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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 10-K

For the Fiscal Year Ended December 31, 2003

ANNUAL REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission File Number: 1-4034

DAVITA INC.

601 Hawaii Street
El Segundo, California 90245
Telephone number (310) 536-2400

Delaware	**51-0354549**
(State of incorporation)	**(I.R.S. Employer Identification No.)**

Securities registered pursuant to Section 12(b) of the Act:

Class of Security:	**Registered on:**
Common Stock, $0.001 par value	New York Stock Exchange
Common Stock Purchase Rights	New York Stock Exchange

The Registrant has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months and has been subject to such filing requirements for the past 90 days.

Disclosure of delinquent filers pursuant to Item 405 of Regulation S-K will be in the Registrant's definitive proxy statement, which is incorporated by reference in Part III of this Form 10-K.

The Registrant is an accelerated filer (as defined in Rule 12b-2 of the Act).

As of June 30, 2003, the number of shares of the Registrant's common stock outstanding was 61,604,379 shares and the aggregate market value of the common stock outstanding held by non-affiliates based upon the closing price of these shares on the New York Stock Exchange was approximately $1.6 billion.

As of February 13, 2004, the number of shares of the Registrant's common stock outstanding was 65,434,531 shares and the aggregate market value of the common stock outstanding held by non-affiliates based upon the closing price of these shares on the New York Stock Exchange was approximately $2.9 billion.

Documents incorporated by reference

Portions of the Registrant's proxy statement for its 2004 annual meeting of stockholders are incorporated by reference in Part III of this Form 10-K.

PART I

Item 1. Business.

The Company's annual report on Form 10-K, quarterly reports on Form 10-Q, current reports on Form 8-K, and amendments to those reports filed or furnished pursuant to section 13(a) or 15(d) of the Exchange Act are made available free of charge through the Company's website, located at http://www.davita.com, as soon as reasonably practicable after the reports have been filed with the Securities and Exchange Commission, or SEC. The SEC also maintains an Internet site at http://www.sec.gov where these reports and other information about the Company can be obtained.

Overview

DaVita Inc. is the second largest provider of dialysis services in the United States for patients suffering from chronic kidney failure, also known as end stage renal disease, or ESRD. We currently operate or provide administrative services to approximately 570 outpatient dialysis centers located in 34 states and the District of Columbia, serving approximately 48,500 patients. We also provide acute inpatient dialysis services in approximately 300 hospitals. All other activities, which account for less than 4% of consolidated revenues, relate to our core business of providing renal care services.

Prior to mid-1999, the company had an aggressive growth strategy of acquiring other dialysis businesses. This rapid growth through acquisitions had a significant impact on administrative functions and operating efficiencies. In the second half of 1999, a new management team initiated a turnaround plan focused on improving our financial and operational infrastructure. During 2000 and 2001, we divested substantially all of our operations outside the continental United States, made significant improvements in our billing and collecting operations, reduced our debt and restructured our credit facilities. During 2002 and 2003, we made significant investments in new systems and processes, and took advantage of further capital restructuring opportunities.

The dialysis industry

The loss of kidney function is normally not reversible. ESRD is the stage of advanced kidney impairment that requires routine dialysis treatments or a kidney transplant to sustain life. Dialysis is the removal of toxins, fluids and salt from the blood of ESRD patients by artificial means. Patients suffering from ESRD generally require dialysis at least three times per week for the rest of their lives.

Since 1972, the federal government has provided universal reimbursement for dialysis under the Medicare ESRD program regardless of age or financial circumstances. Under this system, Congress establishes Medicare reimbursement rates for dialysis treatments and related supplies, tests and medications. Approximately 70% of our patients are under the Medicare reimbursement programs. Medicare reimbursements account for approximately 50% of our total revenues.

ESRD patient base

There are more than 300,000 ESRD dialysis patients in the United States. The recent historical compound annual growth rate in the number of ESRD patients has been approximately 4% to 5%. We do not anticipate any significant change in the general growth rate in the future, which is affected by the continued aging of the population, longer life expectancies of patients with diseases often associated with ESRD such as diabetes and hypertension, improved medical and dialysis technology, and the growth of minority populations that have a high incidence rate of ESRD.

Treatment options for ESRD

Treatment options for ESRD are hemodialysis, peritoneal dialysis and kidney transplantation. In 2003, outpatient hemodialysis treatments, peritoneal dialysis treatments and inpatient or acute hemodialysis treatments accounted for approximately 88%, 8% and 4% of our total dialysis treatments, respectively.

- *Hemodialysis*

Hemodialysis, the most common form of ESRD treatment, is usually performed either in a freestanding or hospital-based outpatient center. A patient can also perform hemodialysis at home with assistance. The hemodialysis machine uses an artificial kidney, called a dialyzer, to remove toxins, fluids and salt from the patient's blood. The dialysis process occurs across a semi-permeable membrane that divides the dialyzer into two distinct chambers. While blood is circulated through one chamber, a pre-mixed fluid is circulated through the other chamber. The toxins, salt and excess fluids from the blood selectively cross the membrane into the fluid, allowing cleansed blood to return into the patient's body. Each hemodialysis treatment typically lasts approximately three and one-half hours. Hemodialysis is usually performed three times per week.

- *Peritoneal dialysis*

A patient generally performs peritoneal dialysis at home. The most common methods of peritoneal dialysis are continuous ambulatory peritoneal dialysis, or CAPD, and continuous cycling peritoneal dialysis, or CCPD. All forms of peritoneal dialysis use the patient's peritoneal, or abdominal, cavity to eliminate fluid and toxins. Because it does not involve going to a center three times a week for treatment, peritoneal dialysis is an attractive alternative to hemodialysis for patients who desire more freedom in their lifestyle. However, peritoneal dialysis is not a suitable method of treatment for many patients, including patients who are not able to perform the necessary procedures and those at greater risk of peritoneal infection.

CAPD introduces dialysis solution into the patient's peritoneal cavity through a surgically placed catheter. Toxins in the blood continuously cross the peritoneal membrane into the dialysis solution. After several hours, the patient drains the used dialysis solution and replaces it with fresh solution. This procedure is usually repeated four times per day.

CCPD is performed in a manner similar to CAPD, but uses a mechanical device to cycle dialysis solution through the patient's peritoneal cavity while the patient is sleeping or at rest.

- *Transplantation*

Although transplantation, when successful, is generally the most desirable form of therapeutic intervention, the shortage of suitable donors, side effects of immunosuppressive drugs given to transplant recipients and dangers associated with transplant surgery for some patient populations limit the use of this treatment option.

Services we provide

Outpatient dialysis services

We currently operate or provide administrative services to approximately 570 outpatient dialysis centers that are designed specifically for outpatient hemodialysis. Throughout our network of outpatient dialysis centers, we also provide training, supplies and on-call support services to our home dialysis patients.

As required by law, we contract with a nephrologist or a group of affiliated nephrologists to provide medical director services at each of our centers. In addition, other nephrologists may apply for practice privileges to treat their patients at our centers. Each center also has an administrator, typically a registered nurse, who supervises the day-to-day operations of the center and its staff. The staff of each center typically consists of registered nurses, licensed practical or vocational nurses, patient care technicians, a social worker, a registered dietician, biomedical technician support, and other administrative and support personnel.

In addition, many of our centers offer services for home dialysis patients, primarily CAPD and CCPD. Home dialysis services consist of providing equipment and supplies, training, patient monitoring and follow-up assistance to patients who prefer and are able to receive peritoneal dialysis treatments in their homes. Registered nurses train patients and their families or other patient assistants to perform either CAPD or CCPD at home. Our

training programs for home dialysis generally last two to three weeks. In 2003, peritoneal dialysis accounted for approximately 8% of our total dialysis treatments.

Hospital inpatient dialysis services

We provide inpatient dialysis services, excluding physician professional services, to patients in approximately 300 hospitals. We render these services for a per-treatment fee individually negotiated with each hospital. When a hospital requests our services, we typically administer the dialysis treatment at the patient's bedside or in a dedicated treatment room in the hospital. Inpatient dialysis services are required for patients with acute kidney failure resulting from trauma, patients in the early stages of ESRD, and ESRD patients who require hospitalization for other reasons. In 2003, acute inpatient dialysis services accounted for approximately 4% of our total dialysis treatments.

Ancillary services

Ancillary services, which account for less than 4% of our total revenues, consist of the following:

- *ESRD laboratory services*. We own a licensed clinical laboratory, located in Florida, specializing in ESRD patient testing. This specialized laboratory provides both routine laboratory tests covered by the Medicare composite reimbursement rate for dialysis and other physician-prescribed laboratory tests for ESRD patients. Our laboratory provides these tests primarily for our own ESRD patients throughout the United States. These tests are performed to monitor a patient's ESRD condition, including the adequacy of dialysis, as well as other diseases a patient may have. Our laboratory utilizes a proprietary information system which provides information to our dialysis centers regarding critical outcome indicators. We also operated another laboratory in Minnesota until November 2001, when it was combined with the operations of the Florida laboratory.
- *Management fee income*. We currently operate or provide administrative services to less than 30 dialysis centers which are wholly-owned or majority-owned by third parties. Management fees are established by contract and are typically based on a percentage of revenues generated from the centers. Through an acquisition in July 2003, we began providing management at 14 third-party outpatient vascular access clinics that provide surgical and interventional radiology services for dialysis patients.
- *Disease management services.* Through an acquisition in August 2003, we began providing specialized renal case management and other disease management services to third party payors.
- *ESRD clinical research programs.* Our subsidiary DaVita Clinical Research conducts renal and renal-related research trials of new drugs and devices designed to improve outcomes, enhance the quality of life and reduce costs for pre-ESRD and ESRD patients. These trials are conducted primarily under contracts with the pharmaceutical companies and medical device manufacturers.

Quality care

We believe our reputation for providing quality care is a key factor in attracting patients and physicians and in securing relationships with managed care payors. We engage in organized and systematic efforts through our quality management programs to monitor and improve the quality of services we deliver. These efforts include the development and implementation of patient care policies and procedures, clinical education and training programs, clinical guidelines and protocols, and audits of the quality of services rendered at each of our centers.

Our quality management programs are under the guidance of our Chief Medical Officer and Director of Quality Management. Approximately 40 regional quality management coordinators implement these programs in our centers. The corporate and regional teams work with each center's multi-disciplinary quality management team, including the medical director, to implement the programs.

We have a national physician council of twelve physicians to advise our senior management on all clinical issues impacting our operations across the country. In addition, we have an eight-physician laboratory advisory committee which acts as a medical advisory board for our clinical laboratory. Our Chief Medical Officer participates in the national physician council and laboratory advisory committee meetings.

Sources of revenue—concentrations and risks

Direct dialysis services including the administration of pharmaceuticals during dialysis treatments represent more than 96% of our total revenues, with lab services, management fees, disease management services and research programs accounting for the balance. Sources of revenue for direct dialysis services have been as follows:

	Year ended December 31,		
	2003	2002	2001
Percent of total dialysis revenues:			
Medicare	50%	51%	52%
Medicaid and other government-based programs	8	8	8
Total government	58	59	60
Commercial payors (HMOs and health insurance carriers)	42	41	40
	100%	100%	100%

Medicare reimbursements

Under the Medicare ESRD program, reimbursement rates for dialysis are established by Congress. The Medicare composite rate set by the Centers for Medicare and Medicaid Services, or CMS, determines the Medicare reimbursement available for a designated group of dialysis services, including the dialysis treatment, supplies used for that treatment, some laboratory tests and some medications. The Medicare composite rate is subject to regional differences based upon several factors, including regional differences in wage levels. Other services and items are eligible for separate reimbursement under Medicare and are not part of the composite rate, including erythropoietin, or EPO, vitamin D analogs, and iron supplements.

Medicare reimburses dialysis providers for the treatment of ESRD patients who are eligible for participation in the Medicare ESRD program. ESRD patients receiving dialysis become eligible for primary Medicare coverage at various times, depending on their age or disability status, as well as whether they are covered by an employer group health plan. Generally, for a patient not covered by an employer group health plan, Medicare becomes the primary payor either immediately or after a three-month waiting period. For a patient covered by an employer group health plan, Medicare generally becomes the primary payor after 33 months, or earlier if the patient's employer group health plan coverage terminates. When Medicare becomes the primary payor, the payment rate we receive for that patient shifts from the employer group health plan rate to the Medicare reimbursement rate.

For each covered treatment, Medicare pays 80% of the amount set by the Medicare reimbursement system. The patient is responsible for the remaining 20%, and in most cases a secondary payor, such as Medicare supplemental insurance, a state Medicaid program or a private payor, covers all or part of these balances. Some patients who do not qualify for Medicaid but otherwise cannot afford secondary insurance can apply for premium payment assistance from charitable organizations, normally through a program offered by the American Kidney Fund. We and other dialysis providers support the American Kidney Fund and similar programs through voluntary contributions. If a patient does not qualify for state Medicaid assistance based on financial need and does not purchase secondary insurance through a private insurer, the dialysis provider may not be reimbursed for the 20% portion of the ESRD composite rate that Medicare does not pay.

The Medicare composite rates set by Congress for the dialysis treatment are currently between $121 and $144 per treatment, with an average rate of $131 per treatment. Historically, there have been very few changes to the Medicare composite reimbursement rates. Since 1972, the rate has declined over 70% in terms of inflation adjusted dollars. The rate did not change from commencement of the program in 1972 until 1983. From 1983 through December 1990, Congressional actions resulted in a net reduction of the average reimbursement rate from $138 per treatment in 1983 to approximately $125 per treatment in 1990. The Medicare composite reimbursement rate was increased by $1.00 in 1991, by 1.2% in 2000 and by 2.4% in 2001. The next scheduled increase is for 1.6% in 2005.

Medicare reimburses for home dialysis services provided by dialysis centers that are designated as the supplier of home supplies and services, and provides all dialysis treatment-related services, including equipment and supplies. The center is reimbursed using a methodology based on the Medicare composite rate. The reimbursement rates for home dialysis are determined prospectively and are subject to adjustment by Congress. Most of our centers are approved to provide home dialysis services.

In 1996 CMS launched an ESRD Managed Care Demonstration Project involving the enrollment of Medicare ESRD patients in managed care organizations. The intent of the demonstration project was to see whether a capitated system of care for ESRD beneficiaries was operationally feasible, efficient, and able to produce health outcomes as good as the current fee-for-service (FFS) system. The results of this three-year demonstration project were released in 2003 and indicated that quality of care and patient outcomes were similar to FFS comparison groups.

In the fall of 2003 CMS announced two new ESRD disease management demonstration projects. The goal of the demonstration projects is to use evidence-based best practices and experienced care managers to oversee ESRD patient care. The program includes two different risk and payment options, full capitation and a fee-for-service outpatient bundled payment. Both options include incentive payments for quality. DaVita has submitted a proposal for the full capitation demonstration. At this time we are uncertain if our proposal will be accepted or if we will choose to continue in the proposed demonstration.

The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) required the Secretary of Health and Human Services to expand the bundle of services included in the composite rate to include separately billable items routinely used in furnishing dialysis services “to the maximum extent feasible”. Phase I research conducted by the Kidney Epidemiology and Cost Center of the University of Michigan concluded that current data sources are adequate for proceeding with the development of a bundled ESRD PPS, however no specific payment recommendation was determined. The second phase of the University of Michigan’s research will address issues such as case mix and other factors that impact a dialysis facilities cost structure when treating more costly resource intensive patients.

Further, the 2003 Medicare Prescription Drug Improvement and Modernization Act requires CMS to establish a new demonstration project for ESRD. The purpose of this new three year demonstration study, to be conducted beginning January 1, 2006, is again to determine the feasibility of an expanded payment outpatient bundle.

Under the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (“MMA”), beginning in 2005 rates of payment for drugs and biologicals provided to ESRD patients in dialysis centers will be reimbursed at an acquisition cost determined by either the Inspector General of the Department of Health and Human Services (“IG”) or the Centers for Medicare and Medicaid Services (“CMS”). The difference between the acquisition cost and the amount previously reimbursed will be added to the dialysis composite rate. The intent of the MMA is for reimbursement to dialysis centers neither to increase or to decrease as a result of this change. In 2006 and in succeeding years, CMS will set the reimbursement rate for drugs and biologicals, and will continue to add back to the composite rate the difference between the CMS-determined rates and the rates that would have been paid for such drugs and biologicals had the MMA not been passed. Again, this formula is not intended to increase or decrease the total reimbursement to dialysis centers. If the IG or CMS incorrectly performs the work required by the MMA, or does not take into account differences in outcomes of drug utilization among providers, it could affect Medicare reimbursement adversely or positively. We cannot predict the results of this process.

Medicaid reimbursements

Medicaid programs are state-administered programs partially funded by the federal government. These programs are intended to provide health coverage for patients whose income and assets fall below state-defined levels and who are otherwise uninsured. In some states, these programs also serve as supplemental insurance programs for the Medicare co-insurance portion of the ESRD composite rate and provide reimbursement for additional services, including some oral medications, that are not covered by Medicare. State regulations generally follow Medicare schedules with respect to reimbursement levels and coverages. Some states, however, require beneficiaries to pay a monthly share of the cost based upon levels of income or assets. We are an authorized Medicaid provider in the states in which we conduct our business.

Commercial (nongovernment) payors

Before Medicare becomes the primary payor, a patient's employer group health plan or private insurance plan, if any, is responsible for payment. Commercial reimbursement rates vary significantly, and can be at negotiated rates for contracted payors or based on the patient's insurance plan's formal or informal coverage terms related to our "usual and customary" fee schedule. The patient is responsible for any deductibles and co-payments under the terms of his or her employer group health plan or other insurance. The rates paid by nongovernment payors are typically significantly higher than Medicare reimbursement rates, and on average are more than double the Medicare rates. Also, traditional indemnity plans and preferred provider organization (PPO) plans typically pay at higher rates than health maintenance organization (HMO) plans. After Medicare becomes the primary payor, the original nongovernment payor, if any, becomes the secondary payor, responsible for the 20% of the Medicare reimbursement rates that Medicare does not pay. Secondary payors are not required to reimburse us for the difference between the rates they previously paid and Medicare rates.

Reimbursement for EPO and other drugs

Approximately one third of our total dialysis revenue is associated with the administration of physician-prescribed pharmaceuticals, including erythropoietin, or EPO, vitamin D analogs, and iron supplements.

EPO is a genetically engineered form of a naturally occurring protein that stimulates the production of red blood cells. EPO is used in connection with all forms of dialysis to treat anemia, a medical complication most ESRD patients experience. The administration of EPO, which is separately billable under the Medicare reimbursement program, accounts for approximately one-fourth of our dialysis revenues. Changes in the levels of physician-prescribed EPO, and government reimbursement policies related to EPO, significantly influence our revenues and operating earnings.

Furthermore, EPO is produced by a single manufacturer, Amgen, and any interruption of supply or product cost increases could adversely affect our operations. Amgen has also developed a new product, darbepoetin alfa, also known as Aranesp®, that could potentially replace EPO or reduce its use with dialysis patients. The FDA has approved this new product for use with dialysis patients. We cannot predict when, or whether, Amgen will seek to market this product for the dialysis market, how Medicare or other payors will reimburse dialysis providers for its use, whether physicians will prescribe it instead of EPO or how it will impact our revenues and earnings.

Other pharmaceuticals that we administer upon physician prescription include vitamin D analogs, calcium and iron supplements, various antibiotics and other medications. Medicare currently reimburses us separately for most of these drugs at a rate of 95% of the average wholesale price of each drug.

Physician relationships

An ESRD patient generally seeks treatment at a dialysis center near his or her home and at which his or her treating nephrologist has practice privileges. Our relationships with local nephrologists and our ability to meet

their needs and the needs of their patients are key factors in the success of a dialysis center. Over 2,000 nephrologists currently refer patients to our centers. As is typical in the dialysis industry, one or a few physicians, including the center's medical director, usually account for all or a significant portion of a dialysis center's patient referral base. Our medical directors provide a substantial majority of our patient referrals. The loss of the medical director or other key referring physicians at a particular center could therefore materially reduce the revenue of that center.

Participation in the Medicare ESRD program requires that treatment at a dialysis center be "under the general supervision of a director who is a physician." Generally, the medical director must be board eligible or board certified in internal medicine or nephrology and have had at least 12 months of experience or training in the care of patients at dialysis centers. We have engaged physicians or groups of physicians to serve as medical directors for each of our centers. At some centers, we also separately contract with one or more physicians to serve as assistant or associate medical directors or to direct specific programs, such as home dialysis training programs. We have contracts with approximately 380 individual physicians and physician groups to provide medical director services.

Medical directors enter into written contracts that specify their duties and fix their compensation for periods of one or more years. The compensation of our medical directors is the result of arm's length negotiations and generally depends upon competitive factors in the local market, the physician's professional qualifications and the specific duties and responsibilities of the physician.

Our medical director agreements generally include covenants not to compete. Also, when we acquire a center from one or more physicians, or where one or more physicians own interests in centers as co-owners with us, these physicians have agreed to refrain from owning interests in competing centers within a defined geographic area for various periods. These noncompetition agreements restrict the physicians from owning, or providing medical director services to, other dialysis centers, but do not restrict the physicians from referring patients to competing centers. Many of these noncompetition agreements expire at the same time as the corresponding medical director agreements. We have from time to time experienced competition from a new dialysis center established by a former medical director following the termination of his or her relationship with us.

Government regulation

Our dialysis operations are subject to extensive federal, state and local governmental regulations. These regulations require us to meet various standards relating to, among other things, government reimbursement programs, dialysis facilities and equipment, management of centers, personnel qualifications, maintenance of proper records, quality assurance programs, and patient care.

All of our dialysis centers are certified by CMS, as is required for the receipt of Medicare reimbursement. In some states our dialysis centers also are required to secure additional state health licenses. Governmental authorities, primarily state departments of health, periodically survey our centers to determine if we satisfy applicable federal and state standards and requirements, including the conditions of participation in the Medicare ESRD program. Consistent with recommendations of the OIG, the frequency and intensity of this survey activity increased industry-wide beginning in 2000. We expect this level of survey activity to continue for the foreseeable future.

Our business could be adversely impacted by:

- Loss or suspension of federal certifications;
- Loss or suspension of authorization to participate in the Medicare or Medicaid programs;
- Loss or suspension of licenses under the laws of any state or governmental authority from which we generate substantial revenues;

- Refunds of reimbursement received because of any failures to meet applicable reimbursement requirements;
- Significant reductions in reimbursement or reduction of coverage for dialysis and ancillary services; or
- Fines and penalties for noncompliance.

To date, we have not had significant unanticipated difficulty in maintaining our licenses or our Medicare and Medicaid authorizations. However, we expect that our industry will continue to be subject to significant government regulation and scrutiny, the scope and application of which are difficult to predict. This regulation and scrutiny could adversely impact us in a material way.

Fraud and abuse under federal law

The "anti-kickback" statute contained in the Social Security Act imposes criminal and civil sanctions on persons who receive or make payments in return for:

- The referral of a patient for treatment; or
- The ordering or purchasing of items or services that are paid for in whole or in part by Medicare, Medicaid or similar state programs.

Federal penalties for the violation of these laws include imprisonment, fines and exclusion of the provider from future participation in the Medicare and Medicaid programs. Civil penalties for violation of these laws include up to $50,000 civil monetary penalties per violation, assessments of up to three times the total payments between the parties and suspension from future participation in Medicare and Medicaid. Some state anti-kickback statutes also include criminal penalties. The federal statute expressly prohibits traditionally criminal transactions, such as kickbacks, rebates or bribes for patient referrals. Court decisions have also held that, under certain circumstances, the statute is violated whenever a purpose of a payment is to induce referrals.

In July 1991, November 1992 and November 1999 the Secretary of HHS published regulations that create exceptions or "safe harbors" for some business transactions and arrangements. Transactions and arrangements structured within these safe harbors do not violate the anti-kickback statute. A business transaction or arrangement must satisfy each and every element of a safe harbor to be protected by that safe harbor. Transactions and arrangements that do not satisfy all elements of a relevant safe harbor are not necessarily inappropriate, but may be subjected to greater scrutiny by enforcement agencies.

Our medical directors refer patients to our centers and these arrangements must be in compliance with the federal anti-kickback statute. Among the available safe harbors is one for personal services, which is relevant to our arrangements with our medical directors. However, most of our agreements with our medical directors do not satisfy all seven of the requirements of the personal services safe harbor. We believe that, except in cases where a center is in transition from one medical director to another or where the term of an agreement with a physician has expired and a new agreement is in negotiation, our agreements with our medical directors satisfy most of the elements of this safe harbor. One of the requirements not satisfied is a requirement that if the services provided under the agreement are on a part-time basis, as they are with our medical directors, the agreement must specify the schedule of intervals of service, their precise length and the exact charge for such intervals. Because of the nature of our medical directors' duties, we believe it is impossible to meet this safe-harbor requirement. Also, one of the safe-harbor requirements is that the compensation be at fair market value for the services rendered. There is little guidance available as to what constitutes fair market value for medical director services. Although our medical director agreements are the result of arm's length negotiations, an enforcement agency could potentially challenge the level of compensation that we pay our medical directors. Accordingly, we could in the future be required to change our practices, pay substantial fines or otherwise experience a material adverse effect as a result of a challenge to these arrangements. One of the areas that the United States Attorney's inquiry described below covers is our financial relationships with physicians.

At 51 of our dialysis centers, physicians who refer patients to the centers hold interests in partnerships or limited liability companies owning the centers and these arrangements must be in compliance with the anti-kickback statute. Among the available safe harbors with respect to these arrangements is one for small entity investment interests. Although none of our arrangements satisfy all of the elements of this small-entity-investment-interests safe harbor, we believe that each of these partnerships and limited liability companies satisfies a majority of the safe harbor's elements, as well as the intent of the regulations.

We lease approximately 82 of our centers from entities in which physicians hold ownership interests and we also sublease space to referring physicians at approximately 69 of our dialysis centers. These arrangements must be in compliance with the anti-kickback statute. Among the available safe harbors with respect to these arrangements is one for space rentals. We believe that the leases and subleases we have entered into are in material compliance with the safe harbor provisions.

Because we are purchasing and selling items and services in the operation of our centers that may be paid for in whole, or in part, by Medicare or a state healthcare program and because these items and services might be purchased or sold at a discount, we must ensure compliance with the federal anti-kickback statute. Among the available safe harbors is one for discounts, which is relevant to our discount arrangements. We believe that the discount arrangements that we have entered into are in compliance with the anti-kickback statute and that these arrangements satisfy, in all material respects, each of the elements of the discounts safe harbor applicable to these arrangements.

Fraud and abuse under state law

Several states, including California, Florida, Georgia, Kansas, Louisiana, Maryland, New York, Utah and Virginia, in which we operate dialysis centers jointly owned with referring physicians, have statutes prohibiting physicians from holding financial interests in various types of medical facilities to which they refer patients. Some states also have laws similar to the federal anti-kickback statute that may affect our ability to receive referrals from physicians with whom we have financial relationships, such as our medical directors. Some of these statutes include exemptions applicable to our medical directors and other physician relationships. Some, however, include no explicit exemption for medical director services or other services for which we contract with and compensate referring physicians or for joint ownership interests of the type held by some of our referring physicians. If these statutes are interpreted to apply to referring physicians with whom we contract for medical director and similar services or to referring physicians with whom we hold joint ownership interests, we may be required to restructure some or all of our relationships with these referring physicians and could be subject to financial penalties.

Stark I/Stark II

The Omnibus Budget Reconciliation Act of 1989 includes provisions, known as Stark I, that restrict physician referrals for clinical laboratory services to entities with which a physician or an immediate family member has a "financial relationship." Federal regulatory agencies may interpret Stark I to apply to our operations. Regulations interpreting Stark I, however, have created an exception to its applicability regarding services furnished in a dialysis center if payment for those services is included in the ESRD composite rate.

The Omnibus Budget Reconciliation Act of 1993 contains provisions, known as Stark II, that restrict physician referrals for "designated health services" to entities with which a physician or immediate family member has a "financial relationship." The entity is prohibited under Stark II, as is the case for entities restricted by Stark I, from claiming reimbursement for such services under the Medicare or Medicaid programs, is liable for the refund of amounts received pursuant to prohibited claims, is subject to civil penalties of up to $15,000 per service and can be excluded from future participation in the Medicare and Medicaid programs. Stark II includes certain exceptions. Stark II provisions that may be relevant to us became effective in January 1995. Phase I of federal regulations interpreting Stark II were issued in January 2001 and became effective, in relevant part, in the first quarter of 2002. CMS has yet to propose Phase II of these regulations.

A “financial relationship” with an entity under Stark II is defined as an ownership or investment interest in, or a compensation arrangement with, the entity. We have entered into compensation agreements with our medical directors. Some of our medical directors own equity interests in entities that operate our dialysis centers. Some of our dialysis centers are leased from entities in which referring physicians hold interests and we sublease space to referring physicians at some of our dialysis centers. In addition, while nearly all of our stock option arrangements with referring physicians were terminated in 2000, a few medical directors still own options to acquire our common stock because we did not have the contractual right to terminate their options. Under the Stark II regulations, these stock options constitute compensation arrangements that must meet an applicable exception. Also, some medical directors and other physicians own our common stock, which they either purchased in the open market or received from us as consideration in an acquisition of dialysis centers from them. Although we believe that the ownership of our stock and the other ownership interests and lease arrangements for our centers are in material compliance with Stark II, it is possible that CMS could view them as prohibited arrangements that must be restructured or for which we could be subject to other applicable penalties.

We believe that our compensation arrangements with medical directors and other contract physicians materially satisfy the personal services compensation arrangement exception to the Stark II prohibitions. Payments made by a lessor to a lessee for the use of premises are also excepted from Stark II prohibitions if specific requirements are met. We believe that our leases and subleases with referring physicians materially satisfy this exception to the Stark II prohibitions. The Stark II exception applicable to physician ownership interests in entities to which they make referrals does not encompass the kinds of ownership arrangements that referring physicians hold in several of our subsidiaries that operate dialysis centers. Accordingly, it is possible that CMS could require us to restructure some of these arrangements or seek to impose substantial fines or additional penalties on us.

For purposes of Stark II, “designated health services” include clinical laboratory services, equipment and supplies, home health services, outpatient prescription drugs and inpatient and outpatient hospital services. We believe that the language and legislative history of Stark II and Phase I of the final Stark II regulations indicate that Congress did not intend to include dialysis services and the services and items provided incident to dialysis services as a part of designated health services. For example, the final Stark II regulations exempt from the referral prohibition referrals for clinical laboratory services furnished in an ESRD center if payment for those services is included in the ESRD composite rate and for EPO and other dialysis-related outpatient prescription drugs furnished in or by an ESRD center. However, our provision of, or arrangement and assumption of financial responsibility for, certain other outpatient prescription drugs, center dialysis services and supplies, home dialysis supplies and equipment and services to hospital inpatients under our dialysis services agreements with hospitals, include services and items that still could be construed as designated health services within the meaning of Stark II. Although we bill the hospital and not Medicare or Medicaid for hospital inpatient services, our medical directors may request or establish a plan of care that includes dialysis services for hospital inpatients that may be considered a referral to us within the meaning of Stark II.

Because the Stark II regulations do not expressly address all of our operations, it is possible that CMS could interpret Stark II to apply to parts of our operations. Consequently, it is possible that CMS could determine that Stark II requires us to restructure existing compensation agreements with our medical directors and to repurchase or to request the sale of ownership interests in subsidiaries and partnerships held by referring physicians or, alternatively, to refuse to accept referrals for designated health services from these physicians. We would be materially impacted if CMS interprets Stark II to apply to us and we either could not achieve material compliance with Stark II or the cost of achieving that compliance was substantial.

The False Claims Act

The federal False Claims Act, or FCA, is a means of policing false bills or false requests for payment in the healthcare delivery system. In part, the FCA imposes a civil penalty on any person who:

- Knowingly presents, or causes to be presented, to the federal government a false or fraudulent claim for payment or approval;

- Knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the federal government;
- Conspires to defraud the federal government by getting a false or fraudulent claim allowed or paid; or
- Knowingly makes, uses or causes to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit, money or property to the federal government.

The penalties for a violation of the FCA range from $5,500 to $11,000 for each false claim plus three times the amount of damages caused by each such claim. The federal government has used the FCA to prosecute a wide variety of issues such as Medicare fraud, including coding errors, billing for services not rendered, the submission of false cost reports, billing services at a higher reimbursement rate than appropriate, billing under a comprehensive code as well as under one or more component codes included in the comprehensive code and billing for care that is not medically necessary. Although subject to some dispute, at least two federal district courts have also determined that an alleged violation of the federal anti-kickback statute or Stark I and Stark II are sufficient to state a claim for relief under the FCA. In addition to the civil provisions of the FCA, the federal government can use several other criminal statutes to prosecute persons who submit false or fraudulent claims for payment to the federal government.

The Health Insurance Portability and Accountability Act of 1996

The Health Insurance Portability and Accountability Act of 1996, or HIPAA, among other things, allows individuals who lose or change jobs to transfer their insurance, limits exclusions for preexisting conditions and establishes a pilot program for medical savings accounts. In addition, HIPAA also expanded federal attempts to combat healthcare fraud and abuse by making amendments to the Social Security Act and the federal criminal code. Among other things, HIPAA created a new “Health Care Fraud Abuse Control Account,” under which advisory opinions are issued by the OIG regarding the application of the anti-kickback statute, criminal penalties for Medicare and Medicaid fraud were extended to other federal healthcare programs, the exclusion authority of the OIG was expanded, Medicare and Medicaid civil monetary penalty provisions were extended to other federal healthcare programs, the amounts of civil monetary penalties were increased and a criminal healthcare fraud statute was established.

HIPAA also includes provisions relating to the privacy of medical information. HHS published HIPAA privacy regulations in December 2000 and modified these regulations in August 2002. Compliance has required the development of extensive policies and procedures, and the implementation of administrative safeguards with respect to private health information in our possession. Compliance with the privacy regulations was required beginning April 2003. HIPAA also includes provisions relating to standards for electronic transactions and electronic signatures. Under HIPAA, compliance with the standards for electronic transactions was required beginning October 2003. We believe we are in compliance with these new requirements.

Other regulations

Our operations are subject to various state hazardous waste and non-hazardous medical waste disposal laws. These laws do not classify as hazardous most of the waste produced from dialysis services. Occupational Safety and Health Administration regulations require employers to provide workers who are occupationally subject to blood or other potentially infectious materials with prescribed protections. These regulatory requirements apply to all healthcare facilities, including dialysis centers, and require employers to make a determination as to which employees may be exposed to blood or other potentially infectious materials and to have in effect a written exposure control plan. In addition, employers are required to provide or employ hepatitis B vaccinations, personal protective equipment and other safety devices, infection control training, post-exposure evaluation and follow-up, waste disposal techniques and procedures, and engineering and work practice controls. Employers are also required to comply with various record-keeping requirements. We believe that we are in material compliance with these laws and regulations.

A New York statute prohibits publicly-held companies from owning the health facility license required to operate a dialysis center in New York. Although we own substantially all of the assets, including the fixed assets, of our New York dialysis centers, the licenses are held by privately-owned companies with which we have agreements to provide a broad range of administrative services, including billing and collecting. The New York State Department of Health has approved these types of arrangements; however, we cannot guarantee that they will not be challenged as prohibited under the relevant statute. We have a similar management relationship with physician practices in several states which prohibit the corporate practice of medicine, and with a privately-owned company in New Jersey for some, but not all, of our New Jersey dialysis centers. We have had difficulty securing licenses for new centers in New Jersey in our own name because the New Jersey Department of Aging and Senior Services refuses to grant new licenses to companies that have more than a small number of outstanding survey issues throughout all of their facilities in the entire United States, regardless of the respective size of the companies' operations.

A few states have certificate of need programs regulating the establishment or expansion of healthcare facilities, including dialysis centers. We believe that we are in compliance with all applicable state certificate of need laws.

Although we have implemented an aggressive corporate compliance program, as discussed below, and believe we are in material compliance with current applicable laws and regulations, our industry will continue to be subject to substantial regulation, the scope and effect of which are difficult to predict. Our activities could be reviewed or challenged by regulatory authorities at any time in the future.

United States Attorney's inquiry

In February 2001 the Civil Division of the United States Attorney's Office for the Eastern District of Pennsylvania in Philadelphia contacted us and requested our cooperation in a review of some of our historical practices, including billing and other operating procedures and our financial relationships with physicians. We have cooperated in this review and provided the requested records to the United States Attorney's Office. In May 2002, we received a subpoena from the Philadelphia office of the OIG. The subpoena requires an update to the information we provided in our response to the February 2001 request, and also seeks a wide range of documents relating to pharmaceutical and other ancillary services provided to patients, including laboratory and other diagnostic testing services, as well as documents relating to our financial relationships with physicians and pharmaceutical companies. The subpoena covers the period from May 1996 to May 2002. We have provided the documents requested. As this review proceeds, the government could expand its areas of concern. If a court determines that there has been wrongdoing, the penalties under applicable statutes could be substantial.

At this time, we are unable to determine:

- When this matter will be resolved;
- What position the Civil Division will take regarding any of our practices and any potential liability on the Company's part;
- Whether any additional areas of inquiry will be opened; and
- Any outcome of this inquiry, financial or otherwise.

An adverse determination could have a material adverse impact on our business, results of operation and financial condition. As described above under the subheading "Government regulation," the penalties under the federal anti-kickback law, Stark laws and False Claims Act and other federal and state statutes can be substantial.

Laboratory payment reviews

Our Florida-based laboratory subsidiary has been the subject of a third-party carrier review of its Medicare reimbursement claims. The carrier has reviewed claims for six separate review periods. In 1998 the carrier issued a formal overpayment determination in the amount of $5.6 million for the first review period (January 1995 to April

1996). The carrier also suspended all payments of Medicare claims from the laboratory beginning in May 1998. In 1999, the carrier issued a formal overpayment determination in the amount of $15.0 million for the second review period (May 1996 to March 1998). Subsequently, the carrier informed us that $16.1 million of the suspended claims for the third review period (April 1998 to August 1999), $11.6 million of the suspended claims for the fourth review period (August 1999 to May 2000), $2.9 million of the suspended claims for the fifth review period (June 2000 to December 2000) and $0.9 million of the suspended claims for the sixth review period (December 2000 to May 2001) were not properly supported by the prescribing physicians' medical justification.

We disputed the carrier's determinations and have provided supporting documentation of our claims. In addition to the formal appeal processes with the carrier and a federal administrative law judge, we also pursued resolution of this matter through meetings with representatives of CMS and the Department of Justice, or DOJ. We initially met with the DOJ in February 2001, at which time the DOJ requested additional information, which we provided in September 2001.

In June 2002, an administrative law judge ruled that the sampling procedures and extrapolations that the carrier used as the basis of its overpayment determinations for the first two review periods were invalid. This decision invalidated the carrier's overpayment determinations for the first two review periods. Recently, the carrier's hearing officer rendered partially favorable decisions on appeal for the third and fourth review periods. We have filed requests for appeal to an administrative law judge on the unfavorable portions of the decisions on the third and fourth review periods, which involve approximately $7 million in disputed claims. We have also filed a notice of appeal to the carrier for the fifth and sixth review periods, which involves approximately $4 million in disputed claims.

During 2000 we stopped accruing Medicare revenue from this laboratory because of the uncertainties regarding both the timing of resolution and the ultimate revenue valuations. Following the favorable ruling by the administrative law judge in 2002 related to the first two review periods covering January 1995 to March 1998, the carrier lifted the payment suspension and began making payments in July 2002 for lab services provided subsequent to May 2001. After making its determination with respect to the fifth and sixth review periods in December 2002, the carrier paid the additional amounts that it is not disputing for the second through sixth review periods. As of December 31, 2002, we had received $69 million, which represented approximately 70% of the total outstanding Medicare lab billings for the period from January 1995 through June 2002. Approximately $10 million of these collections related to 2002 lab services provided through June 2002. In addition to processing prior period claims, the carrier also began processing and paying billings for current period services on a timely basis in the third quarter of 2002. Based on these developments, we began recognizing estimated current period Medicare lab revenue in the third quarter of 2002. In the fourth quarter of 2003, we recognized additional recoveries of $24 million, principally for review periods three and four, based on the hearing officer's most recent findings.

The Medicare carrier for our former Minnesota laboratory is conducting a post-payment review of Medicare reimbursement claims for the period January 1996 through December 1999. The scope of the review is similar to the review conducted at our Florida laboratory. At this time, we are unable to determine how long it will take the carrier to complete this review. There is currently no overpayment determination or payment suspension with respect to the Minnesota laboratory. The DOJ also requested information with respect to this laboratory, which we have provided. Medicare revenues at the Minnesota laboratory, which were much smaller than the Florida laboratory, were approximately $15 million for the period under review. In November 2001, we closed the operations of this laboratory and combined them with our Florida laboratory.

Corporate compliance program

We have implemented a company-wide corporate compliance program as part of our commitment to comply fully with all applicable laws and regulations and to maintain the high standards of conduct we expect from all of our employees. We continuously review this program and enhance it as necessary. The primary purposes of the program include:

- Increasing through training and education, the awareness of our employees and affiliated professionals of the necessity of complying with all applicable laws and regulations in an increasingly complicated regulatory environment;
- Auditing our dialysis centers, laboratories and billing offices on a regular basis to identify any potential instances of noncompliance in a timely manner; and
- Ensuring that we take steps to resolve instances of noncompliance or to address areas of potential noncompliance as promptly as we become aware of them.

We have a code of conduct that each of our employees and affiliated professionals must follow and we have a confidential toll-free hotline (888-272-7272) for employees to report potential instances of noncompliance. Our chief compliance officer administers the compliance program. The chief compliance officer reports directly to our chief executive officer and chief operating officer and to the compliance committee of our board of directors.

Insurance

We carry property and general liability insurance, professional liability insurance, directors' and officers' liability insurance, workers compensation, and other insurance coverage in amounts and on terms deemed adequate by management, based on our claims experience and expectations for future claims. Future claims could, however, exceed our applicable insurance coverage. Physicians practicing at our dialysis centers are required to maintain their own malpractice insurance and our medical directors maintain coverage for their individual private medical practices. Our liability policies also cover our medical directors for the performance of their duties as medical directors.

Location and capacity of our centers

As of December 31, 2003, we operated or provided administrative services to 566 outpatient dialysis centers, of which 537 are consolidated in our financial statements. Of the remaining 29 centers, we own minority interests in five centers, which are accounted for as equity investments, and provide administrative services to 24 centers in which we have no ownership interest. The locations of the 537 centers included in our consolidated financial statements were as follows:

State	Number of Centers	State	Number of Centers	State	Number of Centers
California	89	Pennsylvania	19	Kentucky	3
Texas	45	Illinois	16	South Dakota	3
Florida	44	Louisiana	12	Iowa	2
North Carolina	34	Indiana	11	New Mexico	2
Georgia	33	Kansas	10	Ohio	2
Minnesota	27	Arizona	9	South Carolina	2
New York	26	Washington	8	Utah	2
Virginia	23	Missouri	7	Alabama	1
Oklahoma	22	New Jersey	7	Delaware	1
Maryland	21	Nevada	6	Oregon	1
Michigan	21	District of Columbia	4	Wisconsin	1
Colorado	19	Nebraska	4		

As our business has grown, we have increased capacity at our existing centers, developed new centers, acquired centers or entered into agreements to manage centers. We expand capacity at our existing centers by increasing hours and/or days of operation or, if additional space is available within a center, through the addition of dialysis stations. The development of a typical outpatient center generally requires $1 million to $1.5 million for initial construction and equipment and approximately $350,000 for working capital in the first year. Based on our experience, a new center typically opens nine to thirteen months after the property lease is signed, normally achieves operating profitability by the ninth to eighteenth month of operation and normally reaches maturity within three to five years. Acquiring an existing center requires a substantially greater initial investment, but profitability and cash flow are initially more predictable. In addition to acquiring centers, we enter into agreements to provide administrative services to third-party-owned centers in return for management fees, typically based on a percentage of revenues.

The table below shows the growth of our company by number of dialysis centers. In February 1998, we completed a merger with Renal Treatment Centers, then the fourth largest provider of dialysis services in the United States, approximately doubling the size of our operations. The pace of our acquisitions slowed significantly during the second half of 1999 and we sold substantially all our operations outside the continental United States in 2000.

	2003	2002	2001	2000	1999	1998	1997	1996	1995
Number of centers at beginning of year	515	495	490	572	508	197	134	68	42
Acquired centers	27	11	21	10	45	263	52	57	23
Developed centers	30	19	7	11	13	24	12	9	3
Centers with services agreements	3	2	3	8	18	32			
Divestitures, closures and terminations	9	12	26	111	12	8	1		
Number of centers at end of year	566	515	495	490	572	508	197	134	68

We believe we have adequate capacity within our existing network to accommodate greater patient volume. In addition, we are currently expanding capacity at some of our centers by adding dialysis stations or relocating to larger facilities, and we intend to open and acquire additional centers in 2004.

Competition

The dialysis industry is highly competitive, particularly in terms of acquiring existing dialysis centers. Competition for qualified physicians to act as medical directors and for inpatient dialysis services agreements with hospitals is also vigorous. We have also, from time to time, experienced competition from former medical directors or referring physicians who have opened their own dialysis centers.

The market share of the large multi-center providers has increased significantly over the last several years and the four largest dialysis chains, including us, now comprise approximately 65% to 70% of the market, compared to approximately 30% in 1992. We expect consolidation by these large chain providers to continue. Approximately half of the independent centers are owned or controlled by hospitals or non-profit organizations. Hospital-based and non-profit dialysis units typically are more difficult to acquire than independent, physician-owned centers. Large chain dialysis providers with whom we compete include Fresenius Medical Care, Gambro and Renal Care Group. Our competitors have substantial financial resources and often compete with us for acquisitions and the development of new centers in our markets.

Our two largest competitors, Fresenius and Gambro, manufacture a full line of dialysis supplies and equipment in addition to owning and operating dialysis centers. This may give them cost advantages over us because of their ability to manufacture their own products. In addition, Fresenius is our largest supplier of dialysis products and is also our largest competitor in the dialysis services market. Our purchases of products in the categories generally offered by Fresenius and/or Gambro, represent less than 5% of our total patient care costs.

A portion of our business also consists of monitoring and providing supplies for ESRD treatments in patients' homes. Other companies provide similar services. One company, Aksys, has developed a hemodialysis system designed to enable patients to perform hemodialysis on a daily basis in their homes. In March 2002, Aksys received FDA clearance to market its Personal Hemodialysis (PHD) system. To date there has not been significant adoption of the PHD system by our patients or physicians. We are unable to determine how this system will affect our business over the longer term.

Employees

As of December 31, 2003, we had approximately 13,800 teammates:

- Licensed professional staff (nurses, dieticians and social workers) 5,300
- Other patient care and center support staff and laboratory personnel 6,900
- Corporate, billing and regional administrative staff 1,600

Our dialysis business requires nurses with specialized training for patients with complex care needs. Recruitment and retention of nurses are continuing concerns for health care providers generally because of the disparity between the supply and demand for nurses, which has led to a nursing shortage. We have an active program of investing in our professional healthcare teammates to help ensure we meet our recruitment and retention targets, including expanded training opportunities, tuition reimbursements, and other incentives.

