

**ORIGINAL**ILLINOIS HEALTH FACILITIES AND SERVICES REVIEW BOARD  
APPLICATION FOR PERMIT

14-007

## SECTION I. IDENTIFICATION, GENERAL INFORMATION, AND CERTIFICATION

RECEIVED

This Section must be completed for all projects.

FEB 14 2014

**Facility/Project Identification**

Facility Name: Concerto Dialysis	HEALTH FACILITIES &	
Street Address: 14255 South Cicero Avenue	SERVICES REVIEW BOARD	
City and Zip Code: Crestwood, Illinois 60445		
County: Cook	Health Service Area: 7	Health Planning Area: A-04

**Applicant Identification****[Provide for each co-applicant] [refer to Part 1130.220]**

Exact Legal Name: Concerto Dialysis, LLC
Address: 7257 North Lincoln Avenue, Lincolnwood, Illinois 60712
Name of Registered Agent: Barry A. Comin, Much Shelist, P.C., Chicago, Illinois
Name of Chief Executive Officer: David Hartman
CEO Address: 7257 North Lincoln Avenue, Lincolnwood, Illinois 60712
Telephone Number: (847) 767-5200

**Type of Ownership of Applicant/Co-Applicant**

<input type="checkbox"/> Non-profit Corporation	<input type="checkbox"/> Partnership
<input type="checkbox"/> For-profit Corporation	<input type="checkbox"/> Governmental
<input checked="" type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Sole Proprietorship
	<input type="checkbox"/> Other

- o Corporations and limited liability companies must provide an **Illinois certificate of good standing**.
- o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

APPEND DOCUMENTATION AS ATTACHMENT-1 IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Primary Contact****[Person to receive ALL correspondence or inquiries]**

Name: Michael Munter
Title: Chief Operating Officer
Company Name: Symphony Healthcare, LLC
Address: 7358 North Lincoln Avenue, Suite 120, Lincolnwood, Illinois 60712
Telephone Number: (847) 767-5200
E-mail Address: mmunter@symphonyhc.com
Fax Number: N/A

**Additional Contact****[Person who is also authorized to discuss the application for permit]**

Name: Joseph J. Hylak-Reinholtz
Title: Attorney at Law
Company Name: Holland & Knight LLP
Address: 131 South Dearborn Street, 30 <sup>th</sup> Floor, Chicago, Illinois 60603
Telephone Number: (312) 715-5885
E-mail Address: jhreinoltz@hklaw.com
Fax Number: (312) 578-6666

**Co-Applicant Identification**

Exact Legal Name: Symphony Dialysis, LLC
Address: 7358 North Lincoln Avenue, Suite 120, Lincolnwood, Illinois 60712
Name of Registered Agent: Barry A. Comin, Much Shelist, P.C., Chicago, Illinois
Name of Chief Executive Officer: Robert J. Hartman
CEO Address: 7358 North Lincoln Avenue, Suite 120, Lincolnwood, Illinois 60712
Telephone Number: (847) 767-5200

**Type of Ownership of Applicant/Co-Applicant**

<input type="checkbox"/> Non-profit Corporation	<input type="checkbox"/> Partnership	
<input type="checkbox"/> For-profit Corporation	<input type="checkbox"/> Governmental	
<input checked="" type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Other

- Corporations and limited liability companies must provide an **Illinois certificate of good standing.**
- Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.

**APPEND DOCUMENTATION AS ATTACHMENT-1, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**Post Permit Contact**

[Person to receive all correspondence subsequent to permit issuance-**THIS PERSON MUST BE EMPLOYED BY THE LICENSED HEALTH CARE FACILITY AS DEFINED AT 20 ILCS 3960**

Name: Seema Jose
Title: Director of Dialysis
Company Name: Concerto Dialysis, LLC
Address: 14255 South Cicero Avenue, Crestwood, Illinois 60445
Telephone Number: (708) 699-9299
E-mail Address: seema.jose@symphonyhc.com
Fax Number: N/A

**Site Ownership**

[Provide this information for each applicable site]

Exact Legal Name of Site Owner: Diana Cicero Avenue, LLC
Address of Site Owner: 3820 Mansell Road, Suite 280, Alphretta, Georgia 30022
Street Address or Legal Description of Site: Proof of ownership or control of the site is to be provided as Attachment 2. Examples of proof of ownership are property tax statement, tax assessor's documentation, deed, notarized statement of the corporation attesting to ownership, an option to lease, a letter of intent to lease or a lease.
APPEND DOCUMENTATION AS <b>ATTACHMENT-2</b> , IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Operating Identity/Licensee**

[Provide this information for each applicable facility, and insert after this page.]

Exact Legal Name: Concerto Dialysis, LLC
Address: 7257 North Lincoln Avenue, Lincolnwood, Illinois 60712
<input type="checkbox"/> Non-profit Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> For-profit Corporation <input type="checkbox"/> Governmental <input checked="" type="checkbox"/> Limited Liability Company <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Other
<ul style="list-style-type: none"> <li>o Corporations and limited liability companies must provide an Illinois Certificate of Good Standing.</li> <li>o Partnerships must provide the name of the state in which organized and the name and address of each partner specifying whether each is a general or limited partner.</li> <li>o <b>Persons with 5 percent or greater interest in the licensee must be identified with the % of ownership.</b></li> </ul>
APPEND DOCUMENTATION AS <b>ATTACHMENT-3</b> , IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Organizational Relationships**

Provide (for each co-applicant) an organizational chart containing the name and relationship of any person or entity who is related (as defined in Part 1130.140). If the related person or entity is participating in the development or funding of the project, describe the interest and the amount and type of any financial contribution.

APPEND DOCUMENTATION AS **ATTACHMENT-4**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Flood Plain Requirements**

[Refer to application instructions.]

Provide documentation that the project complies with the requirements of Illinois Executive Order #2005-5 pertaining to construction activities in special flood hazard areas. As part of the flood plain requirements please provide a map of the proposed project location showing any identified floodplain areas. Floodplain maps can be printed at [www.FEMA.gov](http://www.FEMA.gov) or [www.illinoisfloodmaps.org](http://www.illinoisfloodmaps.org). **This map must be in a readable format.** In addition please provide a statement attesting that the project complies with the requirements of Illinois Executive Order #2005-5 (<http://www.hfsrb.illinois.gov>).

APPEND DOCUMENTATION AS **ATTACHMENT -5**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Historic Resources Preservation Act Requirements**

[Refer to application instructions.]

Provide documentation regarding compliance with the requirements of the Historic Resources Preservation Act.

APPEND DOCUMENTATION AS **ATTACHMENT-6**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**DESCRIPTION OF PROJECT**

**1. Project Classification**

[Check those applicable - refer to Part 1110.40 and Part 1120.20(b)]

Part 1110 Classification:

- Substantive
- Non-substantive

## 2. Narrative Description

Provide in the space below, a brief narrative description of the project. Explain **WHAT** is to be done in **State Board defined terms**, **NOT WHY** it is being done. If the project site does NOT have a street address, include a legal description of the site. Include the rationale regarding the project's classification as substantive or non-substantive.

Concerto Dialysis, LLC (the "Applicant") proposes the expansion of its existing in-center hemodialysis facility, which currently has seven (7) approved hemodialysis stations. The Applicant is seeking approval for another two (2) additional hemodialysis stations (the "Project"). If the Illinois Health Facilities and Services Review Board (the "State Board") approves the Project, the dialysis facility would have a total of nine (9) hemodialysis stations.

The existing dialysis facility is located in Health Service Area 7 ("HSA 7"). According to the most recent inventory of health care services, published by the State Board on February 3, 2014, HSA 7 has a need for an additional 83 dialysis stations.

The total cost of the Project is \$25,000.00, which the Applicant will fund entirely with internal financial resources.

The anticipated project completion date is June 30, 2014.

The Project involves an expansion of dialysis stations at an existing end stage renal disease facility, which is not an act that meets the definition of a "substantive" project as such term is defined under Sections 12(8)(a) through 12(8)(c) of the Illinois Health Facilities Planning Act. As a result, this is a non-substantive project.

**Project Costs and Sources of Funds**

Complete the following table listing all costs (refer to Part 1120.110) associated with the project. When a project or any component of a project is to be accomplished by lease, donation, gift, or other means, the fair market or dollar value (refer to Part 1130.140) of the component must be included in the estimated project cost. If the project contains non-reviewable components that are not related to the provision of health care, complete the second column of the table below. Note, the use and sources of funds must equal.

<b>Project Costs and Sources of Funds</b>			
<b>USE OF FUNDS</b>	<b>CLINICAL</b>	<b>NONCLINICAL</b>	<b>TOTAL</b>
Preplanning Costs	\$0	\$0	\$0
Site Survey and Soil Investigation	\$0	\$0	\$0
Site Preparation	\$0	\$0	\$0
Off Site Work	\$0	\$0	\$0
New Construction Contracts	\$0	\$0	\$0
Modernization Contracts	\$2,500.00	\$0	\$2,500.00
Contingencies	\$0	\$0	\$0
Architectural/Engineering Fees	\$0	\$0	\$0
Consulting and Other Fees	\$7,500.00	\$0	\$7,500.00
Movable/Other Equipment (not in construction contracts)	\$15,000.00	\$0	\$15,000.00
Bond Issuance Expense (project related)	\$0	\$0	\$0
Net Interest Expense During Construction (project related)	\$0	\$0	\$0
Fair Market Value of Leased Space or Equipment	\$0	\$0	\$0
Other Costs To Be Capitalized	\$0	\$0	\$0
Acquisition of Building or Other Property (excluding land)	\$0	\$0	\$0
<b>TOTAL USES OF FUNDS</b>	<b>\$25,000.00</b>	<b>\$0</b>	<b>\$25,000.00</b>
<b>SOURCE OF FUNDS</b>	<b>CLINICAL</b>	<b>NONCLINICAL</b>	<b>TOTAL</b>
Cash and Securities	\$25,000.00	\$0	\$25,000.00
Pledges	\$0	\$0	\$0
Gifts and Bequests	\$0	\$0	\$0
Bond Issues (project related)	\$0	\$0	\$0
Mortgages	\$0	\$0	\$0
Leases (fair market value)	\$0	\$0	\$0
Governmental Appropriations	\$0	\$0	\$0
Grants	\$0	\$0	\$0
Other Funds and Sources	\$0	\$0	\$0
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$25,000.00</b>	<b>\$0</b>	<b>\$25,000.00</b>
<b>NOTE: ITEMIZATION OF EACH LINE ITEM MUST BE PROVIDED AT ATTACHMENT-7, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM</b>			



**Cost Space Requirements**

Provide in the following format, the department/area **DGSF** or the building/area **BGSF** and cost. The type of gross square footage either **DGSF** or **BGSF** must be identified. The sum of the department costs **MUST** equal the total estimated project costs. Indicate if any space is being reallocated for a different purpose. Include outside wall measurements plus the department's or area's portion of the surrounding circulation space. **Explain the use of any vacated space.**

Dept. / Area	Cost	Gross Square Feet		Amount of Proposed Total Gross Square Feet That Is:			
		Existing	Proposed	New Const.	Modernized	As Is	Vacated Space
<b>REVIEWABLE</b>							
In-Center Hemodialysis	\$25,000.00				\$25,000.00		
Total Clinical	\$25,000.00				\$25,000.00		
<b>NON REVIEWABLE</b>							
Administrative							
Parking							
Gift Shop							
Total Non-clinical							
<b>TOTAL</b>	<b>\$25,000.00</b>				<b>\$25,000.00</b>		

APPEND DOCUMENTATION AS ATTACHMENT-9, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**Facility Bed Capacity and Utilization -- Not Applicable (See Comment Below)**

Complete the following chart, as applicable. Complete a separate chart for each facility that is a part of the project and insert following this page. Provide the existing bed capacity and utilization data for the latest **Calendar Year for which the data are available**. Include **observation days in the patient day totals for each bed service**. Any bed capacity discrepancy from the Inventory will result in the application being deemed **incomplete**.

<b>FACILITY NAME:</b>		<b>CITY:</b>			
<b>REPORTING PERIOD DATES:</b>		<b>From:</b>	<b>to:</b>		
<b>Category of Service</b>	<b>Authorized Beds</b>	<b>Admissions</b>	<b>Patient Days</b>	<b>Bed Changes</b>	<b>Proposed Beds</b>
Medical/Surgical					
Obstetrics					
Pediatrics					
Intensive Care					
Comprehensive Physical Rehabilitation					
Acute/Chronic Mental Illness					
Neonatal Intensive Care					
General Long Term Care					
Specialized Long Term Care					
Long Term Acute Care					
Other					
<b>TOTALS:</b>					

Note:

The ESRD facility that is the subject this project is Concerto Dialysis, an in-center hemodialysis facility located in Crestwood, Illinois (the "ESRD Facility"). The ESRD Facility is Medicare-certified and has been recently authorized by Medicare to operate a seven (7) station facility. Until this approval, the ESRD Facility operated a six (6) station in-center dialysis facility.

**CERTIFICATION**

The application must be signed by the authorized representative(s) of the applicant entity. The authorized representative(s) are:

- o in the case of a corporation, any two of its officers or members of its Board of Directors;
- o in the case of a limited liability company, any two of its managers or members (or the sole manger or member when two or more managers or members do not exist);
- o in the case of a partnership, two of its general partners (or the sole general partner, when two or more general partners do not exist);
- o in the case of estates and trusts, two of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and
- o in the case of a sole proprietor, the individual that is the proprietor.

This Application for Permit is filed on the behalf of CONCERTO DIALYSIS, LLC \*  
 in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act. The undersigned certifies that he or she has the authority to execute and file this application for permit on behalf of the applicant entity. The undersigned further certifies that the data and information provided herein, and appended hereto, are complete and correct to the best of his or her knowledge and belief. The undersigned also certifies that the permit application fee required for this application is sent herewith or will be paid upon request.

*Michael Munter*  
 SIGNATURE  
Michael Munter  
 PRINTED NAME  
Vice President  
 PRINTED TITLE

*Elizabeth Kosty*  
 SIGNATURE  
ELIZABETH KOSTY  
 PRINTED NAME  
MEMBER  
 PRINTED TITLE

Notarization:  
 Subscribed and sworn to before me  
 this 6 day of February, 2014

Notarization:  
 Subscribed and sworn to before me  
 this 6 day of February, 2014

*Amy L. Kaniff*  
 Signature of Notary

*Amy L. Kaniff*  
 Signature of Notary

Seal

Seal



\*Insert EXACT legal name of the applicant

**CERTIFICATION**

The application must be signed by the authorized representative(s) of the applicant entity. The authorized representative(s) are:

- in the case of a corporation, any two of its officers or members of its Board of Directors;
- in the case of a limited liability company, any two of its managers or members (or the sole manger or member when two or more managers or members do not exist);
- in the case of a partnership, two of its general partners (or the sole general partner, when two or more general partners do not exist);
- in the case of estates and trusts, two of its beneficiaries (or the sole beneficiary when two or more beneficiaries do not exist); and
- in the case of a sole proprietor, the individual that is the proprietor.

This Application for Permit is filed on the behalf of SYMPHONY HEALTHCARE, LLC \*  
 in accordance with the requirements and procedures of the Illinois Health Facilities Planning Act.  
 The undersigned certifies that he or she has the authority to execute and file this application for  
 permit on behalf of the applicant entity. The undersigned further certifies that the data and  
 information provided herein, and appended hereto, are complete and correct to the best of his or  
 her knowledge and belief. The undersigned also certifies that the permit application fee required  
 for this application is sent herewith or will be paid upon request.

*[Handwritten Signature]*  
 SIGNATURE  
Michael Munter  
 PRINTED NAME  
COO  
 PRINTED TITLE

*[Handwritten Signature]*  
 SIGNATURE  
DAVID HARTMAN  
 PRINTED NAME  
CEO  
 PRINTED TITLE

Notarization:  
 Subscribed and sworn to before me  
 this 6 day of February, 2014

Notarization:  
 Subscribed and sworn to before me  
 this 6 day of February, 2014

*[Handwritten Signature]*  
 Signature of Notary

*[Handwritten Signature]*  
 Signature of Notary

Seal

Seal



\*Insert EXACT legal name of the applicant

### SECTION III – BACKGROUND, PURPOSE OF THE PROJECT, AND ALTERNATIVES - INFORMATION REQUIREMENTS

This Section is applicable to all projects except those that are solely for discontinuation with no project costs.

#### Criterion 1110.230 – Background, Purpose of the Project, and Alternatives

READ THE REVIEW CRITERION and provide the following required information:

##### BACKGROUND OF APPLICANT

1. A listing of all health care facilities owned or operated by the applicant, including licensing, and certification if applicable.
2. A certified listing of any adverse action taken against any facility owned and/or operated by the applicant during the three years prior to the filing of the application.
3. Authorization permitting HFSRB and DPH access to any documents necessary to verify the information submitted, including, but not limited to: official records of DPH or other State agencies; the licensing or certification records of other states, when applicable; and the records of nationally recognized accreditation organizations. **Failure to provide such authorization shall constitute an abandonment or withdrawal of the application without any further action by HFSRB.**
4. If, during a given calendar year, an applicant submits more than one application for permit, the documentation provided with the prior applications may be utilized to fulfill the information requirements of this criterion. In such instances, the applicant shall attest the information has been previously provided, cite the project number of the prior application, and certify that no changes have occurred regarding the information that has been previously provided. The applicant is able to submit amendments to previously submitted information, as needed, to update and/or clarify data.

**APPEND DOCUMENTATION AS ATTACHMENT-11, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM. EACH ITEM (1-4) MUST BE IDENTIFIED IN ATTACHMENT 11.**

##### PURPOSE OF PROJECT

1. Document that the project will provide health services that improve the health care or well-being of the market area population to be served.
2. Define the planning area or market area, or other, per the applicant's definition.
3. Identify the existing problems or issues that need to be addressed, as applicable and appropriate for the project. [See 1110.230(b) for examples of documentation.]
4. Cite the sources of the information provided as documentation.
5. Detail how the project will address or improve the previously referenced issues, as well as the population's health status and well-being.
6. Provide goals with quantified and measurable objectives, with specific timeframes that relate to achieving the stated goals **as appropriate.**

For projects involving modernization, describe the conditions being upgraded if any. For facility projects, include statements of age and condition and regulatory citations if any. For equipment being replaced, include repair and maintenance records.

**NOTE: Information regarding the "Purpose of the Project" will be included in the State Board Report.**

**APPEND DOCUMENTATION AS ATTACHMENT-12, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM. EACH ITEM (1-6) MUST BE IDENTIFIED IN ATTACHMENT 12.**

**ALTERNATIVES**

- 1) Identify **ALL** of the alternatives to the proposed project:

Alternative options **must** include:

- A) Proposing a project of greater or lesser scope and cost;
  - B) Pursuing a joint venture or similar arrangement with one or more providers or entities to meet all or a portion of the project's intended purposes; developing alternative settings to meet all or a portion of the project's intended purposes;
  - C) Utilizing other health care resources that are available to serve all or a portion of the population proposed to be served by the project; and
  - D) Provide the reasons why the chosen alternative was selected.
- 2) Documentation shall consist of a comparison of the project to alternative options. The comparison shall address issues of total costs, patient access, quality and financial benefits in both the short term (within one to three years after project completion) and long term. This may vary by project or situation. **FOR EVERY ALTERNATIVE IDENTIFIED THE TOTAL PROJECT COST AND THE REASONS WHY THE ALTERNATIVE WAS REJECTED MUST BE PROVIDED.**
- 3) The applicant shall provide empirical evidence, including quantified outcome data that verifies improved quality of care, as available.

**APPEND DOCUMENTATION AS ATTACHMENT-13, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**SECTION IV - PROJECT SCOPE, UTILIZATION, AND UNFINISHED/SHELL SPACE**

**Criterion 1110.234 - Project Scope, Utilization, and Unfinished/Shell Space**

READ THE REVIEW CRITERION and provide the following information:

**SIZE OF PROJECT:**

1. Document that the amount of physical space proposed for the proposed project is necessary and not excessive. **This must be a narrative.**
2. If the gross square footage exceeds the BGSF/DGSF standards in Appendix B, justify the discrepancy by documenting one of the following:
  - a. Additional space is needed due to the scope of services provided, justified by clinical or operational needs, as supported by published data or studies;
  - b. The existing facility's physical configuration has constraints or impediments and requires an architectural design that results in a size exceeding the standards of Appendix B;
  - c. The project involves the conversion of existing space that results in excess square footage.

Provide a narrative for any discrepancies from the State Standard. A table must be provided in the following format with Attachment 14.

SIZE OF PROJECT				
DEPARTMENT/SERVICE	PROPOSED BGSF/DGSF	STATE STANDARD	DIFFERENCE	MET STANDARD?

APPEND DOCUMENTATION AS ATTACHMENT-14, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**PROJECT SERVICES UTILIZATION:**

This criterion is applicable only to projects or portions of projects that involve services, functions or equipment for which HFSRB has established utilization standards or occupancy targets in 77 Ill. Adm. Code 1100.

Document that in the second year of operation, the annual utilization of the service or equipment shall meet or exceed the utilization standards specified in 1110.Appendix B. **A narrative of the rationale that supports the projections must be provided.**

A table must be provided in the following format with Attachment 15.

UTILIZATION					
	DEPT./ SERVICE	HISTORICAL UTILIZATION (PATIENT DAYS) (TREATMENTS) ETC.	PROJECTED UTILIZATION	STATE STANDARD	MET STANDARD?
YEAR 1					
YEAR 2					

APPEND DOCUMENTATION AS ATTACHMENT-15, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**UNFINISHED OR SHELL SPACE: NOT APPLICABLE – NO UNFINISHED SHELL SPACE**

Provide the following information:

1. Total gross square footage of the proposed shell space;
2. The anticipated use of the shell space, specifying the proposed GSF to be allocated to each department, area or function;
3. Evidence that the shell space is being constructed due to
  - a. Requirements of governmental or certification agencies; or
  - b. Experienced increases in the historical occupancy or utilization of those areas proposed to occupy the shell space.
4. Provide:
  - a. Historical utilization for the area for the latest five-year period for which data are available; and
  - b. Based upon the average annual percentage increase for that period, projections of future utilization of the area through the anticipated date when the shell space will be placed into operation.

APPEND DOCUMENTATION AS ATTACHMENT-16, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**ASSURANCES: NOT APPLICABLE – NO UNFINISHED SHELL SPACE**

Submit the following:

1. Verification that the applicant will submit to HFSRB a CON application to develop and utilize the shell space, regardless of the capital thresholds in effect at the time or the categories of service involved.
2. The estimated date by which the subsequent CON application (to develop and utilize the subject shell space) will be submitted; and
3. The anticipated date when the shell space will be completed and placed into operation.

APPEND DOCUMENTATION AS ATTACHMENT-17, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**SECTION VII - SERVICE SPECIFIC REVIEW CRITERIA**

**G. Criterion 1110.1430 - In-Center Hemodialysis**

1. Applicants proposing to establish, expand and/or modernize In-Center Hemodialysis must submit the following information:
2. Indicate station capacity changes by Service: Indicate # of stations changed by action(s):

Category of Service	# Existing Stations	# Proposed Stations
<input checked="" type="checkbox"/> In-Center Hemodialysis	7	9

3. READ the applicable review criteria outlined below and **submit the required documentation for the criteria:**

APPLICABLE REVIEW CRITERIA	Establish	Expand	Modernize
1110.1430(b)(1) - Planning Area Need - 77 Ill. Adm. Code 1100 (formula calculation)	X		
1110.1430(b)(2) - Planning Area Need - Service to Planning Area Residents	X	X	
1110.1430(b)(3) - Planning Area Need - Service Demand - Establishment of Category of Service	X		
1110.1430(b)(4) - Planning Area Need - Service Demand - Expansion of Existing Category of Service		X	
1110.1430(b)(5) - Planning Area Need - Service Accessibility	X		
1110.1430(c)(1) - Unnecessary Duplication of Services	X		
1110.1430(c)(2) - Maldistribution	X		
1110.1430(c)(3) - Impact of Project on Other Area Providers	X		
1110.1430(d)(1) - Deteriorated Facilities			X
1110.1430(d)(2) - Documentation			X
1110.1430(d)(3) - Documentation Related to Cited Problems			X
1110.1430(e) - Staffing Availability	X	X	
1110.1430(f) - Support Services	X	X	X
1110.1430(g) - Minimum Number of Stations	X		
1110.1430(h) - Continuity of Care	X		
1110.1430(j) - Assurances	X	X	X

**APPEND DOCUMENTATION AS ATTACHMENT-26, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

4. Projects for relocation of a facility from one location in a planning area to another in the same planning area must address the requirements listed in subsection (a)(1) for the "Establishment of Services or Facilities", as well as the requirements in Section 1110.130 - "Discontinuation" and subsection 1110.1430(i) - "Relocation of Facilities".

The following Sections **DO NOT** need to be addressed by the applicants or co-applicants responsible for funding or guaranteeing the funding of the project if the applicant has a bond rating of A- or better from Fitch's or Standard and Poor's rating agencies, or A3 or better from Moody's (the rating shall be affirmed within the latest 18 month period prior to the submittal of the application):

- Section 1120.120 Availability of Funds – Review Criteria
- Section 1120.130 Financial Viability – Review Criteria
- Section 1120.140 Economic Feasibility – Review Criteria, subsection (a)

**VIII. - 1120.120 - Availability of Funds**

The applicant shall document that financial resources shall be available and be equal to or exceed the estimated total project cost plus any related project costs by providing evidence of sufficient financial resources from the following sources, as applicable: **Indicate the dollar amount to be provided from the following sources:**

\$25,000.00	a)	Cash and Securities – statements (e.g., audited financial statements, letters from financial institutions, board resolutions) as to:
		1) the amount of cash and securities available for the project, including the identification of any security, its value and availability of such funds; and
		2) interest to be earned on depreciation account funds or to be earned on any asset from the date of applicant's submission through project completion;
_____	b)	Pledges – for anticipated pledges, a summary of the anticipated pledges showing anticipated receipts and discounted value, estimated time table of gross receipts and related fundraising expenses, and a discussion of past fundraising experience.
_____	c)	Gifts and Bequests – verification of the dollar amount, identification of any conditions of use, and the estimated time table of receipts;
_____	d)	Debt – a statement of the estimated terms and conditions (including the debt time period, variable or permanent interest rates over the debt time period, and the anticipated repayment schedule) for any interim and for the permanent financing proposed to fund the project, including:
		1) For general obligation bonds, proof of passage of the required referendum or evidence that the governmental unit has the authority to issue the bonds and evidence of the dollar amount of the issue, including any discounting anticipated;
		2) For revenue bonds, proof of the feasibility of securing the specified amount and interest rate;
		3) For mortgages, a letter from the prospective lender attesting to the expectation of making the loan in the amount and time indicated, including the anticipated interest rate and any conditions associated with the mortgage, such as, but not limited to, adjustable interest rates, balloon payments, etc.;
		4) For any lease, a copy of the lease, including all the terms and conditions, including any purchase options, any capital improvements to the property and provision of capital equipment;
		5) For any option to lease, a copy of the option, including all terms and conditions.
_____	e)	Governmental Appropriations – a copy of the appropriation Act or ordinance accompanied by a statement of funding availability from an official of the governmental unit. If funds are to be made available from subsequent fiscal years, a copy of a resolution or other action of the governmental unit attesting to this intent;
_____	f)	Grants – a letter from the granting agency as to the availability of funds in terms of the amount and time of receipt;
_____	g)	All Other Funds and Sources – verification of the amount and type of any other funds that will be used for the project.
\$25,000.00	<b>TOTAL FUNDS AVAILABLE</b>	

APPEND DOCUMENTATION AS ATTACHMENT-36, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**IX. 1120.130 - Financial Viability**

All the applicants and co-applicants shall be identified, specifying their roles in the project funding or guaranteeing the funding (sole responsibility or shared) and percentage of participation in that funding.

**Financial Viability Waiver**

The applicant is not required to submit financial viability ratios if:

1. "A" Bond rating or better
2. All of the projects capital expenditures are completely funded through internal sources
3. The applicant's current debt financing or projected debt financing is insured or anticipated to be insured by MBIA (Municipal Bond Insurance Association Inc.) or equivalent
4. The applicant provides a third party surety bond or performance bond letter of credit from an A rated guarantor.

See Section 1120.130 Financial Waiver for information to be provided

**APPEND DOCUMENTATION AS ATTACHMENT-37, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

The applicant or co-applicant that is responsible for funding or guaranteeing funding of the project shall provide viability ratios for the latest three years for which audited financial statements are available and for the first full fiscal year at target utilization, but no more than two years following project completion. When the applicant's facility does not have facility specific financial statements and the facility is a member of a health care system that has combined or consolidated financial statements, the system's viability ratios shall be provided. If the health care system includes one or more hospitals, the system's viability ratios shall be evaluated for conformance with the applicable hospital standards.

Provide Data for Projects Classified as:	Category A or Category B (last three years)			Category B (Projected)
Enter Historical and/or Projected Years:				
Current Ratio	<b>THE APPLICANT MEETS THE FINANCIAL VIABILITY WAIVER CRITERIA BECAUSE ALL OF THE PROJECT'S CAPITAL EXPENDITURES ARE COMPLETELY FUNDED THROUGH INTERNAL RESOURCES; THEREFORE, NO RATIOS ARE PROVIDED.</b>			
Net Margin Percentage				
Percent Debt to Total Capitalization				
Projected Debt Service Coverage				
Days Cash on Hand				
Cushion Ratio				

Provide the methodology and worksheets utilized in determining the ratios detailing the calculation and applicable line item amounts from the financial statements. Complete a separate table for each co-applicant and provide worksheets for each.

**2. Variance**

Applicants not in compliance with any of the viability ratios shall document that another organization, public or private, shall assume the legal responsibility to meet the debt obligations should the applicant default.

**APPEND DOCUMENTATION AS ATTACHMENT 38, IN NUMERICAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.**

**X. 1120.140 - Economic Feasibility**

**This section is applicable to all projects subject to Part 1120.**

**A. Reasonableness of Financing Arrangements**

The applicant shall document the reasonableness of financing arrangements by submitting a notarized statement signed by an authorized representative that attests to one of the following:

- 1) That the total estimated project costs and related costs will be funded in total with cash and equivalents, including investment securities, unrestricted funds, received pledge receipts and funded depreciation; or
- 2) That the total estimated project costs and related costs will be funded in total or in part by borrowing because:
  - A) A portion or all of the cash and equivalents must be retained in the balance sheet asset accounts in order to maintain a current ratio of at least 2.0 times for hospitals and 1.5 times for all other facilities; or
  - B) Borrowing is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day period.

**B. Conditions of Debt Financing**

This criterion is applicable only to projects that involve debt financing. The applicant shall document that the conditions of debt financing are reasonable by submitting a notarized statement signed by an authorized representative that attests to the following, as applicable:

- 1) That the selected form of debt financing for the project will be at the lowest net cost available;
- 2) That the selected form of debt financing will not be at the lowest net cost available, but is more advantageous due to such terms as prepayment privileges, no required mortgage, access to additional indebtedness, term (years), financing costs and other factors;
- 3) That the project involves (in total or in part) the leasing of equipment or facilities and that the expenses incurred with leasing a facility or equipment are less costly than constructing a new facility or purchasing new equipment.

**C. Reasonableness of Project and Related Costs**

Read the criterion and provide the following:

- 1. Identify each department or area impacted by the proposed project and provide a cost and square footage allocation for new construction and/or modernization using the following format (insert after this page).

COST AND GROSS SQUARE FEET BY DEPARTMENT OR SERVICE											
Department (list below)	A	B	C		D		E	F	G	H	Total Cost (G + H)
	Cost/Square Foot New	Mod.	Gross Sq. Ft. New	Circ.*	Gross Sq. Ft. Mod.	Circ.*	Const. \$ (A x C)	Mod. \$ (B x E)			
Contingency											
<b>TOTALS</b>											

\* Include the percentage (%) of space for circulation

**D. Projected Operating Costs**

The applicant shall provide the projected direct annual operating costs (in current dollars per equivalent patient day or unit of service) for the first full fiscal year at target utilization but no more than two years following project completion. Direct cost means the fully allocated costs of salaries, benefits and supplies for the service.

**E. Total Effect of the Project on Capital Costs**

The applicant shall provide the total projected annual capital costs (in current dollars per equivalent patient day) for the first full fiscal year at target utilization but no more than two years following project completion.

APPEND DOCUMENTATION AS ATTACHMENT -39, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

**XI. Safety Net Impact Statement -- Not Applicable (Project is Non-Substantive)**

**SAFETY NET IMPACT STATEMENT that describes all of the following must be submitted for ALL SUBSTANTIVE AND DISCONTINUATION PROJECTS:**

1. The project's material impact, if any, on essential safety net services in the community, to the extent that it is feasible for an applicant to have such knowledge.
2. The project's impact on the ability of another provider or health care system to cross-subsidize safety net services, if reasonably known to the applicant.
3. How the discontinuation of a facility or service might impact the remaining safety net providers in a given community, if reasonably known by the applicant.

**Safety Net Impact Statements shall also include all of the following:**

1. For the 3 fiscal years prior to the application, a certification describing the amount of charity care provided by the applicant. The amount calculated by hospital applicants shall be in accordance with the reporting requirements for charity care reporting in the Illinois Community Benefits Act. Non-hospital applicants shall report charity care, at cost, in accordance with an appropriate methodology specified by the Board.
2. For the 3 fiscal years prior to the application, a certification of the amount of care provided to Medicaid patients. Hospital and non-hospital applicants shall provide Medicaid information in a manner consistent with the information reported each year to the Illinois Department of Public Health regarding "Inpatients and Outpatients Served by Payor Source" and "Inpatient and Outpatient Net Revenue by Payor Source" as required by the Board under Section 13 of this Act and published in the Annual Hospital Profile.
3. Any information the applicant believes is directly relevant to safety net services, including information regarding teaching, research, and any other service.

**A table in the following format must be provided as part of Attachment 43.**

Safety Net Information per PA 96-0031			
CHARITY CARE			
Charity (# of patients)	Year	Year	Year
Inpatient			
Outpatient			
<b>Total</b>			
Charity (cost in dollars)	Year	Year	Year
Inpatient			
Outpatient			
<b>Total</b>			
MEDICAID			
Medicaid (# of patients)	Year	Year	Year
Inpatient			
Outpatient			
<b>Total</b>			
Medicaid (revenue)	Year	Year	Year
Inpatient			
Outpatient			
<b>Total</b>			

**APPEND DOCUMENTATION AS ATTACHMENT 40, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM**

**XII. Charity Care Information**

Charity Care information **MUST** be furnished for **ALL** projects.

1. All applicants and co-applicants shall indicate the amount of charity care for the latest three **audited** fiscal years, the cost of charity care and the ratio of that charity care cost to net patient revenue.
2. If the applicant owns or operates one or more facilities, the reporting shall be for each individual facility located in Illinois. If charity care costs are reported on a consolidated basis, the applicant shall provide documentation as to the cost of charity care; the ratio of that charity care to the net patient revenue for the consolidated financial statement; the allocation of charity care costs; and the ratio of charity care cost to net patient revenue for the facility under review.
3. If the applicant is not an existing facility, it shall submit the facility's projected patient mix by payer source, anticipated charity care expense and projected ratio of charity care to net patient revenue by the end of its second year of operation.

Charity care" means care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third-party payer. (20 ILCS 3960/3) Charity Care **must** be provided at cost.

A table in the following format must be provided for all facilities as part of Attachment 44.

CHARITY CARE			
	Year	Year	Year
Net Patient Revenue			
Amount of Charity Care (charges)			
Cost of Charity Care			

APPEND DOCUMENTATION AS **ATTACHMENT-41**, IN NUMERIC SEQUENTIAL ORDER AFTER THE LAST PAGE OF THE APPLICATION FORM.

After paginating the entire, completed application, indicate in the chart below, the page numbers for the attachments included as part of the project's application for permit:

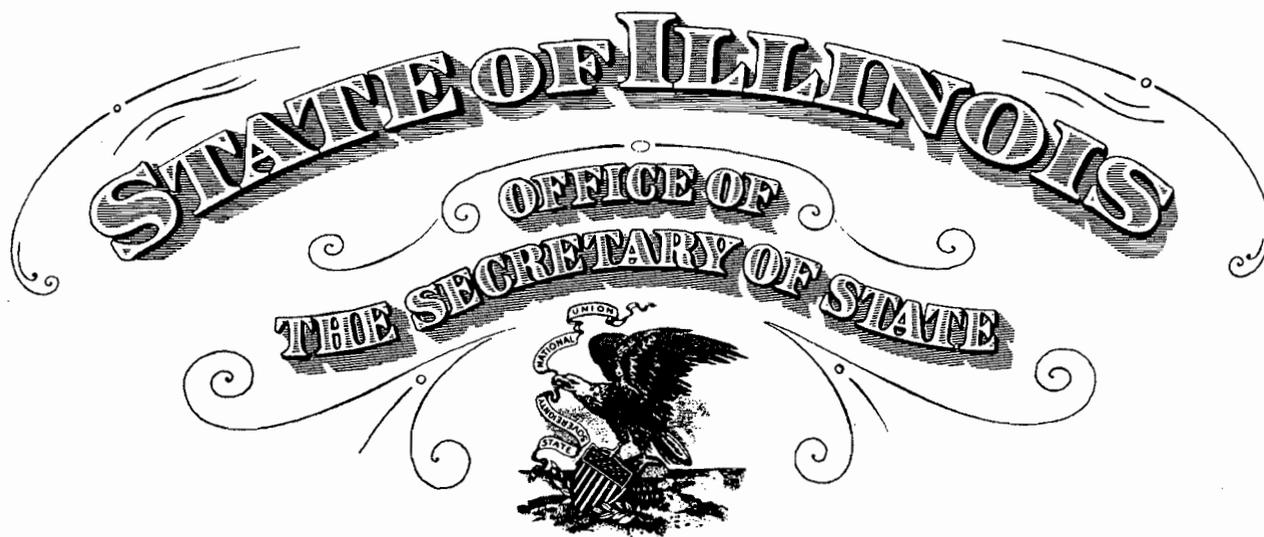
<b>INDEX OF ATTACHMENTS</b>		
<b>ATTACHMENT NO.</b>		<b>PAGES</b>
1	Applicant/Co-Applicant Identification including Certificate of Good Standing	24-26
2	Site Ownership	27-165
3	Persons with 5 percent or greater interest in the licensee must be identified with the % of ownership.	166-168
4	Organizational Relationships (Organizational Chart) Certificate of Good Standing Etc.	169
5	Flood Plain Requirements	170-177
6	Historic Preservation Act Requirements	178-184
7	Project and Sources of Funds Itemization	185-186
8	Obligation Document if required	187
9	Cost Space Requirements	188
10	Discontinuation	n/a
11	Background of the Applicant	189-197
12	Purpose of the Project	198-220
13	Alternatives to the Project	221-224
14	Size of the Project	225
15	Project Service Utilization	226-228
16	Unfinished or Shell Space	n/a
17	Assurances for Unfinished/Shell Space	n/a
18	Master Design Project	n/a
19	Mergers, Consolidations and Acquisitions	n/a
	<b>Service Specific:</b>	
20	Medical Surgical Pediatrics, Obstetrics, ICU	n/a
21	Comprehensive Physical Rehabilitation	n/a
22	Acute Mental Illness	n/a
23	Neonatal Intensive Care	n/a
24	Open Heart Surgery	n/a
25	Cardiac Catheterization	n/a
26	In-Center Hemodialysis	229-266
27	Non-Hospital Based Ambulatory Surgery	n/a
28	Selected Organ Transplantation	n/a
29	Kidney Transplantation	n/a
30	Subacute Care Hospital Model	n/a
31	Children's Community-Based Health Care Center	n/a
32	Community-Based Residential Rehabilitation Center	n/a
33	Long Term Acute Care Hospital	n/a
34	Clinical Service Areas Other than Categories of Service	n/a
35	Freestanding Emergency Center Medical Services	n/a
	<b>Financial and Economic Feasibility:</b>	
36	Availability of Funds	267-270
37	Financial Waiver	271
38	Financial Viability	272-279
39	Economic Feasibility	280-281
40	Safety Net Impact Statement	282
41	Charity Care Information	283
APPENDIX 1	Physician Referral Letters	284-297

**ATTACHMENT 1**

**Applicant Ownership Information**

A Certificate of Good Standing issued by the Illinois Secretary of State for Concerto Dialysis, LLC, an Illinois limited liability company, is attached immediately following this page. Concerto Dialysis, LLC is the certificate of need permit applicant.

A Certificate of Good Standing issued by the Delaware Secretary of State for Symphony Healthcare, LLC, a Delaware limited liability company, is attached immediately following this page. Symphony Healthcare, LLC is a co-applicant to this certificate of need permit application.



**To all to whom these Presents Shall Come, Greeting:**

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

CONCERTO DIALYSIS LLC, HAVING ORGANIZED IN THE STATE OF ILLINOIS ON OCTOBER 09, 2013, APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A DOMESTIC LIMITED LIABILITY COMPANY IN THE STATE OF ILLINOIS.



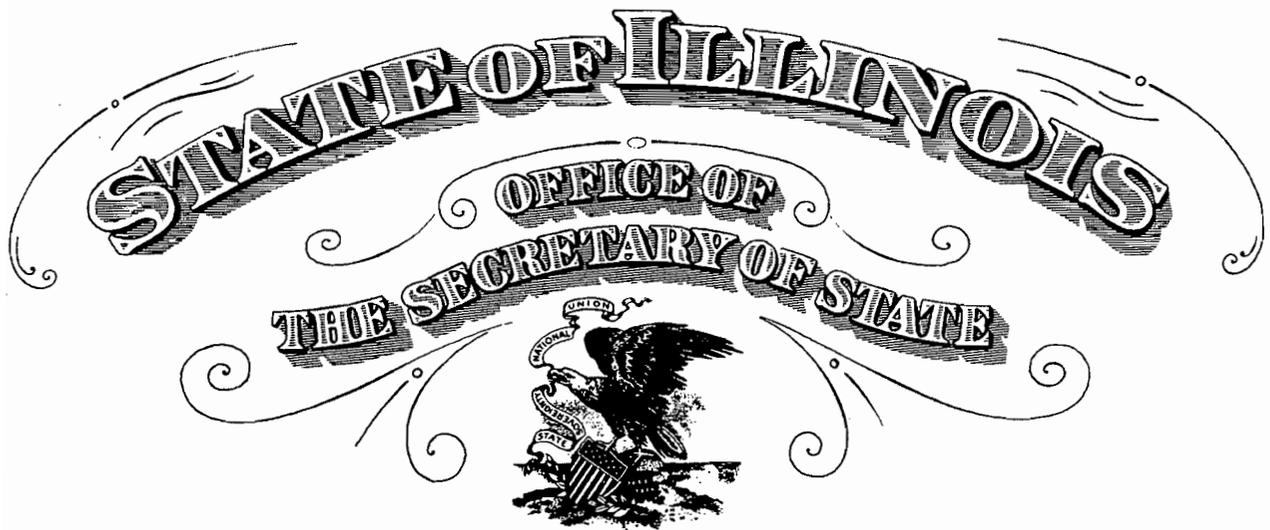
Authentication #: 1328400386

Authenticate at: <http://www.cyberdriveillinois.com>

***In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 11TH day of OCTOBER A.D. 2013 .***

*Jesse White*

SECRETARY OF STATE



**To all to whom these Presents Shall Come, Greeting:**

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

SYMPHONY HEALTHCARE LLC, HAVING ORGANIZED IN THE STATE OF ILLINOIS ON NOVEMBER 22, 2011, APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A DOMESTIC LIMITED LIABILITY COMPANY IN THE STATE OF ILLINOIS.



Authentication #: 1328802174

Authenticate at: <http://www.cyberdriveillinois.com>

***In Testimony Whereof,*** I hereto set  
my hand and cause to be affixed the Great Seal of  
the State of Illinois, this 15TH  
day of OCTOBER A.D. 2013 .

*Jesse White*

SECRETARY OF STATE

## ATTACHMENT 2

### **Site Ownership**

The end stage renal disease facility (the "ESRD Facility") owned and operated by Concerto Dialysis, LLC (the "Applicant") is located in leased space. The ESRD Facility's address is 14255 South Cicero Avenue, Crestwood, Illinois 60445. The ESRD Facility's site owner is Diana Cicero Avenue, LLC (the "Landlord"). A copy of the master lease agreement (the "Master Lease"), which documents that the Landlord is the party with ownership of and has ultimate control over the real property related to the ESRD Facility, is attached immediately after this page. The Master Lease is by and between the Landlord (the "Primary Landlord") and an affiliate of the Primary Landlord, Diana Master Landlord, LLC (the "Primary Tenant"). A copy of the Master Lease is attached immediately following this page.

The Applicant is not a party to the Master Lease. Instead, the Primary Tenant becomes the sub-landlord (the "Sub-Landlord") under a sublease agreement between the Applicant (as "Sub-Tenant") and the Sub-Landlord. A copy of the Sublease between the Applicant/Sub-Tenant and the Sub-Landlord is attached immediately following the attached Master Lease.

### **Structure of Leasing Arrangement for Concerto Dialysis, LLC**

#### **MASTER LEASE & SECURITY AGREEMENT**

##### PARTIES:

Diana Cicero Avenue, LLC et al.  
(Primary Landlord)

&

Diana Master Landlord, LLC  
(Primary Tenant)



#### **SUBLEASE AGREEMENT**

##### PARTIES:

Diana Master Landlord, LLC  
(Sub-Landlord)

&

Concerto Dialysis, LLC  
(Sub-Tenant)

## **Master Lease**

(see attached)

**MASTER LEASE AND SECURITY AGREEMENT**

**By and Between**

**Diana Monroe Street, LLC  
Diana Galeria Blvd, LLC  
Diana Cicero Avenue, LLC  
Diana Larkin Avenue, LLC  
Diana Kickapoo Street, LLC  
Diana McKinley Avenue, LLC  
Diana Pearl Street, LLC  
Diana Castellano Drive, LLC  
Diana Squaw Prairie Road, LLC**

**Each, a Delaware limited liability company**

**Collectively,**

**as "Landlord"**

**and**

**DIANA MASTER LANDLORD, LLC**

**a Delaware limited liability company**

**as "Tenant"**

**dated as of December 31, 2011**

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## TABLE OF CONTENTS

	<u>Page</u>
1. Definitions.....	5
2. Demise; Term.....	15
2.1 Demise.....	15
2.2 Term.....	16
2.3 Renewal Terms.....	17
3. Rent.....	17
3.1 Initial Term Minimum Rent.....	17
3.2 Percentage Rent.....	20
3.3 Renewal Term Minimum Rent.....	24
3.4 Proration for Partial Periods; Business Days.....	24
3.5 Absolute Net Lease.....	24
3.6 Manner of Payment of Rent.....	26
3.7 Additional Minimum Rent Payment.....	25
4. Taxes, Assessments and Other Charges.....	30
4.1 Tenant's Obligations.....	30
4.2 Proration.....	31
4.3 Right to Protest.....	31
4.4 Tax Bills.....	31
4.5 Tax Indemnity.....	32
4.6 Impound.....	33
4.7 Other Charges.....	34
5. Insurance.....	35
5.1 General Insurance Requirements.....	35
5.2 Fire and Extended Coverage.....	37
5.3 Insurance Obtained by Landlord.....	38
5.4 Professional and Public Liability Insurance.....	38
5.5 Workers Compensation.....	38
5.6 Boiler Insurance.....	39
5.7 Business Interruption Insurance.....	39
5.8 Flood Insurance.....	39
5.9 Builder's All Risk Insurance.....	39
5.10 Ordinance or Law Coverage.....	40
5.11 Tail Insurance.....	40
5.12 Waiver of Subrogation.....	41
5.13 Additional Insurance.....	41
5.14 Deductible Amounts.....	41
5.15 Insurance Captive.....	34
6. Use, Maintenance and Alteration of the Premises.....	44
6.1 Tenant's Maintenance Obligations.....	44
6.2 Regulatory Compliance; Qualified Care.....	46
6.3 Continuous Operations; Permitted Use.....	47

6.4	No Liens; Permitted Contests .....	48
6.5	Alterations by Tenant.....	48
6.6	Initial Capital Improvement Investment .....	41
7.	Condition of Premises.....	52
8.	Landlord and Tenant Personal Property .....	53
8.1	Tenant Personal Property.....	53
8.2	Landlord's Security Interest.....	54
8.3	Financing Statements.....	55
8.4	Accounts Receivable.....	56
8.5	Cash Management.....	56
9.	Representations And Warranties.....	58
9.1	Due Authorization And Execution.....	58
9.2	Due Organization.....	59
9.3	No Breach of Other Agreements.....	59
10.	Financial, Management, Litigation and Regulatory Reports .....	59
10.1	Monthly Property Reports.....	59
10.2	Quarterly Financial Statements.....	59
10.3	Annual Financial Statements .....	60
10.4	Accounting Principles.....	60
10.5	Regulatory Reports and Notices .....	61
10.6	Annual Operating Budget .....	62
10.7	Litigation.....	62
10.8	Additional Information .....	62
10.9	Certification .....	63
10.10	Failure to Comply .....	63
10.11	Intentionally Deleted.....	63
10.12	Financial Covenants.....	63
11.	Events of Default and Landlord's Remedies .....	65
11.1	Events of Default .....	65
11.2	Notice and Cure Periods .....	69
11.3	Remedies.....	69
11.4	Cured Default.....	62
11.5	Waiver of Certain Defaults .....	62
11.6	Receivership.....	73
11.7	Late Charges .....	74
11.8	Remedies Cumulative; No Waiver .....	74
11.9	Performance of Tenant's Obligations by Landlord .....	75
12.	Intentionally Deleted.....	76
13.	Damage by Fire or Other Casualty .....	76
13.1	Reconstruction Using Insurance .....	76
13.2	Surplus Proceeds.....	77
13.3	No Rent Abatement.....	78
14.	Condemnation.....	78
14.1	Complete Taking.....	78
14.2	Partial Taking.....	71

14.3	Lease Remains in Effect .....	72
15.	Provisions on Termination of Term .....	80
15.1	Surrender of Possession .....	80
15.2	Removal of Personal Property .....	81
15.3	Title to Personal Property Not Removed .....	82
15.4	Transition of Premises .....	82
15.5	Limited Extended Operation by Tenant .....	76
16.	Notices and Demands .....	84
17.	Right of Entry .....	86
18.	Landlord May Grant Liens .....	86
19.	Quiet Enjoyment .....	87
20.	Applicable Law .....	87
21.	Preservation of Revenues .....	87
22.	Hazardous Materials .....	91
22.1	Hazardous Material Covenants .....	91
22.2	Tenant Notices to Landlord .....	91
22.3	Remediation .....	92
22.4	Indemnity .....	93
22.5	Environmental Inspection .....	94
22.6	Extension of Term .....	95
22.7	Participation in Hazardous Materials Claims .....	96
23.	Assignment and Subletting .....	96
24.	Indemnification .....	99
25.	Holding Over .....	100
26.	Estoppel Certificates .....	100
27.	Conveyance by Landlord .....	100
28.	Waiver of Jury Trial .....	101
29.	Attorneys' Fees .....	101
30.	Severability .....	101
31.	Counterparts .....	101
32.	Binding Effect .....	102
33.	Memorandum of Lease .....	102
34.	Incorporation of Recitals and Attachments .....	102
35.	Titles and Headings .....	102
36.	Usury Savings Clause .....	102
37.	Joint and Several .....	103
38.	Survival of Representations, Warranties and Covenants .....	103
39.	Interpretation .....	103
40.	Management Fees .....	103
41.	Related Party Goods and Services .....	105
42.	Ancillary Contracts .....	105
43.	Relationship of Parties .....	105
44.	Termination of Lease .....	106
45.	Securitization .....	106
46.	Special Purpose Entity Covenants .....	98

47.	Lender Approval .....	107
48.	Limitation of Landlord's Liabilities.....	107
49.	Intentionally Deleted.....	102
50.	HUD Financing.....	107
51.	REIT Event .....	101
52.	Landlord Financial Information.....	108
53.	Entire Agreement; Modification; Waiver .....	109

**EXHIBITS:**

EXHIBIT A	DESCRIPTION AND LOCATION OF PROPERTY
EXHIBIT B	LEGAL DESCRIPTION OF PROPERTY
EXHIBIT C	PERMITTED EXCEPTIONS
EXHIBIT D	FORM OF EXIT OPERATIONS TRANSFER AGREEMENT
EXHIBIT E	FORM OF LIMITED POWER OF ATTORNEY
EXHIBIT F	SUBTENANTS
EXHIBIT G	FORM OF INTERCREDITOR AGREEMENT
EXHIBIT H	PROPOSED STATE PLAN AMENDMENT

**SCHEDULES**

SCHEDULE 1	LICENSED BEDS
SCHEDULE 5.1	INSURANCE CERTIFICATES
SCHEDULE 13.1	MINIMUM RENT ADJUSTMENT
SCHEDULE 22	PHASE I ENVIRONMENTAL REPORTS
SCHEDULE 44	TERMINATION FEE

## MASTER LEASE AND SECURITY AGREEMENT

THIS MASTER LEASE AND SECURITY AGREEMENT ("Lease") is made and entered into as of the 31<sup>st</sup> day of December, 2011, by and between DIANA MONROE STREET, LLC, DIANA GALERIA BLVD, LLC, DIANA CICERO AVENUE, LLC, DIANA LARKIN AVENUE, LLC, DIANA KICKAPOO STREET, LLC, DIANA MCKINLEY AVENUE, LLC, DIANA PEARL STREET, LLC, and DIANA CASTELLANO DRIVE, LLC, each, a Delaware limited liability company (the "Landlord"), DIANA SQUAW PRAIRIE ROAD, LLC ("Diana Squaw Prairie"), and DIANA MASTER LANDLORD, LLC, a Delaware limited liability company (the "Tenant"), with reference to the following Recitals:

### RECITALS

A. As of the Effective Date, Landlord is the owner of that certain real property, all improvements thereon and all appurtenances thereto, as located, identified and more specifically described on Exhibit A attached hereto (the "Property"), the legal description of which is set forth in Exhibit B attached hereto.

