

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**SILVER CROSS HOSPITALS AND MEDICAL CENTERS, INC.**

**AND**

**TOTAL RENAL CARE, INC.**

**Execution Date: March 5, 2012**

**Closing Date: May 1, 2012**

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## ASSET PURCHASE AGREEMENT

This ASSET PURCHASE AGREEMENT (the “Agreement”) is made and entered into as of the 5th day of March, 2012 (the “Execution Date”), by and between Silver Cross Hospitals and Medical Centers, Inc., an Illinois not-for-profit corporation (“Seller”), and Total Renal Care, Inc., a California corporation (“Buyer”).

### RECITALS

A. Seller is a health system that provides hospital and other health services to residents of Will County, Illinois, and surrounding communities (the “Service Area”) and is exempt from federal income taxation under Section 501(a) of the Code as an organization described in Section 501(c)(3) of the Code.

B. Among other businesses, Seller is engaged in the business of providing dialysis and related services at the centers listed on Exhibit A attached hereto (each a “Center” and collectively, the “Centers”). The business of providing all modalities of dialysis and related services at the Centers by Seller is referred to as the “Dialysis Business” herein.

C. Seller has determined that the sale of the Dialysis Business to Buyer would further Seller’s charitable mission by:

- increasing the availability of high quality, innovative dialysis services to patients in the Service Area;
- enhancing the quality and availability of health care services to the residents of the Service Area, including those without the ability to pay;
- achieving excellence in dialysis care clinical outcomes; and
- developing resources for potential new dialysis programs and related services for the benefit of the community.

D. Buyer desires to purchase from Seller and Seller desires to sell to Buyer all of the assets, properties and rights of Seller relating to the Dialysis Business (except for the Excluded Assets) on the terms and conditions hereinafter set forth.

E. As additional consideration, and as a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, Seller desires to make certain representations, warranties, indemnities, covenants and agreements relating to the sale of the Dialysis Business.

F. Capitalized terms used herein shall have the meaning set forth in the Table of Definitions attached hereto as Schedule 1.0.

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

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, agreements, representations and warranties contained herein, and other good and valuable consideration, the sufficiency and adequacy of which are hereby expressly acknowledged, the parties hereto hereby agree as follows:

### **ARTICLE I ASSETS AND LIABILITIES**

#### 1.1. Acquired Assets.

(a) Subject to the terms and the conditions set forth in this Agreement and on the basis of the representations and warranties herein, Seller agrees to sell, convey, transfer, assign and deliver to Buyer and Buyer agrees to purchase, receive and accept from Seller all right, title and interest in and to the assets and properties of every kind, character and description (other than property and rights specifically excluded in this Agreement), used in or for the benefit of the Dialysis Business, whether tangible, intangible, real, personal or mixed, and wherever located, including any assets of any of Seller's Affiliates which are actually used or useful in or necessary for the conduct of the Dialysis Business or otherwise owned by Seller (collectively referred to hereinafter as the "Acquired Assets"), including but not limited to the assets set forth at Schedule 1.1 hereto.

(b) Without limitation of the foregoing, the Acquired Assets shall include, with respect to the Dialysis Business, all tangible property, equipment, inventories (including office supplies and an average of at least eighteen (18) treatment days of medical supplies such as dialysis supplies, EPO and other similar drugs and inventory items used for dialysis treatments at each Center, with no Center having less than twelve (12) treatment days' usage of each individual supply item required for dialysis treatments on site), tenant improvements (regardless of whether they are accounted for as an asset on the books of Seller or of any Affiliate of Seller), goodwill, software (to the extent transferable), Intellectual Property, prepaid expenses and deposits (other than prepaid items identified for separate payment by Buyer at Closing on Schedule 2.1 hereto), Assigned Dialysis Contracts, Assigned Personal Property Leases, books and records (including photocopies of patient medical records and files for all patients being treated at the Centers as of the Closing Date, and patient lists and appointment books relating to patients treated at the Centers within one year prior to the Closing Date, in each case to the extent transferable under applicable Law), any Seller policies and procedures relating to the Dialysis Business, each Center's telephone and facsimile numbers (to the extent such numbers are unique to the Dialysis Business), all Licenses and permits (including without limitation all Medicare provider numbers for the Dialysis Business) and certificates of need to the extent transferable to Buyer, and all benefits, proceeds and other amounts payable under any Seller policy of insurance. For the sake of clarity, prior to Closing, Seller shall acquire all right, title and interest in and to any leased equipment that is used, held for the use or benefit of or necessary by Seller in connection with the Centers, and such acquired equipment shall constitute Acquired Assets.

(c) The parties acknowledge and agree that the portion of Inventory consisting of prescription drugs (“Prescription Drug Inventory”) shall be, immediately prior to the Closing, held in locked storage facilities at each Center in the custody of the medical director of such Center. To ensure continuity of patient care, on the Closing Date, the Prescription Drug Inventory maintained at each Center shall be retained by such medical director or, in the event that the medical director of any Center following the Closing is different than the medical director immediately prior to Closing, the Prescription Drug Inventory shall be deemed to be transferred by the medical director of such Center prior to the Closing to the custody of the new medical director of such Center, in each case, who shall retain or gain, as applicable, means to access each locked storage facility for the benefit of Buyer.

1.2. Excluded Assets. Notwithstanding anything contained in Section 1.1, Buyer is not purchasing Seller’s cash, cash equivalents, accounts receivable, original patient medical records and files, insurance policies, original copies of any personnel records that Seller is legally required to keep in its possession, amounts that may be received following the Closing from Medicare, Medicaid or any other health care reimbursement or payment intermediary, or other third party payor on account of Medicare cost report adjustments or other payment adjustments attributable to any period prior to the Closing, any rights associated with the name “Silver Cross”, or any assets or properties expressly set forth on Schedule 1.2 (such assets being referred to as the “Excluded Assets” and such Schedule 1.2 being referred to herein as the “Excluded Assets Schedule”).

1.3. Assumed Liabilities. As of the Closing Date, Seller shall assign to Buyer and Buyer shall assume Seller’s obligations arising from events occurring on or after the Closing Date under those agreements and contracts designated specifically on Schedule 4.8 as Assigned Personal Property Leases and on Schedule 4.20 as Assigned Dialysis Contracts, except to the extent that any such executory obligations result from, arise out of, relate to, or are caused by, any one or more of the following: (a) a breach of any of the Assigned Personal Property Leases or Assigned Dialysis Contracts occurring prior to the Closing Date; (b) a breach of warranty, infringement or violation of Law occurring prior to the Closing Date; or (c) an event or condition occurring or existing prior to the Closing Date which, through the passage of time or the giving of notice or both, would constitute a breach or default by Seller under any of the Assigned Personal Property Leases or Assigned Dialysis Contracts (collectively, the “Assumed Liabilities”).

1.4. Excluded Liabilities.

(a) EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, BUYER DOES NOT ASSUME AND SHALL NOT BE LIABLE FOR ANY OF THE DEBTS, OBLIGATIONS OR LIABILITIES OF SELLER, DIALYSIS BUSINESS OR ANY AFFILIATE OF SELLER, WHENEVER ARISING AND OF WHATEVER TYPE OR NATURE. In particular, but without limiting the foregoing, Buyer shall not assume, and shall not be deemed by anything contained in this Agreement (other than to the extent expressly provided in Section 1.3 Assumed Liabilities) to have assumed and shall not be liable for any debts, obligations or liabilities of Seller, any Affiliate of Seller or the Dialysis Business whether known or unknown, contingent, absolute or otherwise and whether or not they would be included or disclosed in financial statements prepared in accordance with GAAP (the “Excluded

Liabilities”). Without limitation of the foregoing, the Excluded Liabilities shall include debts, liabilities and obligations: (i) under any real estate lease or any contract or agreement to which Seller is a party or by which Seller or the Dialysis Business is bound that has not been listed as an Assigned Dialysis Contract on Schedule 4.20 hereof or any Personal Property Lease by which Seller or the Dialysis Business is bound that has not been listed as an Assigned Personal Property Lease on Schedule 4.8 hereof; (ii) with respect to any Assigned Dialysis Contract or Assigned Personal Property Lease, arising from the period prior to the Closing Date; (iii) arising out of any collective bargaining agreement to which Seller is a party; (iv) for, under or in connection with any Employee Benefit Plan; (v) for any obligation for Taxes; (vi) for any liability for local or state sales, use or transfer tax and taxes that may be imposed upon the sale or assignment of the Acquired Assets pursuant to this Agreement and the Assignment and Assumption and Bill of Sale, regardless of when such obligations may become known and due; (vii) for any damages or injuries to persons or property or for any tort or strict liability arising from events, actions or inactions in the Dialysis Business or the operation of the Dialysis Business prior to the Closing Date; (viii) arising out of any litigation arising with respect to the period prior to the Closing Date, whether or not threatened or pending on or before the Closing Date; (ix) incurred by Seller or by the Dialysis Business for borrowed money; (x) for any accounts payable of Seller or any Affiliate of Seller; and (xi) for amounts due or that may become due to Medicare, Medicaid or any other health care reimbursement or payment intermediary, or other third party payor on account of Medicare cost report adjustments or other payment adjustments attributable to any period prior to the Closing Date, or any other form of Medicare or other health care reimbursement recapture, adjustment or overpayment whatsoever, including fines and penalties, with respect to any period prior to the Closing Date. The intent and objective of Buyer and Seller is that, except for liabilities explicitly assumed by Buyer hereunder, Buyer does not assume, and no transferee liability shall attach to Buyer pertaining to, any of the Excluded Liabilities.

(b) Buyer is not a party to, and shall not assume or be a successor under in any form or manner, prior to, on or after the Closing Date, any Labor Contracts or other oral or written agreement, including but not limited to any work rules, past practices, memoranda of understanding or letters of understanding, between Seller and any labor union, all of which shall be deemed Excluded Liabilities. Buyer specifically disclaims and Seller shall be solely responsible for any outstanding liabilities and obligations (including, but not limited to, any pension or welfare plan contribution or funding obligations, any contribution history of Seller, and any withdrawal liability with respect to any multiemployer plan as defined in Section 3(37) of ERISA or any other benefit liability) associated with any Labor Contract.

#### 1.5. Employees.

(a) No later than three (3) weeks prior to the Closing Date, effective as of the Closing Date, Buyer shall offer employment to each employee of Seller who (i) is principally employed in the Dialysis Business (collectively, the “Center Employees”), (ii) agrees to the release of his or her employment files to Buyer or its Affiliate prior to the Closing, (iii) passes Buyer’s pre-employment drug test, background check, and physical exam, as permitted by Law, (iv) has the unrestricted ability to provide federally reimbursed services, (v) is not on a corrective action plan with Seller at any time within sixty (60) days prior to the Closing Date, and (vi) is not a former employee of Buyer or an Affiliate of Buyer whose employment terminated on



unfavorable terms. Buyer's offers shall be on terms that are, in the aggregate, equal to or better than the terms offered by Seller to the Center Employees as of August 12, 2011. Buyer will provide Seller with a list of those Center Employees who accept Buyer's or its Affiliate's offer of employment as of the Closing Date (collectively, the "Transferring Employees") no less than five (5) business days prior to the Closing. Seller will terminate the employment of the Transferring Employees effective as of the Closing Date.

(b) Seller acknowledges and agrees that it is responsible for paying to the Transferring Employees all compensation and benefits accrued up to the Closing Date, including without limitation PTO (except to the extent assumed by Buyer pursuant hereto). With respect to each Transferring Employee, the parties agree that Seller shall transfer and Buyer shall assume up to eighty (80) hours of PTO per employee as of the Closing Date for each employee who elects to transfer all or a portion of such PTO to Buyer (the "Assumed PTO"), and the payment of Purchase Price shall be reduced by the aggregate value of such Assumed PTO. Any PTO accrued as of the Closing Date that is in excess of the Assumed PTO or that is not transferred to Buyer shall be paid by Seller to each Transferring Employee in the final Seller payroll disbursed no more than fourteen (14) business days following the Closing Date. All Transferring Employees shall be employees at will, subject to Buyer's or its Affiliate's direction and control, and employment policies. Nothing herein shall obligate Buyer or an Affiliate of Buyer to employ the Transferring Employees for any specific time period. Nothing in this Section shall be construed to grant any employee any rights as a third party beneficiary. Seller shall retain all liabilities with respect to any and all Center Employees who are not Transferring Employees and, unless specifically assumed herein, all liabilities associated with the Transferring Employees which may have accrued prior to the Closing Date.

#### 1.6. New Center Employees.

(a) For the remainder of the calendar month in which the Closing occurs, (the "Employee Transition Period"), Seller shall continue to employ each Center Employee whose first day of employment was on or after the first date of the month prior to the month in which the Closing occurs (the "New Center Employees"), unless otherwise instructed by Buyer no less than five (5) business days prior to the Closing Date. During the Employee Transition Period, Seller shall, under guidelines, practices and policies established by Buyer or an Affiliate of Buyer, in its discretion, and communicated to Seller no less than five (5) business days prior to Closing, continue to direct and control the New Center Employees in the performance of their duties associated with what was formerly the Dialysis Business. In addition, New Center Employees shall continue to accrue PTO in accordance with Seller's policy regarding the same during the Employee Transition Period. During the Employee Transition Period, Seller shall lease the New Center Employees to Buyer or an Affiliate of Buyer, during which time the New Center Employees shall provide services to Buyer or its Affiliate consistent with the services provided to Seller prior to the Closing Date and in accordance with the guidelines, practices and policies of Buyer as set forth in this Section 1.6(a) and in accordance with Seller's obligations as set forth in this Section 1.6(a). For all purposes of this Agreement, the Center Employees shall be deemed to include the New Center Employees. All representations, warranties, covenants and agreements related to the Center Employees made by Seller include the New Center Employees.

(b) Effective as of the end of the Employee Transition Period, Buyer or an Affiliate of Buyer will offer employment to each New Center Employee who (i) is principally employed in the Dialysis Business as of the end of the Employee Transition Period, (ii) agrees to the release of his or her employment files to Buyer or its Affiliate prior to the end of the Employee Transition Period, (iii) passes Buyer's pre-employment drug test, background check, and physical exam, as permitted by Law, prior to the end of the Employee Transition Period, (iv) has the unrestricted ability to provide federally reimbursed services, (v) is not on a corrective action plan with Seller at any time prior to the Closing Date, (vi) is not a former employee of Buyer or an Affiliate of Buyer whose employment terminated on unfavorable terms, and (vii) who Buyer designates as a Transferring Employee. Buyer will provide Seller with a list of those New Center Employees who accept Buyer's or its Affiliate's offer of employment as of the end of the Employee Transition Period (the "New Transferring Employees") no less than five (5) business days prior to the end of the Employee Transition Period. Seller will terminate the employment of the New Transferring Employees at the end of the Employee Transition Period and shall, on the last day of the Employee Transition Period, provide Buyer with a list that contains, with respect to each New Transferring Employee, such person's position, date of hire, current salary, accrued PTO and amount of any other accrued benefits to which such person may be entitled or for which such person has made either written or oral claim to Seller updated through such date (the "New Transferring Employee Schedule"). For all purposes of this Agreement, the Transferring Employees shall be deemed to include the New Transferring Employees. All representations, warranties, covenants and agreements related to the Transferring Employees made by Seller include the New Transferring Employees.

(c) Seller acknowledges and agrees that it is responsible for paying to the New Transferring Employees all compensation and benefits accrued up to the end of the Employee Transition Period, including without limitation PTO (except to the extent assumed by Buyer pursuant hereto). With respect to each New Transferring Employee, the parties agree that Seller shall transfer and Buyer shall assume up to eighty (80) hours of PTO per employee as of the Closing Date for each employee who elects to transfer all or a portion of such PTO to Buyer (the "Reimbursable Assumed PTO"). Seller agrees to pay Buyer the aggregate value of such Reimbursable Assumed PTO in accordance with Section 1.6(f), except to the extent Buyer has taken a credit for any such amount in accordance with Section 1.6(f). Any PTO accrued as of the Closing Date that is in excess of the Reimbursable Assumed PTO or that is not transferred to Buyer shall be paid by Seller to each New Transferring Employee in the final Seller payroll disbursed, whether at or following the end of the Employee Transition Period, but in any event no more than fourteen (14) business days following the end of the Employee Transition Period. Any PTO accrued during the Employee Transition Period, net of any PTO used during the Employee Transition Period, shall be assumed by Buyer upon expiration of the Employee Transition Period and shall be referred to herein as the "Non-reimbursable Assumed PTO." The Reimbursable Assumed PTO and the Non-reimbursable Assumed PTO are referred to collectively herein as the "New Employee Assumed PTO." All New Transferring Employees shall be employees at will, subject to Buyer's or its Affiliate's direction and control, and employment policies. Nothing herein shall obligate Buyer or an Affiliate of Buyer to employ the New Transferring Employees for any specific time period. Nothing in this Section shall be construed to grant any employee any rights as a third party beneficiary. Seller shall retain all liabilities with respect to any and all New Center Employees who are not New Transferring Employees and, unless specifically assumed herein, all liabilities associated with the New

Transferring Employees which may have accrued prior to the end of the Employee Transition Period.