Item 2. Properties.

We own the land and building for only two of our dialysis facilities. Our other dialysis centers are located on premises that we lease. Our leases generally cover periods from five to ten years and typically contain renewal options of five to ten years at the fair rental value at the time of renewal or at rates subject to periodic consumer price index increases. Our outpatient dialysis centers range in size from 500 to 30,000 square feet, with an average size of approximately 6,500 square feet.

We maintain our corporate headquarters in approximately 50,000 square feet of office space in El Segundo, California, which we currently lease for a term expiring in 2013. Our business office in Tacoma, Washington is in a 127,000-square foot facility leased for a term expiring in 2009. We maintain a 57,000-square foot facility in Berwyn, Pennsylvania, which we currently lease for a term expiring in 2006, principally for additional billing and collections staff. Our Florida-based laboratory is located in a 30,000-square foot facility owned by us, with a long-term ground lease, and we lease 15,000 square feet of additional space for laboratory administrative staff for a term expiring in 2007. We also have 40,000 square feet of office space in Torrance, California, formerly our corporate headquarters, under lease until 2008. Currently 13,000 square feet of this office space is subleased.

Some of our dialysis centers are operating at or near capacity. However, we believe that we have adequate capacity within most of our existing dialysis centers to accommodate additional patient volume through increased hours and/or days of operation, or, if additional space is available within an existing facility, by adding dialysis stations. In addition, we often can build new centers if existing centers reach capacity. With respect to relocating centers or building new centers, we believe that we can generally lease space at economically reasonable rates in the area planned for each of these centers. Expansion or relocation of our dialysis centers is subject to review for compliance with conditions relating to participation in the Medicare ESRD program. In states that require a certificate of need or center license, additional approvals would generally be necessary for expansion or relocation.

Item 3. Legal Proceedings.

See the heading "United States Attorney's inquiry" in "Item 1. Business" of this report for information on our cooperation with the Civil Division of the United States Attorney's Office for the Eastern District of Pennsylvania in a review of some of our historical practices, including billing and other operating procedures and our financial relationships with physicians.

See the heading “Laboratory payment reviews” in “Item 1. Business” of this report for information on the payment dispute with our Florida laboratory’s Medicare carrier.

In addition, we are subject to claims and suits in the ordinary course of business. We do not believe that the ultimate resolution of these additional pending or threatened proceedings, whether the underlying claims are covered by insurance or not, will have a material adverse effect on our results of operations or financial condition.

Item 4. Submission of Matters to a Vote of Securities Holders.

No matters were submitted to a vote of security holders during the fourth quarter of 2003.

PART II

Item 5. Market for the Registrant's Common Equity and Related Stockholder Matters.

Our common stock is traded on the New York Stock Exchange under the symbol "DVA". The following table sets forth, for the periods indicated, the high and low closing prices for our common stock as reported by the New York Stock Exchange.

	High	Low
Year ended December 31, 2003:		
1st quarter	$ 25.59	$ 19.55
2nd quarter	26.94	19.52
3rd quarter	32.50	26.83
4th quarter	40.00	32.95
Year ended December 31, 2002:		
1st quarter	$ 26.00	$ 21.50
2nd quarter	26.13	20.40
3rd quarter	23.91	19.46
4th quarter	25.87	22.80

The closing price of our common stock on February 13, 2004 was $44.89 per share. According to The Bank of New York, our registrar and transfer agent, as of February 13, 2004, there were 2,710 holders of record of our common stock. Since our recapitalization in 1994, we have not declared or paid cash dividends to holders of our common stock. We have no current plans to pay cash dividends. Also, see the heading "Liquidity and capital resources" under "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and the notes to our consolidated financial statements.

Item 6. Selected Financial Data.

The following table presents selected consolidated financial and operating data for the periods indicated. The following financial and operating data should be read in conjunction with "Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations" and our consolidated financial statements filed as part of this report.

	Year ended December 31,				
	2003	2002	2001	2000	1999
	(in thousands, except share data)				
Income statement data:					
Net operating revenues(1)	$ 2,016,418	$ 1,854,632	$ 1,650,753	$ 1,486,302	$ 1,445,351
Operating expenses(2)	1,637,883	1,470,806	1,339,895	1,318,460	1,513,121
Operating income (loss)	378,535	383,826	310,858	167,842	(67,770)
Debt expense	66,828	71,636	72,438	115,445	109,196
Refinancing charges (gains)(3)	26,501	48,930	(1,629)	7,009	1,601
Other income (loss), net	3,060	3,997	2,518	(6,270)	(3,259)
Income (loss) before income taxes	288,266	267,257	242,567	39,118	(181,826)
Income tax expense (benefit)	112,475	109,928	105,252	25,633	(34,570)
Net income (loss)	$ 175,791	$ 157,329	$ 137,315	$ 13,485	$ (147,256)
Basic earnings (loss) per common share	$ 2.79	$ 2.19	$ 1.64	$ 0.17	$ (1.81)
Diluted earnings (loss) per common share	$ 2.49	$ 1.96	$ 1.52	$ 0.16	$ (1.81)
Ratio of earnings to fixed charges(4)(5)	4.43:1	4.35:1	3.63:1	1.32:1	See (5)
Balance sheet data:					
Working capital(6)	$ 242,238	$ 251,925	$ 175,983	$ 148,348	$ (1,043,796)
Total assets	1,945,530	1,775,693	1,662,683	1,596,632	2,056,718
Long-term debt(7)	1,117,002	1,311,252	811,190	974,006	5,696
Shareholders' equity(8)	306,871	70,264	503,637	349,368	326,404

(1) Net operating revenues include $24,000 in 2003 and $58,778 in 2002 of prior years' services revenue relating to Medicare lab recoveries, and $22,000 in 2001 of prior years' dialysis services revenue relating to cash settlements and collections in excess of prior estimates.

(2) Total operating expenses include recoveries of $5,192 in 2002 and $35,220 in 2001 of accounts receivable reserved in 1999, net impairment losses of $4,556 in 2000 and impairment and valuation losses of $139,805 in 1999 principally associated with the disposition of the Company's non-continental U.S. operations.

(3) Refinancing charges (gains) were $26,501 in 2003, representing the consideration paid to redeem the $125,000 5 5/8% Convertible Subordinated Notes due 2006 and the $345,000 7% Convertible Subordinated Notes due 2009 in excess of book value, the write off of related deferred financing costs and other financing fees associated with amending the bank credit agreement, $48,930 in 2002 representing the write-off of deferred financing costs associated with the retirement of the $225,000 outstanding 9 1/4% Senior Subordinated Notes due 2011, a net gain of $1,629 in 2001 relating to the write-off of deferred financing costs and the accelerated swap liquidation gains resulting from debt refinancing.

(4) The ratio of earnings to fixed charges is computed by dividing earnings by fixed charges. Earnings for this purpose is defined as pretax income from operations adjusted by adding back fixed charges expensed during the period and debt refinancing charges. Fixed charges include debt expense (interest expense and amortization of financing costs), the estimated interest component of rental expense on operating leases, and capitalized interest.

(5) Due to our loss in 1999, the ratio coverage in 1999 was less than 1:1. We would have had to generate additional earnings of $182,535 to achieve a coverage of 1:1.

(6) The working capital calculation as of December 31, 1999 includes long-term debt of $1,425,610 that was potentially callable under covenant provisions.
(7) Long-term debt as of December 31, 1999 excludes $1,425,610 that was potentially callable under covenant provisions.
(8) We repurchased 3,441,900 shares of common stock for $107,162 in 2003, 27,327,477 shares of common stock for $642,171 in 2002 and 888,700 shares of common stock for $20,360 in 2001. Debt of $124,700 and $526 was also converted into 4,868,352 and 16,030 shares of common stock in 2003.

Item 7. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Forward looking statements

This Form 10-K contains statements that are forward-looking statements within the meaning of the federal securities laws, including statements about our expectations, beliefs, intentions or strategies for the future. These statements involve known and unknown risks and uncertainties, including risks resulting from the regulatory environment in which we operate, economic and market conditions, competitive activities, other business conditions, accounting estimates, and the risk factors set forth in this Form 10-K. These risks, among others, include those relating to the concentration of profits generated from PPO and private indemnity patients and from the administration of pharmaceuticals, possible reductions in private and government reimbursement rates, changes in pharmaceutical practice patterns or reimbursement policies, the Company's ability to maintain contracts with physician medical directors, and legal compliance risks such as the ongoing review by the US Attorney's Office and the HHS Office of Inspector General in Philadelphia. Our actual results may differ materially from results anticipated in our forward-looking statements. We base our forward-looking statements on information currently available to us, and we have no current intention to update these statements, whether as a result of changes in underlying factors, new information, future events or other developments.

The following should be read in conjunction with our consolidated financial statements and "Item 1. Business."

Overview

Our stated mission is to be the provider, employer and partner of choice. We believe our attention to these three areas—our patients, our teammates, and our business partners—represent the major drivers of our long-term success, aside from external factors such as government policy and physician practice patterns. Accordingly, two principal non-financial metrics we track are quality clinical outcomes and teammate turnover. We have developed our own composite index for measuring improvements in our clinical outcomes, which we refer to as the DaVita Quality Index (DQI). Our clinical outcomes have improved over each of the past three years, and we ended 2003 with the best clinical outcomes that we have ever achieved. Although it is difficult to reliably measure clinical performance across our industry, we believe our clinical outcomes compare favorably with other dialysis providers in the United States. Over the past three years we have achieved significant reductions in teammate turnover, which has been a major contributor to our performance improvements. We will continue to focus on these fundamental long-term value drivers.

We are pleased with the overall clinical, operating and financial performance levels achieved over the past three years, and we expect to be able to generally maintain our current levels of performance over the foreseeable future, absent significant adverse shifts in government policy, physician practice patterns, or mix of commercial-plan patients. Although our business has areas of significant potential exposure, as delineated in the risk factors following this discussion and analysis, our operating results over the past three years have not been significantly adversely affected by these risk factors.

Our operations represent a single reporting segment, with more than 96% of our revenues currently derived directly from providing dialysis services, of which 88% represents on-site dialysis services in approximately 540 centers that are wholly-owned or majority-owned. Our other direct dialysis services, which operationally are integrated with our center operations, relate to patient-performed peritoneal dialysis and acute treatments in hospitals.

The principal drivers to our revenue are a) the number of treatments, which is primarily a function of the number of chronic patients requiring three treatments per week, and b) average treatment revenue. The total patient base is a relatively stable factor, influenced by a demographically growing need for dialysis, our relationships with referring physicians together with the quality of our clinical care, and our pace of opening and acquiring new centers.

Our year-over-year treatment volume growth for 2003 was 6.7%, compared with 5.0% and 6.3% for 2002 and 2001. Approximately 40% of our 2003 growth was associated with new centers, and approximately 60% was attributable to increased treatments.

Average revenue per treatment is principally driven by our mix of commercial and government (principally Medicare and Medicaid) treatments, the mix and intensity of physician-prescribed pharmaceuticals, commercial and government reimbursement rates, and our charge capture, billing and collecting operations performance.

On average, reimbursement rates from commercial payors are more than double Medicare and Medicaid reimbursement rates, and therefore the percentage of commercial patients to total patients represents a major driver of our total average revenue per treatment. The percent of patients under government reimbursement programs to total dialysis center patients increased approximately 1% during 2003, and is currently approximately 79%.

In terms of revenue dollars, approximately 58% of our total dialysis revenue is from government programs. Government reimbursement rates are principally determined by federal (Medicare) and state (Medicaid) policy, have limited potential for rate increases and are sometimes at risk of reductions. Medicare reimbursements represent approximately 50% of our dialysis revenue, and cumulative increases since 1990 have only totaled 4.6%. There were no Medicare rate increases for 2002 and 2003, and the next increase is scheduled for 2005 at 1.6%. Medicaid rates in some states have been under severe budget pressures, and some reductions are anticipated in certain states. Commercial rates can vary significantly and a major portion of our commercial rates are contracted amounts with major payors and are subject to intense negotiation pressure. Over the past three years we have been successful in maintaining a relatively stable average reimbursement rate in the aggregate for patients with commercial plans, in addition to obtaining periodic fee schedule increases.

Approximately 40% of our dialysis revenue is associated with physician-prescribed pharmaceuticals, and therefore changes in physician practice patterns, pharmaceutical protocols, and pharmaceutical intensities significantly influence our revenue levels. Such changes, driven by physician practice patterns and protocols focused on improving clinical outcomes, have accounted for a significant portion of the increase in average revenue per treatment over the past three years.

Our operating performance with respect to services charge capture billing and collecting can also be a significant factor in how much average revenue per treatment is actually realized. Over the past two years we have invested heavily in new systems and processes to ensure reliable performance, as well as compliance with federal and state regulations.

Because of the inherent uncertainties associated with predicting third-party reimbursements in the healthcare industry, our revenue recognition involves significant estimation risks. Our estimates are developed based on the best information available to us and our best judgement as to the reasonably assured collectibility of our billings as of the reporting date. Changes in estimates are reflected in the financial statements based upon on-going actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. In 2001 we separately reported cash recoveries of $22 million associated with prior years' dialysis services as a result of improvements in our billing and collecting operations.

Our annual average revenue per treatment increased from $278 in 2001 to $291 in 2002 and to $303 in 2003. These increases were principally due to increases in our standard fee schedules (impacting non-contracted commercial revenue), changes in mix and intensity of physician-prescribed pharmaceuticals, commercial contract negotiations, and continued improvements in revenue capture, billing and collecting operations, while maintaining a relatively stable mix of commercial patients and commercial rates.

The principal drivers for our patient care costs are clinical hours per treatment, labor rates, vendor pricing of pharmaceuticals, and business infrastructure and compliance costs. However, other cost categories can also

represent significant cost changes such as increased insurance costs experienced in 2003. Our average clinical hours per treatment has improved over the past two years primarily because of reduced teammate turnover and improved training and processes. There is limited opportunity for productivity improvements beyond the levels achieved in 2003, and federal and state policies can adversely impact our ability to achieve optimal productivity levels. Labor rates have increased consistent with general industry trends. For the past three years we have been able to negotiate relatively stable pharmaceutical pricing with our vendors, and expect relatively stable pricing through 2004.

General and administrative expenses have remained relatively constant as a percent of total revenue over the past three years, however this reflects substantial increases in spending related to strengthening our business and regulatory compliance processes, legal and other professional fees, and expanding support functions. We expect that these higher levels of general and administrative expenses will be generally maintained to support our long-term initiatives and to ensure the highest levels of regulatory compliance.

Although other revenues represented only approximately 3% of total revenues for 2003 and 2002, changes in the status of disputed Medicare billings at our Florida lab resulted in increased current period revenue and operating income of $21 million in 2002 compared to 2001. The carrier began making payments on Medicare lab billings in the third quarter of 2002 after four years of withholding all payments, and therefore we were able to begin recognizing this revenue which was entirely incremental income because the associated lab revenue costs had always been ongoing. Medicare lab revenues for 2003 current year services amounted to $26 million. In addition to the incremental current period revenue and income, we had Medicare lab recoveries totaling $83 million in 2002 and 2003 associated with lab services provided from 1995 through 2001, representing nearly 90% of the previously disputed Medicare claims.

Outlook for 2004 and beyond. We are targeting operating income to be between $360 and $385 million for 2004, compared with $355 for 2003. This is consistent with our current longer-term three-year outlook of an average annual increase in operating income of three to eight percent for the next three years on a cumulative average basis. However, we believe the potential downside risks for this three-year outlook are greater than the upside potentials outside this range. These projections and the underlying assumptions involve significant risks and uncertainties, and actual results may vary significantly from these current projections. These risks, among others, include those relating to the concentration of profits generated from PPO and private indemnity patients and from the administration of pharmaceuticals, possible reductions in private and government reimbursement rates, changes in pharmaceutical practice patterns or reimbursement policies, our ability to maintain contracts with our physician medical directors, and legal compliance risks such as the ongoing review by the United States Attorney’s Office and HHS Office of Inspector General in Philadelphia. We undertake no duty to update these projections, whether due to changes in current or expected trends, underlying market conditions, decisions of the United States Attorney’s Office, the DOJ or the OIG in any pending or future review of our business, or otherwise.

Results of operations

The following is a summary of operating revenues and operating expenses. The divestiture of our dialysis operations outside the continental United States was substantially completed during 2000, and the sale of our remaining non-continental centers was completed during the second quarter of 2002. The non-continental U.S. operating results are excluded from the revenue and cost trends discussed below.

	Year ended December 31,					
	2003		2002		2001	
	(dollar amounts rounded to nearest million)					
Net operating revenues:						
Continental:						
Current period services	**$1,992**	100%	**$1,790**	100%	**$1,614**	100%
Prior years' services—laboratory	*24*		*59*			
Prior years' services—dialysis					*22*	
Non-continental			*6*		*15*	
	2,016		1,855		1,651	
Operating expenses and charges:						
Continental:						
Patient care costs	**1,361**	68%	**1,212**	68%	**1,087**	67%
General and administrative	**160**	8%	**155**	9%	**128**	8%
Depreciation and amortization	**75**	4%	**64**	4%	**62**	4%
Goodwill amortization					*42*	
Provision for uncollectible accounts	**36**	2%	**32**	2%	**32**	2%
Recoveries			*(5)*		*(35)*	
Minority interest and equity income, net	**7**		**8**		**7**	
Non-continental			*5*		*17*	
Total operating expenses and charges	1,638		1,471		1,340	
Operating income	$ 379		$ 384		$ 311	
Operating income—excluding non-continental operations, prior years' recoveries, and goodwill amortization in 2001 (i.e., excluding amounts in italics)	***$ 355***	*18%*	***$ 319***	*18%*	***$ 298***	*18%*
Dialysis treatments	6,373,894		5,975,280		5,690,199	
Average dialysis treatments per treatment day	20,377		19,090		18,185	
Average dialysis revenue per treatment (excluding prior years' services revenue in 2001)	$303		$291		$278	

Net operating revenues

Net operating revenues. Net operating revenues for current period services for continental U.S. operations increased 11% in both 2003 and 2002. Approximately 4% and 5% of the increases in revenue for 2003 and 2002 were attributable to increases in the average reimbursement rate per treatment and approximately 7% and 5% were due to increases in the number of dialysis treatments. The balance of the increase in 2002 was due to approximately $21 million of additional current year Medicare laboratory revenue. As discussed below, we had not recognized any Medicare laboratory revenue during 2001 due to the ongoing dispute with the third-party carrier.

Dialysis services revenue. Dialysis services revenue, excluding prior period services revenue, represented approximately 97%, 97% and 98% of current operating revenues in 2003, 2002 and 2001, respectively. Lab, other and management fee income account for the balance of revenues.

Dialysis services include outpatient center hemodialysis, which accounts for approximately 88% of total dialysis treatments, home dialysis, and inpatient hemodialysis with contracted hospitals. Major components of dialysis revenue include the administration of EPO and other drugs as part of the dialysis treatment, which represents approximately one third of operating revenues.

Dialysis services are paid for primarily by Medicare and state Medicaid programs in accordance with rates established by CMS, and by other third-party payors such as HMOs and health insurance carriers. Services provided to patients covered by third-party insurance companies are on average more than double the Medicare or Medicaid rates. Patients covered by employer group health plans convert to Medicare after a maximum of 33 months. As of year-end 2003, the Medicare ESRD dialysis treatment rates were between $121 and $144 per treatment, or an overall average of $131 per treatment, excluding the administration of drugs.

The majority of our net earnings from dialysis services are derived from commercial payors, some of which pay at negotiated reimbursement rates and others which pay based on our usual and customary fee schedule. The commercial reimbursement rates are under continual pressure as we negotiate contract rates with large HMOs and insurance carriers. Additionally, as a patient transitions from commercial coverage to Medicare or Medicaid coverage, the reimbursement rates generally decline substantially.

Dialysis services revenues by payor type were as follows:

	Year ended December 31,		
	2003	2002	2001
Percent of total dialysis revenue:			
Medicare	50%	51%	52%
Medicaid and other government-based programs	8	8	8
	58	59	60
Commercial payors (HMOs, and health insurance carriers)	42	41	40
	100%	100%	100%

The average dialysis revenue recognized per treatment was $303, $291 and $278 for 2003, 2002 and 2001, respectively. The increase in average dialysis revenue per treatment in 2003 was principally due to commercial rate increases and changes in intensity of physician-prescribed pharmaceuticals. The increase in 2002 was principally due to commercial rate increases, changes in mix and intensity of physician-prescribed pharmaceuticals, continued improvements in revenue capture, billing and collecting operations, and payor contracting. The average dialysis revenue per treatment for the fourth quarter of 2003 was $306. Our mix of commercial patients and commercial rates, which is a major profitability factor, remained relatively stable during 2003.

The number of dialysis treatments increased 6.7% in 2003 and 5.0% in 2002, principally attributable to non-acquired annual growth rates of approximately 4.0% plus growth through acquisitions. We expect the non-acquired growth rate to remain in the range of 3.0% to 5.0% through 2004.

The prior years' services revenue of $22 million in 2001 related to cash recoveries associated with prior years' services and resulted from improvements in the Company's billing and collecting operations.

Lab and other services. As discussed in Note 16 to the consolidated financial statements (Contingencies), our Florida-based laboratory subsidiary has been under an ongoing third-party carrier review for Medicare reimbursement claims since 1998. Prior to the third quarter 2002, no Medicare payments had been received since May 1998. Following a favorable ruling by an administrative law judge in June 2002 relating to review periods from January 1995 to March 1998, the carrier began releasing funds for lab services provided subsequent to May 2001. During the fourth quarter of 2002, the carrier also released funds for certain claims in review periods from

April 1998 through May 2001. During the second half of 2002, the carrier paid us a total of $69 million, representing approximately 70% of the total outstanding prior Medicare lab billings for the period from January 1995 through June 2002. Approximately $10 million of these collections related to 2002 lab services provided through June 2002, and the balance of $59 million related to prior years' services. In addition to the prior-period claims, the carrier also began processing billings for current period services in the third quarter of 2002, at which time we began recognizing current period Medicare lab revenue.

The carrier's hearing officer recently rendered partially favorable decisions relating to review periods from April 1998 to May 2000, which resulted in our recognition of additional recoveries of $24 million, of which approximately $19 million remains to be paid in the first quarter of 2004. We have filed requests for appeal to an administrative law judge for the remaining unpaid claims of approximately $11 million for review periods from April 1998 through May 2001, but cannot be assured of any further recoveries.

Management fee income. Management fee income represented less than 1% of total revenues for 2003 and 2002. Our fees are typically based on a percentage of revenue of the center that we administrate and are established in the management contract. We operated or provided administrative services to 29 and 30 third-party or minority-owned dialysis centers as of December 31, 2003 and 2002. During the third quarter of 2003 we acquired an outpatient vascular access management business that currently manages the vascular access component at fourteen independent third-party physician practices.

Operating expenses and charges

Patient care costs. Patient care costs are those costs directly associated with operating and supporting our dialysis centers and ancillary operations and consist principally of labor, pharmaceuticals, medical supplies and facility costs. As a percentage of net operating revenue, patient care costs were 68% for 2003 and 2002, and 67% for 2001. On a per-treatment basis, patient care costs increased approximately $11 and $12 in 2003 and 2002. The increase in both years was principally due to higher labor and insurance costs, and increases in new center openings, as well as increases in the levels of physician-prescribed pharmaceuticals. Increases in revenue per treatment more than offset these cost increases.

General and administrative expenses. General and administrative expenses consist of those costs not specifically attributable to the dialysis centers and ancillary operations, and include expenses for corporate and regional administration, including centralized accounting, billing and cash collection functions, and regulatory compliance oversight. General and administrative expenses as a percentage of net operating revenues (excluding prior period services revenue) were approximately 8.0%, 8.7% and 8.0% in 2003, 2002 and 2001, respectively. In absolute dollars, general and administrative expenses increased by approximately $25 million in 2002 and an additional $6 million in 2003. The increase in 2003 principally consisted of higher labor costs. The increase in 2002 was principally due to higher labor and legal costs. The substantial increases in labor costs for 2002 and 2003 principally related to strengthening our business and regulatory compliance processes, as well as expanding support functions.

Depreciation and amortization. The increase in depreciation and amortization from $64 million in 2002 to $75 million in 2003 was principally due to new center developments, acquisitions and our new operating and billing systems.

Provision for uncollectible accounts receivable. The provisions for uncollectible accounts receivable (excluding prior period services revenue) were approximately 1.8% of current operating revenues in 2003 and 2002, and 2.0% in 2001. During 2002 and 2001, we realized recoveries of $5 million and $35 million associated with aged accounts receivables that had been reserved in 1999. The recoveries and lower provisions in 2003 and 2002 resulted from continued improvements that we have made in our billing and collecting processes.

Impairments and valuation adjustments. We perform impairment or valuation reviews for our property and equipment, amortizable intangibles, and investments in and advances to third-party dialysis businesses

whenever a change in condition indicates that a review is warranted. Such changes include shifts in our business strategy or plans, the quality or structure of our relationships with our partners, or when an owned or third-party dialysis business experiences deteriorating operating performance or liquidity problems. Goodwill is routinely assessed for possible valuation impairment using fair value methodologies. There were no significant impairments or valuation adjustments during the periods presented.

Other income

The net of other income items were income of approximately $3 million for 2003, $4 million for 2002, and $3 million for 2001. These amounts included interest income of approximately $3 million for each year.

Debt expense and refinancing charges

Debt expense for 2003, 2002 and 2001 consisted of interest expense of approximately $64 million, $69 million and $70 million respectively, and amortization of deferred financing costs of approximately $3 million for each year. The reduction in interest expense in 2003 was primarily due to lower average interest rates and lower average debt balances.

Reclassification of previously reported extraordinary losses. In accordance with SFAS No. 145 *Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 14, and Technical Corrections*, which became effective as of January 1, 2003, an after-tax loss of $29.4 million in 2002 and an after-tax gain of $1 million in 2001 resulting from the extinguishment of debt previously classified as extraordinary items have been reclassified to a pre-tax refinancing charge of $49 million for 2002 and a pre-tax gain of $2 million for 2001. In 2003, the refinancing charges of $27 million related to the consideration paid in excess of book value to redeem our Convertible Subordinated Notes and the write-off of deferred financing costs and financing fees associated with amending our bank credit agreement. In 2002, the refinancing charges of $49 million, related to debt restructuring, which included retiring $225 million 9¼% Senior Subordinated Notes due 2011 and extinguishing our then existing senior credit facilities. In 2001, the net refinancing gain of $2 million related to the write-off of deferred financing costs being more than offset by the accelerated recognition of deferred interest rate swap liquidation gains as a result of debt refinancing.

Provision for income taxes

The provision for income taxes for 2003 represented an effective tax rate of 39.0%, compared with 41.0% in 2002 and 43.4% in 2001. The reduction in the effective tax rate in 2003 compared to 2002 was primarily due to a lower provision for state income taxes and utilization of previously unrecognized tax losses. The reduction in 2002 was primarily due to a lower provision for state income tax rates, the elimination of book amortization not deductible for tax purposes and changes in tax valuation estimates.

Liquidity and capital resources

Cash flow from operations during 2003 amounted to $294 million, compared with $278 million for 2002 not including $64 million in Medicare lab and uncollectible account recoveries related to prior years' services. Non-operating cash outflows in 2003 included $100 million for capital asset expenditures including $58 million for new center developments, $97 million for acquisitions (net of divestitures), and $107 million in stock repurchases. Non-operating cash outflows for 2002 included $103 million for capital asset expenditures, $19 million for acquisitions, and $642 million in stock repurchases. During 2003 we acquired 27 dialysis centers, including controlling ownership interests in two centers in which we previously had minority ownership, for $84 million and opened 30 new dialysis centers. Other 2003 acquisitions related to ancillary operations. During 2002 we acquired 11 dialysis centers for $20 million and opened 19 new dialysis centers.

The accounts receivable balance at December 31, 2003 and 2002 represented approximately 69 and 70 days of net revenue, net of bad debt provision.

We believe that we will have sufficient liquidity and operating cash flows to fund our scheduled debt service and other obligations over the next twelve months.

Our stated long-term general target range for our debt leverage ratio is 3.0 to 3.5, although we expect that it may be outside this range for periods of time. As of year-end 2003, our ratio was 2.3. For this purpose, debt leverage ratio is defined as total debt net of cash to annualized operating income excluding depreciation, amortization, and minority interests and equity income, net.

2003 capital structure changes. In the first quarter of 2003, we borrowed $150 million that was available under the Term Loan A of our credit facility. The Term Loan A bears interest at LIBOR plus 2.00% for an overall effective rate of 3.19% at December 31, 2003, with provision to potentially further reduce the interest rate to LIBOR plus 1.50% under certain circumstances. The Term Loan A matures in March 2007 and requires annual principal payments of $33.9 million in years 2004 and 2005, $40.1 million in 2006 and $10.6 million in 2007.

In July 2003, we completed a call for redemption of all of our outstanding $125 million 5 5/8% Convertible Subordinated Notes due 2006. Holders of the 5 5/8% Notes had the option to convert their Notes into shares of DaVita common stock at a price of $25.62 per share or receive cash at 1.0169 times the principal amount of the 5 5/8% Notes, plus accrued interest. In July 2003, we issued 4,868,352 shares of common stock from treasury stock for the conversion of nearly all the 5 5/8% Notes, and redeemed the balance for cash and accrued interest.

In July 2003, we also entered into an amended credit agreement in order to, among other things, lower the overall interest rate. We also acquired an additional $200 million of borrowings under the replacement Term Loan B, which amounted to $1.042 billion. In November 2003, we entered into a second amended and restated credit agreement in order to again lower the interest rate on the Term Loan B and to modify certain covenants. The Term Loan B currently bears interest at LIBOR plus 2.25% for an overall effective rate of 3.42%, with a provision to potentially further reduce the interest rate to LIBOR plus 2.00% under certain circumstances. The aggregate annual principal payments for the Term Loan B are approximately $11 million in the first four years of the agreement, $255 million in the fifth year and $741 million in the sixth year, due no later than March 2009.

In August 2003, we completed a call for redemption of $200 million of our outstanding $345 million 7% Convertible Subordinated Notes due 2009. Holders of the 7% Notes had the option to convert their Notes into shares of DaVita common stock at a price of $32.81 per share or receive cash at 1.042 times the principal amount of the 7% Notes, plus accrued interest. All $200 million of the Notes were redeemed for $208 million in cash plus accrued interest.

In October 2003, we completed a call for redemption of the remaining $145 million of our 7% Convertible Subordinated Notes due 2009. These 7% Notes were redeemed for $155 million in cash, including accrued interest, and 16,030 shares of treasury stock.

In November 2003, we entered into an interest rate swap agreement to effectively fix the LIBOR benchmark interest rate at 3.39% on an amortizing notional amount of $135 million of our Term Loan B outstanding debt that had the economic effect of fixing the interest rate at 5.64% based upon the margin in effect on December 31, 2003. The agreement expires in November 2008 and requires quarterly interest payments. As of December 31, 2003, the notional amount of the swap was approximately $135 million and its fair value was a $2 million liability, resulting in a charge to other comprehensive income of approximately $1 million, net of tax. As a result of the swap agreement, the effective interest rate on the entire credit facility was 3.69% based upon the margin in effect on December 31, 2003.

In January 2004, we entered into another interest rate swap agreement to effectively fix the LIBOR benchmark interest rate at 3.08% on an additional amortizing notional amount of $135 million of our Term Loan B outstanding debt that had the economic effect of fixing the interest rate at 5.33% based upon the margin in effect on January 15, 2004. The agreement expires in January 2009 and requires quarterly interest payments. As a

result of these two interest rate swap agreements, as of January 15, 2004, approximately 25% of our outstanding variable rate debt is effectively fixed at a weighted average interest rate of 5.49% and our overall credit facility effective weighted average interest rate was 3.89%, based upon current margins.

During 2003, we repurchased a total of 3,441,900 shares of our common stock for approximately $107 million, or an average of $31.13 per share, pursuant to Board of Directors' authorizations. As of December 31, 2003, we had $146 million remaining to repurchase shares of our common stock in the open market pursuant to a $200 million Board of Directors' authorization.

2002 capital structure changes. In the first quarter of 2002, we initiated a recapitalization plan to restructure our debt and repurchase common stock. In the initial phase of the recapitalization plan we retired all of our $225 million outstanding 9¼% Senior Subordinated Notes due 2011 for $266 million. Concurrent with the retirement of this debt, we secured a new senior credit facility agreement in the amount of $1.115 billion. The excess of the consideration paid over the book value of the Senior Subordinated Notes and write-off of deferred financing costs associated with extinguishing the existing senior credit facilities and the notes resulted in refinancing charges of $49 million. We completed the next phase of the recapitalization plan with the repurchase of 16,682,337 shares of our common stock for approximately $402 million, or $24.10 per share, through a modified dutch auction tender offer. From May through December 2002 we also purchased 7,699,440 shares in the open market for approximately $172 million pursuant to a $225 million Board of Directors' authorization. For the year ended December 31, 2002, stock repurchases, including 2,945,700 shares acquired prior to initiating the recapitalization plan, amounted to $642 million for 27,327,477 shares, for a composite average of $23.50 per share.

Off-balance sheet arrangements and aggregate contractual obligations

In addition to the debt obligations reflected on our balance sheet, we have commitments associated with operating leases, letters of credit and our investments in third-party dialysis businesses. Nearly all of our facilities are leased. We have potential acquisition obligations for several jointly-owned centers, in the form of put options exercisable at the third-party owners' discretion. These put obligations require us to purchase the third-party owners' interests at either the appraised fair market value or a predetermined multiple of earnings or cash flow. The following is a summary of these contractual obligations and commitments as of December 31, 2003 ($ in millions):

	Within One Year	2-3 Years	4-5 Years	After 5 Years	Total
Scheduled payments under contractual obligations:					
Long-term debt	$ 50	$ 97	$ 766	$ 247	$ 1,160
Capital lease obligations	1	1	3	3	8
Operating leases	62	115	93	153	423
	$ 113	$ 213	$ 862	$ 403	$ 1,591
Potential cash requirements under existing commitments:					
Letters of credit	$ 15				$ 15
Acquisition of dialysis centers	38		$ 9	$ 13	60
Working capital advances to third-parties under administrative services agreements	15				15
	$ 68	$ —	$ 9	$ 13	$ 90

Contingencies

Health care provider revenues may be subject to adjustment as a result of (1) examination by government agencies or contractors, for which the resolution of any matters raised may take extended periods of time to finalize; (2) differing interpretations of government regulations by different fiscal intermediaries or regulatory

authorities; (3) differing opinions regarding a patient's medical diagnosis or the medical necessity of services provided; (4) retroactive applications or interpretations of governmental requirements; and (5) claims for refunds from private payors.

As discussed in Note 16 to the consolidated financial statements (*Contingencies*), our Florida-based laboratory subsidiary has been under an ongoing third-party carrier review for Medicare reimbursement claims since 1998. Prior to the third quarter 2002, no Medicare payments had been received since May 1998. Following a favorable ruling by an administrative law judge in June 2002 relating to review periods from January 1995 to March 1998, the carrier began releasing funds for lab services provided subsequent to May 2001. During the fourth quarter of 2002, the carrier also released funds related to review periods from April 1998 through May 2001. During the second half of 2002, the carrier paid us a total of $69 million, of which $59 million related to prior years' services. The carrier's hearing officer recently rendered partially favorable decisions relating to review periods from April 1998 to May 2000, which resulted in our recognition of additional recoveries of $24 million, of which approximately $19 million remains to be paid in the first quarter of 2004. We have filed requests for appeal to an administrative law judge for the remaining unpaid claims of approximately $11 million for review periods from April 1998 through May 2001, but cannot be assured of any further recoveries.

In February 2001 the Civil Division of the United States Attorney's Office for the Eastern District of Pennsylvania in Philadelphia contacted us and requested our cooperation in a review of some of our historical practices, including billing and other operating procedures and our financial relationships with physicians. We cooperated in this review and provided the requested records to the United States Attorney's Office. In May 2002, we received a subpoena from the Philadelphia office of the Office of Inspector General of the Department of Health and Human Services, or OIG. The subpoena requires an update to the information we provided in our response to the February 2001 request, and also seeks a wide range of documents relating to pharmaceutical and other ancillary services provided to patients, including laboratory and other diagnostic testing services, as well as documents relating to our financial relationships with physicians and pharmaceutical companies. The subpoena covers the period from May 1996 to May 2002. We have provided the documents requested. This inquiry remains at an early stage. As it proceeds, the government could expand its areas of concern. If a court determines that there has been wrongdoing, the penalties under applicable statutes could be substantial.

In addition to the foregoing, we are subject to claims and suits in the ordinary course of business. Management believes that the ultimate resolution of these additional pending proceedings, whether the underlying claims are covered by insurance or not, will not have a material adverse effect on our financial condition, results of operations or cash flows.

Critical accounting estimates and judgements

Our consolidated financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States. These accounting principles require us to make estimates, judgements and assumptions that affect the reported amounts of revenues, expenses, assets, liabilities, and contingencies. All significant estimates, judgements and assumptions are developed based on the best information available to us at the time made and are regularly reviewed and updated when necessary. Actual results will generally differ from these estimates. Changes in estimates are reflected in our financial statements in the period of change based upon on-going actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. Interim changes in estimates are applied prospectively within annual periods. Certain accounting estimates, including those concerning revenue recognition and provision for uncollectible accounts, impairments and valuation adjustments, and accounting for income taxes, are considered to be critical in evaluating and understanding our financial results because they involve inherently uncertain matters and their application requires the most difficult and complex judgements and estimates.

Revenue recognition and provision for uncollectible accounts. Revenue recognition uncertainties inherent in the Company's operations are addressed in AICPA Statement of Position (SOP) No. 00-1 *Auditing Health Care Third-Party Revenues and Related Receivables*. As addressed in SOP No. 00-1, net revenue recognition and allowances for uncollectible billings require the use of estimates of the amounts that will actually be realized considering, among other items, retroactive adjustments that may be associated with regulatory reviews, audits, billing reviews and other matters.

Revenues are recognized as services are provided to patients. Operating revenues consist primarily of reimbursement for dialysis and ancillary services to patients. A usual and customary fee schedule is maintained for our dialysis treatment and other patient services; however, actual collectible revenue is normally at a discount to the fee schedule. Medicare and Medicaid programs are billed at pre-determined net realizable rates per treatment that are established by statute or regulation. Most nongovernmental payors, including contracted managed care payors, are billed at our usual and customary rates, but a contractual allowance is recorded to adjust to the expected net realizable revenue for services provided. Contractual allowances along with provisions for uncollectible accounts are estimated based upon credit risks of third-party payors, contractual terms, inefficiencies in our billing and collection processes, regulatory compliance issues and historical collection experience. Our range of dialysis revenue estimating risk is generally expected to be within 1% of total revenue, which can represent as much as 5% of operating income. Changes in estimates are reflected in the financial statements based on on-going actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. Changes in revenue estimates for prior periods are separately disclosed and reported if material to the current reporting period and longer term trend analyses. For example, we recognized $22 million of prior period dialysis revenue in 2001 related to cash recoveries in excess of previous estimates made possible by improvements in our billing and collecting operations.

Lab service revenues for current period dates of services are recognized at the estimated net realizable amounts to be received after considering possible retroactive adjustments that may be made as a result of the ongoing third-party carrier review.

Impairments of long-lived assets. We account for impairment of long-lived assets, which include property and equipment, investments, amortizable intangible assets and goodwill, in accordance with the provisions of SFAS No. 144 *Accounting for the Impairment or Disposal of Long-Lived Assets* or SFAS No. 142 *Goodwill and Other Intangible Assets*, as applicable. An impairment review is performed annually or whenever a change in condition occurs which indicates that the carrying amounts of assets may not be recoverable. Such changes include changes in our business strategies and plans, changes in the quality or structure of our relationships with our partners and deteriorating operating performance of individual dialysis centers. We use a variety of factors to assess the realizable value of assets depending on their nature and use. Such assessments are primarily based upon the sum of expected future undiscounted net cash flows over the expected period the asset will be utilized, as well as market values and conditions. The computation of expected future undiscounted net cash flows can be complex and involves a number of subjective assumptions. Any changes in these factors or assumptions could impact the assessed value of an asset and result in an impairment charge equal to the amount by which its carrying value exceeds its actual or estimated fair value.

Accounting for income taxes. We estimate our income tax provision to recognize our tax expense for the current year and our deferred tax liabilities and assets for future tax consequences of events that have been recognized in our financial statements, measured using enacted tax rates and laws expected to apply in the periods when the deferred tax liabilities or assets are expected to be realized. Deferred tax assets are assessed based upon the likelihood of recoverability from future taxable income and to the extent that recovery is not likely, a valuation allowance is established. The allowance is regularly reviewed and updated for changes in circumstances that would cause a change in judgement about the realizability of the related deferred tax assets. These calculations and assessments involve complex estimates and judgements because the ultimate tax outcome can be uncertain or future events unpredictable.

Variable compensation accruals. We estimate variable compensation accruals monthly based upon the annual amounts expected to be earned and paid out resulting from the achievement of certain teammate-specific and/or corporate financial and operating goals. Our estimates, which include compensation incentives for bonuses, awards and benefit plan contributions, are updated periodically due to changes in our economic condition or cash flows that could ultimately impact the actual final award. Actual results may vary due to the subjective nature of fulfilling employee specific and/or corporate goals, as well as the final determination and approval of amounts by the Company's Board of Directors.

Significant new accounting standards for 2003

In January 2003 the FASB issued Interpretation (FIN) No. 46 *Consolidation of Variable Interest Entities*, which addresses the consolidation of certain entities ("variable interest entities") in which an enterprise has a controlling financial interest through other than voting interests. FIN No. 46 requires that a variable interest entity be consolidated by the holder of the majority of the expected risks and rewards associated with the activities of the variable interest entity. Adoption of this standard did not have a material effect on our consolidated financial statements.

SFAS No. 150 *Accounting for certain financial instruments with characteristics of both liabilities and equity* was issued in May 2003. This statement establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It also requires certain mandatorily redeemable instruments such as the liability for other owners' interests in limited-life entities to be measured based upon the fair values of the limited-life entities assets, with changes in the liability reported as interest costs. At the October 29, 2003 FASB Board meeting, the Board decided to defer indefinitely the effective date of Statement 150 related to classification and measurement requirements, but not the disclosure requirements, for mandatorily redeemable financial instruments that become subject to Statement 150 solely as a result of consolidation. Our consolidated partnerships include interests in limited-life companies for which third-party interests are reflected in "minority interests" in the financial statements. See Note 18 of our consolidated financial statements.

RISK FACTORS

This Form 10-K contains statements that are forward-looking statements within the meaning of the federal securities laws, including statements about our expectations, beliefs, intentions or strategies for the future. These forward-looking statements include statements regarding our expectations for treatment growth rates, revenue per treatment, expense growth, levels of the provision for uncollectible accounts receivable, operating income, cash flow, and capital expenditures. We base our forward-looking statements on information currently available to us, and we do not intend to update these statements, whether as a result of changes in underlying factors, new information, future events or other developments.

These statements involve known and unknown risks and uncertainties, including risks resulting from economic and market conditions, the regulatory and reimbursement environment in which we operate, competitive activities and other business conditions. Our actual results may differ materially from results anticipated in these forward-looking statements. Important factors that could cause actual results to differ materially from the forward-looking statements include those set forth below. The risks discussed below are not the only ones facing our business.

If the average rates that private payors pay us decline, then our revenues, cash flows and earnings would be substantially reduced.

Approximately 42% of our dialysis revenues are generated from patients who have private payors as the primary payor. The majority of these patients have insurance policies that reimburse us at rates materially higher than Medicare rates. Based on our recent experience in negotiating with private payors, we believe that pressure from private payors to decrease the rates they pay us may increase. If the average rates that private payors pay us decline significantly, it would have a material adverse effect on our revenues, cash flows and earnings.

If the number of patients with higher paying commercial insurance declines, then our revenues, cash flows and earnings would be substantially reduced.

Our revenue levels are sensitive to the percentage of our reimbursements from higher-paying commercial plans. A patient's insurance coverage may change for a number of reasons, including as a result of changes in the patient's or a family member's employment status. If there is a significant change in the number of patients under higher-paying commercial plans relative to plans that pay at lower rates, for example a reduction in the average number of patients under indemnity and PPO plans compared with the average number of patients under HMO plans and government programs, it would negatively impact our revenues, cash flows and earnings.

Changes in clinical practices and reimbursement rates or rules for EPO and other drugs could substantially reduce our revenue and earnings.

The administration of EPO and other drugs accounts for approximately one third of our net operating revenues. Changes in physician practice patterns and accepted clinical practices, changes in private and governmental reimbursement criteria, the introduction of new drugs and the conversion to alternate types of administration, (for example from intravenous administration to subcutaneous or oral administration, that may in turn result in lower or less frequent dosages) could materially reduce our revenues and earnings from the administration of EPO and other drugs. For example, some Medicare fiscal intermediaries are seeking to implement local medical review policies for EPO and vitamin D analogs that would effectively limit utilization of and reimbursement for these drugs. CMS had indicated that it may issue a new national coverage decision that will direct all fiscal intermediaries with respect to reimbursement coverage for EPO. We do not know if or when CMS will issue such decision, or what it will provide.

In addition, reductions in current private and government reimbursement rates for EPO or other pharmaceutical drugs would also reduce our net earnings and cash flows. For example, both CMS and members of Congress have proposed changes in the Medicare reimbursement rates for many of the outpatient prescription drugs that we administer to dialysis patients.

Adverse developments with respect to EPO could materially reduce our net earnings and cash flows and affect our ability to care for our patients.

Amgen is the sole supplier of EPO and often unilaterally increases its price for EPO. For example, Amgen unilaterally increased its base price for EPO by 3.9% in each of 2002, 2001 and 2000. Although we have contracted coverage for EPO pricing for a fixed time period that includes discount variables depending on certain clinical criteria, we cannot predict whether we will continue to receive the same discount structure for EPO that we currently receive, or whether we will continue to achieve the same levels of discounts within that structure as we have historically achieved. In addition, Amgen has developed a new product, Aranesp®, that may replace EPO or reduce its use with dialysis patients. We cannot predict if or when Aranesp® will be introduced to the U.S. dialysis market, what its cost and reimbursement structure will be, or how it may impact our revenues from EPO. Increases in the cost of EPO and the introduction of Aranesp® could have a material adverse effect on our net earnings and cash flows.

Future declines, or the lack of further increases, in Medicare reimbursement rates would reduce our net earnings and cash flows.