B. As of the Effective Date, Diana Squaw Prairie has assumed the obligations of the tenant under that certain Lease Agreement dated February 1, 1999 (as amended and assigned, the "Maple Crest Lease") by and between the County of Boone, Illinois, an Illinois municipality (the "County"), and Maple Crest Care Centre L.L.C., an Illinois limited liability company ("Maple Crest") for that certain real property, all improvements thereon and all appurtenances thereto, as located, identified and more specifically described on Exhibit A-1 attached hereto (the "Leased Property"), the legal description of which is set forth on Exhibit B-1 attached hereto, pursuant to that certain Assignment and Assumption Agreement dated of even date herewith by

and among Maple Crest, Diana Squaw Prairie and the County (the "Maple Crest Assignment"). Diana Squaw Prairie intends to sublease the Leased Property to Tenant, as sublessee. Upon the effective date of the Maple Crest Assignment (the "Maple Crest Effective Date"), the Leased Property shall automatically become part of the Premises and subject to the Lease.

C. Landlord is the owner of all the furniture, machinery, equipment (including but not limited to the renal dialysis equipment located at the Crestwood Care Centre), appliances, fixtures, supplies, inventory and other personal property located on and used or required in connection with the operation of the Property, except for any assets owned by the manager of the Property and the Leased Property, (the "Landlord Personal Property") for the Healthcare Use (as defined below). Upon the Maple Crest Effective Date, Diana Squaw Prairie shall become the lessee of all the furniture, machinery, equipment, appliances, fixtures, supplies, inventory and other personal property located on and used or required in connection with the operation of the Leased Property, pursuant to the Maple Crest Assignment, and all such personal property shall automatically be included as part of the Landlord Personal Property.

D. Landlord desires to lease the Property and the Landlord Personal Property to Tenant, and Tenant desires to lease the Property and the Landlord Personal Property from Landlord. The Property and the Landlord Personal Property shall be referred to herein collectively as the "Premises."

E. Tenant intends to sublease the Premises to Symphony M.L., LLC, an Illinois limited liability company ("Master Tenant") by entering into a Master Sublease and Security Agreement of even date herewith (the "Master Sublease"). The Master Tenant intends to further sublease the Premises to Symphony Healthcare, LLC, an Illinois limited liability company, as master subtenant ("Symphony") and Symphony intends to further sublease each

facility included in the Premises (each, a "Facility" and together, the "Facilities") pursuant to eight (8) sub-sublease agreements with certain subtenant operator entities. Upon the Maple Crest Effective Date, Tenant shall sublease the Leased Property to a subtenant operator.

**RECOGNITION OF MASTER LEASE;**

**IRREVOCABLE WAIVER OF CERTAIN RIGHTS**

Tenant, in order to induce Landlord to enter into this Lease, to the extent permitted by law:

A. Agrees that: (i) this Lease is a single lease under which the collective Premises are demised as a whole to Tenant and Tenant is estopped to assert that this Lease is anything other than a unitary, indivisible, unseverable instrument pertaining to all, and not less than all, of the Premises; and (ii) neither this Lease nor the duties, obligations or rights of Tenant may be allocated or otherwise divided among the Properties comprising the Premises by Tenant, except to the extent expressly set forth in this Lease;

B. Agrees and is estopped to assert that this Lease in any manner makes Tenant the partner, joint venturer or agent of Landlord;

C. Knowingly waives and relinquishes all rights under or benefits of the provisions of Section 365 of the United States Bankruptcy Code (11 U.S.C. § 365), or any successor or replacement provision or any analogous state law, to selectively assume or reject this Lease with respect to individual Properties as listed on Exhibit A and Exhibit A-1, should, notwithstanding the provisions above, this Lease be determined or found to be in any proceeding, action or arbitration under state or federal bankruptcy, insolvency, debtor-relief or other applicable laws to constitute multiple leases demising multiple properties;

D. Agrees that: (i) this Lease is a "true lease" and is estopped to assert that it is a mortgage, equitable mortgage, deed of trust, trust agreement or other financing or trust arrangement; (ii) the economic realities of this Lease are those of a true lease; (iii) the business relationship created by this Lease is solely that of a long-term commercial lease between Landlord and Tenant and has been entered into by both parties in reliance on the economic and legal bargains contained in it; and (iv) the parties intend that this Lease be regarded as a commercial lease and that upon making a motion for assumption or rejection of the Lease in the event of bankruptcy, Landlord shall have such rights as are applicable to non-residential real estate;

E. Agrees and is estopped to assert to the contrary that: (i) from an economic point of view the portions of the Premises leased under this Lease constitute one economic unit and the rent and all other provisions have been negotiated and agreed based on a demise of all of the Premises covered by this Lease as a single, composite, inseparable transaction; (ii) except as expressly set forth in this Lease, all provisions of this Lease shall apply equally and uniformly to all the Premises as one unit and are not severable; (iii) the economic terms of this Lease would have been substantially different had separate leases for a "divisible" lease been acceptable to Landlord; (iv) except as expressly set forth in this Lease, a default in any of the terms or conditions of this Lease occurring with respect to any portion of the Premises shall be a default under this Lease with respect to all of the Premises; and (v) the provisions of this Lease shall at all times be construed, interpreted and applied such that the intention of Landlord and Tenant to create a unitary lease shall be preserved and maintained; and

F. Agrees that this Lease is intended as, and shall constitute, an agreement of lease, and nothing herein shall be construed as conveying to the Tenant any right, title or interest

in or to the Premises or to any remainder or reversionary estates in the Premises held by any Person, except, in each instance, as a tenant. Under no circumstances shall this Lease be regarded as an assignment of all of Landlord's interest in and to the Premises; instead Landlord and Tenant shall have the relationship between them of landlord and tenant, pursuant to the provisions of this Lease. In no event shall Tenant or any affiliate of Tenant claim depreciation, amortization or interest deductions as owner of the Premises for United States federal, state or local income tax purposes (except as to alterations not financed by Landlord).

#### A G R E E M E N T

**NOW THEREFORE**, in consideration of the mutual covenants, conditions and agreements set forth herein, Landlord and Tenant hereby agree as follows:

**1. Definitions.** As used herein (including any Exhibits and Schedules attached hereto), the following terms shall have the following meanings:

**"Adjusted EBITDAR"** shall mean, for any period, the sum of the following items: (i) Excess Cash Flow plus (ii) an amount equal to the actual amount deposited by Tenant for Capital Expenditures not to exceed the Capital Expenditure Amount as defined in Section 6.1.3 below plus any sum expended in excess of such amount that is required by Landlord or Senior Lender for Capital Expenditures plus (iii) the actual amount of all Minimum Rent paid by Tenant for such period plus (iv) interest in connection with the Working Capital Financing made to Tenant described in Section 8.4 below.

**"Affiliate"** shall mean, with respect to any Person, any other Person which Controls, is Controlled by or is under common Control with the first Person.

**“Auditors”** means any of the “Big Four” accounting firms, Frost, Ruttenberg & Rothblatt and RSM McGladrey or such other regional or national accounting firms selected by Tenant and approved by Landlord, which approval shall not be unreasonably withheld.

**“Business Day(s)”** shall mean Monday through Friday of each week, exclusive of Holidays.

**“Capital Event”** shall mean the sale, recapitalization, refinancing, change in Control, transfer, merger, conveyance or other capital event with respect to the Premises or the entities comprising Landlord or Tenant in a single transaction or a series of transactions.

**“Capital Expenditures”** shall mean expenditures with respect to the Premises (i) that are for the benefit of such property, (ii) that are capitalized in accordance with GAAP and (iii) that shall include Initial Capital Improvements as set forth in Section 6.6.

**“Capital Expenditure Documents”** shall mean (i) copies of paid invoices for the amounts of the Capital Expenditures then being requested (**“Cap Ex Costs”**), (ii) a brief description of the items (including evidence that pursuant to GAAP such expenditure should be capitalized), (iii) any contracts for Capital Expenditures, (iv) lien waivers and releases from all parties furnishing materials and/or services for the Cap Ex Costs, (v) evidence that all required consents or approvals from government authorities have been obtained, and (vi) such other documents as Senior Lender may reasonably require.

**“Control”** or **“Controlled”** shall mean, as applied to any Person, the possession, directly or indirectly, of the power to direct the management and policies of that Person, whether through ownership, voting control, by contract or otherwise.

**“Current Assets”** means all assets of Tenant and Subtenants that in conformity with GAAP and past practices should be classified as current assets on the balance sheet of Tenant and Subtenants, respectively, during such period.

**“Current Liabilities”** means all liabilities of Tenant and Subtenants that in conformity with GAAP and past practices should be classified as current liabilities on the balance sheet of Tenant and Subtenants, respectively, for such period.

**“Current Ratio”** means, at any time, the ratio of Current Assets at such time to Current Liabilities at such time.

**“Debt”** means, as of any date, all of the following: (a) obligations of a Person for borrowed money, whether current or long term, that in accordance with GAAP should be included as liabilities on such Person’s balance sheet; (b) the capitalized amount (determined in accordance with GAAP) of obligations of such Person under leases required to be capitalized in accordance with GAAP for financial reporting purposes, excluding any Minimum Rent payments due under this Lease and Capital Expenditures; (c) obligations of others for which such Person is liable directly or indirectly by way of guaranty (whether by direct guaranty, suretyship, discount, endorsement, take-or-pay agreement, agreement to purchase or advance or other agreement having the effect of a guaranty) or otherwise; (d) liabilities and obligations secured by liens on any assets of such Person, whether those liabilities or obligations are recourse to such Person; and (e) liabilities of such Person, direct or contingent, with respect to letters of credit issues for the account of such Person or others or with respect to bankers’ acceptances created for such Person; provided, however, “Debt” shall not include trade payables incurred or guaranteed in the ordinary course of business or as otherwise permitted by this Lease.

**“Effective Date”** shall mean December 31, 2011.

**“Encumbrance”** shall have the meaning set forth in Section 18.

**“Environmental Activities”** shall mean the use, generation, spilling, depositing, leaching, dumping, transportation, handling, discharge, production, treatment, storage, release or disposal of any Hazardous Materials to or from any portion of the Premises or caused to be located on or present on or under any portion of the Premises during the Term.

**“Environmental Costs”** include interest, costs of response, removal, remedial action, containment, cleanup, investigation, design, engineering and construction, damages (including actual, consequential and punitive damages) for personal injuries and for injury to, destruction of or loss of property or natural resources, relocation or replacement costs, penalties, fines, charges or expenses, attorney’s fees, expert fees, consultation fees, and court costs, and all amounts paid in investigating, defending or settling any of the foregoing.

**“Event of Default”** shall have the meaning set forth in Section 11.1.

**“Excess Cash Flow”** shall mean, for any period, all gross operating revenues with respect to the Premises (including, without limitation, all allowances for contractual discounts and bad debt allowance) less Operating Expenses (defined below) with respect to the Premises and less the following additional items: (i) an amount equal to the actual amount deposited by Tenant for Capital Expenditures not to exceed the Capital Expenditure Amount as defined in Section 6.1.3 below plus any sum expended in excess of such amount that is required by Landlord or Senior Lender; (ii) interest in connection with the Working Capital Financing made to Tenant described in Section 8.4 below; (iii) Minimum Rent; (iv) the Management Fee; (v) any amounts expended to complete Tenant’s Repair Obligation pursuant to Section 14.2 of

this Lease; and (vi) the Remainder disbursed by Tenant in accordance with Section 6.6(a)(4) of this Lease. "**Operating Expenses**" shall mean all normal and customary operating expenses incurred by Tenant in connection with the Premises (specifically including the applicable state tax on Licensed Beds, impounds for property Taxes as set forth in Section 4.6 below and interest paid in connection with the Working Capital Financing to support operation of the Premises) during any applicable period but excluding the following items: (a) any interest expense and loan fees in connection with any loans other than the Working Capital Financing described above; (b) any management fees other than the Management Fee; (c) federal and state income taxes, whether paid or deferred, made during such period; and (d) the aggregate amount of depreciation and amortization expenses for such period. The determination of Excess Cash Flow and Operating Expenses as described herein shall be made in accordance with GAAP. Any exclusions or deductions from Operating Expenses shall not be excluded or deducted again in the calculation of Excess Cash Flow.

**"Fixed Charge Coverage Ratio"** means, at any time, the ratio of Excess Cash Flow at such time to Fixed Charges at such time.

**"Fixed Charge"** means, at any time, the sum of (i) all interest expense obligations of Tenant and Subtenants; plus (ii) scheduled principal payments on all debt obligations of Tenant and Subtenants; plus (iii) expenses relating to all capitalized leases of Tenant and Subtenants but excluding any expenses of Tenant and Subtenants under this Lease, except as provided herein; plus (iv) Percentage Rent under this Lease; plus (v) dividends and distributions of Tenant and Subtenants, if any; plus (vi) income tax obligations of Tenant and Subtenants (but not less than zero), all determined on a consolidated basis and in conformity with GAAP.

**“Full Insurable Value”** shall mean the actual, full replacement value of the Premises (including all improvements, but excluding land) and every portion thereof, including the cost of compliance with changes in zoning and building codes and other laws and regulations, demolition and debris removal and increased cost of construction.

**“GAAP”** shall mean generally accepted accounting principles consistently applied.

**“Hazardous Materials”** shall mean (a) any petroleum products and/or by-products (including any fraction thereof), flammable substances, explosives, radioactive materials, hazardous or toxic wastes, substances or materials, known carcinogens or any other materials, contaminants or pollutants which pose a hazard to any portion of the Premises or to Persons on or about any portion of the Premises or cause any portion of the Premises to be in violation of any Hazardous Materials Laws; (b) asbestos in any form which is friable; (c) urea formaldehyde in foam insulation or any other form; (d) transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls in excess of fifty (50) parts per million or any other more restrictive standard then prevailing; (e) medical wastes and biohazards; (f) radon gas; and (g) any other chemical, material or substance, exposure to which is prohibited, limited or regulated by any governmental authority or may or could pose a hazard to the health and safety of the occupants of any portion of the Premises or the owners and/or occupants of property adjacent to or surrounding any portion of the Premises, including, without limitation, any materials or substances that are listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101) as amended from time to time.

**“Hazardous Materials Claims”** shall mean any and all enforcement, clean-up, removal or other governmental or regulatory actions, or notices of material violations, or orders

threatened, instituted or completed pursuant to any Hazardous Material Laws, together with all claims, causes of actions, demands, proceedings or suits made or threatened by any third party against any portion of the Premises, Landlord or Tenant relating to damage, contribution, cost recovery compensation, loss or injury resulting from any Hazardous Materials.

**"Hazardous Materials Laws"** shall mean any federal, state and local laws, ordinances, regulations, rules, orders, guidelines or policies relating to the environment, health and safety, Environmental Activities, Hazardous Materials, air and water quality, waste disposal and other environmental matters as any of the foregoing now exist or may hereafter be changed, amended, reauthorized or come into effect.

**"Healthcare Requirements"** shall mean all applicable requirements imposed by federal, state and local statutes, rules and regulations for the maintenance and operation of the Premises as a skilled nursing or assisted living facility.

**"Healthcare Use"** shall mean the use and operation by Tenant of the Premises as a skilled nursing or assisted living facility.

**"Holidays"** means New Years Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Christmas Day, Rosh Hashanah (two days), Yom Kippur, first two and last two days of Passover and Succot and two days of Shavuot and any other nationally or regionally recognized holiday.

**"Initial Capital Improvements"** shall have the meaning set forth in Section 6.6.

**"Initial Term"** shall have the meaning set forth in Section 2.2.

**"Intangible Property"** shall mean all accounts, proceeds of accounts, rents, profits, income or revenue derived from the use of rooms or other space within the Premises or the providing of services in or from any portion of the Premises; documents, chattel paper, instruments, contract rights, deposit accounts, general intangibles, now owned or hereafter acquired by Tenant or any Subtenant (including any right to any refund of any taxes or other charges heretofore or hereafter paid to any governmental authority) arising from or in connection with Tenant's or any Subtenant's operation or use of any portion of the Premises; Tenant's or any Subtenant's rights in any personal property leases affecting the Premises, management agreements, service contracts, equipment leases, maintenance agreements and construction equipment and other warranties affecting the Premises; all licenses and permits now owned or hereinafter acquired by Tenant or any Subtenant, necessary or desirable for Tenant's use of any portion of the Premises under this Lease; and the right to use any trade or other name now or hereafter associated with the operation of any portion of the Premises by Tenant or Subtenants, including, without limitation, the name set forth on Exhibit A attached hereto.

**"Landlord"** shall mean, collectively, Diana Monroe Street, LLC, Diana Galeria Blvd, LLC, Diana Cicero Avenue, LLC, Diana Larkin Avenue, LLC, Diana Kickapoo Street, LLC, Diana McKinley Avenue, LLC, Diana Pearl Street, LLC and Diana Castellano Drive, LLC, each a Delaware limited liability company, and its successors and assigns. Upon the Maple Crest Effective Date, Diana Squaw Prairie shall also be deemed to be included as "Landlord."

**"Landlord Personal Property"** shall have the meaning set forth in the Recitals, including any replacements or substitutes for the items described in the Recitals.

**"Lease"** shall mean this Master Lease and Security Agreement as the same may be amended from time to time in accordance with the terms hereof.

**“Lease Year”** shall mean the twelve (12) month periods commencing on the Effective Date and each anniversary thereof for the remainder of the Term.

**“Licensed Bed”** shall mean beds that are licensed by the State for either skilled nursing or assisted living facility use that are either occupied by residents or immediately available for occupancy by residents.

**“Management Fee”** shall mean an amount equal to four and one half percent (4.5%) of the annual gross revenues realized from the operation of the Premises (after adjustments for contractual adjustments and overpayment by providers), subject to increases pursuant to Section 40 below.

**“Manager”** shall mean Symphony Financial Services LLC, its successors and assigns.

**“Minimum Rent”** shall have the meaning set forth in Section 3.

**“Percentage Rent”** shall mean, for any period, fifty percent (50%) of Excess Cash Flow for such period, but in no event less than zero, and which constitutes a material portion of the rent to be paid to Landlord for the Premises hereunder.

**“Percentage Rent Report”** shall have the meaning set forth in Section 3.

**“Person”** shall mean any individual, partnership, association, corporation, limited liability company or other entity.

**“Portfolio Coverage Ratio”** shall mean, at any time, the ratio of Adjusted EBITDAR at such time, to Minimum Rent.

**Premises** shall have the meaning set forth in the Recitals.

**Property** shall have the meaning set forth in the Recitals.

**Qualifying Letter of Credit** shall mean an irrevocable, direct pay letter of credit with a face value of the Security Deposit Amount, in form and substance reasonably satisfactory to Landlord and Senior Lender, issued by Private Bank or a commercial bank organized under the federal laws of the United States of America and having a minimum long-term unsecured debt rating at all times of "AA" from Standard & Poor's Rating Group ("**S&P**") or "Aa3" from Moody's Investors Service ("**Moody's**") and which provides for assignment without consent or fee.

**REIT** shall mean a real estate investment trust under Sections 856 through 860 of the Code.

**REIT Event** shall mean any event by which Landlord (a) becomes a REIT; (b) becomes wholly or partially owned, directly or indirectly, by a REIT; or (c) sells or conveys all or part of the Premises to a REIT.

**REIT Event Notification Date** shall mean the date of which Landlord notifies Tenant of the occurrence or anticipated occurrence of a REIT Event.

**Renewal Term** shall have the meaning set forth in Section 2.3.

**SEC** shall mean the Securities and Exchange Commission.

**Senior Lender** shall mean any senior lender(s) providing a Senior Loan.

**Senior Loan** shall mean any loan secured by a first priority mortgage on the Premises.

“**State**” means the State of Illinois where the Premises are located.

“**Sub-Subleases**” means the subleases which are reasonably acceptable to Landlord and Tenant pursuant to which the Premises are sublet to the Subtenants.

“**Subtenant(s)**” means Symphony Healthcare LLC, an Illinois limited liability company, and the operator entities described on Exhibit F attached hereto and their successors and assigns as permitted under this Lease.

“**Tenant**” shall mean **DIANA MASTER LANDLORD, LLC**, a Delaware limited liability company, and its permitted successors and assigns.

“**Tenant Personal Property**” shall have the meaning set forth in Section 8.1.

“**Term**” shall mean the Initial Term and, if applicable, the Renewal Term(s).

“**Working Capital Financing**” shall have the meaning set forth in Section 8.4.

## **2. Demise; Term.**

**2.1 Demise.** Landlord hereby leases unto Tenant the Premises for the Term and upon the conditions and provisions set forth herein.

**2.2 Maple Crest.** Landlord and Tenant agree that from and after the Maple Crest Effective Date, (i) the Leased Property shall be included in the Premises and the Maple Crest Facility shall be subject to the Maple Crest Lease, the Prime Lease and to this Lease and (ii) Tenant shall be obligated to perform all of the obligations of the tenant under the Maple Crest Lease. In the event of an express conflict between the provisions of the Maple Crest Lease and this Lease, the Maple Crest Lease provisions shall control, as to the Maple Crest Facility, unless otherwise specifically stated herein; provided, however, the provisions of Section 2.1, Section 2.4, Section 3.1 and Article 11 of this Lease shall control over any express conflicts with the

provisions of the Maple Crest Lease. Notwithstanding the foregoing, Tenant will not be responsible or liable for costs or damages incurred as a result of defaults under the Maple Crest Lease that are caused by the actions or omissions of Assignee. In the event that the Maple Crest Effective Date has not occurred within three (3) years after the Effective Date, then neither party shall have any further obligation with respect to the Leased Property and all references to the Maple Crest Lease and Maple Crest Facility shall be automatically deleted from this Lease.

**2.3 Crestwood.** The Crestwood Facility is a permitted use in the Village of Crestwood, Illinois pursuant to a special use permit issued in the name of a prior owner of the Crestwood Facility. Diana Cicero Avenue, LLC (the "**Crestwood Owner**"), and Symphony Crestwood LLC (the "**Crestwood Operator**") have applied for a new special use permit which will allow the continued operation of the Crestwood Facility as a skilled nursing facility (the "**SUP**"). On the date that the Crestwood Owner and the Crestwood Operator receive the SUP, issued without condition by the Village (the "**Crestwood Effective Date**"), the Crestwood Facility, the parcel of real property on which the Crestwood Facility is located, and all tangible personal property owned by the Crestwood Owner which is located thereon, shall each become part of the Premises and subject to the Prime Lease and to this Lease. In the event that the Crestwood Effective Date has not occurred on or before June 30, 2012, then neither party shall have any further obligation with respect to the Crestwood Facility and all references to the Crestwood Facility shall be automatically deleted from this Lease.

**2.4 Term.** The term of this Lease shall commence at 12:01 a.m. on the Effective Date and shall end on December 31, 2021 (the "**Initial Term**"), unless extended pursuant to Sections 2.3 or 22.6 or earlier terminated in accordance with the provisions hereof.

**2.5 Renewal Terms.** The Term may be extended for two (2) separate renewal terms (each, a "**Renewal Term**" and collectively, the "**Renewal Terms**") of five (5) years each, upon the satisfaction of all of the following terms and conditions:

**2.5.1** Tenant shall provide written notice to Landlord not earlier than twenty-four (24) months and not later than six (6) months before the expiration of the Initial Term or the applicable Renewal Term, as applicable, of Tenant's intention to extend the Initial Term or the then current Renewal Term, as applicable.

**2.5.2** There shall be no Event of Default, or the occurrence of any event which except for the proper notice or the passage of time would become an Event of Default, under this Lease, either on the date of Tenant's notice to Landlord pursuant to Section 2.3.1 above, or on the last day of the Initial Term or first Renewal Term, as applicable.

**2.5.3** Tenant shall occupy the Premises and use the Premises for the Healthcare Use.

All other provisions of this Lease shall remain in full force and effect and shall continuously apply throughout the Renewal Term.

**3. Rent.** During the Term, Tenant shall pay to Landlord rent as follows:

**3.1 Initial Term Minimum Rent.**

(a) Prior to the Maple Crest Effective Date, during the first two (2) years of the Initial Term, Tenant shall pay to Landlord annualized rent in the amount of NINE MILLION SEVENTY-FIVE THOUSAND DOLLARS (\$9,075,000.00), less the Maple Crest Minimum Rent set forth in subsection (c) below, as applicable ("**Minimum**

**Rent**) for each of the first and second Lease Year. Such Minimum Rent shall be paid in advance, without notice, demand or offset, by wire or ACH transfer only, as directed by Landlord, in equal monthly installments of SEVEN HUNDRED FIFTY-SIX THOUSAND TWO HUNDRED FIFTY AND 00/100 DOLLARS (\$756,250.00) on the first day of each calendar month. In the event that the Effective Date of the Lease is other than the first day of a calendar month, such monthly installment of Minimum Rent shall be pro-rated and payable on the Effective Date.

(b) Commencing with the third Lease Year, prior to the Maple Crest Effective Date, Tenant shall pay to Landlord Minimum Rent in the amount of NINE MILLION SEVEN HUNDRED SEVENTY-FIVE THOUSAND DOLLARS (\$9,775,000.00), less the Maple Crest Minimum Rent set forth in subsection (c) below, as applicable. Such Minimum Rent shall be paid in advance, without notice, demand or offset, by wire or ACH transfer only, as directed by Landlord, in equal monthly installments of EIGHT HUNDRED FOURTEEN THOUSAND FIVE HUNDRED EIGHTY-THREE AND 34/100 DOLLARS (\$814,583.34) on the first day of each calendar month.

(c) The Minimum Rent payable by Tenant to Landlord for the Maple Crest Facility for each of the first Lease Year and the second Lease Year shall be equal to FIVE HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$510,000.00) and the Minimum Rent payable by Tenant to Landlord for the Maple Crest Facility for the third Lease Year shall be equal to FIVE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$550,000.00) (as applicable, the "**Maple Crest Minimum Rent**") and prior to the Maple Crest Effective Date, the Minimum Rent due and payable to

Landlord hereunder shall be reduced by the amount of the Maple Crest Minimum Rent. After the Maple Crest Effective Date, the Minimum Rent shall be payable in full by Tenant to Landlord without any reduction for the Maple Crest Minimum Rent. In the event that the Maple Crest Effective Date has not occurred within three (3) years after the Effective Date, then the Minimum Rent shall be reduced by the amount of the Maple Crest Minimum Rent, and all references to the Minimum Rent going forward under this Lease shall mean the Minimum Rent less the Maple Crest Minimum Rent.

(d) The Minimum Rent payable by Tenant to Landlord for the Crestwood Facility for the first Lease Year shall be equal to ONE MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$1,800,000.00)(the "Crestwood Minimum Rent"). In the event that the Crestwood Effective Date has not occurred on or before June 30, 2012, then Tenant may elect, by written notice provided to Landlord on or before July 15, 2012 (provided that the Crestwood Effective Date has not occurred before such notice is given), to reduce the Minimum Rent by the amount of the Crestwood Minimum Rent, and all references to the Minimum Rent going forward under this Lease shall mean the Minimum Rent less the Crestwood Minimum Rent.

(e) Commencing with the fourth Lease Year, and continuing for each Lease Year thereafter during the Initial Term, Minimum Rent (including the Maple Crest Minimum Rent and the Crestwood Minimum Rent, as applicable) shall increase by an amount equal to two percent (2%) of the prior Lease Year's Minimum Rent, compounded annually.

(f) With regard to the Maple Crest Lease, after the Maple Crest Effective Date, there shall be no adjustment to Minimum Rent hereunder in the event of a termination of the Maple Crest Lease due to the act or omission of Tenant. If the Maple Crest

Lease is terminated for any other reason, Minimum Rent shall be adjusted pursuant to Schedule 13.1 attached hereto.

### 3.2 Percentage Rent.

(a) Commencing with the first Lease Year on a quarterly basis and continuing on a quarterly basis during each Lease Year thereafter, within thirty (30) days after the end of each quarter, and concurrent with its payment of Minimum Rent for the month in which such payment is due, Tenant shall pay the estimated Percentage Rent, based on the monthly financial statements for such quarter prepared in accordance with Section 10.1 herein, due for the preceding quarter (ex. estimated Percentage Rent for the first quarter shall be due on or before May 1 of each Lease Year). Notwithstanding anything herein to the contrary, Percentage Rent shall be calculated on a consolidated basis for all Facilities.

(b) Excess Cash Flow shall be determined quarterly by Tenant and annually by the Auditors, who shall also prepare the audited financial statements required in Section 10. Tenant shall provide (i) quarterly Excess Cash Flow statements within sixty (60) days following each fiscal quarter and (ii) annual Excess Cash Flow report of the Auditors to Landlord within ninety (90) days following the end of each Lease Year ("Percentage Rent Report").

(c) Within ninety (90) days following the end of each Lease Year, including the first Lease Year, Tenant shall cause the Auditors to prepare the Percentage Rent Report for such Lease Year in accordance with GAAP and the Percentage Rent Report shall be certified true and correct by the Chief Financial Officer or the Managing

Member of the Manager of the Tenant and the Auditor and delivered to Landlord. In the event that the Percentage Rent is greater than the estimated Percentage Rent paid to Landlord during such Lease Year, Tenant shall within thirty (30) days of receipt of such Percentage Rent Report pay to Landlord an amount equal to the Percentage Rent less the estimated Percentage Rent paid to Landlord during such Lease Year. In the event that the estimated Percentage Rent paid to Landlord during the Lease Year is greater than the Percentage Rent due for such Lease Year, Tenant shall receive a credit against the Minimum Rent due for the next successive two period(s) equal to the difference between the estimated Percentage Rent paid to Landlord during the Lease Year and the Percentage Rent due for such Lease Year and any amount owed in excess of the credit against Minimum Rent for such two periods shall be refunded directly to the Tenant; provided, however, that Tenant's credit in any month shall not exceed an amount that would cause Landlord to violate any of the financial covenants contained in any of the loan documents between Landlord and Senior Lender.

(d) Landlord reserves the right to object to the Percentage Rent Report. In the event Landlord objects to the Percentage Rent Report, Landlord shall provide Tenant written notice within thirty (30) days of receipt of the Percentage Rent Report. Landlord and Tenant shall confer and attempt to resolve such dispute within thirty (30) days of the date of such notice.

(e) Landlord and its accountants and representatives, at Landlord's expense except as hereinafter provided, shall have the right within sixty (60) days from the date of delivery of the Percentage Rent Report to review such records and to audit the Percentage Rent Report for the immediately preceding Lease Year provided by Tenant,

subject to any legal prohibitions or limitations on disclosure of any such records under applicable law or regulation, including, without limitation, such limitations as may be necessary to preserve the confidentiality of the physician-patient privilege. If any such audit discloses a deficiency of greater than five percent (5%) in the payment of Percentage Rent, Tenant shall promptly pay to Landlord any reasonable costs incurred by Landlord in conducting the audit. If any such audit discloses a deficiency of any amount in the payment of Percentage Rent, Tenant shall promptly pay to Landlord the amount of the deficiency, together with interest thereon at the Agreed Rate, as defined in Section 11.4, from the date when such payment should have been made to the date of payment thereof. If Tenant objects to the results of Landlord's audit, Tenant shall provide Landlord written notice within ten (10) days of receipt of Landlord's notice to Tenant of a deficiency in the amount of Percentage Rent. Landlord and Tenant shall confer and attempt to resolve such difference within thirty (30) days of the date of Tenant's notice. In the event such difference is not resolved, the results of Landlord's audit shall control.

(f) At Landlord's sole option in connection with a Capital Event or REIT Event, Landlord may either: (i) assign to a third party the right to receive Percentage Rent by providing written notice of such intent to Tenant at least thirty (30) days prior to the beginning of a calendar quarter, and Tenant and such Landlord's assignee shall enter into a written agreement pursuant to which Tenant shall pay to such assignee all Percentage Rent on the same terms and conditions, and subject to the same rights and obligations, set forth herein, but Landlord shall not be released from any obligations hereunder. In such event, commencing on the first day of such calendar quarter, Tenant shall no longer be obligated to pay Percentage Rent under this Lease to Landlord and shall pay such Percentage Rent instead to such assignee; or (ii) terminate

Tenant's obligation to pay Percentage Rent and increase Minimum Rent to an amount equal to the sum of Minimum Rent in effect for the Lease Year in which such conversion occurs ("Termination Year") plus an amount equal to the average annual Percentage Rent paid during the immediately preceding twenty-four (24) month period, by providing written notice of such termination to Tenant at least thirty (30) days prior to the beginning of a Lease Year quarter, and in such event, the parties will enter into an amendment modifying this Lease to effect such changes in Minimum Rent commencing on the first day of such quarter; provided, however, in the event that Percentage Rent is converted pursuant to subsection (ii) herein ("Percentage Rent Conversion"), Minimum Rent shall not be greater than the amount required for Tenant to satisfy a lease coverage ratio (Adjusted EBITDAR to Minimum Rent) (the "Lease Coverage Ratio") of not less than 1.40 to 1 if Percentage Rent Conversion occurs during the first two (2) Lease Years; not less than 1.3625 to 1 if Percentage Rent Conversion occurs during the first quarter of the third Lease Year; not less than 1.3250 to 1 if Percentage Rent Conversion occurs during the second quarter of the third Lease Year; not less than 1.2875 to 1 if Percentage Rent Conversion occurs during the third quarter of the third Lease Year; and not less than 1.25 to 1 if Percentage Rent Conversion occurs during or any time after the fourth quarter of the third Lease Year. Notwithstanding any provision to the contrary in this Section 3.2(f), upon the occurrence of a Percentage Rent Conversion, the calculation of Minimum Rent shall be subject to certain reasonable adjustments, as mutually agreed upon by Landlord and Tenant, to account for any recent material changes (within the immediately preceding twenty-four month period) either (i) in the annual operating budget for the Premises or (ii) with regard to rate changes for federally or state funded reimbursement programs, which are not within Tenant's reasonable ability to control.

(g) During each Renewal Term, Tenant shall continue to pay to Landlord Percentage Rent in addition to Minimum Rent in accordance with this Section 3.2 unless Landlord has exercised its option to either assign or terminate Percentage Rent as set forth above in Section 3.2(f).

**3.3 Renewal Term Minimum Rent.**

**3.3.1** The Minimum Rent for the first Lease Year of each Renewal Term shall be reset and expressed as an annual amount but shall be payable in advance in equal monthly installments by wire or ACH transfer only on the first day of each calendar month. Beginning in the second Lease Year, and continuing each Lease Year during the Initial Term thereafter, Minimum Rent shall increase by two percent (2%) per year compounded annually.

**3.3.2** Beginning in the second Lease Year of the applicable Renewal Term, and continuing each Lease Year of the applicable Renewal Term thereafter, Minimum Rent shall increase by 2% per year compounded annually.

**3.4 Proration for Partial Periods; Business Days.** The rent for any month during the Term which begins or ends on other than the first or last calendar day of a calendar month shall be prorated based on actual days elapsed. If the date for payment of any installment of Minimum Rent or Percentage Rent falls on a non-Business Day, such installment shall be due on the first Business Day immediately preceding such payment date.

**3.5 Absolute Net Lease.** (a) All rent payments shall be absolutely net to Landlord free of taxes, assessments, utility charges, operating expenses, refurbishings, insurance premiums or any other charge or expense in connection with the Premises. Except as otherwise provided herein, all expenses and charges whether capital or to be expensed, whether for upkeep,

maintenance, repair, refurbishing, refurbishing, restoration, replacement, insurance premiums, taxes, utilities, and other operating or other charges of a like nature or otherwise, shall be paid by Tenant. This provision is not in derogation of the specific provisions of this Lease, but in expansion thereof and as an indication of the general intentions of the parties hereto. Any present or future law to the contrary notwithstanding, this Lease shall not terminate, nor shall Tenant except as set forth in Sections 3.1(d), 13 and 14, be entitled to any abatement, suspension, deferment, reduction, setoff, counterclaim, or defense with respect to any part of the total rent due under this Lease, nor shall the obligations of Tenant hereunder be otherwise affected, by reason of: (1) any defect in the condition, merchantability, design, construction, quality or fitness for use of the Premises or any part thereof, or the failure of the Premises to comply with any legal requirements, including any inability to occupy or use the Premises by reason of such non-compliance; (2) any damage to, removal, abandonment, salvage, loss, contamination of or release from, scrapping or destruction of or any requisition or taking of any portion of the Premises or any part thereof; (3) any restriction, prevention or curtailment of or interference with the construction on or any use or any portion of the Premises or any part thereof including eviction; (4) any defect in title to or rights to any portion of the Premises or any lien on such title or rights or on any portion of the Premises; (5) any change, waiver, extension, indulgence or other action or omission or breach in respect of any obligation or liability of or by Landlord or any Senior Lender; (6) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceedings relating to Landlord, Tenant or any other Person, or any action taken with respect to this Lease by any trustee or receiver of Landlord, Tenant or any other Person, or by any court, in any such proceeding; (7) any claim that Tenant has or might have against any Person, including without limitation Landlord, any Senior Lender, or any vendors, manufacturer, contractor of or for any portion of the Premises; (8) any failure on

the part of Landlord to perform or comply with any of the terms of this Lease or of any other agreement; (9) any invalidity or unenforceability or illegality or disaffirmance of this Lease or any provision thereof or hereof against or by Landlord or Tenant or of any document or instrument executed in connection with the Senior Loan or by the parties thereto; (10) the impossibility or illegality of performance by Landlord or Tenant; (11) any action by any court, administrative agency or other governmental authority; or (12) any other cause or circumstances whether similar or dissimilar to the foregoing and whether or not Landlord or Tenant shall have notice or knowledge of any of the foregoing. The obligations of Tenant under this Lease shall continue to be payable in all events unless such obligations shall be terminated pursuant to the express provisions of this Lease. Tenant shall continue to perform its obligations under this Lease even if Tenant claims that Tenant has been damaged by any act or omission of Landlord. Therefore, except as otherwise provided herein, Tenant shall at all times remain obligated to pay Minimum Rent and Percentage Rent (except as set forth under Section 3.2(f)) under this Lease without any right of set-off, counterclaim, abatement, deduction, reduction or defense of any kind. Tenant's sole right to recover damages against Landlord by reason of a breach or alleged breach of Landlord's obligations under this Lease shall be to prove such damages in a separate action against Landlord.

(b) Nothing in this Section 3.5 will waive, limit or abrogate Landlord's obligations or liabilities to Tenant under this Lease.

**3.6 Manner of Payment of Rent.** Subject to the last sentence of this Section, all Minimum Rent and Percentage Rent shall be paid to Landlord by wire or ACH transfer and shall be due without prior notice or demand. If, at any time, the Senior Loan documents require

payment of rent into a deposit account as described in Section 8.5 herein, Tenant shall, upon written notice from Landlord or Senior Lender, comply with such requirements.

**3.7 Additional Minimum Rent Payment.** (a) In the event that (i) the reimbursement adjustment (hereinafter, the "**Bed Tax**") as proposed by the State of Illinois as of the date of execution of this Lease, a copy of which shall be attached hereto as Exhibit H as soon as it is received by Landlord (the "**Proposed State Plan Amendment**"), is approved by the Centers for Medicare and Medicaid Services ("**CMS**") on or before the first anniversary of the Effective Date, which date may be extended for up to twelve (12) months if CMS is actively taking steps to approve the Proposed State Plan Amendment and (ii) the Tenant and/or Subtenants begin receiving the additional Medicaid reimbursement (the "**Bed Tax Payment**") set forth in the Proposed State Plan Amendment in cash prior to the expiration of the period set forth in clause (i), then the Minimum Rent shall be automatically increased in the first two Lease Years of the Term by an amount (the "**Additional Minimum Rent**") equal to the product of (x) ONE MILLION SIX HUNDRED EIGHTY THOUSAND AND NO/100 DOLLARS (\$1,680,000.00) (an "**AMR Base Amount**") and (y) the ratio (the "**Ratio**") of (A) the Bed Tax Payment that is generated as a result of the reimbursement adjustment as actually approved by CMS less the bed tax that Tenant or Subtenants are required to pay as a result of the Proposed State Plan Amendment (the "**Initial Bed Tax Earnings**") and (B) \$4,000,000.00. Provided that both of the conditions in the immediately preceding sentence are satisfied on or prior to the second anniversary of the Effective Date, then, for the third Lease Year and each subsequent Lease Year thereafter, the Additional Minimum Rent shall be equal to the product of (x) ONE MILLION EIGHT HUNDRED THOUSAND AND NO/100 DOLLARS (\$1,800,000.00) (an "**AMR Base Amount**") and (y) the Ratio as set forth above. In no event shall the numerator of the Ratio be greater than the denominator. Provided that the Proposed State Plan Amendment is

approved by CMS without modification, the Initial Bed Tax Earnings shall be deemed to be \$4,000,000.00. Notwithstanding any provision herein to the contrary, within thirty (30) days after receipt of the 2011 cost reports by Tenant, and provided that the Proposed State Plan Amendment has been approved by CMS, Landlord and Tenant shall engage RSM McGladrey (the cost of such engagement to be split equally between Landlord and Tenant) to provide a revised bed tax earnings calculation based on actual Medicaid days from the 2011 cost reports and the cost impact associated with the bed tax based on actual non-Medicare days from the 2011 cost reports (the "Revised Bed Tax Earnings Determination"). Landlord and Tenant each agree to be bound by the Revised Bed Tax Earnings Determination, and that the Revised Bed Tax Earnings Determination shall replace the Initial Bed Tax Earnings hereunder from the date of the Revised Bed Tax Earnings Determination going forward. The Additional Minimum Rent shall be automatically adjusted to reflect the Revised Bed Tax Earnings Determination on the first month following receipt of the Revised Bed Tax Earnings Determination. The first Additional Minimum Rent payment shall be due on the first day of the month that is at least fifteen (15) days after the date that Tenant and/or any Subtenant actually receives the first Bed Tax Payment. The Additional Minimum Rent shall be paid in equal monthly installments with Minimum Rent and the amount of Additional Minimum Rent due in the Lease Year in which the Bed Tax Payment is first received shall be pro-rated for the number of months remaining in the applicable Lease Year, i.e. if the Bed Tax Payment is first received in the fifth month of the first Lease Year, then seven-twelfths of the Additional Minimum Rent amount shall be paid in the first Lease Year.

(b) In the event that the Proposed State Plan Amendment is approved by CMS and the Tenant and/or Subtenants begin receiving Bed Tax Payments after the second anniversary of the Effective Date, but on or before the third anniversary of the Effective Date, then the Additional

Minimum Rent for the third Lease Year, and each subsequent Lease Year thereafter, shall be equal to the product of (x) ONE MILLION ONE HUNDRED SEVENTY THOUSAND AND NO/100 DOLLARS (\$1,170,000.00) (an "**AMR Base Amount**") and (y) the Ratio as set forth in subsection (a) above. In the event that the Proposed State Plan Amendment has not been approved by CMS on or before the third anniversary of the Effective Date, then there shall be no Additional Minimum Rent charged to Tenant.

(c) In the event that at any time after the receipt of the Revised Bed Tax Earnings Determination, the Economic Terms related to the reimbursement associated with the Initial Bed Tax Earnings are modified, then Tenant shall have the option to provide written notice to Landlord requesting that Landlord, or its Affiliate, engage RSM McGladrey, or another equally qualified third party accounting firm selected by Landlord and reasonably acceptable to Tenant, to provide a calculation of the Initial Bed Tax Earnings based upon such revised Economic Terms, in no less than 90 days from the date of Tenant's notice to Landlord (the "**Modified Bed Tax Earnings**"), which calculation shall include the revenue impact associated with the change in reimbursement rate based on actual Medicaid days from the 2011 cost reports and the cost impact associated with the bed tax based on actual non-Medicare days from the 2011 cost reports. The term "**Economic Terms**" shall include the reimbursement rate and the bed tax. Tenant shall reimburse Landlord for 50% of its costs incurred for the services of the third party accountant, pursuant to a written invoice. Landlord shall provide Tenant with a copy of the Modified Bed Tax Earnings calculation from such accounting firm within ten (10) days after receipt of same. In the event that the Modified Bed Tax Earnings is less than the Revised Bed Tax Earnings Determination, Tenant may provide written notice to Landlord requesting a reduction in the Additional Minimum Rent (the "**Modified Bed Tax Earnings Notice**"). The Modified Bed Tax Earnings Notice shall include reasonable evidence of the date by which the

Modified Bed Tax Earnings will actually result in Tenant receiving a reduced Bed Tax Payment. Within ten (10) days after Landlord's receipt of the Modified Bed Tax Earnings Notice from Tenant, Landlord shall provide written notice to Tenant of the new Additional Minimum Rent (the "**Reduced AMR**") which shall be calculated as follows: the product of (i) the applicable AMR Base Amount, and (ii) the Ratio of (A) the Modified Bed Tax Earnings and (B) \$4,000,000.00; provided, however, in no event shall the Additional Minimum Rent be less than FIVE HUNDRED THOUSAND DOLLARS (\$500,000.00). The Reduced AMR shall be paid in equal monthly installments with Minimum Rent and the first Reduced AMR payment shall be due on the first day of the month that is at least fifteen (15) days after the date on which Tenant first receives a reduced Bed Tax Payment, in connection with the Modified Bed Tax Earnings. The Reduced AMR shall replace the Additional Minimum Rent in the Lease Year in which it becomes effective, provided, however, Tenant shall continue to pay the Additional Minimum Rent until such date as the Tenant first receives a reduced Bed Tax Payment.

**4. Taxes, Assessments and Other Charges.**

**4.1 Tenant's Obligations.** Subject to Sections 4.3 and 4.6, Tenant agrees to pay and discharge (including the filing of all required returns) any and all taxes (including, but not limited to, real estate and personal property taxes, business and occupational license taxes, ad valorem sales, use, intangible property, single business, gross receipts, transaction privilege, franchise taxes, business privilege, rent or other excise taxes) and other assessments levied or assessed against Tenant, any portion of the Premises or any interest therein or Landlord (with respect to this Lease and/or the Premises), but excluding any state or federal income or sales tax based upon the net income or gross receipts of Landlord attributable to the Premises payable by Landlord (all such taxes and assessments payable by Tenant being collectively referred to herein

as "Taxes") prior to delinquency or imposition of any fine, penalty, interest or other cost. If any of the foregoing may, at the option of the taxpayer, be paid in installments, Tenant may exercise such option to pay the same in installments (whether or not interest shall accrue on the unpaid balance) as the same respectively become due and before any delinquency, fine, penalty, or further interest or costs may be added thereto. Notwithstanding the foregoing, any Taxes which become payable upon the recordation of any document related to this Lease shall be paid by the party requesting such recordation. If any refund shall be due from any taxing authority in respect of any imposition paid by Tenant during the Term, the same shall be paid over to or retained by Tenant.

**4.2 Proration.** At the commencement and at the end of the Term, all Taxes and assessments shall be prorated.

**4.3 Right to Protest.** Landlord and/or Tenant shall have the right, but not the obligation, to protest the amount or payment of any real or personal property taxes or assessments levied against the Premises; provided that in the event of any protest by Tenant, Landlord shall not incur any expense because of any such protest. Tenant shall diligently and continuously prosecute any such protest and notwithstanding such protest Tenant shall pay any tax, assessment or other charge before the imposition of any penalty or interest. Likewise, in the event of any protest by Landlord, Tenant shall not incur any expense because of any such protest (including penalties and/or interest).

**4.4 Tax Bills.** Each party shall promptly forward to the other party copies of all tax bills and payment receipts relating to the Premises received by such party.

**4.5 Tax Indemnity.** In the event any Taxes, or fine, penalty, and/or interest thereon are at any time assessed against Landlord by any state in which a portion of the Premises is located or any local governmental entity or authority as a result of or arising out of the lease of the Premises by Tenant from Landlord, or Landlord becomes liable for any reason for any liability of Tenant for Taxes or for any fine, penalty, or interest thereon, whether such assessment arises from the sole liability of Landlord or from the joint liability of Landlord and Tenant, and Landlord pays such assessment or liability, Tenant hereby agrees to pay to the Landlord an amount equal to the amount of such assessment of Taxes, together with any fine, penalty and interest. Such payment shall be due and payable to Landlord on or before the thirtieth (30th) day following Tenant's receipt of a written notice from Landlord (pursuant to the notice provisions under this Lease) of any such assessment and payment. Tenant shall have the right, but not the obligation, to protest the amount or payment of such assessment (in whole or in part) against the Landlord, and Landlord will cooperate fully with Tenant in regard to such protest; provided that in the event of any protest by Tenant, Landlord shall not incur any expense because of such protest. Tenant shall diligently and continuously prosecute any such protest. To the fullest extent permitted by law, Tenant agrees to protect, indemnify, defend and save harmless Landlord, its directors, officers, shareholders, agents, and employees from and against any and all foreseeable or unforeseeable liability, expense, loss, costs, deficiency, fine, penalty, interest, or other damages (including, without limitation, punitive or consequential damages, reasonable attorneys' fees, and expenses) arising out of or due to any tax protest by Tenant pursuant to Section 4.3 hereof whether such items arise from the sole liability of Landlord or from the joint liability of Landlord and Tenant (provided, however, that such indemnification obligation of Tenant shall not apply to any protest by Landlord pursuant to Section 4.3). Upon receiving notice of or information concerning any suit, claim or demand, including any proposed tax audit

of Landlord or any proposed tax assessment, asserted by a third party that Landlord believes is covered by the indemnity set forth in this Lease, Landlord shall give Tenant notice of same. Tenant shall defend Landlord against such matter at Tenant's sole cost and expense with legal counsel reasonably satisfactory to Landlord.

**4.6 Impound.** Unless otherwise agreed to by Landlord and Senior Lender, Tenant shall deposit with Landlord or Senior Lender, commencing on the Effective Date and at the time of each payment of an installment of Minimum Rent, one-twelfth (1/12) of (a) the amount sufficient to discharge the annual amount of real property Taxes and assessments secured by a lien encumbering any portion of the Premises as and when they become due, (b) the amount sufficient to discharge the annual amount of personal property taxes and assessments on Landlord Personal Property and Tenant Personal Property as and when they become due, and (c) payments required pursuant to Section 6.1.3. In addition, upon request of Landlord or Senior Lender (subject to the provisions of Section 5.1 below), Tenant shall deposit with Landlord or Senior Lender, at the time of each payment of an installment of Minimum Rent, one-sixteenth (1/16), or six and one quarter percent (6.25%) of the annual premium for the insurance policies required pursuant to Section 5 herein. Such amounts shall be held by Landlord, or the Senior Lender, and shall be applied to the payment of the obligations with respect to which the amounts were deposited. In the event that Landlord is the recipient of any payment toward future, unpaid real property Taxes and assessments coming due during the term of this Lease, Landlord shall deposit such payment, if any, into the real property Tax escrow account with Senior Lender. If at any time within thirty (30) days prior to the due date of any of the aforementioned obligations the amounts then on deposit therefore shall be insufficient for the payment of such obligation in full, Tenant shall within ten (10) days after written demand, deposit the amount of the deficiency with Landlord or Senior Lender, as directed. If the amounts deposited are in excess of the actual

obligations for which they were deposited, Landlord shall hold the same in a reserve account, not in trust and not bearing interest, and reduce proportionately the required monthly deposits for the ensuing Lease Year; provided that any such excess with respect to the final Lease Year of the Term shall be refunded to Tenant within thirty (30) days of the end of the Term. Tenant shall deliver to Landlord or Landlord's agent, if so directed by Landlord, all Tax bills, assessment statements and bills for insurance required under Section 5, as soon as the same are received by Tenant. Upon payment by Landlord of any sums from the impound described in this Section 4.6, Landlord shall notify Tenant of the amount that was disbursed and the party that received the disbursement. If Landlord sells or assigns this Lease, Landlord shall transfer all amounts deposited by Tenant pursuant to this Section 4.6 to the purchaser or assignee, and provided Landlord shall have complied with its obligations hereunder, Landlord shall thereafter be released from all responsibility related to, and shall have no further liability for the application of such deposits from and after the date of such sale or assignment, and to the extent Landlord transfers such amounts, Tenant shall look solely to such purchaser or assignee for such application and for all responsibility related to such deposits.