(d) Seller shall process the payroll for the New Center Employees. Buyer or its Affiliate will reimburse Seller an amount equal to the total cost of payroll for the New Center Employees during the Employee Transition Period, which cost shall, among other things, consist of: (A) gross wages and salary; (B) employer payroll taxes; (C) fringe benefits (including without limitation paid time off (except as set forth in this Agreement), medical insurance and life insurance); (D) state and local taxes, including without limitation any sales and use taxes on wages and benefits; and (E) any other direct payroll costs of the New Center Employees. By 10:00 a.m., Pacific Time, on Wednesday of the week in which a transition payroll is to be paid, Seller will fax to Buyer or its Affiliate, to such address as has been provided to Seller for these purposes, a copy of the payroll journal and a summary of the amount due. Buyer or its Affiliate will remit the amount due to Seller by wire transfer within three (3) business days. Seller will then deliver to Buyer or its Affiliate a complete detailed payroll report supporting the faxed payroll summary via overnight delivery.

(e) During the Employee Transition Period, Seller shall continue to provide healthcare benefits available to the New Center Employees and maintain workers' compensation insurance to the same extent Seller provided and maintained the same prior to the Closing Date. Seller will fax to Buyer or its Affiliate a copy of the invoice for any health or workers' compensation insurance premiums due for the Employee Transition Period when received by, or available to, Seller. Buyer or its Affiliate will remit the amount due for health or workers' compensation insurance to Seller by wire transfer within three (3) business days of receipt of the invoice. During the Employee Transition Period, Buyer or its Affiliate shall offer enrollment to the New Center Employees in its own healthcare and other benefits programs with the participation of the New Center Employees in such benefits programs to be effective as of the end of the Employee Transition Period, subject to the completion of the applicable enrollment procedures by the New Center Employees.

(f) On or prior to the last day of the Employee Transition Period, Seller shall deliver to Buyer a schedule containing the final New Employee Assumed PTO amounts for all New Center Employees (specifying the Reimbursable Assumed PTO and the Non-reimbursable Assumed PTO) and shall be certified as true and correct by an authorized officer of Seller. Notwithstanding anything to the contrary in this Agreement, Buyer shall be entitled to take a credit for the aggregate value of the Reimbursable Assumed PTO (based on the respective wage rates of the New Center Employees in effect prior to the Closing Date) against any and all amounts owed by Buyer to Seller under this Section 1.6(f). To the extent the value of the aggregate Reimbursable Assumed PTO is greater than the amounts owed by Buyer to Seller and not previously reimbursed by Buyer to Seller under this Section 1.6(f), Seller will pay to Buyer the amount of such difference within three (3) business days after receipt of written notice thereof from Buyer.

1.7. Instruments of Transfer. The sale of the Acquired Assets and the assumption of the Assumed Liabilities as herein provided shall be effected at Closing by the Assignment and Assumption and Bill of Sale in the form attached hereto as Exhibit A.

1.8. Payment of Sales Taxes. Seller covenants and agrees to pay any and all sales, use or other transfer taxes payable by reason of the transfer and conveyance of the Acquired Assets hereunder. The parties will prepare and deliver and if necessary file at or before Closing all transfer tax returns and other filings necessary to vest in Buyer full right, title and interest in the Acquired Assets.

## **ARTICLE II PURCHASE PRICE**

2.1. Purchase Price. Subject to any adjustments and hold-backs which may be set forth below and on Schedule 2.1 hereto, and in reliance on Seller's representations, warranties and covenants, the purchase price (the "Purchase Price") to be paid by Buyer to Seller for the Acquired Assets and the other rights set forth herein shall be (a) Thirty Million Dollars (\$30,000,000) plus (b) the value (determined in accordance with Section 6.5, below) of up to twenty one (21) treatment days of useable inventories and supplies (including, without limitation, EPO and other drugs and supplies used for dialysis treatments) on site at each of the Centers (the "Inventory Value"). The parties acknowledge that Buyer paid to Seller a deposit in the amount of Four Hundred Fifty Thousand Dollars (\$450,000) on August 16, 2011 (the "Deposit"). The remaining portion of the Purchase Price, subject to any adjustments and hold-backs which may be set forth below and on Schedule 2.1 hereto, shall be paid to Seller (and any other entities or individuals designated by Seller on Schedule 2.1) in cash via wire transfer on the Closing Date.

2.2. Pro-Rations. All ordinary course of business expenses incurred, such as utilities, will be pro-rated as of the Closing Date, such that Buyer is responsible for amounts incurred on or after the Closing Date and Seller is responsible for amounts incurred prior to the Closing Date.

2.3. Allocation of Purchase Price. Buyer and Seller acknowledge and agree that the Purchase Price shall be allocated to the Acquired Assets in accordance with Schedule 2.3 hereto. The allocation shall include asset valuation and an amount attributable to the covenant not to compete to be agreed upon by the parties prior to Closing. Seller further acknowledges and agrees that (a) the covenant not to compete is a material inducement to Buyer to enter into this Agreement, and Buyer is doing so in reliance upon full compliance by Seller agreeing to be bound by such covenant; and (b) in light of such reliance, the amount allocated herein to the covenant not to compete is not intended by the parties as a measure of damages that might be incurred by Buyer in the event of a breach of such covenant. Buyer and Seller agree to report the transactions contemplated by this Agreement for federal and state income tax purposes in accordance with such allocation. The parties shall execute all forms required to be filed for tax purposes with any taxing authority in a manner consistent with the allocation on Schedule 2.3 hereto.

2.4. Negotiated Value. The parties agree that the Purchase Price and the Purchase Price allocation set forth on Schedule 2.3 reflect the fair value of the Dialysis Business and the fair values of the Acquired Assets, respectively, agreed to by the parties hereto as a result of arms' length negotiations. The parties agree that no consideration is or will be paid for the value of any patient referrals (direct or indirect) to or from Buyer, Seller or any of their Affiliates.

### **ARTICLE III CLOSING**

The closing of the sale and purchase of the Acquired Assets (the “Closing”) shall take place on the first day of the month after the month in which all of the conditions to closing set forth in Article VIII below are fully satisfied, or on such other date as the parties may mutually agree and which is consistent with the approval received from the Illinois Health Facilities and Services Review Board of the Illinois Department of Public Health (“IDPH”). The Closing shall take place at the offices of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., One Financial Center, Boston, Massachusetts, or by facsimile or electronic transmission and United States or overnight mail (the “Closing Date”). Buyer and Seller shall use their respective good faith efforts to close this transaction as promptly as possible after the Execution Date. For all purposes, including financial accounting and all other necessary regulatory and licensure purposes between the parties, the Closing Date and the Closing shall be deemed to have occurred at 12:01 a.m. local time at the location of the Dialysis Business on the Closing Date.

### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER**

Seller hereby represents and warrants to Buyer, as of the Execution Date and as of the Closing Date (except for those representations and warranties that are made as of the Closing Date only, which are true and correct as of the Closing Date), as follows:

4.1. Organization, Good Standing and Qualification. Seller is a not-for-profit corporation duly organized, validly existing and in good standing under the provisions of the Laws of the State of Illinois, and is qualified and licensed to do business in every other jurisdiction in which it conducts business or the nature of its business and operations would require qualification as a foreign not-for-profit corporation. Seller has all requisite power and authority to own and operate its properties and to carry on its business as now conducted. Seller has all power and authority to enter into all of the Acquisition Agreements to which Seller is a party and to carry out and perform its obligations under the Acquisition Agreements.

4.2. Authorization; Binding Obligation. Seller has full legal and corporate right, power, and authority to execute and deliver the Acquisition Agreements to which Seller is a party, and to carry out the transactions contemplated thereby. The execution and delivery by Seller of the Acquisition Agreements and all of the documents and instruments required thereby and the consummation of the transactions contemplated thereby have been duly authorized by all requisite action on the part of Seller. The Acquisition Agreements to which Seller is a party and each of the other documents and instruments required thereby or delivered in connection therewith have been duly executed and delivered by Seller, and constitute the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms.

4.3. Consents and Approvals.

(a) Governmental Consents and Approvals. Except as set forth on Schedule 4.3(a), no registration or filing with, or consent or approval of, or other action by, any federal,

state or other governmental agency or instrumentality is or will be necessary for the valid execution, delivery and performance of this Agreement by Seller, the transfer of the Acquired Assets to Buyer, the operation of the Dialysis Business by Buyer after Closing and Buyer's receipt of continued reimbursement for the Dialysis Business without change following Closing (each, a "Governmental Approval").

(b) Third Party Consents. Except as set forth on Schedule 4.3(b), no consent, approval or authorization of any non-governmental third party is required in order to consummate the transactions or perform the related covenants and agreements contemplated hereby or to vest full right, title and interest in the Acquired Assets free and clear of any Lien upon Buyer, all without any change in the Acquired Assets and all rights therein after Closing (each, a "Third Party Consent").

4.4. No Violation. The execution, delivery, compliance with and performance by Seller of the Acquisition Agreements and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Seller, (b) violate or contravene any Law to which Seller is subject, (c) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument or other document to which Seller is a party or by which Seller or any of its assets or properties are bound or subject or to which any entity in which Seller has an interest, is a party, or by which any such entity is bound, or (d) result in the creation of any Lien upon the Acquired Assets or the Dialysis Business.

4.5. Licenses and Permits. Schedule 4.5 attached hereto contains a true, correct and complete list and summary description of all Licenses which have been issued to Seller in connection with the Acquired Assets or the Dialysis Business (the "Dialysis Licenses"). Each Dialysis License is valid and in full force and effect as of the date hereof, no Dialysis License is subject to any Lien, limitation, restriction, probation or other qualification and there is no default under any Dialysis License or any basis for the assertion of any default thereunder. Schedule 4.5 specifies the holder of each Dialysis License and whether or not such Dialysis License is transferable to Buyer. There is no investigation or proceeding, threatened or pending, that could result in the termination, revocation, limitation, suspension, restriction or impairment of any Dialysis License or the imposition of any fine, penalty or other sanctions for violation of any legal or regulatory requirements relating to any Dialysis License or, to the best of Seller's knowledge, any basis therefor. Seller has, and has had at all relevant times, all Licenses that are or were necessary in order to enable Seller to own the Acquired Assets and conduct and be reimbursed for the Dialysis Business.

4.6. Ownership; No Subsidiaries. With respect to the Dialysis Business, all of Seller's owners, whether direct or indirect, are listed on Schedule 4.6 hereto. Seller does not own and for the past five (5) years has not owned, either directly or indirectly, any interest or investment (whether debt or equity) in or been a member of any corporation, partnership, joint venture, business trust or other entity that is engaged in the business of providing any modalities of dialysis and related services.

4.7. Acquired Assets. Seller is the sole and exclusive legal and equitable owner of all right, title and interest in, and has good, clear, indefeasible, insurable and marketable title to, all

of the Acquired Assets free of all Liens. All of the Acquired Assets have been maintained in accordance with normal industry practice, and are in good operating condition and repair. During the past three (3) years, there has not been any interruption of the operations of the Dialysis Business due to the condition of any of the Acquired Assets. The Acquired Assets include all assets, properties and rights used or found useful by Seller in connection with the Dialysis Business and which are necessary or desirable in order for Buyer to continue the Dialysis Business as historically and currently conducted following Closing. Seller will convey to Buyer on the Closing Date all of the Acquired Assets free and clear of any Lien, including the conveyance to Buyer of any item not owned by Seller on the Execution Date or not owned free of any Lien by Seller on the Execution Date, which items are set forth on Schedule 4.7.

4.8. Leases of Personal Property. For the purposes of this Agreement, “Personal Property Leases” means any lease, conditional or installment sale contract, Lien or similar arrangement to which any tangible personal property used by Seller in connection with the operation of the Dialysis Business is subject. None of the tangible personal property used by Seller in connection with the operation of the Dialysis Business is subject to a Personal Property Lease. Seller has delivered to Buyer a complete and correct copy of each Personal Property Lease listed on Schedule 4.8. All of such Personal Property Leases are valid, binding and enforceable in accordance with their respective terms and are in full force and effect. Seller is not in default under any of such Personal Property Leases and there has not been asserted, either by or against Seller under any of such Personal Property Leases, any notice of default, set-off or claim of default. The parties to such Personal Property Leases other than Seller are not in default of their respective obligations under any of such Personal Property Leases. There has not occurred any event which, with the passage of time or giving of notice (or both), would constitute such a default or breach under any of such Personal Property Leases by any party thereto. Prior to Closing, the parties will mutually agree upon each Personal Property Lease that will be separately designated as either a Personal Property Lease that Seller has agreed to assign and that Buyer has agreed to assume (each, an “Assigned Personal Property Lease”) or as a Personal Property Lease that shall be paid off by Seller prior to Closing at its own expense or paid off at Closing with a portion of the Purchase Price (each, a “Terminated Personal Property Lease”).

4.9. Financial Statements. Set forth on Schedule 4.9 are (a) the unaudited statements of income of each Center for the 12-month period ended September 30, 2010 (the “Year-End Financial Statements”), and (b) the unaudited statements of income of each Center for the 12-month period ended September 30, 2011 (the “Interim Financial Statements”). The Year-End Financial Statements and the Interim Financial Statements, together with the Closing Financial Statements, as defined in Section 6.6(a) below, are referred to herein collectively as the “Financial Statements.” The Financial Statements fairly present the income of each Center (and no other business of Seller) as of the respective dates of and for the periods referred to in such income statements. Any disclosure omitted due to the nonconformity of the Financial Statements to GAAP, or to the absence of footnotes in the Financial Statements, does not either individually or in the aggregate have a Seller Material Adverse Effect. The Financial Statements reflect the consistent application of accounting principles throughout the periods involved.

4.10. Absence of Certain Events. Since the date of the Interim Financial Statements, the Dialysis Business has been conducted only in the ordinary course and in a manner consistent

with past practices. As amplification and not in limitation of the foregoing, since the date of the Interim Financial Statements, with respect to the Dialysis Business, there has not been:

- (a) any decrease in the value of the Acquired Assets other than ordinary depreciation consistent with past practices;
- (b) any voluntary or involuntary sale, assignment, license or other disposition, of any kind, of any property or right included in the Acquired Assets, except as specifically contemplated by this Agreement and except for the utilization of supplies and drugs in the ordinary course of business;
- (c) any Lien imposed or created on the Acquired Assets;
- (d) any Seller Material Adverse Effect;
- (e) any damage or destruction of any of the assets utilized in the Dialysis Business by fire or other casualty, whether or not covered by insurance;
- (f) any termination of any provider agreement or other contract pursuant to which Seller receives compensation or reimbursement for patient care services in connection with the Dialysis Business;
- (g) any sale, transfer, assignment, termination, modification or amendment of any Dialysis Contract, except for terminations, modifications and amendments of Dialysis Contracts made in the ordinary course of business consistent with past practice and which would not have a Seller Material Adverse Effect;
- (h) any notice (written or oral) to Seller that any Dialysis Contract has been breached or repudiated or will be breached or repudiated;
- (i) except in the ordinary course of business, or otherwise as necessary to comply with any applicable minimum wage Law, any increase in the salary or other compensation of any employee engaged in the Dialysis Business, or any increase in or any addition to other benefits to which any such employee may be entitled;
- (j) any extraordinary compensation, bonus or distribution to Seller or to any Affiliate of Seller;
- (k) any failure to pay or discharge when due any liabilities which arose out of the ownership or operation of the Dialysis Business;
- (l) any change in any of the accounting principles adopted by Seller, or any change in Seller's policies, procedures, or methods with respect to applying such principles;
- (m) any transaction or Dialysis Contract outside the ordinary course of business or involving an amount in excess of \$10,000 that is not disclosed to Buyer;



(n) any termination of key personnel such as registered nurses, social workers, dietitians, or medical directors; or

(o) any action that if taken after the Execution Date would constitute a breach of any of the covenants in Section 6.1 hereof.