Approximately 50% of our dialysis revenues are generated from patients who have Medicare as their primary payor. The Medicare ESRD program reimburses us for dialysis and ancillary services at fixed rates. Unlike most other Medicare programs, the Medicare ESRD program does not provide for periodic inflation increases in reimbursement rates. Increases of 1.2% in 2000 and 2.4% in 2001 were the first increases in the composite rate since 1991, and were significantly less than the cumulative rate of inflation since 1991. For 2002 through 2004 there has been no increase in the composite rate. In 2005 an increase of only 1.6% has been scheduled. Increases in operating costs that are subject to inflation, such as labor and supply costs, have occurred and are expected to continue to occur with or without a compensating increase in reimbursement rates. We cannot predict with certainty the nature or extent of future rate changes, if any. To the extent these rates are not adjusted to keep pace with inflation, our net earnings and cash flows would be adversely affected.

Future changes in the structure of, and reimbursement rates under, the Medicare ESRD program could substantially reduce our operating earnings and cash flows.

CMS is studying changes to the ESRD program, including whether the Medicare composite rate for dialysis should be modified to include additional services that are now separately billable, such as laboratory and other diagnostic tests and the administration of EPO and other pharmaceuticals, in the composite rate. If Medicare began to include in its composite reimbursement rate any ancillary services that it currently reimburses separately, our revenue would decrease to the extent there was not a corresponding increase in that composite rate. In particular, Medicare revenue from EPO is approximately 28% of our total Medicare revenue. If EPO were included in the composite rate, and if the rate were not increased sufficiently, our operating earnings and cash flow could decrease substantially.

Future declines in Medicaid reimbursement rates would reduce our net earnings and cash flows.

Approximately 5% of our dialysis revenues are generated from patients who have Medicaid as their primary coverage. In addition approximately 3% of our dialysis revenues are from Medicaid secondary coverage. Approximately 45% of our Medicaid revenue is derived from patients in California. If state governments change Medicaid programs or the rates paid by those programs for our services, then our revenue and earnings may decline. Some of the states' Medicaid programs have reduced rates for dialysis services, and others have proposed such reductions or other changes to eligibility for Medicaid coverage. Any actions to limit Medicaid coverage or further reduce reimbursement rates for dialysis and related services would adversely affect our revenue and earnings.

The pending federal reviews of some of our historical practices could result in substantial penalties against us.

We are voluntarily cooperating with the Civil Division of the United States Attorney's Office and OIG in Philadelphia in a review of some of our practices, including billing and other operating procedures, financial relationships with physicians and pharmaceutical companies, and the provision of pharmaceutical and other

ancillary services. The DOJ has also requested and received information regarding our laboratories. We are unable to determine when these matters will be resolved, whether any additional areas of inquiry will be opened or any outcome of these matters, financial or otherwise. Any negative findings could result in substantial financial penalties against us and exclusion from future participation in the Medicare and Medicaid programs.

If we fail to adhere to all of the complex government regulations that apply to our business, we could suffer severe consequences that would substantially reduce our revenue and earnings.

Our dialysis operations are subject to extensive federal, state and local government regulations, including Medicare and Medicaid reimbursement rules and regulations, federal and state anti-kickback laws, and federal and state laws regarding the collection, use and disclosure of patient health information. The regulatory scrutiny of healthcare providers, including dialysis providers, has increased significantly in recent years. In addition, the frequency and intensity of Medicare certification surveys and inspections of dialysis centers have increased markedly since 2000.

We endeavor to comply with all of the requirements for receiving Medicare and Medicaid reimbursement and to structure all of our relationships with referring physicians to comply with the anti-kickback laws; however, the laws and regulations in this area are complex and subject to varying interpretations. In addition, our historical dependence on manual processes that vary widely across our network of dialysis centers exposes us to greater risk of errors in billing and other business processes.

Due to regulatory considerations unique to each of these states, all of our dialysis operations in New York and some of our dialysis operations in New Jersey are conducted by privately-owned companies to which we provide a broad range of administrative services. These operations account for approximately 7% of our dialysis revenues. We believe that we have structured these operations to comply with the laws and regulations of these states, but we can give no assurances that they will not be challenged.

If any of our operations are found to violate these or other government regulations, we could suffer severe consequences, including:

- Mandated practice changes that significantly increase operating expenses;
- Suspension of payments from government reimbursement programs;
- Refunds of amounts received in violation of law or applicable reimbursement program requirements;
- Loss of required government certifications or exclusion from government reimbursement programs;
- Loss of licenses required to operate healthcare facilities in some of the states in which we operate, including the loss of revenues from operations in New York and New Jersey conducted by privately-owned companies as described above;
- Fines or monetary penalties for anti-kickback law violations, submission of false claims or other failures to meet reimbursement program requirements and patient privacy law violations; and
- Claims for monetary damages from patients who believe their protected health information has been used or disclosed in violation of federal or state patient privacy laws.

If businesses we acquire failed to adhere to regulations that apply to our business, we could suffer severe consequences that would substantially reduce our revenues and earnings.

Businesses we acquire may have unknown or contingent liabilities, including for failure to adhere to laws and regulations governing dialysis operations. We generally seek indemnification from the sellers of businesses we acquire, but such liabilities may not be covered or may be greater than contractual limits or the financial resources of the indemnifying party.

If a significant number of physicians were to cease referring patients to our dialysis centers, whether due to regulatory or other reasons, our revenue and earnings would decline.

If a significant number of physicians stop referring patients to our centers, it could have a material adverse effect on our revenue and earnings. Many physicians prefer to have their patients treated at dialysis centers where they or other members of their practice supervise the overall care provided as medical directors of the centers. As a result, the primary referral source for most of our centers is often the physician or physician group providing medical director services to the center. If a medical director agreement terminates, whether before or at the end of its term, and a new medical director is appointed, it may negatively impact the former medical director's decision to treat his or her patients at our center. Additionally, both current and former medical directors have no obligation to refer their patients to our centers. Also, if quality or service levels at our centers deteriorate if may negatively impact patient referrals and treatment volumes.

Our medical director contracts are for fixed periods, generally five to ten years. Medical directors have no obligation to extend their agreements with us. As of December 31, 2003, there were 25 centers, accounting for nearly 5% of our treatment volume, at which the medical director agreements required renewal on or before December 31, 2004.

We also may take actions to restructure existing relationships or take positions in negotiating extensions of relationships in order to assure compliance with the safe harbor provisions of the anti-kickback statute and other similar laws. These actions could negatively impact physicians' decisions to extend their medical director agreements with us or to refer their patients to us. In addition, if the terms of an existing agreement were found to violate applicable laws, we may not be successful in restructuring the relationship, which could lead to the early termination of the agreement, or force the physician to stop referring patients to the centers.

If the current shortage of skilled clinical personnel continues, we may experience disruptions in our business operations and increases in operating expenses.

We are experiencing increased labor costs and difficulties in hiring nurses due to a nationwide shortage of skilled clinical personnel. We compete for nurses with hospitals and other health care providers. This nursing shortage may limit our ability to expand our operations. If we are unable to hire skilled clinical personnel when needed, our operations and treatment growth will be negatively impacted.

Provisions in our charter documents and compensation programs we have adopted may deter a change of control that our stockholders would otherwise determine to be in their best interests.

Our charter documents include provisions that may deter hostile takeovers, delay or prevent changes of control or changes in our management, or limit the ability of our stockholders to approve transactions that they may otherwise determine to be in their best interests. These include provisions prohibiting our stockholders from acting by written consent, requiring 60 days advance notice of stockholder proposals or nominations to our Board of Directors and granting our Board of Directors the authority to issue up to five million shares of preferred stock and to determine the rights and preferences of the preferred stock without the need for further stockholder approval, and a poison pill that would substantially dilute the interest sought by an acquirer that our board of directors does not approve.

In addition, most of our outstanding employee stock options include a provision accelerating the vesting of the options in the event of a change of control. We have also adopted a change of control protection program for our employees who do not have a significant number of stock options, which provides for cash bonuses to the employees in the event of a change of control. Based on the shares of our common stock outstanding and the market price of our stock on December 31, 2003, these cash bonuses would total approximately $94 million if a control transaction occurred at that price and our Board of Directors did not modify the program. These compensation programs may affect the price an acquirer would be willing to pay.

These provisions could also discourage bids for our common stock at a premium and cause the market price of our common stock to decline.

Item 7A. Quantitative and Qualitative Disclosures About Market Risk.

Interest rate sensitivity

The table below provides information about our financial instruments that are sensitive to changes in interest rates. For our debt obligations, the table presents principal repayments and current weighted average interest rates on these obligations as of December 31, 2003. For our debt obligations with variable interest rates, the rates presented reflect the current rates in effect at the end of 2003. These rates are based on LIBOR plus margins based upon performance and leverage criteria. The margins currently in effect are between 2.00% to 2.25%.

	Expected maturity date								
	2004	2005	2006	2007	2008	Thereafter	Total	Fair Value	Average interest rate
	(dollars in millions)								
Long-term debt:									
Fixed rate	$ 6	$ 1	$ 1	$ 2		$ 3	$ 13	$ 13	5.08%
Variable rate	45	45	52	22	$ 744	247	1,155	1,155	3.69%

Our senior credit facility is based on a floating LIBOR interest rate plus a margin, which is reset periodically and can be locked in for a maximum of six months. As a result, our interest expense is subject to fluctuations as LIBOR interest rates change.

In November 2003, we entered into an interest rate swap agreement to effectively fix the LIBOR benchmark interest rate at 3.39% on an amortizing notional amount of $135 million of our Term Loan B outstanding debt that had the economic effect of fixing the interest rate at 5.64% based upon the margin in effect on December 31, 2003. The agreement expires in November 2008 and requires quarterly interest payments. As of December 31, 2003, the notional amount of the swap was approximately $135 million and its fair value was a $2 million liability. As a result of the swap agreement our overall effective interest rate on the entire credit facility was 3.69% based upon the margin in effect on December 31, 2003.

In January 2004, we entered into another interest rate swap agreement to effectively fix the LIBOR benchmark interest rate at 3.08% on an additional amortizing notional amount of $135 million of our Term Loan B outstanding debt that had the economic effect of fixing the interest rate at 5.33% based upon the margin in effect on January 15, 2004. The agreement expires in January 2009 and requires quarterly interest payments. As a result of these two interest rate swap agreements, as of January 15, 2004, approximately 25% of our outstanding variable rate debt is effectively fixed at a weighted average interest rate of 5.49% and our overall credit facility effective weighted average interest rate was 3.89%, based upon the current margins.

One means of assessing exposure to interest rate changes is duration-based analysis that measures the potential loss in net income resulting from a hypothetical increase in interest rates of 100 basis points across all variable rate maturities (referred to as a “parallel shift in the yield curve”). Under this model, with all else constant, it is estimated that such an increase would have reduced net income by approximately $6.5 million, $3.5 million and $1.6 million, net of tax, for the years ended December 31, 2003, 2002 and 2001, respectively.

Exchange rate sensitivity

We are currently not exposed to any foreign currency exchange rate risk.

Item 8. Financial Statements and Supplementary Data.

See the Index included at “Item 15. Exhibits, Financial Statement Schedules and Reports on Form 8-K.”

Item 9. Changes In and Disagreements with Accountants on Accounting and Financial Disclosure.

None.

Item 9A. Controls and Procedures.

Management maintains disclosure controls and procedures designed to ensure that information required to be disclosed in the reports filed by the Company pursuant to the Securities Exchange Act of 1934, as amended, or Exchange Act, is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and regulations, and that such information is accumulated and communicated to the Company's management including its Chief Executive Officer and Chief Financial Officer as appropriate to allow for timely decisions regarding required disclosures. Management recognizes that these controls and procedures can provide only reasonable assurance of desired outcomes, and that estimates and judgements are still inherent in the process of maintaining effective controls and procedures.

At the end of the period covered by this report, we carried out an evaluation, under the supervision and with the participation of the Company's Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures in accordance with the Exchange Act requirements. Based upon that evaluation, the Chief Executive Officer and Chief Financial Officer concluded that the Company's disclosure controls and procedures provide reasonable assurance for timely identification and review of material information required to be included in the Company's Exchange Act reports, including this report on Form 10-K.

We have established and maintain a system of internal controls designed to provide reasonable assurance that transactions are executed with proper authorization and are properly recorded in the Company's records, and that errors or irregularities that could be material to the financial statements are prevented or would be detected within a timely period. Internal controls are periodically reviewed and revised if necessary, and are augmented by appropriate oversight and audit functions.

There has not been any change in the Company's internal control over financial reporting during the fiscal period covered by this report on Form 10-K that has materially affected, or is reasonably likely to materially affect, the Company's internal control over financial reporting.

PART III

Item 10. Directors and Executive Officers of the Registrant.

In 2002, we adopted a Corporate Governance Code of Ethics that applies to our principal executive officer, principal financial officer, principal accounting officer or controller, and to all of our financial accounting and reporting professionals, who are directly or indirectly involved in the preparation, reporting and fair presentation of our financial statements and Exchange Act Reports. The Code of Ethics is posted on the Company's website, located at http://www.davita.com, and is included as an Exhibit to this Form 10-K.

The other information required to be disclosed by this item will appear in, and is incorporated by reference from, the section entitled "Proposal No. 1. Election of Directors" under the subheading "Information concerning nominees to our board of directors" and the section entitled "Executive Officers, Compensation and Other Information" under the subheadings "Information concerning our executive officers" and "Section 16(a) beneficial ownership reporting compliance" and the section entitled "the Audit Committee Financial Expert" included in our definitive proxy statement relating to our 2004 annual stockholder meeting.

Item 11. Executive Compensation.

The information required by this item will appear in, and is incorporated by reference from, the section entitled "Proposal No. 1. Election of Directors" under the subheading "Compensation of directors" and the section entitled "Executive Officers, Compensation and Other Information" under the subheadings "Executive compensation," "Employment agreements" and "Compensation committee interlocks and insider participation" included in our definitive proxy statement relating to our 2004 annual stockholder meeting. The compensation committee report and performance graph required by Items 402(k) and (l) of Regulation S-K are not incorporated herein.

Item 12. Equity Compensation Plan Information.

The following table provides information about our common stock that may be issued upon the exercise of options, warrants and rights under all of our existing equity compensation plans and arrangements as of December 31, 2003, including the 1994 Equity Compensation Plan, the 1995 Equity Compensation Plan, the 1997 Equity Compensation Plan, the 1999 Equity Compensation Plan, the 1999 Non-Executive Officer and Non-Director Equity Compensation Plan, the Special Purpose Option Plan (RTC Plan), the 2002 Equity Compensation Plan, the Employee Stock Purchase Plan and the deferred stock unit arrangements. The material terms of each of these plans and arrangements are described in the notes to the December 31, 2003 consolidated financial statements. The 1999 Non-Executive Officer and Non-Director Equity Compensation Plan and the deferred stock unit arrangements were not required to be approved by our shareholders.

Plan category	Number of shares to be issued upon exercise of outstanding options, warrants and rights	Weighted average exercise price of outstanding options, warrants and rights	Number of shares remaining available for future issuance under equity compensation plans (excluding securities reflected in column (a))	Total of shares reflected in columns (a) and (c)
	(a)	*(b)*	*(c)*	*(d)*
Equity compensation plans approved by shareholders	6,076,461	$ 15.91	10,071,496	16,147,957
Equity compensation plans not requiring shareholder approval	3,351,412	$ 16.25	92,451	3,443,863
Total	9,427,873	$ 16.03	10,163,947	19,591,820

Other information required to be disclosed by item 12 will appear in, and is incorporated by reference from, the section entitled "Security Ownership of Principal Stockholders, Directors and Officers" included in our definitive proxy statement relating to our 2004 annual stockholder meeting.

Item 13. Certain Relationships and Related Transactions.

The information required by this item will appear in, and is incorporated by reference from, the section entitled “Certain Relationships and Related Transactions” included in our definitive proxy statement relating to our 2004 annual stockholder meeting.

Item 14. Principal Accounting Fees and Services.

The information required by this item will appear in, and is incorporated by reference from, the section entitled “Independent Auditors” under the subheadings “Audit Fees”, “Audit-Related Fees”, “Tax Fees”, and “All Other Fees” included in our definitive proxy statement relating to our 2004 annual stockholder meeting.

PART IV

Item 15. Exhibits, Financial Statement Schedules, and Reports on Form 8-K.

(a) Documents filed as part of this Report:

(1) *Index to Financial Statements:*

(2) *Index to Financial Statement Schedules:*

(3) *Exhibits:*

3.1	Amended and Restated Certificate of Incorporation of Total Renal Care Holdings, Inc., or TRCH, dated December 4, 1995.(1)
3.2	Certificate of Amendment of Certificate of Incorporation of TRCH, dated February 26, 1998.(2)
3.3	Certificate of Amendment of Certificate of Incorporation of DaVita Inc. (formerly Total Renal Care Holdings, Inc.), dated October 5, 2000.(10)
3.4	Bylaws of TRCH, dated October 6, 1995.(3)
4.1	Indenture, dated June 12, 1996 by Renal Treatment Centers, Inc., or RTC, to PNC Bank including form of RTC Note.(4)
4.2	First Supplemental Indenture, dated as of February 27, 1998, among RTC, TRCH and PNC Bank under the 1996 Indenture.(2)
4.3	Second Supplemental Indenture, dated as of March 31, 1998, among RTC, TRCH and PNC Bank under the 1996 Indenture.(2)
4.4	Indenture, dated as of November 18, 1998, between TRCH and United States Trust Company of New York, as trustee, and form of Note.(5)
4.5	Rights Agreement, dated as of November 14, 2002, between DaVita Inc. and the Bank of New York, as Rights Agent. (6)
10.1	Employment Agreement, dated as of October 18, 1999, by and between TRCH and Kent J. Thiry.(7)*

10.2	Amendment to Mr. Thiry's Employment Agreement, dated May 20, 2000.(8)*
10.3	Second Amendment to Mr. Thiry's Employment Agreement, dated November 28, 2000.(9)*
10.4	Employment Agreement, dated as of November 29, 1999, by and between TRCH and Gary W. Beil.(9)*
10.5	Employment Agreement, dated as of July 19, 2000, by and between TRCH and Charles J. McAllister.(9)*
10.6	Employment Agreement, effective as of April 19, 2000, by and between TRCH and Steven J. Udicious.(10)*
10.7	Employment Agreement, dated as of June 15, 2000, by and between DaVita Inc. and Joseph Mello.(11)*
10.8	Employment Agreement, dated as of April 1, 2001, by and between DaVita Inc. and Richard K. Whitney.(12)*
10.9	Employment Agreement, dated as of October 15, 2002, by and between DaVita Inc. and Lori S. Richardson-Pellicioni.*
10.10	Second Amended and Restated 1994 Equity Compensation Plan.(13)*
10.11	First Amended and Restated 1995 Equity Compensation Plan.(13)*
10.12	First Amended and Restated 1997 Equity Compensation Plan.(13)*
10.13	First Amended and Restated Special Purpose Option Plan.(13)*
10.14	1999 Equity Compensation Plan.(14)*
10.15	Amended and Restated 1999 Equity Compensation Plan.(16)*
10.16	First Amended and Restated Total Renal Care Holdings, Inc. 1999 Non-Executive Officer and Non-Director Equity Compensation Plan.
10.17	2002 Equity Compensation Plan.(17)*
10.18	Credit Agreement, dated as of May 3, 2001, by and among DaVita Inc., the lenders party thereto, Bank of America, N.A., as the Administrative Agent, Banc of America Securities LLC, as Joint Book Manager and Credit Suisse First Boston Corporation, as Joint Book Manager and Syndication Agent (the "Credit Agreement").(18)
10.19	Amendment No. 1, dated as of December 4, 2001, to the Credit Agreement by and among DaVita Inc., the lenders party thereto, Bank of America, N.A., as the Administrative Agent, Banc of America Securities LLC, as Joint Book Manager and Credit Suisse First Boston Corporation, as Joint Book Manager and Syndication Agent.(10)
10.20	Security Agreement, dated as of May 3, 2001, made by DaVita Inc. and the subsidiaries of DaVita Inc. named therein to Bank of America, N.A., as the Collateral Agent for the lenders party to the Credit Agreement.(18)
10.21	Subsidiary Guaranty, dated as of May 3, 2001, made by the subsidiaries of DaVita Inc. named therein in favor of the lenders party to the Credit Agreement.(18)
10.22	Guaranty, entered into as of March 31, 1998, by TRCH in favor of and for the benefit of PNC Bank.(2)
10.23	Credit Agreement, dated as of April 26, 2002, by and among DaVita Inc., the lenders party thereto, Credit Suisse First Boston Corporation as Administrative Agent and Joint Book Manager, Banc of America Securities LLC as Joint Book Manager and Bank of America, N.A., as Syndication Agent ("the Credit Agreement").(12)**
10.24	Amendment No. 1, dated as of May 9, 2002, to the Credit Agreement by and among DaVita Inc., the lenders party thereto, Credit Suisse First Boston Corporation as Administrative Agent and Joint Book Manager, Banc of America Securities LLC as Joint Book Manager and Bank of America, N.A., as Syndication Agent.(12)

10.25	Security Agreement, dated as of April 26, 2002, made by and among DaVita Inc. and the subsidiaries of DaVita Inc. named therein to Credit Suisse First Boston, Cayman Islands Branch, as the Collateral Agent for the lenders party to the Credit Agreement.(12)
10.26	Subsidiary Guarantee, dated as of April 26, 2002, made by the subsidiaries of DaVita Inc. named therein in favor of the lenders party to the Credit Agreement.(12)
10.27	Amendment #4, dated November 16, 2001, to Agreement No. 19990110 between Amgen Inc. and Total Renal Care, Inc. (10)**
10.28	Agreement No. 20010259, dated November 16, 2001 between Amgen USA Inc. and Total Renal Care, Inc.(10)**
10.29	Amendment #1, dated December 31, 2002, to Agreement No. 20010259 between Amgen USA Inc. and Total Renal Care, Inc.**
10.30	Amended and Restated Credit Agreement, dated July 15, 2003, by and among DaVita Inc., the lenders party thereto, Credit Suisse First Boston Corporation as Joint Book Manager, Administrative Agent and Syndication Agent, Banc of America Securities LLC as Joint Book Manager and Bank of America, N.A., as Syndication Agent.(15)
10.31	Guarantee Supplement, dated July 15, 2003, made by the subsidiaries of DaVita Inc. named therein in favor of the lenders party to the Amended and Restated Credit Agreement.(15)
10.32	Employment Agreement dated as of May 1, 2003, by and between DaVita Inc. and Patrick A. Broderick.(15)*
10.33	Second Amended and Restated Credit Agreement, dated November 18, 2003, by and among DaVita Inc., the lenders party thereto, Credit Suisse First Boston, Cayman Islands Branch as Joint Book Manager, and Administrative Agent, Banc of America Securities LLC as Joint Book Manager and Bank of America N.A., as Syndication Agent.ü
10.34	Agreement dated December 24, 2003, between Amgen USA Inc. and DaVita Inc.**ü
12.1	Statement re: Computation of Ratios of Earnings to Fixed Charges. ü
14.1	DaVita Inc. Corporate Governance Code of Ethics.ü
21.1	List of our subsidiaries. ü
23.1	Consent of KPMG LLP.ü
24.1	Powers of Attorney with respect to DaVita.ü(Included on Page II-1)
31.1	Certification of the Chief Executive Officer, dated February 27, 2004, pursuant to Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.ü
31.2	Certification of the Chief Financial Officer, dated February 27, 2004, pursuant to Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.ü
32.1	Certification of the Chief Executive Officer, dated February 27, 2004, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.ü
32.2	Certification of the Chief Financial Officer, dated February 27, 2004, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.ü

ü Included in this filing.
* Management contract or executive compensation plan or arrangement.
** Portions of this exhibit are subject to a request for confidential treatment and have been redacted and filed separately with the SEC.
(1) Filed on March 18, 1996 as an exhibit to our Transitional Report on Form 10-K for the transition period from June 1, 1995 to December 31, 1995.
(2) Filed on March 31, 1998 as an exhibit to our Form 10-K for the year ended December 31, 1997.

(3) Filed on October 24, 1995 as an exhibit to Amendment No. 2 to our Registration Statement on Form S-1 (Registration Statement No. 33-97618).
(4) Filed on August 5, 1996 as an exhibit to RTC's Form 10-Q for the quarter ended June 30, 1996.
(5) Filed on December 18, 1998 as an exhibit to our Registration Statement on Form S-3 (Registration Statement No. 333-69227).
(6) Filed on November 19, 2002 as an exhibit to our Form 8-K reporting the adoption of the Rights Agreement.
(7) Filed on November 15, 1999 as an exhibit to our Form 10-Q for the quarter ended September 30, 1999.
(8) Filed on August 14, 2000 as an exhibit to our Form 10-Q for the quarter ended June 30, 2000.
(9) Filed on March 20, 2001 as an exhibit to our Form 10-K for the year ended December 31, 2000.
(10) Filed on March 1, 2002 as an exhibit to our Form 10-K for the year ended December 31, 2001.
(11) Filed on August 15, 2001 as an exhibit to our Form 10-Q for the quarter ended June 30, 2001.
(12) Filed on May 14, 2002 as an exhibit to our Form 10-Q for the quarter ended March 31, 2002.
(13) Filed on March 29, 2000 as an exhibit to our Form 10-K for the year ended December 31, 1999.
(14) Filed on February 18, 2000 as an exhibit to our Registration Statement on Form S-8 (Registration Statement No. 333-30736).
(15) Filed on August 6, 2003 as an exhibit to our Form 10-Q for the quarter ended June 30, 2003.
(16) Filed on April 27, 2001 as an exhibit to the Definitive Proxy Statement for our 2001 Annual Meeting of Stockholders.
(17) Filed on March 14, 2002 as an exhibit to the Definitive Proxy Statement for our 2002 Annual Meeting of Stockholders.
(18) Filed on June 8, 2001 as an exhibit to our Registration Statement on Form S-4 (Registration Statement No. 333-62552).

(b) Reports on Form 8-K:

Current report on Form 8-K dated February 11, 2004, furnished under Item 9, "Regulation FD Disclosure" and Item 12, "Disclosure of Results of Operations and Financial Condition", announcing the Company's financial results for the quarter ended December 31, 2003. A copy of the press release announcing the Company's financial results for the quarter and year ended December 31, 2003 was attached to Form 8-K as Exhibit 99.1.

DAVITA INC.

REPORT OF MANAGEMENT

Management is responsible for the preparation, integrity and fair presentation of the accompanying consolidated financial statements of DaVita Inc. and its subsidiaries. The financial statements have been prepared in accordance with accounting principles generally accepted in the United States of America and include amounts that are based on management's best estimates and judgements. Financial information included elsewhere in this Annual Report on Form 10-K for the year ended December 31, 2003 is consistent with that in the financial statements.

Management has established and maintains a system of internal controls over financial reporting designed to provide reasonable assurance as to the integrity, reliability and accuracy of the financial statements. Management also maintains disclosure controls and procedures designed to accumulate, process and report materially accurate information within the time periods specified in the Securities and Exchange Commission's rules and regulations.

Internal controls over financial reporting and disclosure controls are periodically reviewed and revised if necessary, and are augmented by appropriate oversight and audit functions, as well as an active Code of Conduct requiring adherence to the highest levels of personal and professional integrity. Management however, recognizes that these controls and procedures can provide only reasonable assurance of desired outcomes.

The consolidated financial statements have been audited and reported on by our independent auditors, KPMG LLP, who report directly to the Audit Committee of the Board of Directors. The Audit Committee, which is comprised solely of independent directors, monitors the integrity of the Company's financial reporting process and systems of internal controls over financial reporting and disclosure controls, monitors the independence and performance of the Company's independent auditors, ensures the effectiveness of an anonymous compliance hotline available to all employees, and holds regular meetings without the presence of management.

The Company has carried out an evaluation of the effectiveness of the design and operations of the Company's internal controls over financial reporting and disclosure controls and procedures in accordance with the Exchange Act requirements. Based upon that evaluation, management has concluded that the Company's internal controls over financial reporting are adequate to provide reasonable assurance that transactions are fairly presented in the consolidated financial statements, and that disclosure controls and procedures are effective for timely identification and review of material information required to be included in the Company's Exchange Act reports, including this Annual Report.

Kent J. Thiry
Chief Executive Officer

Gary W. Beil
Acting Chief Financial Officer,
Vice President and Controller

INDEPENDENT AUDITORS' REPORT

The Board of Directors and Shareholders
DaVita Inc.

We have audited the accompanying consolidated balance sheets of DaVita Inc. and subsidiaries as of December 31, 2003 and 2002, and the related consolidated statements of income and comprehensive income, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2003. These consolidated financial statements are the responsibility of the Company's management. Our responsibility is to express an opinion on the consolidated financial statements based on our audits.

We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement. An audit includes examining, on a test basis, evidence supporting the amounts and disclosures in the financial statements. An audit also includes assessing the accounting principles used and significant estimates made by management, as well as evaluating the overall financial statement presentation. We believe that our audits provide a reasonable basis for our opinion.

In our opinion, the consolidated financial statements referred to above present fairly, in all material respects, the financial position of DaVita Inc. and subsidiaries as of December 31, 2003 and 2002, and the results of their operations and their cash flows for each of the years in the three-year period ended December 31, 2003, in conformity with accounting principles generally accepted in the United States of America.

As discussed in Note 1 to the consolidated financial statements, effective July 1, 2001, the Company adopted the provisions of Statement of Financial Accounting Standards ("SFAS") No. 141, "Business Combinations," and certain provisions of SFAS No. 142, "Goodwill and Other Intangible Assets," as required for goodwill and intangible assets resulting from business combinations consummated after June 30, 2001. In 2002, the Company changed its method of accounting for goodwill and other intangible assets for all other business combinations.

/s/ KPMG LLP

Seattle, Washington
February 20, 2004

DAVITA INC.

CONSOLIDATED STATEMENTS OF INCOME AND COMPREHENSIVE INCOME
(dollars in thousands, except per share data)

	Year ended December 31,		
	2003	2002	2001
Net operating revenues	$ 2,016,418	$ 1,854,632	$ 1,650,753
Operating expenses and charges:			
Patient care costs	1,360,556	1,217,685	1,100,652
General and administrative	159,628	154,073	129,194
Depreciation and amortization	74,687	64,665	105,209
Provision for uncollectible accounts	35,700	26,877	(2,294)
Minority interests and equity income, net	7,312	7,506	7,134
Total operating expenses and charges	1,637,883	1,470,806	1,339,895
Operating income	378,535	383,826	310,858
Debt expense	66,828	71,636	72,438
Refinancing charges (gains)	26,501	48,930	(1,629)
Other income, net	3,060	3,997	2,518
Income before income taxes	288,266	267,257	242,567
Income tax expense	112,475	109,928	105,252
Net income	$ 175,791	$ 157,329	$ 137,315
Earnings per share:			
Basic	$ 2.79	$ 2.19	$ 1.64
Diluted	$ 2.49	$ 1.96	$ 1.52
Weighted average shares for earnings per share:			
Basic	62,897,000	71,831,000	83,768,000
Diluted	75,840,000	90,480,000	103,454,000
STATEMENTS OF COMPREHENSIVE INCOME			
Net income	$ 175,791	$ 157,329	$ 137,315
Unrealized loss on securities, net of tax of $590	(924)		
Comprehensive income	$ 174,867	$ 157,329	$ 137,315

See notes to consolidated financial statements.

DAVITA INC.

CONSOLIDATED BALANCE SHEETS
(dollars in thousands, except per share data)

	December 31, 2003	December 31, 2002
ASSETS		
Cash and cash equivalents	$ 61,657	$ 96,475
Accounts receivable, less allowance of $52,554 and $48,927	387,933	344,292
Medicare lab recoveries	19,000	
Inventories	32,853	34,929
Other current assets	43,875	28,667
Deferred income taxes	59,740	40,163
Total current assets	605,058	544,526
Property and equipment, net	342,447	298,475
Amortizable intangibles, net	49,971	63,159
Investments in third-party dialysis businesses	3,095	3,227
Other long-term assets	10,771	1,520
Goodwill	934,188	864,786
	$ 1,945,530	$ 1,775,693
LIABILITIES AND SHAREHOLDERS' EQUITY		
Accounts payable	$ 71,868	$ 77,890
Other liabilities	112,654	101,389
Accrued compensation and benefits	100,909	95,435
Current portion of long-term debt	50,557	7,978
Income taxes payable	26,832	9,909
Total current liabilities	362,820	292,601
Long-term debt	1,117,002	1,311,252
Other long-term liabilities	19,310	9,417
Deferred income taxes	106,240	65,930
Minority interests	33,287	26,229
Commitments and contingencies		
Shareholders' equity:		
Preferred stock ($0.001 par value, 5,000,000 shares authorized; none issued)		
Common stock ($0.001 par value, 195,000,000 shares authorized; 89,870,803 and 88,874,896 shares issued)	90	89
Additional paid-in capital	539,575	519,369
Retained earnings	389,128	213,337
Treasury stock, at cost (25,368,019 and 28,216,177 shares)	(620,998)	(662,531)
Accumulated comprehensive income valuations	(924)	
Total shareholders' equity	306,871	70,264
	$ 1,945,530	$ 1,775,693

See notes to consolidated financial statements.

DAVITA INC.

CONSOLIDATED STATEMENTS OF CASH FLOWS
(dollars in thousands)

	Year ended December 31,		
	2003	2002	2001
Cash flows from operating activities:			
Net income	$ 175,791	$ 157,329	$ 137,315
Adjustments to reconcile net income to cash provided by operating activities:			
Depreciation and amortization	74,687	64,665	105,209
Refinancing charges	26,501	48,930	(1,629)
Loss (gain) on divestitures	2,130	(1,151)	(71)
Deferred income taxes	20,914	62,172	10,093
Non-cash debt expense	3,124	3,217	2,396
Stock option expense and tax benefits	20,180	22,212	17,754
Equity investment income	(1,596)	(1,791)	(2,126)
Minority interests in income of consolidated subsidiaries	8,908	9,299	9,260
Distributions to minority interests	(7,663)	(6,165)	(7,942)
Changes in operating assets and liabilities, net of effect of acquisitions and divestitures:			
Accounts receivable	(41,369)	(17,699)	(37,167)
Medicare lab recoveries	(19,000)		
Inventories	3,159	(342)	(13,575)
Other current assets	(13,297)	(19,089)	3,321
Other long-term assets	4,692	527	227
Accounts payable	(6,875)	10,822	(3,906)
Accrued compensation and benefits	5,821	6,837	17,990
Other current liabilities	9,958	2,585	9,728
Income taxes	17,810	(4,821)	17,757
Other long-term liabilities	9,773	4,458	157
Net cash provided by operating activities	293,648	341,995	264,791
Cash flows from investing activities:			
Additions of property and equipment, net	(100,272)	(102,712)	(51,233)
Acquisitions and divestitures, net	(97,370)	(18,511)	(66,939)
Investments in and advances to affiliates, net	4,456	5,064	25,217
Intangible assets	(790)	(342)	(11)
Net cash used in investing activities	(193,976)	(116,501)	(92,966)
Cash flows from financing activities:			
Borrowings	4,766,276	2,354,105	1,709,996
Payments on long-term debt	(4,797,994)	(1,855,199)	(1,866,232)
Debt redemption premium	(14,473)	(40,910)	
Deferred financing costs	(4,193)	(10,812)	(9,285)
Net proceeds from issuance of common stock	23,056	29,257	19,560
Purchase of treasury shares	(107,162)	(642,171)	(20,360)
Net cash used in financing activities	(134,490)	(165,730)	(166,321)
Net (decrease) increase in cash and cash equivalents	(34,818)	59,764	5,504
Cash and cash equivalents at beginning of year	96,475	36,711	31,207
Cash and cash equivalents at end of year	$ 61,657	$ 96,475	$ 36,711

See notes to consolidated financial statements.

DAVITA INC.

CONSOLIDATED STATEMENTS OF SHAREHOLDERS' EQUITY
(in thousands)

	Common Stock		Additional paid-in Capital	Notes receivable from shareholders	Retained earnings (deficit)	Treasury Stock		Accumulated comprehensive income valuations	Total
	Shares	Amount				Shares	Amount		
Balance at December 31, 2000	82,136	$ 82	$ 430,676	$ (83)	$ (81,307)				$ 349,368
Shares issued to employees and others	132		602						602
Options exercised	3,141	3	18,872						18,875
Repayment of notes receivable, net of interest accrued				83					83
Income tax benefit on stock options exercised			17,087						17,087
Stock option expense			667						667
Net income					137,315				137,315
Treasury stock purchases						(889)	$ (20,360)		(20,360)
Balance at December 31, 2001	85,409	85	467,904	—	56,008	(889)	(20,360)		503,637
Shares issued to employees and others	45		798						798
Options exercised	3,421	4	28,455						28,459
Income tax benefit on stock options exercised			22,150						22,150
Stock option expense			62						62
Net income					157,329				157,329
Treasury stock purchases						(27,327)	(642,171)		(642,171)
Balance at December 31, 2002	88,875	89	519,369	—	213,337	(28,216)	(662,531)		70,264
Shares issued upon conversion of debt			14,076			4,884	114,700		128,776
Shares issued to employees and others	42		873						873
Deferred stock unit shares issued			(220)			33	770		550
Options exercised	954	1	(14,703)			1,373	33,225		18,523
Income tax benefit on stock options exercised			20,204						20,204
Stock option expense			(24)						(24)
Net income					175,791				175,791
Treasury stock purchases						(3,442)	(107,162)		(107,162)
Unrealized loss on securities								$ (924)	(924)
Balance at December 31, 2003	89,871	$ 90	$ 539,575	$ —	$ 389,128	(25,368)	$ (620,998)	$ (924)	$ 306,871

See notes to consolidated financial statements.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS
(dollars in thousands, except per share data)

1. Organization and summary of significant accounting policies

Organization

DaVita Inc. operates kidney dialysis centers and provides related medical services primarily in dialysis centers and in contracted hospitals across the United States. These operations represent a single business segment.

Basis of presentation

These consolidated financial statements and accompanying notes are prepared in accordance with accounting principles generally accepted in the United States. The financial statements include the Company's subsidiaries and partnerships that are wholly-owned, majority-owned, or in which the Company maintains a controlling financial interest. All significant intercompany transactions and balances have been eliminated. Non-consolidated equity investments are recorded under the equity or cost method of accounting as appropriate. Prior year balances and amounts have been classified to conform to the current year presentation.

Use of estimates

The preparation of financial statements in conformity with accounting principles generally accepted in the United States requires the use of estimates and assumptions that affect the reported amounts of revenues, expenses, assets, liabilities and contingencies. Although actual results in subsequent periods will differ from these estimates, such estimates are developed based on the best information available to management and management's best judgements at the time made. All significant assumptions and estimates underlying the reported amounts in the financial statements and accompanying notes are regularly reviewed and updated. Changes in estimates are reflected in the financial statements based upon on-going actual experience trends, or subsequent settlements and realizations depending on the nature and predictability of the estimates and contingencies. Interim changes in estimates related to annual operating costs are applied prospectively within annual periods.

The most significant assumptions and estimates underlying these financial statements and accompanying notes involve revenue recognition and provisions for uncollectible accounts, impairments and valuation adjustments, accounting for income taxes and variable compensation accruals. Specific estimating risks and contingencies are further addressed in these notes to the consolidated financial statements.

Net operating revenues

Revenue recognition uncertainties inherent in the Company's operations are addressed in AICPA Statement of Position (SOP) No. 00-1 *Auditing Health Care Third-Party Revenues and Related Receivables*. As addressed in SOP No. 00-1, net revenue recognition and allowances for uncollectible billings require the use of estimates of the amounts that will actually be realized considering, among other items, retroactive adjustments that may be associated with regulatory reviews, audits, billing reviews and other matters.

Revenues are recognized as services are provided to patients. Operating revenues consist primarily of reimbursement for dialysis and ancillary services to patients. A usual and customary fee schedule is maintained for dialysis treatments and other patient services; however, actual collectible revenue is at a discount to the fee schedule. Medicare and Medicaid program reimbursement rates are established by statute or regulation. Most nongovernmental payors, including contracted managed care payors, are billed at our usual and customary rates, but a contractual allowance is recorded to adjust to the expected net realizable revenue for services provided.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Contractual allowances along with provisions for uncollectible accounts are estimated based upon credit risks of third-party payors, contractual terms, inefficiencies in our billing and collection processes, regulatory compliance issues and historical collection experience.

Management and administrative support services are provided to dialysis centers and physician practices not owned by the Company. The management fees are principally determined as a percentage of the managed operations' revenues or cash collections, and are included in net operating revenues as earned.

Other income

Other income includes interest income on cash investments and other non-operating gains and losses.

Cash and cash equivalents

Cash equivalents are highly liquid investments with maturities of three months or less at date of purchase.

Inventories

Inventories are stated at the lower of cost (first-in, first-out) or market and consist principally of drugs and dialysis related supplies.

Property and equipment

Property and equipment are stated at cost reduced by any impairments. Maintenance and repairs are charged to expense as incurred. Depreciation and amortization expenses are computed using the straight-line method over the useful lives of the assets estimated as follows: buildings, 20 to 40 years; leasehold improvements, the shorter of their estimated useful life or the lease term; and equipment and software, principally 3 to 8 years. Disposition gains and losses are included in current earnings.

Amortizable intangibles

Amortizable intangible assets include noncompetition agreements and deferred debt issuance costs, each of which have determinate useful lives. Noncompetition agreements are amortized over the terms of the agreements, typically three to twelve years, using the straight-line method. Deferred debt issuance costs are amortized to debt expense over the term of the related debt using the effective interest method.

Goodwill

Goodwill represents the difference between the purchase cost of acquired businesses and the fair value of the identifiable tangible and intangible net assets acquired. Under Statement of Financial Accounting Standards (SFAS) No. 142 *Goodwill and Other Intangible Assets* goodwill is not amortized after December 31, 2001 but is assessed for valuation impairment as circumstances warrant and at least annually. An impairment charge would be recorded to the extent the book value of goodwill exceeds its fair value. The Company operates as one reporting unit for goodwill impairment assessments. If this standard had been effective as of January 1, 2001, net income and diluted net income per share would have been $162,350 or $1.76 per share for 2001.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Impairment of long-lived assets

Long-lived assets, including property and equipment, investments, and amortizable intangible assets, are reviewed for possible impairment whenever significant events or changes in circumstances indicate that an impairment may have occurred, including changes in our business strategy and plans. An impairment is indicated when the sum of the expected future undiscounted net cash flows identifiable to that asset or asset group is less than its carrying value. Impairment losses are determined from actual or estimated fair values, which are based on market values, net realizable values or projections of discounted net cash flows, as appropriate. Interest is not accrued on impaired loans unless the estimated recovery amounts justify such accruals.

Income taxes

Federal and state income taxes are computed at current enacted tax rates, less tax credits. Taxes are adjusted both for items that do not have tax consequences and for the cumulative effect of any changes in tax rates from those previously used to determine deferred tax assets or liabilities. Tax provisions include amounts that are currently payable, as well as changes in deferred tax assets and liabilities that arise because of temporary differences between the timing of when items of income and expense are recognized for financial reporting and income tax purposes, which are measured using enacted tax rates and laws expected to apply in the periods when the deferred tax liability or asset is expected to be realized, and any changes in the valuation allowance caused by a change in judgement about the realizability of the related deferred tax assets.

Minority interests

Consolidated income is reduced by the proportionate amount of income accruing to minority interests. Minority interests represent the equity interests of third-party owners in consolidated entities which are not wholly-owned. As of December 31, 2003, there were 30 consolidated entities with third-party minority ownership interests.

Stock-based compensation

Stock-based compensation for employees is determined in accordance with Accounting Principles Board Opinion No. 25 *Accounting for Stock Issued to Employees*, as allowed under SFAS No. 123 *Accounting for Stock-Based Compensation*. Stock option grants to employees do not result in an expense if the exercise price is at least equal to the market price at the date of grant. Stock option expense is also measured and recorded for certain modifications to stock options as required under FASB Interpretation No. 44 *Accounting for Certain Transactions Involving Stock Compensation*. Stock options issued to non-employees and restricted stock units are valued using the Black-Scholes model and amortized over the respective vesting periods.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

Pro forma net income and earnings per share. If the Company had adopted the fair value-based compensation expense provisions of SFAS No. 123 upon the issuance of that standard, net income and net income per share would have been adjusted to the pro forma amounts indicated below:

Pro forma—As if all stock options were expensed	Year ended December 31, 2003	2002	2001
Net income:			
As reported	$ 175,791	$ 157,329	$ 137,315
Add: Stock-based employee compensation expense included in reported net income, net of tax	1,036	753	1,119
Deduct: Total stock-based employee compensation expense under the fair value-based method, net of tax	(9,554)	(10,182)	(18,350)
Pro forma net income	$ 167,273	$ 147,900	$ 120,084
Pro forma basic earnings per share:			
Pro forma net income for basic earnings per share calculation	$ 167,273	$ 147,900	$ 120,084
Weighted average shares outstanding	62,835	71,787	83,768
Vested restricted stock units	62	44	
Weighted average shares for basic earnings per share calculation	62,897	71,831	83,768
Basic net income per share—Pro forma	$ 2.66	$ 2.06	$ 1.43
Basic net income per share—As reported	$ 2.79	$ 2.19	$ 1.64
Pro forma diluted earnings per share:			
Pro forma net income	$ 167,273	$ 147,900	$ 120,084
Debt expense savings, net of tax, from assumed conversion of convertible debt	13,011	19,661	4,222
Pro forma net income for diluted earnings per share calculations	$ 180,284	$ 167,561	$ 124,306
Weighted average shares outstanding	62,835	71,787	83,768
Vested restricted stock units	62	44	
Assumed incremental shares from stock plans	2,838	4,184	2,708
Assumed incremental shares from convertible debt	9,951	15,394	4,879
Weighted average shares for diluted earnings per share calculations	75,686	91,409	91,355
Diluted net income per share—Pro forma	$ 2.38	$ 1.83	$ 1.36
Diluted net income per share—As reported	$ 2.49	$ 1.96	$ 1.52

The fair values of stock option grants were estimated as of the date of grant using the Black-Scholes option-pricing model with the following assumptions for grants in 2003, 2002 and 2001, respectively: dividend yield of 0% and weighted average expected volatility of 40% for all periods; risk-free interest rates of 2.07%, 3.99% and 4.44% and weighted average expected lives of 3.5, 3.5 and 3.8 years.

Interest rate swap agreements

The Company has from time to time entered into interest rate swap agreements as a means of managing interest rate exposure. These agreements were not for trading or speculative purposes, and had the effect of converting a portion of our variable rate debt to a fixed rate. Net amounts paid or received have been reflected as adjustments to interest expense.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

New accounting standards

In January 2003 the FASB issued Interpretation (FIN) No. 46 *Consolidation of Variable Interest Entities,* which addresses the consolidation of certain entities ("variable interest entities") in which an enterprise has a controlling financial interest through other than voting interests. FIN No. 46 requires that a variable interest entity be consolidated by the holder of the majority of the expected risks and rewards associated with the activities of the variable interest entity. Adoption of this standard did not have a material effect on our consolidated financial statements.