**4.7 Other Charges.** Tenant agrees to pay and discharge, punctually as and when the same shall become due and payable without penalty, all electricity, gas, garbage collection, cable television, internet cable, telephone, water, sewer, and other utilities costs and all other charges, obligations or deposits assessed against the Premises during the Term. In addition, Tenant agrees to pay any rent due to third party landlords, including, after the Maple Crest Effective Date, rent due pursuant to the Maple Crest Lease, directly to such third party as required under such lease agreement.

## 5. Insurance.

**5.1 General Insurance Requirements.** Tenant shall provide, or cause Master Tenant to provide, all insurance required by Landlord or Senior Lender as set forth in this Article 5, on terms which are reasonably acceptable to Landlord and any existing or future Senior Lender, or as may otherwise be approved by Landlord and any Senior Lender from time to time. All insurance provided for in this Lease shall be maintained under valid and enforceable policies issued by Master Tenant's affiliated captive insurance company (to the extent maintained by Master Tenant), pursuant to the provisions of Section 5.15 below, or insurers of recognized responsibility, licensed and approved to do business in the jurisdiction in which the Premises is located, having a general rating of B++ or better by Demotech, or a general policyholders rating of not less than A-X or better by Best's Key Rating Guide and with a claims paying ability rating from S&P of at least AA; provided, however, that if Tenant's affiliated captive insurance company is not rated, then Tenant shall maintain a licensed, rated frontage policy with the same rating requirements as set forth in this Section 5.1. Landlord acknowledges and approves of Master Tenant's existing insurance through its affiliated captive insurance company, as reflected in the insurance certificates attached hereto as Schedule 5.1. Any changes to the insurance coverage existing as of the Effective Date shall be subject to the approval of Landlord and Senior Lender. Upon request of Landlord or Senior Lender, Tenant shall, or shall cause Master Tenant to, periodically update the insurance coverage required pursuant to this Article 5 to be consistent with market and industry standards. In addition, Tenant shall provide to Landlord, (i) prior to the commencement of each Lease Year, a schedule of insurance premiums due during such Lease Year and (ii) written evidence of actual payment of insurance premiums in accordance with the schedule of insurance premiums, at least five (5) business days prior to the date payment is due pursuant to the insurance premium schedule. If Tenant fails to make any payment of insurance

premiums as required pursuant to the preceding sentence, Landlord shall have the right to require Tenant to impound the annual premium for the insurance policies required hereunder, and such payments shall be made on a monthly basis pursuant to Section 4.6 herein. Any and all policies of insurance required under this Lease shall (a) name Landlord, Senior Lender and, to the extent maintained by Master Tenant, Tenant, as additional insureds; (b) contain a standard noncontributory mortgage clause and a lender's loss payable endorsement, or their equivalent, naming Senior Lender (or any other party designated by Senior Lender) as the party to which all payments made by such insurance company shall be paid; provided, however, the use of funds shall be in accordance with Section 13; and (c) notwithstanding anything contained in this Article 5 to the contrary, satisfy all commercially reasonable requirements of the Senior Loan documents. Except as otherwise provided in this Lease, any and all policies of insurance required under this Lease, other than policies required pursuant to Sections 5.3 and 5.4, shall be on an "occurrence" basis. The policies under Sections 5.3 and 5.4 shall be on a "claims made" basis. In addition, Landlord and Senior Lender shall be shown as the loss payable beneficiary under the casualty insurance policies maintained by Tenant pursuant to Section 5.2. All policies of insurance required herein may be in the form of "blanket" or "umbrella" type policies (provided that such "blanket" or "umbrella" policies are in compliance with the terms of any Senior Loan documents) which shall name the Landlord, Tenant, Senior Lender and Master Tenant as their interests may appear and allocate to the Premises the full amount of insurance required hereunder. Original policies or satisfactory certificates from the insurers evidencing the existence of all policies of insurance required by this Lease and showing the interest of the Landlord and the Senior Lender shall be provided to Landlord prior to the commencement of the Term and shall provide that the subject policy may not be canceled, modified or reduced except upon not less than thirty (30) days prior written notice to Landlord and the Senior Lender. On

Landlord's request, after the Effective Date, Tenant shall provide Landlord with a complete copy of any insurance policy evidenced by a certificate within sixty (60) days of such request. Originals of the renewal policies or certificates therefore from the insurers evidencing the existence thereof shall be provided to Landlord at least thirty (30) days prior to the expiration dates of the policies. If Landlord is provided with a certificate for a renewal policy, upon Landlord's request, Tenant shall deliver a copy of the complete renewal policy to Landlord within sixty (60) days of the expiration of the replaced policy. Any claims under any policies of insurance described in this Lease shall be adjudicated by and at the expense of Tenant or of its insurance carrier, but shall be subject to joint control of Tenant and Landlord. Each insurance policy required under this Lease shall contain a provision that such policy shall not be cancelled or amended, including, without limitation, any amendment that would reduce the scope or limit coverage or remove any endorsement to such policy or cause the same to no longer be in full force and effect, or fail to be renewed, without at least thirty (30) days prior written notice to Landlord and Senior Lender in each instance.

**5.2 Fire and Extended Coverage.** Tenant shall keep, or cause Master Tenant to keep, the Premises insured against loss or damage from all causes under standard "all risk" property insurance coverage, without exclusion for fire, lightning, windstorm, explosion, smoke damage, vehicle damage, sprinkler leakage, flood, vandalism, earthquake, malicious mischief or any other risks as are normally covered under an extended coverage endorsement, in the amounts that are not less than the Full Insurable Value of the Premises including all equipment and personal property (whether or not Landlord Personal Property) used in the operation of the Premises subject to an agreed upon loss limit to be approved by Senior Lender. In addition, the casualty insurance required under this Section 5.2 will include an agreed amount endorsement

such that the insurance carrier has accepted the amount of coverage and has agreed that there will be no co-insurance penalty.

**5.3 Insurance Obtained by Landlord.** If Tenant fails to provide to Landlord evidence of insurance as required by Section 5.1 above, or maintain the insurance coverages required by this Lease, Landlord, at Landlord's sole option, may obtain such insurance coverage at Tenant's sole expense, and the cost of such insurance shall be immediately payable to Landlord as additional rent under this Lease.

**5.4 Professional and Public Liability Insurance.** Tenant shall maintain, or cause Master Tenant to maintain, through Master Tenant's affiliated captive insurance company, with respect to the Premises, (a) insurance against liability imposed by law including contractual liability upon Master Tenant for damages on account of professional services rendered or which should have been rendered by Master Tenant or any Person for which acts Master Tenant is liable on account of injury, sickness or disease, including death at any time resulting therefrom, and including damages allowed for loss of service, and (b) commercial general public liability insurance coverage (including products liability, contractual liability and broad form coverage) against claims for bodily injury, death or property damage occurring on, in or about the Premises and the adjoining sidewalks and passageways, in amounts equal to those shown on the insurance certificates attached hereto as Schedule 5.1, provided that Landlord may make reasonable modifications to such requirements consistent with industry practices, subject to the prior approval of Senior Lender.

**5.5 Workers Compensation.** Tenant shall comply, and cause Master Tenant to comply, with all legal requirements regarding worker's compensation, including any requirement

to maintain worker's compensation insurance and employer's liability insurance against claims for injuries sustained by Tenant's employees in the course of their employment.

**5.6 Boiler Insurance.** If applicable, Tenant shall maintain, or cause Master Tenant to maintain, with respect to the Premises, boiler and pressure vessel insurance, including an endorsement for boiler business interruption insurance, on any fixtures or equipment which are capable of bursting or exploding, in an amount not less than the replacement cost for the Premises, resulting from such perils.

**5.7 Business Interruption Insurance.** Tenant shall maintain, with respect to the Premises, at its expense, business interruption insurance, including use and occupancy, rental income loss and extra expense, insuring against loss of rental value for the benefit of the Landlord for a period not less than one (1) year.

**5.8 Flood Insurance.** Tenant shall keep (or cause to be kept) the Premises insured against loss by flood if the Premises is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazards and in which flood insurance has been made available under the National Flood Insurance Act of 1968, the Flood Disaster Protection Act of 1973, or the National Flood Insurance Reform Act of 1994 (and any successor acts thereto) in an amount at least equal to the lesser of (i) the Full Insurable Value with respect to the Premises, or (ii) the maximum limit of coverage available under said act.

**5.9 Builder's All Risk Insurance.** During any period of restoration or construction, Tenant shall carry or cause third parties to carry builder's "all risk" insurance in an amount equal to not less than the Full Insurable Value of the Premises against such risks (including, without limitation, fire and extended coverage and collapse of the improvements to

agreed limits) as Landlord may reasonably request, in form and substance acceptable to Landlord. In addition, each contractor and subcontractor shall be required to provide a certificate of insurance for worker's compensation and employer's liability insurance and general liability insurance in minimum limits of at least One Million Dollars (\$1,000,000), including coverage for premises/operations and products and completed operations. All such insurance provided by any contractor or subcontractor shall also cover Landlord and Senior Lender as additional insureds.

**5.10 Ordinance or Law Coverage.** Tenant shall maintain, or cause Master Tenant to maintain, ordinance or law coverage to compensate for the cost of demolition, increased cost of construction, and loss to any undamaged portions of the improvements, if the current use of the Premises or improvements themselves are or become "nonconforming" pursuant to the applicable zoning regulations, or full rebuildability following casualties is otherwise not permitted under such zoning regulations.

**5.11 Tail Insurance.** If, during the Term, Tenant is covered by general liability, professional liability, residential healthcare malpractice or other liability insurance on a "claims made" basis, ninety (90) days before the termination of this Lease, Tenant at its option shall procure and maintain, at Tenant's sole cost and expense, an extended reporting endorsement or "tail" insurance coverage, with such coverage limits and such deductible amounts as shall be reasonably acceptable to Landlord for general liability, professional liability, residential healthcare professional malpractice or other liability claims reported after the termination of this Lease or expiration of the claims made policy, but concerning services provided during the Term or the claims made policy. Tenant shall provide Landlord with a certificate evidencing such coverage no later than ninety (90) days before the termination of this Lease. If Tenant fails to provide the insurance required under this Section 5.11, Landlord shall have the right to apply any

portion of the Security Deposit to procure and maintain the insurance required under this Section to the extent such coverage is available at commercially reasonable rates.

**5.12 Waiver of Subrogation.** Landlord and Tenant hereby waive any right of subrogation and right of recovery or cause of action for injury or lawsuit to the extent that such injury or loss is covered by fire, extended coverage, "all risk" or similar policies covering real property or personal property required to be obtained and maintained under this Lease (or which would have been covered if the party claiming such right of subrogation or recovery or cause of action had carried the insurance required by this Lease) or covered by any other insurance maintained by the waiving party. Written notice of the terms of the above mutual waiver shall be given to the insurance carriers of Landlord and Tenant, and the parties' insurance policies shall be properly endorsed, if necessary, to prevent the invalidation of the policies by reason of such waivers. At any time that this paragraph operates to the benefit of Landlord, Senior Lender shall similarly benefit hereby.

**5.13 Additional Insurance.** Tenant shall obtain such additional, customary or commercially reasonable insurance for the Premises as Landlord or Senior Lender may reasonably request. Upon the occurrence of a Capital Event for Landlord, Tenant acknowledges and agrees that the insurance requirements of this Lease may be amended to conform to any revised standards or requirements of the Senior Lender or any new lender.

**5.14 Deductible Amounts.** The policies of insurance which Tenant is required to provide under this Lease will not have deductibles or self-insured retentions in excess of the amounts shown on Schedule 5.1 attached hereto, unless a greater amount is approved by each of Landlord, Senior Lender, and junior lender, if any, in writing, and with such approval not to be unreasonably withheld if (a) the increased deductible will not have a material adverse impact on

the financial condition of Tenant and (b) such deductible or self-insured retention is not available on commercially reasonable economic terms.

### **5.15 Insurance Captive.**

**5.15.1** Tenant shall have the right to cause Master Tenant to utilize its established insurance captive (the "**Insurance Captive**") to satisfy the professional liability and general liability insurance requirements under **Article 5** on the terms and conditions of **Section 5.15**. Tenant shall cause Master Tenant to fully disclose and provide copies of all reports, documents and agreements pertaining to the proposed Insurance Captive (and/or the applicable "cells" used for Tenant and Subtenants) to Landlord and Senior Lender, which shall include, at a minimum, (i) on or before the Effective Date, the policy forms and actual captive contracts (including any credit wrap) for the Insurance Captive, which shall be in form and substance reasonably satisfactory to Landlord and Senior Lender; (ii) within one hundred twenty (120) days after the end of each Lease Year, statements required to be filed with the applicable insurance regulator, annual audited financial statements and annual captive managers report for the Insurance Captive (and/or the applicable "cells" used for Tenant and Subtenants); (iii) within forty-five (45) days after the end of each calendar quarter, quarterly unaudited financial statements or other financial reporting of such captive insurance company (and/or the applicable "cells" used for Tenant and Subtenants); and (iv) within ninety (90) days after the end of each Lease Year, all studies, opinions and reports (the "**Insurance Studies**") performed by actuaries or insurance advisors that have been engaged by or on behalf of Tenant and acceptable to Landlord, in its reasonable discretion, including, but not limited to, all loss runs (including all open and closed reported claims and paid losses), all reinsurance agreements, ACORD forms (or equivalent) and quarterly loss summary versus reserve reports, for the purpose of establishing,

implementing and maintaining the captive or other self-insurance retention program for the professional and general liability claims (or any other claims to the extent the liability is covered by such captive or other self-insurance retention program) of Tenant, Master Tenant and the Premises. For so long as any captive insurance arrangements are used by Tenant, Master Tenant and Subtenants, any such captive insurance arrangement shall be funded pursuant to annual actuarial estimates for the facilities covered by such captive insurance arrangements.

**5.15.2 The Insurance Captive shall:**

(i) maintain a balance sheet liability for reserves, claims, and the estimated costs associated with settling, adjudicating, and otherwise resolving professional liability and general liability claims, in an amount recommended by any nationally recognized actuarial firm selected by the Insurance Captive;

(ii) establish and maintain assets in an amount per annum equal to the estimated ultimate losses and costs, as set forth in the most recent Insurance Study, discounted in accordance with GAAP;

(iii) preserve and maintain its legal existence and its rights, privileges, franchises, and permits necessary to conduct its business; and

(iv) not own assets unrelated to or conduct business other than in connection with the self insurance program.

**5.15.3** Tenant shall not permit Master Tenant to request or permit any material alteration or modification to the Insurance Captive policy and/or provider without (i) at least thirty (30) days prior written notice to Landlord and Senior Lender in each instance, and (ii)

the prior written consent of Landlord and Senior Lender in each instance, which consent shall not be unreasonably withheld.

**6. Use, Maintenance and Alteration of the Premises.**

**6.1 Tenant's Maintenance Obligations.**

**6.1.1** Tenant shall be solely responsible for keeping and maintaining the Premises in good appearance, repair and condition and maintain proper housekeeping. Tenant shall promptly make or cause to be made all repairs, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, necessary to keep the Premises in working condition, properly repaired, replaced and maintained in the ordinary course of business.

**6.1.2** As part of Tenant's obligations under this Section 6.1, Tenant shall be solely responsible for maintaining all Landlord Personal Property and all Tenant Personal Property in working order sufficient for normal operation of its business, properly maintained by Tenant in the ordinary course of business. Subject to the foregoing, Tenant shall repair and replace such property consistent with prudent industry practice for the applicable Healthcare Use.

**6.1.3** Without limiting Tenant's obligation to maintain the Premises under this Lease, Tenant shall pay to Landlord or, at Landlord's election, the Senior Lender, with each installment of Minimum Rent, commencing on the first day of the first month of the third Lease Year, one-twelfth (1/12) of an annual amount equal to Three Hundred Dollars (\$300.00) per Licensed Bed (the "Capital Expenditure Amount"). Such funds shall be the sole property of Landlord and may be held in a separate account

subject to the control of the Senior Lender, but portions thereof shall from time to time be disbursed to Tenant if Tenant submits to Landlord the Capital Expenditure Documents and such other evidence as Landlord may reasonably require evidencing that Tenant has incurred expenses for Capital Expenditures together with a request for Landlord or Senior Lender to reimburse Tenant pursuant to the Capital Expenditure Documents. Landlord shall request Senior Lender to make each such disbursement payment within thirty (30) days of the submission by Tenant of the applicable material required hereunder. Landlord shall not be obligated to disburse to Tenant any amount in excess of the escrow amount or more than once in any thirty (30) day period. Any funds being held by Landlord at the expiration of the Term shall be the sole property of Landlord. Tenant shall not be entitled to a disbursement of any Capital Expenditures during the continuance of an Event of Default. Senior Lender or Landlord may, at any time and from time to time, cause to be made inspections of the Premises by a qualified third party inspector. If any inspection report from any such third party inspection reasonably recommends that Capital Expenditures are required to cause the Premises to conform to standards that existed on the Effective Date, Landlord shall provide Tenant with a written description of such needed Capital Expenditures and Tenant shall complete the required needed Capital Improvements to the reasonable satisfaction of Landlord within ninety (90) days of receipt of such description, or, in the event such Capital Improvements cannot be completed within ninety (90) days, Tenant shall diligently prosecute the same to completion within one hundred twenty (120) days of receipt of such description. Any interest that accrues on the funds in the Capital Expenditures account shall at all times remain in the Capital Expenditures account and may be used for Capital Expenditures.

**6.2 Regulatory Compliance; Qualified Care.**

6.2.1 (a) Tenant shall be solely responsible for maintaining or causing to be maintained by Subtenants any and all licensing necessary in the operation of the Premises for the applicable Healthcare Use, with certification through the Medicare and Medicaid (or any successor) programs, if applicable. Further, Tenant shall be solely responsible for ensuring that the Premises continues to be operated as the applicable Healthcare Use, licensed for not less than the applicable number of beds set forth on Schedule 1 attached hereto (as such Schedule may be amended or supplemented from time to time, provided that Tenant shall give Landlord at least thirty (30) days prior written notice of any such amendment or supplement to the Schedule and such amendment shall not be effective, except with Landlord's written approval, which shall not be unreasonably withheld, provided that such amendment shall not cause a default under the Senior Loan documents), all without any suspension, revocation, decertification or other limitation, including without any limitation on admissions or the ability to continue to provide services. Further, Tenant shall not commit any act or omission that would in any way violate any certificate of occupancy affecting any portion of the Premises.

(b) Tenant shall maintain such books, records and other material relating to the Premises, including, but not limited to patient records and records of patient funds, prior to the commencement of and during the Term, in the manner required by law.

6.2.2 (a) All inspection fees, costs and charges associated with maintaining such licensure or certification or a change of such licensure or certification

shall be borne solely by Tenant. Tenant shall be solely responsible for and shall bear all costs and expenses incurred in connection with any requirements of regulatory inspections or surveys conducted after the Effective Date and during the Term and implementing any plans of correction relating to such surveys or inspections. Subject to the requirements of applicable law, Tenant agrees that it shall not request any regulatory inspection or survey of the Premises by any regulatory authority until after the Effective Date.

(b) Tenant shall be solely responsible at its sole cost to make any additions or alterations to the Premises necessitated by, or imposed in connection with, a change of ownership inspection survey for the transfer of operation of the Premises from Tenant or Tenant's assignee to Landlord or Landlord's designee at the expiration or termination of the Term.

(c) Tenant represents and warrants that to the best of its knowledge and belief, it has fully completed and timely filed all licensure, change of ownership/operator, provider enrollment, provider certification, and provider application forms necessary for all payors, including Medicare and Medicaid, to initiate reimbursement to Tenant or Subtenants for program services. Tenant further represents and warrants that it has taken and will take all necessary measures to insure and expedite prompt commencement of such reimbursement following the Effective Date.

**6.3 Continuous Operations; Permitted Use.** Tenant shall continuously use and operate the Premises during the Term as the applicable Healthcare Use, licensed for not less than the applicable number of beds set forth on Schedule 1, and for ancillary services relating thereto, and for no other purpose.

**6.4 No Liens; Permitted Contests.** Except for liens with respect to the Working Capital Financing as set forth in Section 8.4, Tenant shall not cause or permit any liens, levies or attachments to be placed or assessed against any portion of the Premises or the operation thereof for any reason. Any liens other than liens pursuant to the terms of Section 8.4 which may be filed against the Premises shall be removed or bonded off by Tenant within thirty (30) days after Tenant receives notice of any such filing. However, Tenant shall be permitted in good faith and at its expense to contest the existence, amount or validity of any lien upon any portion of the Premises by appropriate proceedings sufficient to prevent the collection or other realization of the lien or claim so contested, as well as the sale, forfeiture or loss of any portion of the Premises or any rent to satisfy the same. If any lien is contested, Tenant shall provide Landlord with security satisfactory to Landlord in Landlord's reasonable judgment to assure the foregoing. Each contest permitted by this Section 6.4 shall be promptly and diligently prosecuted to a final conclusion by Tenant.

**6.5 Alterations by Tenant.** In addition to the Initial Capital Improvements as defined in Section 6.6 below, Tenant shall have the right to alter, improve, replace, modify or expand the Premises, equipment or appliances in the Premises from time to time as it may determine is desirable for the continuing and proper use and maintenance of the Premises under this Lease; provided, however, that any alterations, improvements, replacements, expansions or modifications in excess of One Hundred Seventy Five Thousand Dollars (\$175,000.00) with respect to each Facility included in the Premises in any rolling twelve (12) month period shall require the prior written consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. It shall be reasonable for Landlord to require appropriate insurance, security for payment of the costs incurred for the project, prior approval of the plans for the project and Senior Lender's written approval for any such project. The cost of all such

alterations, improvements, replacements, modifications, expansions or other purchases, whether undertaken as an on-going licensing, Medicare or Medicaid (or any successor program) or other regulatory requirement or otherwise shall be borne solely and exclusively by Tenant and shall immediately become a part of the Premises and the property of the Landlord subject to the terms and conditions of this Lease. All work done in connection therewith shall be done in a good and workmanlike manner and in compliance with all existing codes and regulations pertaining to the Premises and shall comply with the requirements of insurance policies required under this Lease. In the event any items of the Premises have become inadequate, obsolete or worn out or require replacement (by direction of any regulatory body or otherwise), Tenant shall remove such items and exchange or replace the same at Tenant's sole cost and the same shall become part of the Premises and property of the Landlord.

**6.6 Initial Capital Improvement Investment.** (a) Landlord and Tenant hereby agree to provide an initial investment equal to Ten Million Dollars (\$10,000,000.00) ("**Initial Capital Expenditure Amount**") to fund capital improvements which shall be mutually agreed upon by Landlord and Tenant, subject to the approval of Senior Lender, including without limitation, installation of sprinklers at certain Facilities (the "**Initial Capital Improvements**"). Within one hundred sixty-five (165) days after the Effective Date, Tenant shall submit to Landlord, for approval by Landlord, a description of the Initial Capital Improvements, including a schedule for completion and a construction budget for the Initial Capital Improvements, for approval by Senior Lender. Once approved, neither the completion schedule nor the construction budget for the Initial Capital Improvements may be modified without the prior written consent of Landlord and Senior Lender, such consent not to be unreasonably withheld. Notwithstanding anything to the contrary contained in this Lease, the consent of neither Landlord nor Senior Lender will be required: (a) to extend the completion schedule by thirty (30) days or

less or (b) to modify any line item in the construction budget by less than Two Hundred Fifty Thousand Dollars (\$250,000.00). The Initial Capital Expenditure Amount shall be funded as follows:

(1) Landlord shall provide Five Hundred Thousand Dollars (\$500,000.00) in cash on the Effective Date ("Landlord's Initial Investment") for performance of the Initial Capital Improvements by Tenant. Landlord's Initial Investment shall be payable to Tenant upon receipt of a Payment Request (as defined in Section 6.6(b) below) or, at Tenant's option, Landlord shall pay directly to the third party vendor pursuant to a written invoice.

(2) Tenant shall fund, or cause Master Tenant to fund, an amount equal to Three Million Dollars (\$3,000,000.00) ("Tenant's Initial Investment") for performance of the Initial Capital Improvements. On or before the Effective Date, Master Tenant shall have in place a committed credit line, cash escrow or letter of credit in the amount of the Tenant's Initial Investment, and shall provide written evidence of such source of funding to Landlord. Prior to delivering any Payment Request to Landlord for Landlord's Contribution (as set forth below), Tenant shall provide to Landlord and Senior Lender written invoices for work completed and evidence of payment for the full amount of Tenant's Initial Investment.

(3) After Tenant's Initial Investment is fully funded, Landlord (through a credit line with Senior Lender) shall fund a maximum amount equal to Six Million Two Hundred Fifty Thousand Dollars (\$6,250,000.00) ("Landlord's Contribution"). Payment of Landlord's Contribution shall be pursuant to submission of Payment Requests by Tenant for approval by Landlord and Senior Lender, as set forth in Section 6.6(b) below.

(4) The remainder of the Initial Capital Expenditure Amount, which shall be no more than Two Hundred Fifty Thousand Dollars (\$250,000.00) (the "**Remainder**"), if required to complete the Initial Capital Improvements, shall be funded from Excess Cash Flow before the payment of Percentage Rent. Within thirty (30) days after the end of the quarter in which the Remainder is funded, Tenant shall provide written invoices and evidence of payment of such invoices to Landlord.

(b) Tenant shall perform or cause to be performed the Initial Capital Improvements, in accordance with the terms of Section 6.5 above. For funding the Landlord's Initial Investment and Landlord's Contribution, Tenant shall provide a written request for the approval of Landlord and Senior Lender for payment, including paid written invoices (each, a "**Payment Request**"), at least thirty (30) days prior to the date payment is due for the Initial Capital Improvements. With respect to the Landlord's Contribution, Landlord agrees to provide payment to Tenant (or, at Landlord's option, directly to any third party contractor or supplier) in an amount equal to the amount shown on the invoice provided with the Payment Request, provided the following requirements are satisfied: (i) no Event of Default exists hereunder and no material adverse change has occurred on the Premises; (ii) Tenant provides paid written invoices for completed Initial Capital Improvements reasonably acceptable to Landlord and Senior Lender; (iii) Payment Requests are made no more than once every thirty (30) days; (iv) the amount of each Payment Request shall be no less than Two Hundred Thousand Dollars (\$200,000.00); and (v) Tenant shall provide to Landlord the Capital Expenditure Documents and all additional documentation reasonably required from Landlord or Senior Lender for the Landlord's Initial Investment or Landlord's Contribution (as applicable), including, but not limited to, lien waivers, inspection reports, and title endorsements. Notwithstanding any provision contained herein to the contrary, either Landlord or Senior Lender may refuse to approve any Payment Request if any of the

requirements set forth in this Section 6.6 have not been satisfied or if the work performed was not as agreed on Schedule 6.6 or necessary in Landlord's reasonable discretion.

(c) The Initial Capital Improvements shall be substantially completed by Tenant, or Master Tenant, on or before the third anniversary of the Effective Date (the "**Completion Date**"). In the event that the Landlord's Contribution has not been fully disbursed by the Completion Date, then Tenant shall have no further right to submit any Payment Requests to Landlord and the remainder of the Initial Capital Improvements shall be completed by Tenant, at its sole expense, as soon as practicable. In the event that the failure to complete the Initial Capital Improvements causes any Facility to be in violation of any Healthcare Requirements or any other applicable law, then such failure shall be an Event of Default pursuant to Section 11.1.15 hereunder.

7. Condition of Premises. Tenant acknowledges that it has expertise in the Healthcare Use industry. Tenant has thoroughly investigated the Premises, has selected the Premises to its own specifications, and has concluded that, except as set forth in Section 6.6 above, no improvements or modifications to the Premises are required to operate the Premises for its intended use. Tenant accepts the Premises for use as licensed for the Healthcare Use applicable for the Premises under this Lease on an "AS IS" basis, and assumes all responsibility and cost for correcting any observed or unobserved deficiencies or violations. In making its decision to enter into this Lease, Tenant has not relied on any representations or warranties, express or implied, of any kind from Landlord except to the extent expressly set forth in this Lease. Landlord represents and warrants that as of the Effective Date it shall have good and indefeasible title in the Premises subject to the exceptions set forth on Exhibit C. Landlord expressly makes no representations or warranties as to the physical condition of the Premises or the habitability or

fitness of the Premises for any particular use or purpose, including, without limitation, (i) its soundness for any construction or other building purposes, (ii) the availability of any utilities to the Premises, and (iii) the existing zoning. Tenant hereby agrees and acknowledges that it is solely Tenant's responsibility to ensure that Tenant has all necessary licenses or permits with respect to its permitted use and operation of the Premises and hereby releases and indemnifies Landlord for any claims arising in connection therewith.

**8. Landlord and Tenant Personal Property.**

**8.1 Tenant Personal Property.** Tenant and Subtenants shall install, affix or assemble or place on the Premises at its sole cost and expense all items of furniture, fixtures, equipment and supplies not included as Landlord Personal Property as is reasonably necessary for the use of the Premises as contemplated by this Lease (the "**Tenant Personal Property**"). Tenant and Subtenants shall provide and maintain during the entire Term all Tenant Personal Property as shall be necessary to operate the Premises in compliance with all requirements set forth in this Lease. Subject to the provisions of Section 15.2 below, all Tenant Personal Property shall be and shall remain the property of Tenant or Subtenant and may be removed by Tenant or Subtenant on the expiration of the Term. However, if there is any Event of Default which results in the termination of this Lease, Tenant will not remove the Tenant Personal Property from the Premises and will on demand from Landlord, convey all of Tenant's interest, or cause Subtenant to convey all of Subtenant's interest, in the Tenant Personal Property to Landlord by executing a bill of sale in a form reasonably required by Landlord. At Landlord's option, Tenant or Subtenant shall remove the Tenant Personal Property within thirty (30) days after receipt of a written request by Landlord and Tenant or Subtenant will repair all damage to the Premises caused by any removal of the Tenant Personal Property.

## **8.2 Landlord's Security Interest.**

8.2.1 The parties intend that if Tenant defaults under this Lease, Landlord will control the Tenant Personal Property, including the Intangible Property, so that Landlord or its designee can operate or re-let the Premises intact for use as licensed for the Healthcare Use applicable for the Premises.

8.2.2 Therefore, to implement the intention of the parties, and for the purpose of securing the payment and performance of Tenant's obligations under this Lease, Tenant, as debtor, hereby grants to Landlord, as secured party, a security interest in and an express contractual lien upon, all of Tenant's right, title and interest in and to the Tenant Personal Property, including the Intangible Property, and any and all products and proceeds thereof, in which Tenant now owns or hereafter acquires an interest or right, including any leased Tenant Personal Property. The contractual lien granted to Landlord in the Tenant Personal Property is subject to any contractual lien rights of the Working Capital Lender (as defined in Section 8.4) in the Tenant Personal Property. This Lease constitutes a security agreement covering all such Tenant Personal Property, including the Intangible Property. At Landlord's sole option, Tenant shall execute a separate security agreement granting Landlord the security interests in Tenant Personal Property, including the Intangible Property. Additionally, at Landlord's sole option, Tenant shall cause each Subtenant to execute a security agreement, granting Landlord a security interest in and express contractual lien on all of each such Subtenant's right, title and interest in and to the Tenant Personal Property and the Intangible Property, and in any property of Subtenants used in connection with the operation of the Premises. The security interest granted to Landlord in this Section 8.2.2 is intended by Landlord and

Tenant to be a first lien security interest in such property and shall not be inferior or subordinate to any other lien or financing except as set forth in Section 8.4 and except as to de minimis equipment liens not to exceed Ten Thousand Dollars (\$10,000.00) per Facility. Landlord shall have the option to assign this security interest, and any separate security agreement which may be executed by Tenant, to Senior Lender, upon written notice to Tenant. This security agreement and the security interest created herein shall survive the termination of this Lease if such termination results from the occurrence of an Event of Default.

**8.3 Financing Statements.** Prior to the commencement of the Lease and if required by Landlord at any other time during the Term, Tenant shall execute and deliver to Landlord (and cause all Subtenants to execute and deliver), in a form reasonably satisfactory to Landlord, additional security agreements, financing statements, fixture filings and such other documents as Landlord may reasonably require to perfect or continue the perfection of Landlord's security interest in the Tenant Personal Property, including the Intangible Property, and any and all products and proceeds thereof now owned or hereafter acquired by Tenant or any Subtenant. At Tenant's sole cost and expense, Landlord may file such documents in public offices and obtain such record searches as Landlord may reasonably require. Tenant hereby authorizes Landlord, on behalf of Tenant and any Subtenants, to file all financing and continuation statements necessary to perfect the security interests created herein. In the event Tenant fails to execute (or fails to cause any Subtenant to execute) any financing statements or other documents for the perfection or continuation of Landlord's security interest, Tenant hereby appoints Landlord as its true and lawful attorney-in-fact to execute any such documents on its behalf, which power of attorney shall be irrevocable and is deemed to be coupled with an interest.

**8.4 Accounts Receivable.** Landlord agrees to subordinate its contractual lien rights in Tenant's accounts receivable in favor of Senior Lender, or an Affiliate of Senior Lender, if Senior Lender or any such Affiliate makes a working capital credit facility available to Tenant, or in favor of any non-Affiliate of Senior Lender which provides Working Capital Financing to Tenant in compliance with the requirements of this Section 8.4. Any such subordination shall be in writing, signed by all parties and in a form reasonably acceptable to Landlord, Tenant and Senior Lender. Tenant may also obtain working capital financing or otherwise pledge any receivables as collateral ("**Working Capital Financing**") from a non-Affiliate of the Senior Lender if (i) the terms and conditions of this Section 8.4 have been satisfied; (ii) Tenant obtains written approval from Landlord and Senior Lender of the terms and conditions of such Working Capital Financing; (iii) no Event of Default exists hereunder; and (iv) such Working Capital Financing lender and Landlord (and Senior Lender, as applicable) have entered into an intercreditor agreement in form and substance reasonably acceptable to Landlord and Senior Lender. Landlord may withhold its consent in its sole discretion to any Working Capital Financing that does not satisfy the foregoing conditions. Landlord and Tenant acknowledge and agree that Tenant or Subtenants have or will obtain a credit line with Private Bank (the "**Working Capital Lender**") for its Working Capital Financing as of the Effective Date. Tenant shall not commingle any funds or accounts related to the Premises held by the Working Capital Lender with funds or accounts related to other properties owned or leased by Tenant or its Affiliates. Tenant and its Affiliates shall not be in default, beyond any applicable cure period, under any financing agreements with Working Capital Lender or any other provider of Working Capital Financing. The form of approved intercreditor agreement between Senior Lender and the Working Capital Lender is attached hereto as Exhibit G.

**8.5 Cash Management.**

8.5.1 On or before the Effective Date, Tenant shall establish and maintain with a United States depository institution designated by Landlord or Senior Lender ("Account Bank") a separate and unique collection account (the "Account") into which all revenues attributable to the Premises ("Revenues") shall be deposited, commencing on the Effective Date. If any such Revenues are forwarded to Tenant or Subtenant or its manager rather than directly to the Account, Tenant or Subtenant shall (i) deliver an irrevocable direction letter in form and substance satisfactory to Landlord to such entity and make other commercially reasonable efforts to cause such entity to forward such Revenues directly to the Account and (ii) immediately deposit such Revenues in the Account. Subject to the terms of Section 8.5.4 below, neither Tenant nor any Subtenant shall have the right to make or direct any withdrawals from the Account without the prior written consent of Landlord and Senior Lender.

8.5.2 So long as no Event of Default shall have occurred and be continuing, the Revenues shall be held uninvested in the Account and shall be applied as follows: (i) first, to the payment of any and all amounts due with respect to the Premises, including without limitation, Minimum Rent, Percentage Rent, any impounds pursuant to Section 4.6 herein and Management Fees; and (ii) second, as soon as practicably feasible, to an account designated by Tenant.

8.5.3 If an Event of Default has occurred and is continuing (and following the giving of any required notice): (i) Revenues deposited in the Account shall not be applied or deposited to the account designated by Tenant pursuant to Section 8.5.2(ii) and (ii) sums on deposit in the Account may be applied by Landlord for the payment of any amounts due Landlord pursuant to this Lease.

8.5.4 Contemporaneously with the creation of the Account, Landlord, Tenant (or Subtenant, as applicable), and Account Bank shall enter into a Deposit Account Control Agreement (the "Control Agreement") concerning the Account and implementing the provisions of this Section 8.5; provided, however, the Control Agreement shall provide that Landlord shall not exercise any control over the Account until Landlord provides written notice to Account Bank that an Event of Default has occurred and is continuing under this Lease. A fully executed original of the Control Agreement shall be held by Senior Lender and Landlord, and Tenant (or Subtenant, as applicable) shall not enter into any amendment, modification or supplement to the Control Agreement without the prior written consent and agreement of Landlord and Senior Lender.

8.5.5 The provisions set forth in this Section 8.5 shall be subject to the approval of Senior Lender. Any inconsistencies between this provision and the provisions in any working capital loan from Senior Lender or an Affiliate thereof and Tenant shall be governed by the terms and provisions of the working capital loan documents.

9. Representations And Warranties. Landlord and Tenant do hereby each for itself represent and warrant to each other as follows:

9.1 Due Authorization And Execution. This Lease and all agreements, instruments and documents executed or to be executed in connection herewith by such party were duly authorized and shall be binding upon such party.

**9.2 Due Organization.** Landlord and Tenant are duly organized, validly existing and in good standing under the laws of the State of their respective formations and are duly authorized and qualified to do all things required of the applicable party under this Lease within the State in which the Premises are located.

**9.3 No Breach of Other Agreements.** Neither this Lease nor any agreement, document or instrument executed or to be executed in connection herewith, violates the terms of any other agreement to which either Landlord or Tenant is a party.

**10. Financial, Management, Litigation and Regulatory Reports.**

**10.1 Monthly Property Reports.** Within thirty (30) days after the end of each calendar month during the Term (except for the first Lease Year, when the monthly financial reports shall be delivered by Tenant within forty five (45) days after the end of each calendar month), Tenant shall prepare and deliver monthly financial reports to Landlord and Senior Lender (on a consolidated basis for such period and year to date) consisting of a balance sheet, income statement (stating operating revenues, operating expenses and operating income), total patient days, occupancy and payor mix and nursing hours concerning the business conducted at the Premises, and, commencing in the second Lease Year, a comparison of actual results versus the budget and a comparison of actual results versus the prior year results, provided that the time for delivery of said reports may be extended in the event that the Senior Lender agrees in writing to extend same.

**10.2 Quarterly Financial Statements.** Within sixty (60) days after the end of each calendar quarter during the Term (except for the first Lease Year, when the quarterly financial statements shall be delivered by Tenant within seventy five (75) days after the end of

each calendar quarter), Tenant shall deliver to Landlord and Senior Lender the quarterly financial statements of Tenant, including quarterly statements of net cash flow, (consolidated, if applicable, with Tenant's Affiliates, including the manager of the Premises if the Manager is an Affiliate of Tenant, and all Subtenants), quarterly financial statements of the Premises, and, commencing in the second Lease Year, a comparison of actual results versus the budget and a comparison of actual results versus the prior year results.

**10.3 Annual Financial Statements.** Within one hundred twenty (120) days after the end of each Lease Year (except for the first Lease Year, when the annual financial statements shall be delivered by Tenant within one hundred fifty (150) days after the end of the first Lease Year), Tenant shall deliver to Landlord and Senior Lender the annual financial statements of Tenant (consolidated, if applicable, with the Subtenants), audited by the Auditors, annual financial statements of the Premises and a comparison of actual results versus the budget and, commencing in the second Lease Year, a comparison of actual results versus the prior year results, and the Percentage Rent Report required by Section 3.2. The annual financial statements of Manager shall be provided by Tenant upon reasonable request by Senior Lender, and upon reasonable request by Landlord, but only in connection with the occurrence of a Capital Event of Landlord. Notwithstanding any of the other terms of this Section 10.3, if Tenant shall become subject to any reporting requirements of the SEC during the Term, Tenant shall concurrently deliver to Landlord such reports as are delivered to the SEC pursuant to applicable securities laws within five (5) days of filing with the SEC, provided that the time for delivery of said reports may be extended in the event that the Senior Lender agrees in writing to extend same.

**10.4 Accounting Principles.** All of the reports and statements required hereby shall be prepared in accordance with GAAP, as defined herein.

**10.5 Regulatory Reports and Notices.** (a) Tenant shall within seven (7)

Business Days of receipt thereof deliver to Landlord and Senior Lender all federal, state and local licensing and reimbursement certification surveys, inspection and other reports, notices, or requests received by Tenant as to the Premises and the operation of business thereon, including, without limitation, state department of health licensing surveys, Medicare and Medicaid (and successor programs) certification surveys, life safety code reports, any notices of violation or requests for corrective action and any correspondence concerning same.

(b) As soon as practicable, but, in any event, within two (2) Business Days of receipt thereof, Tenant shall deliver to Landlord and Senior Lender written copies of any notice of any violation of any federal, state or local licensing or reimbursement certification statute or regulation, including, without limitation, Medicare or Medicaid (or successor programs), any suspension, termination or restriction placed upon Tenant, any Subtenant or the Premises, the operation of business thereon or the ability to admit residents or patients. Tenant shall continue to provide Landlord with copies of any correspondence regarding said violation and written confirmation of the plan for correcting said violation.

(c) Notwithstanding any provision of this Section 10.5 to the contrary, Tenant shall notify Landlord by email or telephone within two (2) Business days after the receipt of any surveys which (i) threaten any federal, state or local licenses or Medicare and Medicaid (and successor programs) certification or (ii) reflect a violation of level G or higher. Such email or telephone notice shall include the name of the entity conducting the survey, the specific license or certification threatened or details regarding the violation and a copy of any written survey, report or other information available at that time from the entity conducting the survey. Within the time frames required by applicable law, but in no event more than fifteen (15) days after the

initial notice, Tenant shall also provide: (i) the Facility level plan of action or correction; (ii) the corporate plan of action or correction; (iii) the timeline for any response, follow-up or additional action in connection with such survey; and (iv) the proposed or imposed remedies.

(d) At least once each week during the Term, Tenant shall provide Landlord with an open survey report for each Facility in the standard format attached hereto as Schedule 10.5.

**10.6 Annual Operating Budget.** At least thirty-five (35) days prior to the commencement of each subsequent fiscal year of Tenant, Tenant shall provide Landlord and Senior Lender with an annual budget covering the operations of the Premises including any proposed capital expenditures for the forthcoming fiscal year. Tenant shall also provide Landlord with such other information with respect to Tenant or the operations of the Premises as Landlord may reasonably request in writing from time to time. Notwithstanding anything to the contrary, the annual budget for the first fiscal year shall be due ninety (90) days following the Effective Date.

**10.7 Litigation.** Within thirty (30) days after the end of each calendar quarter during the Term, Tenant shall provide third party administrative reports on all pending litigation matters (to be delivered with the Monthly Property Reports or Quarterly Financial Statements, as applicable). In addition, Tenant shall provide periodic updates of any other pending material litigation matters which affect the Premises and/or Tenant.

**10.8 Additional Information.** Upon written request of the Landlord or Senior Lender, Tenant shall provide any additional information regarding the Premises and/or Tenant that Landlord or Senior Lender may reasonably request.

**10.9 Certification.** All statements required by this Section 10 shall be certified true and correct by the Chief Financial Officer or the Managing Member of the Manager of the Tenant.

**10.10 Failure to Comply.** Tenant acknowledges that the failure to furnish Landlord with any of the statements required by this Section 10 will be an Event of Default, subject to any applicable cure period, as set forth in Section 11 below.

**10.11 Intentionally Deleted.**

**10.12 Financial Covenants.** At all times during the Initial Term and each Renewal Term, if applicable, Tenant shall comply with the following covenants (to be calculated on a consolidated basis for all Facilities):

(a) The operations of the Premises shall maintain for each calendar quarter during each Lease Year on a trailing twelve (12) months basis (or, if applicable, by annualizing current Lease Year to date results), a Portfolio Coverage Ratio of not less than 1.08 to 1 during the first Lease Year; not less than 1.16 to 1 during the second and third Lease Year; not less than 1.13 to 1 during the fourth Lease Year; and not less than 1.10 to 1 during the fifth Lease Year and each subsequent Lease Year.

(b) Tenant shall maintain for each calendar quarter during each Lease Year, a Current Ratio of not less than 1.05 to 1.

(c) Beginning as of the Effective Date, and thereafter, Tenant shall maintain for each calendar quarter during each Lease Year on a trailing twelve (12) month basis, a Fixed Charge Coverage Ratio of not less than 1.0 to 1.

(d) None of Tenant, any Subtenant or Manager (but only for so long as Manager is an Affiliate of Tenant) will create, incur or suffer to exist any Debt, other than: (i) any existing or prospective working capital loan for use in connection with the operation of the Premises; (ii) any equipment financing not to exceed Ten Thousand Dollars (\$10,000.00) per Facility in the aggregate; and (iii) any Debt which is in existence on the Effective Date (or Debt that replaces such other Debt in existence on the Effective Date) which such other Debt shall not be increased, amended, modified or revised. Notwithstanding the provisions of this Section 10.12(d), Manager may create, incur or suffer to exist Debt, provided that the Manager meets the following requirements: (x) Manager must be solvent and able to pay its Debt when due, and (y) Manager must give written notice to Landlord at least ten (10) days prior to the creation of such Debt, which such notice shall include the total amount due, identity of the payee and repayment terms.

(e) Neither Tenant nor any Subtenant shall enter into any agreement to sell all or substantially all of its assets or commence structuring of any transaction which could result in a change in Control of the Tenant or any Subtenants without the prior written consent of Landlord (and Senior Lender, as applicable), which consent shall not be unreasonably withheld.

(f) Within thirty (30) days after the end of each quarter during the Term of the Lease, at the same time as the monthly reports are delivered to Landlord pursuant to Section 10.1 above, Tenant shall deliver to Landlord a certificate of compliance for the financial covenants contained in this Section 10.12, specifically including the covenant calculations for subsections (a), (b) and (c) above.

**11. Events of Default and Landlord's Remedies.**

**11.1 Events of Default.** The occurrence of any of the following shall constitute an event of default on the part of Tenant hereunder ("**Event of Default**"):

**11.1.1** The failure to pay within five (5) Business days of the date when due any Minimum Rent, Percentage Rent;

**11.1.2** The failure to pay (a) within five (5) Business days of the date when due any amounts due under Section 4.6 (Impounds), or, (b) within five (5) Business days after the receipt of written notice from Landlord, any other charges or payments required of Tenant under this Lease;

**11.1.3** The failure to replace or replenish the Security Deposit within ten (10) Business days of the receipt of notice of a draw thereon;

**11.1.4** Any termination, suspension, revocation or material adverse action or restriction placed upon (i) Tenant, any Subtenant or the Healthcare Use of any portion of the Premises; (ii) the operation of the Healthcare business thereon, including, without limitation, (a) the ability to admit residents or patients for a period in excess of seven (7) days or (b) the termination of any provider agreement with a government payor without Landlord's consent; or (iii) any material certification, qualification, license, permit or other governmental authorization of any portion of the Premises, including, without, limitation, the failure to maintain any such qualification, license, permit, or other governmental authorization necessary to continue to operate the Premises for its Healthcare Use. Notwithstanding the foregoing, an Event of Default shall not exist if any suspension, revocation or material adverse action or restriction is being contested by

Tenant or Subtenants as permitted by applicable law for a period of seventy-five (75) days from the date of notice of such action or as such period may be reasonably extended by Landlord in writing, subject to the approval of Senior Lender (the "Contest Period"), provided that (i) Tenant has a right to contest such action and pursues such right diligently, (ii) Tenant provides Landlord with a written plan of correction within ten (10) Business Days after receipt of notice of such action, as well as copies of all correspondence, notices and pleadings from the contest action, and (iii) Tenant provides Landlord with weekly written status updates of the progress of the contest action during the Contest Period;

11.1.5 A default by Tenant (or any Affiliate of Tenant) under any obligation or agreement relating to the Premises other than this Lease between Tenant (or any Affiliate of Tenant) and Landlord or any Affiliate of Landlord (including, without limitation, any financing agreement, the Tenant Affiliate Leases, or any other lease or management or other agreement related to the Premises), which default is not cured within any applicable cure period provided in the documentation for such obligation (or waived in writing by such party having the right to waive such default under the applicable agreement);

11.1.6 A default by Tenant with respect to any obligation under any other lease or financing agreement with any other party, specifically including Working Capital Lender, which default is not cured within any applicable cure period provided in the documentation for such obligation (or waived in writing by such party having the right to waive such default under the applicable agreement) which is reasonably likely to

have a material adverse effect on the Premises taken as a whole or the ability of Tenant to perform its obligations hereunder (specifically including the Maple Crest Lease);

**11.1.7** A default by any Subtenant with respect to any Sublease or any lease or financing agreement with any other party, specifically including Working Capital Lender, which default is not cured within any applicable cure period provided in the documentation for such obligation (or waived in writing by such party having the right to waive such default under the applicable agreement) which is reasonably likely to have a material adverse effect on the Premises taken as a whole or the ability of Tenant to perform its obligations hereunder (specifically including the Maple Crest Lease);

**11.1.8** Any material misstatement or omission of fact in any written report, notice or communication from Tenant to Landlord with respect to Tenant, any Subtenant, or any portion of the Premises, and which has a material, negative impact on the Premises taken as a whole;

**11.1.9** Tenant shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make an assignment of all or substantially all of its property for the benefit of its creditors;

**11.1.10** The appointment of a receiver, trustee, or liquidator for Tenant, or any of the property of Tenant, if within three (3) Business Days of Tenant's notice of such appointment Tenant does not inform Landlord in writing that Tenant intends to cause such appointment to be discharged or Tenant does not thereafter diligently prosecute such discharge to completion within ninety (90) days after the date of such appointment;

11.1.11 The failure to (a) deliver evidence of insurance to Landlord as required by Section 5.1, following five (5) days written notice thereof from Landlord, or (b) to maintain the insurance coverages required by Section 5;

11.1.12 The filing by Tenant of a voluntary petition under any federal bankruptcy law or under the law of any state to be adjudicated as bankrupt or for any arrangement or other debtor's relief, or in the alternative, if any such petition is involuntarily filed against Tenant by any other party and Tenant does not within three (3) Business Days of Tenant's notice of any such filing inform Landlord in writing of the intent by Tenant to cause such petition to be dismissed, if Tenant does not thereafter diligently prosecute such dismissal, or if such filing is not dismissed within ninety (90) days after filing thereof;

11.1.13 The failure by Tenant to provide any of the information or documents required by Sections 10.1, 10.2, 10.3 and 10.5 within the time period specified in such sections;

11.1.14 The failure to comply with the financial covenants in Section 10.12 above; and

11.1.15 The failure to perform or comply with any other term or provision of this Lease, other than those described in Sections 11.1.1—11.1.14, inclusive, including, without limitation, the failure to comply with the provisions hereof pertaining to the use, operation and maintenance of the Premises; provided, however, if the default described in this Section 11.1.15 is curable it shall be deemed cured, if: (a) within five (5) Business Days of Tenant's receipt of a written notice of default from Landlord,

Tenant gives Landlord written notice of its intent to cure such default; and (b) Tenant cures such default within thirty (30) days after such written notice from Landlord, or if such default cannot be cured within thirty (30) days and Tenant is diligently pursuing such cure, then within seventy-five (75) days after such written notice from Landlord.

**11.1.16** There shall be no cure period in the event of a breach by Tenant of any of the following, and each such breach shall be an immediate Event of Default: (a) the obligation to maintain the insurance coverages required by Section 5, above; (b) the provisions of Section 8.5, above; (c) the provisions of Section 21.1 below (except for the provisions of Section 21.1.3; or (d) the provisions of Section 23, below.

**11.2**Notice and Cure Periods. All notice and cure periods provided herein shall run concurrently with any notice or cure periods provided by applicable law.