4.11. Legal Proceedings. There is no action, suit, litigation, proceeding or investigation pending or threatened by or against Seller relating to the Dialysis Business, and Seller has not received any written or oral claim, complaint, incident, report, threat or notice of any such proceeding or claim and there is no basis therefor. Seller has not received any opinion or memorandum or advice from legal counsel to the effect that it is exposed, from a legal standpoint, to any liability or claim relating to the Acquired Assets or to the business, prospects, financial condition, operations, property or affairs of the Dialysis Business. There are no outstanding orders, writs, judgments, injunctions or decrees of any court, governmental agency or arbitration tribunal against, involving or affecting Seller or the Acquired Assets, and there are no facts or circumstances which may result in the institution of any such action, suit, claim or legal, administrative or arbitration proceeding or investigation against, involving or affecting Seller, the Acquired Assets or the transactions contemplated hereby. Seller is not in default with respect to any order, writ, injunction or decree known to or served upon it from any court or any Federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign.

4.12. Solvency and Value of Transfer. There is no bankruptcy or insolvency proceeding of any character including without limitation, bankruptcy, receivership, reorganization, dissolution or arrangement with creditors, voluntary or involuntary, affecting Seller, and Seller has not taken any action in contemplation of, or which would constitute the basis for, the institution of any such proceedings. Seller is not insolvent under any bankruptcy, receivership or insolvency Law, and since three (3) years prior to the Closing Date has been paying debts as they become due and within vendor terms. The value of the Purchase Price is equal to the negotiated value of the Acquired Assets and the other rights granted to Buyer herein, as indicated on Schedule 2.3. As of the Closing Date, after the Purchase Price is paid as provided for under this Agreement, the fair value of all of Seller's assets will be equal to or greater than the total amount of the retained debts of Seller. Seller's sale of the Acquired Assets has not been undertaken with the intention to hinder, delay or defraud Seller's current or future creditors.

4.13. Dialysis Payment Programs.

(a) All Payment Programs in which Seller has participated at any time during the last three (3) years with respect to the Dialysis Business are listed on Schedule 4.13 (the "Dialysis Payment Programs"). Seller is a participating provider, in good standing, in each Dialysis Payment Program. There is no threatened or pending or concluded investigation, or civil, administrative or criminal proceeding relating to Seller's participation in any Dialysis Payment Program. Seller is subject to, and has been subject to, pre-payment utilization reviews and other utilization reviews from time-to-time by all Dialysis Payment Programs to which it is contracted. No Dialysis Payment Program has requested or threatened any recoupment, refund, or set-off from Seller and there is no basis therefor. No Dialysis Payment Program has imposed

a fine, penalty or other sanction on Seller. Seller has not been excluded from participation in any Dialysis Payment Program. Seller has not submitted to any Dialysis Payment Program any false or fraudulent claim for payment, nor has Seller at any time violated any condition for participation, or any rule, regulation, policy or standard of, any Dialysis Payment Program. All Medicare Costs Reports required to be filed as of the Closing Date with respect to the Dialysis Business for all periods prior to the Closing Date have been accurately completed and timely filed.

(b) Neither Seller nor any of Seller's Affiliates, directors, or corporate members, officers, trustees, or, to the best of Seller's knowledge, Seller's employees or agents has, directly or indirectly: (i) offered to pay to or solicited any remuneration from, in cash, property or in kind, or made any financial arrangements with, any past or present patient or customer, past or present medical director, physician, other health care provider, supplier, contractor, third party, or Dialysis Payment Program in order to induce or directly or indirectly obtain business or payments from such person, including without limitation any item or service for which payment may be made in whole or in part under any federal, state or private health care program, or for purchasing, leasing, ordering or arranging for or recommending, purchasing, leasing, or ordering any good, facility, service or item for which payment may be made in whole or in part under any federal, state or private health care program; (ii) given or received, or agreed to give or receive, or is aware that there has been made or that there is any agreement to make or receive, any gift or gratuitous payment or benefit of any kind, nature or description (including without limitation in money, property or services) to any past, present or potential patient or customer, medical director, physician, other health care provider supplier or potential supplier, contractor, Payment Program or any other person; (iii) made or agreed to make, or is aware that there has been made or that there is any agreement to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift or the purpose of such contribution, payment or gift is or was illegal under the Laws of the United States or under the Laws of any state thereof or any other jurisdiction in which such payment, contribution or gift was made; (iv) established or maintained any unrecorded fund or asset for any purpose or made any false or artificial entries on any of its books or records for any reason; or (v) made or received or agreed to make or receive, or is aware that there has been made or received or that there has been any intention to make or receive, any payment to any person with the intention or understanding that any part of such payment would be used for any purpose other than that described in the documents supporting such payment. All billing practices of Seller and all predecessors in interest thereof with respect to all Dialysis Payment Programs have been true, fair and correct and in compliance with all applicable Laws, and all regulations and policies of all such Dialysis Payment Programs, and Seller has not billed for or received any payment or reimbursement in excess of amounts permitted by Law or the rules and regulations of Dialysis Payment Programs or contracts therewith.

(c) Seller has, on or before November 1, 2010, opted in fully to the new Medicare bundled rate commencing January 1, 2011 for Silver Cross Renal Center - Morris only.

#### 4.14. Compliance with Laws.

(a) Schedule 4.14(a) lists all claims, statements, and other matters (including, but not limited to, all correspondence or communications with governmental agencies, intermediaries or carriers) concerning or relating to any federal or state government funded health care program that involves, relates to or alleges with respect to the Dialysis Business: (i) any violation of any applicable rule, regulation, policy or requirement of any such program or any irregularity with respect to any activity, practice or policy of Seller or the Dialysis Business; or (ii) any violation of any applicable rule, regulation, policy or requirement of any such program or any irregularity with respect to any claim for payment or reimbursement made by Seller, the Dialysis Business or any payment or reimbursement paid to Seller or the Dialysis Business. With respect to the Dialysis Business, there are no such violations or irregularities nor are there any grounds to anticipate the commencement of any investigation or inquiry, or the assertion of any claim or demand by any government agency, intermediary or carrier with respect to any of the activities, practices, policies or claims of Seller or the Dialysis Business, or any payments or reimbursements claimed by Seller. Seller is not currently subject to any outstanding audit by any such government agency, intermediary or carrier with respect to the Dialysis Business, and there are no grounds to anticipate any such audit in the foreseeable future.

(b) Seller has not violated and is in compliance with all applicable Laws with respect to the Dialysis Business. Seller has not received any notice to the effect that, or otherwise been advised that, it is not in compliance with any Laws, and Seller has no reason to anticipate that any existing circumstances are likely to result in a violation of any Law.

(c) With respect to the Dialysis Business, Seller has not submitted any claim to any Payment Program in connection with any referrals that violated any applicable self-referral Law, including without limitation the Federal Ethics in Patient Referrals Act, 42 U.S.C. § 1395nn (known as the “Stark Law”), or any applicable state self-referral Law.

(d) Seller has complied with all disclosure requirements of all applicable self-referral Laws, including without limitation the Stark Law and any applicable state self-referral Law with respect to the Dialysis Business.

(e) With respect to the Dialysis Business, neither Seller nor any Affiliate of Seller has knowingly or willfully solicited, received, paid or offered to pay any remuneration, directly or indirectly, overtly or covertly, in cash or kind for the purpose of making or receiving any referral which violated any applicable anti-kickback Law, including without limitation the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (known as the “Anti-Kickback Statute”), or any applicable state anti-kickback Law.

(f) With respect to the Dialysis Business, Seller has not submitted any claim for payment to any Payment Program in violation of any Laws relating to false claim or fraud, including without limitation the Federal False Claim Act, 31 U.S.C. § 3729, or any applicable state false claim or fraud Law.

(g) Seller has delivered to Buyer copies of all current Medicare or Medicaid survey reports (which detail, at a minimum, all outstanding deficiencies) relating to the Dialysis Business, copies of which are attached to Schedule 4.14(g). There is no Medicare or Medicaid survey in progress with respect to the Dialysis Business.

(h) Seller has complied with all Environmental Laws and Seller has not received any notice alleging any violation of any Environmental Laws with respect to the Dialysis Business, including Silver Cross Renal Center's prior location at 1200 Maple Road, Joliet, Illinois, or the Acquired Assets. Any past noncompliance with Environmental Laws by or with respect to the Dialysis Business, including Silver Cross Renal Center's prior location at 1200 Maple Road, Joliet, Illinois, is identified by Seller on Schedule 4.14(h), and has been resolved without any pending, ongoing or future obligation, cost or liability. There has been no Release of Hazardous Materials in violation of any Environmental Law on the Premises except for Silver Cross Renal Center at its prior location at 1200 Maple Road in Joliet, Illinois. There is no asbestos or asbestos-containing material on the Silver Cross Renal Center Premises as of the Closing Date and its prior location at 1200 Maple Road, Joliet, Illinois, and the Silver Cross Renal Center – West Premises. To the best of Seller's knowledge, there is no asbestos or asbestos-containing material on the Silver Cross Renal Center – Morris Premises. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will require any Remedial Action or notice to or consent of any governmental authority or third party pursuant to any applicable Environmental Law.

(i) Seller has complied with all applicable requirements of the Occupational Safety and Health Act and all applicable state equivalents, and with all applicable regulations promulgated under any such legislation, and with all orders, judgments, and decrees of any tribunal under such legislation, that apply to the Dialysis Business, the Acquired Assets or the Premises, and Seller has not received any notice alleging any violation thereof with respect to the Dialysis Business or the Acquired Assets.

(j) With respect to the Dialysis Business, Seller has complied with all applicable security and privacy standards regarding protected health information under the Health Insurance Portability and Accountability Act of 1996 and the implementing regulations at 45 CFR Parts 160 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act (collectively "HIPAA"), and all applicable state privacy and security Laws.

(k) Seller has maintained and complied with a compliance plan that applies to its dialysis services, and such compliance plan includes appropriate training and a comprehensive ethical code of conduct.

(l) The Compliance Questionnaire completed by or on behalf of Seller on August 26, 2011 and delivered to Buyer in connection with its due diligence investigation are complete and correct.

#### 4.15. Employment Matters.

(a) Seller has paid or will pay all accrued benefits and wages for all Center Employees through the Closing Date.

(b) No Transferring Employee (i) has an employment agreement with Seller, whether written or oral or (ii) has indicated that he or she intends to terminate his or her employment with Seller or seek a material change in his or her duties or status. Each Center Employee, including without limitation each Transferring Employee, who is required to be

licensed by applicable Law is so licensed, and copies of such Licenses have been delivered to Buyer.

(c) In the 12-month period immediately preceding the Closing Date, Seller has had adequate levels of employee staffing to conduct the Dialysis Business in accordance with industry standard staffing patterns and practices. The Transferring Employees constitute sufficient personnel to continue the operations of the Dialysis Business uninterrupted following the Closing Date.

(d) (i) Seller is not a party to any collective bargaining contracts or any other contracts, agreements or understandings with any labor unions or other representatives of the Center Employees (a "Labor Contract"); (ii) Seller is not subject to any union organizing activities with respect to the Center Employees; (iii) Seller has not breached or otherwise failed to comply with any provision of any Labor Contract, and there are no grievances outstanding against Seller under any Labor Contract with respect to the Center Employees; (iv) there are no unfair labor practice complaints pending against Seller with respect to the Center Employees before the National Labor Relations Board or any current union representation questions involving the Center Employees; and (v) there is no strike, slowdown, work stoppage or lockout or, to the best of Seller's knowledge, threat thereof, by or with respect to the Center Employees. The consent of any labor union which is a party to any Labor Contract is not required to consummate the transactions contemplated by this Agreement.

(e) Buyer shall not assume any liability or responsibility for any benefit or other obligations arising out of or under any Employee Benefit Plan to which any Transferring Employee or Center Employee is or may be entitled to without regard to whether such obligation or responsibility arises under the terms of such Employee Benefit Plan or applicable Law. Seller shall retain all liability and responsibility for benefits, administration and compliance with the terms of any and all Employee Benefit Plans and applicable Laws with regard to any and all Employee Benefit Plans.

(f) No person employed by or affiliated with Seller with respect to the Dialysis Business has employed or proposes to employ any trade secret or any information or documentation proprietary to any former employer and, no person employed by or affiliated with Seller has violated any confidential relationship which such person may have had with any third party while working on behalf of Seller, and Seller has no reason to believe that any such event could occur.

4.16. Benefit Plan Compliance with Provisions of Applicable Law. Seller, for the benefit of any of Center Employees or Transferring Employees, does not maintain or contribute to, nor does Seller have any liability or responsibility with respect to, any Employee Benefit Plan. Seller has not incurred any liability (other than normal claims for benefits under its welfare plans) under any provision of ERISA or other applicable Law relating to any Employee Benefit Plan. Each Employee Benefit Plan has been established, maintained and administered in compliance with its terms and complies, both in form and operation, with the applicable provisions of ERISA (including without limitation the funding and prohibited transactions provisions thereof), the Code, and all other state and federal applicable Laws. No Employee Benefit Plan is funded through a trust intended to be exempt from tax pursuant to Section 501 of

the Code. Neither Seller nor any ERISA Affiliate has ever maintained or contributed to any plan or arrangement subject to Title IV of ERISA or Section 412 of the Code, a multiemployer plan as described in Section 3(37) of ERISA or a “multiple employer plan” as described in Section 3(40) of ERISA or Section 413(c) of the Code, and Seller has never had any liability with respect to any such plan sponsored or maintained by an ERISA Affiliate. No Employee Benefit Plan provides benefits, including, without limitation, death or medical benefits (through insurance or otherwise) with respect to employees or former employees beyond their retirement or other termination of service other than coverage mandated by applicable Law. No Employee Benefit Plan which is a group health plan, as described in Section 5000(b)(1) of the Code is self-insured. No Employee Benefit Plan liability, contingent or otherwise, shall affect any of the Acquired Assets, including but not limited to subjecting such Acquired Assets to attachment, forfeiture, seizure liquidation or use as collateral. Buyer will not assume or become the sponsor of any Employee Benefit Plan and Seller will not terminate any Group Health Plan in such a way that Buyer will have any liability for COBRA under Q&A-8 of Treasury Regulation §54.4980B-9 or as a successor to Seller. Buyer shall: (a) not recognize any collective bargaining unit and specifically rejects any collective bargaining unit which covers any Center Employee; (b) not assume any liability with respect to any Labor Contract or other collective bargaining agreement or other labor agreement; and (c) have no obligation to contribute to a multi-employer plan as described in Section 3(37) of ERISA or pension plan subject to Title IV of ERISA in which Seller participates or to which Seller contributes.

4.17. No Undisclosed Liability. Except as and to the extent of the amounts specifically accrued or disclosed in the Financial Statements, Seller does not have any material liabilities or obligations of any nature whatsoever, due or to become due, accrued, absolute, contingent or otherwise, whether or not required by GAAP to be reflected on a balance sheet, except for liabilities and obligations incurred in the ordinary course of business and consistent with past practice since the date of the Interim Financial Statements, none of which individually or in the aggregate has a Seller Material Adverse Effect. There is no basis for the assertion against Seller of any material liability or obligation not fully and expressly accrued or disclosed in the Financial Statements. Seller has not incurred any material liabilities to customers or suppliers for discounts, returns, promotional allowances or otherwise in connection with the Dialysis Business or any liability for rebates, refunds, allowances or returns for goods or services provided to, by or for the account of Seller which have not been accrued or disclosed in the Financial Statements.

4.18. No Brokers. Neither Seller nor any Affiliate of Seller has employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Seller and its Affiliates agree to indemnify and hold harmless Buyer for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Seller or an Affiliate of Seller in connection with the purchase and sale of the Acquired Assets or the Dialysis Business.