SFAS No. 150 *Accounting for certain financial instruments with characteristics of both liabilities and equity* was issued in May 2003. This statement establishes standards for how an issuer classifies and measures certain financial instruments with characteristics of both liabilities and equity. It also requires certain mandatorily redeemable instruments such as the liability for other owners' interests in limited-life entities to be measured based upon the fair values of the limited-life entities assets, with changes in the liability reported as interest costs. At the October 29, 2003 FASB Board meeting, the Board decided to defer indefinitely the effective date of Statement 150 related to classification and measurement requirements, but not the disclosure requirements, for mandatorily redeemable financial instruments that become subject to Statement 150 solely as a result of consolidation. Our consolidated partnerships include interests in limited-life companies for which third-party interests are reflected in "minority interests" in the financial statements. See note 18.

Reclassification of previously reported extraordinary losses: In accordance with SFAS No. 145 *Rescission of FASB Statements No. 4, 44, and 64, Amendment of FASB Statement No. 14, and Technical Corrections*, which became effective as of January 1, 2003, an after-tax loss of $29,358 in 2002 and an after-tax gain of $977 in 2001, resulting from the extinguishment of debt previously classified as extraordinary items, have been reclassified to a pre-tax refinancing charge of $48,930 for 2002 and a pre-tax gain of $1,629 for 2001. The classification change had no impact on net earnings. In 2002, the refinancing charges of $48,930 related to debt restructuring, which included retiring $225,000 9¼% Senior Subordinated Notes due 2011 and extinguishing our then existing senior credit facilities. In 2001, the refinancing gain of $1,629 related to the write-off of deferred financing costs offset by the accelerated recognition of deferred interest rate swap liquidation gains as a result of debt refinancing.

FASB Interpretation (FIN) No. 45 *Guarantor's Accounting and Disclosure Requirements for Guarantees, Including Indirect Guarantees of Indebtedness of Others* was issued in November 2002. Under FIN No. 45 the recognition and initial measurement provisions became effective to prospective guarantees issued or modified after December 31, 2002. The Interpretation clarifies the requirements for a guarantor's disclosures in its interim and annual financial statements about its obligations under certain guarantees that it has issued and which remain outstanding and also clarifies that guarantees are required to be recognized in the financial statements and measured initially at fair value including the guarantors' ongoing obligation to stand ready to perform over the term of the guarantee in the event that the specified triggering events or conditions occur.

2. Earnings per share

Basic net income per share is calculated by dividing net income by the weighted average number of common shares outstanding. Diluted net income per share includes the dilutive effect of convertible debt (under the if-converted method), and stock options and unvested restricted stock units (under the treasury stock method).

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

The reconciliations of the numerators and denominators used to calculate basic and diluted net income per share are as follows:

	Year ended December 31,		
	2003	2002	2001
	(in thousands, except per share)		
Basic:			
Net income	$ 175,791	$ 157,329	$ 137,315
Weighted average shares outstanding during the year	62,835	71,787	83,768
Vested restricted stock units	62	44	
Weighted average shares for basic earnings per share calculations	62,897	71,831	83,768
Basic net income per share	$ 2.79	$ 2.19	$ 1.64
Diluted:			
Net income	$ 175,791	$ 157,329	$ 137,315
Debt expense savings, net of tax, from assumed conversion of convertible debt	13,011	19,661	19,449
Net income for diluted earnings per share calculations	$ 188,802	$ 176,990	$ 156,764
Weighted average shares outstanding during the year	62,835	71,787	83,768
Vested restricted stock units	62	44	
Assumed incremental shares from stock plans	2,992	3,255	4,292
Assumed incremental shares from convertible debt	9,951	15,394	15,394
Weighted average shares for diluted earnings per share calculations	75,840	90,480	103,454
Diluted net income per share	$ 2.49	$ 1.96	$ 1.52

Options to purchase 174,535 shares at $28.10 to $39.35 per share, 881,350 shares at $23.63 to $33.00 per share and 630,668 shares at $19.04 to $33.00 per share were excluded from the diluted earnings per share calculations for 2003, 2002 and 2001, respectively, because they were anti-dilutive. The calculation of diluted earnings per share assumes conversion of both the 5 5/8% and 7% convertible subordinated notes for 2001, 2002 and the pro-rata periods such notes were outstanding in 2003.

3. Accounts receivable

The provisions for uncollectible accounts receivable, prior to offsetting recoveries in 2003, 2002 and 2001 were $35,700, $32,069 and $32,926, respectively. The provisions before cash recoveries in 2003, 2002 and 2001 were approximately 1.8%, 1.8% and 2.0% of current operating revenues, respectively. During 2002 and 2001, substantial improvements were made in the Company's billing and collection processes, and cash recoveries of $5,192 and $35,220 were realized during 2002 and 2001 on accounts receivable reserved in 1999.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

4. Other current assets

Other current assets were comprised of the following:

	December 31,	
	2003	2002
Supplier rebates and other non-trade receivables	$ 29,745	$ 16,567
Operating advances under administrative services agreements	10,416	3,284
Prepaid expenses and deposits	3,714	8,816
	$ 43,875	$ 28,667

Operating advances under administrative services agreements are unsecured.

5. Property and equipment

Property and equipment were comprised of the following:

	December 31,	
	2003	2002
Land	$ 820	$ 932
Buildings	5,494	5,084
Leasehold improvements	261,437	204,778
Equipment	361,365	301,285
Additions in progress	19,349	49,466
	648,465	561,545
Less accumulated depreciation and amortization	(306,018)	(263,070)
	$ 342,447	$ 298,475

Depreciation and amortization expense on property and equipment was $64,398, $54,701 and $53,182 for 2003, 2002 and 2001, respectively.

Applicable interest charges incurred during significant facility expansion and construction are capitalized as one of the elements of cost and are amortized over the assets' estimated useful lives. Interest capitalized was $1,523, $1,888 and $751 for 2003, 2002 and 2001, respectively.

6. Amortizable intangibles

Amortizable intangible assets were comprised of the following:

	December 31,	
	2003	2002
Noncompetition agreements	$ 112,407	$ 104,479
Deferred debt issuance costs	9,851	24,666
	122,258	129,145
Less accumulated amortization	(72,287)	(65,986)
	$ 49,971	$ 63,159

(dollars in thousands, except per share data)

Amortization expense from noncompetition agreements was $10,289, $9,964 and $10,162 for 2003, 2002 and 2001, respectively. Deferred debt issuance costs are amortized to debt expense as described in Note 11.

Scheduled amortization charges from amortizable intangible assets as of December 31, 2003 were as follows:

	Noncompetition agreements	Deferred debt issuance costs
2004	10,302	1,836
2005	9,550	1,576
2006	8,239	1,303
2007	6,350	1,042
2008	3,668	895
Thereafter	5,077	133

7. Investments in third-party dialysis businesses

Investments in third-party dialysis businesses and related advances were $3,095 and $3,227 at December 31, 2003 and 2002. During 2003, 2002 and 2001, the Company recognized income of $1,596, $1,791 and $2,126, respectively, relating to investments in non-consolidated businesses under the equity method. These amounts are included as a reduction to minority interests in the consolidated statement of income.

8. Goodwill

Changes in the book value of goodwill were as follows:

	Year ended December 31,	
	2003	2002
Balance at January 1	$864,786	$855,760
Acquisitions	70,700	15,260
Divestitures	(1,298)	(6,234)
Balance at December 31	$934,188	$864,786

Amortization expense applicable to goodwill was $0 for 2003 and 2002, and $41,865 for 2001. The book value of goodwill was reduced from its original cost by $169,383 in amortization accumulated through December 31, 2000.

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A reconciliation of the Company's results previously reported to results excluding goodwill amortization is as follows:

	Year ended December 31,		
	2003	2002	2001
Reported net income	$ 175,791	$ 157,329	$ 137,315
Add back: Goodwill amortization, net of tax			25,035
Adjusted net income	$ 175,791	$ 157,329	$ 162,350
Basic earnings per common share:			
Reported net income	$ 2.79	$ 2.19	$ 1.64
Add back: Goodwill amortization, net of tax			$ 0.30
Adjusted net income	$ 2.79	$ 2.19	$ 1.94
Diluted earnings per common share:			
Reported net income	$ 2.49	$ 1.96	$ 1.52
Add back: Goodwill amortization, net of tax			$ 0.24
Adjusted net income	$ 2.49	$ 1.96	$ 1.76

9. Other liabilities

Other accrued liabilities were comprised of the following:

	December 31,	
	2003	2002
Payor deferrals and refunds	$ 76,235	$ 70,406
Deferred revenue	8,727	
Accrued interest	878	12,476
Accrued tax liabilities	6,229	6,389
Disposition accruals	2,539	3,829
Other	18,046	8,289
	$ 112,654	$ 101,389

10. Income taxes

Income tax expense consisted of the following:

	Year ended December 31,		
	2003	2002	2001
Current:			
Federal	$ 75,817	$ 40,094	$ 76,084
State	15,151	7,366	19,076
Deferred:			
Federal	17,966	50,012	6,931
State	3,541	12,456	3,161
	$ 112,475	$ 109,928	$ 105,252

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Temporary differences which gave rise to deferred tax assets and liabilities were as follows:

	December 31,	
	2003	2002
Asset impairment losses	$ 35,817	$ 38,844
Receivables, primarily allowance for doubtful accounts	16,882	18,583
Accrued liabilities	44,861	23,510
Other	11,683	10,124
Deferred tax assets	109,243	91,061
Valuation allowance	(37,200)	(38,669)
Net deferred tax assets	72,043	52,392
Property and equipment	(42,614)	(25,739)
Intangible assets	(73,268)	(49,838)
Other	(2,661)	(2,582)
Deferred tax liabilities	(118,543)	(78,159)
Net deferred tax liabilities	$ (46,500)	$ (25,767)

At December 31, 2003, the Company had state net operating loss carryforwards of approximately $26,000 that expire through 2023. The Company has also incurred losses on certain operations that are not included in its consolidated tax return. The utilization of these losses may be limited in future years based on the profitability of certain corporations. In prior years, the Company recognized capital losses for impairments and sales of certain of its assets of which realization of a tax benefit is not certain. The Company has recorded a valuation allowance of $37,200 against these deferred tax assets. The valuation allowance decreased by $1,469 in 2003, primarily reflecting the tax benefit of losses that are expected to be utilized based on the profitability of certain consolidated entities.

The reconciliation between our effective tax rate and the U.S. federal income tax rate is as follows:

	Year ended December 31,		
	2003	2002	2001
Federal income tax rate	35.0%	35.0%	35.0%
State taxes, net of federal benefit	4.3	4.9	5.8
Nondeductible amortization of intangible assets			0.4
Changes in deferred tax valuation allowances	(0.4)	0.1	0.3
Other	0.1	1.0	1.9
Effective tax rate	39.0%	41.0%	43.4%

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11. Long-term debt

Long-term debt was comprised of the following:

	December 31,	
	2003	2002
Senior secured credit facility, Term Loan A	$ 118,310	
Senior secured credit facility, Term Loan B	1,035,889	$ 841,825
Convertible subordinated notes, 7%, due 2009		345,000
Convertible subordinated notes, 5 5/8%, due 2006		125,000
Acquisition obligations and other notes payable	5,416	585
Capital lease obligations	7,944	6,820
	1,167,559	1,319,230
Less current portion	(50,557)	(7,978)
	$ 1,117,002	$ 1,311,252

Scheduled maturities of long-term debt at December 31, 2003 were as follows:

2004	50,557
2005	46,094
2006	52,482
2007	24,316
2008	744,303
Thereafter	249,807

Included in debt expense was interest, net of capitalized interest, of $63,705, $68,420 and $69,978 for 2003, 2002 and 2001, respectively. Also included in debt expense were amortization and write-off of deferred financing costs of $3,123, $3,216 and $2,460 for 2003, 2002 and 2001, respectively.

In the first quarter of 2003, the Company borrowed $150,000 that was available under the Term Loan A of its credit facility. The Term Loan A bears interest at LIBOR plus 2.00%, for an overall effective rate of 3.19% at December 31, 2003, with provision to potentially further reduce the interest rate to LIBOR plus 1.50% under certain circumstances. The Term Loan A matures in March 2007 and requires annual principal payments of $33,800 in years 2004 and 2005, $40,100 in 2006 and $10,600 in 2007.

In the third quarter of 2003, the Company completed a call for redemption of all of its outstanding $125,000 5 5/8% Convertible Subordinated Notes due 2006. Holders of the 5 5/8% Notes had the option to convert their Notes into shares of DaVita common stock at a price of $25.62 per share or receive cash at 1.0169 times the principal amount of the 5 5/8% Notes, plus accrued interest. In July 2003, the Company issued 4,868,352 shares of common stock from treasury stock for the conversion of $124,700 of the 5 5/8% Notes, and redeemed the balance for cash and accrued interest.

In the third quarter of 2003, the Company also entered into an amended credit agreement in order to, among other things, lower the overall interest rate. The Company also acquired an additional $200,000 of borrowings under the replacement Term Loan B, which amounted to $1,042,000. In November 2003, the Company entered into a second amended and restated credit agreement in order to again lower the interest rate on the Term Loan B and to modify certain covenants. The Term Loan B currently bears interest at LIBOR plus 2.25% for an overall

effective rate of 3.42% at December 31, 2003, with a provision to potentially further reduce the interest rate to LIBOR plus 2.00% under certain circumstances. The aggregate annual principal payments for the Term Loan B are approximately $11,000 in the first four years of the agreement, $255,000 in the fifth year and $741,000 in the sixth year, due no later than March 2009. As of December 31, 2003 the Company had a $115,000 undrawn revolving credit facility of which $15,138 was committed for outstanding letters of credit.

In the second half of 2003, the Company completed two calls for redemption of all of its outstanding $345,000 7% Convertible Subordinated Notes due 2009. Holders of the 7% Notes had the option to convert their Notes into shares of DaVita common stock at a price of $32.81 per share or receive cash at 1.042 times the principal amount of the 7% Notes, plus accrued interest. $344,500 of the Notes were redeemed for $359,000 in cash plus accrued interest, and the balance was converted into 16,030 shares of common stock.

In 2003, the excess consideration paid over the book value to redeem the Convertible Subordinated Notes and the write-off of deferred financing costs and financing fees associated with amending our bank credit agreement resulted in refinancing charges of $26,501.

In the first quarter of 2002, the Company initiated a recapitalization plan to restructure the Company's debt and repurchase common stock. In the initial phase of the recapitalization plan the Company retired all of its $225,000 outstanding 9¼% Senior Subordinated Notes due 2011 for $266,000. Concurrent with the retirement of this debt, the Company secured a new senior credit facility agreement in the amount of $1,115,000. The excess of the consideration paid over the book value of the Senior Subordinated Notes and related write-off of the deferred financing costs associated with extinguishing the existing senior credit facility and the notes resulted in refinancing charges of $48,930. The senior credit facility consisted of a Term Loan A for $150,000, a Term Loan B for $850,000 and a $115,000 undrawn revolving credit facility, which includes up to $50,000 available for letters of credit. During the second quarter of 2002, the Company borrowed all $850,000 of the Term Loan B, and $841,825 of the Term Loan B remained outstanding as of December 31, 2002.

Interest rate swap agreements

In November 2003, the Company entered into an interest rate swap agreement to effectively fix the LIBOR benchmark interest rate at 3.39% on an amortizing notional amount of $135,000 of the Term Loan B outstanding debt that had the economic effect of fixing the interest rate at 5.64% based upon the margin in effect on December 31, 2003. The agreement expires in November 2008 and requires quarterly interest payments. As of December 31, 2003, the notional amount of the swap was approximately $135,000 and its fair value was a $2,000 liability, resulting in a charge to other comprehensive income of approximately $1,000, net of tax. As a result of the swap agreement, the Company's effective interest rate on its entire credit facility was 3.69% based upon the margin in effect on December 31, 2003.

In January 2004, the Company entered into another interest rate swap agreement to effectively fix the LIBOR benchmark interest rate at 3.08% on an additional amortizing notional amount of $135,000 of the Term Loan B outstanding debt that had the economic effect of fixing the interest rate at 5.33% based upon the current margin. The agreement expires in January 2009 and requires quarterly interest payments. As a result of these two swap agreements, the Company's effective interest rate on its entire credit facility was 3.89% based upon the margin in effect on January 15, 2004.

12. Leases

The majority of the Company's facilities are leased under noncancelable operating leases. Most lease agreements cover periods from five to ten years and contain renewal options of five to ten years at the fair rental value at the time of renewal or at rates subject to periodic consumer price index increases. Capital leases are for equipment.

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Future minimum lease payments under noncancelable operating leases and under capital leases are as follows:

	Operating leases	Capital leases
2004	$ 62,064	$ 1,460
2005	59,448	1,358
2006	55,796	1,335
2007	50,114	2,896
2008	43,180	685
Thereafter	152,300	3,764
	$ 422,902	11,498
Less portion representing interest		(3,554)
Total capital lease obligation, including current portion		$ 7,944

Rental expense under all operating leases for 2003, 2002 and 2001 was $71,432, $61,008 and $54,347, respectively. The net book value of property and equipment under capital lease was $7,811 and $7,017 at December 31, 2003 and 2002, respectively. Capital lease obligations are included in long-term debt (see Note 11).

13. Shareholders' equity

During 2003, the Company repurchased a total of 3,441,900 shares of common stock for $107,162 or an average of $31.13 per share, pursuant to Board of Directors' authorizations. As of December 31, 2003, the Company had approximately $146,000 remaining to repurchase shares of its common stock in the open market pursuant to a $200,000 Board of Directors' authorization.

In March 2002, the Company initiated a recapitalization plan consisting of restructuring debt as discussed in Note 11 and repurchasing common stock. Under this plan, the Company repurchased 16,682,337 shares of its common stock for approximately $402,100, or $24.10 per share through a modified dutch auction tender offer in June 2002. From May through December 2002, the Company also purchased 7,699,440 shares in the open market for $172,200 under a $225,000 Board of Directors' authorization. For the year ended December 31, 2002, stock repurchases, including 2,945,700 shares acquired prior to initiating the recapitalization plan, amounted to 27,327,477 shares for $642,200, at a composite average cost of $23.50 per share.

Stock-based compensation plans

The Company's stock-based compensation plans are described below.

2002 Plan. On April 11, 2002, the Company's shareholders approved the DaVita Inc. 2002 Equity Compensation Plan. This plan provides for grants of stock awards to employees, directors and other individuals providing services to the Company, except that incentive stock options may only be awarded to employees. The plan requires that stock option grants are issued with exercise prices not less than the market price of the stock on the date of grant and requires a maximum award term of five years. Stock options granted under this plan are generally non-qualified awards that vest over four years from the date of grant. Shares available under the 2002 Plan may also be replenished by shares repurchased by the Company from the cash proceeds and actual tax savings from award exercises under the 2002 or predecessor plans.

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On May 21, 2003 the shareholders approved an amendment to reduce shares authorized to the 2002 Plan by 1,661,000 and to authorize plan awards in the form of restricted stock, restricted stock units, stock issuances ("full share awards"), stock appreciation rights and other equity-based awards. Full share awards will reduce total shares available under the plan at a rate of 2.75:1. At December 31, 2003, there were 989,231 awards outstanding and 9,463,642 shares available for future grants under the 2002 Plan, including 985,627 shares reserved to the 2002 Plan under its replenishment provision.

Predecessor plans. Upon shareholder approval of the 2002 Plan, the following predecessor plans were terminated, except with respect to options then outstanding: the 1994 Equity Compensation Plan, the 1995 Equity Compensation Plan, the 1997 Equity Compensation Plan, and the 1999 Equity Compensation Plan. Shares available for future grants under these predecessor plans were transferred to the 2002 Plan upon its approval, and all predecessor plan options cancelled become available for new awards under the 2002 Plan. Options granted under these plans were generally issued with exercise prices equal to the market price of the stock on the date of grant, vested over four years from the date of grant, and bore maximum terms of five to 10 years. The RTC plan, a special purpose option plan related to the RTC merger, was also terminated in 1999. At December 31, 2003 there were 5,087,230 stock options outstanding under these terminated plans.

1999 Plan. The 1999 Non-Executive Officer and Non-Director Equity Compensation Plan provides for grants of stock options to employees and other individuals providing services other than executive officers and members of the board of directors. There are 6,000,000 common shares reserved for issuance under this plan. Options granted under this plan generally vest over four years from the date of grant. Grants are generally issued with exercise prices equal to the market price of the stock on the date of grant and maximum terms of five years. At December 31, 2003 there were 3,108,875 options outstanding and 92,451 shares available for future grants under this plan.

A combined summary of the status of these stock-based compensation plans is as follows:

	Year ended December 31,					
	2003		2002		2001	
	Awards	Weighted average exercise price	Awards	Weighted average exercise price	Awards	Weighted average exercise price
Outstanding at beginning of year	9,891,975	$ 13.61	11,280,730	$ 9.36	14,668,579	$ 8.96
Granted	2,009,251	20.29	2,769,500	23.33	1,609,000	17.44
Exercised	(2,327,208)	7.96	(3,420,950)	8.32	(3,141,326)	6.01
Cancelled	(388,682)	14.90	(737,305)	9.59	(1,855,523)	18.88
Outstanding at end of year	9,185,336	$ 16.45	9,891,975	$ 13.61	11,280,730	$ 9.36
Awards exercisable at year end	3,439,354		3,651,702		4,331,910	
Weighted-average fair value of awards granted during the year		$ 7.51		$ 7.99		$ 6.31

Awards granted in 2003 include 86,751 full share awards. During 2001, 1,170,000 options with exercise prices over $15.00 were voluntarily relinquished and no replacement options were issued.

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The following table summarizes information about stock plan awards outstanding at December 31, 2003:

Range of exercise prices	Awards Outstanding	Weighted average remaining contractual life	Weighted average exercise price	Awards exercisable	Weighted average exercise price
$ 0.00–$ 5.00	474,535	1.8	$ 2.20	391,345	$ 2.67
$ 5.01–$10.00	2,412,754	3.0	6.89	1,869,337	6.86
$10.01–$15.00	234,853	2.0	11.02	159,978	11.05
$15.01–$20.00	1,313,598	2.5	17.30	651,349	17.48
$20.01–$25.00	4,394,928	3.6	22.26	153,803	22.03
$25.01–$30.00	194,056	3.9	26.51	70,930	26.55
$30.01–$35.00	155,612	3.8	31.98	142,612	32.12
$35.01–$40.00	5,000	4.9	39.35	0	0
	9,185,336	3.2	$ 16.45	3,439,354	$ 10.72

Deferred stock unit arrangements. The Company also made awards of restricted stock units to members of the Board of Directors and certain key executive officers in 2003, 2002 and 2001. These awards vest over one to four years and will be settled in cash or stock, as they vest or at a later date at the election of the recipient. Awards of 55,923, 91,474 and 128,913 shares, at grant-date fair values of $1,152, $2,159 and $2,000, were made in 2003, 2002 and 2001, respectively.

Compensation expense associated with the above stock-based compensation plans and arrangements of $1,695, $1,246 and $1,865 was recognized in 2003, 2002 and 2001, respectively.

Employee stock purchase plan. The Employee Stock Purchase Plan entitles qualifying employees to purchase up to $25 of the Company's common stock during each calendar year. The amounts used to purchase stock are accumulated through payroll withholdings or through an optional lump sum payment made in advance of the first day of the purchase right period. The plan allows employees to purchase stock for the lesser of 100% of the fair market value on the first day of the purchase right period or 85% of the fair market value on the last day of the purchase right period. Each purchase right period begins on January 1 or July 1, as elected by the employee, and ends on December 31. Payroll withholdings related to the plan, included in accrued employee compensation and benefits, were $968, $882 and $820 at December 31, 2003, 2002 and 2001. Subsequent to December 31, 2003, 2002 and 2001, 37,386, 41,638 and 44,909 shares, respectively, were issued to satisfy obligations under the plan.

The fair value of the employees' purchase rights was estimated on the beginning dates of the purchase right periods using the Black-Scholes model with the following assumptions for grants on July 1, 2003, January 1, 2003, July 1, 2002, January 1, 2002, July 1, 2001, and January 1, 2001, respectively: dividend yield of 0% and expected volatility of 40% for all periods; risk-free interest rates of 1.1%, 1.1%, 3.6%, 4.0%, 3.3% and 4.9%; and expected lives of 0.5 and 1.0 years. Using these assumptions, the weighted-average fair value of purchase rights granted were $7.18, $7.69, $2.53, $3.68, $2.44 and $3.08, respectively.

Shareholder rights plan. The Company's Board of Directors approved a shareholder rights plan on November 14, 2002. This plan is designed to assure that DaVita's shareholders receive fair treatment in the event of any proposed takeover of DaVita.

Pursuant to this plan, the Board approved the declaration of a dividend distribution of one common stock purchase right on each outstanding share of its common stock payable on December 10, 2002 to holders of record of DaVita common stock on November 29, 2002. This rights distribution was not taxable to DaVita shareholders. One purchase right is also attached to each of the Company's new shares issued or shares reissued from treasury. These rights will become exercisable if a person or group acquires, or announces a tender offer for, 15% or more of DaVita's outstanding common stock. The triggering person's stock purchase rights will become void at that time and will not become exercisable.

Each right initially entitles its holder to purchase one share of common stock from the Company at a price of $125.00. If the rights become exercisable, each purchase right will then entitle its holder to purchase $125.00 of common stock at a price per share equal to 50% of the average daily closing price of the Company's common stock for the immediately preceding 30 consecutive trading days. If DaVita is acquired in a merger or other business combination transaction after the rights become exercisable, provisions will be made to allow the holder of each right to purchase $125.00 of common stock from the acquiring company at a price equal to 50% of the average daily closing price of that company's common stock for the immediately preceding 30 consecutive trading days.

The Board of Directors may elect to redeem the rights at $0.01 per purchase right at any time prior to, or exchange common stock for the rights at an exchange ratio of one share per right at any time after, a person or group acquires, or announces a tender offer for, 15% or more of DaVita's outstanding common stock. The exercise price, number of shares, redemption price or exchange ratio associated with each right may be adjusted as appropriate upon the occurrence of certain events, including any stock split, stock dividend or similar transaction. These purchase rights will expire no later than November 14, 2012.

14. Transactions with related parties

Richard K. Whitney, the Company's former Chief Financial Officer, received a loan from the Company in the principal amount of $65 bearing interest at a rate of 7% per year in July 1997. Mr. Whitney used the proceeds of this loan in the purchase of his principal residence. In February 2001 Mr. Whitney prepaid this loan in full plus accrued interest.

Joseph C. Mello, the Company's Chief Operating Officer, received a loan from the Company in the principal amount of $275 bearing interest at a rate of 7% per year in December 2000. Mr. Mello used the proceeds of this loan in the purchase of his principal residence. In December 2002 Mr. Mello prepaid this loan in full plus accrued interest.

Until March 2002, Peter Grauer, a member of the Company's Board of Directors since 1994, was a managing director of Credit Suisse First Boston, or CSFB. In 2002 and 2001, CSFB assisted the Company in connection with the issuance of public debt and securing other financing. Fees for these transactions were approximately $6,000 and $3,000. Mr. Grauer is no longer affiliated with CSFB.

15. Employee benefit plans

The Company has a savings plan for substantially all employees, which has been established pursuant to the provisions of Section 401(k) of the Internal Revenue Code, or IRC. The plan provides for employees to contribute up to 20% of their base annual salaries on a tax-deferred basis not to exceed IRC limitations. Effective January 1, 2002 the Company no longer provides any matching or profit sharing contributions. In 2001, the Company made a matching contribution totaling $62.

During 2000, the Company established the DaVita Inc. Profit Sharing Plan. Contributions to this defined contribution benefit plan are made at the discretion of the Company as determined and approved by the Board of Directors. All contributions are deposited into an irrevocable trust. The profit sharing award for each eligible participant is based upon the achievement of employee-specific and/or corporate financial and operating goals. During 2003, 2002 and 2001, the Company recognized expense of $11,900, $17,440 and $14,935, respectively.

16. Contingencies

Health care provider revenues may be subject to adjustment as a result of (1) examination by government agencies or contractors, for which the resolution of any matters raised may take extended periods of time to finalize; (2) differing interpretations of government regulations by different fiscal intermediaries or regulatory authorities; (3) differing opinions regarding a patient's medical diagnosis or the medical necessity of services provided; (4) retroactive applications or interpretations of governmental requirements; and (5) claims for refunds from private payors.

Florida laboratory

The Company's Florida-based laboratory subsidiary has been the subject of a third-party carrier review of its Medicare reimbursement claims. The carrier has reviewed claims for six separate review periods. In 1998 the carrier issued a formal overpayment determination in the amount of $5,600 for the first review period (January 1995 to April 1996). The carrier also suspended all payments of Medicare claims from the laboratory beginning in May 1998. In 1999, the carrier issued a formal overpayment determination in the amount of $15,000 for the second review period (May 1996 to March 1998). Subsequently, the carrier informed the Company that $16,100 of the suspended claims for the third review period (April 1998 to August 1999), $11,600 of the suspended claims for the fourth review period (August 1999 to May 2000), $2,900 of the suspended claims for the fifth review period (June 2000 through December 2000) and $900 of the suspended claims for the sixth review period (December 2000 through May 2001) were not properly supported by the prescribing physicians' medical justification.

The Company has disputed each of the carrier's determinations and has provided supporting documentation of its claims. In addition to the formal appeal processes with the carrier and a federal administrative law judge, the Company also has pursued resolution of this matter through meetings with representatives of the Centers for Medicare and Medicaid Services, or CMS, and the Department of Justice, or DOJ. The Company initially met with the DOJ in February 2001, at which time the DOJ requested additional information, which the Company provided in September 2001.

In June 2002, an administrative law judge ruled that the sampling procedures and extrapolations that the carrier used as the basis of its overpayment determinations for the first two review periods were invalid. This decision invalidated the carrier's overpayment determinations for the first two review periods. Recently, the carrier's hearing officer rendered partially favorable decisions on appeal for the third and fourth review periods. The Company also filed requests for appeal to an administrative law judge on the unfavorable portions of the decisions on the third and fourth review periods, which involves approximately $7,000 in disputed claims. The Company also filed a notice of appeal to the carrier for the fifth and sixth review periods, which involves approximately $4,000 in disputed claims.

During 2000 the Company stopped accruing Medicare revenue from this laboratory because of the uncertainties regarding both the timing of resolution and the ultimate revenue valuations. Following the favorable

ruling by the administrative law judge in 2002 related to the first two review periods covering January 1995 to March 1998, the carrier lifted the payment suspension and began making payments in July 2002 for lab services provided subsequent to May 2001. After making its determination with respect to the fifth and sixth review periods in December 2002, the carrier paid the additional amounts that it is not disputing for the second through sixth review periods. As of December 31, 2002, the Company had received $69,000, which represented approximately 70% of the total outstanding Medicare lab billings for the period from January 1995 through June 2002. Approximately $10,000 of these collections related to 2002 lab services provided through June 2002. In addition to processing prior period claims, the carrier also began processing and paying billings for current period services on a timely basis in the third quarter of 2002. Based on these developments, the Company began recognizing estimated current period Medicare lab revenue in the third quarter of 2002. In the fourth quarter of 2003, the Company recognized additional recoveries of $24,000, principally for review periods three and four, based on the hearing officer's most recent findings.

The carrier is also currently conducting a study of the utilization of dialysis-related laboratory services. During the study, the carrier has suspended all of its previously existing dialysis laboratory prepayment screens. The purpose of the study is to determine what ongoing program safeguards are appropriate. In its initial findings from the study, the carrier had determined that some of its prior prepayment screens were invalidating appropriate claims. The Company cannot determine what prepayment screens, post-payment review procedures, documentation requirements or other program safeguards the carrier may yet implement as a result of its study. The carrier has also informed the Company that any claims that it reimburses during the study period may also be subject to post-payment review and retraction if determined inappropriate.

Minnesota laboratory

The Medicare carrier for our Minnesota laboratory is conducting a post-payment review of Medicare reimbursement claims for the period January 1996 through December 1999. The scope of the review is similar to the review being conducted at our Florida laboratory. At this time, the Company is unable to determine how long it will take the carrier to complete this review. There is currently no overpayment determination with respect to the Minnesota laboratory. The DOJ has also requested information with respect to this laboratory, which the Company has provided. Medicare revenues at the Minnesota laboratory, which was much smaller than the Florida laboratory, were approximately $15,000 for the period under review. In November 2001, the Company closed the Minnesota laboratory and combined the operations of this laboratory with its Florida laboratory.

United States Attorney's inquiry

In February 2001 the Civil Division of the United States Attorney's Office for the Eastern District of Pennsylvania in Philadelphia contacted the Company and requested its cooperation in a review of some of the Company's historical practices, including billing and other operating procedures and its financial relationships with physicians. The Company cooperated in this review and provided the requested records to the United States Attorney's Office. In May 2002, the Company received a subpoena from the Philadelphia office of the Office of Inspector General of the Department of Health and Human Services, or OIG. The subpoena required an update to the information the Company provided in its response to the February 2001 request, and also sought a wide range of documents relating to pharmaceutical and other ancillary services provided to patients, including laboratory and other diagnostic testing services, as well as documents relating to the Company's financial relationships with physicians and pharmaceutical companies. The subpoena covers the period from May 1996 to May 2002. The Company has provided the documents requested. This inquiry remains at an early stage. As it proceeds, the government could expand its areas of concern. If a court determines that there has been wrongdoing, the penalties under applicable statutes could be substantial.

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Other

In addition to the foregoing, DaVita is subject to claims and suits in the ordinary course of business. Management believes that the ultimate resolution of these additional pending proceedings, whether the underlying claims are covered by insurance or not, will not have a material adverse effect on the Company's financial condition, results of operations or cash flows.

17. Concentrations

Revenues associated with patients whose primary coverage is under Medicare, Medicaid and other government-based programs accounted for approximately 58%, 59% and 60% of total dialysis revenues in the continental U.S. for 2003, 2002 and 2001, respectively. Accounts receivable from Medicare and Medicaid were approximately $115,000 as of December 31, 2003. No other single payor accounted for more than 5% of total accounts receivable.

A significant physician-prescribed pharmaceutical administered during dialysis, erythropoietin (EPO), is provided by a sole supplier and accounts for approximately one fourth of net operating revenues. Although the Company currently receives discounted prices for EPO, the supplier has unilateral pricing discretion and in the future the Company may not be able to achieve the same price levels historically obtained.

18. Other commitments

The Company has obligations to purchase the third-party interests in several of its joint ventures. These obligations are in the form of put options, exercisable at the third-party owners' discretion, and require the Company to purchase the minority owners' interests at either the appraised fair market value or a predetermined multiple of cash flow or earnings, which approximates fair value. As of December 31, 2003, the Company's potential obligations under these put options totaled approximately $60,000 of which approximately $38,000 was exercisable within one year. Additionally, the Company has certain other potential working capital commitments relating to administrative services agreements and minority-owned centers of approximately $15,000.

The Company has mandatorily redeemable instruments in connection with certain consolidated partnerships, consisting of future distributions for the minority partner's interests in these limited-life entities which dissolve after terms of ten to fifty years. As of December 31, 2003, such distributions would be valued below the related minority interests balances in the consolidated financial statements.

Other than operating leases disclosed in Note 12, and the letters of credit and the interest rate swap agreements, as disclosed in Note 11, the Company has no off balance sheet financing arrangements as of December 31, 2003.

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

19. Acquisitions and divestitures

Acquisitions

Acquisition amounts were as follows:

	Year ended December 31,		
	2003	2002	2001
Cash paid, net of cash acquired	$ 99,645	$ 19,977	$ 36,330
Application of investments in and advances to previously managed businesses			25,320
Deferred purchase payments and acquisition obligations	5,146	100	6,300
Aggregate purchase cost	$ 104,791	$ 20,077	$ 67,950
Number of chronic dialysis centers acquired	27	11	21
Aggregate purchase costs of acquired dialysis centers	$ 84,102	$ 20,077	$ 67,950

The assets and liabilities of the acquired operations were recorded at their estimated fair market values at the dates of acquisition. The results of operations of these centers have been included in the financial statements from their designated effective acquisition dates. The nearest month-end has been designated as the effective date for recording acquisitions that close during the month because there were no partial month accounting cutoffs and partial month results associated with these acquisitions would not have a material impact on consolidated operating results. Settlements with tax authorities relating to pre-acquisition income tax liabilities may result in an adjustment to goodwill attributable to that acquisition.

The initial allocations of purchase cost at fair value are based upon available information for the acquired businesses and are finalized when any contingent purchase price amounts are resolved. The final allocations did not differ materially from the initial allocations. Aggregate purchase cost allocations were as follows:

	Year ended December 31,		
	2003	2002	2001
Tangible assets	$ 26,678	$ 3,360	$ 19,886
Amortizable intangible assets	7,273	1,975	1,648
Goodwill	70,700	15,260	51,820
Liabilities assumed	(1,777)	(518)	(5,404)
Minority interests extinguished	1,917		
Aggregate purchase cost	$ 104,791	$ 20,077	$ 67,950

The following summary, prepared on a pro forma basis, combines the results of operations as if these acquisitions had been consummated as of the beginning of both of the periods presented, after including the impact of certain adjustments such as amortization of intangibles, interest expense on acquisition financing and income tax effects.

	Year ended December 31,	
	2003	2002
	(unaudited)	
Net revenues	$ 2,066,371	$ 1,962,295
Net income	180,961	165,527
Pro forma basic net income per share	2.88	2.30
Pro forma diluted net income per share	2.56	2.05

DAVITA INC.

NOTES TO CONSOLIDATED FINANCIAL STATEMENTS—(Continued)
(dollars in thousands, except per share data)

These unaudited pro forma results are not necessarily indicative of what actually would have occurred if the acquisitions had been completed as of the beginning of both of the periods presented. In addition, they are not intended to be a projection of future results and do not reflect all of the synergies, additional revenue-generating services or reductions in direct center operating expenses that might be achieved from combined operations.

Divestitures

During 2003, the Company divested of certain center operating assets, which amounted to $2,275. The Company divested of substantially all of its dialysis operations outside the continental United States during 2000 and completed the sale of its remaining non-continental centers during the second quarter of 2002. Revenues of the non-continental operations were $6,159 and $15,313 for 2002 and 2001, and the related pre tax earnings (losses) were $1,383 and $(2,509) respectively.

20. Fair values of financial instruments

Financial instruments consist primarily of cash, accounts receivable, notes receivable, accounts payable, accrued compensation and benefits, and other accrued liabilities and debt. The balances of the non-debt financial instruments as presented in the financial statements at December 31, 2003 approximate their fair values. Borrowings under credit facilities, of which $1,154,199 was outstanding as of December 31, 2003, reflect fair value as they are subject to fees and adjustable rates, competitively determined in the marketplace. The interest rate swap had a fair value of approximately $2,000 liability as of December 31, 2003.

21. Supplemental cash flow information

The table below provides supplemental cash flow information:

	Year ended December 31,		
	2003	2002	2001
Cash paid:			
Income taxes	$ 53,074	$ 30,217	$ 68,264
Interest	73,278	69,114	70,149
Non-cash investing and financing activities:			
Fixed assets acquired under capital lease obligations	2,283	2,356	
Contributions to consolidated partnerships	2,645	2,154	25
Deferred financing cost write-offs		73	721
Conversion of debt to equity	125,254		
Liabilities assumed in conjunction with common stock acquisition	357		

22. Selected quarterly financial data (unaudited)

	2003				2002			
	December 31	September 30	June 30	March 31	December 31	September 30	June 30	March 31
Net operating revenues	$ 553,446	$ 513,282	$ 489,883	$ 459,807	$ 503,096	$ 481,194	$ 442,677	$ 427,665
Operating income	121,190	95,211	82,800	79,334	118,377	109,919	78,747	76,783
Income before income taxes	100,498	62,910	64,195	60,663	99,411	90,570	15,298	61,978
Net income	62,798	38,060	38,520	36,413	58,811	54,170	8,370	35,978
Basic net income per common share	$ 0.98	$ 0.58	$ 0.63	$ 0.60	$ 0.97	$ 0.84	$ 0.10	$ 0.43
Diluted net income per common share	$ 0.92	$ 0.54	$ 0.55	$ 0.52	$ 0.81	$ 0.72	$ 0.13	$ 0.40

SIGNATURES

Pursuant to the requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934, we have duly caused this Report on Form 10-K to be signed on our behalf by the undersigned, thereunto duly authorized, in the City of El Segundo, State of California, on February 27, 2004.

DAVITA INC.

By: /s/ KENT J. THIRY

Kent J. Thiry
Chairman and Chief Executive Officer

KNOW ALL MEN BY THESE PRESENT, that each person whose signature appears below constitutes and appoints Kent J. Thiry, Gary W. Beil, and Patrick A. Broderick, and each of them his true and lawful attorneys-in-fact and agents with full power of substitution and resubstitution, for him and in his name, place and stead, in any and all capacities, to sign any and all amendments to this Report on Form 10-K, and to file the same, with all exhibits thereto, and other documents in connection therewith, with the Securities and Exchange Commission, granting unto said attorneys-in-fact and agents, and each of them, full power and authority to do and perform each and every act and thing requisite or necessary to be done in and about the premises, as fully to all intents and purposes as he might or could do in person, hereby ratifying and confirming all that said attorneys-in-fact and agents or any of them, or their or his substitute or substitutes, may lawfully do or cause to be done by virtue hereof.

Pursuant to the requirements of the Securities Exchange Act of 1934, this Report on Form 10-K has been signed by the following persons in the capacities and on the dates indicated.

Signature	Title	Date
/s/ KENT J. THIRY Kent J. Thiry	Chairman and Chief Executive Officer (Principal Executive Officer)	February 27, 2004
/s/ GARY W. BEIL Gary W. Beil	Acting Chief Financial Officer, Vice President and Controller (Principal Financial and Accounting Officer)	February 27, 2004
/s/ NANCY-ANN DEPARLE Nancy-Ann DeParle	Director	February 27, 2004
/s/ RICHARD B. FONTAINE Richard B. Fontaine	Director	February 27, 2004
/s/ PETER T. GRAUER Peter T. Grauer	Director	February 27, 2004
/s/ MICHELE J. HOOPER Michele J. Hooper	Director	February 27, 2004
/s/ C. RAYMOND LARKIN, JR. C. Raymond Larkin, Jr.	Director	February 27, 2004
/s/ JOHN M. NEHRA John M. Nehra	Director	February 27, 2004
/s/ WILLIAM L. ROPER William L. Roper	Director	February 27, 2004

INDEPENDENT AUDITORS' REPORT ON
FINANCIAL STATEMENT SCHEDULE

The Board of Directors and Shareholders
DaVita Inc.

Under date of February 20, 2004, we reported on the consolidated balance sheets of DaVita Inc. and subsidiaries as of December 31, 2003 and 2002, and the related consolidated statements of income and comprehensive income, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2003, which are included in the Form 10-K. In connection with our audits of the aforementioned consolidated financial statements, we also audited the related consolidated financial statement schedule for each of the years in the three-year period ended December 31, 2003 in the Form 10-K. The financial statement schedule is the responsibility of the Company's management. Our responsibility is to express an opinion on the financial statement schedule based on our audits.

In our opinion, such financial statement schedule, when considered in relation to the basic consolidated financial statements taken as a whole, presents fairly, in all material respects, the information set forth therein.

As discussed in Note 1 to the consolidated financial statements, the Company changed its method of accounting for goodwill and intangible assets resulting from business combinations.

/s/ KPMG LLP

Seattle, Washington
February 20, 2004

DAVITA INC.