**11.3**Remedies. Upon the occurrence of an Event of Default, which is continuing and has not been cured pursuant to the applicable cure period set forth in Section 11.1 above, if any, and subject to Section 11.4 below, Landlord may exercise all rights and remedies under this Lease and the laws of the State in which the Premises is located available to a lessor of real and personal property in the event of a default by its lessee, and as to the Tenant Personal Property, including the Intangible Property, all remedies granted under the laws of such State to a secured party under its Uniform Commercial Code. Without limiting the foregoing, Landlord shall have the right to do any of the following:

**11.3.1** Sue for the specific performance of any covenant of Tenant under this Lease as to which Tenant is in breach;

11.3.2 Elect to leave this Lease in place, draw down on the Security Deposit to pay for any past due sums and sue for rent and/or other money damages as the same come due;

11.3.3 Before or after repossession of the Premises pursuant to Sections 11.3.6 and 11.3.7, and regardless of whether this Lease has been terminated, Landlord shall have the right (but shall be under no obligation except to the extent required under applicable law) to relet any portion of the Premises to such tenant or tenants, for such term or terms (which may be greater or less than the remaining balance of the Term), for such rent, or such conditions (which may include concessions or free rent) and for such uses, as Landlord, in its absolute discretion, may determine, and Landlord may collect and receive any rents payable by reason of such reletting. Landlord shall have no duty to mitigate damages unless required by applicable law and shall not be responsible or liable for any failure to relet any of the Premises or for any failure to collect any rent due upon any such reletting. Tenant agrees to pay Landlord, immediately upon demand, all expenses incurred by Landlord in obtaining possession and in reletting any of the Premises, including fees, commissions and costs of attorneys, architects, agents and brokers;

11.3.4 Exercise the remedies of a secured party under the applicable Uniform Commercial Code with respect to the Tenant Personal Property, including the Intangible Property;

11.3.5 Revoke any waiver or deferral given by Landlord of any Minimum Rent or Percentage Rent or other amount payable hereunder, and immediately thereafter all such deferred or waived amounts shall become immediately due and payable. The

foregoing shall not be construed to mean that Landlord is under any obligation whatsoever to consider or grant any such deferral or waiver to Tenant;

11.3.6 Enter upon any portion of the Premises, terminate this Lease, dispossess Tenant from any portion of the Premises and/or collect money damages by reason of Tenant's breach if the Event of Default arises under Subsections 11.1.1-11.1.10, 11.1.11(b), 11.1.12, 11.1.14, 11.1.15 and 11.1.16. In the event of any such termination or repossession of the Premises or any part thereof, Tenant shall pay to Landlord all Minimum Rent, Percentage Rent and other sums required to be paid by Tenant for the period to and including the date of such termination or repossession. Notwithstanding the foregoing, all obligations and liabilities of Tenant under this Lease accruing prior to such termination or repossession shall survive the termination of the Term; and

11.3.7 Enter upon any portion of the Premises, terminate this Lease, dispossess Tenant from any portion of the Premises and/or collect money damages by reason of Tenant's breach if the default arises under Subsections 11.1.11(a) and 11.1.13; provided, however, that such default shall not be deemed an Event of Default hereunder unless and until it has occurred more than twice during any calendar year of the Term, or more than four (4) times over the entire Term. In the event of any such termination or repossession of the Premises or any part thereof, Tenant shall pay to Landlord all Minimum Rent, Percentage Rent and other sums required to be paid by Tenant for the period to and including the date of such termination or repossession. Notwithstanding the foregoing, all obligations and liabilities of Tenant under this Lease accruing prior to such termination or repossession shall survive the termination of the Term.

**11.4 Cured Default.** Notwithstanding anything contained in this Lease to the contrary, should a default of Tenant be waived pursuant to Section 11.5 or Section 11.8 below, or cured within the applicable cure period set forth in Section 11.1 above, such default shall no longer be deemed an Event of Default.

**11.5 Waiver of Certain Defaults.** Notwithstanding the provisions of Section 11.7 below, if an Event of Default occurs pursuant to Section 11.1.5, 11.1.6, 11.1.7, 11.1.8, 11.1.14 or 11.1.15 above, such Event of Default shall be deemed waived by Landlord provided that the following conditions are satisfied: (i) Landlord fails to exercise any of its remedies pursuant to Section 11.3 above within twelve (12) months after Landlord has either received (from Tenant) or given written notice of such Event of Default (the "Default Period"), (ii) Tenant cures the Event of Default to Landlord's reasonable satisfaction within the Default Period, prior to Landlord's exercise of any remedy hereunder, and (iii) neither Landlord nor Senior Lender shall suffer any economic harm or other adverse impact resulting from the Event of Default, as determined in Landlord's reasonable discretion. Within three (3) Business Days after Tenant has notice or should, in the exercise of ordinary prudence, have had knowledge of the occurrence of an Event of Default (except as to Section 11.1.14, with respect to which Tenant shall provide written notice to Landlord of any such breach of any financial covenants within five (5) Business Days after Tenant has actual notice of such breach, but in no event later than thirty (30) days after the end of the applicable fiscal quarter), Tenant shall provide written notice to Landlord of such Event of Default, and its intent to cure such Event of Default, if applicable. If Tenant fails to provide written notice to Landlord of such Event of Default in accordance with the immediately preceding sentence, or acts to prevent Landlord from exercising any of its remedies available pursuant to Section 11.3, all rights of Tenant under this Section 11.5 shall be deemed waived by Tenant. Notwithstanding any provision herein to the contrary, nothing

contained in this Section 11.5 shall serve to extend the applicable cure period for Events of Default in the documents described in Sections 11.1.5, 11.1.6 and 11.1.7, if any, or for Events of Default occurring pursuant to Section 11.1.15.

**11.6 Receivership.** Tenant acknowledges that one of the rights and remedies that may be available to Landlord under applicable law is to apply to a court of competent jurisdiction for the appointment of a receiver to take possession of the Premises, to collect the rents, issues, profits and income of the Premises and to manage the operation of the Premises. Tenant further acknowledges that the revocation, suspension or material limitation of the certification of any portion of the Premises for provider status under Medicare or Medicaid (or successor programs) and/or the revocation, suspension or material limitation of a license relating to the operation of any portion of the Premises for its intended use under the laws of the State in which the Premises is located will materially and irreparably impair the value of Landlord's investment in the Premises. Therefore, in any of such events, and in addition to any other right or remedy of Landlord under this Lease, Landlord may petition any appropriate court for, and Tenant hereby consents to, the appointment of a receiver to take possession of the Premises, to manage the operation of the Premises, to collect and disburse all rents, issues, profits and income generated thereby and to preserve or replace to the extent possible any such license and provider certification for the Premises or to otherwise substitute the licensee or provider thereof. The receiver shall be entitled to a reasonable fee for its services as a receiver. All such fees and other expenses of the receivership estate shall be added to the monthly rent due to Landlord under this Lease. Tenant hereby irrevocably stipulates to the appointment of a receiver under such circumstances and for such purposes and agrees not to contest such appointment.

**11.7 Late Charges.** Tenant acknowledges that the late payment of any Minimum Rent, Percentage Rent or any other amounts due under this Lease will cause Landlord to lose the use of such money and incur costs and expenses not contemplated under this Lease, including, without limitation, administrative and collection costs and processing and accounting expenses, the exact amount of which is extremely difficult to ascertain. Therefore, (a) if any installment of Minimum Rent, Percentage Rent or any other amounts due under this Lease is not paid within three (3) days after the due date for such payment, then Tenant shall thereafter pay to Landlord on demand a late charge equal to five percent (5%) of the amount of any delinquent installments of Minimum Rent, Percentage Rent and other amounts due under this Lease and not paid on the due date; and (b) if any installment of Minimum Rent, Percentage Rent or other amounts due under this Lease is not paid within ten (10) calendar days after the due date for such payment, such unpaid amount shall accrue interest from the due date for such payment at the Prime Rate plus five percent (5%) per annum (the "Agreed Rate") (or the maximum rate permitted by law if less than the Agreed Rate). As used herein, "Prime Rate" shall mean the prime rate of interest charged by Bank of America, N.A. from time to time. Landlord and Tenant agree that this late charge and the accrual of interest at the Agreed Rate represent a reasonable estimate of such costs and expenses and is fair compensation to Landlord for the loss suffered from any such nonpayment and/or delinquent payment by Tenant.

**11.8 Remedies Cumulative; No Waiver.** No right or remedy herein conferred upon or reserved to Landlord is intended to be exclusive of any other right or remedy, and each and every right and remedy shall be cumulative and in addition to any other right or remedy given hereunder, or now or hereafter existing at law or in equity. No failure of Landlord to insist at any time upon the strict performance of any provision of this Lease or to exercise any option, right, power or remedy contained in this Lease shall be construed as a waiver, modification or

relinquishment thereof as to any similar or different breach (future or otherwise) by Tenant. A receipt by Landlord of any rent or other sum due hereunder (including any late charge) with knowledge of the breach of any provision contained in this Lease shall not be deemed a waiver of such breach, and no waiver by Landlord of any provision of this Lease shall be deemed to have been made unless expressed in a writing signed by Landlord.

**11.9 Performance of Tenant's Obligations by Landlord.** If Tenant at any time shall fail to make any payment or perform any act on its part required to be made or performed under this Lease, then Landlord and/or Senior Lender may, without waiving or releasing Tenant from any obligations or default of Tenant hereunder, make any such payment or perform any such act for the account and at the expense of Tenant, and may enter upon any portion of the Premises for the purpose of taking all such action thereon as may be reasonably necessary therefore. No such entry shall be deemed an eviction of Tenant. All sums so paid by Landlord and all necessary and incidental costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred in connection with the performance of any such act by Landlord, together with interest at the rate of the Agreed Rate (or if said interest rate is violative of any applicable statute or law, then the maximum interest rate allowable) from the date of the making of such payment or the incurring of such costs and expenses by Landlord, shall be payable by Tenant to Landlord on demand. Nothing in this section shall be construed to grant Landlord the authority (or require Landlord) to engage in, including entry upon the Premises to engage in, the management or operation of the applicable Healthcare Use, to review confidential resident records, or to engage in any activity that would directly or indirectly create any responsibility or duty of or by Landlord to any resident of the Premises, it being the express intention of the parties that Tenant be solely responsible for operation of the Premises as the applicable Healthcare Use.

12. Intentionally Deleted.

13. Damage by Fire or Other Casualty.

13.1 Reconstruction Using Insurance.

13.1.1 In the event of the damage or destruction of any portion of the Premises, Tenant shall immediately notify Landlord (but in no event later than twenty-four hours after such damage or destruction) and, provided that Senior Lender consents to use of the proceeds to repair, diligently repair or reconstruct the same to a like or better condition than existed prior to such damage or destruction. Any insurance proceeds payable with respect to the casualty shall be held and used in the manner determined by Senior Lender and Landlord. In the event the net insurance proceeds are used for the repair or reconstruction of the applicable portion of the Premises, the proceeds shall be subject to reasonable disbursement controls in favor of Landlord or its Senior Lender. If such proceeds are insufficient for the repairs or reconstruction of the damaged portion of the Premises, Tenant shall provide the required additional funds. If Senior Lender prohibits the use of the funds for repairs or reconstruction, the insurance proceeds shall be utilized by Senior Lender to pay down debt owed to it.

13.1.2 Notwithstanding anything to the contrary in Section 13.1.1 above, and provided that (i) Tenant has paid to Landlord all Rent and other amounts due under the Lease through the date of such damage or destruction, (ii) the loss due to damage or destruction exceeds 50% of the full replacement value of the affected Facility, (iii) Senior Lender prohibits the use of the insurance proceeds for repairs or reconstruction and uses the insurance proceeds to pay down debt owed to it (except if any portion of the insurance

proceeds is unavailable for repair or reconstruction due to any acts or omissions of Tenant or any Subtenant), and (iv) Landlord fails to repair or reconstruct the affected Facility to substantially the same condition as existed prior to such damage or destruction within eighteen (18) months after the date of such damage or destruction, then Tenant may, at Tenant's election, made within thirty (30) days after Landlord provides written notice to Tenant that the affected Facility will not be repaired to substantially the same condition as existed prior to such damage or destruction within the time period set forth in (iv) above, terminate this Lease with respect to the affected Property only. In the event of termination of this Lease as to the affected Property, Minimum Rent shall be adjusted in accordance with Schedule 13.1.

**13.1.3** In the event that the loss due to damage or destruction is equal to 50% or less than the full replacement value of the affected Facility, and Senior Lender prohibits the use of the insurance proceeds for repairs or reconstruction and uses the insurance proceeds to pay down debt owed to it (except if any portion of the insurance proceeds is unavailable for repair or reconstruction due to any acts or omissions of Master Tenant or any Subtenant), then, provided that Master Tenant shall continue the operation of the affected Facility for the Healthcare Use, the Minimum Rent for the affected Facility shall be adjusted as mutually agreed by Landlord and Tenant and approved by Senior Lender.

**13.2 Surplus Proceeds.** If there remains any surplus of insurance proceeds after the completion of the repair or reconstruction of the applicable portion of the Premises, and provided that such repair or reconstruction of the Premises is reasonably acceptable to Landlord, such surplus shall be paid to Tenant, provided that no Event of Default has occurred hereunder.

**13.3 No Rent Abatement.** The rent payable under this Lease shall not abate by reason of any damage or destruction of any portion of the Premises by reason of an insured or uninsured casualty; provided, however, that Tenant shall receive a credit against the rent and other sums due hereunder in an amount equal to the proceeds of any rental value and/or business interruption insurance carried by Tenant, which are paid to Landlord. Tenant hereby waives all rights under applicable law to abate, reduce or offset rent by reason of such damage or destruction.

**13.4 Maple Crest Lease.** From and after the Maple Crest Effective Date, and to the extent the provisions of this Section 13 and Section 14 below conflict with the Maple Crest Lease, the Maple Crest Lease shall govern with respect to damage to, destruction of or condemnation affecting the Maple Crest Facility.

**14. Condemnation.**

**14.1 Complete Taking.** If during the Term all or substantially all of any Facility is taken or condemned by any competent public or quasi-public authority, and provided that (i) Tenant has paid Landlord all Rent and other amounts due pursuant to this Lease through the date of such taking or condemnation, (ii) Landlord or Senior Lender fails to make available for rebuilding the proceeds from any award, and (iii) Landlord fails to repair the affected Facility to substantially the same condition as existed prior to such taking or condemnation within eighteen (18) months after the date of such taking or condemnation, then, Tenant may, at Tenant's election, made within thirty (30) days after Landlord provides written notice to Tenant that the affected Facility will not be repaired to substantially the same condition as existed prior to such taking or condemnation within the time period set forth above, terminate this Lease with respect to the affected Property only. The award payable upon such taking shall be paid to Landlord,

and Tenant shall be entitled to seek a separate claim from the condemning authority for Tenant's damages. In the event of a termination of the Lease as to the affected Property, Minimum Rent shall be adjusted in accordance with Schedule 13.1.

**14.2 Partial Taking.** In the event such condemnation proceeding or right of eminent domain results in a taking of less than all or substantially all of a Property, and such taking does not prevent Tenant from operating the Premises for the Healthcare Use, Landlord shall be entitled to receive and retain any and all awards for the partial taking and damage except that Tenant shall be entitled to seek a separate claim from the condemning authority for Tenant's damages, including but not limited to moving expenses, and any unamortized capital addition costs paid by the Tenant. Notwithstanding the preceding sentence, such proceeds shall be held and used in the manner required by the Senior Loan documents. Tenant shall promptly proceed to restore, replace, repair or rebuild the affected Premises to the extent practicable to be a single architecturally functional building of substantially the same quality and character, subject to the portion of the Premises affected by the taking ("Tenant's Repair Obligation"), provided that the award proceeds are made available to Tenant as soon as practicable after such award proceeds are available from the condemning authority. If such proceeds are insufficient to complete the Tenant's Repair Obligation, Tenant shall provide the required additional funds. Provided that Master Tenant shall continue the operation of the Premises for the Healthcare Use, the Minimum Rent for the affected Facility shall be adjusted as mutually agreed by Landlord and Tenant and approved by Senior Lender, based on either the remaining square footage of useable space in the Premises or the number of beds available in the remaining Premises, as applicable.

**14.3 Lease Remains in Effect.** Except as provided above, this Lease shall not terminate and shall remain in full force and effect in the event of a taking or condemnation of

any portion of the Premises, and unless stated otherwise in the provisions of this Lease, Tenant hereby waives all rights under applicable law to abate, reduce or offset rent by reason of such taking.

**15. Provisions on Termination of Term.**

**15.1 Surrender of Possession.** Tenant shall, on or before the last day of the Term, or upon earlier termination of this Lease, (a) surrender to Landlord the Premises (including all resident charts and resident records along with appropriate patient and resident consents if necessary and inventories and supplies at normal operating levels) in good condition and repair, ordinary wear and tear excepted, (b) upon Landlord's written request, shall to the greatest extent permitted by law, transfer to Landlord or its designees or assigns, the following: (i) all federal, state or municipal licenses, certifications, certificates, approvals, permits, variances, waivers, provider agreements and other authorization certificates which relate to the operation of the Healthcare business at the Premises, including certificates of need required for any ancillary services provided at the Premises such as dialysis, except for the right to the use of Tenant's name; and (ii) the name of the health care facility comprising the Premises as then known to the general public, (c) prepare and file all notices required by applicable law in connection with such termination, and (d) execute the Exit Operations Transfer Agreement attached hereto as Exhibit D (the "Exit Agreement"). If Tenant fails or refuses to transfer any such license, certification, certificate, approval, permit, variance, waiver, provider agreement, other authorization or trade name, then this provision shall constitute an act of assignment by Tenant to Landlord or its assigns without the necessity of any further written instrument. Landlord shall have the option of taking over the operation of the Healthcare Use at the Premises, or to have the operation of the business taken over by a designee, in the event of a

termination of this Lease for any reason, without assuming any of Tenant's liabilities or obligations. Landlord shall give Tenant written notice of Landlord's intent to exercise the right set forth above, in which event, upon the approval of the applicable State agency or agencies of the change of ownership, Tenant shall immediately turn over possession and control of the Healthcare Use at the Premises without any further action having to be taken on the part of Landlord. Further, if an Event of Default occurs hereunder, Tenant hereby appoints Landlord its true and lawful attorney by this instrument and by the limited power of attorney attached to this Lease as Exhibit E, said appointment being coupled with an interest, to execute the Exit Agreement on behalf of Tenant and to execute on behalf of Tenant a letter of consent in a form acceptable to Landlord enabling Landlord or its designee to file applications to operate a nursing home with the applicable State agencies and every other regulatory agency now or hereafter claiming jurisdiction and to operate the healthcare business at the Premises during the pendency of such application. This provision shall be enforceable in a court of law and shall be effective by operation of law.

**15.2 Removal of Personal Property.** If Tenant is not then in default hereunder, Tenant shall have the right in connection with the surrender of the Premises to remove from the Premises all Tenant Personal Property, except that Tenant shall not remove (a) the Landlord Personal Property (including Landlord Personal Property replaced by Tenant), (b) any Tenant Personal Property subject to a capital lease or financing arrangement as of the Effective Date, as set forth on Section 15.2 attached hereto, or (c) any Tenant Personal Property required by the State in which the Premises is located or any other governmental entity to operate the Premises for the purpose set forth in Section 6.3 above ("**Governmental Required Property**"); provided, however, Landlord shall pay to Tenant the depreciated book value in accordance with GAAP of such Governmental Required Property. In addition, at Landlord's option, Tenant shall remove

Tenant Personal Property so designated by Landlord in writing. Any such removal shall be done in a workmanlike manner leaving the Premises in good and presentable condition and appearance, including repair of any damage caused by such removal. At the end of the Term or upon the earlier termination of this Lease, Tenant shall return (and cause each Subtenant to return) the Premises to Landlord with the Landlord Personal Property (or replacements thereof) together with the other Governmental Required Property in the same condition and utility as was delivered to Tenant at the commencement of the Term, reasonable wear and tear excepted, and transfer to Landlord all Intangible Property except for Tenant's (or Subtenant's) accounts receivable (unless this Lease was terminated because of an Event of Default by Tenant, in which event Landlord shall have the right, subject to any subordination as set forth in Section 8.4, to enforce its security interests in Tenant's, or Subtenant's, accounts receivable). Tenant covenants and agrees that it shall not, and shall not allow Subtenant to, sell, move, modify, transfer, assign, sell, relocate, pledge, secure, convey or in any other manner encumber Landlord's Personal Property, any certificate of need or any of the licensed or Medicare and/or Medicaid certified beds at the Premises or any other Intangible Property, or attempt to do same.

**15.3 Title to Personal Property Not Removed.** Title to any of Tenant Personal Property which is not removed by Tenant upon the expiration of the Term shall, at Landlord's election, vest in Landlord; provided, however, that Landlord may remove and dispose at Tenant's expense of any or all of such Tenant Personal Property which is not so removed by Tenant without obligation or accounting to the Tenant.

**15.4 Transition of Premises.** Upon the expiration or earlier termination of the Term (the "Expiration Date"), Landlord, upon written notice to Tenant (a "Transition Notice"), may inform Tenant that the responsibilities and obligations for the management and

operation of the Premises shall be transferred to and assumed by a new tenant designated by Landlord (the "Successor Operator"), and Tenant agrees to cooperate fully (and cause each Subtenant to cooperate fully) with Landlord and the Successor Operator to accomplish the transfer of such management and operation without interrupting the operation of the Premises. Tenant shall not commit (or permit any Subtenant to commit) any act or be remiss in the undertaking of any act that would jeopardize any licensure or certification of the Premises, and Tenant shall comply (and cause each Subtenant to comply) with all requests for an orderly transfer of all licenses used in the operation of the Premises, Medicare and Medicaid (or any successor program) certifications and possession of the Premises at the time of any such surrender to the extent permitted by applicable law. Upon the expiration or earlier termination of the Term, subject to applicable laws, Tenant shall promptly deliver copies of all of Tenant's and Subtenants' books and records relating to the Premises and its operations to Landlord.

**15.5 Limited Extended Operation by Tenant.** In the event Landlord delivers a Transition Notice, Tenant shall thereafter operate the Premises in accordance with all of the requirements of this Lease until the earliest to occur of (i) the date on which Landlord or Successor Operator will assume the operation of the Premises, as specified in a written notice from Landlord to Tenant given not less than fifteen (15) days prior to the date of such assumption; (ii) the date that is ninety (90) days after the Expiration Date (except that in connection with any termination of this Lease, or dispossession of Tenant, pursuant to an Event of Default, prior to the Expiration Date, such ninety (90) day period shall not commence until Landlord delivers a Transition Notice); and (iii) the date (on or after the Expiration Date) that is ninety (90) days after Tenant receives written notice from Landlord that, notwithstanding the foregoing, Tenant may commence the transition to the Successor Operator, on which earliest date, Tenant shall vacate the Premises and surrender possession thereof to Landlord in

accordance with all of the applicable requirements of this Lease. In the event Landlord sends Tenant a Transition Notice and the Lease has terminated as of the expiration date of the Term (e.g. not in the case of an early termination of the Lease or early dispossession of Tenant, in connection with an Event of Default), and, as a result thereof, Tenant operates a Facility beyond the expiration date of the Term, then, from and after the expiration of this Lease as to such Facility and until the earliest to occur of the dates described in clauses (i), (ii) and (iii) above relative to the Premises (the "**Reimbursement Period**"), (x) the operating budget shall be the operating budget, if any, that was in effect immediately prior to the commencement of the Reimbursement Period and that had been approved by Landlord or if no such Landlord-approved operating budget was so in effect, an operating budget provided by Landlord, (y) Landlord shall include in such operating budget, and Tenant shall continue to pay during the Reimbursement Period, all Rent that would have been owing under this Lease as to the Premises if the Lease had not so expired, and (z) Landlord shall reimburse Tenant for any operating deficits with respect to the Premises that Tenant may be required to fund out-of-pocket on account of operating losses and expenses of the Premises incurred by Tenant by reason of, or arising out of compliance with such budget with respect to the Reimbursement Period applicable to the Premises. Any such reimbursement shall be due from Landlord to Tenant within thirty (30) days after written request by Tenant, provided that Tenant shall furnish such documentation of any operating deficits, losses and expenses as Landlord may reasonably request. The terms of this Section 15.5 shall survive the expiration or earlier termination of this Lease.

**16. Notices and Demands.** All notices and demands, certificates, requests, consents, approvals, and other similar instruments under this Lease shall be in writing and shall be sent by personal delivery or by either (a) United States certified or registered mail, return receipt

requested, postage prepaid, or (b) Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery, addressed as follows:

If to Tenant: Diana Master Landlord, LLC  
1035 Powers Place  
Alpharetta, GA 30004  
Attn: Christina K. Firth  
Fax No. (770) 754-3085  
Phone: (800) 845-1695

with a simultaneous copy to:

Williams Mullen  
222 Central Park Avenue, Suite 1700  
Virginia Beach, Virginia 23462  
Attn: Lawrence R. Siegel  
Fax No: (757) 473-0395  
Phone: (757) 473-5321

If to Landlord: Diana Monroe Street, LLC, et al.  
1035 Powers Place  
Alpharetta, GA 30004  
Attn: Christina K. Firth  
Fax No. (770) 754-3085  
Phone: (800) 845-1695

with a simultaneous copy to:

Williams Mullen  
222 Central Park Avenue, Suite 1700  
Virginia Beach, Virginia 23462  
Attn: Lawrence R. Siegel  
Fax No: (757) 473-0395  
Phone: (757) 473-5321

Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be, whether accepted or refused. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the

same is to be given. If Tenant fails at any time to provide to Landlord a current address for notice purposes, notice may be made to any officer, general partner or principal of Tenant.

**17. Right of Entry.** Landlord and its representatives may enter any portion of the Premises at any reasonable time after reasonable notice to Tenant for the purpose of inspecting the Premises to determine whether the Tenant is in compliance with its obligations to maintain the Premises under Sections 6.1, 6.2, 6.5 and 6.6; following Tenant's default under this Lease; to exhibit the Premises or portions thereof for sale, lease or mortgage financing; or for posting notices of default, or non-responsibility under any mechanic's or materialman's lien law. Landlord may enter any portion of the Premises at anytime for emergency purposes. Any such entry shall not unreasonably or materially interfere with residents, patients, patient care, or any other of Tenant's operations. During normal business hours, and to the extent permitted by applicable laws, Tenant will permit Landlord and Landlord's representatives, inspectors and consultants to examine and copy such contracts, books and records regarding the Premises as may be necessary to evidence Tenant's compliance with this Lease. Nothing in this section shall be construed to grant Landlord the authority to engage in, including entry upon the Premises to engage in, the management or operation of the applicable Healthcare Use, to review confidential resident records, or to engage in any activity that would directly or indirectly create any responsibility or duty of or by Landlord to any resident of the Premises, it being the express intention of the parties that Tenant be solely responsible for operation of the Premises as the applicable Healthcare Use.

**18. Landlord May Grant Liens.** Without the consent of Tenant, Landlord may, subject to the terms and conditions set forth below in this Section 18, from time to time, directly or indirectly, create or otherwise cause to exist any lien, mortgage, encumbrance or title retention

agreement ("Encumbrance") upon the Premises, or any portion thereof or interest therein (including this Lease), whether to secure any borrowing or other means of financing or refinancing or otherwise. Upon the execution of this Lease and upon the request of Landlord from time to time, Tenant shall subordinate this Lease to the lien of a new Encumbrance on the Premises or any portion thereof or interest therein and will, within ten (10) Business Days of any such request, execute a subordination agreement that is in form reasonably acceptable to Landlord and the proposed lender on the condition that the proposed lender agrees not to disturb Tenant's rights under this Lease so long as Tenant is not in default hereunder. Upon request of any such lender, Tenant shall attorn to and acknowledge the foreclosure purchaser or purchasers as Landlord hereunder.

**19. Quiet Enjoyment.** So long as there is no Event of Default by Tenant, Landlord covenants and agrees that Tenant shall peaceably and quietly have, hold and enjoy the Premises for the Term, free of any claim or other action not caused or created by Tenant (excepting, however, intrusion of Tenant's quiet enjoyment occasioned by condemnation or destruction of the property as referred to in Sections 13 and 14 hereof).

**20. Applicable Law.** This Lease shall be governed by and construed in accordance with the internal laws of the State of Illinois without regard to the conflict of laws rules of such State. The remedies available to Landlord on the occurrence of an Event of Default shall, however, be governed by the laws of the State where the applicable portion of the Premises is located.

**21. Preservation of Revenues.**

21.1 Tenant acknowledges that the diversion of residents and/or patient care activities from the Premises to other property owned or operated by Tenant or its Affiliates at or

near the end of the Term will have a material adverse impact on the value and utility of the Premises.

21.1.1 During the Term and for a period of three (3) years after the expiration or any earlier termination of the Term due to an Event of Default (the "**Restricted Period**"), neither Tenant, its Affiliates, nor any of Tenant's Principals shall directly or indirectly, as an agent, consultant, advisor (other than as a member of boards or committees generally addressing health care needs and facilities in the applicable jurisdiction), equity holder, joint venturer, partner, manager, or any other representative capacity, on its own behalf or on the behalf of others, develop, construct, own, manage, operate, control, or own a beneficial interest in any Person that engages in or owns, invests in, operates, manages or controls any entity engaged in the provision of services relating to a "skilled nursing facility," or, as pertains to the Facility known as Sycamore Village, an "assisted living facility," as those terms are defined by State or federal law (the "**Business**"), which is new construction, a replacement facility or a substantial renovation of an existing facility and is within a five (5) mile radius outward from the outside boundary of the Premises (the "**Radius**"). All distances shall be measured on a straight line rather than on a driving basis. For the purposes of this Section 21.1.1, "substantial renovation" shall mean a facility which requires in excess of \$2,000,000.00 in capital improvements in the first two (2) years of operation of such facility by Tenant, its Affiliates or any of Tenant's Principals. Notwithstanding the foregoing and for the avoidance of doubt, it is understood and agreed that an independent living facility shall not be within the definition of Business. The foregoing restrictive covenants shall not restrict in any manner the ownership of passive investments in securities not constituting

more than five percent (5%) collectively by the Restricted Parties of the outstanding securities of any class of publicly traded securities.

**21.1.2** Should Tenant, its Affiliates or any of Tenant's Principals intend to acquire either a fee simple or leasehold interest in any existing facility or institution within the Radius which will be operated "as is" (such facility requires less than \$2,000,000 for capital improvements in the first two (2) years for operation in accordance with applicable law) (a "**ROFR Property**"), then Tenant hereby grants to Landlord and its Affiliates a right of first refusal to enter into a joint venture equal partnership with Tenant or its applicable Affiliate to acquire the interest in the ROFR Property; provided, however, that Landlord shall not have a right of first refusal as to any ROFR Property which is included in a portfolio acquisition by Tenant or its Affiliates if a majority of the Licensed Beds included in the proposed portfolio acquisition are located outside of the Radius. Tenant shall provide Landlord with written notice of its intention to acquire any ROFR Property and Landlord shall have thirty (30) days to exercise its right to participate in such acquisition as equal partner with Tenant or its Affiliates or any of Tenant's Principals, as applicable.

**21.1.3** Tenant hereby covenants and agrees that for a period of three (3) years following the expiration or earlier termination of this Lease, neither Tenant nor any of its Affiliates shall, without prior written consent of Landlord, hire, engage or otherwise employ or solicit for employment any management or supervisory personnel working on or in connection with the Premises.

**21.1.4** Furthermore, Tenant hereby covenants and agrees that in the event of a proposed change or replacement of personnel in either an Executive Director

or Director of Nursing position at a Facility, Tenant shall provide at least fifteen (15) days prior written notice to Landlord before the start date of the replacement personnel which such notice shall include in reasonable detail the qualifications of the proposed new personnel, who shall possess similar or better qualifications and skills as the personnel being replaced.

**21.1.5** Except as required for medically appropriate reasons, prior to the expiration or any earlier termination of the Term and for a period of five (5) years thereafter, neither Tenant nor any of its Affiliates will recommend or solicit the removal or transfer of any resident or patient or equipment from the Premises to any other nursing or health care facility, or to any senior housing or retirement housing facility.

**21.2** During the Initial Term and any Renewal Terms of this Lease, the following persons shall be actively involved with the operation of Tenant's business on the Premises: David Hartman, Gerry Jenich, Michael Munter and Jay Flatt (the "**Key Personnel**"). In the event that any Key Personnel's employment with Tenant is discontinued for any reason, Tenant shall provide written notice to Landlord, as well as a plan of recruitment for replacement of Key Personnel within fifteen (15) business days after Tenant has notice of such discontinuance of employment. Tenant shall use its best efforts to replace such Key Personnel with a person having similar or better qualifications and experience within one hundred eighty (180) days after the date of such notice to Landlord. If the Key Personnel is not replaced within 180 days after the date of such notice to Landlord (the "**Replacement Period**"), then Tenant shall pay to Landlord a fee equal to Fifty Thousand Dollars (\$50,000.00) within thirty (30) days after receipt of written notice from Landlord. Landlord shall have thirty (30) days after the expiration of the Replacement Period to provide written notice to Tenant that such fee is due. In the event that the

Key Personnel is not replaced within twelve (12) months after the date of Tenant's original notice to Landlord, then Landlord shall have the option to terminate this Lease, by delivering not less than thirty (30) days prior written notice to Tenant. In the event of a termination of this Lease pursuant to this Section 21.2, the provisions of Section 15 herein shall apply.

**22. Hazardous Materials.**

**22.1 Hazardous Material Covenants.** Tenant's use of the Premises shall comply with all Hazardous Materials Laws. In the event any Environmental Activities occur or are suspected to have occurred in violation of any Hazardous Materials Laws or if Tenant has received any Hazardous Materials Claim against any portion of the Premises relating to activities or omissions committed during the Term, excluding those Environmental Activities directly caused by Landlord or those acting on behalf of and at the direction of Landlord, Tenant shall promptly obtain all permits and approvals necessary to remedy any such actual or suspected problem through the removal of Hazardous Materials or otherwise, and upon Landlord's approval of the remediation plan, remedy any such problem to the satisfaction of Landlord and all applicable governmental authorities, in accordance with all Hazardous Materials Laws and good business practices.

**22.2 Tenant Notices to Landlord.** Tenant shall immediately advise Landlord in writing of:

**22.2.1** any Environmental Activities in violation of any Hazardous Materials Laws,

**22.2.2** any Hazardous Materials Claims against Tenant or any portion of the Premises relating to activities or omissions committed during the Term,

22.2.3 any remedial action taken by Tenant in response to any Hazardous Materials Claims or any Hazardous Materials on, under or about any portion of the Premises in violation of any Hazardous Materials Laws,

22.2.4 Tenant's discovery of any occurrence or condition on or in the vicinity of any portion of the Premises that materially increases the risk that any portion of the Premises will be exposed to Hazardous Materials, and/or

22.2.5 all communications to or from Tenant, any governmental authority or any other Person relating to Hazardous Materials Laws or Hazardous Materials Claims with respect to any portion of the Premises, including copies thereof.

**22.3 Remediation.** If (i) Tenant becomes aware of a violation of any Hazardous Material Laws relating to any Hazardous Materials in, on or under the Premises or any adjacent property thereto; (ii) Tenant, Landlord or the Premises becomes subject to any order of any governmental authority or any Hazardous Materials Claims to repair, close, detoxify, decontaminate or otherwise remediate the Premises; or (iii) Tenant's actions, including but not limited to, any renovations or repairs to the Premises, cause the Tenant to remediate any environmental conditions disclosed in the Phase I Environmental Assessments Reports described on Schedule 22 ("Phase I Reports") ("Existing Environmental Conditions"), Tenant shall immediately notify Landlord of such event and, at its sole cost and expense with respect to any such Hazardous Materials in, on, under, or about the Premises (but not adjacent thereto unless caused by Tenant), cure such violation or effect such repair, closure, detoxification, decontamination or other remediation. Notwithstanding the foregoing, Tenant shall not be responsible for the remediation of Hazardous Materials on the Premises directly caused by Landlord or those acting on behalf and at the direction of Landlord.

**22.4 Indemnity.** Tenant shall indemnify, defend, protect, save, hold harmless, and reimburse Landlord and Senior Lender and their respective directors, officers, shareholders, partners, managers, members, affiliates, agents, employees, successors and assigns for, from and against any and all Environmental Costs (whether or not arising out of third-party claims and regardless of whether liability without fault is imposed, or sought to be imposed, on Landlord or Senior Lender) incurred in connection with, arising out of, resulting from or incident to, directly or indirectly (i) the production, use, generation, spilling, depositing, leaching, dumping, storage, treatment, transporting, disposal, discharge, release or other handling or disposition of any Hazardous Materials (collectively, "**Handling**") by Tenant or any Subtenants from, in, on or about the Premises, including the effects of such Handling of any Hazardous Materials on any Person or property within or outside the boundaries of the Premises; (ii) the presence of any Hazardous Materials in, on, under or about the Premises or any adjacent Property; (iii) or the violation of any Hazardous Material Laws (including Hazardous Material Laws); and (iv) the imposition of any lien related to any Environmental Activity. Without limiting the scope or generality of the foregoing, except for any environmental conditions caused or created solely by Landlord, or those acting on Landlord's behalf, Tenant expressly agrees to reimburse Landlord or Senior Lender for any and all costs and expenses incurred by Landlord or Senior Lender:

(A) In investigating any and all matters relating to the Handling of any Hazardous Materials, in, on, from, under or about the Premises;

(B) In bringing the Premises into compliance with all Hazardous Material Laws;

(C) Removing, treating, storing, transporting, cleaning-up and/or disposing of any Hazardous Materials handled in, on, from, under or about the Premises or offsite; and

(D) Subject to the right of Tenant to contest any such claim, if any claim is made hereunder, Tenant agrees to pay such claim promptly, and in any event to pay such claim within thirty (30) calendar days after receipt by Tenant of notice thereof.

**22.5 Environmental Inspection.** Landlord shall have the right, from time to time, and upon not less than five (5) days written notice to Tenant, except in the case of any emergency in which event no notice shall be required, to conduct an inspection of the Premises to determine the existence or presence of Hazardous Materials on or about the Premises and/or the documentation relative to Hazardous Materials or Environmental Matters in Tenant's possession. Landlord shall have the right to enter and inspect the Premises, conduct any testing, sampling and analyses it deems necessary and shall have the right to inspect materials brought into the Premises. Landlord may, in its discretion, retain such experts to conduct the inspection, perform the tests referred to herein, and to prepare a written report in connection therewith. Provided that Landlord's decision to conduct an environmental inspection is reasonable, or if such inspection detects any Environmental Activities in violation of Hazardous Material Laws, all costs and expenses incurred by Landlord under this Section shall be paid on demand by Tenant to Landlord. Failure to conduct an environmental inspection or to detect unfavorable conditions if such inspection is conducted shall in no fashion be intended as a release of any liability for environmental conditions subsequently determined to be associated with or to have occurred during Tenant's tenancy. Tenant shall remain liable for any environmental condition related to or having occurred during its tenancy regardless of when such conditions are

discovered and regardless of whether or not Landlord conducts an environmental inspection at the termination of the Lease. The obligations set forth in this Article shall survive the expiration or earlier termination of the Lease.

**22.6 Extension of Term.** Notwithstanding any other provision of this Lease, in the event any Hazardous Materials are discovered on, under or about any portion of the Premises in violation of any Hazardous Materials Law and such Hazardous Materials become located on, under or about any portion of the Premises during the Term, and the presence of such Hazardous Materials or violation of Hazardous Materials Laws are caused directly or indirectly by Tenant or those acting on behalf or at the direction of Tenant, then Landlord may elect to terminate this Lease, at Landlord's option, and, with the consent of Senior Lender, the Security Deposit shall be retained by Landlord except such portion of the Security Deposit as shall be necessary to pay for the completion of all remedial action or monitoring by Tenant, in accordance with all Hazardous Materials Laws, as approved by Landlord in its reasonable discretion (the "**Remediation Payment**"). Landlord shall provide the Remediation Payment to Tenant within ten (10) Business Days after receipt of a fully signed contract for the performance of such remedial action or monitoring between Tenant and a qualified environmental consultant or contractor, reasonably acceptable to Landlord. In addition, at Landlord's option, the Term may be extended and this Lease shall remain in full force and effect until the earlier to occur of the completion of all remedial action or monitoring, as approved by Landlord, in accordance with all Hazardous Materials Laws, or the date specified in a written notice from Landlord to Tenant terminating this Lease (which date may be subsequent to the date upon which the Term was to have expired). In either event, if the Security Deposit Amount is not sufficient to pay for the required remedial action or monitoring by Tenant, then within ten (10) days after receipt of written notice from Landlord, Tenant shall deposit additional cash with Landlord or deliver to

Landlord a Qualifying Letter of Credit in an amount sufficient to pay for all costs of any remedial action or monitoring as required by all Hazardous Materials Laws (the "**Remediation Escrow**"). Landlord shall make funds available from the Remediation Escrow to reimburse Tenant for its actual, documented costs in performing the remedial action or monitoring as required by all Hazardous Materials Laws. The provisions of this Section 22.6 shall survive the termination of this Lease.

**22.7 Participation in Hazardous Materials Claims.** Landlord shall have the right, at Landlord's sole cost and expense (including, without limitation Landlord's reasonable attorney's fees and costs), with counsel chosen by Landlord, to join and participate in, as a party if it so elects, any legal proceedings or actions initiated in connection with any Hazardous Materials Claims.

**23. Assignment and Subletting.**

**23.1** Except for Sub-subleases to Subtenants and as permitted pursuant to Section 23.6 below, Tenant shall not, without the prior written consent of Landlord, which consent shall be within the sole discretion of the Landlord, assign this Lease or any interest herein or sublet the Premises or any part thereof (an "**Assignment**"). For the purposes of this Lease, the following shall be considered an Assignment of this Lease by Tenant: (a) any financial services or similar agreement relating to the operation and/or control of the Premises; provided, however, the parties acknowledge and agree that Tenant intends to enter into the management agreement with an Affiliate of Tenant, as permitted pursuant to the terms of Section 40 of this Lease, (b) any change (voluntary or involuntary, by operation of law or otherwise), directly or indirectly, in the Persons which ultimately exert effective Control over the management of the affairs of Tenant or any Subtenant as of the date hereof and (c) any assignment or sublease to any unrelated third party

operator. Any of the foregoing acts without such consent shall be void and shall, at the option of Landlord in its sole discretion, constitute an Event of Default giving rise to Landlord's right, among other things, to terminate this Lease. Notwithstanding the foregoing prohibition on changes in Control of the Tenant or any Subtenant, any transfer or assignment of interest made to an immediate family member for estate planning purposes, shall be permitted with at least thirty (30) days prior written notice to Landlord. Without limiting the foregoing, this Lease shall not, nor shall any interest of Tenant herein, be assigned or encumbered by operation of law without the prior written consent of Landlord, which may be withheld at Landlord's sole discretion. Anything contained in this Lease to the contrary notwithstanding, except as qualified in Section 3.2(f) herein, Tenant shall not sublet the Premises on any basis such that the rental to be paid by the sublessee thereunder would be based, in whole or in part, on either the income or profits derived by the business activities of the sublessee, or any other formula, such that any portion of the sublease rental received by Landlord would fail to qualify as "rents from real property" within the meaning of Section 856(d) of the U.S. Internal Revenue Code, or any similar or successor provision thereto.

23.2 For the purpose of this Lease the transfer, assignment, sale, hypothecation or other disposition of any stock or membership interests of Tenant or any Subtenant or any agreement which results in either (a) a change in the Person(s) which ultimately (directly or indirectly, voluntary or involuntary, by operation of law or otherwise) exerts effective Control over the management of the affairs of Tenant or any Subtenant as of the Effective Date, or (b) the transfer of more than fifty percent (50%) in the aggregate of the stock or membership interests of Tenant or any Subtenant in a single transaction or series of transactions, shall be deemed to be an Assignment of this Lease.

23.3 In the event that Landlord consents to Tenant entering into a financial services agreement for the Premises, Tenant shall require that the manager agree in writing that the manager's right to receive compensation shall be subordinate to the right of Landlord to receive Minimum Rent and other payments required under this Lease, in accordance with Section 40. Tenant may not amend or modify any such financial services agreement without Landlord's prior written consent.

23.4 Upon any transfer or assignment of this Lease, Landlord, Tenant and the new tenant or assignee (as the case may be) will enter into assignment and assumption agreements in form and content satisfactory to the parties including the granting of security interests that are provided to Landlord under this Lease.

23.5 Tenant represents and warrants that it has provided to Landlord an organizational structure chart of Tenant and all Subtenants showing the ownership of Tenant and Subtenants and each Person that ultimately exerts effective Control over the management of the affairs of Tenant and Subtenants as of the date of this Lease. Tenant shall provide to Landlord a revised organizational structure chart at least three (3) Business Days before any changes in any of the Persons depicted on such chart are to become effective.

23.6 Notwithstanding any provision of this Section 23 to the contrary, Tenant shall have the one-time right to sublet no more than one (1) Facility to a qualified operator that is not an Affiliate of Tenant or Subtenants. Tenant shall make a written request for Landlord's consent to such sublease at least thirty (30) days prior to the effective date of such transfer (such request to include an appropriate sublease agreement to be signed by Landlord evidencing such consent) and Landlord's consent shall not be unreasonably withheld. Tenant shall remain

primarily liable for its obligations hereunder, including the payment of all Minimum Rent and Percentage Rent, during the term of such sublease.

**24. Indemnification.** In addition to the other indemnities contained herein, to the fullest extent permitted by law, Tenant agrees to protect, indemnify, defend and save harmless Senior Lender and Landlord, their respective directors, officers, shareholders, partners, members, manager, agents, affiliates, employees, successors and assigns from and against any and all foreseeable or unforeseeable liability, expense, loss, costs, deficiency, fine, penalty, or damage (including, without limitation, punitive or consequential damages) of any kind or nature, including reasonable attorneys' fees, from any suits, claims or demands regardless of the merits of any such alleged suit, claim or demand, on account of any matter or thing, action or failure to act arising out of or in connection with this Lease (including, without limitation, the breach by Tenant of any of its obligations hereunder), the Premises, or the operations of Tenant on any portion of the Premises, including, without limitation, all Environmental Activities on any portion of the Premises unless caused solely by the gross negligence or willful misconduct of Landlord, Senior Lender or their respective directors, officers, shareholders, partners, members, manager, agents, affiliates, employees, successors and assigns. Upon receiving knowledge of any suit, claim or demand asserted by a third party that Landlord believes is covered by this indemnity, Landlord shall give Tenant notice of the matter. Tenant shall defend Landlord and Senior Lender against all matters covered by this indemnity at Tenant's sole cost and expense (including, without limitation, attorneys' fees and costs) with legal counsel satisfactory to Landlord and Senior Lender in their reasonable discretion. Landlord may elect to defend the matter with its own counsel at Tenant's expense. Notwithstanding anything to the contrary in this Lease, Tenant shall not be required to indemnify Landlord pursuant to this Section 24 to the extent that the subject claim occurred prior to the commencement of the term of this Lease or

after the date Tenant vacates and surrenders possession of the Premises to Landlord following expiration or early termination of the Term of this Lease.

**25. Holding Over.** If Tenant shall for any reason remain in possession of any portion of the Premises after the expiration or earlier termination of this Lease, such possession shall be a month-to-month tenancy during which time Tenant shall pay as rental each month, one and a half (1.5) times the aggregate of the monthly Minimum Rent payable with respect to the last Lease Year plus Percentage Rent allocable to the month, all additional charges accruing during the month and all other sums, if any, payable by Tenant pursuant to the provisions of this Lease with respect to the Premises. Nothing contained herein shall constitute the consent, express or implied, of Landlord to the holding over of Tenant after the expiration or earlier termination of this Lease, nor shall anything contained herein be deemed to limit Landlord's remedies pursuant to this Lease or otherwise available to Landlord at law or in equity.

**26. Estoppel Certificates.** Tenant shall, upon not less than ten (10) Business Days prior written request by Landlord, execute, acknowledge and deliver to Landlord or its designee a statement in writing, executed by an officer, manager or general partner of Tenant, certifying that this Lease is unmodified and in full force and effect (or, if there have been any modifications, that this Lease is in full force and effect as modified, and setting forth such modifications), the dates to which Minimum Rent, Percentage Rent and additional charges hereunder have been paid, certifying that, to the best of Tenant's knowledge, no default by either Landlord or Tenant exists hereunder or specifying each such default and as to other matters as Landlord may reasonably request.

**27. Conveyance by Landlord.** If Landlord or any successor owner of the Premises shall convey all or any portion of the Premises in accordance with the terms hereof, Landlord or such

successor owner shall thereupon be released from all future liabilities and obligations of Landlord under this Lease arising or accruing from and after the date of such conveyance or other transfer as to all or such portion of the Premises and all such future liabilities and obligations shall be expressly assumed and be binding upon the new owner. Such new owner shall be responsible for payment of the Security Deposit to Tenant pursuant to Section 12.3 hereunder provided that Landlord actually transfers such Security Deposit Amount (if in the form of cash) to the new owner upon the conveyance of the Premises.

**28. Waiver of Jury Trial.** Landlord and Tenant hereby waive any rights to trial by jury in any action, proceedings or counterclaim brought by either of the parties against the other in connection with any matter whatsoever arising out of or in any way connected with this Lease, including, without limitation, the relationship of Landlord and Tenant, Tenant's use and occupancy of the Premises, or any claim of injury or damage relating to the foregoing or the enforcement of any remedy hereunder.

**29. Attorneys' Fees.** If Landlord or Tenant brings any action to interpret or enforce this Lease, or for damages for any alleged breach hereof, the prevailing party in any such action shall be entitled to reasonable attorneys' fees and costs as awarded by the court in addition to all other recovery, damages and costs.

**30. Severability.** In the event any part or provision of the Lease shall be determined to be invalid or unenforceable, the remaining portion of this Lease shall nevertheless continue in full force and effect.

**31. Counterparts.** This Lease may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same agreement.

**32. Binding Effect.** Subject to the provisions of Section 23 above, this Lease shall be binding upon and inure to the benefit of Landlord and Tenant and their respective heirs, personal representatives, successors in interest and assigns.

**33. Memorandum of Lease.** Landlord and Tenant shall, promptly upon the request of either, enter into a short form memorandum of this Lease, in form suitable for recording under the laws of the State(s) in which the Premises are located in which reference to this Lease shall be made. The party requesting such recordation shall pay all costs and expenses of preparing and recording such memorandum of this Lease. Landlord, at no cost to Landlord, shall cooperate with Tenant if Tenant chooses to obtain leasehold title insurance policies with respect to the Property.

**34. Incorporation of Recitals and Attachments.** The Recitals and Exhibits, Schedules, addenda and other attachments to this Lease are hereby incorporated into this Lease and made a part hereof.

**35. Titles and Headings.** The titles and headings of sections of this Lease are intended for convenience only and shall not in any way affect the meaning or construction of any provision of this Lease.

**36. Usury Savings Clause.** Nothing contained in this Lease shall be deemed or construed to constitute an extension of credit by Landlord to Tenant. Notwithstanding the foregoing, in the event any payment made to Landlord hereunder is deemed to violate any applicable laws regarding usury, the portion of any payment deemed to be usurious shall be held by Landlord to pay the future obligations of Tenant as such obligations arise and, in the event Tenant discharges and performs all obligations hereunder, such funds will be reimbursed to

Tenant upon the expiration of the Term. No interest shall be paid on any such funds held by Landlord.

**37. Joint and Several.** If more than one Person or entity is the Tenant hereunder, the liability and obligations of such Persons or entities under this Lease shall be joint and several.

**38. Survival of Representations, Warranties and Covenants.** All of the obligations (accruing prior to the date of expiration or earlier termination of this Lease), representations, warranties and covenants of Tenant under this Lease shall survive the expiration or earlier termination of the Term, for a period of three (3) years, including, without limitation, Tenant's obligations to pay rent and other sums under this Lease following the occurrence of an Event of Default and the termination of this Lease pursuant to Section 11.3.6 or 11.3.7 above.

**39. Interpretation.** Both Landlord and Tenant have been represented by counsel and this Lease has been freely and fairly negotiated. Consequently, all provisions of this Lease shall be interpreted according to their fair meaning and shall not be strictly construed against any party.

**40. Management Fees.** (a) Tenant shall engage, or cause Master Tenant to engage, a manager to provide financial services to the Premises pursuant to a financial services agreement reasonably acceptable to Landlord, pursuant to which Master Tenant and/or Subtenants shall pay the Management Fee to Manager. The Management Fee shall be subordinate to Minimum Rent and to all other payments required under this Lease except Percentage Rent. At Landlord's request, Tenant shall cause Manager and Subtenant to enter into a Subordination Agreement reasonably acceptable to Landlord and Senior Lender, if applicable. During the Term, neither Tenant nor Subtenant may change the Manager or engage a new Manager to manage the

Premises, or amend, modify, supplement or replace any financial services agreement without Landlord's prior written consent, which will not be unreasonably withheld; provided, however, Landlord may condition its consent to any proposed change in Manager upon the new Manager confirming in writing that the Management Fee shall continue to be subordinate to the payment of Minimum Rent and to all other payments required under this Lease except Percentage Rent.

(b) The Management Fee is four and a half percent (4.5%) of the annual gross revenues realized from the operation of the Premises. At such time that Tenant has paid at least Two Million Dollars (\$2,000,000.00) in Percentage Rent to Landlord in any trailing 12 month period (the "Management Fee Threshold"), in the fourth Lease Year or any subsequent Lease Year, then the Management Fee shall be permanently increased to five percent (5%). If Tenant shall reach the Management Fee Threshold in payment of Percentage Rent at any time prior to the fourth Lease Year, then an additional Incentive Management Fee (defined below) of up to one half of one percent (0.5%) may be paid to Manager on a quarterly basis as set forth in (c) below.

(c) Upon meeting the Management Fee Threshold, Tenant shall provide written notice to Landlord, including (i) a detailed statement of Percentage Rent for such trailing 12 month period and (ii) the calculation of the Incentive Management Fee (defined below) showing the amounts paid or payable to Manager. At the time such notice is provided by Tenant, any Excess Cash Flow for such quarter received after the Management Fee Threshold was met (and after the payment of any Deposit Payment to Landlord for any increased Security Deposit Amount required pursuant to Section 12.1) shall be paid to Manager in the amount of up to one half of one percent (0.5%) of the gross revenues from the same trailing 12 month period, less any amounts paid as Incentive Management Fee in the prior three (3) quarters (the "Incentive Management Fee"). After the Incentive Management Fee has been paid to Manager, Tenant

shall continue to be responsible for the payment of Percentage Rent to Landlord as set forth in Section 3.2.