4.19. Taxes. Seller has filed, or has caused to be filed, on a timely basis and subject to all permitted extensions, all Tax Returns with the appropriate governmental agencies in all jurisdictions in which such Tax Returns are required to be filed, and all such Tax Returns were correct and complete. All Taxes that are shown as due on such Tax Returns have been timely paid, or delinquencies cured with payment of any applicable penalties and interest, as of the

Closing Date with respect to the Dialysis Business. There are no Liens for Taxes on any Acquired Assets of Seller, no basis exists for the imposition of any Liens and the consummation of the transactions contemplated by this Agreement will not give rise to any Liens for Taxes on any Acquired Assets. With respect to the Dialysis Business, no adjustment of or deficiency of any Tax or claim for additional Taxes has been proposed, asserted, assessed or threatened against Seller or any member of any affiliated or combined group of which Seller is or was a member or for which Seller could be liable, and there is no basis therefor. Seller has no dispute with any taxing authority as to Taxes of any nature with respect to the Dialysis Business. There are no audits or other examinations being conducted or threatened, and there is no deficiency or refund litigation or controversy in progress or threatened with respect to any Taxes previously paid by Seller or with respect to any returns previously filed by Seller or on behalf of Seller with respect to the Dialysis Business. Seller has not made any extension or waiver of any statute of limitations relating to the assessment or collection of Taxes with respect to the Dialysis Business. There are in effect no powers of attorney or other authorizations to any persons or representatives of Seller with respect to any Tax with respect to the Dialysis Business. Buyer shall have no liability for any Taxes related to the ownership or operation of the Acquired Assets or the Dialysis Business for the periods prior to the Closing Date.

#### 4.20. Dialysis Contracts.

(a) For purposes of this Agreement, “Dialysis Contracts” means, with respect to the Dialysis Business, all agreements, contracts and commitments, written or oral, to which Seller is a party or by which Seller or any of its properties, the Acquired Assets or the Dialysis Business is bound including, without limitation: (i) notes, loans, credit agreements, mortgages, indentures, security agreements, operating leases, capital leases and other agreements and instruments relating to the borrowing of money or extension of credit and any contract of suretyship or guaranty; (ii) all employment and consulting agreements and arrangements (including but not limited to agreements for medical director services), and all bonus, compensation, pension, insurance, retirement, deferred compensation and other plans, agreements, trusts, funds and other arrangements for the benefit of employees; (iii) agreements with health care providers, including without limitation, visiting nurses associations, health maintenance organizations, hospitals and long-term care facilities; (iv) agreements, orders or commitments for the purchase by Seller of inventories and supplies which involve annual purchases exceeding \$5,000; (v) agreements, orders or commitments for the sale or lease to customers of goods or services which involve annual sales exceeding \$5,000 (including without limitation agreements to provide dialysis services); (vi) licenses of patents, copyrights, trademarks and other intangible property rights; (vii) agreements or commitments for capital expenditures in excess of \$5,000 for any single project; (viii) provider and supplier agreements with Dialysis Payment Programs; (ix) any joint venture, partnership or other agreement involving a share of profits or losses; (x) any contract, agreement or arrangements with any Affiliate; (xi) any agreement restricting competition or the business activities of any person or entity; (xii) any agreement for the purchase or sale of any Acquired Asset; (xiii) all leases of real property; and (xiv) any other agreements or obligations material to the Dialysis Business or the Acquired Assets. Schedule 4.20 hereto contains a complete and correct list of Dialysis Contracts, including a complete description for any oral Dialysis Contracts. Each Dialysis Contract is separately designated on Schedule 4.20 as either a Dialysis Contract that Seller has agreed to assign and that Buyer has agreed to assume (each, an “Assigned Dialysis Contract”) or

as a Dialysis Contract that shall be retained or terminated by Seller, in its discretion and at its own expense (each, a “Retained Dialysis Contract”).

(b) Seller is not in default under the terms of any Dialysis Contract. No event has occurred that would constitute a default by Seller under any Dialysis Contract, nor has Seller received any notice of any default under any Dialysis Contract. To Seller’s knowledge, the counterparties to the Dialysis Contracts are not in default under the terms thereof, nor has any event occurred that would constitute a default by any such counterparty under any Dialysis Contract, nor has Seller received any notice of any such counterparty’s default under any Dialysis Contract.

(c) Seller has made no prepayments or deposits under any Dialysis Contract.

(d) The Dialysis Contracts are valid and binding obligations and in full force and effect and have been entered into in the ordinary course of business, consistent with past practice. Seller has not received any notice from any other party to a Dialysis Contract of the termination or threatened termination thereof, nor any claim, dispute or controversy thereon, and has no knowledge of the occurrence of any event which would allow any other party to terminate any Dialysis Contract, nor has Seller received notice of any asserted claim of default, breach or violation of, any Dialysis Contract and there is no basis therefor.

(e) Consummation of the transactions contemplated by this Agreement will not constitute a default under any Dialysis Contract (including without limitation, the Assigned Dialysis Contracts) nor will it trigger any other provision in a Dialysis Contract that would result in a change in such Dialysis Contract, including without limitation the requirement for a transfer fee or new deposit, or termination thereof.

4.21. Real Properties. Schedule 4.21 sets forth a true and complete description of all real property used in connection with the Centers (the “Premises”). Seller has sufficient title to those Premises which it owns and has the right to use those Premises which it leases from third parties, to conduct the Dialysis Business as currently conducted. Seller holds the Premises free and clear of all claims or rights of any third parties and the possession of the Premises by Seller has not been disturbed and no claim has been asserted against Seller adverse to its rights in such Premises. All improvements, fixtures and all structures on the Silver Cross Renal Center Premises and Silver Cross Renal Center – West Premises and the current uses of such Premises conform to all applicable federal, state and local Laws, building, health and safety and other ordinances, Laws, rules and regulations. To the best of Seller’s knowledge, all improvements, fixtures and all structures on the Silver Cross Renal Center – Morris Premises and the current uses of such Premises conform to all applicable federal, state and local Laws, building, health and safety and other ordinances, Laws, rules and regulations. Applicable zoning Laws permit the presently existing improvements and the conduct and continuation of the Dialysis Business as being conducted on the Premises.

4.22. Financing Statements. There are no financing statements under the Uniform Commercial Code with respect to the Acquired Assets which name Seller as debtor or lessee filed in any state. Except for those no longer in effect, Seller has not signed any financing



statement or any security agreement under which a secured party thereunder may file any such financing statement with respect to the Acquired Assets.

4.23. Transactions With Affiliates. No corporate member, director, officer, trustee or employee of Seller or member of the family of any such person, or any corporation, partnership, trust or other entity in which any such person, or any member of the family of any such person, has a substantial interest or is an officer, director, trustee, partner or holder of any equity interest, is a party to any transaction with Seller with respect to the Dialysis Business, including any contract, agreement or other arrangement providing for the employment of, furnishing of goods or services by, rental of real or personal property from or to or otherwise requiring payments or involving other obligations to any such person or firm.

4.24. Insurance. Seller is, and will through the Closing Date be, insured with responsible insurers (including without limitation general liability insurance coverage of the Acquired Assets and Premises and professional liability coverage) against risks normally insured against by similar businesses under similar circumstances. Schedule 4.24 correctly describes, by type, carrier, policy number, limits, premium and expiration date, the insurance coverage carried by Seller with respect to the Dialysis Business, including any policies of self-insurance, which insurance will remain in full force and effect in accordance with policy terms, with respect to all events occurring prior to the Closing Date. Schedule 4.24 also states whether each such policy is carried on a “claims made” or “occurrence” basis. With respect to the Acquired Assets, all such insurance policies are owned by and payable solely to Seller. Seller has not failed to give any notice or present any claim under any such policy or binder in due and timely fashion, has not received notice of cancellation or non-renewal of any such policy or binder and is not aware of any threatened or proposed cancellation or non-renewal of any such policy or binder. With respect to the Acquired Assets, there are no outstanding claims under any such policy which have gone unpaid for more than thirty (30) days, or as to which the insurer has disclaimed liability.

4.25. Inventory. Seller has maintained sufficient medical and office inventory consisting of items of a quality and quantity usable or saleable in the ordinary course of business at levels consistent with those maintained by businesses of similar size and providing similar services as the Dialysis Business. As of the Closing Date, the Centers have an average of eighteen (18) treatment days per Center of useable medical supplies inventory, including, without limitation, EPO and other drugs and supplies used for dialysis treatments, and no Center has less than twelve (12) treatment days’ usage of each individual supply item required for dialysis treatments on site.

4.26. Intellectual Property. Schedule 4.26 sets forth a list of Intellectual Property owned, controlled or used by Seller in connection with the Acquired Assets or the Dialysis Business, together in each case with a brief description of the nature of such right. All Seller-owned fictitious or assumed business names, patents, copyrights and trademarks listed in Schedule 4.26 are valid and in full force and all applications listed therein as pending have been prosecuted in good faith as required by Law and are in good standing. With respect to the Dialysis Business, there has been no infringement by Seller or any of its Affiliates with respect to any Intellectual Property rights of others. Seller owns or possesses adequate licenses or other rights to use all Intellectual Property necessary or desirable to conduct the Dialysis Business as

conducted, none of which rights will be impaired by the consummation of the transactions contemplated by this Agreement, and all of the rights of Seller thereunder will be enforceable by Buyer immediately after Closing without the consent or agreement of any other party. None of the Intellectual Property listed in Schedule 4.26 is involved in any interference or opposition proceeding, and there has been no written notice received by Seller or any other indication that any such proceeding will hereafter be commenced. Seller has not granted any person or entity any right to use any of the Intellectual Property for any purpose.

4.27. Disclosure. Seller, in connection with this Agreement, the Schedules to this Agreement, and any other agreement, document, certificate or statement made to Buyer by or on behalf of Seller in connection with the transactions contemplated hereby, including but not limited to the Compliance Questionnaire, has not made and will not make any untrue statement of a material fact and has not omitted and will not omit to state a material fact necessary in order to make the statements contained herein or therein not misleading in light of the circumstances under which they were made or necessary to provide a prospective purchaser of the Acquired Assets or the Dialysis Business with all information material thereto. There is no fact within the knowledge of Seller that has not been disclosed herein to Buyer and which could have a Seller Material Adverse Effect.

4.28. Accounts Receivable. All accounts receivable of Seller with respect to the Dialysis Business as of the end of the calendar month ended not more than thirty one (31) days prior to the Closing Date are reflected on the Closing Financial Statements and (a) have arisen only from bona fide transactions in the ordinary course of the Dialysis Business consistent with past practice; (b) represent valid obligations; (c) shall be fully collected net of allowances in the aggregate face amounts thereof within a reasonable time after the issuance thereof; and (d) are owned by Seller free of all Liens. With respect to the Dialysis Business, no discount or allowance from any receivable has been made or agreed to and none represents billings prior to actual sale of goods or provision of services.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer hereby represents, warrants and covenants to Seller, as of the Execution Date and as of the Closing Date (except for those representations and warranties that are made as of the Closing Date only, which are true and correct as of the Closing Date), as follows:

5.1. Organization, Good Standing and Qualification. Buyer is a corporation duly organized, validly existing and in good standing under the Laws of the State of California and is qualified and licensed as a foreign corporation in the State of Illinois. Buyer has all requisite corporate power and authority to own and operate its properties and to carry on its business as now conducted, to enter into this Agreement and to carry out and perform its obligations under the Acquisition Agreements to which Buyer is a party.

5.2. Authorization; Binding Agreement. Buyer has the corporate power and authority to execute and deliver this Agreement, and to carry out the transactions contemplated hereby. The execution and delivery by Buyer of the Acquisition Agreements to which Buyer is a party and all of the documents and instruments required thereby and the consummation of the

transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. The Acquisition Agreements to which Buyer is a party and each of the other documents and instruments required thereby have been duly executed and delivered by Buyer and constitute the valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms.

5.3. Legal Proceedings. There are no actions, suits, litigation, or proceedings pending or threatened against Buyer which could materially adversely affect Buyer's ability to perform its obligations under this Agreement or the consummation of the transactions contemplated by this Agreement.

5.4. No Brokers. Buyer has not employed, either directly or indirectly, or incurred any liability to, any broker, finder or other agent in connection with the transactions contemplated by this Agreement. Buyer agrees to indemnify Seller for any claims brought by any broker, finder or other agent claiming to have acted on behalf of Buyer in connection with this sale.

5.5. No Violation. The execution, delivery, compliance with and performance by Buyer of the Acquisition Agreements to which Buyer is a party and each of the other documents and instruments delivered in connection therewith do not and will not (a) violate or contravene the organizational certificates, documents and agreements, as amended to date, of Buyer, (b) violate or contravene any Law to which Buyer is subject, or (c) conflict with or result in a breach of or constitute a default by any party under any contract, agreement, instrument or other document or contract to which Buyer is a party or by which Buyer or any of its assets or properties are bound or to which Buyer or any of its assets or properties are subject.

## **ARTICLE VI COVENANTS**

6.1. Conduct of the Dialysis Business Pending Closing. Seller agrees that, between the Execution Date and the Closing Date, unless Buyer shall consent in writing, (i) the Dialysis Business shall be conducted only in, and Seller shall not take any action except in, the ordinary course of business consistent with past practice, (ii) Seller shall use its best efforts to keep available the services of Center Employees and to preserve the current relationships of the Dialysis Business with such of the patients, suppliers, physicians and other persons with which Seller has significant business relations in order to preserve substantially intact the Dialysis Business, and (iii) Seller shall preserve intact the Acquired Assets and shall not discontinue the operations of the Dialysis Business. By way of amplification and not limitation, between the Execution Date and the Closing Date, Seller shall not, and shall neither cause nor permit any of Seller's Affiliates, officers, directors, trustees, employees and agents to, directly or indirectly, do, or agree to do, any of the following with respect to the Dialysis Business or the Acquired Assets, without the prior written consent of Buyer:

(a) Sell, pledge, dispose of, grant, transfer, lease, license, guarantee, encumber, or authorize the sale, pledge, disposition, grant, transfer, lease, license, guarantee or encumbrance of the Dialysis Business, or any of the Acquired Assets except in the ordinary course of business and in a manner consistent with past practice; provided that the aggregate amount of any such sale or disposition (other than a sale or disposition of products or other

inventory in the ordinary course of business consistent with past practice, as to which there shall be no restriction on the aggregate amount), or pledge, grant, transfer, lease, license, guarantee or encumbrance of such property or assets shall not exceed \$5,000;

(b) Acquire without disclosure to Buyer (including, without limitation, by merger, consolidation or acquisition of stock or assets) for or in connection with the Dialysis Business any interest in any corporation, partnership, other business organization, person or any division thereof or any assets, other than (i) acquisitions of any assets outside of the ordinary course of business consistent with past practice that are not, in the aggregate, in excess of \$10,000, (ii) acquisitions of equipment as contemplated by the last sentence of Section 1.1(b), or (iii) purchases of inventory for resale (whether for cash or pursuant to an exchange) in the ordinary course of business and consistent with past practice;

(c) Incur any indebtedness for borrowed money or issue any debt securities or assume, guarantee or endorse, or otherwise as an accommodation become responsible for, the obligations of any person for borrowed money;

(d) Enter into, amend, terminate, cancel or make any material change in any Dialysis Contract or Personal Property Lease;

(e) Make or authorize any capital expenditure, dividends or distributions;

(f) Increase the compensation payable or to become payable to any Center Employee, except for increases in the ordinary course of business in accordance with past practices in salaries or wages of such employees, or alter its current severance or termination programs and practices for any Center Employee, or establish, adopt, enter into or amend any collective bargaining, bonus, profit sharing, thrift, compensation, pension, retirement, deferred compensation, employment, termination, severance or other plan, agreement, trust, fund, policy or arrangement for the benefit of any Center Employee;

(g) Modify any material accounting policies, procedures or methods;

(h) Waive, release, assign, settle or compromise any claims or litigation relating to the Dialysis Business involving amounts in excess of \$5,000 or any agreements as to or limiting in any way the conduct of the Dialysis Business;

(i) Authorize or enter into any formal or informal agreement or otherwise make any commitment to do any of the foregoing;

(j) Take any action that could result in the representations and warranties set forth in Article IV becoming false or inaccurate;

(k) Take any action or fail to take any action that could result in a Seller Material Adverse Effect; or

(l) Permit or cause any of Seller's Affiliates to do any of the foregoing or agree or commit to do any of the foregoing.