SCHEDULE II—VALUATION AND QUALIFYING ACCOUNTS

Description	Balance at beginning of year	Amounts charged to income	Amounts written off	Balance at end of year
		(in thousands)		
Allowance for uncollectible accounts:				
Year ended December 31, 2001	$ 61,619	$ 32,926	$ 42,070	$ 52,475
Year ended December 31, 2002	52,475	32,069	35,617	48,927
Year ended December 31, 2003	48,927	35,700	32,073	52,554

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EXHIBIT INDEX

Exhibit Number	Description
3.1	Amended and Restated Certificate of Incorporation of Total Renal Care Holdings, Inc., or TRCH, dated December 4, 1995.(1)
3.2	Certificate of Amendment of Certificate of Incorporation of TRCH, dated February 26, 1998.(2)
3.3	Certificate of Amendment of Certificate of Incorporation of DaVita Inc. (formerly Total Renal Care Holdings, Inc.), dated October 5, 2000.(10)
3.4	Bylaws of TRCH, dated October 6, 1995.(3)
4.1	Indenture, dated June 12, 1996 by Renal Treatment Centers, Inc., or RTC, to PNC Bank including form of RTC Note.(4)
4.2	First Supplemental Indenture, dated as of February 27, 1998, among RTC, TRCH and PNC Bank under the 1996 Indenture.(2)
4.3	Second Supplemental Indenture, dated as of March 31, 1998, among RTC, TRCH and PNC Bank under the 1996 Indenture.(2)
4.4	Indenture, dated as of November 18, 1998, between TRCH and United States Trust Company of New York, as trustee, and form of Note.(5)
4.5	Rights Agreement, dated as of November 14, 2002, between DaVita Inc. and the Bank of New York, as Rights Agent. (6)
10.1	Employment Agreement, dated as of October 18, 1999, by and between TRCH and Kent J. Thiry.(7)*
10.2	Amendment to Mr. Thiry's Employment Agreement, dated May 20, 2000.(8)*
10.3	Second Amendment to Mr. Thiry's Employment Agreement, dated November 28, 2000.(9)*
10.4	Employment Agreement, dated as of November 29, 1999, by and between TRCH and Gary W. Beil.(9)*
10.5	Employment Agreement, dated as of July 19, 2000, by and between TRCH and Charles J. McAllister.(9)*
10.6	Employment Agreement, effective as of April 19, 2000, by and between TRCH and Steven J. Udicious.(10)*
10.7	Employment Agreement, dated as of June 15, 2000, by and between DaVita Inc. and Joseph Mello.(11)*
10.8	Employment Agreement, dated as of April 1, 2001, by and between DaVita Inc. and Richard K. Whitney.(12)*
10.9	Employment Agreement, dated as of October 15, 2002, by and between DaVita Inc. and Lori S. Richardson-Pellicioni.*
10.10	Second Amended and Restated 1994 Equity Compensation Plan.(13) *
10.11	First Amended and Restated 1995 Equity Compensation Plan.(13)*
10.12	First Amended and Restated 1997 Equity Compensation Plan.(13)*
10.13	First Amended and Restated Special Purpose Option Plan.(13)*
10.14	1999 Equity Compensation Plan.(14)*
10.15	Amended and Restated 1999 Equity Compensation Plan.(16)*
10.16	First Amended and Restated Total Renal Care Holdings, Inc. 1999 Non-Executive Officer and Non-Director Equity Compensation Plan.
10.17	2002 Equity Compensation Plan.(17)*

Exhibit Number	Description
10.18	Credit Agreement, dated as of May 3, 2001, by and among DaVita Inc., the lenders party thereto, Bank of America, N.A., as the Administrative Agent, Banc of America Securities LLC, as Joint Book Manager and Credit Suisse First Boston Corporation, as Joint Book Manager and Syndication Agent (the "Credit Agreement").(18)
10.19	Amendment No. 1, dated as of December 4, 2001, to the Credit Agreement by and among DaVita Inc., the lenders party thereto, Bank of America, N.A., as the Administrative Agent, Banc of America Securities LLC, as Joint Book Manager and Credit Suisse First Boston Corporation, as Joint Book Manager and Syndication Agent.(10)
10.20	Security Agreement, dated as of May 3, 2001, made by DaVita Inc. and the subsidiaries of DaVita Inc. named therein to Bank of America, N.A., as the Collateral Agent for the lenders party to the Credit Agreement.(18)
10.21	Subsidiary Guaranty, dated as of May 3, 2001, made by the subsidiaries of DaVita Inc. named therein in favor of the lenders party to the Credit Agreement.(18)
10.22	Guaranty, entered into as of March 31, 1998, by TRCH in favor of and for the benefit of PNC Bank.(2)
10.23	Credit Agreement, dated as of April 26, 2002, by and among DaVita Inc., the lenders party thereto, Credit Suisse First Boston Corporation as Administrative Agent and Joint Book Manager, Banc of America Securities LLC as Joint Book Manager and Bank of America, N.A., as Syndication Agent ("the Credit Agreement").(12)**
10.24	Amendment No. 1, dated as of May 9, 2002, to the Credit Agreement by and among DaVita Inc., the lenders party thereto, Credit Suisse First Boston Corporation as Administrative Agent and Joint Book Manager, Banc of America Securities LLC as Joint Book Manager and Bank of America, N.A., as Syndication Agent.(12)
10.25	Security Agreement, dated as of April 26, 2002, made by and among DaVita Inc. and the subsidiaries of DaVita Inc. named therein to Credit Suisse First Boston, Cayman Islands Branch, as the Collateral Agent for the lenders party to the Credit Agreement.(12)
10.26	Subsidiary Guarantee, dated as of April 26, 2002, made by the subsidiaries of DaVita Inc. named therein in favor of the lenders party to the Credit Agreement.(12)
10.27	Amendment #4, dated November 16, 2001, to Agreement No. 19990110 between Amgen Inc. and Total Renal Care, Inc. (10)**
10.28	Agreement No. 20010259, dated November 16, 2001 between Amgen USA Inc. and Total Renal Care, Inc.(10)**
10.29	Amendment #1, dated December 31, 2002, to Agreement No. 20010259 between Amgen USA Inc. and Total Renal Care, Inc.**
10.30	Amended and Restated Credit Agreement, dated July 15, 2003, by and among DaVita Inc., the lenders party thereto, Credit Suisse First Boston Corporation as Joint Book Manager, Administrative Agent and Syndication Agent, Banc of America Securities LLC as Joint Book Manager and Bank of America, N.A., as Syndication Agent.(15)
10.31	Guarantee Supplement, dated July 15, 2003, made by the subsidiaries of DaVita Inc. named therein in favor of the lenders party to the Amended and Restated Credit Agreement.(15)
10.32	Employment Agreement dated as of May 1, 2003, by and between DaVita Inc. and Patrick A. Broderick.(15)*
10.33	Second Amended and Restated Credit Agreement, dated November 18, 2003, by and among DaVita Inc., the lenders party thereto, Credit Suisse First Boston, Cayman Islands Branch as Joint Book Manager, and Administrative Agent, Banc of America Securities LLC as Joint Book Manager and Bank of America N.A., as Syndication Agent.ü

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Exhibit Number	Description
10.34	Agreement dated December 24, 2003, between Amgen USA Inc. and DaVita Inc.**ü
12.1	Statement re: Computation of Ratios of Earnings to Fixed Charges. ü
14.1	DaVita Inc. Corporate Governance Code of Ethics. ü
21.1	List of our subsidiaries. ü
23.1	Consent of KPMG LLP.ü
24.1	Powers of Attorney with respect to DaVita. ü(Included on Page II-1)
31.1	Certification of the Chief Executive Officer, dated February 27, 2004, pursuant to Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.ü
31.2	Certification of the Chief Financial Officer, dated February 27, 2004, pursuant to Rule 13a-14(a) or 15d-14(a), as adopted pursuant to Section 302 of the Sarbanes-Oxley Act of 2002.ü
32.1	Certification of the Chief Executive Officer, dated February 27, 2004, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.ü
32.2	Certification of the Chief Financial Officer, dated February 27, 2004, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002.ü

ü Included in this filing.
* Management contract or executive compensation plan or arrangement.
** Portions of this exhibit are subject to a request for confidential treatment and have been redacted and filed separately with the SEC.
(1) Filed on March 18, 1996 as an exhibit to our Transitional Report on Form 10-K for the transition period from June 1, 1995 to December 31, 1995.
(2) Filed on March 31, 1998 as an exhibit to our Form 10-K for the year ended December 31, 1997.
(3) Filed on October 24, 1995 as an exhibit to Amendment No. 2 to our Registration Statement on Form S-1 (Registration Statement No. 33-97618).
(4) Filed on August 5, 1996 as an exhibit to RTC's Form 10-Q for the quarter ended June 30, 1996.
(5) Filed on December 18, 1998 as an exhibit to our Registration Statement on Form S-3 (Registration Statement No. 333-69227).
(6) Filed on November 19, 2002 as an exhibit to our Form 8-K reporting the adoption of the Rights Agreement.
(7) Filed on November 15, 1999 as an exhibit to our Form 10-Q for the quarter ended September 30, 1999.
(8) Filed on August 14, 2000 as an exhibit to our Form 10-Q for the quarter ended June 30, 2000.
(9) Filed on March 20, 2001 as an exhibit to our Form 10-K for the year ended December 31, 2000.
(10) Filed on March 1, 2002 as an exhibit to our Form 10-K for the year ended December 31, 2001.
(11) Filed on August 15, 2001 as an exhibit to our Form 10-Q for the quarter ended June 30, 2001.
(12) Filed on May 14, 2002 as an exhibit to our Form 10-Q for the quarter ended March 31, 2002.
(13) Filed on March 29, 2000 as an exhibit to our Form 10-K for the year ended December 31, 1999.
(14) Filed on February 18, 2000 as an exhibit to our Registration Statement on Form S-8 (Registration Statement No. 333-30736).
(15) Filed on August 6, 2003 as an exhibit to our Form 10-Q for the quarter ended June 30, 2003.
(16) Filed on April 27, 2001 as an exhibit to the Definitive Proxy Statement for our 2001 Annual Meeting of Stockholders.
(17) Filed on March 14, 2002 as an exhibit to the Definitive Proxy Statement for our 2002 Annual Meeting of Stockholders.
(18) Filed on June 8, 2001 as an exhibit to our Registration Statement on Form S-4 (Registration Statement No. 333-62552).

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of November 18, 2003

Among

DAVITA INC.

as Borrower

CREDIT SUISSE FIRST BOSTON, CAYMAN ISLANDS BRANCH

as Administrative Agent

BANK OF AMERICA, N.A.

as Syndication Agent

CREDIT SUISSE FIRST BOSTON, CAYMAN ISLANDS BRANCH and
BANC OF AMERICA SECURITIES LLC
in relation to the Revolving Credit Facility and Term A Facility

as Joint Book Managers and Joint Lead Arrangers

and

BANC OF AMERICA SECURITIES LLC
in relation to the Term B Facility

as Sole Book Manager and Sole Lead Arranger

and

THE BANK OF NEW YORK, THE BANK OF NOVA SCOTIA
and WACHOVIA BANK, NATIONAL ASSOCIATION
in relation to the Revolving Credit Facility and the Term A Facility

as Documentation Agents

and

THE LENDERS, ISSUING BANKS AND
SWING LINE BANK party hereto

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EXHIBITS

SECOND AMENDED AND RESTATED CREDIT AGREEMENT

THIS SECOND AMENDED AND RESTATED CREDIT AGREEMENT dated as of November 18, 2003 among DAVITA INC., a Delaware corporation (the "***Borrower***"), the banks, financial institutions and other institutional lenders listed on the signature pages hereof under the caption "Lenders," the banks party hereto as Issuing Banks (as hereinafter defined), CREDIT SUISSE FIRST BOSTON, acting through its CAYMAN ISLANDS BRANCH ("***CSFB***"), as the provider of the Swing Line Facility (as hereinafter defined) (the "***Swing Line Bank***"), CSFB and BANC OF AMERICA SECURITIES LLC ("***BAS***"), as the joint book running managers and joint lead arrangers in respect of the Revolving Credit Facility and the Term A Facility and BAS as the sole book running manager and sole lead arranger in respect of the Term B Facility (CSFB and BAS, collectively, in such capacities, the "***Book Managers***"), CSFB as the administrative agent (together with any successor thereto appointed pursuant to Article VII, the "***Administrative Agent***") for the Lender Parties (as hereinafter defined), THE BANK OF NEW YORK, THE BANK OF NOVA SCOTIA and WACHOVIA BANK, NATIONAL ASSOCIATION, as documentation agents in respect of the Revolving Credit Facility and the Term A Facility (the "***Documentation Agents***") and BANK OF AMERICA, N.A. as syndication agent in respect of the Revolving Credit Facility, the Term A Facility and the Term B Facility (the "***Syndication Agent***") AMENDS AND RESTATES IN FULL the Existing Credit Agreement (as hereinafter defined).

PRELIMINARY STATEMENTS:

(1) The Borrower entered into a Credit Agreement dated as of April 26, 2002, which was amended and restated pursuant to that certain Amended and Restated Credit Agreement, dated as of July 15, 2003 (the "***Existing Credit Agreement***"), with the banks, financial institutions and other institutional lenders party thereto as revolving credit lenders (the "***Revolving Credit Lenders***"), as term A lenders (the "***Term A Lenders***"), and as term B lenders (the "***Term B Lenders***"), and CSFB as the administrative agent.

(2) The Borrower has requested to amend and restate the Existing Credit Agreement in its entirety in order, among other things, to amend the pricing of the Term B Facility and to modify certain covenants.

(3) The Term B Lenders and, to the extent that the Term B Lenders do not comprise the Required Lenders under the terms of the Existing Credit Agreement, such Term A Lenders and Revolving Credit Lenders as are required to comprise, together with the Term B Lenders, the Required Lenders, have agreed to the amendment of the Credit Agreement as provided herein pursuant to a Consent dated as of even date herewith (the "***Consent***").

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree as follows:

ARTICLE I

DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. *Certain Defined Terms.* As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

"***Accepting Lender***" has the meaning specified in Section 2.06(d).

"***Administrative Agent***" has the meaning specified in the recital of parties to this Agreement.

"***Administrative Agent's Account***" means the account of the Administrative Agent maintained by the Administrative Agent at The Bank of New York, ABA No. 021000018, Account Name: "CSFB Agency Cayman Account," Account No. 8900492627, Reference: DaVita Inc., or such other account maintained by the Administrative Agent and designated by the Administrative Agent from time to time as such in a written notice to the Borrower and each of the Lender Parties.

"***Administrative Questionnaire***" means a questionnaire, in form and substance satisfactory to the Administrative Agent, delivered by an Eligible Assignee pursuant to Section 8.07(a)(ii)(D) which provides the administrative information relating to such Eligible Assignee.

"***Advance***" means a Term A Advance, a Term B Advance, a Revolving Credit Advance, a Swing Line Advance or a Letter of Credit Advance, as the context may require.

"***Affiliate***" means, with respect to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling," "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to vote 10% or more of the Voting Interests in such Person or to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Interests, by contract or otherwise.

"***Agents***" means, collectively, the Administrative Agent, the Book Managers, the Documentation Agents, the Syndication Agent and each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 7.01(b).

"***Agreement***" means this Second Amended and Restated Credit Agreement, as the same may be amended, restated, supplemented or otherwise modified from time to time.

"***Agreement Value***" means, for each Hedge Agreement, on any date of determination, an amount reasonably determined by the Administrative Agent equal to: (a) in the case of a Hedge Agreement documented pursuant to the Master Agreement (Multicurrency-Cross Border) published by the International Swap and Derivatives Association, Inc. (the "***Master Agreement***"), the amount, if any, that would be payable by any Loan Party to its counterparty in respect of such Hedge Agreement, as if (i) such Hedge Agreement was being terminated early on such date of determination, (ii) such Loan Party was the sole "Affected Party", and (iii) the Administrative Agent was the sole party determining such payment amount (with the Administrative Agent making such determination pursuant to the provisions of that specific form of Master Agreement); or (b) in the case of a Hedge Agreement traded on an exchange, the mark-to-market value of such Hedge Agreement, which will be the unrealized gain or loss on such Hedge Agreement to the Loan Party to such Hedge Agreement reasonably determined by the Administrative Agent based on the settlement price of such Hedge Agreement on such date of determination, or (c) in all other cases, the mark-to-market value of such Hedge Agreement, which will be the unrealized gain or loss on such Hedge Agreement to the Loan Party to such Hedge Agreement reasonably determined by the Administrative Agent as the amount, if any, by which (i) the present value of the future cash flows to be paid by such Loan Party exceeds (ii) the present value of the future cash flows to be received by such Loan Party pursuant to such Hedge Agreement; capitalized terms used and not otherwise defined in this definition shall have the respective meanings set forth in the above described Master Agreement.

"***Applicable Lending Office***" means (a) with respect to each of the Lenders, the Base Rate Lending Office of such Lender in the case of a Base Rate Advance and the Eurodollar Lending Office of such Lender in the case of a Eurodollar Rate Advance and (b) with respect to the Issuing Bank and the Swing Line Bank, the Base Rate Lending Office of the Issuing Bank and the Swing Line Bank, respectively, for all purposes of this Agreement.

"***Applicable Margin***" means, on any date of determination, a percentage per annum equal to the applicable percentage for the Performance Level set forth below as determined by reference to the Leverage Ratio for the most recently completed Measurement Period:

		Base Rate Advances		Eurodollar Rate Advances	
Performance Level	**Leverage Ratio**	**Term A Facility/Revolving Credit Facility**	**Term B Facility**	**Term A Facility/Revolving Credit Facility**	**Term B Facility**
I	Less than 2.00x	0.50%	1.00%	1.50%	2.00%
II	Greater than or equal to 2.00x but less than 2.50x	1.00%	1.00%	2.00%	2.00%
III	Greater than or equal to 2.50x but less than 2.75x	1.25%	1.00%	2.25%	2.00%
IV	Greater than or equal to 2.75x but less than 3.00x	1.25%	1.25%	2.25%	2.25%
V	Greater than or equal to 3.00x but less than 3.50x	1.50%	1.50%	2.50%	2.50%
VI	Greater than or equal to 3.50x	1.75%	1.50%	2.75%	2.50%

For the purposes of:

(A) clause (ii) of the immediately preceding sentence, the Applicable Margin for each Base Rate Advance shall be determined by reference to the Performance Level in effect from time to time and the Applicable Margin for each Eurodollar Rate Advance shall be determined by reference to the Performance Level in effect on the first day of each Interest Period for such Eurodollar Rate Advance; and

(B) determining the Performance Level in respect of the Applicable Margin at any date of determination, changes in the Performance Level shall be effective on the date on which the Administrative Agent and the Lender Parties receive the Required Financial Information reflecting such change; provided, however, that if the Borrower has not delivered to the Administrative Agent and the Lender Parties all of the information required under this clause (B) within five Business Days after the date on which such information is otherwise required under Section 5.03(b) or 5.03(c), as applicable, the Performance Level in respect of the Revolving Credit Facility and the Term A Facility shall be deemed to be at Performance Level VI for so long as such information has not been submitted and *provided*, *further*, that the Performance Level in respect of the Term B Facility shall be deemed to be at Performance Level IV for so long as the information required under Section 5.03(b) in respect of the 2003 Fiscal Year has not been submitted.

"***Applicable Percentage***" means, with respect to the Commitment Fee, a rate per annum equal to 0.375% if the Leverage Ratio for the most recently completed Measurement Period is less than 3.00:1.00 and 0.50% if such Leverage Ratio is greater than or equal to 3.00:1.00. For the purposes of determining the Leverage Ratio in respect of the Applicable Percentage at any date of determination, changes in the Applicable Percentage shall be effective on the date on which the Administrative Agent and the Lender Parties receive the Required Financial Information reflecting such change; *provided*, *however*, that if the Borrower has not delivered to the Administrative Agent and the Lender Parties all of the information required under this definition within five Business Days after the date on which such information is otherwise required under Section 5.03(b) or 5.03(c), as applicable, the Applicable Percentage shall be 0.50% for so long as such information has not been submitted.

"***Appropriate Lender***" means, at any time, (a) with respect to the Term A Facility, the Term B Facility or the Revolving Credit Facility, a Lender that has outstanding Advances or a Commitment with respect to such Facility at such time, (b) with respect to the Letter of Credit Facility, (i) the Issuing Bank and (ii) if the Revolving Credit Lenders have made Letter of Credit Advances pursuant to Section 2.03(b) that are outstanding at such time, each such Revolving Credit Lender and (c) with respect to the Swing Line Facility,

(i) the Swing Line Bank and (ii) if the Revolving Credit Lenders have made Swing Line Advances pursuant to Section 2.02(b) that are outstanding at such time, each such Revolving Credit Lender.

"***Approved Fund***" means any Person (other than a natural Person) that (i) is (or will be) an "accredited investor" (as defined in Regulation D under the Securities Act) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business and (ii) is administered, advised or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers, advises or manages a Lender.

"***Assignment and Assumption***" means an Assignment and Assumption entered into by a Lender Party and an Eligible Assignee, and accepted by the Administrative Agent and, if applicable, the Borrower, in accordance with Section 8.07 and in substantially the form of Exhibit C hereto.

"***Available Amount***" of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing).

"***Base Rate***" means a fluctuating interest rate per annum in effect from time to time, which rate per annum shall at all times be equal to the higher of:

(a) the rate of interest established by CSFB from time to time as its prime rate (which rate of interest may not be the lowest rate of interest charged by CSFB to its customers); and

(b) the Federal Funds Rate plus 0.50%.

Any change in the Base Rate resulting from a change in the prime rate established by CSFB shall become effective on the Business Day on which such change in the prime rate is announced by CSFB.

"***Base Rate Advance***" means an Advance that bears interest as provided in Section 2.07(a)(i).

"***Base Rate Lending Office***" means, with respect to each of the Lender Parties, the office of such Lender Party specified as its "Base Rate Lending Office" opposite its name on Schedule I hereto or in the Assignment and Assumption pursuant to which it became a Lender Party, as the case may be, or such other office of such Lender Party as such Lender Party may from time to time specify to the Borrower and the Administrative Agent for such purpose.

"***Borrower's Account***" means such account of the Borrower as is agreed from time to time in writing between the Borrower and the Administrative Agent.

"***Borrower's Percentage***" means, in respect of the sale or issuance of Equity Interests by any Subsidiary of the Borrower, the percentage of the common Equity Interests of such Subsidiary beneficially owned directly or indirectly by the Borrower after giving effect to such sale or issuance.

"***Borrowing***" means a Term A Borrowing, a Term B Borrowing, a Revolving Credit Borrowing or a Swing Line Borrowing, as the context may require.

"***Business Day***" means a day of the year on which banks are not required or authorized by law to close in New York, New York, and, if the applicable Business Day relates to any Eurodollar Rate Advances, on which dealings are carried on in U.S. dollar deposits in the London interbank market.

"***Capital Assets***" means, with respect to any Person, all equipment, fixed assets and real property or improvements of such Person, or replacements or substitutions therefor or additions thereto, that, in accordance with GAAP, have been or should be reflected as additions to property, plant or equipment on the balance sheet of such Person.

"***Capital Expenditures***" means, with respect to any Person for any period, all expenditures made directly or indirectly by such Person during such period for Capital Assets (whether paid in cash or other consideration or accrued as a liability and including, without limitation, all expenditures for maintenance and repairs which are required, in accordance with GAAP, to be capitalized on the books of such Person).

For purposes of this definition, the purchase price of equipment or other fixed assets that are purchased simultaneously with the trade-in of existing assets or with insurance proceeds shall be included in Capital Expenditures only to the extent of the gross amount by which such purchase price exceeds the credit granted by the seller of such assets for the assets being traded in at such time or the amount of such insurance proceeds, as the case may be.

"***Capitalized Lease***" means any lease with respect to which the lessee is required to recognize concurrently the acquisition of property or an asset and the incurrence of a liability in accordance with GAAP.

"***Capitalized Lease Obligations***" means, with respect to any Capitalized Lease, the amount required to be capitalized in the financial statements of the lessee in accordance with GAAP.

"***Cash Distributions***" means, with respect to any Person for any period, all dividends and other distributions on any of the outstanding Equity Interests in such Person, all purchases, redemptions, retirements, defeasances or other acquisitions of any of the outstanding Equity Interests in such Person and all returns of capital to the stockholders, partners or members (or the equivalent persons) of such Person, in each case to the extent paid in cash by or on behalf of such Person during such period.

"***Cash Equivalents***" means (a) securities with maturities of one year or less from the date of acquisition, issued, fully guaranteed or insured by the United States Government, (b) securities with maturities of one year or less from the date of acquisition issued, fully guaranteed or insured by any State of the United States of America or any political subdivision thereof rated at least AA- by S&P or Aa3 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of the two named rating agencies cease publishing ratings of investments, (c) certificates of deposit, time deposits, overnight bank deposits, bankers' acceptances and repurchase agreements issued by a Qualified Issuer having maturities of 270 days or less from the date of acquisition, (d) commercial paper of an issuer rated at least A-2 by S&P or P-2 by Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of the two named rating agencies cease publishing ratings of investments, and having maturities of 270 days or less from the date of acquisition, (e) money market accounts or funds, a substantial portion of the assets of which constitute Cash Equivalents described in clauses (a) through (d) above, with, issued by or managed by Qualified Issuers, (f) money market accounts or funds, a substantial portion of the assets of which constitute Cash Equivalents described in clauses (a) through (d) above, which money market accounts or funds have net assets of not less than $500,000,000 and have the highest rating available of either S&P or Moody's, or carrying an equivalent rating by a nationally recognized rating agency if both of the two named rating agencies cease publishing ratings of investments, (g) auction rate securities rated AAA by S&P and Aaa by Moody's, and (h) money market accounts or funds rated at least AA by S&P and at least Aa by Moody's.

"***CERCLA***" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended from time to time.

"***CERCLIS***" means the Comprehensive Environmental Response, Compensation and Liability Information System maintained by the U.S. Environmental Protection Agency.

"***CHAMPUS***" means the United States Department of Defense Human Civilian Health and Medical Program of the Uniformed Services.

"***Change of Control***" means, at any time:

(a) any "*person*" or "*group*" (each as used in Sections 13(d)(3) and 14(d)(2) of the Exchange Act) (i) becomes the "*beneficial owner*" (as defined in Rule 13d-3 of the Exchange Act), directly or indirectly, of Voting Interests in the Borrower (including through securities convertible into or exchangeable for such Voting Interests) representing 35% or more of the combined voting power of all of the Voting Interests in the Borrower (on a fully diluted basis) or (ii) otherwise has the ability, directly or indirectly, to elect a majority of the board of directors of the Borrower; or

(b) during any period of 24 consecutive months, whether commencing before or after the date of this Agreement, individuals who at the beginning of such 24-month period were Continuing Directors shall cease for any reason to constitute a majority of the board of directors of the Borrower;

"***Closing Date***" means the first date on which all of the conditions precedent to the effectiveness of this Agreement set forth in Article III are satisfied, which date shall occur on or prior to November 18, 2003.

"***Collateral***" means all of the "*Collateral*" referred to in the Collateral Documents and all of the other property and assets that are or are intended under the terms of the Collateral Documents to be subject to Liens in favor of the Administrative Agent for the benefit of the Secured Parties.

"***Collateral Documents***" means, collectively, the Security Agreement, the Intellectual Property Security Agreement, collateral assignments, Security Agreement Supplements, security agreements, pledge agreements, mortgages, deeds of trust or other similar agreements delivered to the Administrative Agent and the Lender Parties pursuant to Section 3.01(a) or Section 5.01(j), and each of the other agreements, instruments or documents that creates or purports to create a Lien in favor of the Administrative Agent for the benefit of the Secured Parties.

"***Commitment***" means a Revolving Credit Commitment or a Swing Line Commitment, as the context may require.

"***Commitment Fee***" has the meaning specified in Section 2.08(a).

"***Confidential Information***" means information that is furnished to the Administrative Agent or any of the Lender Parties by or on behalf of the Borrower or any of its Subsidiaries in a writing that is marked as confidential or otherwise on an expressly confidential basis, but does not include any such information that (a) is or becomes generally available to the public (other than as a result of a breach by the Administrative Agent or such Lender Party of its confidentiality obligations under this Agreement) or (b) is or becomes available to the Administrative Agent or such Lender Party from a source other than the Borrower or any of its Subsidiaries that is not, to the knowledge of the Administrative Agent or such Lender Party, acting in violation of a confidentiality agreement with the Borrower or any such Subsidiary.

"***Consolidated***" refers to the consolidation of accounts in accordance with GAAP.

"***Consolidated Cash Taxes***" means, with respect to any Person for any period, (a) the aggregate amount of all payments in respect of income taxes made in cash by such Person and its Subsidiaries to any applicable Governmental Authority during such period less (b) the aggregate amount of all cash refunds in respect of income taxes received by such Person and its Subsidiaries from any applicable Governmental Authority during such period, after giving effect, to the extent available, to the application of net operating losses available to such Person or any such Subsidiary.

"***Consolidated EBITDA***" means, with respect to any Person for any period, the amount equal to (I) the sum of (a) the Consolidated Net Income of such Person and its Subsidiaries for such period *plus* (b) the sum of each of the following expenses that have been deducted in the determination of the Consolidated Net Income of such Person and its Subsidiaries for such period: (i) the Consolidated Interest Expense of such Person and its Subsidiaries for such period, (ii) all income tax expense (whether federal, state, local, foreign or otherwise) of such Person and its Subsidiaries for such period, (iii) all depreciation expense of such Person and its Subsidiaries for such period, (iv) all amortization expense of such Person and its Subsidiaries for such period and (v) all non-cash charges otherwise deducted in determining the Consolidated Net Income of such Person and its Subsidiaries for such period *less* all extraordinary gains added in determining the Consolidated Net Income of such Person and its Subsidiaries for such period; *provided* that for any period, the amount of non-cash charges arising from the write-off of current assets shall not be included in this subclause (v) *plus* (c) for each such period ending during the twelve-month period immediately following the closing of any acquisition permitted under Section 5.02(f), an amount equal to the Consolidated EBITDA (calculated on the basis as provided herein) for each such acquisition calculated on a *pro forma* basis as if such acquisition had occurred on the first day of the twelve-month period then ended, *minus* (d) any cash expenditures for such period relating to the non-cash charges set forth in subclause (b) (v)

hereof, whether for such period or any prior period, *plus* (e) non-recurring charges incurred during such period not exceeding in the aggregate during the period from April 1, 2000 and continuing through the term of this Agreement $45,000,000 resulting from the write-off of accounts receivable and other related charges as a result of the pending third party carrier review of claims for Medicare reimbursement submitted by the Subsidiary of the Borrower operating the Borrower's Florida laboratory or other Governmental Reimbursement Program Costs, *minus* (II) in respect of (a) any Subsidiary sold in such period or (b) any assets sold or disposed of in such period as to which EBITDA attributable thereto can be determined, an amount equal to the Consolidated EBITDA (calculated on the basis as provided herein) for each such sale or disposition otherwise included in Consolidated EBITDA for such period.

"***Consolidated Interest Expense***" means, with respect to any Person for any period, the gross interest expense accrued on all Debt of such Person and its Subsidiaries during such period, determined on a Consolidated basis and in accordance with GAAP for such period, including, without limitation, (a) in the case of the Borrower, all fees paid or payable pursuant to Section 2.08(a), (b) commissions, discounts and other fees and charges paid or payable in connection with letters of credit (including, without limitation, the Letters of Credit), (c) all amortization of original issue discount in respect of all Debt of such Person and its Subsidiaries, (d) all dividends on Redeemable Preferred Interests, to the extent paid or payable in cash, and (e) the net payment, if any, paid or payable in connection with Hedge Agreements less the net credit, if any, received in connection with Hedge Agreements.

"***Consolidated Net Income***" means, for any period, the net income (or net loss) of any Person and its Subsidiaries for such period, determined on a Consolidated basis and in accordance with GAAP.

"***Consolidated Pre-Minority EBITDA***" means Consolidated EBITDA plus minority interests in income of consolidated Subsidiaries of the Borrower to the extent deducted in determining net income of the Borrower and its Subsidiaries on a Consolidated basis in the calculation of Consolidated EBITDA.

"***Constitutive Documents***" means, with respect to any Person, the certificate of incorporation or registration (including, if applicable, certificate of change of name), articles of incorporation or association, memorandum of association, charter, bylaws, certificate of limited partnership, partnership agreement, trust agreement, joint venture agreement, certificate of formation, articles of organization, limited liability company operating or members agreement, joint venture agreement or one or more similar agreements, instruments or documents constituting the organization or formation of such Person.

"***Contingent Obligation***" means, with respect to any Person, any Obligation or arrangement of such Person to guarantee or intended to guarantee any Debt, leases, dividends or other obligations ("*primary obligations*") of any other Person (the "*primary obligor*") in any manner, whether directly or indirectly, including, without limitation, (a) the direct or indirect guarantee, endorsement (other than for collection or deposit in the ordinary course of business), co-making, discounting with recourse or sale with recourse by such Person of the Obligation of a primary obligor, (b) the Obligation to make take-or-pay or similar payments, if required, regardless of nonperformance by any other party or parties to an agreement or (c) any Obligation of such Person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital, equity capital, net worth or other balance sheet condition or any income statement condition of the primary obligor or otherwise to maintain the solvency of the primary obligor, (iii) to purchase, lease or otherwise acquire property, assets, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the holder of such primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be an amount equal to the stated or determinable amount of the primary obligation in respect of which such Contingent Obligation is made (or, if less, the maximum amount of such primary obligation for which such Person may be liable pursuant to the terms of the agreement, instrument or other document evidencing such Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such Person is required to perform thereunder), as determined by such Person in good faith.

"***Continuing Director***" means, for any period, an individual who is a member of the board of directors of the Borrower on the first day of such period or who has been nominated to the board of directors of the Borrower by a majority of the other Continuing Directors who were members of the board of directors of the Borrower at the time of such nomination.

"***Conversion***", "***Convert***" and "***Converted***" each refer to a conversion of Advances of one Type into Advances of the other Type pursuant to Section 2.09 or 2.10.

"***Debt***" means, with respect to any Person (without duplication) (a) all indebtedness of such Person for borrowed money, (b) all Obligations of such Person for the deferred purchase price of property or services (other than unsecured trade payables incurred in the ordinary course of such Person's business, *provided* that at all times during which the aggregate amount of such payables exceed 50% of Consolidated EBITDA for the most recent Measurement Period, "Debt" shall include all such payables which are past due for more than 60 days (excluding payables being contested in good faith) after the date on which such payable was first past due), (c) all Obligations of such Person evidenced by notes, bonds, debentures or other similar instruments, or upon which interest payments are customarily made, (d) all Obligations of such Person created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to repossession or sale of such property), (e) all Capitalized Lease Obligations of such Person, (f) all Obligations, contingent or otherwise, of such Person under acceptance, letter of credit or similar facilities, (g) all Obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any preferred Equity Interests in such Person or any other Person, valued, at the greater of its voluntary or involuntary liquidation preference plus accrued and unpaid dividends, (h) all Obligations of such Person in respect of Hedge Agreements, take-or-pay agreements or other similar arrangements, valued, in the case of Hedge Agreements, at the Agreement Value thereof, (i) all Obligations of such Person under any synthetic lease, tax retention operating lease, off-balance sheet loan or similar off-balance sheet financing if the transaction giving rise to such Obligation is considered indebtedness for borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP; (j) all Contingent Obligations, and (k) all indebtedness and other payment Obligations referred to in clauses (a) through (j) above of another Person secured by (or for which the holder of such indebtedness or other payment Obligations has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness or other payment Obligations: *provided* that for the purposes of this subclause (k) the amount thereof shall be equal to the lesser of (i) the amount of such indebtedness or other payment Obligations and (ii) the fair market value of the property subject to such Lien.

"***Declining Lender***" has the meaning specified in Section 2.06(d).

"***Default***" means any Event of Default or any event or condition that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"***Defaulted Advance***" means, with respect to any Lender Party at any time, the portion of any Advance required to be made by such Lender Party to the Borrower pursuant to Section 2.01 or 2.02 at or prior to such time that has not been made by such Lender Party or by the Administrative Agent for the account of such Lender Party pursuant to Section 2.02(e) as of such time. In the event that a portion of a Defaulted Advance shall be deemed made pursuant to Section 2.16(a), the remaining portion of such Defaulted Advance shall be considered a Defaulted Advance originally required to be made pursuant to Section 2.01 on the same date as the Defaulted Advance so deemed made in part.

"***Defaulted Amount***" means, with respect to any Lender Party at any time, any amount required to be paid by such Lender Party to the Administrative Agent or any other Lender Party hereunder or under any other Loan Document at or prior to such time that has not been so paid as of such time, including, without limitation, any amount required to be paid by such Lender Party to (a) the Swing Line Bank pursuant to Section 2.02(b) to purchase a portion of a Swing Line Advance made by the Swing Line Bank, (b) the

Issuing Bank pursuant to Section 2.03(b) to purchase a portion of a Letter of Credit Advance made by the Issuing Bank, (c) the Administrative Agent pursuant to Section 2.02(e) to reimburse the Administrative Agent for the amount of any Advance made by the Administrative Agent for the account of such Lender Party, (d) any other Lender Party pursuant to Section 2.14 to purchase any participation in Advances owing to such other Lender Party and (e) the Administrative Agent or the Issuing Bank pursuant to Section 7.05 to reimburse the Administrative Agent or the Issuing Bank for such Lender Party's ratable share of any amount required to be paid by the Lender Parties to the Administrative Agent or the Issuing Bank as provided therein. In the event that a portion of a Defaulted Amount shall be deemed paid pursuant to Section 2.16(b), the remaining portion of such Defaulted Amount shall be considered a Defaulted Amount originally required to be paid hereunder or under any other Loan Document on the same date as the Defaulted Amount so deemed paid in part.

"***Defaulting Lender***" means, at any time, any Lender Party that, at such time, (a) owes a Defaulted Advance or a Defaulted Amount or (b) shall take any action or be the subject of any action or proceeding of a type described in Section 6.01(f).

"***Dialysis Facilities***" has the meaning specified in Section 4.01(s).

"***Domestic Person***" means a Person that is organized under the laws of, or whose property is located in, a jurisdiction within the United States.

"***Domestic Subsidiary***" means, at any time, any of the direct or indirect Subsidiaries of the Borrower that is incorporated or organized under the laws of any state of the United States of America or the District of Columbia.

"***Eligible Assignee***" means (a) with respect to any Facility (other than the Letter of Credit Facility), (i) a Lender; (ii) an Affiliate of a Lender or an Approved Fund of a Lender; (iii) a commercial bank organized under the laws of the United States, or any State thereof having a combined capital and surplus of at least $100,000,000; (iv) a savings and loan association or savings bank organized under the laws of the United States, or any State thereof having a combined capital and surplus of at least $100,000,000; (v) a commercial bank organized under the laws of any other country which is a member of the OECD, or a political subdivision of any such country, and having a combined capital and surplus of at least $100,000,000, *provided* that such bank is acting through a branch, agency or Affiliate located in the United States or managed and controlled by a branch, agency or affiliate located in the United States; (vi) the central bank of any country that is a member of the OECD; (vii) a finance company, insurance company or other financial institution, fund (whether a corporation, partnership, trust or other entity) or other entity that is engaged in making, purchasing or otherwise investing in commercial loans in the ordinary course of its business and, except with respect to a Term Facility, having total assets (inclusive of assets of Affiliates or Approved Funds thereof) of at least $100,000,000; and (viii) any other Person approved by the Administrative Agent and, provided no Event of Default is continuing, the Borrower, *provided* that the approval of the Administrative Agent and the Borrower, when required, shall not be unreasonably withheld or delayed, and (b) with respect to the Letter of Credit Facility, a Person that is an Eligible Assignee under subclause (iii) or (v) of clause (a) of this definition and is approved by the Administrative Agent (such approval not to be unreasonably withheld or delayed); *provided*, *however*, that neither any Loan Party nor any Affiliate of a Loan Party shall qualify as an Eligible Assignee under this definition.

"***Environmental Action***" means any outstanding action, suit, demand, demand letter, claim, notice of noncompliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement, abatement order or other order or directive (conditional or otherwise) relating in any way to any Environmental Law, any Environmental Permit or any Hazardous Materials or arising from alleged injury or threat to health, safety, natural resources or the environment, including, without limitation, (a) by any Governmental Authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any applicable Governmental Authority or any other third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

"***Environmental Law***" means any Requirement of Law relating to (a) the generation, use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials, (b) pollution or the protection of the environment, health, safety or natural resources or (c) occupational safety and health, industrial hygiene, land use or the protection of human, plant or animal health or welfare, including, without limitation, CERCLA, in each case as amended from time to time, and including the regulations promulgated and the rulings issued from time to time thereunder.

"***Environmental Permit***" means any permit, approval, identification number, license or other authorization required under any Environmental Law.

"***Equipment***" has the meaning specified in Section 1(a) of the Security Agreement.

"***Equity Interests***" means, with respect to any Person, all of the shares of capital stock of (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or other acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or other acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including, without limitation, partnership, member or trust interests therein), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are authorized or otherwise existing on any date of determination.

"***ERISA***" means the Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and the rulings issued from time to time thereunder.

"***ERISA Affiliate***" means any Person that for purposes of Title IV of ERISA is a member of the controlled group of any Loan Party, or under common control with any Loan Party, within the meaning of Section 414 of the Internal Revenue Code.

"***ERISA Event***" means (a)(i) the occurrence of a reportable event, within the meaning of Section 4043 of ERISA, with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC or (ii) the requirements of Section 4043(b) of ERISA are met with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA could reasonably be expected to occur with respect to such Plan within the following 30 days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Loan Party or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA; (e) the partial or complete withdrawal by any Loan Party or any ERISA Affiliate from a Plan or a Multiple Employer Plan; (f) the conditions for imposition of a lien under Section 302(f) of ERISA shall have been met with respect to any Plan; (g) the adoption of an amendment to a Plan requiring the provision of security to such Plan pursuant to Section 307 of ERISA; or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 of ERISA, or the occurrence of any event or condition described in Section 4042 of ERISA, that constitutes grounds for the termination of, or the appointment of a trustee to administer, a Plan.

"***Eurodollar Lending Office***" means, with respect to each of the Lenders, the office of such Lender specified as its "Eurodollar Lending Office" opposite its name on Schedule I hereto or in the Assignment and Assumption pursuant to which it became a Lender, as the case may be (or, if no such office is specified, its Base Rate Lending Office), or such other office of such Lender as such Lender may from time to time specify to the Borrower and the Administrative Agent for such purpose.

"***Eurodollar Rate***" means, with respect to any Eurodollar Rate Advance for any Interest Period, the rate per annum determined by the Administrative Agent at approximately 11:00 a.m. (London time) on the date which is two Business Days prior to the beginning of such Interest Period by reference to the

British Bankers' Association Interest Settlement Rates for deposits in U.S. dollars (as set forth by any service selected by the Administrative Agent which has been nominated by the British Bankers' Association as an authorized information vendor for the purpose of displaying such rates) for a period equal to such Interest Period; *provided* that, to the extent that an interest rate is not ascertainable pursuant to the foregoing provisions of this definition the Eurodollar Rate shall be the interest rate per annum determined by the Administrative Agent to be the average of the rates per annum at which deposits in U.S. dollars are offered for such Interest Period to major banks in the London interbank market in London, England by the Agent at approximately 11:00 a.m. (London time) on the date which is two Business Days prior to the beginning of such Interest Period. Each determination by the Administrative Agent pursuant to this definition shall be conclusive absent manifest error.

"***Eurodollar Rate Advance***" means an Advance that bears interest as provided in Section 2.07(a)(ii).

"***Events of Default***" has the meaning specified in Section 6.01.

"***Exchange Act***" means the Securities Exchange Act of 1934, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"***Existing Credit Agreement***" has the meaning specified in Preliminary Statement (l) to this Agreement.

"***Existing Issuing Bank***" means each bank which issued existing Letters of Credit issued under the Existing Credit Agreement.

"***Existing Letters of Credit***" means all letters of credit issued under the Existing Credit Agreement and outstanding on the Closing Date, as more fully described on Schedule II hereto.

"***Facility***" means the Term A Facility, the Term B Facility, the Revolving Credit Facility, the Swing Line Facility or the Letter of Credit Facility, as the context may require.

"***Federal Funds Rate***" means, for any period, a fluctuating interest rate per annum equal for each day during such period to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day (or, if such day is not a Business Day, for the immediately preceding Business Day) by the Federal Reserve Bank of New York or, if such rate is not so published for any day that is a Business Day, the average rate charged to the Administrative Agent (in its individual capacity) on such day on such transactions as determined by the Administrative Agent.

"***Fiscal Quarter***" means, with respect to the Borrower or any of its Subsidiaries, the period commencing January 1 in any Fiscal Year and ending on the next succeeding March 31, the period commencing April 1 in any Fiscal Year and ending on the next succeeding June 30, the period commencing July 1 in any Fiscal Year and ending on the next succeeding September 30 or the period commencing October 1 in any Fiscal Year and ending on the next succeeding December 31, as the context may require, or, if any such Subsidiary was not in existence on the first day of any such period, the period commencing on the date on which such Subsidiary is incorporated, organized, formed or otherwise created and ending on the last day of such period.

"***Fiscal Year***" means, with respect to the Borrower or any of its Subsidiaries, the period commencing on January 1 in any calendar year and ending on the next succeeding December 31 or, if any such Subsidiary was not in existence on January 1 in any calendar year, the period commencing on the date on which such Subsidiary is incorporated, organized, formed or otherwise created and ending on the next succeeding December 31.

"***Fixed Charge Coverage Ratio***" means, for any period, the ratio of (a) the amount equal to (i) the sum of (A) Consolidated Pre-Minority EBITDA and (B) Lease Expense less (ii) Capital Expenditures, in each case for the Borrower and its Subsidiaries for such period, to (b) the sum of (i) Consolidated Interest Expense, (ii) the aggregate principal amount (or the equivalent thereto) of all Required Principal Payments,

(iii) the aggregate amount of all Consolidated Cash Taxes, (iv) Lease Expense and (v) amounts paid as cash dividends by the Borrower pursuant to Section 5.02(g)(i), in each case for the Borrower and its Subsidiaries for such period.

"***Foreign Subsidiary***" means, at any time, any direct or indirect Subsidiary of the Borrower that is not a Domestic Subsidiary.

"***Funded Debt***" of any Person means all Debt of such Person that by its terms matures more than one year after the date of determination or matures within one year from such date but is renewable or extendible, at the option of such Person, to a date more than one year after such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year after such date, in each case determined on a Consolidated basis in accordance with GAAP, including, without limitation, (i) the aggregate amount of Governmental Reimbursement Program Costs (exclusive of, with respect to the determination of Funded Debt in any period, the portion of Governmental Reimbursement Program Costs paid in such period) and (ii) in the case of the Borrower, the Advances; *provided*, *however*, that the term "*Funded Debt*" shall not include (x) any Contingent Obligations of such Person (if and to the extent such Contingent Obligations would otherwise be included in such term on any date of determination) that are incurred solely to support Debt or Governmental Reimbursement Program Costs of the Borrower or one or more Subsidiaries of the Borrower to the extent such Contingent Obligations are otherwise expressly permitted to be incurred under Section 5.02(b), and (y) all Obligations of such Person to purchase, redeem, retire, defease or otherwise make any payment in respect of any Redeemable Preferred Interests.

"***GAAP***" has the meaning specified in Section 1.03.

"***Governmental Authority***" means any nation or government, any state, province, city, municipal entity or other political subdivision thereof, and any governmental, executive, legislative, judicial, administrative or regulatory agency, department, authority, instrumentality, commission, board or similar body, whether federal, state, provincial, territorial, local or foreign.

"***Governmental Authorization***" means any authorization, approval, consent, franchise, license, covenant, order, ruling, permit, certification, exemption, notice, declaration or similar right, undertaking or other action of, to or by, or any filing, qualification or registration with, any Governmental Authority.

"***Governmental Reimbursement Program Costs***" means with respect to and payable by the Borrower and its Subsidiaries the sum of:

(i) all amounts (including punitive and other similar amounts) agreed to be paid in settlement or payable as a result of a final, non-appealable judgment, award or similar order relating to participation in Medical Reimbursement Programs;

(ii) all final, non-appealable fines, penalties, forfeitures or other amounts rendered pursuant to criminal indictments or other criminal proceedings relating to participation in Medical Reimbursement Programs; and

(iii) the amount of final, non-appealable recovery, damages, awards, penalties, forfeitures or similar amounts rendered in any litigation, suit, arbitration, investigation or other legal or administrative proceeding of any kind relating to participation in Medical Reimbursement Programs.

"***Guarantee Supplement***" has the meaning specified in the Subsidiary Guarantee.

"***Guaranteed Obligations***" has the meaning specified in the Subsidiary Guarantee.

"***Guarantor***" means each Subsidiary of the Borrower party to the Subsidiary Guarantee or, as the case may be, a Guarantee Supplement.

"***Hazardous Materials***" means (a) petroleum or petroleum products, by-products or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and

(b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

"***Hedge Agreements***" means, collectively, interest rate swap, cap or collar agreements, interest rate future or option contracts, commodity future or option contracts, currency swap agreements, currency future or option contracts, equity swap agreements and other similar agreements.

"***Hedge Bank***" means any Person that is a Lender Party or an Affiliate of a Lender Party, in its capacity as a party to a Hedge Agreement.

"***Indemnified Party***" has the meaning specified in Section 8.04(b).

"***Information Memorandum***" means the information memorandum dated November 2003 used in connection with the syndication of the Term B Facility.

"***Initial Extension of Credit***" means, collectively, the initial Borrowings under one or more of the Facilities, and/or the initial issuances of one or more Letters of Credit, made on the closing date of the Existing Credit Agreement.

"***Insufficiency***" means, with respect to any Plan, the amount, if any, of its unfunded benefit liabilities, as defined in Section 4001(a)(18) of ERISA.

"***Intellectual Property Security Agreement***" means the Intellectual Property Security Agreement dated as of April 26, 2002 executed by the Borrower and certain subsidiaries of the Borrower as Grantors (as defined therein) under the Existing Credit Agreement and which has been ratified by such parties pursuant to Section 3.01(a)(vii) hereof.

"***Intercreditor Agreement***" means that certain Intercreditor Agreement dated as of April 26, 2002, duly executed by the Agent on behalf of the Lender Parties, the Collateral Agent, as defined therein, and any Lender or an Affiliate thereof who is as of such date or thereafter a party to a Hedge Agreement.