**41. Related Party Goods and Services.** Tenant agrees that if it or any of its Affiliates provide services or goods to the Tenant or the Premises that such services or goods will be provided at rates no higher than and upon terms at least as favorable to the Tenant and/or Premises as would be obtainable in an arms-length transaction. All such agreements for services with Affiliates of Tenant shall be at market rates and Tenant shall provide prior written notice to Landlord before entering into such agreements.

**42. Ancillary Contracts.** Tenant agrees not to enter into any new contracts or agreements with providers of ancillary healthcare services, including without limitation, therapy, hospice, home health pharmacy or medical supply agreements, without providing prior written notice to Landlord. With regard to contracts or agreements relating specifically to providers of therapy or rehabilitation services, Tenant agrees to provide Landlord and its Affiliates at least thirty (30) days prior written notice of such contract or agreement and an equal opportunity to submit a bid for providing such therapy or rehabilitation services. Ancillary services under all such contracts shall be provided at market rates.

**43. Relationship of Parties.** Nothing contained in this Lease shall be deemed to create a partnership or joint venture or any form of agency relationship between Landlord and Tenant. Landlord and Tenant's relationship in this Lease shall be deemed to be one of landlord and tenant only, and neither party shall have the right or authority to hold out any party to this Lease as a partner, joint venturer, principal or agent of the other. Tenant shall not acquire any direct or indirect equity interest in Landlord or in any lender or financing arrangement from or in which Landlord, or any of its Affiliates, is a borrower.

**44. Termination of Lease.** Landlord shall have the right, at any time during the Term of this Lease, to terminate this Lease upon the occurrence of a Capital Event of Landlord on the terms and conditions set forth in this Section 44. Upon such Capital Event, Landlord may terminate this Lease by (i) providing ninety (90) days prior written notice to Tenant, (ii) providing written termination agreements for all leases and other documents between Landlord and Tenant and any of their respective Affiliates, including, without limitation, this Lease, any subleases and any management agreements, and (iii) paying to Tenant a termination fee ("**Termination Fee**") in accordance with Schedule 44 attached hereto; provided, however, no such Termination Fee shall be due if this Lease is not in full force and effect or an Event of Default has occurred and is continuing under this Lease.

**45. Securitization.** In the event Landlord elects to securitize any loan secured by the Premises, Tenant agrees to cooperate with Landlord and provide information and execute documents that Landlord may reasonably request, provided that Tenant does not incur any additional liability as a result of such request and Tenant does not incur any expense.

**46. Special Purpose Entity Covenants.** At all times during the term of the Lease, Tenant shall adhere to the following covenants: (a) Tenant shall preserve and keep in full force and effect its existence as a single purpose entity formed solely for the purpose of entering into this Lease with Landlord; (b) Tenant shall not change its organizational structure without prior written consent of Landlord and Senior Lender; (c) Tenant shall maintain its separateness as an entity, including maintaining separate books, records, and accounts and observing corporate and partnership formalities independent of any other entity; and (d) Tenant shall pay its obligations with its own funds and shall not commingle funds or assets with those of any other entity form. In addition, Tenant shall cause all Subtenants and operators of the Premises to abide by similar

covenants and to include those covenants in the organizational documents of the Tenant, all Subtenants and operators of the Premises.

**47. Lender Approval.** Tenant acknowledges that this Lease is subject to Senior Lender's approval. Tenant agrees to execute any amendment to this Lease required by the Senior Lender or any subsequent senior lender provided that such modifications do not (a) negatively impact or expand Tenant's obligations under this Lease; (b) Tenant does not incur any additional liability as a result of such request; and (c) Tenant does not incur any expense.

**48. Limitation of Landlord's Liabilities.** If Landlord defaults in the performance of any of its obligations, Tenant agrees to look solely to Landlord's interest in the Premises for the satisfaction of any judgment obtained by Tenant as the result of any default, and Tenant shall not seek any personal money judgment against Landlord or any of its officers, directors, stockholders, members, managers or partners.

**49. Intentionally Deleted.**

**50. HUD Financing.** At all times during the Term, Tenant and Manager shall (and Tenant shall cause Subtenants to) reasonably cooperate with Landlord to enable Landlord to obtain HUD insured financing for the Properties; provided, however, Landlord shall reimburse Tenant and Subtenants for all reasonable documented expenses incurred by Tenant and Subtenants in complying with this provision. In connection with any such HUD financing, Tenant and Manager shall (and Tenant shall cause Subtenants to) enter into such agreements, instruments, certificates and other documents reasonably required in connection with such financings, including, without limitation, a HUD Regulatory Agreement for each such Property; a HUD Addendum to this Lease requiring Tenant and Subtenants to comply with all legal and

regulatory requirements related to such financings; and modifications to this Lease (including, if required by HUD, splitting this Lease into separate leases on the same terms and conditions as contained in this Lease, subject to prorating the financial obligations in each such separate lease) and will thereafter remain in substantial compliance with all statutes, rules, regulations and laws related to such financings. With respect to any repairs or escrows required to obtain HUD insured financing for the Properties, Tenant shall be responsible for performing repairs required by HUD which have been directly or indirectly caused by Tenant's negligence or failure of Tenant to perform its obligations under this Lease, in order to deliver the Premises in good working order. Tenant shall also be responsible for contributing to HUD required escrows for capital improvements, to the extent necessary to pay for repairs directly or indirectly caused by Tenant's negligence or failure of Tenant to perform its obligations under this Lease.

**51. REIT Event.** From and after a REIT Event Notification Date: (a) Tenant shall, and shall cause its Affiliates, including Subtenants, to take all commercially reasonable actions requested by Landlord that in Landlord's reasonable judgment will be recommended for compliance with the requirements for maintaining REIT status; and (b) Tenant shall not, and shall cause its Affiliates not to, acquire any equity interest in Landlord or any of Landlord's Affiliates if such acquisition would result in Tenant and/or any of Tenant's Affiliates owning, directly or indirectly, a ten percent (10%) or greater interest in Landlord or any of Landlord's Affiliates within the meaning of Section 856(d)(2)(B) of the Code. Subject to the provisions set forth in Section 3.2(f) above, upon the occurrence of a REIT Event, any and all references to Percentage Rent in this Lease shall no longer apply.

**52. Landlord Financial Information.** To the extent reasonably necessary to complete and file Medicare and Medicaid cost reports, and for no other purpose whatsoever, Landlord

agrees to provide to Tenant any pertinent information and supporting documentation related to its debt and equity affecting the Premises, including the applicable terms of any loan agreement and any loan payment information.

**53. Entire Agreement; Modification; Waiver.** This Lease and the Exhibits and Schedules to this Lease constitute the entire agreement between Landlord and Tenant pertaining to the subject matter contained in this Lease and supersede all prior agreements, representations and understandings of the parties. No supplement, modification or amendment of this Lease shall be binding unless expressed as such and executed in writing by Landlord and Tenant. Except as set forth herein, no waiver of any provision of this Lease shall constitute a continuing waiver. No waiver shall be binding unless expressed as such in a document executed by the party making the waiver.

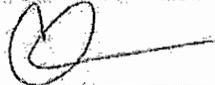
[SIGNATURE PAGE FOLLOWS]

*[Signature page to Master Lease & Security Agreement]*

Executed as of the date indicated above.

**TENANT**

**DIANA MASTER LANDLORD, LLC**  
a Delaware limited liability company

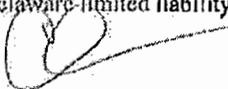
By:   
\_\_\_\_\_  
Christina K. Firth  
President

**LANDLORD**

**DIANA MONROE STREET, LLC**  
**DIANA GALERIA BLVD, LLC**  
**DIANA CICERO AVENUE, LLC**  
**DIANA LARKIN AVENUE, LLC**  
**DIANA KICKAPOO STREET, LLC**  
**DIANA MCKINLEY AVENUE, LLC**  
**DIANA PEARL STREET, LLC**  
**DIANA CASTELLANO DRIVE, LLC**  
Each, a Delaware limited liability company

By:   
\_\_\_\_\_  
Christina K. Firth  
President

**DIANA SQUAW PRAIRIE ROAD, LLC,**  
a Delaware limited liability company

By:   
\_\_\_\_\_  
Christina K. Firth  
President

**SECOND AMENDMENT TO MASTER SUBLEASE  
AND SECURITY AGREEMENT**

**THIS SECOND AMENDMENT TO MASTER SUBLEASE AND SECURITY AGREEMENT** (the "**Amendment**") is entered into effective as of the ~~31st~~ 31st day of December, 2013 (the "**Effective Date**"), by and between **DIANA MASTER LANDLORD, LLC**, a Delaware limited liability company ("**Landlord**") and **SYMPHONY M.L. LLC**, an Illinois limited liability company ("**Tenant**"), with reference to the following Recitals:

**RECITALS**

A. Landlord and Tenant are parties to that certain Master Sublease and Security Agreement dated December 31, 2011, as amended by that certain First Amendment to Master Sublease and Security Agreement dated March 25, 2013 (collectively, the "**Lease**") whereby Landlord leases certain property, including eight (8) skilled nursing facilities, and sub-leases certain other property, including one (1) assisted living facility, each located in the State of Illinois (together, the "**Premises**"), to Tenant; and

B. Tenant and Symphony Healthcare LLC ("**Symphony Healthcare**") are parties to that certain Sublease and Security Agreement dated December 31, 2011 (the "**Sublease**"), whereby Tenant subleases the Premises to Symphony Healthcare.

C. Symphony Healthcare and Symphony Crestwood LLC ("**Symphony Crestwood**") are parties to that certain Lease Agreement [Crestwood Care Center] dated December 31, 2011 (the "**Crestwood Sub-Sublease**"), whereby Symphony Crestwood leases that portion of the Premises known as the Crestwood Care Center to Symphony Crestwood.

D. Symphony Crestwood and Symphony Dialysis LLC ("**Symphony Dialysis**") are parties to that certain Lease Agreement [Crestwood Dialysis Facility] dated December 31, 2011 (the "**Crestwood Sub-Sub-Sublease**"), whereby Symphony Crestwood leases a portion of the

Crestwood Care Center containing approximately 1,279 square feet of space, as depicted on Exhibit A attached hereto, together with certain rental dialysis equipment located therein, to Symphony Dialysis (said space is hereinafter referred to as the “**Dialysis Space**,” and said rental equipment is hereinafter referred to as the “**Dialysis Equipment**”) for the operation of a dialysis center (the “**Dialysis Center**”).

E. An affiliate of Tenant (“**Tenant’s Affiliate**”) has contracted to purchase the Dialysis Equipment from Diana Cicero Avenue, LLC, an affiliate of Landlord, and has agreed to lease the Dialysis Space from Landlord.

F. Landlord and Tenant each desire to terminate this Lease as to the Dialysis Equipment and the Dialysis Space, so that Tenant’s Affiliate may purchase the Dialysis Equipment, lease the Dialysis Space from Landlord and operate the Dialysis Center to continue to serve residents of Crestwood Care Centre.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and agreements set forth herein, Landlord and Tenant agree to amend the Lease as follows:

1. Defined Terms. All capitalized terms used herein and not expressly defined shall have the meaning given to them in the Lease.

2. Partial Lease Termination. From and after the Effective Date, this Lease shall terminate and be of no further force or effect as to the Dialysis Equipment and the Dialysis Space. The term “Premises” as defined in the Lease shall hereinafter be deemed to exclude the Dialysis Equipment and the Dialysis Space. Landlord and Tenant acknowledge and agree that the Dialysis Center shall continue to operate at the Crestwood Facility, and serve the residents of Crestwood Care Centre, pursuant to a separate space lease between Landlord and Tenant’s Affiliate (the “**New Lease**”). The rent paid by Tenant’s Affiliate to Landlord pursuant to the New Lease shall not be included in the calculation of Percentage Rent set forth in Section 3.2 of the Lease. There shall be no adjustment to the Minimum Rent due to this partial lease termination. The indemnification obligations of Tenant in Section 24 of the Lease shall survive

this partial lease termination as to any suits, claims, demands, liability, loss, costs or damages suffered by Landlord and accruing prior to the Effective Date.

3. Ratification. Except as herein expressly amended, the Lease shall remain in full force and effect. The Lease, as modified by this Amendment, is hereby ratified and affirmed in all respects. To the extent of any inconsistency between the provisions of the Lease and the terms and provisions of this Amendment, the terms and provisions of this Amendment shall be controlling.

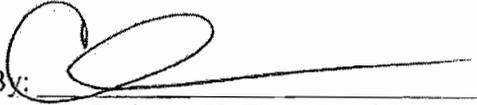
4. Counterparts, Facsimiles. This Amendment may be executed in counterparts. Each executed counterpart of this Amendment will constitute an original document, and all executed counterparts, together, will constitute the same agreement. Any counterpart evidencing signature by one party that is delivered by telecopy or email by such party to the other party hereto shall be binding on the sending party when such telecopy is sent.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Second Amendment effective the day and year first set forth above.

LANDLORD:

DIANA MASTER LANDLORD, LLC,  
a Delaware limited liability company

By:   
Christina K. Firth, President

TENANT:

SYMPHONY M.L. LLC,  
An Illinois limited liability company

By: \_\_\_\_\_  
David J. Hartman, Manager

23290609\_2

IN WITNESS WHEREOF, the parties have executed this Second Amendment effective the day and year first set forth above.

LANDLORD:

DIANA MASTER LANDLORD, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Christina K. Firth, President

TENANT:

SYMPHONY M.L. LLC,  
an Illinois limited liability company

By: \_\_\_\_\_  
David J. Hartman, Manager

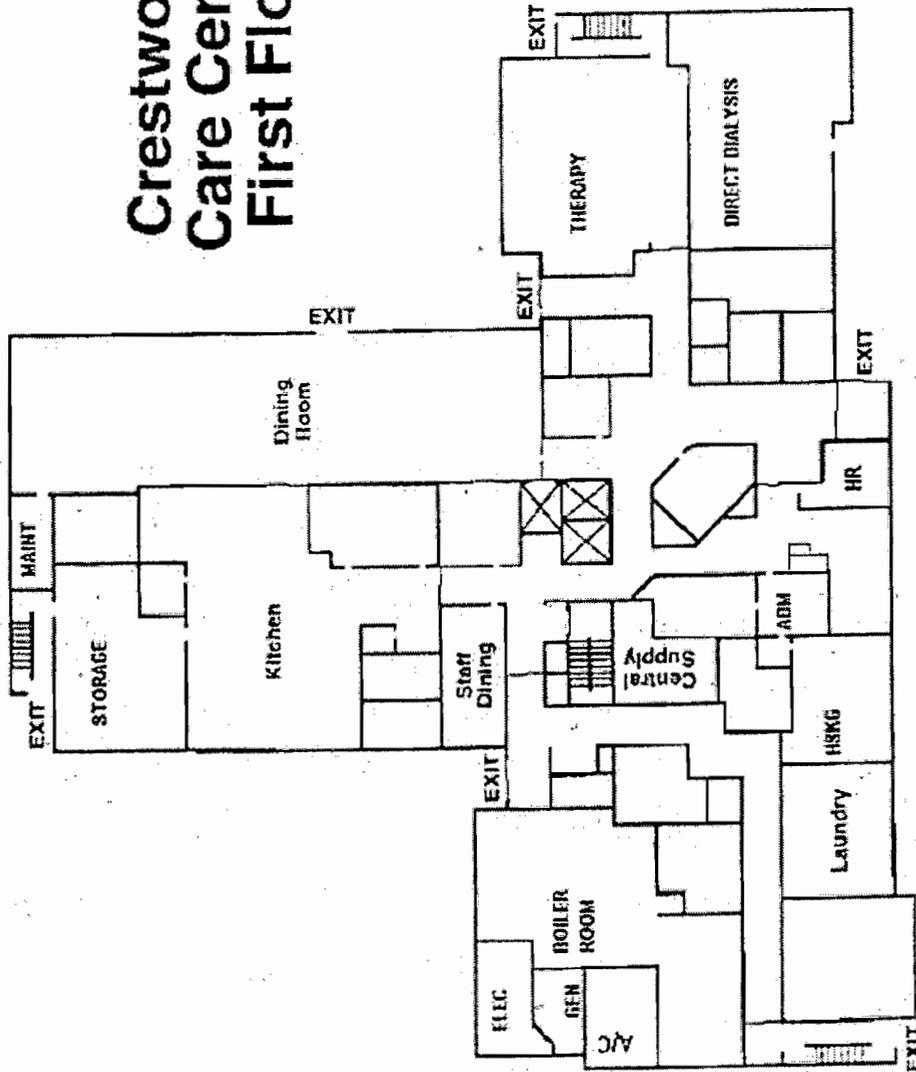
[Signature Page to Second Amendment to Master Sublease]

Exhibit A

Attach sketch of Dialysis Space

**Floor Plan of Symphony of Crestwood Skilled Nursing Facility & Free-Standing ESRD Facility (First Floor)**

**Crestwood  
Care Center  
First Floor**



ESRD Facility  
First Floor Only  
Total ESRD Facility SQF: 1,279



Symphony of Crestwood SNF  
Floors 1-4  
Total SNF SQF: 90,681

**Sublease**

(see attached)

**SUBLEASE AGREEMENT**

**THIS SUBLEASE AGREEMENT** (hereinafter referred to as the "**Lease**"), is made and entered into by and between **DIANA MASTER LANDLORD, LLC**, a Delaware limited liability company (hereinafter referred to as "**Landlord**") and **CONCERTO DIALYSIS, LLC**, an Illinois limited liability company (hereinafter referred to as "**Tenant**").

**WITNESSETH:**

**WHEREAS**, Landlord is the lessee of that certain skilled nursing home facility known as the Crestwood Care Centre (hereinafter referred to as the "**Facility**"), located at 14255 South Cicero Avenue, Crestwood, Illinois, pursuant to that certain Master Lease and Security Agreement dated December 31, 2011, by and between Diana Cicero Avenue, LLC (the "**Prime Lessor**") and Landlord (the "**Master Lease**"); and

**WHEREAS**, Tenant desires to enter into a sublease for certain space in the Facility.

**NOW, THEREFORE**, Landlord hereby subleases to Tenant, and Tenant hereby subleases from Landlord, a portion of the Facility upon the following terms and conditions:

**1. CAPITALIZED TERMS.** Capitalized terms not otherwise defined herein shall have the meaning assigned to them in the Master Lease.

**2. TERMS SUBJECT TO MASTER LEASE.** This Lease and Tenant's rights pursuant to this Lease are subject and subordinate at all times to the Master Lease and to all of the covenants and agreements of the Master Lease, except such terms of the Master Lease which are specifically excluded herein by reference below. This Lease is intended to be a space lease only, and is not subject to the Master Sublease and Security Agreement dated December 31, 2011 by and between Landlord and Symphony M.L. LLC, an Illinois limited liability company, which is the master tenant and sublessor of eight (8) skilled nursing facilities and one (1) assisted living facility, each located in the State of Illinois, as amended by that certain First Amendment to Master Sublease and Security Agreement dated March 25, 2013 and that certain Second Amendment to Master Sublease and Security Agreement dated of even date herewith (collectively, the "**Master Sublease**"). Tenant hereby expressly agrees during the Term (as hereinafter defined) to be subject to, to be bound by and to observe, and the Lease shall be deemed to contain, all of the covenants, stipulations, restrictions, agreements and other provisions contained in the Master Lease to the extent the same are applicable to the Premises except as expressly modified, excluded or otherwise addressed in this Lease. Tenant further agrees not to do, permit or tolerate anything to be done in the Premises or in connection with Tenant's use or occupancy of the Premises which would violate any covenant or agreement set forth in the Master Lease or would cause Landlord to be in default under the Master Lease. The following terms and provisions included in the Master Lease shall not apply to Tenant or to this Lease: Section 1 (Definitions), only to the extent such Definitions are not applicable due to other

excluded Sections; Section 2.1 (Demise); Section 2.2 (Maple Crest); Section 2.3 (Crestwood); Section 2.4 (Term); Section 3.1 (Initial Term Minimum Rent); Section 3.2 (Percentage Rent); Section 3.7 (Additional Minimum Rent Payment); Section 4.6 (Impound); Section 4.7 (Other Charges – last sentence only); Section 5.6 (Boiler Insurance); Section 5.8 (Flood Insurance); Section 6.1.3 (Capital Expenditure Amounts); Section 6.3 (Continuous Operation; Permitted Use); Section 6.5 (Alterations by Tenant); Section 6.6 (Initial Capital Improvement Investment); Section 8.4 (Accounts Receivable); Section 8.5 (Cash Management); Section 10.1 (Monthly Property Reports); Section 10.2 (Quarterly Financial Statements); Section 10.3 (Annual Financial Statements); Section 10.6 (Annual Operating Budget); Section 10.12 (Financial Covenants); Section 11.1.1 (Minimum Rent; Percentage Rent); Section 11.1.3 (Security Deposit); Section 11.1.7 (Subtenant Default); Section 11.1.13 (Financial Reports/Statements-Section 10.1, 10.2 and 10.3 only); Section 11.1.14 (Financial Covenant Default); Section 13 (Damage by Fire or Other Casualty); Section 14 (Condemnation); Section 16 (Notices and Demands); Section 21 (Preservation of Revenues); Section 23.6 (Sublease of Facility); Section 33 (Memorandum of Lease); Section 40 (Management Fees); and Section 44 (Termination of Lease).

**3. LEASED PREMISES.** Landlord hereby leases to Tenant, and Tenant hereby leases from Landlord, the portion of the Facility consisting of approximately 1,279 square feet of patient care and therapy space of the Facility, as outlined for descriptive purposes only on Exhibit A hereto (hereinafter referred to as the "**Premises**").

**4. PARKING AND COMMON AREAS.** In addition to the Premises hereinabove described, Tenant shall have the nonexclusive use of the parking area(s) , driveways, sidewalks, loading areas and access roads appurtenant to the Facility, and common areas located within the Facility, appurtenant to the Building and common areas, including corridors, lobbies, elevators, and rest rooms, for Tenant and Tenant's employees, clients and patrons, subject to such reasonable rules and regulations which may from time to time be adopted by the Landlord or an authorized authority.

**5. TERM.** The initial term of this Lease shall be eight (8) years, commencing upon delivery of the Premises to the Tenant, estimated to occur on or before January 1, 2014 ("**Commencement Date**"), except as otherwise provided herein below, and expiring on December 31, 2021, unless sooner terminated as provided herein (the "**Initial Term**"). Landlord and Tenant hereby agree that the Initial Term of this Lease shall be coterminous with the initial term of the Master Lease. Notwithstanding said Commencement Date, if for any reason Landlord cannot deliver possession of the Premises to Tenant on said date, Landlord shall not be subject to any liability therefor, nor shall such failure affect the validity of this Lease or the obligations of Tenant hereunder, or extend the term hereof. The Initial Term may be extended by Tenant for two (2) five (5)-year renewal terms in accordance with the provisions of Section 2.5 of the Master Lease.

**6. RENT.** Tenant shall pay to Landlord as base rent, without notice or demand and without abatement, deduction or offset, except as elsewhere provided herein, the annual amount of Ninety Thousand and 00/100 Dollars (\$90,000.00) ("**Annual Base Rent**"). Annual Base Rent shall be paid in advance in equal monthly installments of Seven Thousand Five Hundred and 00/100 Dollars (\$7,500.00) ("**Monthly Base Rent**"), by wire or ACH transfer only, on

the first day of each and every calendar month during the term of this Lease; provided, however, that in the event the Initial Term commences on a day other than the first day of a calendar month, then upon the Commencement Date hereof Tenant shall pay to the Landlord a pro-rata portion of Monthly Base Rent to that portion of the calendar month remaining from the Commencement Date to the first day of the next following calendar month. No payment by Tenant or receipt by Landlord of a lesser amount than the monthly payment in this Lease shall be considered anything other than a payment on account of the earliest rent due, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction. Landlord may accept such payment without prejudice to its right to recover the balance of the rent and to pursue any other remedy provided for in this Lease, or otherwise available at law or in equity. Commencing on the first anniversary of the Commencement Date, and continuing on each anniversary of the Commencement Date thereafter during the Initial Term (and during any applicable Renewal Term), Annual Base Rent shall increase by an amount equal to two percent (2%) of the prior lease year's Annual Base Rent, compounded annually.

7. **ADDITIONAL RENT.** All charges, costs, and expenses that Tenant assumes or agrees to pay hereunder, including Tenant's pro-rata share of taxes and utilities due pursuant to the Master Lease, together with all interest and penalties that may accrue thereon in the event of failure of Tenant to pay those items and all other damages, costs, expenses, and sums that Landlord may suffer or incur, or that may become due, by reason of any default of Tenant or failure by Tenant to comply with the terms and conditions of this Lease, shall be deemed collectively, "**Additional Rent**"; and, in the event of nonpayment of Annual Base Rent and/or any Additional Rent, Landlord shall have all rights and remedies as provided in Section 11.3 of the Master Lease.

8. **DELIVERY OF PREMISES.** Tenant acknowledges and agrees that its Affiliate, Symphony Dialysis LLC (the "**Operator**"), has been in possession of the Premises and operating the dialysis center located therein since December 31, 2011. Landlord shall deliver the Premises to Tenant "as is, where is and with all faults" and makes no representation or warranty as to the condition of the Premises or as to the ability of Tenant to operate the dialysis center located therein.

9. **USE OF PREMISES.** Tenant shall use and occupy the Premises continuously throughout the Term of the Lease solely for the purpose of operating and maintaining an outpatient renal dialysis clinic for the residents of the Facility, and for no other purpose whatsoever (the "**Healthcare Use**"). Tenant agrees not to engage in the referral practice of radiology, imagery and/or clinical laboratory on said Premises without Landlord's prior consent, except, however, that Tenant may maintain on said Premises a private x-ray and/or clinical laboratory strictly and solely for the use by the Tenant and Tenant's own patients. Tenant agrees not to dispense any drugs for remuneration, but this shall not be deemed to prevent Tenant's licensed providers from lawfully administering drugs and medicine to Tenant's own private patients, nor from giving samples of drugs and medicines to patients. Tenant recognizes that these restrictions on the use of the Premises are a material consideration for Landlord to enter into this Lease. Tenant shall comply with all laws, ordinances, rules, regulations and codes of all municipal, county, state and federal authorities pertaining to the use and occupation of the Premises. No use shall be made or permitted to be made of the Premises, nor acts done, which will increase the existing rate of insurance upon the Facility in which said Premises may be located, or cause a cancellation of any insurance policy covering said Facility,

or any part thereof, nor shall Tenant sell, or permit to be kept, used, or sold, in or about said Premises, any article which may be prohibited by the standard form of fire insurance policies. Tenant shall not commit, or suffer to be committed, any waste upon said Premises or any public or private nuisance, or other act or thing which may disturb the quiet enjoyment of any other tenant or resident in the Facility in which the Premises may be located, nor shall Tenant use any apparatus, machinery or devices in or about the Premises which shall make any noise or set up any vibration or which shall in any way increase the amount of electricity, water or compressed air agreed to be furnished or supplied under this Lease (if any), and Tenant further agrees not to connect with electric wires, water or air pipes any apparatus, machinery or device without the consent of Landlord, which consent shall not unreasonably withheld, conditioned or delayed. Tenant shall be responsible for obtaining a Certificate of Need permit from the Illinois Health Facilities and Services Review Board and any additional health care licenses, registration, certifications or permits required by the State of Illinois from the Operator, on or before the Commencement Date.

**10. MAINTENANCE OF THE PREMISES.** Except as otherwise provided in this Lease, Tenant shall be solely responsible for keeping and maintaining the Premises in good appearance, repair and condition and maintaining proper housekeeping, and Tenant shall promptly make or cause to be made all repairs necessary to keep the Premises in working condition, properly repaired, and maintained in the ordinary course of business.

As part of Tenant's obligations under this Section 10, Tenant shall be solely responsible for maintaining all of its personal property and equipment in working order sufficient for normal operation of its business, properly maintained by Tenant in the ordinary course of business. Subject to the foregoing, Tenant shall repair and replace such property consistent with prudent industry practice for the applicable Healthcare Use. Specifically, Tenant shall purchase replacement dialysis equipment within six (6) months after the Commencement Date, to replace such equipment purchased from the Prime Lessor on or before the Commencement Date pursuant to that certain Asset Purchase Agreement dated October 15, 2013 by and between Prime Lessor and Tenant.

**11. ALTERATIONS BY TENANT.** Tenant shall have the right to alter, improve, replace, modify or expand the Premises, equipment or appliances in the Premises from time to time as it may determine is desirable for the continuing and proper use and maintenance of the Premises under this Lease; provided, however, that any alterations, improvements, replacements, expansions or modifications in excess of TWENTY FIVE THOUSAND DOLLARS (\$25,000.00) in any rolling twelve (12) month period shall require the prior written consent of the Landlord, which consent shall not be unreasonably withheld, conditioned or delayed. It shall be reasonable for Landlord to require appropriate insurance, security for payment of the costs incurred for the project, prior approval of the plans for the project and Senior Lender's written approval for any such project. Notwithstanding anything to the contrary contained in this Section 11, in the event that Landlord's consent is required pursuant to this Section 11 and Landlord fails to respond within fifteen (15) days after receipt of a written request from Tenant, Landlord's consent shall be deemed given. The cost of all such alterations, improvements, replacements, modifications, expansions or other purchases, whether undertaken as an on-going licensing, Medicare or Medicaid (or any successor program) or other regulatory requirement or otherwise shall be borne

solely and exclusively by Tenant and shall immediately become a part of the Premises and the property of the Landlord subject to the terms and conditions of this Lease. All work done in connection therewith shall be done in a good and workmanlike manner and in compliance with all existing codes and regulations pertaining to the Premises and shall comply with the requirements of insurance policies required under this Lease. In the event any items of the Premises have become inadequate, obsolete or worn out or require replacement (by direction of any regulatory body or otherwise), Tenant shall remove such items and exchange or replace the same at Tenant's sole cost and the same shall become part of the Premises and property of the Landlord.

**12. RIGHTS OF LANDLORD.** Landlord shall have the right at any time, without effecting an actual or constructive eviction and without incurring any liability to the Tenant therefor, to change the arrangement or location of entrances or passageways, doors and doorways, corridors, elevators, stairs, toilets or other public parts of the Facility and to change the name, number or designation by which the Facility is commonly known; provided, however, that no such change shall interfere with Tenant's access to or beneficial use and enjoyment of the Premises.

**13. DESTRUCTION OF PREMISES.** In the event of the damage or destruction of any portion of the Premises, Tenant shall immediately notify Landlord (but in no event later than twenty-four hours after such damage or destruction) and, provided that Senior Lender consents to use of the proceeds to repair, diligently repair or reconstruct the same to a like or better condition than existed prior to such damage or destruction. Any insurance proceeds payable with respect to the casualty shall be held and used in the manner determined by Senior Lender and Landlord. In the event the net insurance proceeds are used for the repair or reconstruction of the applicable portion of the Premises, the proceeds shall be subject to reasonable disbursement controls in favor of Landlord or its Senior Lender. If such proceeds are insufficient for the repairs or reconstruction of the damaged portion of the Premises, Tenant shall provide the required additional funds. If Senior Lender prohibits the use of the funds for repairs or reconstruction, the insurance proceeds shall be utilized by Senior Lender to pay down debt owed to it. Notwithstanding anything to the contrary herein, and provided that (i) Tenant has paid to Landlord all amounts due under the Lease through the date of such damage or destruction, (ii) more than fifty percent (50%) of the Premises is damaged, (iii) Senior Lender prohibits the use of the insurance proceeds for repairs or reconstruction, and (iv) Landlord fails to repair or reconstruct the Premises to substantially the same condition as existed prior to such damage or destruction within twelve (12) months after the date of such damage or destruction, then Tenant may, at Tenant's election, made within thirty (30) days after Landlord provides written notice to Tenant that the Premises will not be repaired to substantially the same condition as existed prior to such damage or destruction within the time period set forth in (iv) above, terminate this Lease. In the event that the damage or destruction affects 50% or less of the Premises, and Senior Lender prohibits the use of the insurance proceeds for repairs or reconstruction, then, provided that Tenant shall continue the operation of the Premises for the Healthcare Use, the Annual Base Rent shall be adjusted as mutually agreed by Landlord and Tenant and approved by Senior Lender. Other than as provided in this Section 13, the rent payable under this Lease shall not abate by reason of any damage or destruction of any portion of the Premises by reason of an insured or uninsured casualty; provided, however, that Tenant shall

receive a credit against the rent and other sums due hereunder in an amount equal to the proceeds of any rental value and/or business interruption insurance carried by Tenant, which are paid to Landlord. Tenant hereby waives all rights under applicable law to abate, reduce or offset rent by reason of such damage or destruction.

**14. FULL MARKET VALUE OF RENT.** Rent paid by Tenant to Landlord under this Lease has been independently determined to be consistent with fair market value in an arms-length transaction based on consultation with each party's respective advisors and knowledge of market conditions. For the purposes of this Lease, the "fair market value" ("**FMV**") of the Rent shall mean the dollar amount that the Premises would rent for on the open market, between a willing lessor and a willing lessee, both having reasonable knowledge of the relevant facts. The FMV of the Rent only considered the value of the rental property for general commercial purposes, and was not adjusted to reflect any additional value that one party (either the prospective lessee or lessor) would attribute to the property as a result of its proximity or convenience to sources of referrals or business otherwise generated for which payment may be made in whole or in part under Medicare, Medicaid, and all other federal health care programs.

**15. ELIMINATION OF THIRD PARTY RIGHTS.** Nothing herein expressed or implied is intended or shall be construed to confer upon or give to any Person, other than the parties to this Lease, and their respective permitted successors and assigns, any rights or remedies under or by reason of this Lease, except for the Prime Lessor and the Senior Lender, as applicable under the Master Lease.

**16. NOTICES.** All notices and demands, certificates, requests, consents, approvals, and other similar instruments under this Lease shall be in writing and shall be sent by personal delivery or by either (a) United States certified or registered mail, return receipt requested, postage prepaid, or (b) Federal Express or similar generally recognized overnight carrier regularly providing proof of delivery, addressed as follows:

If to Tenant:                      Concerto Dialysis, LLC  
   7257 North Lincoln Avenue  
   Lincolnwood, Illinois 60712  
   Attn: Michael Munter  
   Phone: (847) 767-5200

with a simultaneous copy to:

Holland & Knight LLP  
131 South Dearborn Street, 30<sup>th</sup> Floor  
Chicago, Illinois 60603  
Attn: Joseph Hylak-Reinholtz, Esq.  
Fax: (312) 578-6666  
Phone: (312) 715-5885

and to:

Barry A. Comin  
Much Shelist  
191 North Wacker Drive, Suite 1800  
Chicago, Illinois 60606  
Fax: (312) 521-  
Phone: (312) 521-2000

If to Landlord: Diana Master Landlord, LLC  
1035 Powers Place  
Alpharetta, Georgia 30004  
Attn: Christina K. Firth  
Fax: (770) 754-3085  
Phone: (800) 845-1695

with a simultaneous copy to:

Williams Mullen  
222 Central Park Avenue, Suite 1700  
Virginia Beach, Virginia 23462  
Attn: Lawrence R. Siegel  
Fax No: (757) 473-0395  
Phone: (757) 473-5321

Such addresses may be changed by notice to the other parties given in the same manner as provided above. Any notice so given by mail shall be deemed to have been given as of the date of delivery (whether accepted or refused) established by U.S. Post Office return receipt or the overnight carrier's proof of delivery, as the case may be, whether accepted or refused. Any such notice not so given shall be deemed given upon receipt of the same by the party to whom the same is to be given. If Tenant fails at any time to provide to Landlord a current address for notice purposes, notice may be made to any officer, general partner or principal of Tenant.

**17. ASSIGNMENT AND SUBLETTING.** Tenant shall not assign or sublease all or any part of the Premises under this Lease, except with the prior written consent of the Landlord, which consent shall be within the sole discretion of the Landlord, or except as otherwise provided in Section 23 of the Master Lease.

**18. BROKERS.** Tenant and Landlord each warrants that it has had no dealings with any real estate broker or agent in connection with the negotiation of this Lease, and that it knows of no other real estate broker or agent who is or might be entitled to a commission in connection with this Lease.

**19. SUBORDINATION OF LEASE.** This Lease is subject and subordinate to the existing lien of Senior Lender and any mortgages which may hereafter be placed upon or affect the property or the Facility of which the Premises are a part, and to all renewals, modifications, consolidations, replacements, and extensions hereof.

**20. CORPORATE AUTHORITY.** If Tenant executes this Lease as a corporation or limited liability company, each of the persons executing this Lease on behalf of Tenant does hereby personally covenant and warrant that Tenant is a duly authorized and existing corporation or limited liability company, that Tenant was and is qualified to do business in the state in which the Premises are located, that the corporation or limited liability company has full right and authority to enter into this Lease, and that each person signing on behalf of the corporation or limited liability company was authorized to do so.

**21. CHANGES IN LAW.** Notwithstanding any other provision of this Lease, if the governmental agencies that administer the Medicare, Medicaid, or other federal programs (or their representatives or agents), or any other federal, state or local governmental or nongovernmental agency, or any court or administrative tribunal passes, issues or promulgates any law, rule, regulation, standard, interpretation, order, decision or judgment, including but not limited to those relating to any regulations pursuant to state or federal anti-kickback or self-referral statutes (collectively or individually, "**Legal Event**"), which, in the good faith judgment of one party (the "**Noticing Party**"), materially and adversely affects either party's licensure, accreditation, certification, or ability to refer, to accept any referral, to bill, to claim, to present a bill or claim, or to receive payment or reimbursement from any federal, state or local governmental or non-governmental payor, or which subjects the Noticing Party to a risk of prosecution or civil monetary penalty, or which, in the good faith judgment of the Noticing Party, indicates a rule or regulation with which the Noticing Party desires further compliance, then the Noticing Party may give the other party notice of intent to amend or terminate this Lease in accordance with the next Subparagraph. The Noticing Party shall give notice to the other party together with an opinion of counsel setting forth the following information:

- (a.) The Legal Event(s) giving rise to the notice;
- (b.) The consequences of the Legal Event(s) as to the Noticing Party;
- (c.) The Noticing Party's intention to either:
  - (1) Terminate this Agreement due to unacceptable risk of prosecution or civil monetary penalty; or
  - (2) Amend this Agreement, together with a statement that the purpose thereof is one or more of the following:
  - (3)

- (d.) to further comply with any anti-kickback or Stark II statutory provisions or rules or regulations created or affected by the Legal Event(s); and/or
- (e.) to satisfy any licensure, accreditation or certification requirements created or affected by the Legal Event(s); and/or
- (f.) to eliminate or minimize the risk of prosecution or civil monetary penalty;
- (g.) The Noticing Party's proposed amendment(s); and
- (h.) The Noticing Party's request for commencement of the Renegotiation Period (as defined below).

In the event of notice under either Subparagraph 21(a) or 21(b) above, the parties shall have thirty (30) days from the giving of such notice ("**Renegotiation Period**") within which to attempt to amend this Agreement in accordance with the Noticing Party's proposal (if any) or otherwise as the parties may agree. If this Agreement is not so amended within the Renegotiation Period, this Agreement shall terminate as of midnight on the 30th day after said notice was given. Except as otherwise required by applicable law, any amounts owing to either party hereunder shall be paid, on a pro rata basis, up to the date of such termination, and any obligation hereunder that is to continue beyond expiration or termination shall so continue pursuant to its terms. All opinions of counsel presented by the Noticing Party hereunder, and any corresponding opinions given by the other party in response, shall be deemed confidential and given solely for purposes of renegotiation and settlement of a potential dispute, and shall not be deemed disclosed so as to waive any privileges otherwise applicable to said opinions.

**22. EXECUTION OF LEASE.** This Lease shall not become effective or in force until all of the required signatories below have executed this Lease. This Lease may be executed in counterparts. Each executed counterpart of this Lease will constitute an original document, and all executed counterparts, together, will constitute the same agreement. Any counterpart evidencing signature by one party that is delivered by telecopy or email by such party to the other party hereto shall be binding on the sending party when such telecopy is sent.

**[SIGNATURE PAGES ATTACHED]**

**THE PARTIES HERETO** have executed this Lease in duplicate on \_\_\_\_\_, 2013.

**LANDLORD:**

**DIANA MASTER LANDLORD, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Christina K. Firth  
President

**TENANT:**

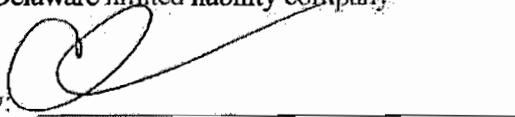
**CONCERTO DIALYSIS, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Michael Munter  
Chief Operating Officer

THE PARTIES HERETO have executed this Lease in duplicate on 12/31, 2013.

**LANDLORD:**

**DIANA MASTER LANDLORD, LLC,**  
a Delaware limited liability company

By:   
Christina K. Firth  
President

**TENANT:**

**CONCERTO DIALYSIS, LLC,**  
an Illinois limited liability company

By: \_\_\_\_\_  
Michael Munter  
Chief Operating Officer

**TENANT:**

**CONCERTO DIALYSIS, LLC,**  
an Illinois limited liability company

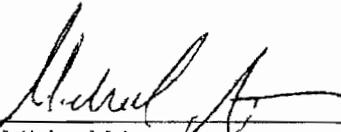
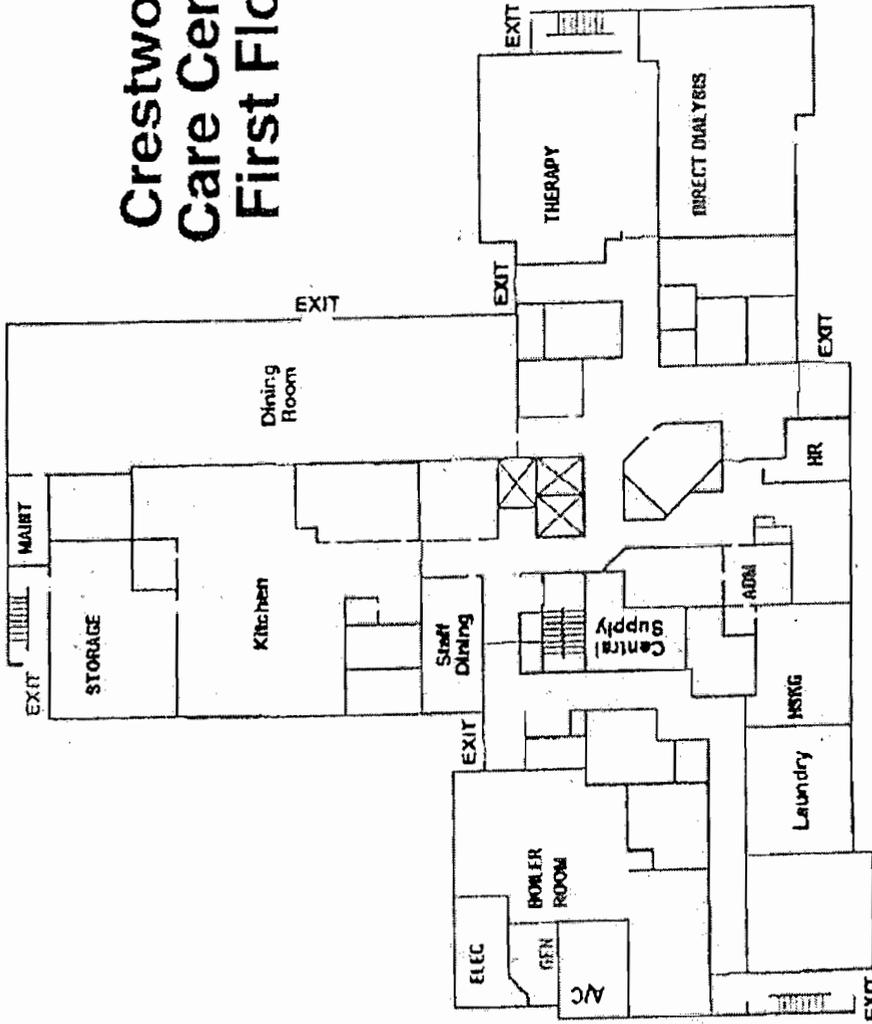
By:   
Michael Munter  
Chief Operating Officer

EXHIBIT A  
SKETCH OF PREMISES

Floor Plan of Symphony of Crestwood Skilled Nursing Facility & Free-Standing ESRD Facility (First Floor)

# Crestwood Care Center First Floor



ESRD Facility  
First Floor Only  
Total ESRD Facility SQF: 1,279



Symphony of Crestwood SNF  
Floors 1-4  
Total SNF SQF: 90,681

**ATTACHMENT 3**

**Operating Entity/Licensee Information**

**I. Certificate of Good Standing**

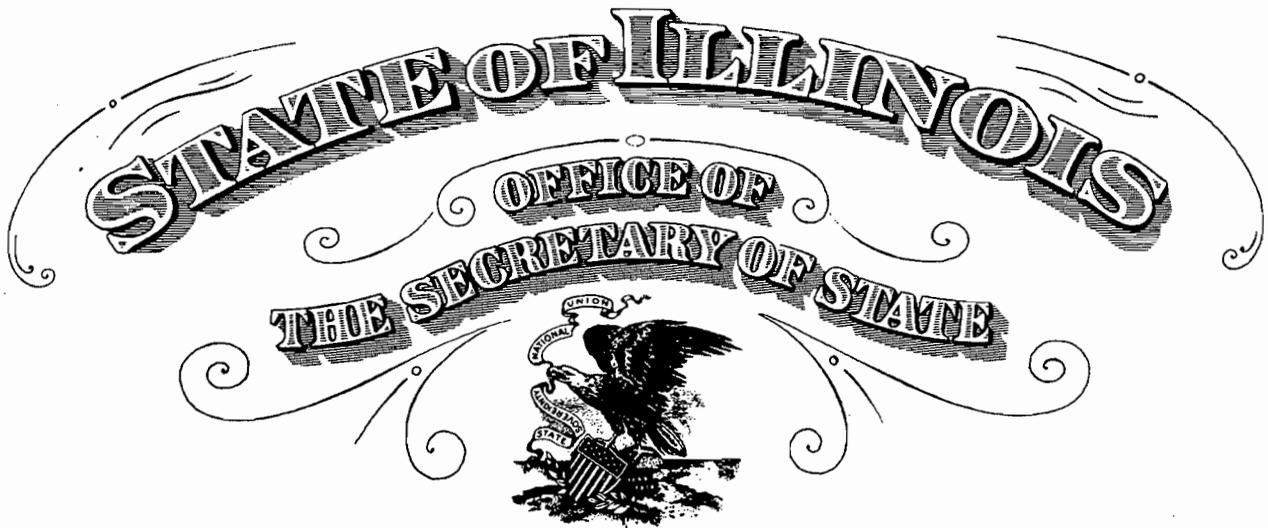
A Certificate of Good Standing issued by the Illinois Secretary of State for Concerto Dialysis, LLC, an Illinois limited liability company, is attached immediately following this page. Concerto Dialysis, LLC is the certificate of need permit applicant.

A Certificate of Good Standing issued by the Delaware Secretary of State for Symphony Healthcare, LLC, a Delaware limited liability company, is attached immediately following this page. Symphony Healthcare, LLC is a co-applicant to this certificate of need permit application.

**II. Ownership Disclosures**

The following persons hold a five percent (5%) or greater ownership interest in the entity that is the applicant seeking a CON permit from the Illinois Health Facilities and Services Review Board:

<b>CONCERTO DIALYSIS, LLC</b>		
<b>Name</b>	<b>Entity/Individual</b>	<b>Ownership %</b>
Sarex, LLC	Entity	10%
IBEX Management Services, LLC	Entity	25%
Drake Louis Enterprises, LLC	Entity	30%
Fairhome Trust	Trust	35%



**To all to whom these Presents Shall Come, Greeting:**

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

CONCERTO DIALYSIS LLC, HAVING ORGANIZED IN THE STATE OF ILLINOIS ON OCTOBER 09, 2013, APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A DOMESTIC LIMITED LIABILITY COMPANY IN THE STATE OF ILLINOIS.



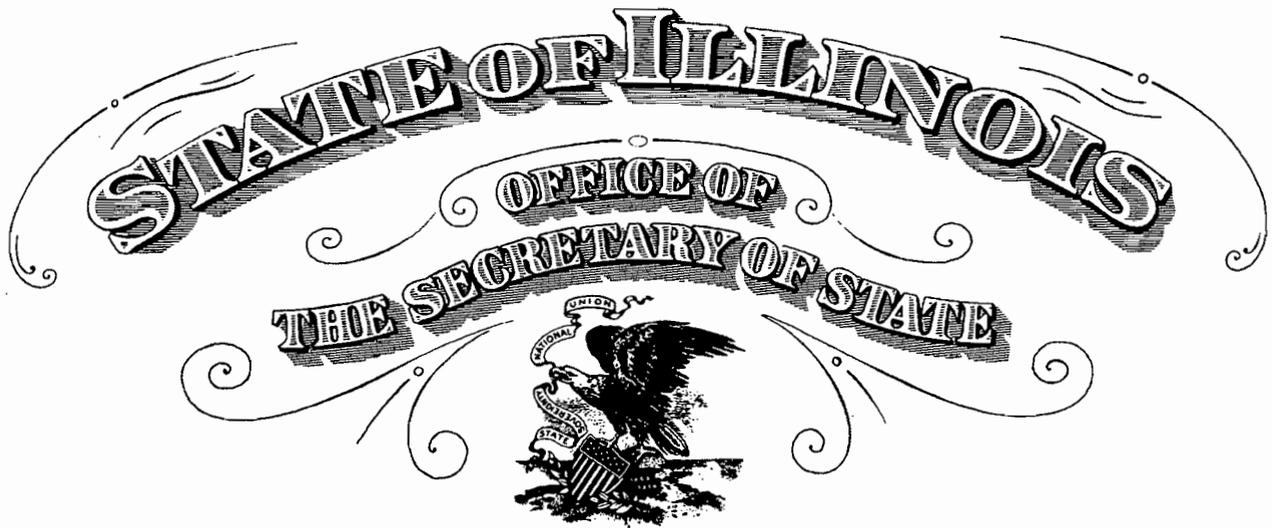
Authentication #: 1328400386

Authenticate at: <http://www.cyberdriveillinois.com>

***In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 11TH day of OCTOBER A.D. 2013 .***

*Jesse White*

SECRETARY OF STATE



**To all to whom these Presents Shall Come, Greeting:**

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

SYMPHONY HEALTHCARE LLC, HAVING ORGANIZED IN THE STATE OF ILLINOIS ON NOVEMBER 22, 2011, APPEARS TO HAVE COMPLIED WITH ALL PROVISIONS OF THE LIMITED LIABILITY COMPANY ACT OF THIS STATE, AND AS OF THIS DATE IS IN GOOD STANDING AS A DOMESTIC LIMITED LIABILITY COMPANY IN THE STATE OF ILLINOIS.



Authentication #: 1328802174

Authenticate at: <http://www.cyberdriveillinois.com>

***In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 15TH day of OCTOBER A.D. 2013 .***

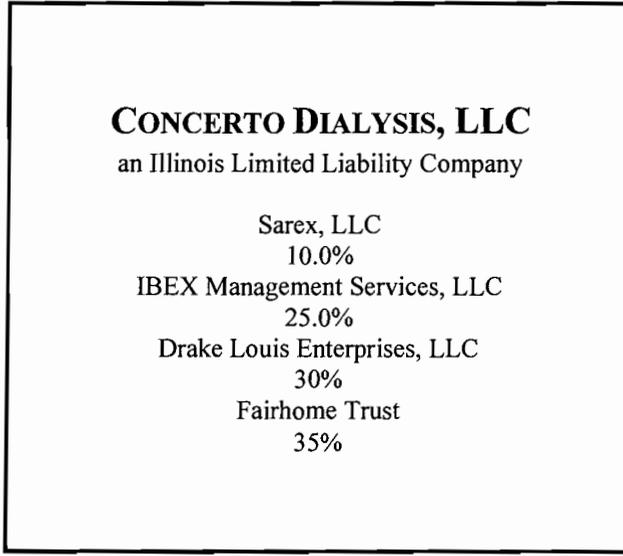
*Jesse White*

SECRETARY OF STATE

**ATTACHMENT 4**

**Organizational Relationship**

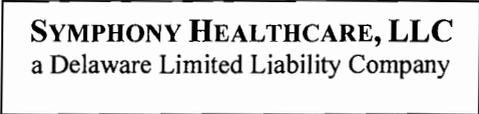
*No Parent Company*



*No Subsidiaries*



*Affiliate Company*



## **ATTACHMENT 5**

### **Flood Plain Requirements**

Concerto Dialysis, LLC (the "Applicant") is proposing an expansion of dialysis stations at its existing in-center hemodialysis facility (the "ESRD Facility"). The ESRD Facility is currently authorized to operate 7 in-center hemodialysis stations. The Applicant is now seeking approval from the Illinois Health Facilities and Services Review Board (the "State Board") for another 2 in-center hemodialysis stations (the "Project"). If the State Board approves the Project, the ESRD Facility would have a total of 9 hemodialysis stations.