6.2. Notice by Seller of Certain Events. Seller shall give prompt written notice to Buyer of (a) any notice or other communication from any person alleging that the consent of such person is or may be required in connection with the consummation of the transactions contemplated by this Agreement; (b) any notice or other communication from any governmental entity in connection with the transactions contemplated by this Agreement; (c) any actions, suits, claims, investigations or proceedings commenced or, to the best of Seller's knowledge, threatened against, relating to or involving or otherwise affecting Seller, the Dialysis Business or the Acquired Assets or the transactions contemplated by this Agreement; (d) the occurrence of a breach or default or event that, with notice or lapse of time or both, could become a breach or default under this Agreement or any Dialysis Contract or Personal Property Lease; and (e) any Seller Material Adverse Effect or change, event or circumstance which is likely to delay or impede the ability of Seller to consummate the transactions contemplated by this Agreement or to fulfill its obligations set forth herein.

6.3. Consents and Approvals; Coordination with Payors.

(a) Third Party Consents. Unless otherwise agreed to in writing by Buyer, Seller shall obtain prior to the Closing Date all Third Party Consents. If a Third Party Consent is not obtained and delivered at Closing and Buyer waives in writing such requirement, (i) neither this Agreement nor any action taken hereunder shall be deemed to constitute an assignment of any Acquired Asset or any Dialysis Contract if such assignment or attempted assignment would constitute a breach of any Dialysis Contract or result in the loss or diminution of any rights thereunder or acceleration of any obligations thereunder, and (ii) Seller shall cooperate with Buyer in any reasonable arrangement proposed by Buyer designed to provide Buyer with the benefits of the Acquired Asset and Dialysis Contract as to which such Third Party Consent relates, including enforcement by Seller, for the account and benefit of Buyer, of any and all rights of Seller against any other person arising out of the breach or cancellation of any such Dialysis Contract by such other person or otherwise.

(b) Governmental Approvals.

(i) Buyer and Seller shall file with the Centers for Medicare and Medicaid Services ("CMS") documentation notifying same of a change of ownership of the Dialysis Business effective as of the Closing Date. Seller shall cooperate with Buyer to take all actions necessary to transfer or reissue to Buyer the certificate of need ("CON") from the IDPH and Licenses for the Centers as of the Closing Date. Seller shall make all required filings with the Illinois Attorney General (the "Attorney General"), and diligently pursue all consents, approvals or authorizations required to be obtained from the Attorney General prior to the Closing Date.

(ii) Seller shall cooperate with Buyer to take all actions necessary to transfer or reissue to Buyer Seller's Medicare number and to issue to Buyer a new Medicaid provider number; provided, however, that the actual transfer or reissuance of the provider numbers prior to or on the Closing Date shall not be a condition to Closing. Upon Buyer's receipt of written notification from CMS and/or Seller's fiscal intermediary indicating that CMS has processed and approved Buyer's change of ownership application with respect to Seller's Medicare provider number (the "Medicare CHOW Approval"), Seller will (A) terminate all

electronic funds transfer arrangements with third party payors effective as of the Closing Date, and (B) notify the Medicare and Medicaid programs to discontinue the linkage of Seller's Medicare provider number to its Medicaid provider number.

(c) Cooperation. Buyer and Seller shall continue after the Closing Date to pursue the Third Party Consents and Governmental Approvals to the extent not previously obtained in connection with the consummation of the transactions contemplated hereunder. Each of the parties hereto shall, from time to time after the Closing Date, upon the request of any other party hereto and at the expense of such requesting party, duly execute, acknowledge and deliver all such further instruments and documents reasonably required to further effectuate the interests and purposes of this Agreement.

(d) Right to Revenues. Buyer shall have the right to receive all revenues from any source relating to services provided at or with respect to the Dialysis Business on and following the Closing Date and Seller shall pay to Buyer all cash received relating thereto. Seller shall have the right to retain all revenues received from any source relating to services provided at or with respect to the Dialysis Business prior to the Closing Date, and any such revenue received by Buyer shall be returned to Seller in accordance with the provisions of Section 6.7(b) below.

6.4. Cost Reports. Seller shall be responsible for accurately completing and filing on a timely basis all Medicare Cost Reports for the period up to the Closing Date. Seller shall provide Buyer with a reasonable opportunity to review such Medicare Cost Reports before filing. Buyer shall be responsible for completing and filing on time Medicare Cost Reports for the periods beginning on and after the Closing Date. Each of the parties shall provide reasonable access to their respective employees and records to the other party for the purpose of completing all such Medicare Cost Reports.

6.5. Inventory Value; Calculation. Representatives of Buyer shall be provided access to the Centers no less than three (3) weeks prior to the Closing Date in order to undertake with Seller a dry run inventory of supplies on site at each of the Centers. Buyer and Seller shall conduct the inventory using a template to be provided by Buyer to Seller at least one (1) week prior to such inventory. Between the date of the dry run inventory and the day before the Closing Date, Seller and Buyer will cooperate with each other in good faith to address any issues, including issues that may arise pertaining to pricing. On the day before the Closing Date, at a mutually agreed upon time, representatives of Buyer shall be provided access to the Centers to undertake with Seller a final inventory of supplies on site at such Centers. Each item of inventory shall be valued using Seller's contracted price of such inventory and supplies unless otherwise mutually agreed. The results of such inventory count shall be attached hereto as part of Schedule 1.1.

6.6. Closing Financial Statements; Final Financial Statements and Final Fixed Assets List.

(a) At least two (2) business days prior to the Closing Date, Seller shall prepare and deliver to Buyer unaudited statements of income for each Center as of the end of the calendar month ended not more than thirty one (31) days prior to the Closing Date, certified as

true and correct by the chief financial officer of Seller (the “Closing Financial Statements”). The Closing Financial Statements, which shall be subject to the approval of Buyer, will present fairly the income and expenses of each Center (and no other business of Seller) as of the last day of such calendar month, and will be prepared in accordance with accounting principles applied consistently with the Year-End Financial Statements and Interim Financial Statements. Any disclosure omitted due to the nonconformity of the Closing Financial Statements to GAAP, or the absence of footnotes in the Closing Financial Statements, shall not either individually or in the aggregate have a Seller Material Adverse Effect.

(b) As soon as practicable after the Closing, and in any event within thirty (30) days after the Closing Date, Seller shall prepare and deliver to Buyer unaudited statements of income (the “Final Financial Statements”) and a detailed listing of the Fixed Assets (the “Final Fixed Asset List”) for each Center as of midnight on the day before the Closing Date, certified as true and correct by the chief financial officer of Seller. The Final Financial Statements will present fairly the income and expenses of each Center (and no other business of Seller) as of midnight on the day before the Closing Date, and will be prepared in accordance with accounting principles applied consistently with the Year-End Financial Statements and Interim Financial Statements. The Final Fixed Asset List shall include each individually capitalized fixed asset included in the Acquired Assets, together with Seller’s original cost, in-service date, estimated useful life, and current net book value for each asset included thereon. Such Fixed Asset listing shall reflect the depreciation and amortization on a GAAP basis.

#### 6.7. Payments; Collections.

(a) Seller shall pay to Buyer all cash received from any source relating to services provided at or with respect to the Dialysis Business on and subsequent to the Closing Date. Such payments shall be made within forty-five (45) days of receipt of such payments by Seller, and a copy of the remittance advice shall accompany such payments.

(b) Buyer shall pay to Seller all cash received from any source relating to services provided at or with respect to the Dialysis Business prior to the Closing Date. Such payments shall be made within forty-five (45) days of receipt of such payments by Buyer, and a copy of the remittance advice shall accompany such payments.

(c) If and to the extent that Medicare or any other payor withholds funds from Buyer or Buyer is required to refund any payments due on claims which are attributable to any period prior to the Closing Date, and which payment Buyer did not receive and retain on or after the Closing Date, Seller shall promptly compensate and reimburse Buyer and take any such action as may be required to satisfy Medicare or any other payor as the case may be.

(d) If and to the extent that Medicare or any other payor withholds funds from Seller for services provided prior to the Closing Date as an offset for payments due to said payor from Buyer relating to services provided on or after the Closing Date, then Buyer shall promptly compensate and reimburse Seller and take any such action as may be required to satisfy Medicare or any other payor as the case may be.

#### 6.8. Preservation of and Access to Certain Records.

(a) After Closing, Buyer shall, in the ordinary course of business and to the extent required by Law, keep and preserve all records of the Dialysis Business existing as of the Closing and which are delivered to Buyer by Seller (it being acknowledged that only copies of medical records are being delivered to Buyer at Closing); provided that, notwithstanding any other provision of this Agreement, if and to the extent Buyer desires at any time following the Closing Date to dispose of any such records, Buyer shall first notify Seller of its intent and Seller shall have thirty (30) days following its receipt of such notice to notify Buyer of its intent to reclaim any such records in whole or in part. Seller shall reclaim such records no later than ten (10) days following Seller's delivery of such notice of intent. In addition to Buyer's obligations set forth herein, upon reasonable notice, subject to patient confidentiality and during regular business hours and at mutually agreeable times, Buyer will afford the representatives of Seller, including its counsel and accountants, full and complete access to, and copies of (at the sole cost and expense of Seller), the patient medical records transferred to Buyer at Closing; provided, however, that Seller shall indemnify Buyer and its Affiliates from any loss, liability or expense that may arise therefrom.

(b) After Closing, Seller shall, in the ordinary course of business and to the extent required by Law, keep and preserve all medical records and other records of the Dialysis Business as of Closing which are not delivered to Buyer by Seller and which are required to be kept and preserved by applicable Law or in connection with any claim or controversy pending at Closing involving the Dialysis Business. For such period, Seller shall retain and make available to representatives of Buyer, including its counsel and accountants, upon reasonable notice, subject to patient confidentiality and during regular business hours and at mutually agreeable times, full and complete access to, and copies of (at sole cost of Buyer), any such records of the Dialysis Business prior to the Closing Date and access to such of Seller's personnel as may be reasonably necessary for Buyer to comply with applicable Law or to resolve any such pending dispute. Notwithstanding the foregoing, should Seller wish to destroy such records or any portion thereof, Seller shall first notify Buyer of its intent and Buyer shall have thirty (30) days following its receipt of such notice to notify Seller of its intent to reclaim any such records in whole or in part. Buyer shall take possession of such records no later than ten (10) days following Buyer's delivery of such notice of intent.

(c) Seller shall cooperate and shall cause its auditors to cooperate (at Buyer's reasonable expense) with all reasonable requests of Buyer and its auditors necessary to audit all previously unaudited periods for activities of Seller relating to the Dialysis Business, for the purpose of enabling Buyer to make periodic reports pursuant to the Securities Exchange Act of 1934, as amended (the "Securities Exchange Act"), or to make a public offering of its securities under the Securities Act of 1933, as amended (the "Securities Act"), or for other reasonable business purposes, and Seller shall permit the historical financial statements of Seller relating to the Dialysis Business to be included (if required by the rules and regulations of the Securities and Exchange Commission (the "Commission") in any of Buyer's filings with the Commission under either the Securities Exchange Act or the Securities Act and in any prospectus used in connection with any offering of Buyer's securities. Seller acknowledges and agrees that such audits are necessary for Buyer's compliance with federal and state securities Laws and financial and tax reporting requirements, and agrees that Seller's failure to reasonably cooperate would cause Buyer irreparable harm, and therefore will not contest Buyer in seeking a temporary restraining order, preliminary injunction and other available equitable relief in the event of a breach of these



provisions, in addition to any and all other available remedies including damages. For a period of five (5) years after the Closing Date or longer if required by applicable Law, Seller shall retain all books and records relating to the Dialysis Business or the Acquired Assets not transferred to Buyer hereunder, shall afford access to such records to Buyer upon its reasonable request and to any employees of Seller with knowledge related to such records. Seller shall give Buyer at least thirty (30) days prior written notice of its intention to destroy any such books and records and shall provide Buyer the opportunity to take possession of such books and records, after which Seller may destroy such records if Buyer does not take possession.

6.9. Maintenance of Insurance Coverage. For a period of at least two (2) years following the Closing Date, Seller shall continue its currently existing professional and general liability insurance coverages at its own expense, either by continuing applicable existing policies or by purchasing tail insurance policies covering claims made on and following the Closing Date related to services provided by and liabilities incurred by Seller prior to the Closing Date.

6.10. Transition Services.

(a) Transitional Use of Manuals, Clinical Systems and Telecom Services.

(i) To the extent that they are not included within the Acquired Assets transferred to Buyer at Closing, effective as of the Closing Date, Seller grants Buyer the right to use, on a transitional basis for up to ninety (90) days after the Closing Date (the “Transition Period”), the clinical and operating policies and procedures manuals of Seller that are currently located at the Centers (the “Policy Manuals”). The parties acknowledge that the Policy Manuals may contain proprietary information of Seller, but Seller is willing to permit Buyer to retain and use the Policy Manuals as an accommodation to Buyer and in consideration of the Purchase Price, solely in connection with the sale of the Dialysis Business and the transition of patient care to Buyer. Accordingly, Seller hereby grants Buyer a limited license to use such Policy Manuals at the Centers during the Transition Period, provided that the Policy Manuals: (A) are used by the Buyer only in connection with the ordinary operation of the Centers, and (B) shall be returned to Seller promptly following the end of the Transition Period, and in any event no later than ninety-five (95) days after the Closing Date.

(ii) To the extent they are not included within the Acquired Assets transferred to Buyer at Closing, effective as of the Closing Date, Seller, to the extent legally permitted under any applicable license agreements, grants Buyer the right to use, on a transitional basis during the Transition Period, Seller’s clinical systems currently used at the Centers (the “Clinical Systems”). The parties acknowledge that one or more of the Clinical Systems are proprietary systems of the Seller, but Seller is willing to permit Buyer to retain and use the Clinical Systems as an accommodation to Buyer and in consideration of the Purchase Price, in connection with the sale of the Dialysis Business and the transition of patient care to Buyer. Accordingly, Seller hereby grants Buyer a limited license to use such Clinical Systems at the Centers during the Transition Period, provided, that: (A) the Clinical Systems are used only in connection with the ordinary operation of the Centers, (B) Buyer shall notify Seller when Buyer has discontinued its use of the Clinical Systems, and (C) Seller shall remove the Clinical Systems from the Centers promptly following the end of the Transition Period, and in any event no later than ninety-five (95) days after the Closing Date, and Buyer shall cooperate therewith.

(iii) As an accommodation to Buyer and in consideration of the Purchase Price, Seller agrees to permit Buyer to transfer the internet, telephone and cable television services at the Centers (collectively, "Telecom Services") to Buyer's own name after the Closing, and Seller shall reasonably cooperate with Buyer in arranging such transfer of services. Buyer shall use commercially reasonable efforts to transfer such services to its own name promptly after the Closing, and in any event prior to the end of the Transition Period, and Seller agrees not to terminate such services before the expiration of the Transition Period. Buyer shall reimburse Seller upon demand for the prorated cost of such services, without mark-up, for the period from the Closing Date through the date that such services are transferred. Seller shall provide Buyer with a copy of Seller invoice for such services to support such reimbursement.

(iv) Buyer acknowledges that Seller has not made, and Seller hereby expressly disclaims and negates, any representation or warranty, implied or expressed, relating to the Policy Manuals, Clinical Systems or Telecom Services, including, without limitation, any implied or express warranty of merchantability; any implied or express warranty of fitness for a particular purpose; and any implied or express warranty of freedom from defects, whether known or unknown. To the fullest extent permitted by Law, Buyer hereby waives and releases any and all rights, claims and causes of action that Buyer or any of its Affiliates may have against Seller or any of its Affiliates arising out of Buyer's possession or use of the Policy Manuals, Clinical Systems or Telecom Services, including any claims based on any defects in the Policy Manuals, Clinical Systems or Telecom Services.

(b) Ancillary Transition Services. Effective as of the Closing Date, Seller agrees to permit Buyer to use the medical waste disposal, janitorial, pest control and fire safety and alarm services, and the copiers, facsimile machines and computers at the Centers (collectively, "Ancillary Transition Services") on a transitional basis during the Transition Period. The parties acknowledge that Seller is willing to provide the Ancillary Transition Services as an accommodation to Buyer and in consideration of the Purchase Price, in connection with the transactions contemplated by this Agreement and the transition of patient care to Buyer. Buyer shall use commercially reasonable efforts to arrange for such services in its own name promptly after the Closing, and in any event prior to the end of the Transition Period, and Seller agrees not to terminate such services before the expiration of the Transition Period. Buyer shall reimburse Seller upon demand for the cost of such services without mark-up for the period from the Closing Date through the date that such services are terminated. Seller shall provide Buyer with a copy of Seller's invoice for such services to support such reimbursement.