"***Interest Period***" means, for each Eurodollar Rate Advance comprising part of the same Borrowing, the period commencing on the date of such Eurodollar Rate Advance or the date of the Conversion of any Base Rate Advance into such Eurodollar Rate Advance, and ending on the last day of the period selected by the Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by the Borrower pursuant to the provisions below, *provided* that for each Eurodollar Rate Advance outstanding on the Closing Date the then applicable Interest Period shall be as determined under the Existing Credit Agreement. The duration of each such Interest Period shall be one, two, three or six months, or if available to the Lenders and the Administrative Agent, one year, as the Borrower may, upon notice received by the Administrative Agent not later than 2:00 P.M. (New York, New York time) on the third Business Day prior to the first day of such Interest Period, select; *provided*, *however*, that:

(a) the Borrower may not select any Interest Period with respect to any Eurodollar Rate Advance under a Facility that ends after any principal repayment installment date for such Facility unless, after giving effect to such selection, the aggregate principal amount of Base Rate Advances and of Eurodollar Rate Advances having Interest Periods that end on or prior to such principal repayment installment date for such Facility shall be at least equal to the aggregate principal amount of Advances under such Facility due and payable on or prior to such date;

(b) Interest Periods commencing on the same date for Eurodollar Rate Advances comprising part of the same Borrowing shall be of the same duration;

(c) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day; *provided*, *however*, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the immediately preceding Business Day; and

(d) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

"***Internal Revenue Code***" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated and the rulings issued thereunder.

"***Investment***" means, with respect to any Person, any loan or advance to such Person, any purchase or other acquisition of Equity Interests in or Debt of, or the property and assets comprising a division or business unit or all or a substantial part of the business of, such Person, any capital contribution to such Person or any other investment in such Person, including, without limitation, any acquisition by way of a merger or consolidation (or similar transaction) and any arrangement pursuant to which the investor incurs Debt of the types referred to in clause (j) or (k) of the definition of "Debt" set forth in this Section 1.01 in respect of such Person.

"***ISDA Master Agreement***" means the Master Agreement (Multicurrency-Cross Border) published by the International Swap and Derivatives Association, Inc., as in effect from time to time.

"***Issuing Bank***" means (i) CSFB or any Affiliate thereof that may from time to time issue Letters of Credit for the account of the Borrower, (ii) any other Revolving Credit Lender that from time to time agrees in writing to issue Letters of Credit hereunder, and (iii) solely with respect to the Existing Letters of Credit, each Existing Issuing Bank.

"***L/C Cash Collateral Account***" has the meaning specified in the Preliminary Statements to the Security Agreement.

"***L/C Related Documents***" has the meaning specified in Section 2.03(b)(ii).

"***Lease Expense***" means, with respect to any Person, for any period for such Person and its subsidiaries on a Consolidated basis, lease and rental expense accrued during such period under all leases and rental agreements, other than Capitalized Leases and leases of personal property, of renal treatment centers, determined in conformity with GAAP.

"***Lender Party***" means any Lender, the Issuing Bank or the Swing Line Bank.

"***Lenders***" means, collectively, the banks, financial institutions and the institutional lenders listed on the signature pages as "Lenders" and each Person that becomes a Lender pursuant to Section 8.07 for so long as such Lender or Person, as the case may be, shall be a party to this Agreement.

"***Letter of Credit***" has the meaning specified in Section 2.01(e)(i).

"***Letter of Credit Advance***" means an advance made by an Issuing Bank or any Revolving Credit Lender pursuant to Section 2.03(b).

"***Letter of Credit Agreement***" has the meaning specified in Section 2.03(a).

"***Letter of Credit Facility***" means, at any time, an amount equal to the lesser of (a) the aggregate amount of the Unused Revolving Credit Commitments of the Issuing Banks at such time and (b) $50,000,000, as such amount may be reduced at or prior to such time pursuant to Section 2.05.

"***Leverage Ratio***" means, at any date of determination, the ratio of (a) (i) all Funded Debt of the Borrower and its Subsidiaries *plus* (ii) to the extent not otherwise included in subclause (a)(i) of this definition, the face amount of all Letters of Credit issued for the account of the Borrower or any of its Subsidiaries *minus* (iii) cash and cash equivalents of the Borrower and its Subsidiaries on a Consolidated basis to (b) Consolidated Pre-Minority EBITDA of the Borrower and its Subsidiaries for the most recently completed Measurement Period prior to such date.

"***Lien***" means, with respect to any Person, (a) any mortgage, lien (statutory or other), pledge, hypothecation, security interest, charge or encumbrance of any kind (including, without limitation, any

agreement to give any of the foregoing), (b) any sale of accounts receivable or chattel paper, or any assignment, deposit arrangement or lease intended as, or having the effect of, security, (c) any easement, right of way or other encumbrance on title to real property or (d) any other interest or title of any vendor, lessor, lender or other secured party to or of such Person under any conditional sale or other title retention agreement or any Capitalized Lease or upon or with respect to any property or asset of such Person (including, in the case of Equity Interests, voting trust agreements and other similar arrangements).

"***Loan Documents***" means, collectively, this Agreement, the Notes, the Subsidiary Guarantee, the Collateral Documents and each Letter of Credit Agreement, in each case as amended, supplemented or otherwise modified hereafter from time to time in accordance with the terms thereof and Section 8.01.

"***Loan Parties***" means, collectively, the Borrower and each of the Subsidiaries of the Borrower party to the Subsidiary Guarantee or any of the Collateral Documents.

"***Margin Stock***" means 'margin stock' as defined in Regulation U of the Board of Governors of the Federal Reserve System, as the same may be amended or supplemented from time to time.

"***Material Adverse Change***" means any material adverse change in the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrower and its Subsidiaries, taken as a whole; *provided* that the occurrence or subsistence of any such material adverse change which has been disclosed by the Borrower in any filing made with the Securities and Exchange Commission prior to the date of this Agreement shall not constitute a Material Adverse Change.

"***Material Adverse Effect***" means a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance, properties or prospects of the Borrower and its Subsidiaries taken as a whole, (b) the rights and remedies of the Administrative Agent or any Lender Party under any Loan Document or (c) the ability of any Loan Party to perform its Obligations under any Loan Document to which it is or is to be a party; *provided* that the occurrence or subsistence of any such material adverse effect which has been disclosed by the Borrower in any filing made with the Securities and Exchange Commission prior to the date of this Agreement shall not constitute a Material Adverse Effect.

"***Material Subsidiaries***" means, as of any date, any Subsidiary or Subsidiaries of the Borrower that either individually or taken as a whole accounted for more than 5% of Consolidated Net Income of the Borrower and its Subsidiaries for the most recently completed Fiscal Quarter on or prior to such date, in each case as reflected in the Required Financial Information most recently delivered to the Administrative Agent and the Lender Parties on or prior to such date and determined in accordance with GAAP for such period.

"***Measurement Period***" means, at any date of determination, the most recently completed four consecutive Fiscal Quarters ended prior to such date for which financial information is available.

"***Medicaid***" means that means-tested entitlement program under Title XIX of the Social Security Act that provides federal grants to states for medical assistance based on specific eligibility criteria. (Social Security Act of 1965, Title XIX, P.L. 89-87, as amended; 42 U.S.C. 1396 et seq.).

"***Medical Reimbursement Programs***" means the Medicare, Medicaid and CHAMPUS programs and any other health care program operated by or financed in whole or in part by any federal, state or local government.

"***Medicare***" means that government-sponsored entitlement program under Title XVIII of the Social Security Act that provides for a health insurance system for eligible elderly and disabled individuals. (Social Security Act of 1965, Title XVIII, P.L. 89-87 as amended; 42 U.S.C. 1395 et seq.).

"***Moody's***" means Moody's Investors Service, Inc.

"***Multiemployer Plan***" means a multiemployer plan (as defined in Section 4001(a)(3) of ERISA) to which any Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five plan years made or accrued an obligation to make contributions.

"***Multiple Employer Plan***" means a single employer plan (as defined in Section 4001(a)(15) of ERISA) that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and at least one Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could reasonably be expected to have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"***Net Cash Proceeds***" means, with respect to any sale, lease, transfer or other disposition of any property or asset, or the incurrence or issuance of any Debt, or the sale or issuance of any Equity Interests (including, without limitation, any capital contribution) in any Person, the aggregate amount of cash received from time to time (whether as initial consideration or through payment or disposition of deferred consideration) by or on behalf of such Person for its own account in connection with any such transaction, after deducting therefrom only (without duplication):

(a) out-of-pocket expenses, including brokerage commissions, underwriting fees and discounts, legal fees, finder's fees and other similar fees and commissions;

(b) the amount of taxes payable in connection with or as a result of such transaction, and if not paid at the time of the respective transaction, the amount thereof reserved in accordance with GAAP as in effect on the date of determination;

(c) in the case of any sale, lease, transfer or other disposition of any property or asset, the outstanding principal amount of, the premium or penalty, if any, on, and any accrued and unpaid interest on, any Debt (other than the Debt outstanding under the Loan Documents) that is secured by a Lien on the property and assets subject to such sale, lease, transfer or other disposition and is required to be repaid under the terms thereof as a result of such sale, lease, transfer or other disposition;

(d) in the case of any sale, lease, transfer or other disposition of any property or asset, an amount reserved, in accordance with GAAP as in effect on the date on which the Net Cash Proceeds from such sale, lease, transfer or other disposition are determined, and so reserved, against liabilities under indemnification obligations, liabilities related to environmental matters or other liabilities associated with the property and assets subject to such sale, lease, transfer or other disposition that are required to be so provided for under the terms of the documentation for such sale, lease, transfer or other disposition; and

(e) in the case of any sale, lease, transfer or other disposition of any property or asset by a Subsidiary, the amount of any payments or distributions required to be made in respect of such transaction to owners of Equity Interests in such Subsidiary other than the Borrower or any other Subsidiary;

provided, *however*, in the case of clauses (b) and (d) of this definition, that if, at the time such taxes or such contingent liabilities are actually paid or otherwise satisfied, the amount of the reserve therefor exceeds the amount paid or otherwise satisfied, then the Borrower shall prepay the outstanding Advances in accordance with the terms of Section 2.06(b), in an amount equal to the amount of such excess reserve.

"***Note***" means a Term A Note, a Term B Note or a Revolving Credit Note, as the context may require.

"***Notice of Borrowing***" has the meaning specified in Section 2.02(a).

"***Notice of Conversion***" has the meaning specified in Section 2.09(a).

"***Notice of Covenant Reduction***" means, with respect to any restricted payment pursuant to Section 5.02(g)(vi)(C), a notice substantially in the form of Exhibit H hereto duly executed by a Responsible Officer of the Borrower specifying that (i) immediately prior to such restricted payment and after giving *pro forma* effect thereto the Leverage Ratio is less than 3.00:1.00 and the Senior Leverage Ratio is less than 1.75:1.00 and (ii) at all times thereafter, for purposes of Section 5.04(a) and (e), respectively, the Leverage Ratio shall be 3.00:1.00 and the Senior Leverage Ratio shall be 1.75:1.00.

"***Notice of Issuance***" has the meaning specified in Section 2.03(a).

"***Notice of Renewal***" has the meaning specified in Section 2.01(e)(ii).

"***Notice of Swing Line Borrowing***" has the meaning specified in Section 2.02(b).

"***Notice of Termination***" has the meaning specified in Section 2.01(e)(ii).

"***NPL***" means the National Priorities List under CERCLA.

"***Obligation***" means, with respect to any Person, any payment, performance or other obligation of such Person of any kind, including, without limitation, any liability of such Person on any claim, whether or not the right of any creditor to payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured or unsecured, and whether or not such claim is discharged, stayed or otherwise affected by any proceeding referred to in Section 6.01(f). Without limiting the generality of the foregoing, the Obligations of the Loan Parties under the Loan Documents include (a) the obligation to pay principal, interest, Letter of Credit commissions, charges, expenses, fees, attorneys' fees and disbursements, indemnity payments and other amounts payable by any Loan Party under any Loan Document and (b) the obligation of any Loan Party to reimburse any amount in respect of any of the foregoing items that any Lender Party, in its sole discretion, may elect to pay or advance on behalf of such Loan Party.

"***OECD***" means the Organization for Economic Cooperation and Development.

"***Open Year***" means, with respect to any Person, any year for which United States federal income tax returns have been filed by or on behalf of such Person and for which the expiration of the applicable statute of limitations for assessment or collection has not occurred (whether by reason of extension or otherwise).

"***Other Taxes***" has the meaning specified in Section 2.13(b).

"***PBGC***" means the Pension Benefit Guaranty Corporation or any successor thereto.

"***Performance Level***" means Performance Level I, Performance Level II, Performance Level III, Performance Level IV, Performance Level V or Performance Level VI, as identified in the definition of "Applicable Margin", as the context may require.

"***Permitted Liens***" means the following types of Liens (excluding any such Lien imposed pursuant to Section 401(a)(29) or 412(n) of the Internal Revenue Code or by ERISA or any such Lien relating to or imposed in connection with any Environmental Action): (a) Liens for taxes, assessments and governmental charges or levies to the extent not otherwise required to be paid under Section 5.01(b); (b) Liens imposed by law, such as materialmen's, mechanics', carriers', landlords', workmen's and repairmen's Liens and other similar Liens arising in the ordinary course of business securing obligations (other than Debt for borrowed money) (i) that are not overdue for a period of more than 60 days or (ii) the amount, applicability or validity of which are being contested in good faith and by appropriate proceedings diligently conducted and with respect to which the Borrower or any of its Subsidiaries, as the case may be, has established reserves in accordance with GAAP; (c) pledges or deposits to secure obligations incurred in the ordinary course of business under workers' compensation laws, unemployment insurance or similar social security legislation (other than in respect of employee benefit plans subject to ERISA) or to secure public or statutory obligations; (d) Liens, pledges and deposits securing the performance of, or payment in respect of, bids, tenders, leases, contracts (other than for the repayment of borrowed money), surety and appeal bonds, letters of credit, and other obligations of a similar nature incurred in the ordinary course of business; (e) any interest or title of a lessor or sublessor and any restriction or encumbrance to which the interest or title of such lessor or sublessor may be subject that is incurred in the ordinary course of business and, either individually or when aggregated with all other Permitted Liens in effect on any date of determination, could not be reasonably expected to have a Material Adverse Effect; (f) Liens in favor of customs and revenue authorities arising as a matter of law or pursuant to a bond to secure payment of customs duties in connection with the importation of goods; (g) Liens arising out of judgments or awards that do not constitute an Event of Default under Section 6.01(g) or 6.01(h) and in respect of which the Borrower or any of its Subsidiaries subject thereto shall be prosecuting an appeal or proceedings for review in good faith and,

pending such appeal or proceedings, shall have secured within 30 days after the entry thereof a subsisting stay of execution and shall be maintaining reserves, in accordance with GAAP, with respect to any such judgment or award; (h) unperfected Liens of suppliers and vendors to secure the purchase price of the property or assets sold; (i) protective Uniform Commercial Code filings by lessors under operating leases; and (j) any easements, rights of way, restrictions, defects, encroachments and other encumbrances on title to real property which either individually or when aggregated with all other permitted Liens, would not be reasonably expected to have a Material Adverse Effect.

"***Person***" means an individual, partnership, corporation (including a business trust), limited liability company, unlimited liability company, joint stock company, trust, unincorporated association, joint venture or other entity, or a government or any political subdivision or agency thereof.

"***Plan***" means a Single Employer Plan or a Multiple Employer Plan.

"***Pledged Debt***" has the meaning specified in Section 1 of the Security Agreement.

"***Pledged Shares***" has the meaning specified in Section 1 of the Security Agreement.

"***Prepayment Date***" has the meaning specified in Section 2.06(d).

"***primary obligation***" has the meaning specified in the definition of "*Contingent Obligation*" set forth in this Section 1.01.

"***primary obligor***" has the meaning specified in the definition of "*Contingent Obligation*" set forth in this Section 1.01.

"***Pro Rata Share***" of any amount means, with respect to any of the Lenders at any time, the product of (a) a fraction the numerator of which is the amount of such Lender's Commitment(s) or Advance(s), as applicable, under the applicable Facility or Facilities at such time (or, if the Commitments shall have been terminated pursuant to Section 2.05 or 6.01 at or prior to such time, such Lender's Commitment(s) or Advance(s), as applicable, under the applicable Facility or Facilities as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of such Facility or Facilities at such time (or, if the Commitments shall have been terminated pursuant to Section 2.05 or 6.01 at or prior to such time, the applicable Facility or Facilities as in effect immediately prior to such termination) *multiplied by* (b) such amount.

"***Qualified Issuer***" means (a) any Lender hereunder and (b) any commercial bank that has a combined capital and surplus in excess of $100,000,000.

"***Reedemable Preferred Interest***" means with respect to any Person, (a) any Equity Interest of such Person that, by its terms or by the terms of any security into which it is convertible, exercisable or exchangeable, is, or upon the happening of an event or the passage of time or both would be, required to be redeemed or repurchased (including at the option of the holder thereof) by such Person or any of its Subsidiaries, in whole or in part, not earlier than July 1, 2009, and (b) any Equity Interest of any Subsidiary of such Person other than any common equity with no preferences, privileges, and no redemption or repayment provisions; *provided*, *however*, that any Equity Interest that would constitute a Redeemable Preferred Interest solely because the holders thereof have the right to require the issuer to repurchase such a Redeemable Preferred Interest upon the occurrence of a change of control shall not be so treated if the terms thereof (a) do not trigger any rights upon any circumstance constituting a change of control under such Redeemable Preferred Interest that would not constitute a Change of Control under this Agreement and (b) do not permit either any repurchase by such Person or any rights of the holder of such Equity Interest to assert any claim in respect of such failure to purchase as long as any Event of Default exists hereunder.

"***Reduction Amount***" has the meaning specified in Section 2.06(b)(iv).

"***Register***" has the meaning specified in Section 8.07(c).

"***Regulation U***" means Regulation U of the Board of Governors of the Federal Reserve System, as in effect from time to time.

"***Required Financial Information***" means, at any date of determination, the Consolidated financial statements of the Borrower and its Subsidiaries most recently delivered to the Administrative Agent and the Lender Parties on or prior to such date pursuant to, and satisfying all of the requirements of, Section 5.03(b) or 5.03(c) and accompanied by the certificates and other information required to be delivered therewith.

"***Required Lenders***" means, at any time, Lenders owed or holding at least a majority in interest of the sum of (a) the aggregate principal amount of the Advances outstanding at such time, (b) the aggregate Available Amount of all Letters of Credit outstanding at such time, and (c) the aggregate Unused Revolving Credit Commitments at such time; *provided*, *however*, that if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required Lenders at such time (A) the aggregate principal amount of the Advances owing to such Lender (in its capacity as a Lender) and outstanding at such time, (B) such Lender's Pro Rata Share of the aggregate Available Amount of all Letters of Credit issued by such Lender and outstanding at such time, and (C) the Unused Revolving Credit Commitment of such Lender at such time. For purposes of this definition, the aggregate principal amount of Swing Line Advances owing to the Swing Line Bank and of Letter of Credit Advances owing to the Issuing Bank and the Available Amount of each Letter of Credit shall be considered to be owed to the Revolving Credit Lenders ratably in accordance with their respective Revolving Credit Commitments.

"***Required Principal Payments***" means, with respect to any Person for any period, the sum of all regularly scheduled principal payments or redemptions and all required prepayments, repurchases, redemptions or similar acquisitions for value of outstanding Funded Debt made during such period.

"***Requirements of Law***" means, with respect to any Person, all laws, constitutions, statutes, treaties, ordinances, rules and regulations, all orders, writs, decrees, injunctions, judgments, determinations and awards of an arbitrator, a court or any other Governmental Authority, and all Governmental Authorizations, binding upon or applicable to such Person or to any of its properties, assets or businesses.

"***Responsible Officer***" means, with respect to the Borrower or any of its Subsidiaries, the chief executive officer, the president, the chief financial officer, the principal accounting officer or the treasurer (or the equivalent of any of the foregoing) or any other officer, partner or member (or person performing similar functions) of the Borrower or any such Subsidiary responsible for overseeing the administration of, or reviewing compliance with, all or any portion of this Agreement or any of the other Loan Documents.

"***Revolving Credit Advance***" has the meaning specified in Section 2.01(c).

"***Revolving Credit Borrowing***" means a borrowing consisting of simultaneous Revolving Credit Advances of the same Type made by the Revolving Credit Lenders.

"***Revolving Credit Commitment***" means, with respect to any Revolving Credit Lender at any time, the amount set forth opposite such Revolving Credit Lender's name on Schedule I hereto under the caption "Revolving Credit Commitment" or, if such Revolving Credit Lender has entered into one or more Assignment and Assumptions, the amount set forth for such Revolving Credit Lender in the Register maintained by the Administrative Agent pursuant to Section 8.07(c) as such Revolving Credit Lender's "Revolving Credit Commitment", as such amount may be reduced at or prior to such time pursuant to Section 2.05.

"***Revolving Credit Facility***" means, at any time, the aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments at such time.

"***Revolving Credit Lender***" means, at any time, any Lender that has a Revolving Credit Commitment or Revolving Credit Advance, as the case may be, at such time.

"***Revolving Credit Note***" means a promissory note of the Borrower payable to the order of any Revolving Credit Lender, in substantially the form of Exhibit A-3 hereto, evidencing the aggregate indebtedness of the Borrower to such Revolving Credit Lender resulting from the Revolving Credit Advances made by such Revolving Credit Lender.

"***S&P***" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"***Secured Obligations***" has the meaning specified in Section 2 of the Security Agreement.

"***Secured Parties***" means, collectively, the Agents, the Lender Parties, and the other Persons the Obligations owing to which are or are purported to be secured by the Collateral under the terms of the Collateral Documents.

"***Securities Act***" means the Securities Act of 1933, as amended, and the regulations promulgated and the rulings issued thereunder.

"***Security Agreement***" means the Security Agreement dated as of April 26, 2002, executed by the Borrower and certain subsidiaries of the Borrower as Grantors (as defined therein) under the Existing Credit Agreement and which has been ratified by such parties pursuant to Section 3.01(a)(vii) hereof.

"***Security Agreement Supplement***" has the meaning specified in Section 24 of the Security Agreement.

"***Senior Leverage Ratio***" means, at any date of determination, the ratio of (a)(i) all Funded Debt of the Borrower and its Subsidiaries *plus* (ii) to the extent not otherwise included in subclause (a)(i) of this definition, the face amount of all outstanding Letters of Credit issued for the account of the Borrower or any of its Subsidiaries *minus* (iii) cash and cash equivalents of the Borrower and its Subsidiaries on a Consolidated basis *minus* (iv) all Subordinated Debt of the Borrower and its Subsidiaries to (b) Consolidated Pre-Minority EBITDA of the Borrower and its Subsidiaries for the most recently completed Measurement Period prior to such date.

"***Single Employer Plan***" means a single employer plan (as defined in Section 4001(a)(15) of ERISA) that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and no Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"***Solvent***" and "***Solvency***" mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property and assets of such Person is greater than the total amount of liabilities (including, without limitation, contingent liabilities), of such Person, (b) the present fair salable value of the property and assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person's ability to pay such debts and liabilities as they mature and (d) such Person is not engaged in business or in a transaction, and is not about to engage in business or in a transaction, for which such Person's property and assets would constitute an unreasonably small capital. The amount of contingent liabilities of any such Person at any time shall be computed as the amount that, in the light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

"***Special Purpose Licensed Entity***" means any Person in a related business of the Borrower and its Subsidiaries that (i) the Borrower and its Subsidiaries are prohibited from engaging in directly under applicable law, including provisions of state law (a) prohibiting the ownership of healthcare facilities by public companies, (b) prohibiting the corporate practice of medicine or (c) otherwise restricting the ability of the Borrower or one of its Subsidiaries to acquire directly a required license to operate a healthcare facility, and (ii) has entered into a transaction or series of transactions with the Borrower or any of its Subsidiaries under which:

(x) the Borrower or any of its Subsidiaries provides management, administrative or consulting services to the Special Purpose Licensed Entity,

(y) the owners of the Special Purpose Licensed Entity are prohibited from transferring any of their interests in the Special Purpose Licensed Entity without the consent of the Borrower or one of its Subsidiaries, and

(z) the Borrower or one of its Subsidiaries has the right to require the owners of the Special Purpose Licensed Entity to transfer all of their interests in the Special Purpose Licensed Entity to a Person designated by the Borrower or one of its Subsidiaries.

"***Subordinated Debt***" means the subordinated debt evidenced by the Subordinated Notes or other subordinated Debt issued or incurred by the Borrower subordinated in right of payment to the payment in full of the Obligations of the Borrower to the Loan Parties under the Loan Documents and other senior obligations of the Borrower; *provided* that (i) the negative covenants in such subordinated Debt are less burdensome than the negative covenants in this Agreement as in effect at the time such subordinated Debt is incurred, (ii) the affirmative covenants in such subordinated Debt are no more burdensome than the affirmative covenants in this Agreement as in effect at the time such subordinated Debt is incurred, (iii) the events of default in such subordinated Debt relating to insolvency and nonpayment of amounts owed thereunder are no more restrictive than the corresponding defaults in this Agreement as in effect at the time such subordinated Debt is incurred, (iv) such subordinated Debt does not cross-default to other Debt (but may cross-accelerate to other Debt of Borrower or any Subsidiary that has guaranteed such subordinated Debt), (v) the subordination provisions in such subordinated Debt are either (A) reasonably satisfactory to the Administrative Agent or (B) confirmed by a nationally recognized investment bank (that is not the Administrative Agent) as market terms and conditions at such time for similar debt securities issued by Persons whose debt securities have credit ratings not greater than that of the Borrower, and (vi) such subordinated Debt does not provide for any scheduled payment or mandatory prepayment of principal earlier than July 1, 2009, other than (x) redemptions made at the option of the holders of such subordinated Debt upon a change in control of the Borrower in circumstances that would also constitute a Change of Control under this Agreement (*provided* that any such redemption cannot be made fewer than 30 days after such change in control and that any such redemption is fully and absolutely subordinated to the indefeasible payment in full of all principal, interest and other amounts under the Loan Documents) and (y) mandatory prepayments required as a result of asset dispositions if such subordinated Debt allows the Borrower to satisfy such mandatory prepayment requirement by prepayment of Loans under this Agreement or other senior obligations of the Borrower or reinvestment of the asset disposition proceeds within a specified period of time.

"***Subordinated Notes***" means (i) the 5 5/8% convertible subordinated notes of Renal Treatment Centers, Inc. due 2006 in the aggregate principal amount of $125,000,000 issued pursuant to the Indenture dated June 12, 1996 between Rental Treatment Centers, Inc. and PNC Bank, National Association as trustee; (ii) the 7% convertible subordinated notes of the Borrower (f/k/a Total Renal Care Holdings, Inc.) due 2009 in the aggregate principal amount of $345,000,000 issued pursuant to the Indenture dated November 18, 1998 between Total Renal Care Holdings, Inc. and United States Trust Company of New York as trustee; and (iii) the 2001 Subordinated Notes.

"***Subordinated Notes Documents***" means the Subordinated Notes, any indentures or other agreements, instruments and other documents pursuant to which the Subordinated Notes or other Subordinated Debt have been or will be issued or otherwise setting forth the terms of the Subordinated Notes or such Subordinated Debt, including guarantees in respect of the Subordinated Debt referred to in clauses (i) and (iii) of the definition of "Subordinated Notes," in each case as such agreement, instrument or other document may be amended, supplemented or otherwise modified from time to time in accordance with the terms thereof, but only to the extent permitted under the terms of the Loan Documents.

"***Subsidiary Guarantee***" means the Subsidiary Guarantee dated as of April 26, 2002, executed by the Guarantors under the Existing Credit Agreement and which has been ratified by such parties pursuant to Section 3.01(a)(vii) hereof.

"***Subsidiary***" of any Person means any corporation, partnership, joint venture, limited liability company, unlimited liability company, trust or estate of which (or in which) more than 50% of (a) the issued and outstanding shares of capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time shares of capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (b) the interest in the capital or profits of such partnership, joint venture, limited liability company or unlimited liability company or (c) the beneficial interest in such trust or estate, is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or

more of such Person's other Subsidiaries, *provided*, *however*, that the entities listed on Exhibit I attached hereto shall not be deemed Subsidiaries for so long as the assets of each such entity do not exceed $25,000.

"***Swing Line Advance***" means an advance made by (a) the Swing Line Bank pursuant to Section 2.01(d) or (b) simultaneous Swing Line Advances made by the Revolving Credit Lenders pursuant to Section 2.02(b).

"***Swing Line Bank***" has the meaning specified in the recital of parties to this Agreement.

"***Swing Line Borrowing***" means a borrowing consisting of a Swing Line Advance made by the Swing Line Bank.

"***Swing Line Commitment***" means, with respect to the Swing Line Bank at any time, the amount set forth opposite the Swing Line Bank's name on Schedule I hereto under the caption "Swing Line Commitment", as such amount may be reduced at or prior to such time pursuant to Section 2.05.

"***Swing Line Facility***" means, at any time, an amount equal to the lesser of (a) the amount of the Swing Line Commitment at such time and (b) $25,000,000, as such amount may be reduced at or prior to such time pursuant to Section 2.05.

"***2001 Subordinated Notes***" means the 9 1/4% senior subordinated notes of the Borrower due April 15, 2011, in the aggregate principal amount of $225,000,000 issued pursuant to the Indenture dated April 11, 2001 between the Borrower, certain of its Subsidiaries and U.S. Trust Company of Texas, N.A.

"***Taxes***" has the meaning specified in Section 2.13(a).

"***Term Advance***" means a Term A Advance or a Term B Advance.

"***Term A Advance***" means the advances made by the Term A Lenders.

"***Term A Borrowing***" means the borrowing consisting of simultaneous Term A Advances of the same Type made by the Term A Lenders.

"***Term A Facility***" means, at any time, the aggregate outstanding principal amount of all Term A Advances at such time.

"***Term A Lender***" means, at any time, any Lender that has a Term A Advance at such time.

"***Term A Note***" means a promissory note of the Borrower payable to the order of any Term A Lender, in substantially the form of Exhibit A-1 hereto, evidencing the indebtedness of the Borrower to such Term A Lender resulting from the Term A Advance made by such Term A Lender.

"***Term B Advance***" has the meaning specified in Section 2.01(b).

"***Term B Borrowing***" means the borrowing consisting of simultaneous Term B Advances of the same Type made by the Term B Lenders.

"***Term B Facility***" means, at any time, the aggregate outstanding principal amount of all Term B Advances at such time.

"***Term B Lender***" means, at any time, any Lender that has a Term B Advance at such time.

"***Term B Note***" means a promissory note of the Borrower payable to the order of any Term B Lender, in substantially the form of Exhibit A-2 hereto, evidencing the indebtedness of the Borrower to such Term B Lender resulting from the Term B Advances made by such Term B Lender.

"***Term Facility***" means a Term A Facility or a Term B Facility, as the context requires.

"***Term Lender***" means a Term A Lender or a Term B Lender, as the context requires.

"***Termination Date***" means the earlier of (a) April 26, 2007 and (b) the date of termination in whole of the Swing Line Commitments and the Revolving Credit Commitments pursuant to Section 2.05 or 6.01.

"***TRC***" means Total Renal Care, Inc., a California corporation.

"***Transaction***" means, collectively, the entering into by the Loan Parties of the Loan Documents to which they are or are intended to be a party and the consummation of the transactions contemplated thereby.

"***Type***" refers to the distinction between Advances bearing interest at the Base Rate and Advances bearing interest at the Eurodollar Rate.

"***Unused Revolving Credit Commitment***" means, with respect to any Revolving Credit Lender at any time, (a) such Revolving Credit Lender's Revolving Credit Commitment at such time *minus* (b) the sum of (i) the aggregate principal amount of all Revolving Credit Advances, Swing Line Advances and Letter of Credit Advances made by such Revolving Credit Lender (in its capacity as a Lender) and outstanding at such time and (ii) such Lender's Pro Rata Share of (A) the aggregate Available Amount of all Letters of Credit outstanding at such time, (B) the aggregate principal amount of all Letter of Credit Advances made by the Issuing Bank pursuant to Section 2.03(b) and outstanding at such time and (C) the aggregate principal amount of all Swing Line Advances made by the Swing Line Bank pursuant to Section 2.01(d) and outstanding at such time.

"***Voting Interests***" means shares of capital stock issued by a corporation, or equivalent Equity Interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

"***Welfare Plan***" means a welfare plan (as defined in Section 3(1) of ERISA) that is maintained for employees of any Loan Party or in respect of which any Loan Party could reasonably be expected to have liability.

"***Withdrawal Liability***" has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

SECTION 1.02. *Computation of Time Periods; Other Definitional Provisions*. In this Agreement and the other Loan Documents, in the computation of periods of time from a specified date to a later specified date, the word "*from*" means "from and including", the word "*through*" means "through and including" and the words "*to*" and "*until*" each means "to but excluding." References in this Agreement or any of the other Loan Documents to any agreement, instrument or other document "as amended" shall mean and be a reference to such agreement, instrument or other document as amended, amended and restated, supplemented or otherwise modified hereafter from time to time in accordance with its terms, but solely to the extent permitted hereunder. In this Agreement, the words "*herein*," "*hereof*" and words of similar import refer to the entirety of this Agreement and not to any particular Section, subsection, or Article of this Agreement.

SECTION 1.03. *Accounting Terms*. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistent with those applied in the preparation of the Consolidated financial statements of the Borrower and its Subsidiaries as at December 31, 2002 and for the Fiscal Year then ended referred to in Section 4.01(g) ("***GAAP***").

ARTICLE II

AMOUNTS AND TERMS OF THE ADVANCES AND THE LETTERS OF CREDIT

SECTION 2.01. *The Advances and the Letters of Credit*.

(a) *The Term A Advances*. Each Term A Lender has made a Term A Advance pursuant to the Existing Credit Agreement. Any Term A Advance which is repaid or prepaid may not be reborrowed.

(b) *The Term B Advances*. Each Term B Lender has made a Term B Advance pursuant to the Existing Credit Agreement Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed.

(c) *The Revolving Credit Advances*. Each Revolving Credit Lender severally agrees, on the terms and conditions hereinafter set forth, to make advances (each a "***Revolving Credit Advance***") in U.S. dollars to the Borrower from time to time until the Termination Date, in each case in an amount not to exceed the Unused Revolving Credit Commitment of such Revolving Credit Lender at such time. Each Revolving Credit Borrowing shall be in an aggregate amount of $5,000,000 or an integral multiple of $1,000,000 in excess thereof (other than a Borrowing the proceeds of which shall be used solely to repay or prepay in full outstanding Swing Line Advances or the outstanding Letter of Credit Advances) or, if less, the amount of the aggregate Unused Revolving Credit Commitments at such time. Each Revolving Credit Borrowing shall consist of Revolving Credit Advances made simultaneously by the Revolving Credit Lenders in accordance with their respective Pro Rata Shares of the Revolving Credit Facility. Within the limits of each Revolving Credit Lender's Unused Revolving Credit Commitment in effect from time to time, the Borrower may borrow under this Section 2.01(c), prepay pursuant to Section 2.06(a) and reborrow under this Section 2.01(c).

(d) *The Swing Line Advances*. The Borrower may request the Swing Line Bank to make, and the Swing Line Bank shall on the terms and conditions hereinafter set forth, make Swing Line Advances to the Borrower from time to time on any Business Day during the period from the Closing Date until the Termination Date (i) in an aggregate amount not to exceed $25,000,000 at any time outstanding (the "***Swing Line Facility***") and (ii) in an amount for each such Swing Line Borrowing not to exceed the aggregate Unused Revolving Credit Commitments of the Revolving Credit Lenders at such time. No Swing Line Advance shall be used for the purpose of funding the payment of principal of any other Swing Line Advance. Each Swing Line Borrowing shall be in an amount of $500,000 or an integral multiple of $250,000 in excess thereof and shall bear interest at a rate to be agreed on by the Borrower and the Swing Line Bank. Within the limits of the first sentence of this Section 2.01(d), the Borrower may borrow under this Section 2.01(d), repay pursuant to Section 2.04(c), prepay pursuant to Section 2.06(a) and reborrow under this Section 2.01(d).

(e) *Letters of Credit*.

(i) The Borrower, the Existing Issuing Banks and each of the Revolving Credit Lenders hereby agree that each of the Existing Letters of Credit shall, on and after the Closing Date, be deemed for all purposes of this Agreement to be a Letter of Credit issued and outstanding under the terms of this Agreement. Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, to issue letters of credit (the "***Letters of Credit***") in U.S. dollars for the account of the Borrower from time to time on any Business Day during the period from the date hereof until five Business Days before the Termination Date (A) in an Available Amount for each such Letter of Credit not to exceed at any time the Unused Revolving Credit Commitment of such Issuing Bank at such time and (B) in an aggregate Available Amount for all Letters of Credit not to exceed the lesser of (1) the Letter of Credit Facility at such time and (2) the aggregate Unused Revolving Credit Commitments at such time. No Letter of Credit shall have an expiration date (including all rights of the Borrower or the beneficiary of such Letter of Credit to require renewal) later than the earlier of (x) five Business Days prior to the Termination Date and (y) one year after the date of issuance thereof, but any such Letter of Credit may by its terms be renewable annually on the terms set forth in clause (ii) of this Section 2.01(e). Within the limits of the Letter of Credit Facility, and subject to the limits referred to above, the Borrower may request the issuance of Letters of Credit under this Section 2.01(e)(i), repay any Letter of Credit Advances resulting from drawings thereunder pursuant to Section 2.03(b) and request the issuance of additional Letters of Credit under this Section 2.01(e)(i).

(ii) Each Letter of Credit may by its terms be renewable annually upon notice (a "***Notice of Renewal***") given to the Issuing Bank and the Administrative Agent on or prior to any date for notice of renewal set forth in such Letter of Credit but in any event at least three Business Days prior to the date of the proposed renewal of such Letter of Credit and upon fulfillment of the applicable conditions set forth in Article III unless such Issuing Bank has notified the Borrower (with a copy to the Administrative Agent) on or prior to the date for notice of termination set forth in such Letter of Credit but in any event at least 30 Business Days prior to the date of automatic renewal of its election not to

renew such Letter of Credit (a "***Notice of Termination***"); *provided* that the terms of each Letter of Credit that is automatically renewable annually (A) shall require the Issuing Bank to give the beneficiary of such Letter of Credit notice of any Notice of Termination, (B) shall permit such beneficiary, upon receipt of such notice, to draw under such Letter of Credit prior to the date such Letter of Credit otherwise would have been automatically renewed and (C) shall not permit the expiration date (after giving effect to any renewal) of such Letter of Credit in any event to be extended to a date later than five Business Days prior to the Termination Date. If either a Notice of Renewal is not given by the Borrower or a Notice of Termination is given by the Issuing Bank pursuant to the immediately preceding sentence, such Letter of Credit shall expire on the date on which it otherwise would have been automatically renewed; *provided*, *however*, that in the absence of receipt of a Notice of Renewal the Issuing Bank may in its discretion, unless instructed to the contrary by the Administrative Agent or the Borrower deem that a Notice of Renewal had been timely delivered and, in such case, a Notice of Renewal shall be deemed to have been so delivered for all purposes under this Agreement.

SECTION 2.02. *Making the Advances*.

(a) Except as otherwise provided in Section 2.02(b) or 2.03 and except that the Term B Borrowing shall be made on the Closing Date, each Borrowing (other than a Swing Line Borrowing) shall be made on notice, given not later than 2:00 P.M. (New York, New York time) on the third Business Day prior to the date of the proposed Borrowing in the case of a Borrowing comprised of Eurodollar Rate Advances, or on the first Business Day prior to the date of the proposed Borrowing in the case of a Borrowing comprised of Base Rate Advances, by the Borrower to the Administrative Agent, which shall give prompt notice thereof to each Appropriate Lender. Each notice of a Borrowing (a "***Notice of Borrowing***") shall be by telephone, confirmed immediately in writing, or by telecopier, in substantially the form of Exhibit B-1 hereto, shall be duly executed by a Responsible Officer of the Borrower, and shall specify therein: (i) the requested date of such Borrowing (which shall be a Business Day); (ii) the Facility under which such Borrowing is requested to be made; (iii) the Type of Advances requested to comprise such Borrowing; (iv) the requested aggregate amount of such Borrowing; and (v) in the case of a Borrowing comprised of Eurodollar Rate Advances, the requested duration of the initial Interest Period for each such Advance. Each Appropriate Lender shall, before 2:00 P.M. (New York, New York time) on the date of such Borrowing, make available for the account of its Applicable Lending Office to the Administrative Agent at the Administrative Agent's Account, in same day funds, such Lender's Pro Rata Share of such Borrowing. After the Administrative Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Administrative Agent will make such funds available to the Borrower by crediting the Borrower's Account; *provided*, *however*, that, in the case of any Revolving Credit Borrowing, the Administrative Agent shall first make a portion of such funds equal to the aggregate principal amount of any Swing Line Advances and Letter of Credit Advances made by the Swing Line Bank or the Issuing Bank, as the case may be, and by any Revolving Credit Lender and outstanding on the date of such Revolving Credit Borrowing, *plus* accrued and unpaid interest thereon to and as of such date, available to the Swing Line Bank or the Issuing Bank, as applicable, and such other Revolving Credit Lenders for repayment of such Swing Line Advances and Letter of Credit Advances.

(b) (i) Each Swing Line Borrowing shall be made on notice, given not later than 2:00 P.M. (New York, New York time) on the date of the proposed Swing Line Borrowing, by the Borrower to the Swing Line Bank and the Administrative Agent. Each notice of a Swing Line Borrowing (a "***Notice of Swing Line Borrowing***") shall be by telephone, confirmed immediately in writing, or telecopier, shall be in substantially the form of Exhibit B-2 hereto and duly executed by a Responsible Officer of the Borrower, and shall specify therein: (A) the requested date of such Borrowing (which shall be a Business Day); (B) the requested amount of such Borrowing; and (C) the requested maturity of such Borrowing (which maturity shall be no later than the seventh day after the requested date of such Borrowing). Upon fulfillment of the applicable conditions set forth in Article III, the Swing Line Bank will make the amount thereof available for the account of its Applicable Lending Office to the Borrower by crediting the Borrower's Account.

(ii) Upon demand by the Swing Line Bank, with a copy of such demand to the Administrative Agent (which shall give prompt notice thereof to each Revolving Credit Lender), each Revolving Credit Lender shall purchase from the Swing Line Bank, and the Swing Line Bank shall sell and assign to each such Revolving Credit Lender, such Revolving Credit Lender's Pro Rata Share of such outstanding Swing Line Borrowing as of the date of such demand, by making available for the account of its Applicable Lending Office to the Administrative Agent at the Administrative Agent's Account for the account of the Swing Line Bank, in same day funds, an amount equal to such Pro Rata Share. Promptly after receipt of such funds, the Administrative Agent shall transfer such funds to the Swing Line Bank at its Applicable Lending Office. Each Revolving Credit Lender hereby agrees to purchase its Pro Rata Share of an outstanding Swing Line Borrowing on (A) the Business Day on which demand therefor is made by the Swing Line Bank so long as notice of such demand is given not later than 12:00 Noon (New York, New York time) on such Business Day or (B) the first Business Day next succeeding such demand if notice of such demand is given after such time. The Borrower hereby agrees to each such sale and assignment. Upon any such assignment by the Swing Line Bank to any Revolving Credit Lender of a portion of a Swing Line Borrowing, the Swing Line Bank represents and warrants to such Revolving Credit Lender that the Swing Line Bank is the legal and beneficial owner of such interest being assigned by it, but makes no other representation or warranty and assumes no responsibility with respect to such Swing Line Borrowing, the Loan Documents or any Loan Party. If and to the extent that any Revolving Credit Lender shall not have so made its Pro Rata Share of any applicable Swing Line Borrowing available to the Administrative Agent in accordance with the foregoing provisions of this Section 2.02(b)(ii), such Revolving Credit Lender hereby agrees to pay to the Administrative Agent forthwith on demand the amount of its Pro Rata Share, together with interest thereon, for each day from the date of demand by the Swing Line Bank therefor until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate. If such Lender shall pay to the Administrative Agent the amount of its Pro Rata Share for the account of the Swing Line Bank on any Business Day, such amount so paid in respect of principal shall constitute a Swing Line Advance made by such Lender on such Business Day for all purposes of this Agreement, and the outstanding principal amount of the Swing Line Advance made by the Swing Line Bank shall be reduced by such amount on such Business Day.

(iii) The obligation of each Revolving Credit Lender to purchase its Pro Rata Share of each outstanding Swing Line Borrowing upon demand by the Swing Line Bank therefor pursuant to clause (ii) of this Section 2.02(b) shall be absolute, unconditional and irrevocable, and shall be made strictly in accordance with the terms of clause (ii) of this Section 2.02(b) under all circumstances, including, without limitation, the following circumstances:

(A) any lack of validity or enforceability of any Loan Document or any other agreement or instrument relating thereto;

(B) the existence of any claim, set-off, defense or other right that such Revolving Credit Lender may have at any time against the Swing Line Bank, the Borrower or any other Person, whether in connection with the transactions contemplated by the Loan Documents or any unrelated transaction;

(C) the occurrence and continuance of any Default or Event of Default; or

(D) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(c) Anything in subsection (a) of this Section 2.02 to the contrary notwithstanding, (i) the Borrower may not select Eurodollar Rate Advances if the obligation of the Appropriate Lenders to make Eurodollar Rate Advances shall then be suspended pursuant to Section 2.09 or 2.10. In addition, the Term Advances may not be outstanding as part of more than 10 separate Borrowings and the Revolving Credit Advances may not be outstanding as part of more than 10 separate Borrowings.

(d) Each Notice of Borrowing and Notice of Swing Line Borrowing shall be irrevocable and binding on the Borrower. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of Eurodollar Rate Advances, the Borrower shall indemnify each Appropriate Lender against any loss, cost or expense incurred by such Lender as a result of any failure to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Eurodollar Rate Advance to be made by such Lender as part of such Borrowing when such Advance, as a result of such failure, is not made on such date. A certificate of the Lender requesting compensation pursuant to this subsection (d) submitted to the Borrower by such Lender and specifying therein the amount of such additional compensation (including the basis of calculation thereof) shall be conclusive and binding for all purposes, absent manifest error.

(e) Unless the Administrative Agent shall have received notice from an Appropriate Lender prior to the date of any Borrowing under a Facility under which such Lender has a Commitment that such Lender will not make available to the Administrative Agent such Lender's Pro Rata Share of such Borrowing, the Administrative Agent may assume that such Lender has made the amount of such Pro Rata Share available to the Administrative Agent on the date of such Borrowing in accordance with subsection (a) or (b) of this Section 2.02, as applicable, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made the amount of such Pro Rata Share available to the Administrative Agent, such Lender and the Borrower severally agree to repay or to pay to the Administrative Agent forthwith on demand such corresponding amount, together with interest thereon, for each day from the date such amount is made available to the Borrower until the date such amount is repaid or paid to the Administrative Agent, at (i) in the case of the Borrower, the interest rate applicable at such time under Section 2.07 to Advances comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If such Lender shall pay to the Administrative Agent such corresponding amount, such amount so paid shall constitute such Lender's Advance as part of such Borrowing for all purposes under this Agreement.