The existing ESRD Facility is located at 14255 South Cicero Avenue, Crestwood, Illinois 60445. This site is located within Health Service Area 7. According to map records maintained by the Federal Emergency Management Agency ("FEMA"), the Project site is not within or in close proximity to a flood plain.

Two maps are attached immediately following this page. The two maps provide evidence that the Project site is not within or near a flood zone. The two maps are: (1) a map identifying the location of the Project site, taken from the MapQuest website (see Exhibit A); and (2) a FEMA flood plain map showing the location of the ESRD Facility and the closest flood zone, which is far from the Project's site (see Exhibit B). Accordingly, the Project complies with the requirements of Illinois Executive Order #2006-5 (see Exhibit C).

**Exhibit A**

**MapQuest Map Identifying Project Site**

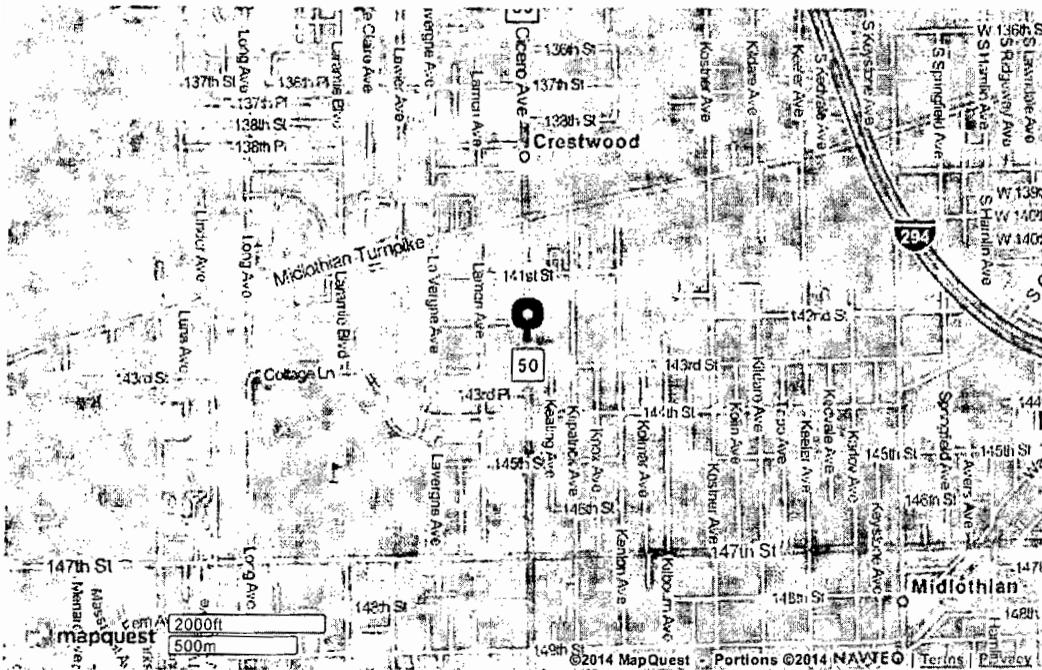


Map of:  
**14255 Cicero Ave**  
Crestwood, IL 60445-2154

Notes

FREE NAVIGATION APP  
SELECT:  IPHONE  ANDROID

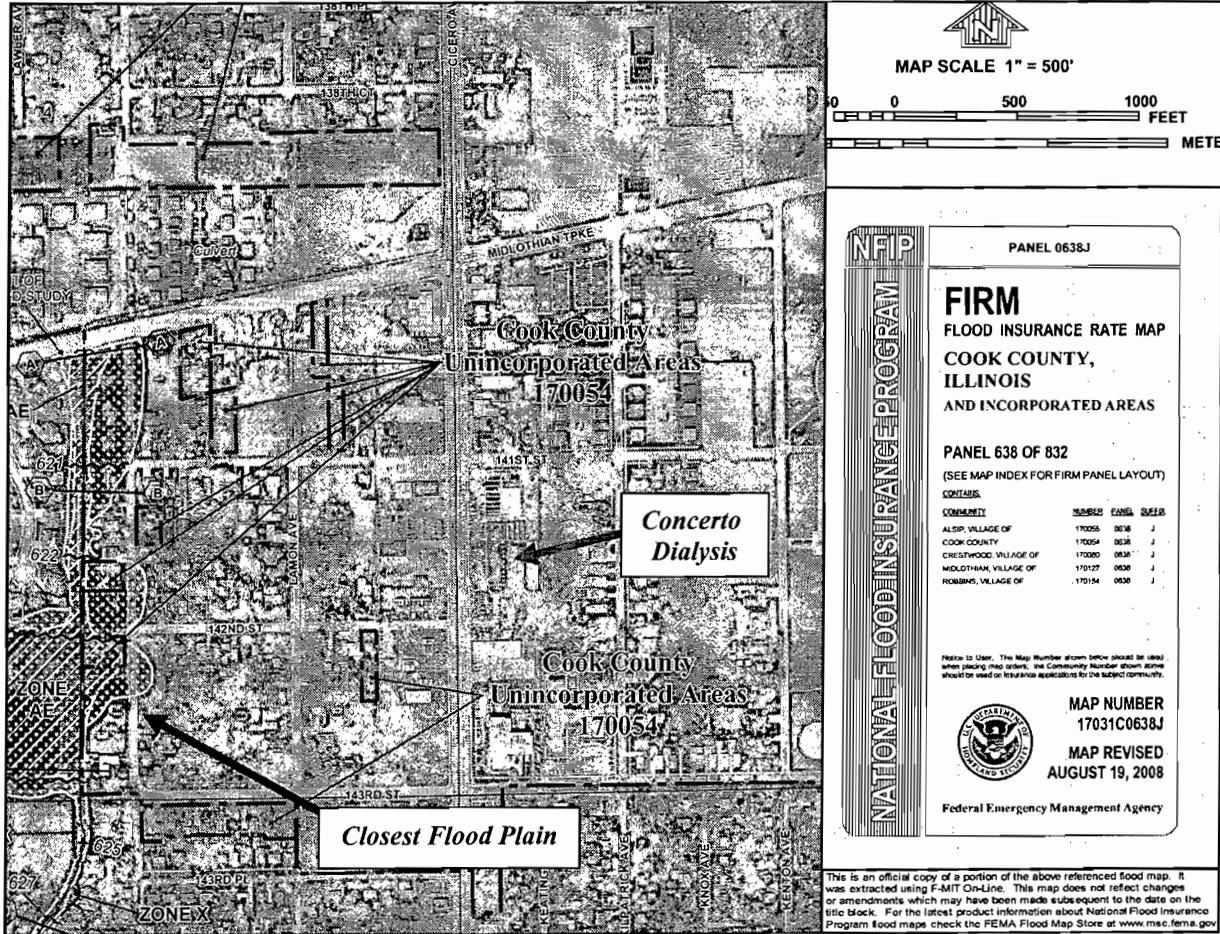
Enter your mobile number



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**Exhibit B**

**FEMA Map Showing Project Site and Closest Flood Plain**



**Exhibit C**

**Executive Order #2006-5**

(see attached)



2006-05

**CONSTRUCTION ACTIVITIES  
IN SPECIAL FLOOD HAZARD AREAS**

**WHEREAS**, the State of Illinois has programs for the construction of buildings, facilities, roads, and other development projects and annually acquires and disposes of lands in floodplains; and

**WHEREAS**, federal financial assistance for the acquisition or construction of insurable structures in all Special Flood Hazard Areas requires State participation in the National Flood Insurance Program; and

**WHEREAS**, the Federal Emergency Management Agency has promulgated and adopted regulations governing eligibility of State governments to participate in the National Flood Insurance Program (44 C.F.R. 59-79), as presently enacted or hereafter amended, which requires that State development activities comply with specified minimum floodplain regulation criteria; and

**WHEREAS**, the Presidential Interagency Floodplain Management Review Committee has published recommendations to strengthen Executive Orders and State floodplain management activities;

**NOW THEREFORE**, by virtue of the authority vested in me as Governor of the State of Illinois, it is hereby ordered as follows:

1. For purpose of this Order:

- A. "Critical Facility" means any facility which is critical to the health and welfare of the population and, if flooded, would create an added dimension to the disaster. Damage to these critical facilities can impact the delivery of vital services, can cause greater damage to other sectors of the community, or can put special populations at risk. The determination of Critical Facility will be made by each agency.

Examples of critical facilities where flood protection should be required include:

Emergency Services Facilities (such as fire and police stations)  
Schools  
Hospitals  
Retirement homes and senior care facilities  
Major roads and bridges  
Critical utility sites (telephone switching stations or electrical transformers)  
Hazardous material storage facilities (chemicals, petrochemicals, hazardous or toxic substances)

Examples of critical facilities where flood protection is recommended include:

Sewage treatment plants  
Water treatment plants  
Pumping stations

- B. "Development" or "Developed" means the placement or erection of structures (including manufactured homes) or earthworks; land filling, excavation or other alteration of the ground surface; installation of public utilities; channel modification; storage of materials or any other activity undertaken to modify the existing physical features of a floodplain.
- C. "Flood Protection Elevation" means one foot above the applicable base flood or 100-year frequency flood elevation.
- D. "Office of Water Resources" means the Illinois Department of Natural Resources, Office of Water Resources.
- E. "Special Flood Hazard Area" or "Floodplain" means an area subject to inundation by the base or 100-year frequency flood and shown as such on the most current Flood Insurance Rate Map published by the Federal Emergency Management Agency.
- F. "State Agencies" means any department, commission, board or agency under the jurisdiction of the Governor; any board, commission, agency or authority which has a majority of its members appointed by the Governor; and the Governor's Office.

2. All State Agencies engaged in any development within a Special Flood Hazard Area shall undertake such development in accordance with the following:
  - A. All development shall comply with all requirements of the National Flood Insurance Program (44 C.F.R. 59-79) and with all requirements of 92 Illinois Administrative Code Part 700 or 92 Illinois Administrative Code Part 708, whichever is applicable.
  - B. In addition to the requirements set forth in preceding Section A, the following additional requirements shall apply where applicable:
    1. All new Critical Facilities shall be located outside of the floodplain. Where this is not practicable, Critical Facilities shall be developed with the lowest floor elevation equal to or greater than the 500-year frequency flood elevation or structurally dry floodproofed to at least the 500-year frequency flood elevation.
    2. All new buildings shall be developed with the lowest floor elevation equal to or greater than the Flood Protection Elevation or structurally dry floodproofed to at least the Flood Protection Elevation.
    3. Modifications, additions, repairs or replacement of existing structures may be allowed so long as the new development does not increase the floor area of the existing structure by more than twenty (20) percent or increase the market value of the structure by fifty (50) percent, and does not obstruct flood flows. Floodproofing activities are permitted and encouraged, but must comply with the requirements noted above.
3. State Agencies which administer grants or loans for financing development within Special Flood Hazard Areas shall take all steps within their authority to ensure that such development meets the requirements of this Order.
4. State Agencies responsible for regulating or permitting development within Special Flood Hazard Areas shall take all steps within their authority to ensure that such development meets the requirements of this Order.
5. State Agencies engaged in planning programs or programs for the promotion of development shall inform participants in their programs of the existence and location of Special Flood Hazard Areas and of any State or local floodplain requirements in effect in such areas. Such State Agencies shall ensure that proposed development within Special Flood Hazard Areas would meet the requirements of this Order.
6. The Office of Water Resources shall provide available flood hazard information to assist State Agencies in carrying out the responsibilities established by this Order. State Agencies which obtain new flood elevation, floodway, or encroachment data developed in conjunction with development or other activities covered by this Order shall submit such data to the Office of Water Resources for their review. If such flood hazard information is used in determining design features or location of any State development, it must first be approved by the Office of Water Resources.

7. State Agencies shall work with the Office of Water Resources to establish procedures of such Agencies for effectively carrying out this Order.
8. **Effective Date.** This Order supersedes and replaces Executive Order Number 4 (1979) and shall take effect on the first day of.

---

Rod R. Blagojevich, Governor

Issued by Governor: March 7, 2006  
Filed with Secretary of State: March 7, 2006

**ATTACHMENT 6**

**Illinois Historical Preservation Letter**

Concerto Dialysis, LLC (the "Applicant") is proposing an expansion of dialysis stations at its existing in-center hemodialysis facility (the "ESRD Facility"), which currently has 7 approved in-center hemodialysis stations. The Applicant is seeking approval for another 2 in-center hemodialysis stations at the ESRD Facility (the "Project"). If the Illinois Health Facilities and Services Review Board (the "State Board") approves the Project, the ESRD Facility would have a total of 9 hemodialysis stations. The ESRD Facility's address is 14255 South Cicero Avenue, Crestwood, Illinois 60445, which is within Health Service Area 7.

The ESRD Facility is not located in a historic building, nor will the proposed project have any impact upon Illinois' historic resources. A copy of a letter submitted by the Applicant to the Illinois Historic Preservation Agency (the "HPA") is attached immediately after this page of the CON permit application. The Applicant's letter explains why the Project will not adversely affect historic resources and asks the HPA to provide a "clearance letter" that reaches the same conclusion (see Exhibit A). The Applicant will submit a copy of the clearance letter to the State Board once it is obtained from the HPA.

Exhibit A

**HPA Clearance Letter Request**

(see attached)

# Holland & Knight

131 South Dearborn Street | Chicago, IL 60603 | T 312 263 3600 | F 312 578 6666  
Holland & Knight LLP | www.hklaw.com

Joseph Hylak-Reinholtz  
(312) 715-5885  
jreinholtz@hklaw.com

February 6, 2014

## VIA U.S. MAIL

Illinois Historic Preservation Agency  
1 Old State Capitol Plaza  
Springfield, Illinois 62701-1512  
Attention: Director Amy Martin

### *Re: Illinois Certificate of Need Review & Letter Request*

Dear Director Martin:

The Illinois State Agency Historic Resources Preservation Act, 20 ILCS 3420/1 et seq. (the "Act"), provides that written notice of a proposed undertaking shall be given to the Director of the Illinois Historic Preservation Agency (the "HPA") either by a State agency or a recipient of its funds, licenses or permits when the proposed undertaking might affect historic, architectural or archaeological resources. This letter hereby provides notice of an undertaking proposed by Concerto Dialysis, LLC ("Concerto"), a health care facility that is seeking a certificate of need ("CON") permit from the Illinois Health Facilities and Services Review Board (the "State Board"). Specifically, Concerto owns and operates an end stage renal disease facility in leased space, which is located in Crestwood, Illinois (the "ESRD Facility").

Concerto plans to add two (2) in-center hemodialysis stations to an existing seven (7) station end stage renal disease facility (the "Project"). Concerto must obtain State Board approval before it may pursue the proposed undertaking. The State Board also requires Concerto obtain a clearance letter from the HPA for the Project. Based on this requirement, Concerto is providing the HPA with the following information:

1. General project description and address;
2. Topographic or metropolitan map showing the general location of the project;
3. Photographs of any standing buildings/structure within the project area; and
4. Addresses for buildings/structures, if present.

The information regarding the project follows.

1. Project Description

As noted above, the Project involves the addition of two (2) in-center hemodialysis stations to an existing seven (7) station end stage renal disease facility. Concerto will require minor building changes to complete the Project. Specifically, the Project will require the addition of two dialysis station wall boxes. Dialysis station wall boxes are designed to connect central distribution systems to a hemodialysis machine. Every wall box serves as a work station for each individual patient treatment area, conveniently accepting connections for reverse osmosis or deionized water, bicarbonate, and acid concentrates. Wall boxes keep the dialysis work area clean and free from leakage. Examples of dialysis wall boxes are provided hereto as Exhibit A.

2. General Location of the Project

The Project will be located in Crestwood, Illinois. A map showing the general location of the Project is attached hereto as Exhibit B.

3. Buildings/Structures Within the Project Area

There are no buildings/structures in the area of the Project that have historical or architectural significance. Photographs of the building that houses the ESRD Facility and the surrounding structures are attached hereto as Exhibit C.

4. Addresses for Buildings/Structures

The ESRD Facility is located within a nursing home. The address of the ESRD Facility is 14255 South Cicero Avenue, Crestwood, Illinois 60445. Neither the main building housing the ESRD Facility, nor any adjacent structure, has architectural significance, has been deemed a historic site by the HPA, or has historic significance. Moreover, there are no designated historical sites in the vicinity of the ESRD Facility.

\* \* \* \*

The State Board requires applicants to submit a written summary of the HPA's determination along with the CON permit application. Therefore, Concerto asks the HPA to review the information provided herein and issue a written summary of its findings. Thank you for your consideration. If you have questions, please contact me at (312) 715-5885.

Respectfully Submitted,

HOLLAND & KNIGHT LLP

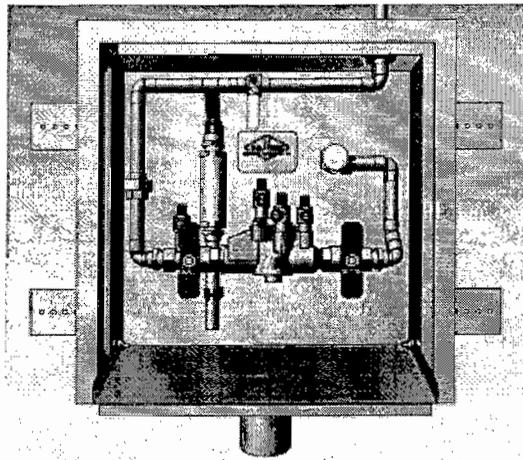
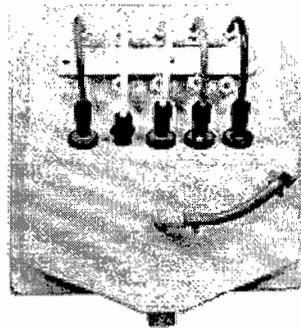
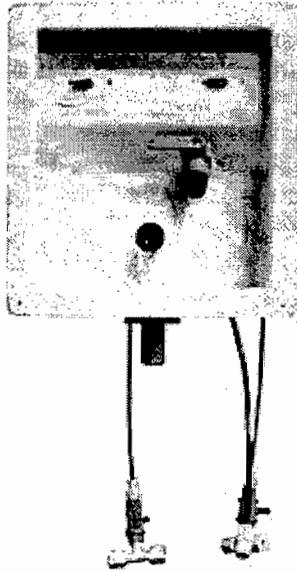
Joseph Hylak-Reinholtz, Esq.

enclosures

## Exhibit A

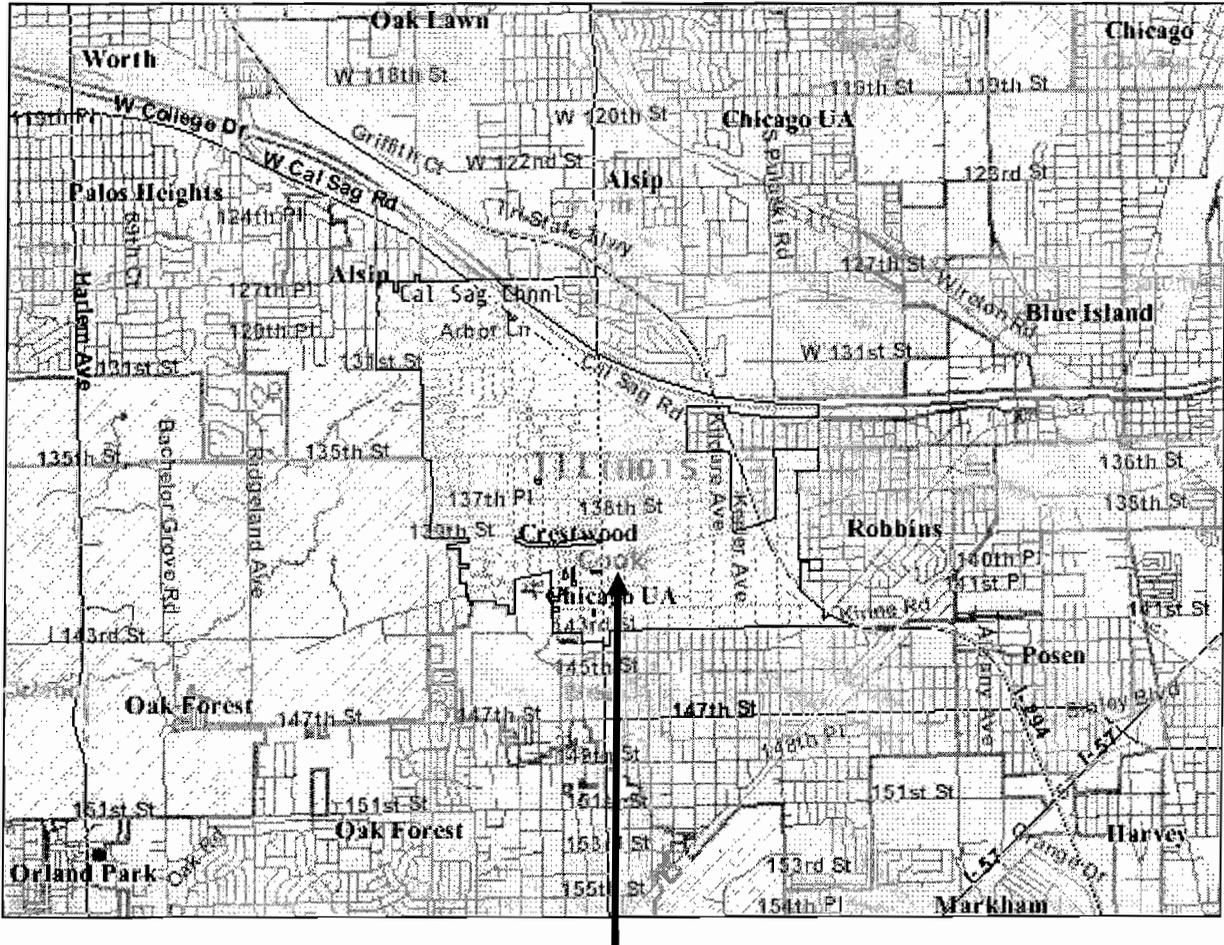
### Dialysis Wall Box Examples

Wall boxes recess into the wall, preventing damage to valves and dialysis machine connections when chairs recline. A wall box will have water and other valves, a water connector, and a drain connection. Wall box installation does not affect either the internal or external makeup of a building.



**Exhibit B**

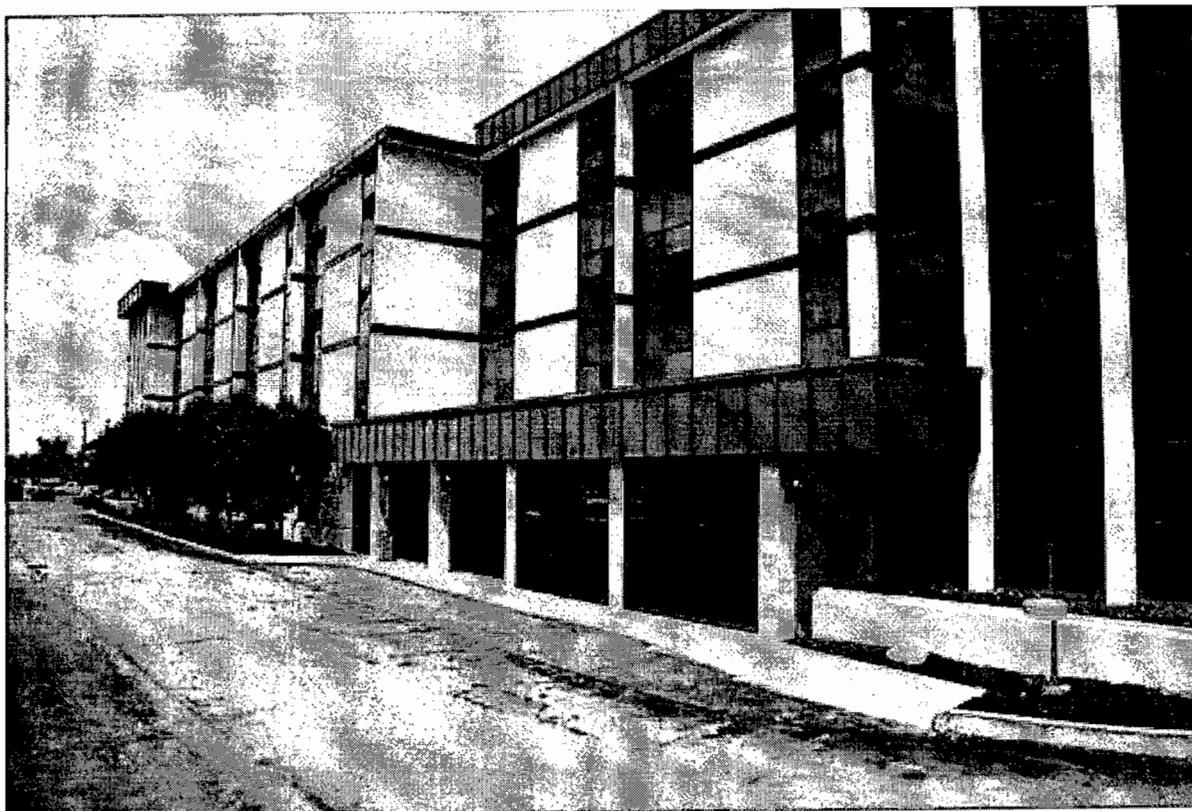
**General Location of the Project**



**Crestwood Dialysis**  
14255 South Cicero Avenue  
Crestwood, Illinois 60445-2154

Exhibit C

Photograph of Project Site



**ATTACHMENT 7**

**Project Costs and Sources of Funds**

<b>Project Costs and Sources of Funds</b>			
<b>USE OF FUNDS</b>	<b>CLINICAL</b>	<b>NONCLINICAL</b>	<b>TOTAL</b>
Preplanning Costs	\$0	\$0	\$0
Site Survey and Soil Investigation	\$0	\$0	\$0
Site Preparation	\$0	\$0	\$0
Off Site Work	\$0	\$0	\$0
New Construction Contracts	\$0	\$0	\$0
Modernization Contracts	\$2,500.00	\$0	\$2,500.00
Contingencies	\$0	\$0	\$0
Architectural/Engineering Fees	\$0	\$0	\$0
Consulting and Other Fees	\$7,500.00	\$0	\$7,500.00
Movable/Other Equipment (not in construction contracts)	\$15,000.00	\$0	\$15,000.00
Bond Issuance Expense (project related)	\$0	\$0	\$0
Net Interest Expense During Construction (project related)	\$0	\$0	\$0
Fair Market Value of Leased Space or Equipment	\$0	\$0	\$0
Other Costs To Be Capitalized	\$0	\$0	\$0
Acquisition of Building or Other Property (excluding land)	\$0	\$0	\$0
<b>TOTAL USES OF FUNDS</b>	<b>\$25,000.00</b>	<b>\$0</b>	<b>\$25,000.00</b>
<b>SOURCE OF FUNDS</b>	<b>CLINICAL</b>	<b>NONCLINICAL</b>	<b>TOTAL</b>
Cash and Securities	\$25,000.00	\$0	\$25,000.00
Pledges	\$0	\$0	\$0
Gifts and Bequests	\$0	\$0	\$0
Bond Issues (project related)	\$0	\$0	\$0
Mortgages	\$0	\$0	\$0
Leases (fair market value)	\$0	\$0	\$0
Governmental Appropriations	\$0	\$0	\$0
Grants	\$0	\$0	\$0
Other Funds and Sources	\$0	\$0	\$0
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$25,000.00</b>	<b>\$0</b>	<b>\$25,000.00</b>

[Attachment 7 Continues on Next Page]

**ATTACHMENT 7**

**Project Costs and Sources of Funds**

<b>Project Costs and Sources of Funds</b>			
<b>USE OF FUNDS</b>	<b>CLINICAL</b>	<b>NONCLINICAL</b>	<b>TOTAL</b>
Preplanning Costs	\$0	\$0	\$0
Site Survey and Soil Investigation	\$0	\$0	\$0
Site Preparation	\$0	\$0	\$0
Off Site Work	\$0	\$0	\$0
New Construction Contracts	\$0	\$0	\$0
Modernization Contracts	\$2,500.00	\$0	\$2,500.00
Contingencies	\$0	\$0	\$0
Architectural/Engineering Fees	\$0	\$0	\$0
Consulting and Other Fees	\$7,500.00	\$0	\$7,500.00
Movable/Other Equipment (not in construction contracts)	\$15,000.00	\$0	\$15,000.00
Bond Issuance Expense (project related)	\$0	\$0	\$0
Net Interest Expense During Construction (project related)	\$0	\$0	\$0
Fair Market Value of Leased Space or Equipment	\$0	\$0	\$0
Other Costs To Be Capitalized	\$0	\$0	\$0
Acquisition of Building or Other Property (excluding land)	\$0	\$0	\$0
<b>TOTAL USES OF FUNDS</b>	<b>\$25,000.00</b>	<b>\$0</b>	<b>\$25,000.00</b>
<b>SOURCE OF FUNDS</b>	<b>CLINICAL</b>	<b>NONCLINICAL</b>	<b>TOTAL</b>
Cash and Securities	\$25,000.00	\$0	\$25,000.00
Pledges	\$0	\$0	\$0
Gifts and Bequests	\$0	\$0	\$0
Bond Issues (project related)	\$0	\$0	\$0
Mortgages	\$0	\$0	\$0
Leases (fair market value)	\$0	\$0	\$0
Governmental Appropriations	\$0	\$0	\$0
Grants	\$0	\$0	\$0
Other Funds and Sources	\$0	\$0	\$0
<b>TOTAL SOURCES OF FUNDS</b>	<b>\$25,000.00</b>	<b>\$0</b>	<b>\$25,000.00</b>

**ATTACHMENT 7**

**Project Costs and Sources of Funds**

***Cost Breakdown by Line Item***

**Modernization contracts**

<b>Item</b>	<b>Cost</b>
Dialysis Station Wall Box • \$1,250.00 each box	\$2,500.00
<b>TOTAL</b>	<b>\$2,500.00</b>

**Consulting and Other Fees**

<b>Item</b>	<b>Cost</b>
Legal Fees	\$5,000.00
Consulting Fees	\$2,500.00
<b>TOTAL</b>	<b>\$7,500.00</b>

**Moveable & Other Equipment**

<b>Item</b>	<b>Cost</b>
Dialysis Machines (Fresenius K) • \$4,500.00 each machine	\$9,000.00
Dialysis Station Chairs • \$1,500.00 each	\$3,000.00
Dialysis Station Televisions • \$1,500 each	\$3,000.00
<b>TOTAL</b>	<b>\$15,000.00</b>

## **ATTACHMENT 8**

### **Project Status and Completion Schedules**

- The anticipated project completion date is June 30, 2014.
- Project obligation will occur after permit issuance.
- Current CON Permits:
  1. Project 13-065: Change of Ownership re: Direct Dialysis. Notice of project completion from Concerto Dialysis, LLC in regards to this project is forthcoming.

**ATTACHMENT 9**

**Cost Space Requirements**

Dept. / Area	Cost	Gross Square Feet		Amount of Proposed Total Gross Square Feet That Is:			
		Existing	Proposed	New Const.	Modernized	As Is	Vacated Space
<b>REVIEWABLE</b>							
In-Center Hemodialysis	\$25,000.00				\$25,000.00		
Total Clinical	\$25,000.00				\$25,000.00		
<b>NON REVIEWABLE</b>							
Administrative							
Parking							
Gift Shop							
Total Non-clinical							
<b>TOTAL</b>	<b>\$25,000.00</b>				<b>\$25,000.00</b>		

Concerto Dialysis, LLC (the "Applicant") is seeking a certificate of need ("CON") permit from the Illinois Health Facilities and Services Review Board (the "State Board") to add two (2) in-center hemodialysis stations to an existing end stage renal disease facility (the "Project"). Specifically, the Project involves the addition of two (2) in-center hemodialysis stations to an existing seven (7) station end stage renal disease facility. The Project will require minor building changes to complete the Project; however, no changes will occur to the square footage of the space used by this facility.

**ATTACHMENT 11**

**Criterion 1110.230 -- Background of Applicant**

(see attached)

**ATTACHMENT 11**

**Criterion 1110.230 -- Background of Applicant**

189

# Concerto Dialysis, LLC

7257 North Lincoln Avenue  
Lincolnwood, Illinois 60712  
(847) 767-5200

---

February 5, 2014

Illinois Health Facilities and Services Review Board  
Illinois Department of Public Health  
525 West Jefferson St., 2nd Floor  
Springfield, IL 62761  
Attention: Kathryn J. Olson, Board Chairperson

**Re: Background of Applicant - Concerto Dialysis, LLC**

Dear Chairperson Olson:

Pursuant to 77 Ill. Adm. Code § 1110.230, pertaining to the Background of the CON Permit Applicant Concerto Dialysis, LLC (the "Applicant"), the undersigned representative of the Applicant hereby certifies the following:

## **I. Facilities Owned or Operated by Applicant**

The Applicant is a newly formed Illinois limited liability company that does not have any related parent companies or subsidiary companies. The Applicant does not own, operate, or manage any other end stage renal disease facilities. The Applicant also does not own, operate, or manage any other type of health care facility.

Pursuant to this review criterion, copies of all applicable licenses and certifications, as applicable, are attached hereto as Attachment A.

## **II. No Adverse Action Certification**

The Applicant hereby certifies that no adverse action has been taken against any health care facility owned or operated by the Applicant during the three (3) years prior to filing of this certificate of need application. As indicated above, the Applicant does not have a history adverse action against the company as it is a newly formed business entity. The Applicant further certifies that no adverse action has been taken against any of the persons who are owners/members of the Applicant. Based on the foregoing, the Applicant, and its owners/members, are fit, willing, and able, and have the qualifications, background, and character, to provide the proper standard of health care services to the community.

## **III. Authorization**

The Applicant hereby authorizes the Illinois Health Facilities and Services Review Board and the Illinois Department of Public Health ("IDPH") to access any documents necessary to verify the information submitted, including, but not limited to: (1) official records of IDPH or other State of Illinois agencies; (2) the licensing or certification of records of other states, where applicable; and (3) the records of nationally recognized accreditation organizations.

**IV. Prior Applications**

The Applicant has not submitted a prior application for permit this calendar year; therefore, the Applicant is not referencing previously submitted documentation in this permit application.

Respectfully Submitted,



Mike Munter  
Chief Operating Officer  
Concerto Dialysis, LLC

**NOTARY:**

Subscribed and sworn to before me this 7<sup>th</sup> day of February, 2014

  
\_\_\_\_\_  
Notary Public

Seal:



**ATTACHMENT A**

**Licenses & Certifications**

(see attached)

ESRD Number: 14-2655

FILE COPY

December 29, 2004

Pat Barrows  
Administrator  
Direct Dialysis  
14255 South Cicero Avenue  
Crestwood, IL 60445

Dear Ms. Barrows:

The Centers for Medicare & Medicaid Services has accepted your request for approval as a supplier of renal services in the Medicare program. Your effective date of coverage is November 29, 2004.

Your unit has been approved as a freestanding renal dialysis facility. This approval is for a total of six (6) hemodialysis maintenance stations.

Your facility is approved to provide the following services:

- Staff Assisted Hemodialysis
- Self Administered Peritoneal Dialysis
  - Patient Training for Continuous Ambulatory Peritoneal Dialysis (CAPD)
  - Patient Training for Continuous Cycling Peritoneal Dialysis (CCPD)
- Patient Training for Hemodialysis

Your ESRD identification number is 14-2655. The number should be entered on all forms and correspondence relating to the Medicare renal treatment program. Your fiscal year end date is June 30.

Your fiscal intermediary for reimbursement for renal treatment procedures will be Mutual of Omaha.

233 North Michigan Avenue  
Suite 600  
Chicago, Illinois 60601-5519

Richard Bolling Federal Building  
601 East 12<sup>th</sup> Street, Room 235  
Kansas City, Missouri 64106-2808

Your renal network contact is as follows:

Susan Stark, Executive Director  
Renal Network 9/10  
911 East 86<sup>th</sup> Street, Suite 202  
Indianapolis, IN 46240  
(800) 456-6919  
sstark2nw10esrd.net

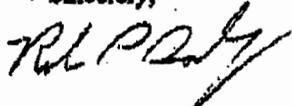
FILE COPY

If you are dissatisfied with the effective date of Medicare participation indicated above, you may request that the determination of the effective date be reconsidered. The request must be submitted in writing to this office within 60 days of the date you receive this notice. The request for reconsideration must state the issues or the findings of fact with which you disagree and the reasons for disagreement.

Please inform the IDPH, if you wish to relocate your facility, change the services that you are currently providing, change the number of approved stations, or undergo a change in ownership.

We welcome your participation and look forward to working with you in the administration of the Medicare program. If you have any questions, please contact April Rush in our Chicago office at (312) 353-5184.

Sincerely,



Robert P. Dady, Manager  
Non-Long Term Care Branch

cc: Illinois Department of Public Health  
Illinois Department of Public Aid  
Mutual of Omaha  
Illinois Foundation for Quality Health Care  
Renal Network 9/10  
Office of Clinical Standards and Quality

TOTAL P.03



Pat Quinn, Governor

525-535 West Jefferson Street • Springfield, Illinois 62761-0001 • www.idph.state.il.us

March 20, 2013

Provider No: 14-2655

Seema Jose, Administrator  
Direct Dialysis  
14255 S. Cicero Ave.  
Crestwood, Illinois 60445

Dear Ms. Jose:

Effective March 19, 2013, your request to increase your dialysis maintenance stations from 6 to 7 **stations** is approved. Your facility is approved for the following:

Following is a list of the types of services for which you are approved.

- Transplantation
- Dialysis

Total Maintenance Stations

7

Staff Assisted

- 1. Hemodialysis
- 2. Peritoneal

X  
X

Self Dialysis

- 1. Hemodialysis
- 2. Peritoneal Dialysis

\_\_\_\_\_  
\_\_\_\_\_

Patient Dialysis Training

- 1. Hemodialysis
- 2. Continuous Ambulatory Peritoneal Dialysis (CAPD)
- 3. Continuous Cycling Peritoneal Dialysis (CCPD)

X  
X  
X

Seema Jose  
March 20, 2013  
Page 2

You should advise our office of any changes in staffing, services, ownership, or organization that may affect your certification. If you have any questions, please do not hesitate to call Kevin Fergusson of my staff at 217/782-7412. The Department's TTY number is 800/547-0466, for use by the hearing impaired.

Sincerely

*Karen Senger RN*

Karen Senger, RN  
Supervisor, Central Office Operations Section  
Division of Health Care Facilities and Programs  
Illinois Department of Public Health

KS/kef

cc: Centers for Medicare and Medicaid Services  
National Government Services, Inc.  
Illinois Department of Public Aid  
Mike Cosentino Health Systems Development  
Field Operations Section



U.S. DEPARTMENT of HEALTH & HUMAN SERVICES  
CENTERS for MEDICARE & MEDICAID SERVICES

**End-Stage Renal Disease Quality Incentive Program**

2013 Certificate of Dialysis Facility Performance - Part 1

Facility CMS Certification Number: 142855



\*\* The information shown below is based on 2011 data. \*\*

**Certificate of Dialysis Facility Performance**

**This Facility Meets 2 of 2 Quality Standards**

**TOTAL PERFORMANCE SCORE**

**30 out of 30**

**National Average**

**29**

**MEASURES OF QUALITY**

**FACILITY SCORE NATIONAL AVERAGE MEETS STANDARD**

**Anemia Management: (Shows how well a facility keeps red blood cell counts at an acceptable level)**

Percentage of patients with hemoglobin greater than 12 g/dL

10 of 10

10 of 10

Yes

**Dialysis Adequacy: (Shows how well a facility cleans blood during a dialysis treatment)**

Percentage of patients with urea reduction ratio of at least 65%

10 of 10

9 of 10

Yes

Facility Name and Address  
DIRECT DIALYSIS  
14256 S CICERO AVENUE  
CRESTWOOD, IL 60445

*Janna Rydelms*  
Facility Medical Director

*Patrick Conway, M.D., M.Sc.*  
CMS Chief Medical Officer  
Director, Office of Clinical Standards and Quality

## ATTACHMENT 12

### **Criterion 1110.230 -- Purpose of the Project**

#### 1. Health and Well-Being of the Market Area Population.

The proposed project contemplates an expansion of in-center hemodialysis stations at an existing health care facility. Specifically, Concerto Dialysis (the "Applicant"), located at 14255 South Cicero Avenue, Crestwood, Illinois 60445 (the "ESRD Facility") seeks approval from the Illinois Health Facilities and Services Review Board (the "State Board") to add two (2) in-center hemodialysis stations at the ESRD Facility (the "Project"). The ESRD Facility presently is approved for seven (7) in-center hemodialysis stations proposed expansion/addition of two in-center hemodialysis stations at Concerto Dialysis in Crestwood, Illinois.

The project's purpose is to address a dramatic increase in the utilization of existing stations at the ESRD Facility. Adding two in-center hemodialysis stations will ensure the ongoing health and well-being of the patients that are currently being served by this ESRD Facility. The project also will ensure that the ESRD facility's pre-ESRD patients will continue to have access to the in-center hemodialysis services offered by the Facility, especially at more desirable times. The Project is important because it is located in Health Service Area 7, which according to the State Board's revised need determinations issued on February 3, 2014, this area has a stated need for an additional 83 in-center hemodialysis stations.

#### 2. Market Area.

The ESRD Facility is located in Crestwood, Illinois, which falls within Health Service Area 7. The Applicant intends to serve the same geographic area that the existing ESRD Facility has been serving since it was first issued a CON permit from the State Board.

#### 3. Issues to Address.

##### (a) Need for ESRD Stations

The State Board's revised need determinations for in-center hemodialysis, issued by the State Board on February 3, 2014, shows that Health Service Area 7 has a stated need for an additional 83 in-center hemodialysis stations. The Project, therefore, will not only ensure that the Applicant is able to meet growing demand at the ESRD Facility, but also will ensure that ESRD patients residing in this area can continue to obtain their necessary dialysis treatments in a familiar location, at preferred times, and that the popular ESRD Facility continues to remain an available option to other ESRD patients in the community served by the Applicant.

##### (b) HRSA-Designated Shortage Areas in Crestwood, Illinois and Many Surrounding Communities.

The expansion of services at the ESRD Facility is important because Crestwood, Illinois, and many of the surrounding communities in southwest Cook County, have been designated by

the U.S. Department of Health and Human Services, Health Resources and Services Administration ("HRSA"), as being within all of the following HRSA-designated areas:

- Health Professional Shortage Area
- Medically Underserved Area
- Medically Underserved Population

(c) High Quality ESRD Provider

The ESRD Facility is also recognized as a high quality provider of ESRD services; therefore, its expanded operation will ensure that high quality care remains available to the residents of Crestwood, Illinois and its surrounding communities. The U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services ("CMS"), issued the ESRD Facility a Certificate of Dialysis Facility Quality Performance last year ("Quality Certificate"). The Quality Certificate states that the ESRD Facility met 30 out of 30 quality performance indicators, a number that exceeds the national average for all ESRD facilities.

(d) Multiple Treatment Modalities Offered by the Facility

The ESRD Facility is also important to the community because it offers different options to persons living in Crestwood, Illinois and its surrounding communities. The Facility presently has a seven (7) station in-center hemodialysis unit in Crestwood, Illinois, which is located in a site adjacent to a skilled nursing facility. The ESRD Facility also is a Medicare-certified supplier of home dialysis training and support services, which allows the Applicant to offer different treatment options and modalities to persons who are in need of dialysis treatments. The ESRD Facility's ability to provide different options and treatment modalities means that the area's dialysis patients can find a plan that best meets their particular medical needs. However, this cannot continue if the Applicant is unable to accept new patients due to demand levels at the ESRD Facility.

4. Documentation.

The following documents are attached as evidence that an expansion of in-center hemodialysis stations is needed at the ESRD Facility and that the facility is playing a critical role in meeting the dialysis needs of patients living in Crestwood, Illinois and many of its surrounding communities.

- Illinois Health Facilities and Services Review Board, February 3, 2104 Update to the Inventory of Other Health Services. See Attachment 12(a).
- HRSA Summaries and Charts showing that Crestwood, Illinois and many of its surrounding communities lie within areas designated by HRSA as being Health Professional Shortage Areas, Medically Underserved Areas and Medically Underserved Populations. See Attachment 12(b).
- The Facility's 2013 Quality Certificate, issued by HHS-CMS. See Attachment 12(c).

- Evidence showing the increased utilization of the existing seven in-center hemodialysis stations at the ESRD Facility. A copy of the data is provided hereto as Attachment 12(d).

5. Addressing/Improving Access to Care.

As noted above, the existing ESRD facility is located in Crestwood, Illinois and serves this and many surrounding communities, several which have been designated by the federal government as being Health Professional Shortage Areas, Medically Underserved Areas and having Medically Underserved Populations. The continued operation and expansion of the ESRD Facility is essential to meeting the needs of ESRD patients living in these communities.

In addition to these important federal designations, the State Board presently shows that the related Health Service Area has a need for 83 additional in-center hemodialysis stations.

Based on these facts, the ESRD Facility is playing a vital role in ensuring that the area's ESRD patients are able to gain access to dialysis treatments. The proposed expansion of in-center hemodialysis stations is critically important because it will allow the Applicant to meet the needs of current ESRD patients but also meet the growing need for such services in this service area.

6. Goals and Objectives.

The goal of this project is to ensure that dialysis patients living in Crestwood, Illinois and its surrounding communities can continue to access high-quality dialysis services from a Medicare-certified supplier that is able to offer a treatment plan that best meets the medical needs of each patient. The expansion of stations will provide existing patients better scheduling for their dialysis treatments, but also allow the Applicant to serve more patients in the future.

**Attachment 12(a)**

**Illinois Health Facilities and Services Review Board Inventory of Other Health Services  
Update of February 3, 2014**

(see attached)

UPDATE TO INVENTORY OF HEALTH CARE FACILITIES  
February 3, 2014

**Changes to Ambulatory Surgical Treatment Centers**

HSA 6	13-039	9/24/2013	Center for Ambulatory Surgery at Swedish Covenant, Chicago, received permit for Change of Ownership.
HSA 7	13-007	9/24/2013	Preferred Surgicenter, LLC, Orland Park received permit to establish a multi-specialty Ambulatory Surgical Treatment Center with 3 operating rooms at 10 Orland Square Drive in Orland Park.
HSA 5	13-052	11/5/2013	Massac County Surgery Center, Metropolis, received permit to establish a limited-specialty Ambulatory Surgical Treatment Center offering orthopedic and podiatric services, in Metropolis.
HSA 7	E-025-13	12/13/2013	Midwest Endoscopy Center, Naperville, received exemption for change of ownership.
HSA 7	E-026-13	12/13/2013	Salt Creek Surgery Center, Westmont, received exemption for change of ownership.

**Changes to End Stage Renal Disease**

HSA 8	13-031	9/24/2013	DaVita Waukegan Renal Center received permit to relocate a 22 station End Stage Renal Dialysis facility from 697 Judge Avenue, Waukegan to 3300 Grand Avenue, Waukegan. No change in authorized stations in HSA 8.
HSA 7	13-049	11/5/2013	Nocturnal Dialysis Spa, Villa Park, received permit to establish a 12 station End Stage Renal Dialysis facility at 1634 South Ardmore in Villa Park. Health Service Area 7 now has a total of 1,202 authorized ESRD stations, with a calculated need for 82 additional stations.
HSA 8	13-055	11/5/2013	Quality Renal Care Marengo, Marengo, received permit for change of ownership. No change in authorized stations in HSA 8.
HSA 8	13-056	11/5/2013	Quality Renal Care Carpentersville, Carpentersville, received permit for change of ownership. No change in authorized stations in HSA 8.
HSA 6	13-060	11/5/2013	DaVita Garfield Kidney Center, Chicago, received permit for change of ownership. No change in authorized stations in HSA 6.
HSA 7	13-053	12/17/2013	RCG Evanston, Evanston, received permit to add 6 ESRD stations to existing facility. Facility is now authorized for 20 ESRD stations. HSA 7 now has a total of 1,208 authorized ESRD stations, with a calculated need for 76 additional stations.
HSA 7	13-054	12/17/2013	NxStage Oak Brook, Oak Brook, received permit to establish an 8 station ESRD facility. HSA 7 now has a total of 1,216 authorized ESRD stations, with a calculated need for 68 additional stations.
HSA 7	13-061	12/17/2013	Naperville Dialysis Center, Naperville, received permit to discontinue a 15 station ESRD facility. HSA 7 now has a total of 1,201 authorized ESRD stations, with a calculated need for 83 additional stations.
HSA 7	13-065	12/17/2013	Concerto Dialysis, Crestwood, received permit for change of ownership. No change in authorized ESRD stations.
HSA 8	Station Change	1/3/2014	Fresenius Medical Care Elgin, Elgin, added 2 ESRD stations to an existing facility; the facility now has 14 ESRD stations. Health Service Area 8 has a total of 363 authorized ESRD stations, with a calculated excess capacity of 30 stations.

**Changes to Alternative Health Care Delivery Models**

			The Post-Surgical Recovery Care Model category of service is closed. No additional applications for Post-Surgical Recovery Care Models will be accepted.
	13-051	9/24/2013	Center for Comprehensive Services, Inc., Palatine, received permit to establish a 5 bed unit for Community-Based Rehabilitation Alternative Health Care Model.
HSA 7	13-044	9/24/2013	VHS Macneal Hospital, Berwyn, received permit for change of ownership. Project includes Sub-Acute Care Alternative Health Care Model operated by the hospital.

**Other Projects**

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REVISED NEED DETERMINATIONS

2/3/2014

ESRD STATIONS

ESRD SERVICE AREAS	APPROVED EXISTING STATIONS	CALCULATED STATION NEED 2015	ADDITIONAL STATIONS NEEDED 2015	EXCESS ESRD STATIONS 2015
HSA 1	157	141	0	16
HSA 2	169	147	0	22
HSA 3	158	133	0	25
HSA 4	174	162	0	12
HSA 5	188	164	0	24
HSA 6	1,168	1,262	94	0
HSA 7	1,201	1,284	83	0
HSA 8	363	333	0	30
HSA 9	251	228	0	23
HSA 10	90	71	0	19
HSA 11	177	173	0	4
<b>ILLINOIS TOTAL</b>	<b>4,096</b>	<b>4,098</b>	<b>177</b>	<b>175</b>

AMBULATORY SURGICAL TREATMENT CENTERS

ASTC PLANNING AREAS	ASTC FACILITIES	OPERATING ROOMS
HSA 1	4	11
HSA 2	6	18
HSA 3	5	12
HSA 4	15	41
HSA 5	11	20
HSA 6	22	57
HSA 7	49	154
HSA 8	15	43
HSA 9	9	25
HSA 10	4	9
HSA 11	9	17
<b>ILLINOIS TOTAL</b>	<b>149</b>	<b>407</b>

**Attachment 12(b)**

**HRSA Summaries and Charts**

(see attached)



U. S. Department of Health and Human Services  
 Health Resources and Services Administration

**Criteria:**

State: Illinois  
 County: Cook County  
 ID #: All

Results: 491 records found.