(c) Termination of Transition Services. Buyer or its Affiliate may terminate any of the Transition Services (or any part of them) and the Employee Transition Period or Transition Period, as applicable, upon three (3) days prior written notice to Seller. Seller shall have the right to terminate the Transition Services (or any part of them) immediately and without prior notice in the event Buyer or its Affiliate, as applicable, does not timely reimburse Seller for the provision of Transition Services pursuant to the above provisions of this Section 6.10, which goes uncured for ten (10) days following notice to Buyer or its Affiliate of such nonpayment.

6.11. Updates to Seller's Disclosure Schedules. Following the Execution Date and until the Closing Date, Seller shall promptly supplement or amend the disclosure schedules referred to in Article IV and matters disclosed pursuant to Sections 4.10(m) and 6.1(b) to reflect any fact

necessary to make the representations true and correct. No such supplement or amendment shall affect Buyer's rights under Section 8.1(a), and the conditions in such section shall be applied without taking into account any such supplement or amendment.

6.12. Naming Rights. Seller acknowledges and agrees that Buyer shall have the right to designate the name of each Center; provided, however, that, within a reasonable period of time following the Closing, Buyer shall incorporate the name of the founder of Silver Cross Renal Center – East, Dr. Satish Kathpalia, into the name of each Center and/or on a memorial located within each Center. Notwithstanding the foregoing, Buyer shall have the right to identify each Center as an outpatient dialysis facility owned by Buyer following Closing.

## **ARTICLE VII CONFIDENTIALITY; NON-COMPETITION**

### 7.1. Confidentiality.

(a) The parties agree that (i) all information not disclosed to the public by Seller regarding the Dialysis Business and the medical information of any patient currently receiving treatment or having previously received treatment at the Centers, which is compiled by, obtained by, or furnished to Buyer or any of its agents or employees in the course of its due diligence review of the Dialysis Business is acknowledged to be confidential information, trade secrets and the exclusive property of Seller through the Closing Date, and of Buyer thereafter, and (ii) all information not disclosed to the public by Buyer regarding Buyer's business or operations is acknowledged to be confidential information, trade secrets and the exclusive property of Buyer (collectively, "Confidential Information").

(b) The term "Confidential Information" shall include the terms of this Agreement and the transactions contemplated hereby. Each of the parties hereto agrees not to divulge, directly or indirectly, any Confidential Information of the other party in any manner contrary to the interests of such party, use or cause or suffer to be used any Confidential Information in competition with such party, or use Confidential Information in violation of the patients' confidentiality rights under HIPAA or any applicable state Law. Each of the parties acknowledges that the breach or threatened breach of the provisions of this Section would cause irreparable injury to the other party that could not be adequately compensated by money damages. Accordingly, a party may obtain a restraining order and/or injunction prohibiting a breach or threatened breach of the provisions of this Section, in addition to any other legal or equitable remedies that may be available. If requested by legal process to disclose any Confidential Information of another party, the party in receipt of such request shall promptly give notice thereof to the other party so that such party may, at its own cost and expense, seek an appropriate protective order or, in the alternative, waive compliance to the extent necessary to comply with such request if a protective order is not obtained. If a protective order or waiver is granted, the party subject to such legal process may disclose the Confidential Information to the extent required by such court order or as may be permitted by such waiver. Notwithstanding any part of the foregoing, Buyer shall be permitted to disclose Confidential Information, including without limitation a copy of this Agreement and the Assignment and Assumption and Bill of Sale, for the purpose of complying with government filing requirements.

(c) The term “Confidential Information” does not include information that (i) is at the time of disclosure or later becomes generally known to the public or within the industry or segment of the industry to which such information relates without violation by a party of any of its obligations hereunder and not through any action by any of its directors, officers, trustees, employees and agents which, if committed by such party, would have constituted a violation by it of any of its obligations hereunder; (ii) at the time of disclosure to the other party was already known by such other party; or (iii) after the time of the disclosure to the other party, is received by such party from a third party which, to such party’s best knowledge, is under no confidentiality obligation with respect thereto.

7.2. Non-Competition and Non-Solicitation. The parties will mutually agree upon a covenant not to compete and covenant not to solicit prior to the Closing.

## **ARTICLE VIII**

### **CONDITIONS PRECEDENT TO BUYER’S PERFORMANCE AND TO SELLER’S PERFORMANCE**

8.1. Conditions to Buyer’s Obligations. The obligations of Buyer under this Agreement are subject to the satisfaction of the following conditions on or prior to the Closing Date, all or any of which may be waived in writing by Buyer:

(a) All representations and warranties made by Seller in this Agreement and in any written statements delivered to Buyer under this Agreement shall be true and correct as of the Execution Date and as of the Closing Date as though made on such dates.

(b) Seller shall have performed, satisfied and complied with all obligations and covenants required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date.

(c) As of the Closing Date, there shall not have occurred any Seller Material Adverse Effect since the date of the Interim Financial Statements.

(d) Seller shall have delivered to Buyer all documents required to be delivered by them, and all such documents shall have been properly executed by each of them, if applicable. Such documents shall include, without limitation:

(i) The receipt by Buyer of a corporate good standing certificate for Seller from the State of Illinois, dated no more than ten (10) days prior to the Closing Date;

(ii) A certificate signed by the secretary or other authorized officer of Seller and dated on or prior to the Closing Date, certifying (A) that the Board of Trustees has adopted resolutions to authorize the transactions contemplated by this Agreement, and (B) a specimen signature of an officer duly authorized thereby to execute the Acquisition Agreements and such other documents to be delivered in connection with Closing on behalf of Seller;

(iii) Evidence of continued professional and general liability insurance coverage by Seller for the Dialysis Business for the period of time prior to Closing; and

(iv) Such other documents and instruments, each in a form reasonably satisfactory to Buyer and its counsel, as may be reasonably requested by Buyer in order to carry out the transaction contemplated by this Agreement and to vest good and marketable title in the Acquired Assets in Buyer, free and clear of all Liens.

(e) Seller shall have executed and delivered to Buyer the Assignment and Assumption and Bill of Sale in the form attached hereto as Exhibit A, dated and effective as of the Closing Date.

(f) Buyer shall have received all Third Party Consents in form and substance satisfactory to Buyer, effective as of the Closing Date.

(g) Buyer shall have received all Governmental Approvals and consents by necessary governmental authorities to the transfer or reissuance to Buyer of all CONs and all Licenses for the Centers in form and substance satisfactory to Buyer, with the exception of tie-in notices with respect to Seller's Medicare and Medicaid provider numbers; provided that Buyer shall have no reason to believe that it will not receive the Medicare CHOW Approval retroactive to the Closing Date.

(h) Buyer shall have received payment and release letters, together with UCC-3 termination statements, from all parties having financing statements filed against the Acquired Assets in form and substance satisfactory to Buyer.

(i) Buyer shall have received a Medical Director Agreement for each Center, in form and substance satisfactory to Buyer, with a qualified, board-certified nephrologist acceptable to Buyer to serve as medical director(s) of each of the Centers, dated and effective as of the Closing Date.

(j) Buyer shall have received for the Silver Cross Renal Center – Morris an Amendment, Assignment, Assumption and Consent executed by Seller and the landlord for the Silver Cross Renal Center – Morris, amending certain terms of and assigning to Buyer Seller's existing lease for that portion of the Premises that it currently leases from the landlord, in form and substance satisfactory to Buyer, dated and effective as of the Closing Date.

(k) Buyer shall have received the following:

(i) A sublease for the Silver Cross Renal Center executed by Seller, as sublessor, and consented to by SCH MSB LLC, a Colorado limited liability company, as master landlord, in form and substance satisfactory to Buyer, dated and effective as of the Closing Date; and

(ii) A lease for the Silver Cross Renal Center – West executed by Seller or an Affiliate of Seller, as landlord, in form and substance satisfactory to Buyer, dated and effective as of the Closing Date.

(l) Buyer shall have received all approvals, consents and clearances from governmental authorities, including the Attorney General, and others in connection with the transactions contemplated by this Agreement deemed necessary by Buyer, including receipt by

Buyer of all licenses, permits, consents and approvals for Buyer to own and operate the Dialysis Business and be reimbursed therefor in the same manner after the Closing Date.

(m) Buyer shall have received and approved the Closing Financial Statements two (2) days prior to the Closing Date.

(n) Buyer shall have received certificates of an authorized officer of Seller certifying: (i) as of the Execution Date and as of the Closing Date, the accuracy of Seller's representations and warranties as set forth in Article IV hereof, (ii) as of the Execution Date and as of the Closing Date, compliance with Seller's covenants as set forth in this Agreement, and (iii) the Inventory Value as of the Closing Date.

(o) Seller shall have delivered to Buyer, no later than ten (10) business days before the Closing Date, a detailed listing of the Fixed Assets (as defined in GAAP) to be included in the Acquired Assets as of the Closing Date, dated as of the most recent month ended before the Closing Date, which listing shall be certified as true and complete by Seller's Chief Financial Officer and shall include each individually capitalized fixed asset included in the Acquired Assets, together with Seller's original cost, in-service date, estimated useful life, and current net book value for each asset included thereon. Such listing shall reflect depreciation and amortization on a GAAP basis, and not on a federal income tax basis.

(p) Seller shall have executed and delivered (i) to Buyer, for submission to the appropriate authorities, CMS Form 855A, duly completed to report the change of ownership of the Centers, and (ii) to the appropriate healthcare licensing authority of the State of Illinois and, in each case to the extent applicable, notice relinquishing Seller's license to operate each Center or amending Seller's license to remove each Center therefrom.

(q) The Transferring Employees as of the Closing Date shall be sufficient to operate the Centers in a manner consistent with their operation as of the Execution Date of this Agreement.

(r) Seller shall have delivered to Buyer a complete copy of the medical records of each patient who is being dialyzed at any Center as of the Closing Date, such copies to be provided in paper or electronic format, as available.

(s) Seller shall have delivered to Buyer evidence satisfactory to Buyer, in Buyer's sole discretion, proving resolution of those matters identified during Buyer's compliance audit of Seller's billing practices.

(t) Seller shall have executed and delivered to Buyer a STAT laboratory services agreement (the "STAT Laboratory Services Agreement"), in form and substance satisfactory to Buyer, dated and effective as of the Closing Date.

(u) Seller shall have executed and delivered to Buyer an Interim Laboratory Services Agreement (the "Interim Laboratory Services Agreement"), in form and substance satisfactory to Buyer, dated and effective as of the Closing Date.

(v) Buyer shall have been satisfied, in its sole discretion, with the results of its due diligence investigation of Seller, the Dialysis Business and the Centers.

(w) Buyer shall be satisfied, in its sole discretion, that (i) the corrections specified in the Plan of Correction for the Statement of Deficiencies identified in the Medicare survey completed January 24, 2012 at Silver Cross Renal Center have been completed, (ii) the corrections and remediation specified in the Plan of Correction for the Statement of Deficiencies identified in the Medicare Life Safety survey completed January 19, 2012 at Silver Cross Renal Center have been completed, and (iii) IDPH has approved the correction and remediation of all deficiencies set forth therein.

8.2. Conditions to Seller's Obligations. The obligations of Seller under this Agreement are subject to the satisfaction of the following conditions, on or prior to the Closing Date, all or any of which may be waived in writing by Seller:

(a) All representations and warranties made by Buyer in this Agreement and in any written statements delivered to Seller under this Agreement shall be true and correct as of the Execution Date and as of the Closing Date as though made on such date.

(b) Buyer shall have performed, satisfied and complied with all obligations and covenants of Buyer required by this Agreement to be performed or complied with by it on or prior to the Closing Date.

(c) Buyer shall have delivered to Seller all documents required to be delivered by Buyer, and all such documents shall have been properly executed by Buyer, if applicable.

(d) Buyer shall have delivered to Seller a corporate good standing certificate from the State of California, and a certificate of good standing from the State of Illinois showing that it is authorized to business in the State of Illinois, each dated no more than ten (10) days prior to the Closing Date.

(e) Buyer shall have delivered to Seller certificates signed by an authorized representative of Buyer certifying, as of the Execution Date and as of the Closing Date, (i) the accuracy of Buyer's representations and warranties as set forth in Article V hereof, and (ii) compliance with Buyer's covenants as set forth in this Agreement.

(f) Buyer shall have executed and delivered to Seller the Assignment and Assumption and Bill of Sale, and each of the Amendment, Assignment, Assumption and Consent, sublease and lease referenced in Sections 8.1(e), (j) and (k) above, dated and effective as of the Closing Date.

(g) Buyer shall have executed and delivered to Seller the Pedigree Side Agreement.

(h) Buyer shall have executed and delivered to Seller the STAT Laboratory Services Agreement.

(i) Buyer shall have executed and delivered to Seller the Interim Laboratory Services Agreement.

8.3. No Injunction or Action. The obligations of both Buyer and Seller under this Agreement are conditioned upon there being, as of the Closing Date, no preliminary or permanent injunction or other order, decree or ruling issued by a court of competent jurisdiction or by a governmental agency concerning this Agreement which would make illegal or otherwise prevent consummation of this Agreement in accordance with its terms, and no proceeding or action brought by any governmental authority seeking the foregoing shall be pending.

## **ARTICLE IX SURVIVAL OF REPRESENTATIONS AND WARRANTIES; INDEMNIFICATION**

9.1. Survival of Representations and Warranties. All Buyer and Seller representations and warranties contained in this Agreement or any other agreement, schedule, certificate, instrument or other writing delivered by Buyer and Seller in connection with this transaction shall survive for five (5) years after the Closing Date. If a party hereto determines that there has been a breach by any other party hereto of any such representation or warranty and notifies the breaching party in writing reasonably promptly after learning of such breach, such representation or warranty and liability therefor shall survive with respect to the specified breach until such breach has been resolved, but no party shall have any liability after such five (5) year period for any matters not specified in a writing delivered within such five (5) year period. Notwithstanding any term in this Section 9.1, the applicable statute of limitations shall be the survival period for any matter relating to (a) fraud or willful, intentional or reckless misrepresentation or willful omission of a material fact in connection with this Agreement or the Acquisition Agreements and the transactions contemplated hereby or thereby, (b) any liability relating to personal injury, or (c) any alleged or actual violation of the representations and warranties made in any of the following sections of this Agreement: Section 4.13 - "Payment Programs"; Section 4.14 - "Compliance with Laws"; Section 4.16 - "Benefit Plan Compliance with Provisions of Applicable Law"; and Section 4.19 - "Taxes" (the items in this clause (c) are collectively referred to as the "Fundamental Representations").

9.2. Indemnification by Seller. Subject to the provisions of Section 9.4 below, Seller agrees unconditionally to indemnify, defend and hold Buyer harmless, on demand, from and against the following:

(a) Any and all Losses of every kind, nature or description which arise out of or result from or as a consequence of (i) any false, incorrect or misleading representation or warranty or breach thereof made by or on behalf of Seller in this Agreement (including the Exhibits and Schedules hereto) or in any of the Acquisition Agreements; or (ii) any failure by Seller to perform, comply with or observe any one or more of their covenants, agreements or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Buyer in connection with this Agreement or any of the transactions contemplated by this Agreement; and

(b) Any and all Losses which may at any time or from time to time arise out of or result from or as a consequence of (i) the provision, delivery or sale by Seller at any time



prior to the Closing Date of any services; (ii) the production, provision or sale by Seller at any time prior to the Closing Date of any property, products, materials or supplies of any kind; (iii) any Excluded Liability; (iv) any failure by Seller to comply with the provisions of this Agreement; and (v) relating to, or the failure by Seller to discharge, any obligations of Seller which were incurred by Seller on account of the period prior to the Closing Date (except for the Assumed Liabilities), including without limitation the following: (A) any audit or investigation or civil, administrative or criminal proceedings arising as a result of the Dialysis Business prior to the Closing Date whether or not Seller or its Affiliates had knowledge thereof as of the Closing Date, (B) any assessments, adjustments or offsets made against Buyer as a result of such an audit or investigation or in connection with the recovery by any governmental authority or administrative agency or any third party payor of any overpayments made to Seller for services performed prior to the Closing Date, or (C) Seller's failure to obtain any Third Party Consent referred to herein which is not actually waived in writing by Buyer or UCC-3 release for any UCC-1 on file against Seller prior to Closing.