(f) The failure of any Lender to make the Advance to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Advance on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Advance to be made by such other Lender on the date of any Borrowing.

SECTION 2.03. *Issuance of and Drawings and Reimbursement Under Letters of Credit*.

(a) *Request for Issuance*. Each Letter of Credit shall be issued upon notice, given not later than 2:00 P.M. (New York, New York time) on the fifth Business Day prior to the date of the proposed issuance of such Letter of Credit (or such later day as the Issuing Bank in its sole discretion shall agree), by the Borrower to the Issuing Bank, which shall give to the Administrative Agent and each Revolving Credit Lender prompt notice thereof. Each notice of issuance of a Letter of Credit (a "***Notice of Issuance***") shall be by telephone, confirmed immediately in writing, or by telecopier, shall be duly executed by a Responsible Officer of the Borrower, and shall specify therein: (i) the requested date of such issuance (which shall be a Business Day); (ii) the requested Available Amount of such Letter of Credit; (iii) the requested expiration date of such Letter of Credit (which shall comply with the requirements of Section 2.01(e)); (iv) the name and address of the proposed beneficiary of such Letter of Credit; and (v) the proposed form of such Letter of Credit, and shall be accompanied by such application and agreement for letters of credit as the Issuing Bank may specify to the Borrower for use in connection with such requested Letter of Credit (such applications and agreements, and all similar agreements entered into in connection with an Existing Letter of Credit, a "***Letter of Credit Agreement***"). If the requested form of such Letter of Credit is acceptable to the Issuing Bank in its sole discretion, the Issuing Bank will, upon fulfillment of the applicable conditions set forth in Article III, make such Letter of Credit available to the Borrower at its office referred to in Section 8.02 or as otherwise agreed with the Borrower in connection with the issuance of such Letter of Credit. If and to the extent that the provisions of any Letter of Credit Agreement shall conflict with this Agreement, the provisions of this Agreement shall govern.

(b) *Drawing and Reimbursement*.

(i) The obligation of the Borrower to reimburse the Issuing Bank for each payment made by the Issuing Bank under any Letter of Credit, and to pay interest thereon as provided herein, shall be absolute, unconditional and irrevocable, without regard to any circumstances, including, without limitation, those referred to in Section 2.04(d) below. The payment by the Issuing Bank of a draft drawn under any Letter of Credit shall constitute for all purposes of this Agreement the making by the Issuing Bank of a Letter of Credit Advance, which shall be a Base Rate Advance, in the amount of such draft; *provided* that such payment shall not be deemed a Base Rate Advance if the Borrower reimburses the Issuing Bank therefor prior to 2:00 P.M. (New York, New York time) on the date of such payment, or if such payment by the Issuing Bank is made on or after 2:00 P.M. (New York, New York time), then prior to 2:00 P.M. (New York, New York time), on the Business Day immediately succeeding the date of such payment, together with interest thereon from the date of such payment to the date of such reimbursement at a rate per annum equal to the sum of the Base Rate then in effect from time to time and the Applicable Margin for Base Rate Advances that are Revolving Credit Advances then in effect from time to time. Upon demand by the Issuing Bank, with a copy of such demand to the Administrative Agent (which shall give prompt notice thereof to each Revolving Credit Lender), each Revolving Credit Lender shall purchase from the Issuing Bank, and the Issuing Bank shall sell and assign to each such Revolving Credit Lender, such Lender's Pro Rata Share of such outstanding Letter of Credit Advance as of the date of such purchase, by making available for the account of its Applicable Lending Office to the Administrative Agent for the account of the Issuing Bank, at the Administrative Agent's Account, in same day funds, an amount equal to the portion of the outstanding principal amount of such Letter of Credit Advance to be purchased by such Lender. Promptly after receipt thereof, the Administrative Agent shall transfer such funds to the Issuing Bank. The Borrower hereby agrees to each such sale and assignment. Each Revolving Credit Lender agrees to purchase its Pro Rata Share of an outstanding Letter of Credit Advance on (A) the Business Day on which demand therefor is made by the Issuing Bank so long as notice of such demand is given not later than 2:00 P.M. (New York, New York time) on such Business Day or (B) the first Business Day next succeeding such demand if notice of such demand is given after such time. Upon any such assignment by the Issuing Bank to any other Revolving Credit Lender of a portion of a Letter of Credit Advance, the Issuing Bank represents and warrants to such other Lender that the Issuing Bank is the legal and beneficial owner of such interest being assigned by it, free and clear of any liens, but makes no other representation or warranty and assumes no responsibility with respect to such Letter of Credit Advance, the Loan Documents or any Loan Party. If and to the extent that any Revolving Credit Lender shall not have so made the amount of such Letter of Credit Advance available to the Administrative Agent, such Revolving Credit Lender agrees to pay to the Administrative Agent forthwith on demand such amount, together with interest thereon, for each day from the date of demand by the Issuing Bank until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate, for its account or the account of the Issuing Bank, as applicable. If such Revolving Credit Lender shall pay to the Administrative Agent such amount for the account of the Issuing Bank on any Business Day, such amount so paid in respect of principal shall constitute a Letter of Credit Advance made by such Revolving Credit Lender on such Business Day for all purposes of this Agreement, and the outstanding principal amount of the Letter of Credit Advance made by the Issuing Bank shall be reduced by such amount on such Business Day.

(ii) The Obligation of each Revolving Credit Lender to purchase its Pro Rata Share of each outstanding Letter of Credit Advance upon demand by the Issuing Bank therefor pursuant to clause (i) of this Section 2.03(b) shall be absolute, unconditional and irrevocable, and shall be made strictly in accordance with the terms of clause (i) of this Section 2.03(b) under all circumstances, including, without limitation, the following circumstances:

(A) any lack of validity or enforceability of any Loan Document, any Letter of Credit Agreement, any Letter of Credit or any other agreement or instrument relating thereto (collectively, the "***L/C Related Documents***");

(B) the existence of any claim, set-off, defense or other right that such Revolving Credit Lender may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Bank, the Borrower or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(C) the occurrence and continuance of any Default or Event of Default; or

(D) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing.

(c) *Failure to Make Letter of Credit Advances*. The failure of any Revolving Credit Lender to make the Letter of Credit Advance to be made by it on the date specified in Section 2.03(b) shall not relieve any other Revolving Credit Lender of its obligation hereunder to make its Letter of Credit Advance on such date, but no Revolving Credit Lender shall be responsible for the failure of any other Revolving Credit Lender to make the Letter of Credit Advance to be made by such other Revolving Credit Lender on such date.

SECTION 2.04. *Repayment of Advances*.

(a) *Term Advances*.

The Borrower shall repay to the Administrative Agent for the ratable account of the Appropriate Lenders the aggregate principal amount of all Term Advances outstanding on the following dates in the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of priority set forth in Section 2.06):

DATE	AMOUNT	
	Term A Facility	Term B Facility
December 31, 2003	$ 8,450,704.23	$ 2,805,388
March 31, 2004	$ 8,450,704.23	$ 2,805,388
June 30, 2004	$ 8,450,704.23	$ 2,805,388
September 30, 2004	$ 8,450,704.23	$ 2,805,388
December 31, 2004	$ 8,450,704.23	$ 2,805,388
March 31, 2005	$ 8,450,704.23	$ 2,805,388
June 30, 2005	$ 8,450,704.23	$ 2,805,388
September 30, 2005	$ 8,450,704.23	$ 2,805,388
December 31, 2005	$ 8,450,704.23	$ 2,805,388
March 31, 2006	$ 8,450,704.23	$ 2,805,388
June 30, 2006	$ 10,563,380.27	$ 2,805,387
September 30, 2006	$ 10,563,380.27	$ 2,805,387
December 31, 2006	$ 10,563,380.27	$ 2,805,387
March 31, 2007	$ 10,563,380.27	$ 2,805,387
June 30, 2007		$ 2,805,387
September 30, 2007		$ 2,805,387
December 31, 2007		$ 2,805,387
March 31, 2008		$ 2,805,387
June 30, 2008		$ 247,049,409
September 30, 2008		$ 247,049,409
December 31, 2008		$ 247,049,409
March 31, 2009		$ 247,049,409

provided further that the final principal installment of the respective Term Advances shall be in an amount equal to the aggregate principal amount of all such Term Advances then outstanding.

(b) *Revolving Credit Advances*. The Borrower shall repay to the Administrative Agent for the ratable account of the Revolving Credit Lenders on the Termination Date the aggregate principal amount of all Revolving Credit Advances outstanding on such date.

(c) *Swing Line Advances*. The Borrower shall repay to the Administrative Agent for the account of the Swing Line Bank and each Revolving Credit Lender that has made a Swing Line Advance on the earlier of (i) the maturity date for each Swing Line Advance (as specified in the applicable Notice of Swing Line Borrowing (which maturity shall be no later than the seventh day after the date on which such Swing Line Borrowing was initially made by the Swing Line Bank) and (ii) the Termination Date, the principal amount of each such Swing Line Advance made by the Swing Line Bank and each such Revolving Credit Lender and outstanding on such date.

(d) *Letter of Credit Advances*.

(i) The Borrower shall repay to the Administrative Agent for the account of the Issuing Bank and each Revolving Credit Lender that has made a Letter of Credit Advance on the earlier of (A) the date of demand therefor and (B) the Termination Date, the principal amount of each such Letter of Credit Advance made by the Issuing Bank and each such Revolving Credit Lender and outstanding on such date.

(ii) The Obligations of the Borrower under this Agreement, any Letter of Credit Agreement and any other agreement or instrument relating to any Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, such Letter of Credit Agreement or such other agreement or instrument under all circumstances, including, without limitation, the following circumstances (it being understood that any such payment by the Borrower is without prejudice to, and does not constitute a waiver of, any rights the Borrower might have or might acquire as a result of the payment by the Issuing Bank of any draft drawn or the reimbursement by the Borrower thereof):

(A) any lack of validity or enforceability of any L/C Related Document;

(B) any change in the time, manner or place of payment of, or in any other term of, all or any of the Obligations of the Borrower in respect of any L/C Related Document or any other amendment or waiver of or any consent to departure from all or any of the L/C Related Documents;

(C) the existence of any claim, set-off, defense or other right that the Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Issuing Bank or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(D) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(E) payment by the Issuing Bank under a Letter of Credit against presentation of a draft, certificate or other document that does not strictly comply with the terms of such Letter of Credit;

(F) any exchange, release or nonperfection of any Collateral or other collateral, or any release or amendment or waiver of or consent to departure from the Subsidiary Guarantee or any other guarantee, for all or any of the Obligations of the Borrower in respect of the L/C Related Documents; or

(G) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Borrower or a guarantor.

SECTION 2.05. *Termination or Reduction of the Commitments*.

(a) *Optional*. The Borrower may, upon at least three Business Days' notice to the Administrative Agent, terminate in whole or reduce in part the unused portions of the Letter of Credit Facility, or the

Unused Revolving Credit Commitments; *provided*, *however*, that each partial reduction of a Facility shall be in an aggregate amount of $5,000,000 or an integral multiple of $1,000,000 in excess thereof or, if less, the aggregate amount of such Facility.

(b) *Mandatory*.

(i) The Revolving Credit Facility shall be automatically and permanently reduced on each date on which the prepayment of Revolving Credit Advances outstanding thereunder is required to be made pursuant to Section 2.06(b)(i) by an amount equal to the applicable Reduction Amount.

(ii) The Swing Line Facility shall be automatically and permanently reduced on the date of each reduction in the Revolving Credit Facility by the amount, if any, by which the amount of the Swing Line Facility on such date exceeds the amount of the Revolving Credit Facility on such date (after giving effect to such reduction of the Revolving Credit Facility on such date).

(iii) The Letter of Credit Facility shall be automatically and permanently reduced on the date of each reduction in the Revolving Credit Facility by an amount equal to the amount, if any, by which (A) the Letter of Credit Facility on such date exceeds (B) the Revolving Credit Facility on such date, after giving effect to such reduction of the Revolving Credit Facility.

(c) *Application of Commitment Reductions*. Upon each reduction of a Facility pursuant to this Section 2.05, the Commitment of each Appropriate Lender under such Facility shall be reduced by such Lender's Pro Rata Share of the amount by which such Facility is reduced.

SECTION 2.06. *Prepayments*.

(a) *Optional*. The Borrower may, (i) on any Business Day, prepay all or any portions of any Swing Line Advance and (ii) upon at least three Business Days' notice to the Administrative Agent for a Eurodollar Rate Advance or upon at least one Business Days' notice to the Administrative Agent for a Base Rate Advance, in each case, stating the Facility under which Advances are proposed to be prepaid and the proposed date and aggregate principal amount of the prepayment, and if such notice is given the Borrower shall, prepay the aggregate principal amount of the Advances comprising part of the same Borrowing and outstanding on such date, in whole or ratably in part; *provided*, *however*, that each partial prepayment of (i) Revolving Credit Advances shall be in an aggregate principal amount of $1,000,000 or an integral multiple of $250,000 in excess thereof and (ii) Term Advances shall be in an aggregate principal amount of $5,000,000 or an integral multiple of $500,000 in excess thereof or, if less, the aggregate outstanding principal amount of such Facility. Each prepayment of Term Advances made pursuant to this clause (a) shall be applied against the principal repayment installments of the respective Term Facility designated by the Borrower in the respective notice of prepayment.

(b) *Mandatory*.

(i) The Borrower shall, not later than three Business Days after the date of receipt of the Net Cash Proceeds by the Borrower or any of its Subsidiaries from:

(A) the sale, lease, transfer or other disposition of any property or assets of the Borrower or any of its Subsidiaries (other than any property or assets expressly permitted to be sold, leased, transferred or otherwise disposed of pursuant to clause (i), (ii), (iii), (iv) or (v) of Section 5.02(e));

(B) the incurrence or issuance by the Borrower or any of its Subsidiaries of any Debt (other than Debt expressly permitted to be incurred or issued pursuant to clause (i), (iii), (iv), (v), (vi), (vii), (viii), (ix), (x), (xi) or (xiii) of Section 5.02(b)); and

(C) the issuance or sale by the Borrower or any Subsidiary thereof (which is or will be as a result thereof subject to the Securities Exchange Act of 1934, as amended) of any Equity Interests therein (other than (i) the issuance by the Borrower of (a) its common stock pursuant to equity incentive or benefit plans of the Borrower, (b) Equity Interests to effect any acquisition permitted under Section 5.02(f) hereof, *provided* that in the case in which the proceeds of such issuance are

contemplated to be used to effect such acquisition, then all the proceeds thereof are used within 180 days of such issuance to effect such acquisition, and any such proceeds not so used by such 180th day shall be applied as a prepayment as provided herein, (c) Debt or Redeemable Preferred Interests permitted under Section 5.02(b)(viii) or Section 5.02(b)(xii) hereof, or (d) Equity Interests in connection with a redemption of Subordinated Debt to the extent contemplated in Section 5.02(i) and, (ii) the issuance by any Subsidiary of the Borrower of any Equity Interests therein (a) to the Borrower or to another Subsidiary thereof, or (b) to any other Person or Persons in an aggregate amount in any one transaction or series of related transactions not in excess of $10,000,000),

prepay an aggregate principal amount of the Advances comprising part of the same Borrowings equal to (x) 100% of the amount of the Net Cash Proceeds in respect of any sale, lease, transfer or other disposition of any property or assets of the Borrower or any of its Subsidiaries referred to in subclause (b)(i)(A) above to the extent such Net Cash Proceeds have not been reinvested within the applicable reinvestment period as provided in Section 5.02(e)(vi); (y) the first $200,000,000 of Net Cash Proceeds from the incurrence or issuance by the Borrower or any of its Subsidiaries of all Debt referred to in subclause (b)(i)(B) above *plus* 50% of any such Net Cash Proceeds in excess of $200,000,000; and (z) 50% of the amount of the Net Cash Proceeds of the issuance or sale by the Borrower of any Equity Interests referred to in subclause (b)(i)(C), and in the case of Net Cash Proceeds from the issuance or sale by any Subsidiary of the Borrower of Equity Interests referred to in subclause (b)(i)(C) above, 50% of an amount equal to the Borrower's Percentage of such Net Cash Proceeds; *provided*, *however*, that prepayments of Net Cash Proceeds from the issuance or sale by the Borrower or any Subsidiary of the Borrower of Equity Interests referred to in subclause (b)(i)(C) above shall not be required if, after giving pro forma effect to such issuance or sale, the Borrower has a Leverage Ratio of less than 2.75:1.00. Each prepayment of advances required to be made pursuant to this subclause (i) shall *first* be applied on a *pro rata* basis between the Term Facilities, and with respect to each Term Facility, applied on a *pro rata* basis against the respective principal repayment installments thereof, and *thereafter* applied to the Revolving Credit Facility in the manner set forth in this Section 2.06(b).

(ii) The Borrower shall, on each Business Day, prepay an aggregate principal amount of the Revolving Credit Advances comprising part of the same Borrowings, the Letter of Credit Advances and the Swing Line Advances and, if applicable, deposit an amount into the L/C Cash Collateral Account equal to the amount by which (A) the sum of (1) the aggregate principal amount of all Revolving Credit Advances, Letter of Credit Advances and Swing Line Advances outstanding on such Business Day and (2) the aggregate Available Amount of all Letters of Credit outstanding on such Business Day exceeds (B) the Revolving Credit Facility on such Business Day (after giving effect to any permanent reduction thereof pursuant to Section 2.05 on such Business Day).

(iii) The Borrower shall, on each Business Day, pay to the Administrative Agent for deposit into the L/C Cash Collateral Account an amount sufficient to cause the aggregate amount on deposit in the L/C Cash Collateral Account on such Business Day to equal the amount by which (A) the aggregate Available Amount of all Letters of Credit outstanding on such Business Day exceeds (B) the Letter of Credit Facility on such Business Day (after giving effect to any permanent reduction thereof pursuant to Section 2.05 on such Business Day).

(iv) Prepayments of the Revolving Credit Facility made pursuant to clause (i), (ii) or (iii) of this Section 2.06(b), *first*, shall be applied to prepay Letter of Credit Advances outstanding at such time until all such Letter of Credit Advances are paid in full, *second*, shall be applied to prepay Swing Line Advances outstanding at such time until all such Swing Line Advances are paid in full, *third*, shall be applied to prepay Revolving Credit Advances comprising part of the same Borrowings and outstanding at such time until all such Revolving Credit Advances are paid in full and, *fourth*, shall be deposited into the L/C Cash Collateral Account to cash collateralize 100% of the Available Amount of all Letters of Credit outstanding at such time; and, in the case of prepayments of the Revolving Credit Facility required pursuant to clause (i) or (ii) of this Section 2.06(b), the amount remaining, if any, after the

prepayment in full of all Advances outstanding at such time and the 100% cash collateralization of the aggregate Available Amount of all Letters of Credit outstanding at such time (the sum of such prepayment amounts, cash collateralization amounts and remaining amount being, collectively, the "***Reduction Amount***") may be retained by the Borrower for use in the ordinary course of its business, and the Letter of Credit Facility shall be automatically and permanently reduced as set forth in Section 2.05(b)(iii). Upon the drawing of any Letter of Credit for which funds are on deposit in the L/C Cash Collateral Account, such funds shall be applied (without any further action by or notice to or from the Borrower or any other Loan Party) to reimburse the Issuing Bank or the Revolving Credit Lenders, as applicable.

(c) *Prepayments to Include Accrued Interest, Etc*. All prepayments under this Section 2.06 shall be made together with (i) accrued and unpaid interest to the date of such prepayment on the principal amount so prepaid and (ii) in the case of any such prepayment of a Eurodollar Rate Advance on a date other than the last day of an Interest Period therefor, any amounts owing in respect of such Eurodollar Rate Advance pursuant to 8.04(c).

(d) *Term B Lender Opt-Out*. Any Term B Lender may elect (upon such election, such Term B Lender being a "***Declining Lender***"), by notice to the Administrative Agent in writing (or by telecopy or telephone promptly confirmed in writing) by 12:00 p.m., New York, New York time, at least two Business Days prior to any prepayment of Term B Advances required to be made by the Borrower for the account of such Declining Lender pursuant to this Section 2.06(d), not to accept the portion of such prepayment to which such Declining Lender would be entitled and upon such election, such declined amount shall be applied instead to prepay a portion of the Term A Advances (to the extent Term A Advances remain outstanding after giving effect to such prepayment of the Term A Advances) in accordance with subsection 2.06(b)(i) above and this subsection 2.06(d). On the date of such prepayment (the "***Prepayment Date***"), (i) an amount equal to that portion of the prepayment required to be made to the Term B Lenders other than the Declining Lenders (such Term B Lenders being the "***Accepting Lenders***") shall be applied by the Administrative Agent on behalf of the Borrower to prepay Term B Advances owing to such Accepting Lenders on a pro rata basis as provided above, (ii) fifty percent of any amounts that would otherwise have been applied to prepay Advances under the Term B Facility owing to Declining Lenders shall instead be applied ratably to prepay the remaining Term A Advances owing to Term A Lenders as provided above, and (iii) the remaining fifty percent of such amounts shall be credited to the Borrower's Account; provided that on prepayment in full of all Term B Advances owing to Accepting Lenders and all Term A Advances owing to Term A Lenders, the remainder of such amounts under subsection (ii) shall be applied ratably to prepay Term B Advances owing to Declining Lenders.

(e) *Term B Facility Call Protection*. In the event that, during the twelve-month period following the Closing Date, the Term B Advances are prepaid in whole or in part from the proceeds of any incurrence of Debt (other than Debt issued through a public offering or a private placement) which has an interest rate lower than the interest rate then applicable to the Term B Facility, the Borrower shall pay to each Term B Lender, in connection with such prepayment, a prepayment premium of 101% on the principal amount of the Term B Advances of such Term B Lender which are prepaid.

SECTION 2.07. *Interest*.

(a) *Scheduled Interest*. The Borrower shall pay interest on the unpaid principal amount of each Advance owing to each Lender Party from the date of such Advance (which for purposes of each Term A Advance and Revolving Credit Advance outstanding on the Closing Date shall be the date of each such Advance under the Existing Credit Agreement) until such principal amount shall be paid in full, at the following rates per annum:

(i) *Base Rate Advances*. During such periods as such Advance is a Base Rate Advance, a rate per annum equal at all times to the sum of (A) the Base Rate in effect from time to time and (B) the Applicable Margin for such Base Rate Advance in effect from time to time, payable in arrears quarterly

on the last Business Day of each March, June, September and December during such periods and on the date such Base Rate Advance shall be Converted or paid in full.

(ii) *Eurodollar Rate Advances*. During such periods as such Advance is a Eurodollar Rate Advance, a rate per annum equal at all times during each Interest Period for such Eurodollar Rate Advance to the sum of (A) the Eurodollar Rate for such Eurodollar Rate Advance for such Interest Period and (B) the Applicable Margin for such Advance in effect on the first day of such Interest Period, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three months, on each day that occurs during such Interest Period every three months from the first day of such Interest Period and on the date such Eurodollar Rate Advance shall be Converted or paid in full.

(iii) *Default Interest*. Upon the occurrence and during the continuance of a Default under Section 6.01(a) or 6.01(f) or an Event of Default, the Administrative Agent may, and upon the request of the Required Lenders shall, require that the Borrower pay interest on (i) the unpaid principal amount of each Advance owing to each Lender Party, payable in arrears on the dates referred to in clause (i) or (ii) of Section 2.07(a), as applicable, and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on such Advance pursuant to clause (i) or (ii) of Section 2.07(a), as applicable, and (ii) to the fullest extent permitted by applicable law, the amount of any interest, fee or other amount payable under this Agreement or any other Loan Document to any Agent or any Lender Party that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid, in the case of interest, on the Type of Advance on which such interest has accrued pursuant to clause (i) or (ii) of Section 2.07(a), as applicable, and, in all other cases, on Base Rate Advances pursuant to clause (i) of Section 2.07(a).

(b) *Notice of Interest Rate*. Promptly after receipt of a Notice of Borrowing pursuant to Section 2.02(a), a Notice of Conversion pursuant to Section 2.09(a) or a notice of selection of an Interest Period pursuant to the definition of "Interest Period" set forth in Section 1.01, the Administrative Agent shall give notice to the Borrower and each Appropriate Lender of the applicable interest rate determined by the Administrative Agent for purposes of clause (i) or (ii) of Section 2.07(a), as applicable.

SECTION 2.08. *Fees*.

(a) *Commitment Fee*.

The Borrower shall pay to the Administrative Agent for the account of the Revolving Credit Lenders a commitment fee (the "***Commitment Fee***"), from the date hereof in the case of each such Lender listed on the signature pages hereof and from the effective date specified in the Assignment and Assumption pursuant to which it became a Revolving Credit Lender in the case of each other Revolving Credit Lender until, in each case, the Termination Date, payable in arrears quarterly on the last Business Day of each March, June, September and December, commencing December 31, 2003, and on the Termination Date, at the Applicable Percentage in effect from time to time on the sum of (i) the average daily Unused Revolving Credit Commitment of each Revolving Credit Lender *plus* (ii) such Revolving Credit Lender's Pro Rata Share of the average daily outstanding Swing Line Advances during such quarter; *provided*, *however*, that no Commitment Fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender; *provided further* that the initial payment on December 31, 2003 shall include the accrued and unpaid amount of the commitment fee as provided in the Existing Credit Agreement.

(b) *Letter of Credit Fees, Etc*.

(i) The Borrower shall pay to the Administrative Agent for the account of each Revolving Credit Lender a commission, payable in arrears quarterly on the last Business Day of each March, June, September and December, commencing December 31, 2003, and on the earliest to occur of the full

drawing, expiration, termination or cancellation of any such Letter of Credit and on the Termination Date, on such Revolving Credit Lender's Pro Rata Share of the average daily aggregate Available Amount of all Letters of Credit outstanding from time to time during such quarter at the rate per annum equal to the Applicable Margin in effect at such time for Eurodollar Rate Advances under the Revolving Credit Facility, *provided* that the initial payment on December 31, 2003 shall include the accrued and unpaid letter of credit commission as provided in the Existing Credit Agreement. Upon the occurrence and during the continuance of a Default under Section 6.01(a) or 6.01(f) or an Event of Default, the amount of commission payable by the Borrower under this clause (b)(i) shall be increased by 2% per annum.

(ii) The Borrower shall pay to each Issuing Bank, for its own account, an issuing bank fee, payable in arrears quarterly on the last Business Day of each March, June, September and December, commencing December 31, 2003, and on the earliest to occur of the full drawing, expiration, termination or cancellation of any such Letter of Credit issued by such Issuing Bank and on the Termination Date, on the average daily aggregate Available Amount of all Letters of Credit issued by such Issuing Bank and outstanding from time to time during such quarter at the rate per annum equal to 0.25%, together with such commissions, transfer fees and other fees and charges in connection with the issuance or administration of each Letter of Credit as the Borrower and such Issuing Bank shall from time to time agree, *provided* that the initial payment on December 31, 2003 shall include the accrued and unpaid issuing bank fee and other related fees as provided in the Existing Credit Agreement.

(c) *Agents' Fees*. The Borrower shall pay to the Administrative Agent for the account of the Agents such fees as may from time to time be agreed between the Borrower and the Administrative Agent.

(d) *Amendment Fee in respect of Interest Rates.* In the event that, during the twelve-month period following the Closing Date, this Agreement shall be amended to reduce the Applicable Margin in respect of the Term B Facility, then the Borrower shall pay to each Term B Lender, in connection with such amendment, an amendment fee equal to 1.00% of the principal amount of the Term B Advances of such Term B Lender then outstanding.

SECTION 2.09. *Conversion of Advances*.

(a) *Optional*. The Borrower may on any Business Day, upon notice given to the Administrative Agent not later than (i) 2:00 P.M. (New York, New York time) on the third Business Day prior to the date of the proposed Conversion in the case of a Conversion of Base Rate Advances into Eurodollar Rate Advances or of Eurodollar Rate Advances of one Interest Period into Eurodollar Rate Advances of another Interest Period, or (ii) 2:00 P.M. (New York, New York time) on the Business Day immediately preceding the date of the proposed Conversion in the case of a Conversion of Eurodollar Rate Advances into Base Rate Advances; *provided*, *however*, that in each case:

(A) any Conversion of Base Rate Advances into Eurodollar Rate Advances shall be made only if no Default under Section 6.01(f) or Event of Default shall have occurred and be continuing and shall be in an amount not less than the minimum amount specified in Section 2.01(c);

(B) no Conversion of any Advances shall result in more separate Borrowings than permitted under Section 2.02(c); and

(C) each Conversion of Advances comprising part of the same Borrowing under any Facility shall be made among the Appropriate Lenders in accordance with their respective Pro Rata Shares of such Borrowing.

Each notice of a Conversion (a "***Notice of Conversion***") shall be delivered by telephone, confirmed immediately in writing, or by telecopier, in substantially the form of Exhibit B-3 hereto, shall be duly executed by a Responsible Officer of the Borrower, and shall, within the restrictions set forth in the immediately preceding sentence, specify therein:

(1) the requested date of such Conversion (which shall be a Business Day);

(2) the Advances requested to be Converted; and

(3) if such Conversion is into Eurodollar Rate Advances, the requested duration of the Interest Period for such Eurodollar Rate Advances.

The Administrative Agent shall give each of the Appropriate Lenders prompt notice of each Notice of Conversion received by it. Each Notice of Conversion shall be irrevocable and binding on the Borrower.

(b) *Mandatory*.

(i) On the last day of any Interest Period during which the aggregate unpaid principal amount of Eurodollar Rate Advances comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than $5,000,000, such Advances shall automatically Convert into Base Rate Advances.

(ii) If the Borrower shall fail to select the duration of any Interest Period for any Eurodollar Rate Advances in accordance with the provisions contained in the definition of "Interest Period" set forth in Section 1.01, the Administrative Agent will forthwith so notify the Borrower and the Appropriate Lenders, whereupon each such Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance.

(iii) Upon the occurrence and during the continuance of any Default under Section 6.01(f) or any Event of Default, (A) each Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance and (B) the obligation of the Lenders to make, or to Convert Advances into, Eurodollar Rate Advances shall be suspended.

SECTION 2.10. *Increased Costs, Etc*.

(a) If, after the date hereof, the adoption of any applicable Requirement of Law, or any change in any applicable Requirement of Law, or any change in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by any Lender (or its Applicable Lending Office) with any request or directive (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency:

(i) shall subject such Lender (or its Applicable Lending Office) to any tax, duty, or other charge with respect to any Eurodollar Rate Advances, any of its Notes, or its obligation to make any Eurodollar Rate Advances, or change the basis of taxation of any amounts payable to such Lender (or its Applicable Lending Office) under this Agreement or its Note in respect of any Eurodollar Rate Advances (other than, for purposes of this Section 2.10, any such increased costs resulting from (A) Taxes or Other Taxes (as to which Section 2.13 shall govern), and (B) changes in the basis of taxation of overall net income or overall gross income by the United States of America or the jurisdiction under the laws of which such Lender Party has its principal office or such Applicable Lending Office);

(ii) shall impose, modify, or deem applicable any reserve, special deposit, assessment, or similar requirement relating to any extensions of credit or other assets of, or any deposits with or other liabilities or commitments of, such Lender (or its Applicable Lending Office), including the Commitments of such Lender hereunder; or

(iii) shall impose on such Lender (or its Applicable Lending Office) or on the United States market for certificates of deposit or the London interbank market any other condition affecting this Agreement or its Note or any of such extensions of credit or liabilities or commitments;

and the result of any of the foregoing is to increase the cost to such Lender (or its Applicable Lending Office) of making, Converting into or maintaining any Eurodollar Rate Advances or to reduce any sum received or receivable by such Lender (or its Applicable Lending Office) under this Agreement or its Note with respect to any Eurodollar Rate Advances, then the Borrower shall pay to such Lender on demand such amount or amounts as will compensate such Lender for such increased cost or reduction. Each Lender shall

promptly notify the Borrower and the Administrative Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this Section 2.10(a) and will designate a different Applicable Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the judgment of such Lender, be otherwise disadvantageous to it (other than by reason of administrative convenience or preference). Any Lender claiming compensation under this Section 2.10(a) shall furnish to the Borrower and the Administrative Agent a statement setting forth the additional amount or amounts to be paid to it hereunder (including the method of calculation), which shall be conclusive and binding, absent manifest error. In determining such amount, such Lender may use any reasonable averaging and attribution methods. If any Lender requests compensation by the Borrower under this Section 2.10(a), the Borrower may, by notice to such Lender (with a copy to the Administrative Agent), suspend the obligation of such Lender to make or Convert Eurodollar Rate Advances, or to Convert Base Rate Advances into Eurodollar Rate Advances, until the event or condition giving rise to such request ceases to be in effect (in which case the provisions of Section 2.10(e) shall be applicable); provided that such suspension shall not affect the right of such Lender to receive the compensation so requested.

(b) If, after the date hereof, any Lender shall have determined that the adoption of any applicable Requirement of Law regarding capital adequacy or any change therein or in the interpretation or administration thereof by any Governmental Authority, central bank or comparable agency charged with the interpretation or administration thereof, or any request or directive regarding capital adequacy (whether or not having the force of law) of any such Governmental Authority, central bank or comparable agency, has or would have the effect of reducing the rate of return on the capital of such Lender or any corporation controlling such Lender as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such adoption, change, request or directive (taking into consideration its policies with respect to capital adequacy), then from time to time upon demand the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender for such reduction. Each Lender shall promptly notify the Borrower and the Administrative Agent of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this Section 2.10(b) and will designate a different Applicable Lending Office if such designation will avoid the need for, or reduce the amount of, such compensation and will not, in the judgment of such Lender, be otherwise disadvantageous to it. Any Lender claiming compensation under this Section 2.10(b) shall furnish to the Borrower and the Administrative Agent a statement setting forth the additional amount or amounts to be paid to it hereunder (including the method of calculation), which shall be conclusive and binding, absent manifest error. In determining such amount, such Lender may use any reasonable averaging and attribution methods.

(c) If, on or prior to the first day of any Interest Period for any Eurodollar Rate Advance, the Required Lenders at any time notify the Administrative Agent that the Eurodollar Rate for any Interest Period for such Advances will not adequately and fairly reflect the cost to the Appropriate Lenders of funding their Eurodollar Rate Advances for such Interest Period, the Administrative Agent shall promptly so notify the Borrower and the Appropriate Lenders, whereupon (i) each such Eurodollar Rate Advance will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Advance and (ii) the obligation of the Appropriate Lenders to make, or to Convert Advances into, Eurodollar Rate Advances shall be suspended until the Administrative Agent shall notify the Borrower (promptly following notice from the Appropriate Lenders) that such Lenders have determined that the circumstances causing such suspension no longer exist.

(d) Notwithstanding any other provision of this Agreement, in the event that it becomes unlawful for any Lender or its Applicable Lending Office to make, maintain, or fund Eurodollar Rate Advances hereunder, then such Lender shall promptly notify the Borrower thereof and such Lender's obligation to make Eurodollar Rate Advances and to Convert Base Rate Advances into Eurodollar Rate Advances shall be suspended until such time as such Lender may again make, maintain and fund Eurodollar Rate Advances (in which case the provisions of Section 2.10(e) shall be applicable).

(e) If the obligation of any Lender to make a Eurodollar Rate Advance or to Convert Base Rate Advances into Eurodollar Rate Advances shall be suspended pursuant to any other provision of this Section 2.10, such Lender's suspended Eurodollar Rate Advances shall be automatically Converted into Base Rate Advances on the last day(s) of the then current Interest Period(s) therefor (or, in the case of a Conversion required by Section 2.10(d), on such earlier date as such Lender may specify to the Borrower with a copy to the Administrative Agent) and, unless and until such Lender gives notice as provided below that the circumstances specified in such other provision of this Section 2.10 that gave rise to such Conversion no longer exist:

(i) to the extent that such Lender's suspended Eurodollar Rate Advances have been so Converted, all payments and prepayments of principal that would otherwise be applied to such Lender's suspended Eurodollar Rate Advances shall be applied instead to its Base Rate Advances; and

(ii) all Eurodollar Rate Advances that would otherwise be made or Converted by such Lender shall be made instead as (or shall remain as) Base Rate Advances.

If such Lender gives notice to the Borrower (with a copy to the Administrative Agent) that the circumstances otherwise specified in this Section 2.10 that gave rise to the suspension of the making of Eurodollar Rate Advances by such Lender no longer exist (which such Lender agrees to do promptly upon such circumstances ceasing to exist) at a time when Eurodollar Rate Advances by other Lenders with Commitments under the same Facility are outstanding, such Lender's Base Rate Advances shall be automatically Converted, on the first day(s) of the next succeeding Interest Period(s) therefor, to the extent necessary into Eurodollar Rate Advances.

SECTION 2.11. *Evidence of Debt*.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the debt of the Borrower to such Lender resulting from each Advance owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder.

(b) The Register maintained by the Administrative Agent pursuant to Section 8.07(c) shall include accounts for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of each Advance made hereunder, (ii) the terms of each Assignment and Assumption delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each Lender hereunder and (iv) the amount of any sum received by the Administrative Agent from the Borrower hereunder and each Lender's share thereof.

(c) The entries made as provided in this Section 2.11 shall be conclusive and binding for all purposes, absent manifest error.

SECTION 2.12. *Payments and Computations*.

(a) The Borrower shall make each payment hereunder and under the Notes, irrespective of any right of counterclaim, deduction or set-off (except as otherwise provided in Section 2.16), not later than 2:00 P.M. (New York, New York time) on the day when due in U.S. dollars to the Administrative Agent at the Administrative Agent's Account in same day funds, with payments received by the Administrative Agent after such time being deemed to have been received on the next succeeding Business Day. The Administrative Agent will promptly thereafter cause like funds to be distributed (i) if such payment by the Borrower is in respect of principal, interest, commitment fees or any other Obligation then due and payable hereunder and under the Notes to more than one Lender Party, to such Lender Parties for the accounts of their respective Applicable Lending Offices in accordance with their respective Pro Rata Shares of the amounts of such respective Obligations due and payable to such Lender Parties at such time and (ii) if such payment by the Borrower is in respect of any Obligation then due and payable hereunder solely to one Lender Party, to such Lender Party for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and

Assumption and recording of the information contained therein in the Register pursuant to Section 8.07(c), from and after the effective date of such Assignment and Assumption, the Administrative Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender Party assignee thereunder, and the parties to such Assignment and Assumption shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) The Borrower hereby authorizes each Lender Party, if and to the extent payment owed to such Lender Party is not made when due hereunder or, in the case of a Lender, under the Note held by such Lender, to charge from time to time against any or all of the Borrower's accounts with such Lender Party any amount so due.

(c) All computations of interest based on the Base Rate shall be made by the Administrative Agent on the basis of a year of 365 or 366 days, as the case may be, and all computations of interest based on the Eurodollar Rate or the Federal Funds Rate and of the letter of credit commissions and commitment or letter of credit fees payable hereunder shall be made by the Administrative Agent on the basis of a year of 360 days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest, fees or commissions are payable. Each determination by the Administrative Agent of an interest rate, fee or commission hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, letter of credit commissions or commitment or letter of credit fees, as the case may be; *provided*, *however*, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Advances to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

(e) Unless the Borrower or any Lender Party has notified the Administrative Agent prior to the date any payment is required to be made by it to the Administrative Agent hereunder, that the Borrower or such Lender Party, as the case may be, will not make such payment, the Administrative Agent may assume that the Borrower or such Lender Party, as the case may be, has timely made such payment and may (but shall not be so required to), in reliance thereon, make available a corresponding amount to the Person entitled thereto. If and to the extent that such payment was not in fact made to the Administrative Agent in immediately available funds, then:

(i) if the Borrower failed to make such payment, each Lender Party shall forthwith on demand repay to the Administrative Agent the portion of such assumed payment that was made available to such Lender Party in immediately available funds, together with interest thereon in respect of each day from and including the date such amount was made available by the Administrative Agent to such Lender Party to the date such amount is repaid to the Administrative Agent in immediately available funds, at the Federal Funds Rate from time to time in effect; and

(ii) if any Lender Party failed to make such payment, such Lender Party shall forthwith on demand pay to the Administrative Agent the amount thereof in immediately available funds, together with interest thereon for the period from the date such amount was made available by the Administrative Agent to the Borrower to the date such amount is recovered by the Administrative Agent (the "***Compensation Period***") at a rate per annum equal to the Federal Funds Rate from time to time in effect. If such Lender Party pays such amount to the Administrative Agent, then such amount shall constitute such Lender Party's Advance included in the applicable Borrowing. If such Lender Party does not pay such amount forthwith upon the Administrative Agent's demand therefor, the Administrative Agent may make a demand therefor upon the Borrower, and the Borrower shall pay such amount to the Administrative Agent, together with interest thereon for the Compensation Period at a rate per annum equal to the rate of interest applicable to the applicable Borrowing. Nothing herein shall be deemed to relieve any Lender Party from its obligation to fulfill its applicable Commitment or to prejudice any rights which the Administrative Agent or the Borrower may have against any Lender Party as a result of any default by such Lender Party hereunder.

A notice from the Administrative Agent to any Lender Party with respect to any amount owing under this subsection (e) shall be conclusive, absent manifest error.

(f) Whenever any payment received by the Administrative Agent under this Agreement or any of the other Loan Documents is insufficient to pay in full all amounts due and payable to the Agents and the Lender Parties under or in respect of this Agreement and the other Loan Documents on any date, such payment shall be distributed by the Administrative Agent and applied by the Agents and the Lender Parties in the following order of priority:

(i) *first*, to the payment of all of the fees, indemnification payments, costs and expenses that are due and payable to the Agents (solely in their respective capacities as Agents) under or in respect of this Agreement and the other Loan Documents on such date, ratably based upon the respective aggregate amounts of all such fees, indemnification payments, costs and expenses owing to the Agents on such date;

(ii) *second*, to the payment of all of the fees, indemnification payments, costs and expenses that are due and payable to the Issuing Bank and the Swing Line Bank (solely in their respective capacities as such) under or in respect of this Agreement and the other Loan Documents on such date, ratably based upon the respective aggregate amounts of all such fees, indemnification payments, costs and expenses owing to the Issuing Bank and the Swing Line Bank on such date;

(iii) *third*, to the payment of all of the indemnification payments, costs and expenses that are due and payable to the Lenders under Section 8.04 hereof, Section 12 of the Subsidiary Guarantee, Section 21 of the Security Agreement and any similar section of any of the other Loan Documents on such date, ratably based upon the respective aggregate amounts of all such indemnification payments, costs and expenses owing to the Lenders on such date;

(iv) *fourth*, to the payment of all of the amounts that are due and payable to the Administrative Agent and the Lender Parties under Sections 2.10 and 2.13 hereof and Section 5 of the Subsidiary Guarantee on such date, ratably based upon the respective aggregate amounts thereof owing to the Administrative Agent and the Lender Parties on such date;

(v) *fifth*, to the payment of all of the accrued and unpaid interest on the Obligations of the Borrower under or in respect of the Loan Documents that is due and payable to the Administrative Agent and the Lender Parties under Section 2.07(a) on such date and all of the fees that are due and payable to the Lenders or the Issuing Bank under Section 2.08(a) or 2.08(b) on such date, ratably based upon the respective aggregate Commitments of the Lenders under the Facilities on such date;

(vi) *sixth*, to the payment of the principal amount of all of the outstanding Advances that is due and payable to the Administrative Agent and the Lender Parties on such date, ratably based upon the respective aggregate amounts of all such principal owing to the Administrative Agent and the Lender Parties on such date; and

(vii) *seventh*, to the payment of all other Obligations of the Loan Parties owing under or in respect of the Loan Documents that are due and payable to the Administrative Agent and the other Secured Parties on such date, ratably based upon the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date.

If the Administrative Agent receives funds for application to the Obligations of the Loan Parties under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify the Advances or the Facility to which, or the manner in which, such funds are to be applied, the Administrative Agent may, but shall not be obligated to, elect to distribute such funds to each of the Lender Parties in accordance with such Lender Party's Pro Rata Share of the sum of (A) the aggregate principal amount of all Advances outstanding at such time and (b) the aggregate Available Amount of all Letters of Credit outstanding at such time, in repayment or prepayment of such of the outstanding Advances or other Obligations then owing to such Lender Party, and, in the case of the Term Facility, for application to such principal repayment installments thereof, as the Administrative Agent shall direct.

SECTION 2.13. *Taxes*.

(a) Any and all payments by the Borrower to or for the account of any Lender Party or any Agent hereunder or under any other Loan Document shall be made, in accordance with Section 2.12 or the applicable provisions of such other Loan Document, if any, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, charges or withholdings, and all liabilities with respect thereto, *excluding*, in the case of each Lender Party and each Agent, taxes that are imposed on its overall net income by the United States and taxes that are imposed on its overall net income (and franchise taxes imposed in lieu thereof) by the state or foreign jurisdiction under the laws of which such Lender Party or such Agent, as the case may be, is organized or is a resident, or has a fixed place of business or a permanent establishment, or any political subdivision of any of the foregoing, and, in the case of each Lender Party, taxes that are imposed on its overall net income (and franchise taxes imposed in lieu thereof) by the state or foreign jurisdiction of either of its Applicable Lending Offices or any political subdivision thereof (all such nonexcluded taxes, levies, imposts, deductions, charges, withholdings and liabilities in respect of payments hereunder or under the Notes being, collectively, "***Taxes***"). If the Borrower shall be required under applicable Requirements of Law to deduct any Taxes from or in respect of any sum payable hereunder or under any other Loan Document to any Lender Party or any Agent, (i) the sum payable by the Borrower shall be increased as necessary so that after the Borrower and the Administrative Agent have been made all required deductions (including deductions applicable to additional sums payable under this Section 2.13) such Lender Party or such Agent, as the case may be, receives an amount equal to the sum it would have received had no such deductions been made, (ii) the Borrower shall make such deductions, (iii) the Borrower shall pay the full amount deducted to the relevant taxation authority or other Governmental Authority in accordance with applicable Requirements of Law and (iv) within 30 days after the date of any payment of Taxes, the Borrower shall furnish to the Administrative Agent, at its address referred to in Section 8.02, the original or a certified copy of a receipt evidencing payment thereof, to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Administrative Agent.

(b) In addition, the Borrower agrees to pay any present or future stamp, recording or documentary, excise, property or similar taxes, charges or levies that arise from any payment made hereunder or under any other Loan Document or from the execution, delivery of, or registration of, any performance under, or otherwise with respect to, this Agreement or any other Loan Document (collectively, "***Other Taxes***").

(c) The Borrower shall indemnify each of the Lender Parties and each of the Agents for, and hold each of them harmless against, the full amount of Taxes and Other Taxes, and the full amount of taxes of any kind imposed by any jurisdiction on amounts payable under this Section 2.13, imposed on or paid by such Lender Party or such Agent, as the case may be, and any liability (including penalties, additions to tax, interest and expenses) arising therefrom or with respect thereto. The indemnity by the Borrower provided for in this subsection (c) shall apply and be made whether or not the Taxes or Other Taxes for which indemnification hereunder is sought have been correctly or legally asserted; provided, however, that such Lender or such Agent seeking such indemnification shall take all reasonable actions (consistent with its internal policy and legal and regulatory restrictions) requested by the Borrower to assist the Borrower in recovering the amounts paid thereby pursuant to this subsection (c) from the relevant taxation authority or other Governmental Authority. Amounts payable by the Borrower under the indemnity set forth in this subsection (c) shall be paid within 30 days from the date on which the applicable Lender or Agent, as the case may be, makes written demand therefor (including the method of calculation).