Name	ID#	Type	Score	Designation Date	Update Date
<b>Rogers Park Service Area</b>	00522	MUA	61.20	1999/06/10	
CT 0101.00					
CT 0102.01					
CT 0102.02					
CT 0103.00					
CT 0104.00					
CT 0105.01					
CT 0105.02					
CT 0105.03					
CT 0106.00					
CT 0107.01					
CT 0107.02					
CT 8306.00					
<b>Communities Asian-American Population</b>	00801	GOV MUP	0.00	1988/03/31	
<b>Roseland Service Area</b>	00802	MUA	46.90	1995/10/23	
CT 4409.00					
CT 4903.00					
CT 4905.00					
CT 4906.00					
CT 4907.00					
CT 4908.00					
CT 4909.01					
CT 4909.02					
CT 4910.00					
CT 4911.00					
CT 4912.00					
CT 4913.00					
CT 4914.00					
CT 8340.00					
<b>Leclaire Courts Service Area</b>	00822	MUA	56.50	1992/12/09	1994/02/01















CT 8259.00									
CT 8260.00									
CT 8261.00									
CT 8262.01									
CT 8262.02									
<b>Brighton Park / Gage Park Service Area</b>									
CT 5801.00	07323	MJA	61.60	2003/04/07					
CT 5802.00									
CT 5803.00									
CT 5804.00									
CT 5805.01									
CT 5805.02									
CT 5806.00									
CT 5807.00									
CT 5808.00									
CT 6301.00									
CT 6302.00									
CT 6303.00									
CT 6304.00									
CT 6305.00									
CT 6308.00									
CT 6309.00									
CT 8351.00									
CT 8428.00									
<b>Humboldt Park Service Area</b>									
CT 2312.00	07335	MJA	60.70	2003/05/14					
CT 2315.00									
CT 8366.00									
CT 8421.00									
<b>Austin Community Service Area</b>									
CT 2502.00	07336	MJA	51.00	2003/05/22					
CT 2503.00									
CT 2504.00									
CT 2506.00									
CT 2507.00									
CT 2508.00									
CT 2510.00									
CT 2511.00									
CT 2512.00									
CT 2513.00									
CT 2514.00									
CT 2515.00									
CT 2516.00									
CT 2517.00									
CT 2518.00									





CT 6611.00									
CT 7001.00									
CT 7002.00									
CT 7003.01									
CT 7003.02									
CT 7004.01									
CT 7004.02									
CT 7005.01									
CT 7005.02									
CT 8350.00									
Low Inc-Skokie				07886		MUP	61.00	2012/09/24	

**Attachment 12(c)**

**2013 HHS-CMS Quality Certificate**

(see attached)



U.S. DEPARTMENT OF HEALTH & HUMAN SERVICES  
CENTERS for MEDICARE & MEDICAID SERVICES



**End-Stage Renal Disease Quality Incentive Program**  
2013 Certificate of Dialysis Facility Performance - Part 1

Facility CMS Certification Number: 142655

\*\* The information shown below is based on 2011 data. \*\*

**Certificate of Dialysis Facility Performance**

**This Facility Meets 2 of 2 Quality Standards**

<b>TOTAL PERFORMANCE SCORE</b>	<b>30 out of 30</b>
<b>National Average</b>	<b>29</b>

**MEASURES OF QUALITY**

	<b>FACILITY SCORE</b>	<b>NATIONAL AVERAGE</b>	<b>MEETS STANDARD</b>
<b>Anemia Management: (Shows how well a facility keeps red blood cell counts at an acceptable level)</b>			
Percentage of patients with hemoglobin greater than 12 g/dL	10 of 10	10 of 10	Yes
<b>Dialysis Adequacy: (Shows how well a facility cleans blood during a dialysis treatment)</b>			
Percentage of patients with urea reduction ratio of at least 65%	10 of 10	9 of 10	Yes

Facility Name and Address  
DIRECT DIALYSIS  
14255 S CICERO AVENUE  
CRESTWOOD, IL 60445

*James Rydell MD*  
Facility Medical Director

*Patrick Conway, M.D., M.Sc.*  
CMS Chief Medical Officer  
Director, Office of Clinical Standards and Quality

**Attachment 12(d)**

**ESRD Facility Utilization Data**

<b>UTILIZATION AT CONCERTO DIALYSIS</b>						
<b>Yearly Average</b>						
<b>2012-2013</b>						
<b>Service</b>	<b>Year</b>	<b>Concerto Dialysis: # of Dialysis Stations</b>	<b>Year Average: Patients</b>	<b>Concerto Dialysis Station Utilization</b>	<b>State Standard</b>	<b>Met Standard?</b>
In-Center Hemodialysis	2012	6	38.5	106.94%	80.0%	YES
	2013	6/7	43.0	105.99%	80.0%	YES

<b>Calendar Year 2012</b>					
<b>Year</b>	<b>Month</b>	<b>Stations</b>	<b>Patients</b>	<b>Utilization %</b>	<b>State Average Met?</b>
2012	January	6	32	88.89%	YES
	February	6	34	94.44%	YES
	March	6	37	102.78%	YES
	April	6	39	108.33%	YES
	May	6	39	108.33%	YES
	June	6	38	105.56%	YES
	July	6	37	102.78%	YES
	August	6	42	116.67%	YES
	September	6	42	116.67%	YES
	October	6	40	111.11%	YES
	November	6	41	113.89%	YES
	December	6	41	113.89%	YES
<b>TOTALS</b>			<b>38.5</b>	<b>106.94%</b>	<b>YES</b>

<b>Calendar Year 2013</b>					
<b>Year</b>	<b>Month</b>	<b>Stations</b>	<b>Patients</b>	<b>Utilization %</b>	<b>State Average Met?</b>
2013	January	6	42	116.67	YES
	February	6	42	116.67	YES
	March	6	43	119.44	YES
	April	7	40	95.24	YES
	May	7	41	97.62	YES
	June	7	40	95.24	YES
	July	7	42	97.62	YES
	August	7	51	121.43	YES
	September	7	51	121.43	YES
	October	7	42	97.62	YES
	November	7	42	97.62	YES
	December	7	40	95.24	YES
<b>TOTALS</b>			<b>43.0</b>	<b>105.99%</b>	<b>YES</b>

UTILIZATION AT CONCERTO DIALYSIS						
Latest Quarter						
4Q (2013)						
Service	Most Recent Quarter	Concerto Dialysis: # of Dialysis Stations	4Q Average: Patients	Concerto Dialysis Station Utilization	State Standard	Met Standard?
In-Center Hemodialysis	4Q (2013)	7	41.3	96.83%	80.0%	YES

Calendar Year 2013: Fourth Quarter					
Year	Month	Stations	Patients	Utilization %	State Average Met?
2013	October	7	42	97.62%	YES
	November	7	42	97.62%	YES
	December	7	40	95.24%	YES
<b>TOTALS</b>			<b>41.3</b>	<b>96.83%</b>	<b>YES</b>

Notes:

1. On March 20, 2013, Concerto Dialysis, then known as Direct Dialysis, received approval from the Medicare program to expand the number of in-center hemodialysis stations from 6 to 7. The change was effective as of March 19, 2013. A copy of the Medicare approval letter is provided with this certificate of need permit application at Attachment 11 – Background of Applicant.

## ATTACHMENT 13

### Criterion 1110.230 -- Alternatives

#### Background

Concerto Dialysis, LLC (the "Applicant") proposes the expansion of its existing in-center hemodialysis facility (the "ESRD Facility"). The ESRD Facility currently approved for 7 in-center hemodialysis stations. The Applicant is seeking approval for another two 2 in-center hemodialysis stations (the "Project") to address a dramatic increase of patient utilization at this site. If the Project is approved, the ESRD Facility would have a total of 9 in-center hemodialysis stations.

The existing ESRD Facility is located in Health Service Area 7 ("HSA 7"). According to the most recent inventory of health care services, published by the Illinois Health Facilities and Services Review Board (the "State Board") on February 3, 2014, HSA 7 has a need for an additional 83 in-center hemodialysis stations.

#### Alternatives

In accordance with 77 Ill. Adm. Code § 1110.230(c), the Applicant considered the following alternatives to the Project:

**1. Do Nothing.**

The first alternative considered by the Applicant was to maintain the status quo and continue to operate the ESRD Facility with 7 stations.

Total Project Cost: \$0

Reason(s) for Rejecting Alternative: This option was rejected by the Applicant because it fails to meet the needs of the ESRD Facilities existing patients, it does not address the demand for additional in-center hemodialysis stations in HSA 7, nor does it allow the Applicant to offer its patients more desirable time slots for receiving their dialysis treatments.

**2. Expand the ESRD Facility Using the Ten Percent Rule**

Section 1130.310(a)(2) of the State Board's rules provides that a certificate of need ("CON") permit is necessary when a proposed project substantially changes the scope or changes the functional operation of a health care facility. The State Board defines a "substantial change in the scope or functional operation" in Section 1130.140 of its rules, which provides, among other acts, that a substantial change occurs when there is an increase of more than three dialysis stations or more than 10% of the facility's total number of dialysis stations, whichever is less, over a two-year period. The rule adds that the two-year period begins on the date the facility's additional stations are certified. The

rule further states that when a CON permit is issued for additional stations or for the establishment of an additional facility/service, the facility may not add any more dialysis stations for two years from the date that such stations approved in the permit are certified without obtaining an additional CON permit.

Total Project Cost: \$0

Reason(s) for Rejecting Alternative: This option was rejected because the Applicant already used this rule to expand the ESRD Facility by 1 in-center hemodialysis station, which was approved by the Medicare program in March 2013. As a result, this State Board rule was not an option for increasing the facility by 2 more dialysis stations.

**3. Establish a New ESRD Facility in the Southwest Suburbs.**

Another alternative considered by the Applicant was to secure a new property and seek approval to establish a new ESRD Facility in the Crestwood, Illinois area.

Total Project Cost: Estimated Cost \$2,500,000 to \$5,000,000

Reason(s) for Rejecting Alternative: The Applicant did not pursue this alternative for several reasons. First, the Applicant already has a lease agreement in place for the existing ESRD Facility. It is not presently feasible to terminate this lease. Second, the ESRD Facility is presently experiencing significantly high utilization and a new in-center dialysis facility would not be ready for many months.

**4. Acquire Ownership and Control of an Existing ESRD Facility.**

The Applicant considered purchasing an existing in-center hemodialysis facility in the same area as the current ESRD Facility.

Total Project Cost: Unknown

Reason(s) for Rejecting Alternative: The Applicant did not pursue this alternative because it was not aware of any existing dialysis facilities that were on the market in the communities surrounding Crestwood, Illinois.

**5. Expand the Number of Stations at Concerto Dialysis in Crestwood, Illinois.**

The final alternative considered by the Applicant was to seek State Board approval for the expansion of in-center hemodialysis stations at its Crestwood, Illinois ESRD Facility.

Total Project Cost: \$25,000.00

Reason(s) for Rejecting Alternative: The Applicant chose this option for several reasons. First, this alternative offers the fastest way to meet the needs of the ESRD Facility's patients. Second, this alternative will relieve the high utilization rates at the ESRD

Facility quicker than any other alternative, but also allow more patients to obtain services at this increasingly popular site. Third, this alternative was the lowest cost option available to the Applicant.

### **Documentation and Evidence**

As noted previously on Attachment 12, the existing ESRD Facility plays a vital role in meeting the dialysis needs of persons living in Crestwood, Illinois and the surrounding communities. The Applicant provided information to show that the existing ESRD Facility is needed, including the following:

- Illinois Health Facilities and Services Review Board, February 3, 2014 Update to the Inventory of Other Health Services.
- HRSA Summaries and Charts showing that Crestwood, Illinois and many of its surrounding communities lie within areas designated by HRSA as being Health Professional Shortage Areas, Medically Underserved Areas and Medically Underserved Populations.
- The Facility's 2013 Quality Certificate, issued by HHS-CMS.
- Evidence of the ESRD Facility's increased utilization rates.

[Attachment 13 Continues on Next Page]

**Comparison**

As discussed in narrative provided above, the Applicant considered several alternative options before filing the present application to expand its existing in-center hemodialysis facility. The following chart compares the various alternatives examined by the Applicant prior to submitting this CON permit application.

<b>Proposed Project</b>	<b>Do Nothing</b>	<b>Use Ten Percent Rule to Expand Present Facility</b>	<b>Establish a New Facility in Same Community</b>	<b>Acquire Existing Facility Through Change of Ownership Process</b>	<b>Expand Existing ESRD Facility by Obtaining CON Permit to Add 2 Stations</b>
<b>Cost</b>	\$0	\$0	\$2-5 Million	Unknown	\$25,000
<b>Patient Access</b>	This alternative to the present project: (1) would not address the need for additional in-center hemodialysis stations in HSA 7; (2) would not alleviate the high utilization at the existing ESRD Facility; and (3) would not give existing patients at the facility better shift time choices.	This alternative is not available to the Applicant.	This alternative would help with patient access, and may even allow the Applicant to serve more ESRD patients living in HSA 7; however, it is a much more costly option and would not address the utilization at the existing ESRD Facility as quickly as the proposed station expansion will.	This alternative would help with patient access, and may even allow the Applicant to serve more ESRD patients living in HSA 7; however, it is a much more costly option and would not address the utilization at the existing ESRD Facility as quickly as the proposed station expansion will.	The Applicant chose this option because it is the lowest cost option and most quickly meets the needs of the existing ESRD Facility's patients.
<b>Quality</b>	Quality of care could suffer if patients needs cannot be satisfied by the existing facility.	Quality of care could suffer if patients needs cannot be satisfied by the existing facility.	Quality of care could suffer if patients needs cannot be satisfied by the existing facility sooner rather than later.	Quality of care could suffer if patients needs cannot be satisfied by the existing facility sooner rather than later.	The Applicant chose this option because it is the one that most quickly meets the needs of the existing ESRD Facility's patients.
<b>Financial Benefits (Short Term)</b>	None.	None.	This is a much more costly option than the proposed project. The Applicant did not identify short-term financial benefits.	This is a much more costly option than the proposed project. The Applicant did not identify short-term financial benefits.	The Applicant chose this option because it is the lowest cost option.
<b>Financial Benefits (Long Term)</b>	None.	None.	This is a much more costly option than the proposed project. The Applicant did not identify long-term financial benefits.	This is a much more costly option than the proposed project. The Applicant did not identify long-term financial benefits.	The Applicant chose this option because it is the lowest cost option.

**ATTACHMENT 14**

**Criterion 1110.234  
Project Scope**

<b>Size of the Project</b>				
<b>Department/ Service</b>	<b>Proposed BGSF/DGSF</b>	<b>State Standard</b>	<b>Difference</b>	<b>Met Standard?</b>
ESRD In-Center Hemodialysis	1,279 (9 Stations)	360-520 DGSF	None	YES

As seen in the chart above, the State Standard for ESRD In-Center Hemodialysis is between 360-520 department gross square feet (“DGSF”) per in-center hemodialysis station. Concerto Dialysis, LLC (the “Applicant”) presently owns and operates 7 in-center hemodialysis stations at this end stage renal disease facility (the “ESRD Facility”). The ESRD Facility is located with leased space, which totals 1,279 DGSF, or is 213.17 DGSF per dialysis station.

The proposed expansion of in-center hemodialysis stations, increasing the ESRD Facility’s total from 7 to 9 stations, would occur within the same space. Accordingly, the Applicant will not be increasing the square footage of the space if the 2 additional stations are approved. A 9 station ESRD Facility would lower the per-station square footage to 142.11 DGSF. In either case, the ESRD Facility’s DGSF would not exceed the state’s standard for in-center hemodialysis facilities.

**ATTACHMENT 15**

**Criterion 1110.234  
Utilization**

<b>Utilization</b>					
	<b>Dept./ Service</b>	<b>Historical Utilization (Patient Days) (Treatments) Etc.</b>	<b>Projected Utilization</b>	<b>State Standard</b>	<b>Met Standard?</b>
<b>January 2014</b>	In-Center Hemodialysis	40 Patients	95.24%	80.0%	YES
<b>Year 1</b>	In-Center Hemodialysis	59 Patients*	140.48%	80.0%	YES
<b>Year 2</b>	In-Center Hemodialysis	60 Patients*	142.86%	80.0%	YES

\* see narrative below regarding patient attrition

**Narrative**

Two nephrologists anticipate making additional referrals to Concerto Dialysis (the "Applicant") if the Illinois Health Facilities and Services Review Board (the "State Board") grants a certificate of need permit allowing the Applicant to add two in-center hemodialysis stations at its existing end stage renal disease facility in Crestwood, Illinois. Specifically, Dr. James Rydel has pledged to refer 10 patients to the facility during the first and second years following project approval and Dr. Kareen Simpson has pledged to refer 15 new dialysis patients to the facility each year for the next two years. In total, both physicians anticipate referring an aggregate total of 25 new patients to the Applicants in-center hemodialysis facility in each of the two years following project approval.

Although the two referring nephrologists already accounted for patient attrition in their referral estimates, the Applicant further reduced the anticipated number of patient referrals to present an even more conservative estimate to the State Board. The Applicant further reduced the nephrologists estimates by 25 percent for year one (bringing the total patient referral estimates down from 25 to 19) and by 20 percent for year two (bring the total patient referral estimates down from 25 to 20).

Additional facility utilization data is provided below.

[Attachment 15 Continued on Next Page]

### ESRD Facility Utilization Data

<b>UTILIZATION AT CONCERTO DIALYSIS</b>						
<b>Yearly Average</b>						
<b>2012-2013</b>						
Service	Year	Concerto Dialysis: # of Dialysis Stations	Year Average: Patients	Concerto Dialysis Station Utilization	State Standard	Met Standard?
In-Center Hemodialysis	2012	6	38.5	106.94%	80.0%	YES
	2013	6/7	43.0	105.99%	80.0%	YES

<b>Calendar Year 2012</b>					
Year	Month	Stations	Patients	Utilization %	State Average Met?
2012	January	6	32	88.89%	YES
	February	6	34	94.44%	YES
	March	6	37	102.78%	YES
	April	6	39	108.33%	YES
	May	6	39	108.33%	YES
	June	6	38	105.56%	YES
	July	6	37	102.78%	YES
	August	6	42	116.67%	YES
	September	6	42	116.67%	YES
	October	6	40	111.11%	YES
	November	6	41	113.89%	YES
	December	6	41	113.89%	YES
<b>TOTALS</b>			<b>38.5</b>	<b>106.94%</b>	<b>YES</b>

<b>Calendar Year 2013</b>					
Year	Month	Stations	Patients	Utilization %	State Average Met?
2013	January	6	42	116.67	YES
	February	6	42	116.67	YES
	March	6	43	119.44	YES
	April	7	40	95.24	YES
	May	7	41	97.62	YES
	June	7	40	95.24	YES
	July	7	42	97.62	YES
	August	7	51	121.43	YES
	September	7	51	121.43	YES
	October	7	42	97.62	YES
	November	7	42	97.62	YES
	December	7	40	95.24	YES
<b>TOTALS</b>			<b>43.0</b>	<b>105.99%</b>	<b>YES</b>

<b>UTILIZATION AT CONCERTO DIALYSIS</b>						
<b>Latest Quarter</b>						
<b>4Q (2013)</b>						
<b>Service</b>	<b>Most Recent Quarter</b>	<b>Concerto Dialysis: # of Dialysis Stations</b>	<b>4Q Average: Patients</b>	<b>Concerto Dialysis Station Utilization</b>	<b>State Standard</b>	<b>Met Standard?</b>
In-Center Hemodialysis	4Q (2013)	7	41.3	96.83%	80.0%	YES

<b>Calendar Year 2013: Fourth Quarter</b>					
<b>Year</b>	<b>Month</b>	<b>Stations</b>	<b>Patients</b>	<b>Utilization %</b>	<b>State Average Met?</b>
2013	October	7	42	97.62%	YES
	November	7	42	97.62%	YES
	December	7	40	95.24%	YES
<b>TOTALS</b>			<b>41.3</b>	<b>96.83%</b>	<b>YES</b>

Notes:

1. On March 20, 2013, Concerto Dialysis, then known as Direct Dialysis, received approval from the Medicare program to expand the number of in-center hemodialysis stations from 6 to 7. The change was effective as of March 19, 2013. A copy of the Medicare approval letter is provided with this certificate of need permit application at Attachment 11 – Background of Applicant.

**ATTACHMENT 26**

**Criterion 1110.1430  
In-Center Hemodialysis**

<b>APPLICABLE REVIEW CRITERIA FOR STATION EXPANSION</b>	
1110.1430(b)(2)	Planning Area Need - Service to Planning Area Residents
1110.1430(b)(4)	Planning Area Need - Service Demand - Expansion of Existing Category of Service
1110.1430(e)	Staffing Availability
1110.1430(f)	Support Services
1110.1430(j)	Assurances

[Attachment 26 continues on next page]

**ATTACHMENT 26**

**Criterion 1110.1430(b)(2)  
Planning Area Need - Service to Planning Area Residents**

**Primary Purpose of Project**

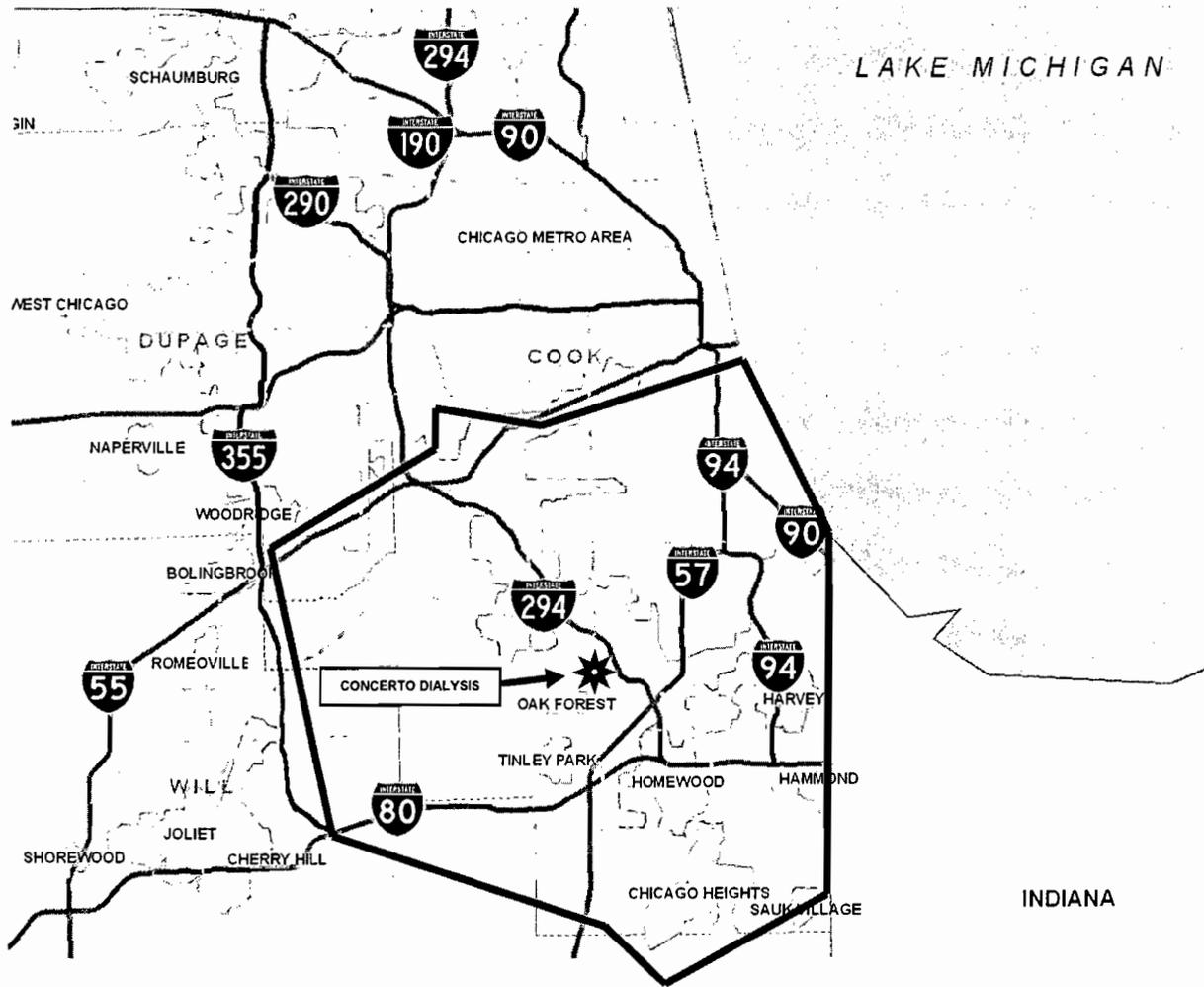
The proposed project contemplates an expansion of in-center hemodialysis stations at an existing health care facility. Specifically, Concerto Dialysis (the "Applicant"), located at 14255 South Cicero Avenue, Crestwood, Illinois 60445 (the "ESRD Facility") seeks approval from the Illinois Health Facilities and Services Review Board (the "State Board") to add two (2) in-center hemodialysis stations at the ESRD Facility (the "Project"). The ESRD Facility presently is approved for seven (7) in-center hemodialysis stations proposed expansion/addition of two in-center hemodialysis stations at Concerto Dialysis in Crestwood, Illinois.

The project's purpose is to address an ongoing overutilization of existing stations at the ESRD Facility. Adding two in-center hemodialysis stations will ensure the ongoing health and well-being of the patients that are currently being served by this ESRD Facility. The project also will ensure that the ESRD facility's pre-ESRD patients will continue to have access to the in-center hemodialysis services offered by the Facility, especially at more desirable times. The Project is important because it is located in Health Service Area 7, which according to the State Board's revised need determinations issued on February 3, 2014, this area has a stated need for an additional 83 in-center hemodialysis stations. See chart below, showing most recent need for 83 in-center hemodialysis stations in Health Service Area 7.

REVISED NEED DETERMINATIONS 2/3/2014 ESRD STATIONS				
ESRD SERVICE AREAS	APPROVED EXISTING STATIONS	CALCULATED STATION NEED 2015	ADDITIONAL STATIONS NEEDED 2015	EXCESS ESRD STATIONS 2015
HSA 1	157	141	0	16
HSA 2	169	147	0	22
HSA 3	158	133	0	25
HSA 4	174	162	0	12
HSA 5	188	164	0	24
HSA 6	1,168	1,262	94	0
HSA 7	1,201	1,284	83	0
HSA 8	363	333	0	30
HSA 9	251	228	0	23
HSA 10	90	71	0	19
HSA 11	177	173	0	4
<b>ILLINOIS TOTAL</b>	<b>4,096</b>	<b>4,098</b>	<b>177</b>	<b>175</b>

ESRD Facility Service Area

The Applicant's ESRD Facility is located in Crestwood, Illinois. This municipality falls within Health Service Area 7. The Applicant intends to continue serving the same geographic area that the ESRD Facility served under prior ownership, which included a 30 minute radius around the site of the ESRD Facility located at 14255 South Cicero Avenue, Crestwood, Illinois 60445.



— Purple Border Denotes 30 Minute Radius Around Concerto Dialysis in Crestwood, Illinois.

[Attachment 26 Continued on Next Page]

Patient Origin Information

The following chart identifies patient origin information for patients served by the Applicant during the most recent 12 month period. The chart shows that at least 50% of the ESRD Facility’s admissions were residents living within the service area.

Zip Code	# Patients	In Service Area?	Zip Code	# Patients	In Service Area?	Zip Code	# Patients	In Service Area?
06028	1	No	60440	2	No	60586	1	No
06451	1	No	60441	2	Yes	60606	1	No
39213	1	No	60443	3	Yes	60613	1	No
60056	1	No	60445	4	Yes	60617	22	Yes
60403	3	No	60446	5	No	60619	4	Yes
60406	13	Yes	60448	1	Yes	60620	24	Yes
60409	4	Yes	60450	1	No	60621	2	Yes
60410	1	No	60451	2	Yes	60628	22	Yes
60411	6	Yes	60452	3	Yes	60629	1	Yes
60415	4	Yes	60453	10	Yes	60632	2	No
60416	1	Yes	60458	2	Yes	60633	3	Yes
60419	2	Yes	60459	1	Yes	60636	6	Yes
60423	2	Yes	60463	1	Yes	60637	4	No
60424	2	No	60465	2	Yes	60638	3	Yes
60425	2	Yes	60466	3	Yes	60643	16	Yes
60426	5	Yes	60469	1	Yes	60649	5	Yes
60428	3	Yes	60471	1	Yes	60652	5	Yes
60429	4	Yes	60472	3	Yes	60653	3	No
60430	3	Yes	60473	2	Yes	60655	2	Yes
60431	3	No	60477	1	Yes	60803	5	Yes
60432	3	No	60478	2	Yes	60805	2	Yes
60433	3	Yes	60479	1	No	60827	3	Yes
60434	2	No	60482	1	Yes	61920	1	No
60435	8	No	60505	1	No			
60436	1	No	60544	3	No			

[Attachment 26 continues on next page]

**ATTACHMENT 26**

**Criterion 1110.1430(b)(4)**

**Planning Area Need - Service Demand – Expansion of In-Center Hemodialysis Service**

Historical Service Demand

<b>UTILIZATION AT CONCERTO DIALYSIS</b>						
<b>Yearly Average 2012-2013</b>						
<b>Service</b>	<b>Year</b>	<b>Concerto Dialysis: # of Dialysis Stations</b>	<b>Year Average: Patients</b>	<b>Concerto Dialysis Station Utilization</b>	<b>State Standard</b>	<b>Met Standard?</b>
In-Center Hemodialysis	2012	6	38.5	106.94%	80.0%	YES
	2013	6/7	43.0	105.99%	80.0%	YES

<b>Calendar Year 2012</b>					
<b>Year</b>	<b>Month</b>	<b>Stations</b>	<b>Patients</b>	<b>Utilization %</b>	<b>State Average Met?</b>
2012	January	6	32	88.89%	YES
	February	6	34	94.44%	YES
	March	6	37	102.78%	YES
	April	6	39	108.33%	YES
	May	6	39	108.33%	YES
	June	6	38	105.56%	YES
	July	6	37	102.78%	YES
	August	6	42	116.67%	YES
	September	6	42	116.67%	YES
	October	6	40	111.11%	YES
	November	6	41	113.89%	YES
	December	6	41	113.89%	YES
<b>TOTALS</b>			<b>38.5</b>	<b>106.94%</b>	<b>YES</b>

[Attachment 26 Continued on Next Page]

Calendar Year 2013					
Year	Month	Stations	Patients	Utilization %	State Average Met?
2013	January	6	42	116.67	YES
	February	6	42	116.67	YES
	March	6	43	119.44	YES
	April	7	40	95.24	YES
	May	7	41	97.62	YES
	June	7	40	95.24	YES
	July	7	42	97.62	YES
	August	7	51	121.43	YES
	September	7	51	121.43	YES
	October	7	42	97.62	YES
	November	7	42	97.62	YES
	December	7	40	95.24	YES
<b>TOTALS</b>			<b>43.0</b>	<b>105.99%</b>	<b>YES</b>

UTILIZATION AT CONCERTO DIALYSIS Latest Quarter 4Q (2013)						
Service	Most Recent Quarter	Concerto Dialysis: # of Dialysis Stations	4Q Average: Patients	Concerto Dialysis Station Utilization	State Standard	Met Standard?
In-Center Hemodialysis	4Q (2013)	7	41.3	96.83%	80.0%	YES

Calendar Year 2013: Fourth Quarter					
Year	Month	Stations	Patients	Utilization %	State Average Met?
2013	October	7	42	97.62%	YES
	November	7	42	97.62%	YES
	December	7	40	95.24%	YES
<b>TOTALS</b>			<b>41.3</b>	<b>96.83%</b>	<b>YES</b>

Notes:

1. On March 20, 2013, Concerto Dialysis, then known as Direct Dialysis, received approval from the Medicare program to expand the number of in-center hemodialysis stations from 6 to 7. The change was effective as of March 19, 2013. A copy of the Medicare approval letter is provided with this certificate of need permit application at Attachment 11 – Background of Applicant.

[Attachment 26 continues on next page]

Projected Referrals

See attached letters from Drs. Rydel and Simpson.

[Attachment 26 continues on next page]



## JR NEPHROLOGY & ASSOCIATES, S.C.

James J. Rydel, M.D., F.A.C.P.  
Michael E. Arvan, M.D.  
Sreya Pallath, M.D.

4542 WEST 95<sup>TH</sup> STREET  
OAK LAWN, IL 60453  
PHONE: 708/425-0522  
FAX: 708/425-4505

February 4, 2014

Ms. Courtney Avery  
Administrator  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson St., 2<sup>nd</sup> Floor  
Springfield, IL 62761

**Re: ESRD Station Expansion Request by Concerto Dialysis, LLC**

Dear Ms. Avery:

I, James Rydel, M.D., am a physician who has been practicing nephrology in the southwest suburbs of Chicago for 20 years. I am presently working with Concerto Dialysis, LLC (the "Applicant"), a provider that operates an end stage renal disease ("ESRD") facility located in Crestwood, Illinois. The Applicant is proposing the addition of two dialysis stations at this facility to address a dramatic increase in ESRD patient utilization (the "Project"). This letter provides information regarding projected referrals as required by 77 Ill. Adm. Code 1110.1430(b)(4)(B).

The addition of two dialysis stations will allow the Applicant to ease the burden being placed on many current patients who are receiving their dialysis treatments during undesirable shift times and take on new patients as the need for dialysis services grows in the Crestwood community. In the past 12 months, I have seen the demand for in-center dialysis treatments at this facility grow rapidly. In fact, the Applicant's existing dialysis station utilization rate has risen well beyond the State Board's 80% per station utilization standard. As of December 31, 2013, the Applicant's ESRD facility utilization rate was greater than 80%. The current utilization rate of this ESRD facility, as of January 22, 2014, is 100%. As a result, it is getting increasingly difficult to accommodate the needs of my dialysis patients at this facility. Furthermore, I am greatly concerned that the growth of pre-ESRD patients in my practice will lead to this community not having adequate access to dialysis services in the near future, especially when the Illinois Health Facilities and Services Review Board (the "State Board") reports that this health service area has a stated need for more dialysis stations.



## JR NEPHROLOGY & ASSOCIATES, S.C.

James J. Rydel, M.D., F.A.C.P.  
Michael E. Arvan, M.D.  
Sreya Pallath, M.D.

4542 WEST 95<sup>TH</sup> STREET  
OAK LAWN, IL 60453  
PHONE: 708/425-0522  
FAX: 708/425-4505

The State Board requires the Applicant to submit historical referral data and information related to projected referrals from nephrologists who will refer patients to an ESRD facility as part of a dialysis station expansion project. Using the information that I submitted to The Renal Network, please note the following:

(a) Total Patients Receiving Dialysis Care at Area ESRD Facilities

I was treating: 23 in-center hemodialysis patients at the end of 2011; (ii) 32 in-center hemodialysis patients at the end of 2012; and (iii) 37 in-center hemodialysis patients at the end of 2013. As of the end of the most recent quarter (December 31, 2013), I was treating 18 in-center hemodialysis patients. A detailed breakout of these patients, by ESRD facility and zip code, is attached hereto as Exhibit A.

(b) Total New Patients Referred for In-Center Hemodialysis Past Twelve Months

Over the past twelve months (January 1, 2013 through December 31, 2013) I referred 11 new patients for in-center hemodialysis services to the Applicant's ESRD facility. A detailed breakout of these patients, by ESRD facility and zip code, is attached hereto as Exhibit B.

(c) Estimated Patient Referrals to Concerto Dialysis After Project Completion

I have more than 20 pre-ESRD patients who live in the vicinity of the existing ESRD facility that I expect to refer to it within the two-year period following project completion. These patients are showing lab values that indicate they are in stages 3 or 4 of chronic kidney disease ("CKD") and are expected to require dialysis therapy starting in the applicable time period. Of these 20 pre-ESRD patients, I anticipate referring 10 patients to the ESRD facility when taking into account anticipated patient attrition.

According to my estimates, I will refer 10 patients to the ESRD facility for in-center hemodialysis services during the first year following project completion, and 10 patients to the



# JR NEPHROLOGY & ASSOCIATES, S.C.

James J. Rydel, M.D., F.A.C.P.  
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Sreya Pallath, M.D.

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OAK LAWN, IL 60453  
PHONE: 708/425-0522  
FAX: 708/425-4505

facility during the second year following project completion. These estimated referral numbers are based upon my practice experience.<sup>1</sup>

I hereby attest that, to the best of my knowledge, all of the information contained in this letter is true and correct and that the projected referrals in this document were not used to support any other CON permit application.

I fully support this Project for the reasons stated in this letter and therefore ask the State Board to approve the Applicant's certificate of need permit application. The addition of dialysis stations is necessary because it will reduce the ESRD facility's high utilization rate and also meet a projected demand for in-center ESRD services. Thank you for your consideration.

Sincerely,

James J. Rydel M.D.  
Nephrology  
4542 W 95<sup>th</sup> Street  
Oak Lawn, IL 60453

### NOTARIZATION:

Subscribed and sworn to before me this 6<sup>th</sup> day of February, 2014

Signature of Notary Public

Seal



<sup>1</sup> These estimates assume that a CON permit is granted at the April 2014 State Board meeting and considers a project completion date of June 30, 2014. Accordingly, the first year after project completion will be July 1, 2014 through June 30, 2015. The second year after project completion will be July 1, 2015 through June 30, 2016.

**EXHIBIT A**

Zip Code	End of CY 2011 Patients
60629	1
46404	1
60430	1
60428	1
60477	1
60803	1
60445	1
60620	1
60452	1
60624	1
60445	1
60628	1
60453	1
60628	1
60827	1
60425	1
60643	1
60428	1
60469	1
60473	1
60430	1
60425	1
60827	1

Zip Code	End of CY 2012 Patients
46404	1
60409	1
60491	1
60406	1
60428	1
60428	1
60429	1
60803	1
60617	1
60445	1
60620	1
60620	1
60803	1
60615	1
60445	1
60453	1
60406	1
60628	1
60425	1
60805	1
60643	1
60428	1
60487	1
60469	1
60473	1
60406	1
60655	1
60425	1
60443	1
60475	1
60472	1
60827	1

Zip Code	End of CY 2013 Patients
46404	1
60620	1
60445	1
60653	1
60406	1
60406	1
60462	1
60628	1
60445	1
60620	1
60620	1
60649	1
60478	1
60827	1
60453	1
60628	1
60652	1
60466	1
60428	1
60426	1
60805	1
60469	1
60620	1
60655	1
60628	1
60445	1
60803	1
60443	1
60475	1
60409	1
60652	1
60415	1
60617	1
60633	1
60827	1
60406	1

Zip Code	End of Most Recent Quarter
60411	1
60619	1
60406	1
60462	1
60620	1
60628	1
60466	1
60428	1
60805	1
60469	1
60620	1
60655	1
60419	1
60475	1
60409	1
60827	1
60406	1
60482	1

**EXHIBIT B**

<b>Total New Patients Referred for In-Center Hemodialysis Past 12 Months</b>	
<b>Zip Code</b>	<b>End of CY 2013 Patients</b>
60466	1
60472	1
60617	1
60628	1
60423	1
60805	1
60620	1
60445	1
60419	1
60633	1
60482	1

**EXHIBIT C**

<b>Zip Code</b>	<b>Year One 07/01/14 – 06/30/15</b>	<b>Year Two 07/01/15 – 06/30/16</b>
60453	2	1
60805	1	2
60459	2	1
60462	1	1
60803	1	2
60428	2	2
60472	1	1
<b>TOTAL</b>	<b>10</b>	<b>10</b>

Year 1                    10  
Year 2                    10  
  
**Total**                    **10**

<b>REVISED REFERRAL NUMBERS BASED ON PATIENT ATTRITION</b>		
<b>Zip Code</b>	<b>Year One 07/01/14 – 06/30/15</b>	<b>Year Two 07/01/15 – 06/30/16</b>
<b>ALL</b>	10	10

Year 1                    10  
Year 2                    10  
  
**Revised Total**

ASSOCIATES IN NEPHROLOGY, S.C.

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Kareen Simpson, M.D.  
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312-654-2700

February 5, 2014

Ms. Courtney Avery  
Administrator  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson St., 2<sup>nd</sup> Floor  
Springfield, IL 62761

**Re: ESRD Station Expansion Request by Concerto Dialysis, LLC**

Dear Ms. Avery:

I, Kareen Simpson, M.D., am a physician who has been practicing nephrology in the southwest suburbs of Chicago for 10 years. I am presently working with Concerto Dialysis, LLC (the "Applicant"), a provider that operates an end stage renal disease ("ESRD") facility located in Crestwood, Illinois. The Applicant is proposing the addition of two dialysis stations at this facility to address a dramatic increase in ESRD patient utilization (the "Project"). This letter provides information regarding projected referrals as required by 77 Ill. Adm. Code 1110.1430(b)(4)(B).

The addition of two dialysis stations will allow the Applicant to ease the burden being placed on many current patients who are receiving their dialysis treatments during undesirable shift times and take on new patients as the need for dialysis services grows in the Crestwood community. In the past 12 months, I have seen the demand for in-center dialysis treatments at this facility grow rapidly. In fact, the Applicant's existing dialysis station utilization rate has risen well beyond the State Board's 80% per station utilization standard. As of December 31, 2013, the Applicant's ESRD facility utilization rate was greater than 80%. The current utilization rate of this ESRD facility, as of January 27, 2014, is 100%. As a result, it is getting increasingly difficult to accommodate the needs of my dialysis patients at this facility. Furthermore, I am greatly concerned that the growth of pre-ESRD patients in my practice will lead to this

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community not having adequate access to dialysis services in the near future, especially when the Illinois Health Facilities and Services Review Board (the "State Board") reports that this health service area has a stated need for more dialysis stations.

The State Board requires the Applicant to submit historical referral data and information related to projected referrals from nephrologists who will refer patients to an ESRD facility as part of a dialysis station expansion project. Using the information that I submitted to The Renal Network, please note the following:

(a) Total Patients Receiving Dialysis Care at Area ESRD Facilities

I was treating: 16 in-center hemodialysis patients by the end of 2011; (ii) 20 in-center hemodialysis patients at the end of 2012; and (iii) 28 in-center hemodialysis patients at the end of 2013. As of the end of the most recent quarter (December 31, 2013), I was treating 11 in-center hemodialysis patients. A detailed breakout of these patients, by ESRD facility and zip code, is attached hereto as Exhibit A.

(b) Total New Patients Referred for In-Center Hemodialysis Past Twelve Months

Over the past twelve months (January 1, 2013 through December 31, 2013) I referred 11 new patients for in-center hemodialysis services to the Applicant's ESRD facility. A detailed breakout of these patients, by ESRD facility and zip code, is attached hereto as Exhibit B.

(c) Estimated Patient Referrals to Concerto Dialysis After Project Completion

I have 30 pre-ESRD patients who live in the vicinity of the existing ESRD facility that I expect to refer to it within the two-year period following project completion. These patients are

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showing lab values that indicate they are in stages 3 or 4 of chronic kidney disease ("CKD") and are expected to require dialysis therapy starting in the applicable time period. Of these 30 pre-ESRD patients, I anticipate referring 15 patients to the ESRD facility when taking into account anticipated patient attrition.

According to my estimates, I will refer 15 patients to the ESRD facility for in-center hemodialysis services during the first year following project completion, and 15 patients to the facility during the second year following project completion. These estimated referral numbers are based upon my practice experience.<sup>1</sup> A detailed breakout of my patient referral data is attached hereto as Exhibit C.

I hereby attest that, to the best of my knowledge, all of the information contained in this letter is true and correct and that the projected referrals in this document were not used to support any other CON permit application.

---

<sup>1</sup> These estimates assume that a CON permit is granted at the April 2014 State Board meeting and considers a project completion date of June 30, 2014. Accordingly, the first year after project completion will be July 1, 2014 through June 30, 2015. The second year after project completion will be July 1, 2015 through June 30, 2016.

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Vinitha Raghavan, M.D.

**Office:**

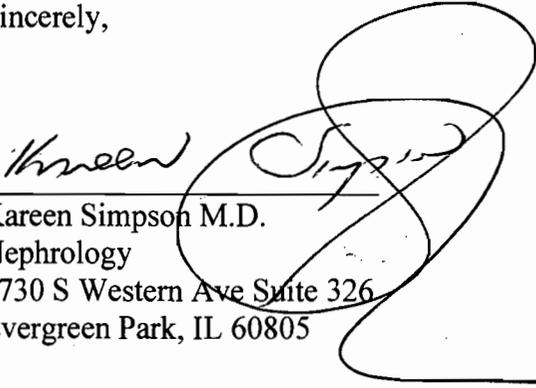
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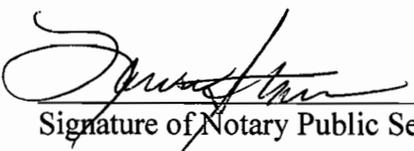
I fully support this Project for the reasons stated in this letter and therefore ask the State Board to approve the Applicant's certificate of need permit application. The addition of dialysis stations is necessary because it will reduce the ESRD facility's high utilization rate and also meet a projected demand for in-center ESRD services. Thank you for your consideration.

Sincerely,

  
Kareen Simpson M.D.  
Nephrology  
9730 S Western Ave Suite 326  
Evergreen Park, IL 60805

**NOTARIZATION:**

Subscribed and sworn to before me this 6th day of February, 2014

  
Signature of Notary Public Seal



**EXHIBIT A**

Zip Code	End of CY 2011 Patients
60153	1
60428	1
60478	1
60617	1
60617	1
60617	1
60620	1
60620	1
60620	1
60627	1
60628	1
60628	1
60628	1
60628	1
60643	1
60803	1
63121	1

Zip Code	End of CY 2012 Patients
60426	1
60428	1
60430	1
60478	1
60617	1
60617	1
60617	1
60617	1
60617	1
60617	1
60617	1
60619	1
60619	1
60619	1
60620	1
60620	1
60627	1
60644	1
60653	1
60803	1
60827	1
63121	1

Zip Code	End of CY 2013 Patients
60419	1
60428	1
60430	1
60445	1
60466	1
60478	1
60478	1
60617	1
60617	1
60617	1
60617	1
60617	1
60617	1
60617	1
60619	1
60619	1
60619	1
60619	1
60620	1
60627	1
60628	1
60628	1
60628	1
60632	1
60638	1
60643	1
60643	1
60643	1
60803	1
60827	1
63121	1

Zip Code	End of Most Recent Quarter
60428	1
60430	1
60445	1
60478	1
60478	1
60617	1
60617	1
60619	1
60627	1
60628	1
60803	1

**EXHIBIT B**

<b>Total New Patients Referred for In-Center Hemodialysis Past 12 Months</b>	
<b>Zip Code</b>	<b>End of CY 2013 Patients</b>
60620	1
60628	1
60428	1
60617	1
60638	1
60652	1
60620	1
60643	1
60406	1
60620	1
60643	1

**EXHIBIT C**

<b>Zip Code</b>	<b>Year One 07/01/14 – 06/30/15</b>	<b>Year Two 07/01/15 – 06/30/16</b>
60625	3	2
60668	1	3
60661	2	1
60455	3	3
60805	2	3
60453	1	2
60651	3	1
<b>TOTAL</b>	<b>15</b>	<b>15</b>

Year 1                    15  
Year 2                    15  
  
**Total**                    **30**

<b>REVISED REFERRAL NUMBERS BASED ON PATIENT ATTRITION</b>		
<b>Zip Code</b>	<b>Year One 07/01/14 – 06/30/15</b>	<b>Year Two 07/01/15 – 06/30/16</b>
<b>ALL</b>	15	15

Year 1                    15  
Year 2                    15  
  
**Revised Total**                    **15**

## ATTACHMENT 26

### **Criterion 1110.1430(e) Staffing Availability**

#### **ESRD Facility Staffing Requirements**

Medicare's ESRD conditions for coverage ("Conditions for Coverage") lists several qualifications that must be met by certain ESRD facility staff members. Specifically, Section 494.140 of the Conditions for Coverage sets forth the personnel qualifications of certain ESRD facility staff members and lists the minimum required content for patient care technician ("PCT") training programs. All ESRD facility staff identified in this standard under the Conditions for Coverage must meet the applicable qualifications, scope of practice, and board and licensure/certification requirements in effect in the state in which they are employed. The ESRD facility's staff members (employees and independent contractors) must meet the personnel qualifications and demonstrated competencies necessary to serve collectively the comprehensive needs of the ESRD facility's patients. The ESRD facility's staff must have the ability to demonstrate and sustain the skills needed to perform the duties of their respective positions.

Concerto Dialysis (the "Applicant") employs or contracts with persons to meet all of the personnel needs to safely operate the ESRD Facility in compliance with Medicare's Conditions for Coverage.

A list of employees is attached after this part of the certificate of need permit application, which shows that ample staff is available at the ESRD Facility.

[Attachment 26 continues on next page]

<b>2013</b>	
<b>Full Time nurse</b>	
Seema	crestwood
Shiny	crestwood
Ignasia	crestwood
Micheal	crestwood
Bineesh	crestwood
Leya	crestwood
James	crestwood
Ancy	joliet
<b>DIETITAN</b>	
Linda	agency
<b>SOCIAL WORKER</b>	
Raquel	6-3
<b>PRN Nurses</b>	
Josephine	crestwood
Heena	crestwood
<b>full time Technicians</b>	
Willie	crestwood
Rose mary	crestwood
Monica Weathe	crestwood
Jovy	crestwood
Ruth	crestwood
Antonio	crestwood
Neal	joliet
Jacky	joliet
<b>P R N Technicians</b>	
Ednar	joliet
Angie	crestwood
Jay yap	crestwood
Cherry	crestwood
Melony	crestwood
Jeff-c	crestwood
Patrick	crestwood
<b>Transporter-Stock full time</b>	
YaYa	crestwood
Deepu	crestwood
<b>BIO-MED Tech</b>	
Leo	crestwood/joliet

[Attachment 26 continues on next page]

HDPRI75  
RUN DATE 9/23/13 12:09

SYMPHONY DIALYSIS LLC  
EMPLOYEE LIST

PAGE: 1

EMPLOYEE NAME	EMP #	DEPT	JOB DESCR.
AGAPITO D, ROSEMARIE	3044	DT	DTC
AGUSTIN D, JACQUELINE	3060	DT	DTC
AQUINO F, CHERRY LYN	3039	DT	DTC
ARTISTA C, ANTONIO	3046	DT	DTC
CALIMAG P, JEFFRIE	3068	DT	DTC
CHACKO , SHINY	3011	DRN	DRN
CLARK , WILLIE	5070	DT	DTC
CRUZ A, PATRICK	3061	DT	DTC
CYRIAC , DEEPU	3065	DTR	TRS
DEGALA M, JOVY	5076	DT	DTC
DULCE F, ANGELITA	3066	DT	DTC
ENOYA N, MICHAEL	3056	DRN	DRN
JOSE , SEEMA	5031	DD	DDD
KALLADANTHYIL J, ANCY	3058	DRN	DRN
KALLADANTHYIL M, JAMES	3064	DRN	DRN
KURIAN , BINEESH	3052	DRN	DRN
LOPEZ-COVINGTON , IGNACIA	3033	DRN	DRN
MATHEW , LEYA	3067	DRN	DRN
MOORE S, MELANIE	3018	DT	DTC
RAMIREZ , RAQUEL	3035	SW	SW
RUIZ , RUTH	3020	DT	DTC
SERAPIO P, EDNOR	3040	DT	DTC

251

HDPR175  
RUN DATE 9/23/13 12:09

SYMPHONY DIALYSIS LLC  
EMPLOYEE LIST

EMPLOYEE NAME	EMP #	DEPT	JOB DESCR.
SISON , NEIL	3032	DT	DTC
SONI K, HEENABEN	3047	DRN	DRN
TOBIAS G, DARLEO	3007	BMT	B10
TOKON , YAHTETIA	5043	DTR	TRS
WEATHERALL R, MONICA	3057	DT	DTC
YAP , JAY	3030	DT	DTC
YAP , JOSEPHINE	3062	DRN	DRN

[Attachment 26 continues on next page]

## **Medical Director**

Section 494.140(a) of the Conditions for Coverage provides that the ESRD facility's medical director must be a physician who is board-certified in internal medicine or pediatrics by a professional board, has completed a board-approved training program<sup>1</sup> in nephrology, and has at least 12 months of experience providing care to patients receiving dialysis. An ESRD facility is expected to maintain verification of the medical director's board certification, hold documentation showing the medical director's completion of a board-approved training program in nephrology or pediatric nephrology, and have some evidence to prove the physician has the required experience.

James J. Rydel, M.D. is the Medical Director of Concerto Dialysis (the "ESRD Facility"). A copy of his curriculum vitae is attached immediately following this attachment.

[Attachment 26 continues on next page]

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<sup>1</sup> Completion of a "board-approved training program" means the physician completed a two (2) year nephrology fellowship, which would serve as evidence of the required twelve (12) months of nephrology experience.

## CURRICULUM VITAE

James J Rydel, MD, FACP

4542 W. 95<sup>th</sup> St.

Oak Lawn, IL 60453

(708)-425-0522

### PERSONAL:

Birthplace Chicago, IL, USA

Marital status: married; Valerie C. Walker, MD

Children: Andrew, Miranda, Madeleine, and Luke

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### EDUCATION

William Howard Taft High School, Chicago, Illinois

University of Illinois at Chicago, Chicago, IL; B.S, Biology, Chemistry (majors), Mathematics (minor), 1981

University of Illinois at Chicago, Chicago, IL; M.S, Molecular Biology; 1981-83

Rush Medical College, Chicago, IL; M.D. 1983-88

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### INTERNSHIP

Rush-Presbyterian St. Luke's Medical Center, Chicago, IL; Internal Medicine, 1988-89

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### RESIDENCY

Rush-Presbyterian St. Luke's Medical Center, 1989-1991

Chief Resident: 1991-1992

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## FELLOWSHIP

Rush-Presbyterian St. Luke's Medical Center, Chicago, IL, Department of Pathology, Post-sophomore fellowship in pathology, 1985-86.

Nephrology Fellowship: Rush-Presbyterian St. Luke's Medical Center, Chicago, IL; 1992-94

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## HONORS AND AWARDS

Phi Kappa Phi, Phi Beta Sigma, University of Illinois at Chicago, 1981

Sigma Xi Research Society, Rush Medical College, 1984

Herrick Award, Rush Medical College, 1984

Muehrcke Outstanding Student Nephrology Award, Rush Medical College, 1987

Discussant, CPC for Graduating class of 1988, Rush Medical College, 06/10/88

Intern of the Year Award, Department of Medicine, Rush-Presbyterian St. Luke's Medical Center, 1988-89

Aesculapius Teaching Award, Rush Medical College, 1990

Aesculapius Teaching Award, Rush Medical College, 1992

Department of Internal Medicine Teaching and Service Award, Rush-Presbyterian St. Luke's Medical Center, 1991-92

Top 500 Doctors, Chicago Magazine; January, 1997

Teacher of the Year, Christ Hospital and Medical Center, June 1997

Teacher of the Year, Christ Hospital and Medical Center, June 1999

How to Find the Best Doctors, 1<sup>st</sup> Ed. Castle Connolly Guide, 1999, p. 195, July, 1999.