Without limiting the generality of the foregoing provisions of this Section 9.2 with respect to the measurement of damages, Buyer shall have the right to be put in the same financial position as it would have been in had the representations and warranties of Seller been true and correct, had each of the covenants of Seller been performed in full, and had Seller paid, discharged and performed all of its liabilities and obligations.

9.3. Indemnification by Buyer. Subject to the provisions of Section 9.4 below, Buyer agrees unconditionally to indemnify, defend and hold Seller harmless, on demand, from and against any and all of the following that could reasonably result in a judgment or legal action:

(a) Any and all Losses of every kind, nature or description which arise out of or result from or as a consequence of (i) any false, incorrect or misleading representation or warranty or breach thereof made by or on behalf of Buyer in this Agreement (including the Exhibits and Schedules hereto) or in any of the Acquisition Agreements; or (ii) any failure by Buyer to perform, comply with or observe any one or more of its covenants, agreements, or obligations contained in this Agreement or in any other agreement, instrument or document delivered to Seller in connection with this Agreement or any of the transactions contemplated by this Agreement; and

(b) Any and all Losses which may at any time or from time to time arise out of or result from or as a consequence of (i) the provision, delivery or sale by Buyer at any time on or after the Closing Date of any services; (ii) the production, provision or sale by Buyer at any time on or after the Closing Date of any property, products, materials or supplies of any kind; (iii) any Assumed Liability; (iv) any failure by Buyer to comply with the provisions of this Agreement; and (v) relating to, or the failure by Buyer to discharge, any obligations of Buyer which were incurred by Buyer on or after the Closing Date (except for the Excluded Liabilities), including without limitation the following: (A) any audit or investigation or civil, administrative or criminal proceedings arising as a result of the business of the Centers on or after the Closing Date, and (B) any assessments, adjustments or offsets made against Seller as a result of such an audit or investigation or in connection with the recovery by any governmental authority or administrative agency or any third party payor of any overpayments made to Buyer for services performed on or after the Closing Date.

Without limiting the generality of the foregoing provisions of this Section 9.3 with respect to the measurement of damages, Seller shall have the right to be put in the same financial position as it would have been in had the representations and warranties of Buyer been true and correct, had each of the covenants of Buyer been performed in full, and had Buyer paid, discharged and performed all of its respective liabilities and obligations.

9.4. Indemnification Process. Any party seeking indemnification under this Article IX (an “Indemnified Party”) shall give each party from whom indemnification is being sought (each, an “Indemnifying Party”) notice of any matter which such Indemnified Party has determined has given rise to or could give rise to a right of indemnification under this Agreement, stating the amount of the loss, if known, and method of computation thereof, and containing a reference to the provisions of this Agreement in respect of which such right of indemnification is claimed or arises. The obligations and liabilities of an Indemnifying Party under this Article IX with respect to Losses arising from claims of any third party which are subject to the indemnification provided for in this Article IX (“Third Party Claims”) shall be governed by and contingent upon the following additional terms and conditions:

(a) If any Indemnified Party shall receive notice of any Third Party Claim, the Indemnified Party shall give the Indemnifying Party notice of such Third Party Claim within thirty (30) days of the receipt by the Indemnified Party of such notice; provided, however, that the failure to provide such notice shall not release the Indemnifying Party from any of its obligations under this Article IX except to the extent the Indemnifying Party is materially prejudiced by such failure.

(b) If the Indemnifying Party acknowledges in writing its obligation to indemnify the Indemnified Party hereunder against any losses that may result from such Third Party Claim, then the Indemnifying Party shall be entitled to assume and control the defense of such Third Party Claim at its expense and through counsel of its choice if it gives notice of its intention to do so to the Indemnified Party within thirty (30) days of the receipt of such notice from the Indemnified Party; provided, further however, that if it would be a conflict of interest for the same counsel to represent both the Indemnified Party and the Indemnifying Party, then the Indemnified Party shall be entitled to retain its own counsel, in each jurisdiction for which the Indemnified Party determines counsel is required, at the expense of the Indemnifying Party.

(c) In the event the Indemnifying Party exercises the right to undertake any such defense against any such Third Party Claim as provided above, the Indemnified Party shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party’s expense, all witnesses, pertinent records, materials and information in the Indemnified Party’s possession or under the Indemnified Party’s control relating thereto as is reasonably required by the Indemnifying Party. Similarly, in the event the Indemnifying Party declines to take such defense and the Indemnified Party is, directly or indirectly, conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party’s expense, all such witnesses, records, materials and information in the Indemnifying Party’s possession or under the Indemnifying Party’s control relating thereto as is reasonably required by the Indemnified Party.

(d) If the Indemnifying Party shall have failed to assume the defense of any claim in accordance with the provisions of this article, then the Indemnified Party shall have the absolute right to control the defense of such claim and, if and when it is finally determined that the Indemnified Party is entitled to indemnification from the Indemnifying Party hereunder, the fees and expenses of the Indemnified Party's counsel shall be borne by the Indemnifying Party and paid by the Indemnifying Party to the Indemnified Party within five (5) business days of written demand therefor, but the Indemnifying Party shall be entitled, at its own expense, to participate in (but not control) such defense.

(e) So long as the Indemnifying Party has assumed and is conducting the defense of the Third Party Claim in accordance with Section 9.4(b) above, (i) the Indemnifying Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Party (not to be withheld unreasonably provided that the Indemnified Party is completely released from all claims) unless the judgment or proposed settlement involves only the payment of money damages by the Indemnifying Party and does not impose an injunction or other equitable relief upon the Indemnified Party, and (ii) the Indemnified Party will not consent to the entry of any judgment or enter into any settlement with respect to the Third Party Claim without the prior written consent of the Indemnifying Party (not to be withheld unreasonably).

(f) The rights and remedies of Buyer and Seller set forth in this Article IX shall constitute the sole and exclusive remedy for the matters described herein. Prior to Closing, the parties will agree to any limitations on the provisions set forth in this Article IX.

## **ARTICLE X MISCELLANEOUS**

10.1. Termination. This Agreement may be terminated and the transaction contemplated hereby may be abandoned at any time prior to the Closing Date as follows:

(a) By mutual written consent of Buyer and Seller;

(b) By either Buyer or Seller upon thirty (30) days written notice to the other party, if Closing shall not have occurred on or before April 1, 2012; provided, however, that (i) the right to terminate this Agreement under this Section 10.1(b) shall not be available to the party whose failure to fulfill any obligation under this Agreement shall have been the cause of, or resulted in, the failure of Closing to occur on or before such date; and (ii) if the Closing is able to be held within the thirty (30) days following the giving of the notice in this Section, then the notice of termination shall be of no effect and the Closing shall occur;

(c) By either Buyer or Seller, if any final and nonappealable order or other legal restraint or prohibition preventing the consummation of the transaction contemplated by this Agreement shall have been issued by any governmental authority or any Law shall have been enacted or adopted that enjoins, prohibits or makes illegal consummation of the transaction;

(d) By Buyer, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the

part of Seller set forth in this Agreement, such that a condition set forth in Section 8.1 would not be satisfied; or

(e) By Seller, upon a breach of, or failure to perform in any material respect (which breach or failure cannot be or has not been cured within thirty (30) days after the giving of notice of such breach or failure), any representation, warranty, covenant or agreement on the part of Buyer set forth in this Agreement, such that a condition set forth in Section 8.2 would not be satisfied.

10.2. Notice of Termination; Effect of Termination; Return of Deposit.

(a) In the event of termination of this Agreement by either Buyer or Seller pursuant to Section 10.1 (b), (c), (d) or (e) hereof, the terminating party shall give prompt written notice thereof to the nonterminating party. In the event of termination of this Agreement pursuant to Section 10.1, this Agreement shall be of no further effect, there shall be no liability under this Agreement on the part of either Buyer or Seller and all rights and obligations of each party hereto shall cease, provided, however, that nothing herein shall relieve any party from liability for the breach of any of its representations and warranties or the breach of any of its covenants or agreements set forth in this Agreement.

(b) If the Closing does not occur, Seller shall retain the Deposit unless the reason why the Closing does not occur is due to one or more of the following reasons: (i) Seller's Board of Directors or Trustees fails to approve the transactions contemplated by this Agreement and the other Acquisition Agreements, including the sale of the Dialysis Business and the transfer of the Acquired Assets from Seller to Buyer (the "Transaction"); (ii) Seller's management does not recommend approval of the Transaction materially consistent with the terms of the Letter of Intent dated August 12, 2011, as amended, between DaVita Inc. and Seller, and with other standard terms for a transaction of this size and nature to Seller's Board of Directors or Trustees; (iii) Seller breaches any of its obligations set forth in this Agreement; (iv) Seller fails to use commercially reasonable efforts to cooperate with Buyer's diligence activities and the regulatory approval process and to consummate the Transaction; (v) Seller fails to satisfy the conditions to Closing set forth in Section 8.1 of this Agreement; or (vi) the operations of the Dialysis Business are materially inconsistent with the information provided by Seller to Buyer during its preliminary due diligence in April 2011. If the Transaction does not close due to one or more of the foregoing, Seller shall return the Deposit to Buyer no more than three (3) business days following such event.

10.3. Expenses. Each of the parties hereto shall pay its own fees, costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

10.4. Entire Subject Matter; Amendment. This Agreement, together with its Schedules and Exhibits and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing, contains the entire understanding of the parties with respect to the subject matter hereof and supersedes all prior agreements, either oral or written. The Agreement may not be amended, or any term or condition waived, unless signed by the party to be charged or making the waiver. Each party to this Agreement acknowledges that no representations, inducements, promises, or

agreements, orally or otherwise, have been made by other party(ies), or by anyone acting on behalf of any party, that are not embodied herein, and that no other agreement, statement, or promise not contained in this Agreement shall be valid or binding.

10.5. Assignment. No party hereto shall assign or otherwise transfer this Agreement or any of its rights hereunder, or delegate any of its obligations hereunder, without the prior written consent of the other party; provided, however, that Buyer shall be permitted, without the consent of Seller, to assign or otherwise transfer this Agreement or any of its rights hereunder: (a) upon the purchase or sale of all or substantially all of the assets or stock of DaVita Inc. or the transfer (by operation of law or otherwise) of the ownership or control of DaVita Inc., to the purchaser of such assets or stock or the transferee of such interests; (b) upon the purchase, transfer or sale of all or substantially all of the Acquired Assets purchased from Seller by Buyer pursuant to this Agreement or the business or operations conducted at the Centers (or any replacement location) to the purchaser or transferee of such Acquired Assets, business or operations; or (c) to any Affiliate of Buyer. Subject to the foregoing, this Agreement and the rights and obligations set forth herein shall inure to the benefit of, and be binding upon the parties hereto, and each of their respective successors, heirs and assigns.

10.6. Counterparts. This Agreement may be executed in two or more counterparts, any one of which need not contain the signatures of all parties, but all of which counterparts when taken together will constitute one and the same agreement.

10.7. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the Laws of the State of Illinois applicable to contracts made and to be performed in that State. The parties agree, with respect to any litigation arising directly or indirectly out of, or that in any way relates to, this Agreement or the parties' respective obligations hereunder, to commence it exclusively in the State of Illinois Courts of Will County, Illinois, and by this Agreement consents to the jurisdiction of these courts.

10.8. Schedules and Exhibits. The Schedules and Exhibits attached hereto are an integral part of this Agreement. All exhibits and schedules attached to this Agreement are incorporated herein by this reference and all references herein to this "Agreement" shall mean this Asset Purchase Agreement together with all such exhibits and schedules, and all ancillary agreements and exhibits and schedules thereto to be delivered at Closing.

10.9. Severability. Any provision hereof which is held to be prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be adjusted rather than avoided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible without in any manner invalidating the remaining provisions hereof.

10.10. Notices. All notices or other communications required or permitted hereunder shall be in writing and shall be deemed properly given three (3) business days after being sent by registered or certified mail, postage prepaid, to the parties at the address listed below:

If to Seller: Silver Cross Hospital  
1200 Maple Road  
Joliet, Illinois 60432

Attention: President

With a copy to:

Barnes & Thornburg LLP  
One North Wacker Drive, Suite 4400  
Chicago, IL 60606-2833  
Attention: Charles J. Schultz, Esq.

If to Buyer:

Total Renal Care, Inc.  
c/o DaVita Inc.  
601 Hawaii Street  
El Segundo, California 90245  
Attention: Chief Operating Officer

With copies to:

DaVita Inc.  
601 Hawaii Street  
El Segundo, California 90245  
Attention: General Counsel

DaVita Inc.  
601 Hawaii Street  
El Segundo, California 90245  
Attention: Vice President for Corporate Development

10.11. Representation by Counsel. Each party hereto acknowledges that it has been advised by legal and any other counsel retained by such party in its sole discretion. Each party acknowledges that such party has had a full opportunity to review this Agreement and all related exhibits, schedules and ancillary agreements and to negotiate any and all such documents in its sole discretion, without any undue influence by any other party hereto or any third party.

10.12. Construction. The parties have participated jointly in the negotiations and drafting of this Agreement and in the event of any ambiguity or question of intent or interpretation, no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

10.13. Headings. The section headings contained in this Agreement are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Agreement.

10.14. Waivers. No waiver by any party, whether express or implied, of its rights under any provision of this Agreement shall constitute a waiver of the party's rights under such provisions at any other time or a waiver of the party's rights under any other provision of this Agreement. No failure by any party to take any action against any breach of this Agreement or default by another party shall constitute a waiver of the former party's right to enforce any provision of this Agreement or to take action against such breach or default or any subsequent breach or default by the other party. To be effective any waiver must be in writing and signed by the waiving party.

10.15. Public Announcements. Except for any announcement intended solely for internal distribution by either party or any disclosure require by legal, accounting, or regulatory requirements, all media releases, public announcements, or public disclosures, including but not limited to promotional or marketing material, by either party or its employees or agents relating to this Agreement or its subject matter, shall be coordinated with and approved in writing by the other party prior to the release thereof.

[Signatures on following page.]

**THEREFORE**, the parties hereto have executed, or caused this Asset Purchase Agreement to be executed by their duly authorized representatives, as of the date first written above.

**BUYER:**

TOTAL RENAL CARE, INC.

  
\_\_\_\_\_  
By: David Finn  
Its: Vice President

**SELLER:**

SILVER CROSS HOSPITALS AND  
MEDICAL CENTERS, INC.

\_\_\_\_\_  
By:  
Its:



**THEREFORE**, the parties hereto have executed, or caused this Asset Purchase Agreement to be executed by their duly authorized representatives, as of the date first written above.

**BUYER:**

TOTAL RENAL CARE, INC.

**SELLER:**

SILVER CROSS HOSPITALS AND  
MEDICAL CENTERS, INC.

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By: David Finn  
Its: Vice President



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By: Paul Pawlak  
Its: President and Chief Executive Officer

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**EXHIBIT A**

**CENTERS**

Silver Cross Renal Center  
1890 Silver Cross Boulevard  
New Lenox, Illinois

Silver Cross Renal Center West  
1051 Essington Road  
Joliet, Illinois

Silver Cross Renal Center Morris  
1551 Creek Drive  
Morris, Illinois

## **EXHIBIT B**

### **ASSIGNMENT AND ASSUMPTION AND BILL OF SALE**

This Assignment and Assumption and Bill of Sale (the “Agreement”), is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2012 (the “Closing Date”) by and between Silver Cross Hospitals and Medical Centers, Inc., an Illinois not-for-profit corporation (“Seller”), and Total Renal Care, Inc., a California corporation (“Buyer”).

#### **RECITALS**

**WHEREAS**, Seller and Buyer are parties to that certain Asset Purchase Agreement effective as of the Closing Date (the “Purchase Agreement”) relating to the Centers listed on Exhibit A hereto, pursuant to which (i) Seller has agreed to sell, convey, transfer, assign and deliver to Buyer the Acquired Assets (as defined in the Purchase Agreement), and (ii) Seller has agreed to assign, and Buyer has agreed to assume, the Assumed Liabilities (as defined in the Purchase Agreement); and

**WHEREAS**, all capitalized terms not defined herein shall have the meanings ascribed to such terms in the Purchase Agreement.

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

1. Bill of Sale.

(a) Seller hereby sells, conveys, transfers, assigns and delivers to Buyer, its successors and assigns, free and clear of any pledge, lien, option, security interest, mortgage or other encumbrance, and Buyer does hereby acquire from Seller, all right, title and interest in, to and under the Acquired Assets. The Acquired Assets shall include all rights, privileges, hereditaments and appurtenances belonging, incident or appertaining to the Acquired Assets.

(b) Notwithstanding anything contained herein, Buyer is not purchasing from Seller any Excluded Assets.

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

(d) Seller does hereby irrevocably constitute and appoint Buyer, its successors and assigns, its true and lawful attorney, with full power of substitution, in its name or otherwise, and on behalf of Seller, or for its own use, to claim, demand, collect and receive at any time and from time to time any and all Acquired Assets, properties, claims, accounts and other rights,

tangible or intangible, hereby sold, transferred, conveyed, assigned and delivered, or intended so to be, and to prosecute the same at law or in equity and, upon discharge thereof, to complete, execute and deliver any and all necessary instruments of satisfaction and release.

2. Assignment and Assumption of Assumed Liabilities.

(a) Seller hereby assigns to Buyer, its successors and assigns, and Buyer hereby assumes, in accordance with the terms and conditions of the Purchase Agreement, the Assumed Liabilities. Notwithstanding anything in this Agreement to the contrary, except as specifically set forth in the Purchase Agreement, Buyer shall not assume nor be deemed to have assumed any debt, claim, obligation or other liability of Seller or any Affiliate of Seller, whether known or unknown, accrued or unaccrued, fixed or contingent, natural or unnatural, whether arising out of occurrences, events or actions prior to, at or after the Closing Date.

(b) In the event that Seller and/or Buyer determines after execution of this Agreement that one or more contracts or agreements between Seller and any third party necessary to operate the Acquired Assets was not designated as an Assigned Dialysis Contract or an Assigned Personal Property Lease (each an "Omitted Agreement"), and the parties consent in writing to the assignment and assumption of such Omitted Agreement, which consent shall not be unreasonably withheld, then, such Omitted Agreement shall be deemed assigned by Seller to Buyer as of 12:01 a.m. on the Closing Date.

(c) Seller hereby authorizes and directs all obligors under any Assigned Dialysis Contracts and Assigned Personal Property Leases included in the Assumed Liabilities, to deliver any warrants, checks, drafts or payments to be issued or paid to Seller pursuant to the Assigned Dialysis Contracts or the Assigned Personal Property Leases to Buyer; and Seller further authorizes Buyer to receive such warrants, checks, drafts or payments from such obligors and to endorse Seller's name on them and to collect all funds due or to become due on or after the Closing Date under the Assigned Dialysis Contracts and the Assigned Personal Property Leases.

(d) Any payment that may be received by Seller to which Buyer is entitled by reason of this Agreement or the Purchase Agreement shall be received by Seller as trustee for Buyer, and will be immediately delivered to Buyer without commingling with any other funds of Seller, and any payment that may be received by Buyer to which Seller is entitled by reason of this Agreement or the Purchase Agreement shall be received by Buyer as trustee for Seller, and will be immediately delivered to Seller without commingling with any other funds of Buyer.

(e) Notice of the assignment under this Agreement may be given at the option of either party to all parties to the Assigned Dialysis Contracts and the Assigned Personal Property Leases (other than Seller) or to such parties' duly authorized agents.

(f) The assumption by Buyer of any Assumed Liabilities shall not enlarge the rights of any third party with respect to any Assumed Liabilities, nor shall it prevent Buyer, with respect to any party other than Seller, from contesting or disputing any Assumed Liability.

(g) Seller hereby appoints Buyer, its successors and assigns, as the true and lawful attorney-in-fact of Seller, with full power of substitution, having full right and authority,

in the name of Seller, to collect or enforce for the account of Buyer, liabilities and obligations of third parties under the Assumed Liabilities; to institute and prosecute all proceedings they may deem proper in order to enforce any claim to obligations owed under the Assumed Liabilities, to defend and compromise any and all actions, suits or proceedings in respect of the Assumed Liabilities, and to do all such acts in relation to the Assumed Liabilities that Buyer may deem advisable. Seller agrees that the above-stated powers are coupled with an interest and shall be irrevocable by Seller.

3. Consummation of Purchase Agreement. This Agreement is intended to evidence the consummation of the assignment by Seller and assumption by Buyer of the Assumed Liabilities and the sale by Seller and the purchase by Buyer of the Acquired Assets contemplated by the Purchase Agreement. Buyer and Seller by their execution of this Agreement each hereby acknowledges and agrees that neither the representations and warranties nor the rights and remedies of any party under the Purchase Agreement shall be deemed to be enlarged, modified or altered in any way by this Agreement. Any inconsistencies or ambiguities between this Agreement and the Purchase Agreement shall be resolved in favor of the Purchase Agreement.

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

5. Further Assurances. After the Closing Date, each party will from time to time, at the other party's request and without further cost to the party receiving the request, execute and deliver to the requesting party such other instruments and take such other action as the requesting party may reasonably request so as to enable it to exercise and enforce its rights under and fully enjoy the benefits and privileges with respect to this Agreement and to carry out the provisions and purposes hereof.

6. Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the Laws of the State of Illinois applicable to agreements made and to be performed in that State without giving effect to conflicts of law principles. The parties agree, with respect to any litigation arising directly or indirectly out of, or that in any way relates to, this Agreement or the parties' respective obligations hereunder, to commence it exclusively in the State of Illinois Courts of Will County, and by this Agreement consents to the jurisdiction of these courts.

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

**[Signatures on following page.]**

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

**BUYER:**

TOTAL RENAL CARE, INC.

**SPECIMEN - DO NOT SIGN**

\_\_\_\_\_  
By:  
Its:

**SELLER:**

SILVER CROSS HOSPITALS AND  
MEDICAL CENTERS, INC.

**SPECIMEN - DO NOT SIGN**

\_\_\_\_\_  
By:  
Its:

**EXHIBIT A**

**CENTERS**

Silver Cross Renal Center  
1890 Silver Cross Boulevard  
New Lenox, Illinois

Silver Cross Renal Center - West  
1051 Essington Road  
Joliet, Illinois

Silver Cross Renal Center - Morris  
1551 Creek Drive  
Morris, Illinois



## **Schedule 1.0**

### **TABLE OF DEFINITIONS**

“Acquired Assets” has the meaning set forth in Section 1.1.

“Acquisition Agreements” means this Agreement, the Assignment and Assumption and Bill of Sale and all other agreements executed in connection with this Agreement and in connection with Closing.

“Affiliates” has the meaning set forth in Rule 501 of Regulation D under the Securities Act of 1933, as amended.

“Agreement” has the meaning set forth in the first sentence of this Agreement.

“Ancillary Transition Services” has the meaning set forth in Section 6.10(b).

“Assumed Liabilities” has the meaning set forth in Section 1.3.

“Assumed PTO” has the meaning set forth in Section 1.5(b).

“Attorney General” has the meaning set forth in Section 6.3(b).

“Buyer” has the meaning set forth in the first sentence of this Agreement. For the purposes of Section 7.2, the term “Buyer” shall include Buyer and its Affiliates.

“Center Employees” has the meaning set forth in Section 1.5(a).

“Centers” has the meaning set forth in the Recitals of this Agreement.

“Clinical Systems” has the meaning set forth in Section 6.10(a).

“Closing” has the meaning set forth in the first sentence of Article III of this Agreement.

“Closing Date” has the meaning set forth in Article III of this Agreement.

“Closing Financial Statements” has the meaning set forth in Section 6.6(a).

“CMS” has the meaning set forth in Section 6.3(b).

“COBRA” means the health care continuation requirements set forth in Section 4980B of the Code and Sections 601 through 608 of ERISA, respectively.

“Code” means the Internal Revenue Code of 1986, as amended.

“Commission” has the meaning set forth in Section 6.8(c).

“Compliance Questionnaire” means the form for reporting upon compliance with Law and with Payment Program requirements completed by Seller and delivered to Buyer in connection with Buyer’s due diligence.

“Confidential Information” has the meaning set forth in Section 7.1.

“Deposit” has the meaning set forth in the Section 2.1.

“Dialysis Business” has the meaning set forth in the Recitals of this Agreement.

“Dialysis Contract,” “Assigned Dialysis Contract” and “Retained Dialysis Contract” have the meanings set forth in Section 4.20.

“Dialysis Licenses” has the meaning set forth in Section 4.5.

“Dialysis Payment Programs” has the meaning set forth in Section 4.13(a).

“Employee Benefit Plans” means any “employee benefit plan” as defined in Section 3(3) of ERISA and all bonus, stock or other security option, stock or other security purchase, stock or other security appreciation rights, incentive, deferred compensation, retirement or supplemental retirement, severance, golden parachute, vacation, cafeteria, dependent care, medical care, employee assistance program, education or tuition assistance programs, insurance and other similar fringe or employee benefit plans, programs or arrangements, and any current or former employment or executive compensation or severance agreements or any other plan or arrangement to provide compensation or benefits to any individual, written or otherwise, which has ever been contributed to, sponsored or maintained by, entered into for the benefit of, or relating to, any present or former contractor, employee or director of Seller or any ERISA Affiliate or employed in connection with the Dialysis Business, without regard to whether such individual is a Center Employee or a Transferring Employee.

“Employee Transition Period” has the meaning set forth in Section 1.6(a).

“Environmental Laws” means all Laws relating to hazardous waste, infectious medical and radioactive waste, and other environmental matters, including, without limitation, the Resource Conservation and Recovery Act, the Clean Air Act and the Comprehensive Environmental Response Compensation and Liability Act, and any regulations issued thereunder.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any entity (whether or not incorporated) that together with Seller is a member of: (i) a controlled group of corporations within the meaning of Section 414(b) of the Code; (ii) a group of trades or business under common control within the meaning of Section 414(c) of the Code; (iii) an affiliated service group within the meaning of Section 414(m) of the Code; or (iv) any other person or entity treated as an Affiliate of Seller under Section 414(o) of the Code.

“Excluded Assets” has the meaning set forth in Section 1.2

“Excluded Liabilities” has the meaning set forth in Section 1.4(a).

“Execution Date” has the meaning set forth in the first paragraph of this Agreement.

“Final Financial Statements” has the meaning set forth in Section 6.6(b).

“Final Fixed Asset List” has the meaning set forth in Section 6.6(b).

“Financial Statements” has the meaning set forth in Section 4.9.

“Fundamental Representations” has the meaning set forth in Section 9.1.

“GAAP” means accounting principles generally accepted in the United States of America, consistently applied.

“Governmental Approval” has the meaning set forth in Section 4.3(a).

“Group Health Plan” means a plan, program or arrangement described in Section 5000(b)(1) of the Code.

“Hazardous Material” means (i) petroleum and petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials and polychlorinated biphenyls; (ii) infectious medical waste; and (iii) any other chemical, material or substance, all of which are defined or regulated as toxic or hazardous or as a pollutant, contaminant or waste under any applicable Environmental Law.

“HIPAA” has the meaning set forth in Section 4.14(j).

“IDPH” has the meaning set forth in Article III.

“Indemnified Party” has the meaning set forth in Section 9.4.

“Indemnifying Party” has the meaning set forth in Section 9.4.

“Intellectual Property” means all recipes, patents, inventions, know-how, show-how, designs, trade secrets, copyrights, trademarks, trade names, service marks, fictitious and assumed business names, Internet domain names, manufacturing processes, software, formulae, trade secrets, technology or the like, and all applications for any of the foregoing.

“Interim Financial Statements” has the meaning set forth in Section 4.9.

“Interim Laboratory Services Agreement” has the meaning set forth in Section 8.1(v).

“Inventory Value” has the meaning set forth in Section 2.1.

“Labor Contract” has the meaning set forth in Section 4.15(d).

“Law” or “Laws” means any and all federal, state, and local statutes, codes, licensing requirements, ordinances, laws, rules, regulations, decrees or orders of any foreign, federal, state

or local government and any other governmental department or agency, and any judgment, decision, decree or order of any court or governmental agency, department or authority.

“Licenses” means licenses, permits, consents, approvals, authorizations, registrations, qualifications and certifications of any governmental or administrative agency or authority (whether federal, state or local), including without limitation any Medicare, Medicaid and other provider numbers, certificates or determinations of need, CLIA and DEA certifications.

“Liens” means any lien, claim, security interest, mortgage, pledge, restriction, covenant, charge or encumbrance of any kind or character, direct or indirect, whether accrued, absolute, contingent or otherwise.

“Losses” means losses, damages, liabilities, actions, suits, proceedings, claims, demands, taxes, sanctions, deficiencies, assessments, judgments, costs, interest, penalties and expenses (including without limitation reasonable attorneys’ fees, which shall include a reasonable estimate of the allocable costs of in-house legal counsel and staff).

“Medicare CHOW Approval” has the meaning set forth in Section 6.3(b).

“New Center Employees” has the meaning set forth in Section 1.6(a).

“New Employee Assumed PTO” has the meaning set forth in Section 1.6(c).

“New Transferring Employees” has the meaning set forth in Section 1.6(b).

“New Transferring Employee Schedule” has the meaning set forth in Section 1.6(b).

“Non-reimbursable Assumed PTO” has the meaning set forth in Section 1.6(c).

“Payment Programs” means Medicare, TRICARE, Medicaid, Worker’s Compensation, Blue Cross/Blue Shield programs, and all other health maintenance organizations, preferred provider organizations, health benefit plans, health insurance plans, and other third party reimbursement and payment programs including without limitation the Dialysis Payment Programs.

“Personal Property Leases,” “Assigned Personal Property Leases” and “Terminated Personal Property Leases” have the meanings set forth in Section 4.8.

“Policy Manuals” has the meaning set forth in Section 6.10(a).

“Premises” means all real property used by Seller in connection with the Dialysis Business, as described on Schedule 4.21 hereto.

“Prescription Drug Inventory” shall have the meaning set forth in Section 1.1(c).

“PTO” means accrued vacation and other payable time off.

“Purchase Price” has the meaning set forth in Section 2.1.

“Reimbursable Assumed PTO” has the meaning set forth in Section 1.6(c)

“Release” means disposing, discharging, injecting, spilling, leaking, leaching, dumping, emitting, escaping, emptying, seeping, placing and the like into or upon any land, water or air, or otherwise entering into the environment.

“Remedial Action” means all action to (i) clean up, remove or treat Hazardous Materials in the environment; (ii) restore or reclaim the environment or natural resources; (iii) prevent the Release of Hazardous Materials so that they do not migrate or endanger or threaten to endanger public health or the environment; or (iv) perform remedial investigations, feasibility studies, corrective actions, closures and post-remedial or post-closure studies, investigations, operations, maintenance and monitoring on, about or in the Premises.

“Securities Act” has the meaning set forth in Section 6.8(c).

“Securities Exchange Act” has the meaning set forth in Section 6.8(c).

“Seller” has the meaning set forth in the first sentence of this Agreement.

“Seller Material Adverse Effect” means any event, circumstance, change or effect that individually or in the aggregate with all other events, circumstances, changes or effects, is reasonably expected to be materially adverse to the condition (financial or otherwise), properties, assets, liabilities, businesses, operations, results of operations or prospects of the Dialysis Business or the Acquired Assets or to Seller’s ability to perform its obligations as contemplated in this Agreement.

“Service Area” has the meaning set forth in the Recitals.

“STAT Laboratory Services Agreement” has the meaning set forth in Section 8.1(u).

“Taxes” means all taxes of any type or nature whatsoever, including without limitation, income, gross receipts, excise, franchise, property, value added, import duties, employment, payroll, sales and use taxes and any additions to tax and any interest or penalties thereon.

“Tax Returns” means any and all returns, declarations, reports, claims for refunds and information returns or statements relating to Taxes, required to be filed by Seller for itself and for the Employee Benefit Plans of Seller, including all schedules or attachments thereto and including any amendment thereof.

“Telecom Services” has the meaning set forth in Section 6.10(a).

“Third Party Consent” has the meaning set forth in Section 4.3(b).

“Transaction” has the meaning set forth in Section 10.2(b).

“Transferring Employees” has the meaning set forth in Section 1.5(a).

“Transition Period” has the meaning set forth in Section 6.10(a).

“Year-End Financial Statements” has the meaning set forth in Section 4.9.