Distinctive Recognition by the Nurses at Christ Hospital and Medical Center, 4<sup>th</sup> quarter, 1999 for compassion and flexibility

Fellow, American College of Physicians, July 2001-present

Top Doctors, Chicago Metro Area; page 220, July 2001

Best Doctors in America, 2007, 2008, 2009, 2010, 2011, 2012, 2013.

Bassam Habbal MD Award for Outstanding Teaching and Consulting, Advocate Christ Hospital and Medical Center, Family Medicine Department, 2004

Recognition for Outstanding Teaching in Family Medicine, Christ Hospital and Medical Center, 2005-present

Recognition for Teaching in Internal Medicine, Department of Internal Medicine, Christ Hospital and Medical Center, 2001-present

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#### **ORGANIZATIONS**

Physicians for Social Responsibility

American College of Physicians

American Society of Nephrology

ACLU

Lincoln Park Zoological Society

John G. Shedd Aquarium

Renal Physicians Association

American Medical Association

American Board of Internal Medicine

Knights of Columbus

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#### **BOARD CERTIFICATION**

American Board of Internal Medicine, Internal Medicine; 1992-present, expires 12-31-2022

American Board of Internal Medicine/ASN; Nephrology, 1994-present, expires 12-31-2024

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#### **EXPERIENCE**

Phlebotomist, Resurrection Hospital, Chicago, IL; 1977-81

Chemistry 107 (Freshman Chemistry) Tutor, University of Illinois at Chicago; 1977-80

Laboratory Aide, University of Illinois at Chicago, Department of Biology; 1980-81

Teaching Assistant:

Freshman Biology (BIOS 101, 102), Microbiology (BIOS 250); University of Illinois at Chicago, 1981-83

Research Assistant, University of Illinois, Department of Molecular Biology, 1983

Teaching Assistant, M2 Pathology Laboratory, Rush Medical College, 1985-86

House Physician, Roseland Community Hospital, Chicago, IL, 1990-92

Attending Physician, Rush-Presbyterian St. Luke's Medical Center, 1991-92

ACLS Instructor, Rush Medical College, 1990-96

Health Care Provider, Humana Michael Reese, Chicago, IL, 1991-94

Emergency Room Attending, Rush-Presbyterian St. Luke's Medical Center, Chicago, IL, 1991-94

Nephrologist, Southwest Nephrology Associates, Evergreen Park, IL, 1994-2000

Assistant Professor of Medicine, Rush-Presbyterian St. Luke's Medical Center, Chicago, IL, 2000-2011

Clinical Assistant Professor of Medicine, University of Illinois at Chicago, June 1, 2008-present

Nephrologist, Edmund J. Lewis & Associates, Chicago, IL (312) 850-8434, June 2000-June 2001

President, JR Nephrology and Associates, January 2001-present

Medical Director, Diamond Dialysis Center, Chicago, IL, May 2003-February 6, 2006

Medical Director, DaVita Beverly, Chicago, IL, February 6, 2006-present

Medical Director, DaVita Stony Creek Dialysis, Oak Lawn, IL, February 6, 2006-present

Medical Director, Direct Dialysis/Symphony Dialysis, Crestwood, IL, October 8, 2004-present

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#### STAFF PRIVILEGES

Christ Hospital and Medical Center, Oak Lawn, IL, 1994-present

Little Company of Mary Hospital, Evergreen Park, IL, 1994-present

Holy Cross Hospital, Chicago, IL, 1997-2000, 2005-2008

Rush-Presbyterian St. Luke's Medical Center, 2000-2001

South Suburban Hospital, Hazelcrest, IL, 2000-2005

Diamond Dialysis, May 2003-February 6, 2006

Direct Dialysis/Symphony Dialysis, October 8, 2004-present

DaVita Dialysis, February 6, 2006-present

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## COMMITTEES

Relevance Reviewer for National Board of Medical Examiners, 1995

Transfusion Committee, Christ Hospital and Medical Center, Oak Lawn, IL, 1994-2008

Kidney Transplant Committee, Advocate Christ Hospital and Medical Center, Oak Lawn, IL, April 2007-present

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## STUDIES

Irbesartan in Hypertensive Patients with Type II Diabetes and Diabetic Nephropathy Trial: Chicago, Sydney, Heidelberg

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## ABSTRACTS

1. Rydel, JJ, Vacante D, Linzmeier R, and Matsumura P: Overexpression and Characterization of the CheY Gene and Gene Product of Escherichia coli. Presented at the 83<sup>rd</sup> Annual Meeting of the American Society of Microbiology, New Orleans, LA, 3/16/1983.
  2. Rydel JJ and Matsumura P: Overexpression and Characterization of the CheY Gene Product of Bacterial Chemotaxis in Escherichia coli. Presented at Rush University Week Poster Session: 5/25/84.
  3. Rydel JJ, Singh AK, and Schwartz MM: Immunopathogenesis of Passive Heymann Nephritis. Presented at the 71<sup>st</sup> Annual Meeting of the Federation of American Societies for Experimental Biology, Washington DC: 3/29/87-4/2/87.
  4. Rydel JJ, Singh AK, and Schwartz MM: Immunopathogenesis of Passive Heymann Nephritis. Presented at Rush University Week Poster Session: 4/29/87.
  5. Korbet, SK, Rydel JJ, Schwartz MM, and Lewis, EJ: The Prognosis of Focal Segmental Glomerulosclerosis in Adults: NKF Meeting, Boston, MA: 11/10/93-11/13/93.
  6. Rydel JJ, Sharma J, Carlson A, and Leikin JB: An Approach to Dialysis in Ethylene Glycol Intoxication. Presented at Rush University Week Poster Session: 4/3/2001-4/5/01.
  7. Rydel JJ, Sharma J, Carlson A, and Leikin JB: An Approach to Dialysis in Ethylene Glycol Intoxication. North American congress of Clinical Toxicology, Montreal, Canada: 10/16/01.
  8. Rydel JJ, Sharma J, Carlson A, and Leikin JB: An Approach to Dialysis in Ethylene Glycol Intoxication. Presented at Chicago Nephrology Day, Loyola University, Maywood, IL: 6/12/01.
  9. Rydel JJ, Sharma J, Carlson A, and Leikin JB: An Approach to Dialysis in Ethylene Glycol Intoxication. World Congress of Nephrology, San Francisco, CA: 10/14/01.
  10. Mital D, Blicharski E, Hammes E, Vasquez S, and Rydel JJ: New Transplant Program/Old Town: Need more Patients or Patience. Poster Session, Advocate Christ Hospital and Medical Center, 2008.
-

## PUBLICATIONS

1. Matsumura P, Rydel JJ, Linzmeier R, and Vacante D: Overexpression and Sequence of CheY Gene and Biochemical Activities of the CheY Gene Product in Escherichia coli. *J. Bacteriology*. 160(1): 36-41, 1984.
  2. Rydel JJ, Singh AK, and Schwartz MM: Sequential Localization of Antibody to Multiple Regions of the Glomerular Capillary Wall in Passive Heymann Nephritis. *Laboratory Investigation*. 60(4): 492-498, 1989.
  3. Rydel JJ, Aks S, Bower-Lewis R, Ferrario CG, and Leikin JB: Management Considerations in Copperhead Envenomation. *J Emergency Nursing*. 19(3): 193-196, 1993.
  4. Rydel JJ, Korbet SM, Borok RZ, and Schwartz MM: Focal Segmental Glomerular Sclerosis in Adults: Presentation, Course, and Response to Treatment. *Am J Kidney Disease*. 25(4): 534-542, 1995.
  5. Schwartz MM, Korbet SM, Rydel JJ, Borok R, and Genchi R: Primary Focal Segmental Glomerulosclerosis in Adults: Prognostic Value of Histologic Variants. *Am J Kidney Disease*. 25(6): 845-852, 1995.
  6. Shih DJ, Korbet SM, Rydel JJ, and Schwartz MM: Renal Vasculitis Associated with Ciprofloxacin. *Am J Kidney Disease*. 26(3): 516-519, 1995.
  7. Rydel JJ, and Rodby RA: An Eighteen-Year Male with Goodpasture's and ANCA Negative Central Nervous System Vasculitis. *Am J Kidney Disease*. 31(2): 245-249, 1998.
  8. Meehan S, Junsanto T, Rydel JJ, and Desnick RJ: Fabry's Disease: Renal Involvement Limited to Podocyte Pathology and Proteinuria in a Septuagenarian Cardiac Variant. Pathologic and Therapeutic Implication: *Am J Kidney Disease*. 43(1): 164-171, 2004.
  9. Patel T, and Rydel JJ: Rhabdomyolysis, Acute Renal Failure and Hepatology Associated with Gemfibrozil and Simvastatin Therapy. In Press.
  10. Rodby RA, Rhode, RD, Williams C, Hunsicker, LG, Anzalone DA, Atkins RG, Eberhard R, and Lewis EJ for the Collaborative Study Group. The Irbesartan Type II Diabetic Nephropathy Trial: Study Design and baseline patient characteristics. *Nephro Dialysis Transplantation*. 15: 487-497, 2000
  11. Rydel JJ, Sharma J, Carlson A, and Leikin JB: An Approach to Dialysis in Ethylene Glycol Intoxication. *Journal of Veterinary and Human Toxicology*. 44(1): 36-39, 2002.
  12. Lewis EJ, Hunsicker LG, Clarke WR, Berl T, Pohl M, Lewis J, Eberhard R, Atkins R, Rhode R, Itamar R: The Collaborative Study Group. Renoprotective Effects of the Angiotensin-Receptor Antagonist Irbesartan in Patients with Nephropathy for Type II Diabetes. *NEJM*. 345(12): 851-860, 2001.
- 

## LECTURES

1. Continuous Renal Replacement Therapies: Medical Grand Rounds. Christ Hospital and Medical Center, June 16, 1994.
2. Fluid Assessment in the Dialysis Patient. National Kidney Foundation of Illinois. November 16, 1995.
3. Hyperkalemia: The Heart of the Matter. National Kidney Foundation of Illinois. May 9, 1996.
4. The Clinical Use of Diuretics. Christ Hospital and Medical Center. Sponsored by Boehringer-Manheim: June 20, 1996.
5. Assessment of Hyperkalemia and Hypokalemia. National Kidney Foundation, National Meeting. San Antonio, TX. November 1, 1997.
6. Continuous Renal Replacement Therapies. Christ Hospital and Medical Center. March 12, 1998.

7. Salt and Water Metabolism. Rush Medical College: November 13, 2000.
8. An Approach to Dialysis in Ethylene Glycol Intoxication. Toxicon. Chicago, IL. May 9, 2001.
9. Pre-ESRD Management. Christ Hospital and Medical Center. January 28, 2004.
10. Nephrotic Syndrome. Presentation, Etiology, and Management. Christ Hospital and Medical Center. November 12, 2008.
11. Proteinuria in the Kidney Transplant Recipient. Advocate Christ Hospital and Medical Center. Transplant Symposium, December 1, 2010.
12. Malignancy in the Kidney Transplant . Advocate Christ Hospital and Medical Center Transplant Symposium. November 30, 2011.
13. Bone Disease in the CKD patient. Advocate Christ Hospital and Medical Center 4<sup>th</sup> Annual Transplant Symposium. December 4, 2012.
14. Herbs and the Kidney: A Recipe for Disaster. Advocate Christ Hospital and Medical Center 5<sup>th</sup> Annual Transplant Symposium. December 2, 2013.

# Concerto Dialysis, LLC

7257 North Lincoln Avenue  
Lincolnwood, Illinois 60712  
(847) 767-5200

February 5, 2014

Illinois Health Facilities and Services Review Board  
Illinois Department of Public Health  
525 West Jefferson St., 2nd Floor  
Springfield, IL 62761  
Attention: Kathryn J. Olson, Board Chairperson

**Re: Medical Staff Certification - Concerto Dialysis, LLC**

Dear Chairperson Olson:

Pursuant to 77 Ill. Adm. Code § 1110.1430(e)(5), a certificate of need permit applicant seeking approval from the Illinois Health Facilities and Services Review Board to expand dialysis stations at an existing end stage renal disease facility must provide a letter certifying whether the dialysis facility will or will not maintain an open medical staff. This letter hereby certifies that Concerto Dialysis has and will continue to maintain an open medical staff.

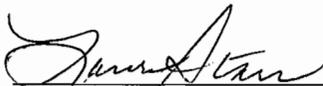
Respectfully Submitted,



Mike Munter  
Chief Operating Officer  
Concerto Dialysis, LLC

**NOTARY:**

Subscribed and sworn to before me this 7<sup>th</sup> day of February, 2014



Notary Public

Seal:



**ATTACHMENT 26**

**Criterion 1110.1430(f)  
Support Services**

(see attached)

# Concerto Dialysis, LLC

7257 North Lincoln Avenue  
Lincolnwood, Illinois 60712  
(847) 767-5200

February 5, 2014

Illinois Health Facilities and Services Review Board  
Illinois Department of Public Health  
525 West Jefferson St., 2nd Floor  
Springfield, IL 62761  
Attention: Kathryn J. Olson, Board Chairperson

**Re: Support Services - Concerto Dialysis, LLC**

Dear Chairperson Olson:

In accordance with 77 Ill. Adm. Code § 1110.1430(f), specifically with respect to Concerto Dialysis, LLC (the "Applicant") and its end stage renal disease facility in Crestwood, Illinois, the undersigned representative of the Applicant hereby certifies:

1. The Applicant participates in a dialysis data system;
2. The Applicant certifies that support services consisting of clinical laboratory service, blood bank, nutrition, rehabilitation, psychiatric and social services are and will continue to be available to its patients; and
3. The Applicant certifies that provision of home-based dialysis and training will be provided by Concerto Dialysis.

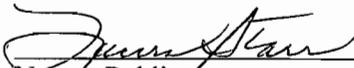
Respectfully Submitted,



Mike Munter  
Chief Operating Officer  
Concerto Dialysis, LLC

**NOTARY:**

Subscribed and sworn to before me this 7<sup>th</sup> day of February, 2014

  
\_\_\_\_\_  
Notary Public

Seal:



**ATTACHMENT 26**

**Criterion 1110.1430(j)  
Assurances**

(see attached)

# Concerto Dialysis, LLC

7257 North Lincoln Avenue  
Lincolnwood, Illinois 60712  
(847) 767-5200

February 5, 2014

Illinois Health Facilities and Services Review Board  
Illinois Department of Public Health  
525 West Jefferson Street, 2nd Floor  
Springfield, IL 62761  
Attention: Kathryn J. Olson, Board Chairperson

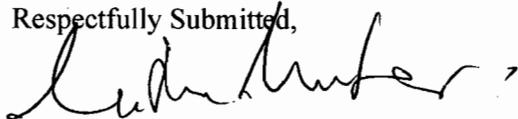
**Re: Criterion 1110.1430(i) – Assurances -- Concerto Dialysis, LLC**

Dear Chairperson Olson:

In accordance with 77 Ill. Adm. Code § 1110.1430(j), specifically with respect to Concerto Dialysis, LLC (the "Applicant"), an end stage renal disease facility located in Crestwood, Illinois (the "ESRD Facility"), the undersigned representative of the Applicant hereby certifies the following:

1. By the second year of operation after the project has been completed, the ESRD Facility will achieve and maintain the utilization standards specified in 77 Ill. Adm. Code § 1100.630 for the In-Center Hemodialysis Category of Service as requested in this certificate of need permit application; and
2. That the ESRD Facility will continue to maintain compliance with hemodialysis quality measures. The ESRD Facility's data compares favorably to the most recent benchmarks set by the Federal Centers of Medicare and Medicaid Services and USRDS data, as follows.
  - $\geq 85\%$  of hemodialysis patient population to achieve area reduction ratio (URR)  $\geq 65\%$  and  $\geq 85\%$  if hemodialysis patient population achieves Kt/V Daugirdas II.1.2.

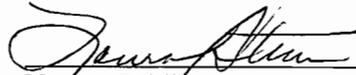
Respectfully Submitted,



Mike Munter  
Chief Operating Officer  
Concerto Dialysis, LLC

**NOTARY:**

Subscribed and sworn to before me this 7<sup>th</sup> day of February, 2014

  
\_\_\_\_\_  
Notary Public

Seal:



**Attachment 36**

**Availability of Funds**

The following documents are attached immediately following this page:

- As documentation for showing the availability of Cash & Securities for the project, a copy of a Board Resolution adopted by Concerto Dialysis, LLC as to the amount of cash available for the project and interest to be earned on assets.

**WRITTEN CONSENT OF THE MEMBERS  
AND  
OF CONCERTO DIALYSIS, LLC**

This Written Consent ("Written Consent") of the members (the "Members") of Concerto Dialysis, LLC (the "Company"), is made and entered into effective as of the 5th day of February, 2014 (the "Effective Date") by and among the Company's Members. Pursuant to the provisions of the Company's Operating Agreement and the Illinois Limited Liability Company Act, 805 ILCS 180/1-1 et seq., the Members do hereby consent to the following: (i) taking action on the following resolutions through this written consent; (ii) indicate the unanimous consent of the undersigned in favor of such resolutions; and (iii) direct that this consent be filed with the Company as minutes of the proceedings in lieu of a meeting of the Company's Members.

**RECITALS**

**WHEREAS**, on December 17, 2013, Company obtained approval from the Illinois Health Facilities and Services Review Board (the "State Board") allowing it to acquire a seven (7) station in-center hemodialysis facility in Crestwood, Illinois doing business as Direct Dialysis (the "ESRD Facility");

**WHEREAS**, Company subsequently entered into an agreement, effective December 31, 2013, which transferred ownership and control of the ESRD Facility to Company;

**WHEREAS**, Company now desires to expand the number of in-center hemodialysis stations at the ESRD Facility due to high utilization of the existing seven dialysis stations; and

**WHEREAS**, Company must obtain a certificate of need ("CON") permit from the State Board before it can expand these stations.

**NOW, THEREFORE, BE IT RESOLVED**, that the Members of the Company hereby approve the following resolutions;

**FURTHER RESOLVED**, that Company pursues State Board approval for the proposed expansion of two (2) in-center hemodialysis stations at the ESRD Facility;

**FURTHER RESOLVED**, that the Member's authorize Company Officer Elizabeth Koshy to make available from internal cash resources an amount up to \$25,000 to fund said expansion at the ESRD Facility;

**FURTHER RESOLVED**, that that the Member's authorize Company Officers Ms. Koshy and Michael Munter to act on behalf of the Company in this particular matter and execute all necessary documents and take other actions to submit a CON permit application and obtain State Board approval for the proposed project;

**FURTHER RESOLVED**, any and all actions heretofore taken by any Member, Members, Officers and/or agents of the Company to effect the actions authorized by the foregoing resolutions or otherwise in furtherance of the actions authorized by the foregoing resolutions are hereby approved, ratified and confirmed in all respects; and

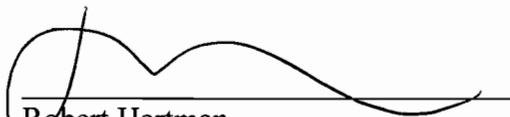
**FURTHER RESOLVED**, that the Company is hereby authorized and empowered to perform all terms, covenants and conditions contained in the documents, instruments, agreements, affidavits or certificates executed and delivered by any member or members of the Company to effect the dialysis station expansion.

**[Signature Page Follows]**

**IN WITNESS WHEREOF**, the undersigned Members of the Company have executed this Written Consent in lieu of a meeting, which shall be effective as of the date first written above.

**MEMBERS:**

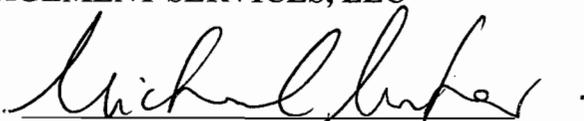
**FAIRHOME TRUST**

By:   
Robert Hartman

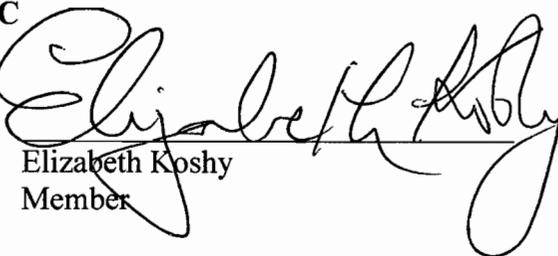
**DRAKE LOUIS ENTERPRISES, LLC**

By:   
David Hartman  
Member

**IBEX MANAGEMENT SERVICES, LLC**

By:   
Michael Munter  
Member

**SAREX, LLC**

By:   
Elizabeth Koshy  
Member

**Attachment 37**

**Criterion 1120.130 - Financial Viability Waiver**

The Applicant is not required to submit financial viability ratios because the project's capital expenditures are funded entirely through internal resources.

**Attachment 38**

**Criterion 1120.130 - Viability Ratios**

The co-applicant, Symphony Healthcare, LLC, meets the financial viability waiver criteria because all of the project's capital expenditures are entirely funded using internal resources; therefore, no ratios are provided.

Please find attached immediately following this page the most recent financial statements of Symphony Healthcare, LLC, which shows that an adequate amount of cash on hand is available to fund the capital components.

**SYMPHONY DIALYSIS LLC**  
**FINANCIAL STATEMENTS**  
**DECEMBER 31, 2012**

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**SYMPHONY DIALYSIS LLC**

**CONTENTS**

EXHIBIT A	- Statement of Assets, Liabilities, and Equity December 31, 2012
EXHIBIT B	- Statement of Revenues & Expenses for the Twelve Months Ended December 31, 2012
EXHIBIT C	- Statement of Cash Flows for the One Month Ended December 31, 2012

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**SYMPHONY DIALYSIS LLC**  
**STATEMENT OF ASSETS, LIABILITIES, AND EQUITY - INCOME TAX BASIS**  
**DECEMBER 31, 2012**

**ASSETS**

**CURRENT ASSETS:**

CASH AND CASH EQUIVALENTS	\$ 45,452	
ACCOUNTS RECEIVABLE	799,291	
BAD DEBIT ALLOWANCE	(80,614)	
PREPAID INSURANCE	16,738	
INSURANCE - WORKERS COMP	2,667	
PREPAID EXPENSES	<u>2,502</u>	
TOTAL CURRENT ASSETS		\$ <u>786,036</u>
TOTAL ASSETS		\$ <u><u>786,036</u></u>

**SYMPHONY DIALYSIS LLC**  
**STATEMENT OF ASSETS, LIABILITIES, AND EQUITY - INCOME TAX BASIS**  
**DECEMBER 31, 2012**

**LIABILITIES AND STOCKHOLDERS' EQUITY**

**CURRENT LIABILITIES:**

ACCOUNTS PAYABLE	258,996	
PAYROLL	42,041	
ACCOUNTS PAYABLE - INSURANCE	35,458	
ACCRUED EMPLOYEE BENEFITS	55,010	
ACCRUED EXPENSES	20,035	
MANAGEMENT FEES - SYMPHONY	18,290	
STATE UNEMPLOYMENT TAX	4,142	
FEDERAL UNEMPLOYMENT TAX	111	
DUE TO CRESTWOOD CARE	112,200	
N/P - SYMPHONY HEALTHCARE	320,000	
FEDERAL & FICA WITHHELD	4	
ACCRUED PAYROLL TAXES	6,764	
TOTAL CURRENT LIABILITIES	<u>          </u>	\$ 873,051

**STOCKHOLDERS' EQUITY**

NET LOSS FOR THE PERIOD	<u>(87,015)</u>	
TOTAL STOCKHOLDERS' EQUITY		<u>(87,015)</u>

---

TOTAL LIABILITIES AND STOCKHOLDERS' EQUITY		<u>\$ 786,036</u>
---	--	-------------------

**SYMPHONY DIALYSIS LLC**  
**STATEMENT OF REVENUES & EXPENSES - INCOME TAX BASIS**

	<u>YEAR ENDED</u>	
	<u>DECEMBER 31, 2012</u>	
	<u>AMOUNT</u>	<u>PCT</u>
<b>REVENUES</b>		
REVENUE - CRESTWOOD OUTPATIENT	\$ 2,724,921	-
<b>TOTAL REVENUES</b>	2,724,921	-
<b>OPERATING EXPENSES:</b>		
SALARIES & WAGES	1,031,447	-
LABORATORY	55,492	-
MEDICAL & NURSING SUPPLIES	429,360	-
MEDICAL DIRECTOR	30,000	-
EPOGEN	351,867	-
ACTIVASE	18,857	-
MEDICAL SUPPLIES-DB	33,720	-
DIETITIAN CONSULTANT	11,280	-
ACCOUNTING FEES	12,000	-
MEDICAL DIRECTOR-DB	29,951	-
LABORATORY - DB	17,495	-
DIETITIAN CONSULTANT-DB	3,384	-
DATA PROCESSING	27,045	-
DATA PROCESSING-DB	3,139	-
DUES & SUBSCRIPTIONS	325	-
GENERAL INSURANCE	54,060	-
INSURANCE - WORKERS COMP	23,017	-
INTEREST - SYMPHONY	11,174	-
LEGAL FEES	2,809	-
LICENSES & PERMITS	5,401	-
OFFICE EXPENSES	1,718	-
MESSENGER & DELIVERIES	131	-
PENALTIES	45	-
POLITICAL CONTRIBUTION	200	-
OTHER PROFESSIONAL FEES	95,818	-
RENT	60,000	-
MANAGEMENT FEES - SYMPHONY	122,378	-
SALES TAX	7,014	-
BUILDING MAINTENANCE & REPAIR	24,982	-
EQUIPMENT MAINTENANCE & REPAIR	25,494	-
EQUIPMENT MAINTENANCE & REPAIR-DB	1,701	-
TRAVEL & ENTERTAINMENT	3,363	-
GARBAGE	12,063	-
BUILDING MAINTENANCE & SUPPLIES-DB	1,092	-
FICA	72,030	-

**SYMPHONY DIALYSIS LLC**  
**STATEMENT OF REVENUES & EXPENSES - INCOME TAX BASIS**

	<u>YEAR ENDED</u>	
	<u>DECEMBER 31, 2012</u>	
	<u>AMOUNT</u>	<u>PCT</u>
STATE UNEMPLOYMENT TAX	44,178	-
FEDERAL UNEMPLOYMENT TAX	1,734	-
401K-MATCHING	7,399	-
R/E TAXES	16,200	-
EMP BENEFITS - DB	40	-
TELEPHONE	3,530	-
TELEPHONE-DB	1,989	-
HEALTH INSURANCE	62,662	-
EMPLOYEE BENEFITS	1,738	-
UTILITIES	12,000	-
BAD DEBT EXPENSE	80,614	-
<b>TOTAL EXPENSES</b>	<u>2,811,936</u>	<u>-</u>
<b>NET INCOME (LOSS)</b>	<u>\$ (87,015)</u>	<u>-</u>

**SYMPHONY DIALYSIS LLC**  
**STATEMENT OF CASH FLOWS**  
**FOR THE TWELVE MONTHS ENDED DECEMBER 31, 2012**

<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
NET INCOME OR (LOSS)		\$ (87,015)
NONCASH ITEMS INCLUDED IN NET INCOME:		
<b>CHANGES IN ASSETS AND LIABILITIES:</b>		
ACCOUNTS RECEIVABLE	(799,291)	
BAD DEBIT ALLOWANCE	80,614	
PREPAID INSURANCE	(16,738)	
INSURANCE - WORKERS COMP	(2,667)	
PREPAID EXPENSES	(2,502)	
ACCOUNTS PAYABLE	258,996	
ACCOUNTS PAYABLE - INSURANCE	35,458	
PAYROLL	42,041	
ACCRUED EMPLOYEE BENEFITS	55,010	
ACCRUED EXPENSES	20,035	
MANAGEMENT FEES - SYMPHONY	18,290	
DUE TO CRESTWOOD CARE	112,200	
STATE UNEMPLOYMENT TAX	4,142	
FEDERAL UNEMPLOYMENT TAX	111	
FEDERAL & FICA WITHHELD	4	
ACCRUED PAYROLL TAXES	<u>6,764</u>	
TOTAL ADJUSTMENTS		<u>(187,533)</u>
<b>NET CASH PROVIDED BY OPERATING ACTIVITIES</b>		<b>(274,548)</b>
 <b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
NET CASH FROM INVESTING ACTIVITIES		-
 <b>CASH FLOWS FROM FINANCING ACTIVITIES</b>		
SHORT TERM NOTES AND LOANS	<u>320,000</u>	
<b>NET CASH FROM FINANCING ACTIVITIES</b>		<u>320,000</u>
 <b>NET INCREASE (DECREASE) IN CASH AND CASH EQUIVALENTS</b>		 45,452
 <b>CASH AND CASH EQUIVALENTS AT BEGINNING OF PERIOD</b>		 <u>-</u>
 <b>CASH AND CASH EQUIVALENTS AT END OF PERIOD</b>		 <u>\$ 45,452</u>

**ATTACHMENT 39**

**Criterion 1120.140  
Economic Feasibility**

**A. Reasonableness of Financing Arrangements**

A signed and notarized statement from the Applicant is attached immediately following this attachment. The statement attests that the project is being funded entirely by available cash and that no financing will be secured to pay for the expansion of the ESRD facility.

**B. Conditions of Debt Financing**

The project will not affect the existing sublease agreement as no changes are being made to square footage of the ESRD Facility. As a result, the Applicant is not required to report any costs related to the existing sublease.

**C. Reasonableness of Project and Related Costs**

COST AND GROSS SQUARE FEET BY DEPARTMENT OR SERVICE									
Department (list below)	A	B	C	D	E	F	G	H	Total Cost (G + H)
	Cost/Square Foot New	Mod.	Gross Sq. Ft. New	Circ.*	Gross Sq. Ft. Mod.	Circ.*	Const. \$ (A x C)	Mod. \$ (B x E)	
ESRD		\$1.95			1,279				
Contingency		0			1,279				
TOTALS		\$1.95			1,279				

\* Include the percentage (%) of space for circulation

*Note: The addition of 2 in-center hemodialysis stations will only involve expenditures to pay for the addition of two dialysis wall boxes. There will be no other construction or other modernization costs incurred as a result of this project.*

**D. Projected Operating Costs**

The minimal cost of this project will not have any notable impact on operating costs; therefore, the Applicant is not anticipating any effect on future operating costs.

CY 2016 Cost Per Treatment: \$0.00

**E. Total Effect of the Project on Capital Costs**

The minimal cost of this project will not have any notable impact on capital costs; therefore, the Applicant is not anticipating any effect on future operating costs.

CY 2016 Capital Cost Per Treatment: \$0.00

**Concerto Dialysis, LLC**

7257 North Lincoln Avenue  
Lincolnwood, Illinois 60712  
(847) 767-5200

February 5, 2014

Illinois Health Facilities and Services Review Board  
Illinois Department of Public Health  
525 West Jefferson Street, 2nd Floor  
Springfield, IL 62761  
Attention: Kathryn J. Olson, Board Chairperson

**Re: Criterion 1120.140 - Economic Feasibility**

Dear Chairperson Olson:

Pursuant to 77 Ill. Adm. Code § 1120.140, pertaining to the Reasonableness of Financing Arrangements, on behalf of Concerto Dialysis, LLC (the "Applicant"), the undersigned representative of the Applicant hereby certifies to the following:

(a) That the project's capital costs will be funded in total with cash on hand and that the Applicant will not be borrowing any funds from a financial institution or other similar lender to pay for the proposed expansion of dialysis stations at the existing end stage renal disease facility located in Crestwood, Illinois. However, per the policy of the Illinois Health Facilities and Services Review Board, the existence of a lease agreement is viewed as borrowing. Accordingly, on behalf of the Applicant, I hereby attest that the existing lease (e.g., borrowing) is less costly than the liquidation of existing investments, and the existing investments being retained may be converted to cash or used to retire debt within a 60-day prior; and

(b) That the conditions of debt financing (i.e., the terms of an existing sublease agreement between the Applicant and the ESRD facility's landlord) are reasonable and that the project involves the leasing of an ESRD facility, and the expenses incurred with leasing the ESRD facility, are less costly than constructing a new ESRD facility.

Respectfully Submitted,



Mike Munter  
Chief Operating Officer  
Concerto Dialysis, LLC

**NOTARY:**

Subscribed and sworn to before me this 7<sup>th</sup> day of February, 2014



Notary Public

Seal:



**ATTACHMENT 40**

**Safety Net Impact Statement**

The Project is non-substantive because an expansion of stations at an existing end stage renal disease facility is not a "substantive" project based upon Sections 12(8)(a) through 12(8)(c) of the Illinois Health Facilities Planning Act. As a result, this requirement does not apply to the present CON permit application.

**ATTACHMENT 41**

**Charity Care Information**

**Requirement**

Pursuant to the Illinois Health Facilities Planning Act, "charity care" means care provided by a health care facility for which the provider does not expect to receive payment from the patient or a third-party payer (20 ILCS 3960/3). Charity care must be provided at cost. All applicants and co-applicants are required to indicate the amount of charity care provided for the latest three audited fiscal years, the cost of such charity care and the ratio of that charity care cost to net patient revenue. If an applicant is not an existing facility, the applicant is required to submit the facility's projected patient mix by payer source, anticipated charity care expense and projected ratio of charity care to net patient revenue by the end of its second year of operation.

**Discussion**

Concerto Dialysis, LLC (the "Applicant") is a new business entity that was formed to acquire and operate the existing ESRD facility. This change of ownership occurred on December 31, 2013. The prior owners did not provide ESRD-related charity care at this health care facility; therefore, the Applicant cannot report any charity care services for the past three calendar years.

The following chart shows the amount of charity care provided at the existing ESRD facility during the past three years (when the facility was operated by prior owner Crestwood Care Centre, L.P. d/b/a Direct Dialysis):

<b>CHARITY CARE</b>			
	<b>Year 2011</b>	<b>Year 2012</b>	<b>Year 2013</b>
Net Patient Revenue	\$0	\$0	\$0
Amount of Charity Care	\$0	\$0	\$0
Cost of Charity Care	\$0	\$0	\$0

**Charity Care Projections**

Now that the transfer of ownership of the ESRD Facility has occurred, the Applicant is in the process of establishing a charity care program. The Applicant does anticipate providing charity care services similar to those offered by similiary-situated ESRD facilities in the Crestwood, Illinois area. However, at this time, the Applicant is unable to make projections for charity care services in calendar years 2014 and 2015. The Applicant does anticipate that providing charity care at the ESRD Facility may be difficult due to the robust coverage for these services by private insurance programs and public insurance programs such as Medicare and Medicaid.

**APPENDIX 1**

**Physician Referral Letters**

(see attached)



## JR NEPHROLOGY & ASSOCIATES, S.C.

James J. Rydel, M.D., F.A.C.P.  
Michael E. Arvan, M.D.  
Sreya Pallath, M.D.

4542 WEST 95<sup>TH</sup> STREET  
OAK LAWN, IL 60453  
PHONE: 708/425-0522  
FAX: 708/425-4505

February 4, 2014

Ms. Courtney Avery  
Administrator  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson St., 2<sup>nd</sup> Floor  
Springfield, IL 62761

**Re: ESRD Station Expansion Request by Concerto Dialysis, LLC**

Dear Ms. Avery:

I, James Rydel, M.D., am a physician who has been practicing nephrology in the southwest suburbs of Chicago for 20 years. I am presently working with Concerto Dialysis, LLC (the "Applicant"), a provider that operates an end stage renal disease ("ESRD") facility located in Crestwood, Illinois. The Applicant is proposing the addition of two dialysis stations at this facility to address a dramatic increase in ESRD patient utilization (the "Project"). This letter provides information regarding projected referrals as required by 77 Ill. Adm. Code 1110.1430(b)(4)(B).

The addition of two dialysis stations will allow the Applicant to ease the burden being placed on many current patients who are receiving their dialysis treatments during undesirable shift times and take on new patients as the need for dialysis services grows in the Crestwood community. In the past 12 months, I have seen the demand for in-center dialysis treatments at this facility grow rapidly. In fact, the Applicant's existing dialysis station utilization rate has risen well beyond the State Board's 80% per station utilization standard. As of December 31, 2013, the Applicant's ESRD facility utilization rate was greater than 80%. The current utilization rate of this ESRD facility, as of January 22, 2014, is 100%. As a result, it is getting increasingly difficult to accommodate the needs of my dialysis patients at this facility. Furthermore, I am greatly concerned that the growth of pre-ESRD patients in my practice will lead to this community not having adequate access to dialysis services in the near future, especially when the Illinois Health Facilities and Services Review Board (the "State Board") reports that this health service area has a stated need for more dialysis stations.



## JR NEPHROLOGY & ASSOCIATES, S.C.

James J. Rydel, M.D., F.A.C.P.  
Michael E. Arvan, M.D.  
Sreya Pallath, M.D.

4542 WEST 95<sup>TH</sup> STREET  
OAK LAWN, IL 60453  
PHONE: 708/425-0522  
FAX: 708/425-4505

The State Board requires the Applicant to submit historical referral data and information related to projected referrals from nephrologists who will refer patients to an ESRD facility as part of a dialysis station expansion project. Using the information that I submitted to The Renal Network, please note the following:

(a) Total Patients Receiving Dialysis Care at Area ESRD Facilities

I was treating: 23 in-center hemodialysis patients at the end of 2011; (ii) 32 in-center hemodialysis patients at the end of 2012; and (iii) 37 in-center hemodialysis patients at the end of 2013. As of the end of the most recent quarter (December 31, 2013), I was treating 18 in-center hemodialysis patients. A detailed breakout of these patients, by ESRD facility and zip code, is attached hereto as Exhibit A.

(b) Total New Patients Referred for In-Center Hemodialysis Past Twelve Months

Over the past twelve months (January 1, 2013 through December 31, 2013) I referred 11 new patients for in-center hemodialysis services to the Applicant's ESRD facility. A detailed breakout of these patients, by ESRD facility and zip code, is attached hereto as Exhibit B.

(c) Estimated Patient Referrals to Concerto Dialysis After Project Completion

I have more than 20 pre-ESRD patients who live in the vicinity of the existing ESRD facility that I expect to refer to it within the two-year period following project completion. These patients are showing lab values that indicate they are in stages 3 or 4 of chronic kidney disease ("CKD") and are expected to require dialysis therapy starting in the applicable time period. Of these 20 pre-ESRD patients, I anticipate referring 10 patients to the ESRD facility when taking into account anticipated patient attrition.

According to my estimates, I will refer 10 patients to the ESRD facility for in-center hemodialysis services during the first year following project completion, and 10 patients to the



**JR NEPHROLOGY & ASSOCIATES, S.C.**

James J. Rydel, M.D., F.A.C.P.  
Michael E. Arvan, M.D.  
Sreya Pallath, M.D.

4542 WEST 95<sup>TH</sup> STREET  
OAK LAWN, IL 60453  
PHONE: 708/425-0522  
FAX: 708/425-4505

facility during the second year following project completion. These estimated referral numbers are based upon my practice experience.<sup>1</sup>

I hereby attest that, to the best of my knowledge, all of the information contained in this letter is true and correct and that the projected referrals in this document were not used to support any other CON permit application.

I fully support this Project for the reasons stated in this letter and therefore ask the State Board to approve the Applicant's certificate of need permit application. The addition of dialysis stations is necessary because it will reduce the ESRD facility's high utilization rate and also meet a projected demand for in-center ESRD services. Thank you for your consideration.

Sincerely,

*James J. Rydel M.D.*

James J. Rydel M.D.  
Nephrology  
4542 W 95<sup>th</sup> Street  
Oak Lawn, IL 60453

**NOTARIZATION:**

Subscribed and sworn to before me this 6<sup>th</sup> day of February, 2014

*Laura Starr*

Signature of Notary Public

Seal



<sup>1</sup> These estimates assume that a CON permit is granted at the April 2014 State Board meeting and considers a project completion date of June 30, 2014. Accordingly, the first year after project completion will be July 1, 2014 through June 30, 2015. The second year after project completion will be July 1, 2015 through June 30, 2016.

**EXHIBIT A**

Zip Code	End of CY 2011 Patients
60629	1
46404	1
60430	1
60428	1
60477	1
60803	1
60445	1
60620	1
60452	1
60624	1
60445	1
60628	1
60453	1
60628	1
60827	1
60425	1
60643	1
60428	1
60469	1
60473	1
60430	1
60425	1
60827	1

Zip Code	End of CY 2012 Patients
46404	1
60409	1
60491	1
60406	1
60428	1
60428	1
60429	1
60803	1
60617	1
60445	1
60620	1
60620	1
60803	1
60615	1
60445	1
60453	1
60406	1
60628	1
60425	1
60805	1
60643	1
60428	1
60487	1
60469	1
60473	1
60406	1
60655	1
60425	1
60443	1
60475	1
60472	1
60827	1

Zip Code	End of CY 2013 Patients
46404	1
60620	1
60445	1
60653	1
60406	1
60406	1
60462	1
60628	1
60445	1
60620	1
60620	1
60649	1
60478	1
60827	1
60453	1
60628	1
60652	1
60466	1
60428	1
60426	1
60805	1
60469	1
60620	1
60655	1
60628	1
60445	1
60803	1
60443	1
60475	1
60409	1
60652	1
60415	1
60617	1
60633	1
60827	1
60406	1

Zip Code	End of Most Recent Quarter
60411	1
60619	1
60406	1
60462	1
60620	1
60628	1
60466	1
60428	1
60805	1
60469	1
60620	1
60655	1
60419	1
60475	1
60409	1
60827	1
60406	1
60482	1

**EXHIBIT B**

<b>Total New Patients Referred for In-Center Hemodialysis Past 12 Months</b>	
<b>Zip Code</b>	<b>End of CY 2013 Patients</b>
60466	1
60472	1
60617	1
60628	1
60423	1
60805	1
60620	1
60445	1
60419	1
60633	1
60482	1

**EXHIBIT C**

<b>Zip Code</b>	<b>Year One 07/01/14 - 06/30/15</b>	<b>Year Two 07/01/15 - 06/30/16</b>
60453	2	1
60805	1	2
60459	2	1
60462	1	1
60803	1	2
60428	2	2
60472	1	1
<b>TOTAL</b>	<b>10</b>	<b>10</b>

Year 1                    10  
Year 2                    10  
  
**Total**                    **10**

<b>REVISED REFERRAL NUMBERS BASED ON PATIENT ATTRITION</b>		
<b>Zip Code</b>	<b>Year One 07/01/14 - 06/30/15</b>	<b>Year Two 07/01/15 - 06/30/16</b>
<b>ALL</b>	<b>10</b>	<b>10</b>

Year 1                    10  
Year 2                    10  
  
**Revised Total**

ASSOCIATES IN NEPHROLOGY, S.C.

Paul Crawford, M.D., F.A.C.P.  
Clark McClurkin, Jr., M.D.  
Kareen Simpson, M.D.  
Edgar Lerma, M.D.  
April Brooks, M.D.  
Sreedevi Chittineni, M.D.  
Nimeet Brahmabhatt, M.D.  
Vinitha Raghavan, M.D.

**Office:**

9730 S. Western, Suite 326  
Evergreen Park, IL 60805  
708-952-3040  
708-952-3043 fax

**Headquarters:**

210 S. Desplaines  
Chicago, Illinois 60611  
312-654-2700

February 5, 2014

Ms. Courtney Avery  
Administrator  
Illinois Health Facilities & Services Review Board  
525 W. Jefferson St., 2<sup>nd</sup> Floor  
Springfield, IL 62761

**Re: ESRD Station Expansion Request by Concerto Dialysis, LLC**

Dear Ms. Avery:

I, Kareen Simpson, M.D., am a physician who has been practicing nephrology in the southwest suburbs of Chicago for 10 years. I am presently working with Concerto Dialysis, LLC (the "Applicant"), a provider that operates an end stage renal disease ("ESRD") facility located in Crestwood, Illinois. The Applicant is proposing the addition of two dialysis stations at this facility to address a dramatic increase in ESRD patient utilization (the "Project"). This letter provides information regarding projected referrals as required by 77 Ill. Adm. Code 1110.1430(b)(4)(B).

The addition of two dialysis stations will allow the Applicant to ease the burden being placed on many current patients who are receiving their dialysis treatments during undesirable shift times and take on new patients as the need for dialysis services grows in the Crestwood community. In the past 12 months, I have seen the demand for in-center dialysis treatments at this facility grow rapidly. In fact, the Applicant's existing dialysis station utilization rate has risen well beyond the State Board's 80% per station utilization standard. As of December 31, 2013, the Applicant's ESRD facility utilization rate was greater than 80%. The current utilization rate of this ESRD facility, as of January 27, 2014, is 100%. As a result, it is getting increasingly difficult to accommodate the needs of my dialysis patients at this facility. Furthermore, I am greatly concerned that the growth of pre-ESRD patients in my practice will lead to this

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**Office:**

9730 S. Western, Suite 326  
Evergreen Park, IL 60805  
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708-952-3043 fax

**Headquarters:**

210 S. Desplaines  
Chicago, Illinois 60611  
312-654-2700

community not having adequate access to dialysis services in the near future, especially when the Illinois Health Facilities and Services Review Board (the "State Board") reports that this health service area has a stated need for more dialysis stations.

The State Board requires the Applicant to submit historical referral data and information related to projected referrals from nephrologists who will refer patients to an ESRD facility as part of a dialysis station expansion project. Using the information that I submitted to The Renal Network, please note the following:

(a) Total Patients Receiving Dialysis Care at Area ESRD Facilities

I was treating: 16 in-center hemodialysis patients by the end of 2011; (ii) 20 in-center hemodialysis patients at the end of 2012; and (iii) 28 in-center hemodialysis patients at the end of 2013. As of the end of the most recent quarter (December 31, 2013), I was treating 11 in-center hemodialysis patients. A detailed breakout of these patients, by ESRD facility and zip code, is attached hereto as Exhibit A.

(b) Total New Patients Referred for In-Center Hemodialysis Past Twelve Months

Over the past twelve months (January 1, 2013 through December 31, 2013) I referred 11 new patients for in-center hemodialysis services to the Applicant's ESRD facility. A detailed breakout of these patients, by ESRD facility and zip code, is attached hereto as Exhibit B.

(c) Estimated Patient Referrals to Concerto Dialysis After Project Completion

I have 30 pre-ESRD patients who live in the vicinity of the existing ESRD facility that I expect to refer to it within the two-year period following project completion. These patients are

ASSOCIATES IN NEPHROLOGY, S.C.

Paul Crawford, M.D., F.A.C.P.  
Clark McClurkin, Jr., M.D.  
Kareen Simpson, M.D.  
Edgar Lerma, M.D.  
April Brooks, M.D.  
Sreedevi Chittineni, M.D.  
Nimeet Brahmhatt, M.D.  
Vinitha Raghavan, M.D.

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showing lab values that indicate they are in stages 3 or 4 of chronic kidney disease ("CKD") and are expected to require dialysis therapy starting in the applicable time period. Of these 30 pre-ESRD patients, I anticipate referring 15 patients to the ESRD facility when taking into account anticipated patient attrition.

According to my estimates, I will refer 15 patients to the ESRD facility for in-center hemodialysis services during the first year following project completion, and 15 patients to the facility during the second year following project completion. These estimated referral numbers are based upon my practice experience.<sup>1</sup> A detailed breakout of my patient referral data is attached hereto as Exhibit C.

I hereby attest that, to the best of my knowledge, all of the information contained in this letter is true and correct and that the projected referrals in this document were not used to support any other CON permit application.

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<sup>1</sup> These estimates assume that a CON permit is granted at the April 2014 State Board meeting and considers a project completion date of June 30, 2014. Accordingly, the first year after project completion will be July 1, 2014 through June 30, 2015. The second year after project completion will be July 1, 2015 through June 30, 2016.

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**Office:**

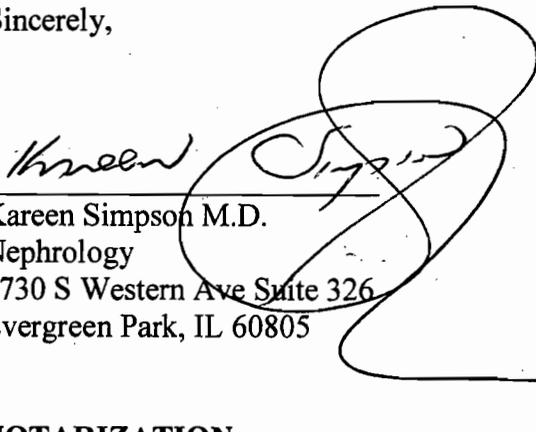
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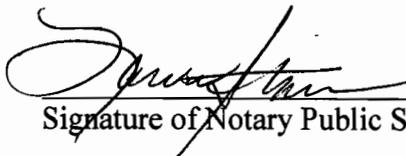
I fully support this Project for the reasons stated in this letter and therefore ask the State Board to approve the Applicant's certificate of need permit application. The addition of dialysis stations is necessary because it will reduce the ESRD facility's high utilization rate and also meet a projected demand for in-center ESRD services. Thank you for your consideration.

Sincerely,

  
Kareen Simpson M.D.  
Nephrology  
9730 S Western Ave Suite 326  
Evergreen Park, IL 60805

**NOTARIZATION:**

Subscribed and sworn to before me this 6<sup>th</sup> day of February, 2014

  
Signature of Notary Public Seal



**EXHIBIT A**

Zip Code	End of CY 2011 Patients
60153	1
60428	1
60478	1
60617	1
60617	1
60617	1
60620	1
60620	1
60620	1
60627	1
60628	1
60628	1
60628	1
60643	1
60803	1
63121	1

Zip Code	End of CY 2012 Patients
60426	1
60428	1
60430	1
60478	1
60617	1
60617	1
60617	1
60617	1
60617	1
60617	1
60619	1
60619	1
60619	1
60620	1
60620	1
60627	1
60644	1
60653	1
60803	1
60827	1
63121	1

Zip Code	End of CY 2013 Patients
60419	1
60428	1
60430	1
60445	1
60466	1
60478	1
60478	1
60617	1
60617	1
60617	1
60617	1
60617	1
60617	1
60617	1
60617	1
60619	1
60619	1
60619	1
60619	1
60620	1
60627	1
60628	1
60628	1
60628	1
60632	1
60638	1
60643	1
60643	1
60643	1
60803	1
60827	1
63121	1

Zip Code	End of Most Recent Quarter
60428	1
60430	1
60445	1
60478	1
60478	1
60617	1
60617	1
60619	1
60627	1
60628	1
60803	1

**EXHIBIT B**

<b>Total New Patients Referred for In-Center Hemodialysis Past 12 Months</b>	
<b>Zip Code</b>	<b>End of CY 2013 Patients</b>
60620	1
60628	1
60428	1
60617	1
60638	1
60652	1
60620	1
60643	1
60406	1
60620	1
60643	1

**EXHIBIT C**

<b>Zip Code</b>	<b>Year One 07/01/14 - 06/30/15</b>	<b>Year Two 07/01/15 - 06/30/16</b>
60625	3	2
60668	1	3
60661	2	1
60455	3	3
60805	2	3
60453	1	2
60651	3	1
<b>TOTAL</b>	<b>15</b>	<b>15</b>

Year 1                    15  
Year 2                    15  
  
**Total**                    **30**

<b>REVISED REFERRAL NUMBERS BASED ON PATIENT ATTRITION</b>		
<b>Zip Code</b>	<b>Year One 07/01/14 - 06/30/15</b>	<b>Year Two 07/01/15 - 06/30/16</b>
<b>ALL</b>	<b>15</b>	<b>15</b>

Year 1                    15  
Year 2                    15  
  
**Revised Total**                    **15**

# Holland & Knight

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14-007

## VIA OVERNIGHT DELIVERY

February 10, 2014

Ms. Courtney Avery  
Administrator  
Illinois Health Facilities and Services Review Board  
525 West Jefferson Street, 2<sup>nd</sup> Floor  
Springfield, Illinois 62761

**RECEIVED**

FEB 14 2014

HEALTH FACILITIES &  
SERVICES REVIEW BOARD

**Re: ESRD Station Expansion Request by Concerto Dialysis, LLC**

Dear Ms. Avery:

Please find enclosed an original and copy of a certificate of need ("CON") permit application, which I submit on behalf of Concerto Dialysis, LLC (the "Applicant"). The CON permit application involves a proposed expansion of in-center hemodialysis stations at the Applicant's existing seven (7) station end stage renal disease facility located in Crestwood, Illinois. Specifically, the Applicant is seeking approval from the Illinois Health Facilities and Services Review Board (the "State Board") for two (2) additional in-center hemodialysis stations. Please be advised, the Applicant is sending the \$2,500 application fee in a separate mailing.

If you have questions about this letter, or should the State Board need additional information about this project, please do not hesitate to contact me at (312) 715-5885. Thank you for your consideration.

Respectfully submitted,

Holland & Knight, LLP



Joseph Hylak-Reinholtz

JHR/jhr

Enclosures