(d) In the case of any payment hereunder or under any other Loan Document by or on behalf of the Borrower through an account or branch outside the United States, or on behalf of the Borrower by a payor that is not a United States person, if the Borrower determines that no Taxes are payable in respect thereof, the Borrower shall furnish, or shall cause such payor to furnish, to the Administrative Agent, at its address referred to in Section 8.02, an opinion of counsel reasonably acceptable to the Administrative Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e) of this Section 2.13, the terms "***United States***" and "***United States person***" shall have the meanings specified in Section 7701 of the Internal Revenue Code.

(e) Each Lender Party organized under the laws of a jurisdiction outside the United States shall, on or prior to the date of its execution and delivery of this Agreement in the case of each Initial Lender, the Swing Line Bank or the Initial Issuing Bank, as the case may be, and on or prior to the date of the Assignment and Assumption pursuant to which it becomes a Lender Party in the case of each other Lender Party, and from time to time thereafter as reasonably requested in writing by the Borrower (but only so long thereafter as such Lender Party remains lawfully able to do so), provide each of the Administrative Agent and the Borrower with two original Internal Revenue Service forms W-8BEN, W-8ECI or W-8IMY, or in the case of a Lender Party that has certified in writing to the Administrative Agent that it is claiming exemption from United States withholding tax under Section 871(h) or 881(c) of the Internal Revenue Code with respect to payments of "portfolio interest" from W-8BEN), (and, if such Lender Party delivers a form W-8BEN, a certificate representing that such Lender Party is not (i) a "*bank*" for purposes of Section 881(c) of the Internal Revenue Code, (ii) a ten-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Internal Revenue Code) of the Borrower or (iii) a controlled foreign corporation related to the Borrower (within the meaning of Section 864(d)(4) of the Internal Revenue Code)), as appropriate, or any successor or other form prescribed by the Internal Revenue Service, certifying that such Lender Party is exempt from or entitled to a reduced rate of United States withholding tax on payments pursuant to this Agreement or any other Loan Document or, in the case of a Lender Party providing a form W-8BEN, certifying that such Lender Party is a foreign corporation, partnership, estate or trust. If any such forms provided by a Lender Party at the time such Lender Party first becomes a party to this Agreement indicate a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Lender Party provides the appropriate form certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes solely for the periods governed by such forms. However, if at the date of the Assignment and Assumption pursuant to which a Lender Party becomes a party to this Agreement, the Lender Party assignor was entitled to payments under subsection (a) of this Section 2.13 in respect of United States withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to the Lender Party assignee on such date. None of the Lender Parties shall be entitled to payment pursuant to subsection (a) or (c) of this Section 2.13 with respect to any additional Taxes that result solely and directly from a change in either of the Applicable Lending Offices of such Lender Party (*other than* any such additional Taxes that are imposed as a result of a change in the applicable Requirements of Law, or in the interpretation of application thereof, occurring after the date of such change), unless such change is made pursuant to the terms of Section 2.10(e) or subsection (g) of this Section 2.13 or as a result of a request therefor by the Borrower.

(f) For any period with respect to which a Lender Party has failed to provide the Borrower with the appropriate form, certificate or other document described in subsection (e) of this Section 2.13 (*other than* if such failure is due to a change in the applicable Requirements of Law, or in the interpretation or application thereof, occurring after the date on which a form, certificate or other document originally was required to be provided or if such form, certificate or other document otherwise is not required under subsection (e) of this Section 2.13), such Lender Party shall not be entitled to indemnification under subsection (a) or (c) of this Section 2.13 with respect to Taxes imposed by the United States by reason of such failure; *provided*, *however*, that should a Lender Party become subject to Taxes because of its failure to deliver a form, certificate or other document required hereunder, the Borrower shall take such steps as such Lender Party shall reasonably request to assist such Lender Party in recovering such Taxes.

(g) Each of the Lender Parties hereby agrees that, upon the occurrence of any circumstances entitling such Lender Party to additional amounts pursuant to this Section 2.13, such Lender Party shall use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the reasonable judgment of such Lender Party, be otherwise disadvantageous to such Lender Party (other than by reason of administrative convenience or preference).

SECTION 2.14. *Sharing of Payments, Etc*. If any Lender Party shall obtain at any time any payment (whether voluntary, involuntary, through the exercise of any right of setoff, or otherwise) (a) on account of Obligations due and payable to such Lender Party under or in respect of this Agreement or any of the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations due and payable to such Lender Party at such time (other than pursuant to Section 2.10, 2.13, 8.04 or 8.07) to (ii) the aggregate amount of the Obligations due and payable to all Lender Parties at such time) of payments on account of the Obligations due and payable to all Lender Parties under or in respect of this Agreement and the other Loan Documents at such time obtained by all the Lender Parties at such time or (b) on account of Obligations owing (but not due and payable) to such Lender Party under or in respect of this Agreement or any of the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Obligations owing to such Lender Party at such time (other than pursuant to Section 2.10, 2.13, 8.04 or 8.07) to (ii) the aggregate amount of the Obligations owing (but not due and payable) to all Lender Parties under or in respect of this Agreement and the other Loan Documents at such time) of payments on account of the Obligations owing (but not due and payable) to all Lender Parties under or in respect of this Agreement and the other Loan Documents at such time obtained by all of the Lender Parties at such time, such Lender Party shall forthwith purchase from the other Lender Parties such interests or participating interests in the Obligations due and payable or owing to them, as the case may be, as shall be necessary to cause such purchasing Lender Party to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender Party, such purchase from each other Lender Party shall be rescinded and such other Lender Party shall repay to the purchasing Lender Party the purchase price to the extent of such Lender Party's ratable share (according to the proportion of (A) the purchase price paid to such Lender Party to (B) the aggregate purchase price paid to all Lender Parties) of such recovery, together with an amount equal to such Lender Party's ratable share (according to the proportion of (1) the amount of such other Lender Party's required repayment to (2) the total amount so recovered from the purchasing Lender Party) of any interest or other amount paid or payable by the purchasing Lender Party in respect of the total amount so recovered; *provided further* that, so long as the Obligations under the Loan Documents shall not have been accelerated, any excess payment received by any Appropriate Lender shall be shared on a pro rata basis only with other Appropriate Lenders. The Borrower hereby agrees that any Lender Party so purchasing an interest or participating interest from another Lender Party pursuant to this Section 2.14 may, to the fullest extent permitted under applicable law, exercise all its rights of payment (including the right of setoff) with respect to such an interest or participating interest, as the case may be, as fully as if such Lender Party were the direct creditor of the Borrower in the amount of such an interest or participating interest.

SECTION 2.15. *Use of Proceeds*. The proceeds of the Term A Advances were used as provided in the Existing Credit Agreement. The proceeds of the Term B Advances will be used as provided in the Existing Credit Agreement and the proceeds of the Revolving Credit Advances shall be available (and the Borrower agrees that it shall use such proceeds) solely for acquisitions as permitted herein and for general corporate purposes of the Borrower and its subsidiaries.

SECTION 2.16. *Defaulting Lenders*.

(a) In the event that, at any one time, (i) any Lender Party shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Advance to the Borrower and (iii) the Borrower shall be required to make any payment hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then the Borrower may, so long as no Default shall occur or be continuing at such time and to the fullest extent permitted by applicable law, set off and otherwise apply the Obligation of the Borrower to make such payment to or for the account of such Defaulting Lender against the obligation of such Defaulting Lender to make such Defaulted Advance. In the event that, on any date, the Borrower shall so set off and otherwise apply its obligation to make any such payment against the obligation of such Defaulting Lender to make any such Defaulted Advance on or prior to such date, the amount so set off and otherwise applied by the Borrower shall constitute for all purposes of this Agreement and the other Loan Documents an Advance by such Defaulting Lender made on the date of such setoff under the Facility pursuant to which such Defaulted Advance was originally required to have been made pursuant to Section 2.01. Such Advance

shall be a Base Rate Advance and shall be considered, for all purposes of this Agreement, to comprise part of the Borrowing in connection with which such Defaulted Advance was originally required to have been made pursuant to Section 2.01, even if the other Advances comprising such Borrowing shall be Eurodollar Rate Advances on the date such Advance is deemed to be made pursuant to this subsection (a). The Borrower shall notify the Administrative Agent at any time the Borrower exercises its right of set-off pursuant to this subsection (a) and shall set forth in such notice (A) the name of the Defaulting Lender and the Defaulted Advance required to be made by such Defaulting Lender and (B) the amount set off and otherwise applied in respect of such Defaulted Advance pursuant to this subsection (a). Any portion of such payment otherwise required to be made by the Borrower to or for the account of such Defaulting Lender which is paid by the Borrower, after giving effect to the amount set off and otherwise applied by the Borrower pursuant to this subsection (a), shall be applied by the Administrative Agent as specified in subsection (b) or (c) of this Section 2.16.

(b) In the event that, at any one time, (i) any Lender Party shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Amount to the Administrative Agent or any of the other Lender Parties and (iii) the Borrower shall make any payment hereunder or under any other Loan Document to the Administrative Agent for the account of such Defaulting Lender, then the Administrative Agent may, on its behalf or on behalf of such other Lender Parties and to the fullest extent permitted by applicable law, apply at such time the amount so paid by the Borrower to or for the account of such Defaulting Lender to the payment of each such Defaulted Amount to the extent required to pay such Defaulted Amount. In the event that the Administrative Agent shall so apply any such amount to the payment of any such Defaulted Amount on any date, the amount so applied by the Administrative Agent shall constitute for all purposes of this Agreement and the other Loan Documents payment, to such extent, of such Defaulted Amount on such date. Any such amount so applied by the Administrative Agent shall be retained by the Administrative Agent or distributed by the Administrative Agent to such other Lender Parties, ratably in accordance with the respective portions of such Defaulted Amounts payable at such time to the Administrative Agent and such other Lender Parties and, if the amount of such payment made by the Borrower shall at such time be insufficient to pay all Defaulted Amounts owing at such time to the Administrative Agent and the other Lender Parties, in the following order of priority:

(A) *first*, to the Administrative Agent for any Defaulted Amount then owing to the Administrative Agent;

(B) *second*, to the Issuing Bank and the Swing Line Bank for any Defaulted Amount then owing to them, in their capacities as such, ratably in accordance with such respective Defaulted Amounts then owing to such Issuing Bank and such Swing Line Bank; and

(C) *third*, to any other Lender Parties for any Defaulted Amounts then owing to such other Lender Parties, ratably in accordance with such respective Defaulted Amounts then owing to such other Lender Parties.

Any portion of such amount paid by the Borrower for the account of such Defaulting Lender remaining, after giving effect to the amount applied by the Administrative Agent pursuant to this subsection (b), shall be applied by the Administrative Agent as specified in subsection (c) of this Section 2.16.

(c) In the event that, at any one time, (i) any Lender Party shall be a Defaulting Lender, (ii) such Defaulting Lender shall not owe a Defaulted Advance or a Defaulted Amount and (iii) the Borrower, the Administrative Agent or any other Lender Party shall be required to pay or distribute any amount hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then the Borrower or such other Lender Party shall pay such amount to the Administrative Agent to be held by the Administrative Agent, to the fullest extent permitted by applicable law, in escrow or the Administrative Agent shall, to the fullest extent permitted by applicable law, hold in escrow such amount otherwise held by it. Any funds held by the Administrative Agent in escrow under this subsection (c) shall be deposited by the Administrative Agent in an account with CSFB, in the name and under the control of the Administrative Agent, but subject to the provisions of this subsection (c). The terms applicable to such account, including the rate of interest

payable with respect to the credit balance of such account from time to time, shall be CSFB's standard terms applicable to escrow accounts maintained with it. Any interest credited to such account from time to time shall be held by the Administrative Agent in escrow under, and applied by the Administrative Agent from time to time in accordance with the provisions of, this subsection (c). The Administrative Agent shall, to the fullest extent permitted by applicable law, apply all funds so held in escrow from time to time to the extent necessary to make any Advances required to be made by such Defaulting Lender and to pay any amount payable by such Defaulting Lender hereunder and under the other Loan Documents to the Administrative Agent or any other Lender Party, as and when such Advances or amounts are required to be made or paid and, if the amount so held in escrow shall at any time be insufficient to make and pay all such Advances and amounts required to be made or paid at such time, in the following order of priority:

(A) *first*, to the Administrative Agent for any amount then due and payable by such Defaulting Lender to the Administrative Agent hereunder;

(B) *second*, to the Issuing Bank and the Swing Line Bank for any amounts then due and payable to them hereunder, in their capacities as such, by such Defaulting Lender, ratably in accordance with such amounts then due and payable to such Issuing Bank and such Swing Line Bank;

(C) *third*, to any other Lender Parties for any amount then due and payable by such Defaulting Lender to such other Lender Parties hereunder, ratably in accordance with such respective amounts then due and payable to such other Lender Parties; and

(D) *fourth*, to the Borrower for any Advance then required to be made by such Defaulting Lender pursuant to a Commitment of such Defaulting Lender.

In the event that any Lender Party that is a Defaulting Lender shall, at any time, cease to be a Defaulting Lender, any funds held by the Administrative Agent in escrow at such time with respect to such Lender Party shall be distributed by the Administrative Agent to such Lender Party and applied by such Lender Party to the Obligations owing to such Lender Party at such time under this Agreement and the other Loan Documents ratably in accordance with the respective amounts of such Obligations outstanding at such time.

(d) The rights and remedies against a Defaulting Lender under this Section 2.16 are in addition to other rights and remedies that the Borrower may have against such Defaulting Lender with respect to any Defaulted Advance and that the Administrative Agent or any Lender Party may have against such Defaulting Lender with respect to any Defaulted Amount.

ARTICLE III

CONDITIONS OF EFFECTIVENESS OF THIS AGREEMENT AND LENDING AND ISSUANCES OF LETTERS OF CREDIT

SECTION 3.01. *Conditions Precedent to Effectiveness of this Agreement*. This Agreement shall be effective on the date when each of the following conditions precedent are satisfied:

(a) The Administrative Agent shall have received on or before the Closing Date the following, each dated such day (unless otherwise specified), in form and substance satisfactory to the Administrative Agent (unless otherwise specified) and in sufficient copies for each Lender Party:

(i) Certified copies of the resolutions of the Board of Directors of each Loan Party approving the Transaction and each Loan Document to which it is or is to be a party, and of all documents evidencing other necessary Governmental Authorizations and other necessary corporate actions or third party approvals and consents, if any, with respect to the Transaction and each Loan Document to which it is or is to be a party.

(ii) a copy of a certificate of the Secretary of State of the jurisdiction of incorporation of each Loan Party that is a Domestic Subsidiary, dated reasonably near the Closing Date, certifying (A) as to a

true and correct copy of the charter (or comparable Constitutive Document) of such Loan Party and each amendment thereto on file in such Secretary's office (B) that such amendments are the only amendments to such Loan Party's charter (or comparable Constitutive Document) on file in such Secretary's office, and (C) that such Loan Party is duly incorporated and in good standing or presently subsisting under the laws of the State of the jurisdiction of its incorporation; *provided*, that, in the case of (A) and (B), such certifications shall only be required to the extent only that there have been amendments to the relevant documents since the delivery of such documents pursuant to the Existing Credit Agreement.

(iii) A certificate of each Loan Party, signed on behalf of such Loan Party by its President or a Vice President and its Secretary or any Assistant Secretary, dated the Closing Date (the statements made in which certificate shall be true on and as of the Closing Date), certifying as to (A) the absence of any amendments to the charter (or comparable Constitutive Document) of such Loan Party provided pursuant to the Existing Credit Agreement, (B) the absence of any amendments to the bylaws (or comparable Constitutive Document) provided pursuant to the terms of the Existing Credit Agreement, or, in respect of any Loan Party not a party to the Existing Credit Agreement, a true and correct copy of the bylaws (or comparable Constitutive Document) of such Loan Party as in effect on the date on which the resolutions referred to in Section 3.01(a)(i) were adopted and on the Closing Date, (C) the due incorporation and good standing or valid existence of such Loan Party as a corporation organized under the laws of the jurisdiction of its incorporation, and the absence of any proceeding for the dissolution or liquidation of such Loan Party, and (D) the truth of the representations and warranties contained in the Loan Documents as though made on and as of the Closing Date except for representations and warranties that by their terms speak as of another specific date, which shall be true as of such specific date.

(iv) A certificate of the Secretary or an Assistant Secretary of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign each Loan Document to which it is or is to be a party and the other documents to be delivered hereunder and thereunder.

(v) Such financial, business and other information regarding each Loan Party and its Subsidiaries as the Lender Parties shall have reasonably requested, including, without limitation, information as to possible contingent liabilities, tax matters, environmental matters, obligations under Plans, Multiemployer Plans and Welfare Plans, collective bargaining agreements and other arrangements with employees, audited annual financial statements dated December 31, 2002, interim financial statements dated the end of the most recent fiscal quarter for which financial statements are available, *pro forma* financial statements as to the Borrower and forecasts prepared by management of the Company, of balance sheets, income statements and cash flow statements on a quarterly basis for the first year following the Closing Date and on an annual basis for five years thereafter.

(vi) Confirmation and ratification of the continued validity of the Subsidiary Guarantee and the Collateral Documents, such confirmation and ratification to be in the form attached hereto as Exhibit J.

(b) All Governmental Authorizations and all third party consents and approvals necessary in connection with the Transaction shall have been obtained (without the imposition of any conditions that are not acceptable to the Lender Parties) and shall remain in effect; and no Requirements of Law shall be applicable in the judgment of the Lender Parties that restrains, prevents or imposes materially adverse conditions upon the Transaction.

(c) The Borrower shall have paid all accrued fees and expenses of the Agents.

(d) Each of the Term B Lenders and, to the extent that the Term B Lenders do not comprise the Required Lenders under the terms of the Credit Agreement, such Term A Lenders and Revolving Credit Lenders as are required to comprise, together with the Term B Lenders, the Required Lenders, shall have executed the Consent to the amendments to the Existing Credit Agreement.

SECTION 3.02. *Conditions Precedent to Each Borrowing and Issuance and Renewal*. The obligation of each Appropriate Lender to make an Advance (other than a Letter of Credit Advance made by the Issuing Bank or a Revolving Credit Lender pursuant to Section 2.03(b) and a Swing Line Advance made by a Revolving Credit Lender pursuant to Section 2.02(b)) on the occasion of each Borrowing excluding any conversion of Advances pursuant to Section 2.09 as provided therein), and the obligation of the Issuing Bank to issue a Letter of Credit (including the initial issuance but excluding any Existing Letters of Credit) or renew a Letter of Credit and the right of the Borrower to request a Swing Line Borrowing, shall be subject to the further conditions precedent that on the date of such Borrowing or issuance or renewal (a) the following statements shall be true and the Administrative Agent shall have received for the account of such Lender or the Issuing Bank a certificate signed by a duly authorized officer of the Borrower, dated the date of such Borrowing or issuance or renewal, stating that (and each of the giving of the applicable Notice of Borrowing, Notice of Swing Line Borrowing, Notice of Issuance or Notice of Renewal and the acceptance by the Borrower of the proceeds of such Borrowing or of such Letter of Credit or the renewal of such Letter of Credit shall constitute a representation and warranty by the Borrower that both on the date of such notice and on the date of such Borrowing or issuance or renewal such statements are true):

(i) the representations and warranties contained in each Loan Document are correct on and as of such date, before and after giving effect to such Borrowing or issuance or renewal and to the application of the proceeds therefrom, as though made on and as of such date except (A) for any such representations or warranties that, by their terms, refer to a specific date other than the date of such Borrowing or issuance or renewal, in which case as of such specific date and (B) if any Required Financial Information has been delivered to the Administrative Agent and the Lender Parties on or prior to the date of such Borrowing or issuance or renewal, that the Consolidated financial statements of the Borrower and its Subsidiaries referred to in Section 4.01(g)(i) shall be deemed at any time and from time to time after the Closing Date to refer to the Consolidated financial statements of the Borrower and its Subsidiaries comprising part of the Required Financial Information most recently delivered to the Administrative Agent and the Lender Parties pursuant to Sections 5.03(b) and 5.03(c) (except that in the case of financial statements delivered pursuant to Section 5.03(c), such financial statements may not contain all notes and may be subject to year end audit adjustments), respectively, on or prior to the date of such Borrowing, issuance or renewal; and

(ii) no Default has occurred and is continuing, or would result from such Borrowing or issuance or renewal or from the application of the proceeds therefrom;

and (b) the Administrative Agent shall have received such other approvals, opinions or documents as any Appropriate Lender through the Administrative Agent may reasonably request.

SECTION 3.03. *Determinations Under Section 3.01*. For purposes of determining compliance with the conditions specified in Section 3.01, each Lender Party shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to the Lender Parties unless an officer of the Administrative Agent responsible for the transactions contemplated by the Loan Documents shall have received notice from such Lender Party, specifying its objection thereto.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES

SECTION 4.01. *Representations and Warranties of the Borrower*. The Borrower represents and warrants as follows:

(a) Each Loan Party and each of its Subsidiaries (i) is duly organized, validly existing and in good standing (if such concept is applicable) under the laws of the jurisdiction of its organization, (ii) is duly

qualified and in good standing as a foreign business enterprise (if such concept is applicable) in each other jurisdiction in which it owns or leases property or in which the conduct of its business requires it to so qualify or be licensed except where the failure to be so qualified or licensed would not result in a Material Adverse Effect and (iii) has all requisite power and authority (including, without limitation, all material Governmental Authorizations) to own or lease and operate its properties and to carry on its business as now conducted and as proposed to be conducted.

(b) Set forth on Schedule 4.01(b) hereto is a complete and accurate list of all Subsidiaries of the Borrower, showing as of the date hereof (as to each such Subsidiary) the jurisdiction of its organization, the number of shares or other units of each class of its Equity Interests authorized, and the number outstanding, on the date hereof and the percentage of each such class of its Equity Interests owned (directly or indirectly) by the Borrower or any Subsidiary thereof and the number of shares or other units covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the date hereof, except for any obligations or rights of the Borrower or any of its Subsidiaries to acquire any minority interest in any Subsidiary of the Borrower that is a partnership or a limited liability company. All of the outstanding Equity Interests in each such Subsidiary have (A) (in the case of Subsidiaries that are corporations) been validly issued, are fully paid and non-assessable and are (B) to the extent owned by the Borrower or one or more of its Subsidiaries, free and clear of all Liens, except those created under the Collateral Documents or Permitted Liens.

(c) The execution, delivery and performance by each Loan Party of each Loan Document to which it is or is to be a party, and the consummation of the Transaction, are within such Loan Party's corporate, partnership or limited liability company powers, as applicable, have been duly authorized by all necessary corporate, partnership or limited liability company action, as applicable, and do not (i) contravene such Loan Party's Constitutive Documents, (ii) violate any Requirements of Law, (iii) conflict with or result in the breach of, or constitute a default or require any payment to be made under, any material contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument binding on or affecting any Loan Party or any of its properties or (iv) except for the Liens created under the Loan Documents, result in or require the creation or imposition of any Lien upon or with respect to any of the properties of any Loan Party. No Loan Party is in violation of any such Requirements of Law or in breach of any such contract, loan agreement, indenture, mortgage, deed of trust, lease or other instrument, the violation or breach of which would be reasonably likely to have a Material Adverse Effect.

(d) No Governmental Authorization, and no other authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required for (i) the due execution, delivery, recordation, filing or performance by any Loan Party of any Loan Document to which it is or is to be a party, or for the consummation of the Transaction, (ii) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (iii) the perfection or maintenance of the Liens created under the Collateral Documents on such of the Collateral located in the United States in which a Lien may be perfected by the filing of financing statements, the recordation of security agreements with the U.S. Patent and Trademark Office or the U.S. Copyright Office or the delivery of Collateral (including the first priority nature thereof) or (iv) the exercise by any Agent or any Lender Party of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for (A) the authorizations, approvals, filings and actions on Schedule 4.01(d) hereto, all of which have been duly obtained and are in full force and effect or will be obtained and in full force and effect prior to the Closing Date, (B) filings, notices, recordings and other similar actions necessary for the creation or perfection of the Liens and security interests contemplated by the Loan Documents and (C) the actions required by laws generally with respect to the exercise by secured creditors of their rights and remedies. All applicable waiting periods in connection with the Transaction have expired without any action having been taken by any competent authority restraining, preventing or imposing materially adverse conditions upon the Transaction or the rights of the Loan Parties or their Subsidiaries freely to transfer or otherwise dispose of, or to create any Lien on, any properties now owned or hereafter acquired by any of them.

(e) This Agreement has been, and each other Loan Document when delivered hereunder will have been, duly executed and delivered by each Loan Party thereto. This Agreement is, and each other Loan Document when delivered hereunder will be, the legal, valid and binding obligation of each Loan Party thereto, enforceable against such Loan Party in accordance with its terms.

(f) There is no action, suit, investigation, litigation or proceeding affecting any Loan Party or any of its Subsidiaries, including any Environmental Action, pending or, to the knowledge of the Borrower, threatened before any Governmental Authority or arbitrator that (i) could be reasonably likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of any Loan Document or the consummation of the Transaction, except as described on Schedule 4.01(f) hereto or disclosed prior to the Closing Date in the Borrower's filings made with the Securities and Exchange Commission.

(g) (i) The Consolidated balance sheet of the Borrower and its Subsidiaries as at December 31, 2002, and the related Consolidated statement of income and Consolidated statement of cash flows of the Borrower and its Subsidiaries for the fiscal year then ended, accompanied by an unqualified opinion of KPMG LLP, independent public accountants, copies of which have been furnished to each Lender Party, fairly present the Consolidated financial condition of the Borrower and its Subsidiaries as at such date and the Consolidated results of operations of the Borrower and its Subsidiaries for the period ended on such date, all in accordance with generally accepted accounting principles applied on a consistent basis, and (ii) since December 31, 2002, there has been no Material Adverse Change.

(h) The Consolidated forecasted balance sheet, statement of income and statement of cash flows of the Borrower and its Subsidiaries delivered to the Lender Parties pursuant to Section 3.01(a)(vi) or Section 5.03 were prepared in good faith on the basis of the assumptions stated therein, which assumptions were believed to be reasonable in light of the conditions existing at the time of delivery of such forecasts, and represented, at the time of delivery, the Borrower's best estimate of its future financial performance.

(i) Neither the Information Memorandum nor any other information, exhibit or report furnished by any Loan Party to any Agent or any Lender Party in connection with the negotiation and syndication of the Loan Documents or pursuant to the terms of the Loan Documents contained any untrue statement of a material fact or omitted to state a material fact necessary to make the statements made therein not misleading.

(j) The Borrower is not engaged in the business of extending credit for the purpose of purchasing or carrying Margin Stock, and no proceeds of any Advance or drawings under any Letter of Credit will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock, except for the purchase by the Borrower of its common stock as contemplated in Sections 5.02(g)(v) and (vi).

(k) Neither any Loan Party nor any of its Subsidiaries is an "investment company", or an "affiliated person" of, or "promoter" or "principal underwriter" for, an "investment company", as such terms are defined in the Investment Company Act of 1940, as amended. Neither any Loan Party nor any of its Subsidiaries is a "holding company", or a "subsidiary company" of a "holding company", or an "affiliate" of a "holding company" or of a "subsidiary company" of a "holding company", as such terms are defined in the Public Utility Holding Company Act of 1935, as amended. Neither the making of any Advances, nor the issuance of any Letters of Credit, nor the application of the proceeds or repayment thereof by the Borrower, nor the consummation of the other transactions contemplated by the Loan Documents and Related Documents, will violate any provision of any such Act or any rule, regulation or order of the Securities and Exchange Commission thereunder.

(l) Upon making of the filings and taking of the other actions necessary to create, perfect and protect the security interest in the Collateral created under the Collateral Documents, the Collateral Documents create in favor of the Administrative Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, perfected first priority security interest in the Collateral, securing the payment of the Secured Obligations, subject to Permitted Liens. The Loan Parties are the legal and beneficial owners of the Collateral free and clear of any Lien, except for the liens and security interests created or permitted under the Loan Documents.

(m) Each Loan Party is, individually and together with its Subsidiaries, Solvent.

(n) (i) No ERISA Event has occurred or is reasonably expected to occur with respect to any Plan that has resulted in or is reasonably expected to result in a material liability of any Loan Party or any ERISA Affiliate.

(ii) Schedule B (Actuarial Information) to the most recent annual report (Form 5500 Series) for each Plan, copies of which have been filed with the Internal Revenue Service and furnished to the Lender Parties, is complete and accurate and fairly presents the funding status of such Plan, and since the date of such Schedule B there has been no material adverse change in such funding status.

(iii) Neither any Loan Party nor any ERISA Affiliate has incurred or is reasonably expected to incur any Withdrawal Liability exceeding $100,000 to any Multiemployer Plan.

(iv) Neither any Loan Party nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or has been terminated, within the meaning of Title IV of ERISA, and no such Multiemployer Plan is reasonably expected to be in reorganization or to be terminated, within the meaning of Title IV of ERISA.

(o) Except as described on Schedule 4.01(o) hereto:

(i) The operations and properties of each Loan Party comply in all material respects with all applicable Environmental Laws and Environmental Permits, except where any such failure to comply would not be reasonably expected to have a Material Adverse Effect, all past non-compliance with such Environmental Laws and Environmental Permits has been resolved without ongoing obligations or costs, except where any such failure to comply would not be reasonably expected to have a Material Adverse Effect and, to Borrower's knowledge, no circumstances exist that could be reasonably likely to (A) form the basis of an Environmental Action against any Loan Party or any of their properties that could have a Material Adverse Effect or (B) cause any such property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law.

(ii) None of the properties currently or, to Borrower's knowledge, formerly owned or operated by any Loan Party is listed or proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or, to Borrower's knowledge, is adjacent to any such property; and except to the extent that any of the following would not have a Material Adverse Effect, (A) there are no and, to Borrower's knowledge, never have been any underground or aboveground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or, to its knowledge, on any property formerly owned or operated by any Loan Party, (B) there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party, and (C) Hazardous Materials have not been released, discharged or disposed of on any property currently or, to Borrower's knowledge, formerly owned or operated by any Loan Party except in compliance with Environmental Laws.

(iii) No Loan Party is undertaking, and has not completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law; and all Hazardous Materials generated, used, treated, handled or stored at, or transported to or from, any property currently or formerly owned or operated by any Loan Party have been disposed of in a manner not reasonably expected to result in liability to any Loan Party that, individually or in the aggregate, would have a Material Adverse Effect.

(p) Each Loan Party and each of its Affiliates has filed, has caused to be filed or has been included in all tax returns (Federal, state, local and foreign) required to be filed and has paid all taxes shown thereon to be due, together with applicable interest and penalties. Set forth on Schedule 4.01(p) hereto is a complete and accurate list, as of the date hereof, of each Open Year of each Loan Party and each of its Affiliates. The aggregate unpaid amount, as of the date hereof, of adjustments to the Federal income tax liability of each

Loan Party and each of its Affiliates proposed by the Internal Revenue Service with respect to Open Years does not exceed $62,500,000. No issues have been raised by the Internal Revenue Service in respect of Open Years that, in the aggregate, could be reasonably likely to have a Material Adverse Effect.

(q) Set forth on Schedule 4.01(q) hereto is a complete and accurate list of all Liens (other than Permitted Liens) on the property or assets of any Loan Party, showing as of the date hereof the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party subject thereto.

(r) Set forth on Schedule 4.01(r) hereto is a complete and accurate list of all Investments held by any Loan Party on the date hereof, showing the amount, obligor or issuer and maturity, if any, thereof.

(s) Except as set forth on Schedule 4.01(s), the dialysis facilities operated by each of the Borrower and its Subsidiaries (the "***Dialysis Facilities***") are qualified for participation in the Medicare programs and the Medicaid programs in which they participate (together with their respective intermediaries or carriers, the "***Government Reimbursement Programs***") and are entitled to reimbursement under the Medicare program for services rendered to qualified Medicare beneficiaries, and comply in all material respects with the conditions of participation in all Government Reimbursement Programs in which they participate or have participated. Except as set forth on Schedule 4.01(s), there is no pending or, to Borrower's knowledge, threatened proceeding or investigation by any of the Government Reimbursement Programs with respect to (i) the Borrower's or any of its Subsidiaries' qualification or right to participate in any Government Reimbursement Program in which they participate or have participated, (ii) the compliance or non-compliance by the Borrower or any of its Subsidiaries with the terms or provisions of any Government Reimbursement Program in which they participate or have participated, or (iii) the right of the Borrower or any of its Subsidiaries to receive or retain amounts received or due or to become due from any Government Reimbursement Program in which they participate or have participated, which proceeding or investigation, together with all other such proceedings and investigations, could reasonably be expected to (x) have a Material Adverse Effect or (y) result in Consolidated net operating revenues for any (including any future) four fiscal quarter period of the Borrower constituting less than 95% of Consolidated net operating revenues for the immediately preceding four fiscal quarter period of the Borrower.

(t) Neither the Borrower nor any of its Subsidiaries, nor any of their respective officers or directors has, on behalf of the Borrower or any of its Subsidiaries, knowingly or willfully violated the federal Medicare and Medicaid statutes, 42 U.S.C. § 1320a-7b, or the regulations promulgated pursuant to such statutes or related state or local statutes or regulations, including but not limited to the following: (i) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any applications for any benefit or payment; (ii) knowingly and willfully making or causing to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment; (iii) failing to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment on its own behalf or on behalf of another, with intent to secure such benefit or payment fraudulently; (iv) knowingly and willfully soliciting or receiving any remuneration (including any kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (a) in return for referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicare, Medicaid or other applicable government payers, or (b) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service or item for which payment may be made in whole or in part by Medicare, Medicaid or other applicable government payers. With respect to this Section, knowledge of an individual director or officer of the Borrower or a Subsidiary of any of the events described in this Section shall not be imputed to the Borrower or such Subsidiary unless such knowledge was obtained or learned by the director or officer in his or her official capacity as a director or officer of the Borrower or such Subsidiary.

(u) The subordination provisions of (i) the Subordinated Notes Documents, (ii) the Subordinated Notes, (iii) any Subordinated Debt now existing or hereafter incurred or assumed by any Loan Party and (iv) any guarantee by any Loan Party of any Subordinated Debt will be enforceable against the holders thereof, and

the Advances and all other monetary obligations hereunder and all monetary obligations under the Subsidiary Guarantee will constitute "Senior Indebtedness" and "Designated Senior Indebtedness" (or any comparable terms) as defined in such provisions.

ARTICLE V

COVENANTS OF THE BORROWER

SECTION 5.01. *Affirmative Covenants*. So long as any Advance or any other Obligation of any Loan Party under any Loan Document shall remain unpaid, any Letter of Credit shall be outstanding or any Lender Party shall have any Commitment hereunder, the Borrower will:

(a) *Compliance with Laws, Etc*. Comply, and cause each of its Subsidiaries to comply, in all material respects, with all applicable Requirements of Law, such compliance to include, without limitation, compliance with ERISA and the Racketeer Influenced and Corrupt Organizations Chapter of the Organized Crime Control Act of 1970, except to the extent that non-compliance could not be reasonably expected to result in a Material Adverse Effect.

(b) *Payment of Taxes, Etc*. Pay and discharge, and cause each of its Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all lawful claims that, if unpaid, might by law become a Lien upon its property; *provided, however*, that neither the Borrower nor any of its Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim (A) the non-payment or non-discharge of which could not be reasonably expected to result in a Material Adverse Effect or (B) that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors and subjects the property to a substantial risk of forfeiture.

(c) *Compliance with Environmental Laws*. Comply, and cause each of its Subsidiaries and all lessees and other Persons operating or occupying its properties to comply, in all material respects, with all applicable Environmental Laws and Environmental Permits; obtain and renew and cause each of its Subsidiaries to obtain and renew all Environmental Permits necessary for its operations and properties; and conduct, and cause each of its Subsidiaries to conduct, any investigation, study, sampling and testing, and undertake any cleanup, removal, remedial or other action necessary to remove and clean up all Hazardous Materials from any of its properties, in accordance with the requirements of all Environmental Laws; *provided, however*, that neither the Borrower nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and appropriate reserves are being maintained with respect to such circumstances.

(d) *Maintenance of Insurance*. Maintain, and cause each of its Subsidiaries to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Borrower or such Subsidiary operates.

(e) *Preservation of Corporate Existence, Etc*. Preserve and maintain, and cause each of its Subsidiaries to preserve and maintain, its existence, legal structure, legal name, rights (charter and statutory) and material franchises; *provided, however*, that neither the Borrower nor any of its Subsidiaries shall be required to preserve any right, privilege or franchise if the Board of Directors of the Borrower or such Subsidiary shall determine that the preservation thereof is no longer desirable in the conduct of the business of the Borrower or such Subsidiary, as the case may be, and that the loss thereof is not disadvantageous in any material respect to the Borrower, such Subsidiary or the Lender Parties and any Subsidiary may merge with or into or be liquidated into another Subsidiary or the Borrower as permitted under Section 5.02(d).

(f) *Visitation Rights*. At any reasonable time and from time to time, and, unless a Default or an Event of Default shall have occurred and be continuing, upon reasonable notice, permit any of the Agents or any of the Lender Parties, or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Borrower and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Borrower and any of its Subsidiaries with any of their officers or directors and with their independent certified public accountants (*provided* that representatives of the Borrower shall be entitled to notice of and to participate in any such discussion).

(g) *Keeping of Books*. Keep, and cause each of its Subsidiaries to keep, proper books of record and account, in which full and correct entries shall be made of all financial transactions and the assets and business of the Borrower and each such Subsidiary using sound business practices sufficient to permit the preparation of financial statements based thereon in accordance with generally accepted accounting principles in effect from time to time.

(h) *Maintenance of Properties, Etc*. Maintain and preserve, and cause each of its Subsidiaries to maintain and preserve, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted.

(i) *Transactions with Affiliates*. Conduct, and cause each of its Subsidiaries to conduct, all transactions otherwise permitted under the Loan Documents with any of their Affiliates on terms that are fair and reasonable and no less favorable to the Borrower or such Subsidiary than it would obtain in a comparable arm's-length transaction with a Person not an Affiliate.

(j) *Covenant to Guarantee Obligations and Give Security*. Upon (x) the formation or acquisition of any new direct or indirect Subsidiaries by any Loan Party or (y) the acquisition of any personal property or real property fee interests (other than any real property fee interest on which the only business conducted by the Borrower or any of its Subsidiaries is the operation of a Dialysis Facility and services related or incidental thereto) by any Loan Party, which, in the judgment of the Administrative Agent, shall not already be subject to a perfected first priority security interest in favor of the Administrative Agent for the benefit of the Secured Parties, then the Borrower shall, in each case at the Borrower's expense:

(i) in connection with the formation or acquisition of a wholly-owned Domestic Subsidiary, not later than 15 Business Days following the last day of the Fiscal Quarter in which such formation or acquisition occurs, cause each such Domestic Subsidiary, and cause each direct and indirect parent of such Domestic Subsidiary (if it has not already done so), to duly execute and deliver to the Administrative Agent a guarantee or guarantee supplement, in form and substance satisfactory to the Administrative Agent, guaranteeing the other Loan Parties' obligations under the Loan Documents, and, in connection with the formation or acquisition of a Foreign Subsidiary, not later than 15 Business Days following the last day of the Fiscal Quarter in which such formation or acquisition occurs, pledge or, cause its respective Subsidiary to pledge, to the Administrative Agent for the benefit of the Secured Parties 65% of the Equity Interests in such Foreign Subsidiary,

(ii) not later than 15 Business Days following the last day of the Fiscal Quarter in which such formation or acquisition occurs, furnish to the Administrative Agent a description of (A) the material personal properties and such real property fee interests of such wholly-owned Domestic Subsidiary and (B) such property which was not previously subject to such perfected security interest, in each case in detail satisfactory to the Administrative Agent,

(iii) not later than 15 Business Days following the last day of the Fiscal Quarter in which such formation or acquisition occurs, duly execute and deliver, and cause each such wholly-owned Domestic Subsidiary and each direct and indirect parent of such wholly-owned Domestic Subsidiary (if it has not already done so) to duly execute and deliver, to the Administrative Agent pledges, assignments, mortgages, deeds of trust, security agreements and security agreement supplements, as specified by and in form and substance satisfactory to the Administrative Agent, with respect to the Equity Interests in and assets of such wholly-owned Domestic Subsidiary and such personal property and such real property fee interests,

(iv) not later than 15 Business Days following the last day of the Fiscal Quarter in which such formation or acquisition occurs, take, and cause such wholly-owned Subsidiary or such parent to take, whatever action (including, without limitation, the filing of Uniform Commercial Code financing statements, the filing of mortgages or deeds of trust, the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the opinion of the Administrative Agent to vest in the Administrative Agent (or in any representative of the Administrative Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the pledges, assignments, mortgages, deeds of trust, security agreements and security agreement supplements delivered pursuant to this Section 5.01(j), enforceable against all third parties in accordance with their terms,

(v) not later than 45 days following the last day of the Fiscal Quarter in which such formation or acquisition occurs, deliver to the Administrative Agent, upon the request of the Administrative Agent in its sole discretion, a signed copy of a favorable opinion (subject to customary qualifications, limitations and exceptions), addressed to the Administrative Agent and the other Secured Parties, of counsel for the Loan Parties acceptable to the Administrative Agent as to the matters contained in clauses (i), (iii) and (iv) above, as to such guarantees, guarantee supplements, pledges, assignments, mortgages, deeds of trust, security agreements and security agreement supplements being legal, valid and binding obligations of the respective Loan Party thereto enforceable in accordance with their terms, as to the matters contained in clause (iv) above, as to such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such properties, and as to such other matters as the Administrative Agent may reasonably request, and

(vi) at any time and from time to time, promptly execute and deliver any and all further instruments and documents and take all such other action as the Administrative Agent may deem necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, pledges, assignments, mortgages, deeds of trust, security agreements and security agreement supplements.

(k) *Further Assurances*.

(i) Promptly upon request by any Agent, or any Lender Party through the Administrative Agent, correct, and cause each of its Subsidiaries promptly to correct, any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof; and

(ii) Promptly upon request by any Agent, or any Lender Party through the Administrative Agent, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and re-register any and all such further acts, pledge agreements, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as any Agent, or any Lender Party through the Administrative Agent, may reasonably require from time to time in order to (A) carry out more effectively the purposes of the Loan Documents, (B) to the fullest extent permitted by applicable law, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (C) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (D) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party is or is to be a party, and cause each of its Subsidiaries to do so.

SECTION 5.02. *Negative Covenants*. So long as any Advance or any other Obligation of any Loan Party under any Loan Document shall remain unpaid, any Letter of Credit shall be outstanding or any Lender Party shall have any Commitment hereunder, the Borrower will not, at any time:

(a) *Liens, Etc*. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Lien on or with respect to any of its properties of any character whether now

owned or hereafter acquired, or sign or file or suffer to exist, or permit any of its Subsidiaries to sign or file or suffer to exist, under the Uniform Commercial Code of any jurisdiction, a financing statement that names the Borrower or any of its Subsidiaries as debtor, or sign or suffer to exist, or permit any of its Subsidiaries to sign or suffer to exist, any security agreement authorizing any secured party thereunder to file such financing statement, or assign, or permit any of its Subsidiaries to assign, any accounts or other right to receive income, except:

(i) Liens created under the Loan Documents;

(ii) Permitted Liens;

(iii) Liens existing on the Closing Date and described on Schedule 4.01(q) hereto;

(iv) Liens upon or in real property or equipment acquired or held by the Borrower or any of its Subsidiaries in the ordinary course of business to secure the purchase price of such property or equipment or to secure Debt incurred solely for the purpose of financing the acquisition, construction or improvement of any such property or equipment to be subject to such Liens, or Liens existing on any such property or equipment at the time of acquisition (other than any such Liens created in contemplation of such acquisition that do not secure the purchase price), or extensions, renewals or replacements of any of the foregoing for the same or a lesser amount; *provided*, *however*, that (a) such Liens shall be created not more than 180 days after the date of acquisition or completion of construction or improvement and (b) no such Lien shall extend to or cover any property other than the property or equipment being acquired, constructed or improved and any attachments thereto and proceeds thereof, and no such extension, renewal or replacement shall extend to or cover any property not theretofore subject to the Lien being extended, renewed or replaced; and *provided further* that the aggregate principal amount of the Debt secured by Liens permitted by this clause (iv) shall not exceed the amount permitted under Section 5.02(b)(v) at any time outstanding;

(v) Liens arising in connection with Capitalized Leases permitted under Section 5.02(b)(vi); *provided* that no such Lien shall extend to or cover any Collateral or assets other than the assets subject to such Capitalized Leases; and

(vi) the replacement, extension or renewal of any Lien permitted by clause (iii) above upon or in the same property theretofore subject thereto or the replacement, extension or renewal (without increase in the amount or change in any direct or contingent obligor) of the Debt secured thereby.

(b) *Debt*. Create, incur, assume or suffer to exist, or permit any of its Subsidiaries to create, incur, assume or suffer to exist, any Debt, except:

(i) Debt under the Loan Documents;

(ii) Debt existing on the Closing Date and described on Schedule 5.02(b) hereto;

(iii) Debt of the Borrower in respect of Hedge Agreements (A) existing on the date of this Agreement and described in Schedule 5.02(b) hereto or (B) entered into from time to time after the date of this Agreement with counter parties that are Lender Parties at the time such Hedge Agreement is entered into (or Affiliates of such Lender Party at such time); and which counter party is then a party to the Intercreditor Agreement; *provided* that, in all cases under this clause (iii), all such Hedge Agreements shall not be speculative in nature (including, without limitation, with respect to the term and purpose thereof);

(iv) Debt of (A) the Borrower owing to any other Loan Party, and (B) any of the Subsidiaries owing to the Borrower or any other Loan Party to the extent permitted under Section 5.02(f)(viii);

(v) Debt incurred after the date of this Agreement and secured by Liens expressly permitted under Section 5.02(a)(iv) in an aggregate principal amount not to exceed, when aggregated with the principal amount of all Debt incurred under clause (vi) of this Section 5.02(b), $50,000,000 any time outstanding;

(vi) Capitalized Leases incurred after the date of this Agreement which, when aggregated with the principal amount of all Debt incurred under clause (v) of this Section 5.02(b), do not exceed $50,000,000 at any time outstanding;

(vii) Contingent Obligations of (A) the Borrower guaranteeing all or any portion of the outstanding Obligations of any of the Subsidiaries and (B) any Subsidiary of the Borrower guaranteeing any Obligations of the Borrower or another Subsidiary thereof; *provided* that each such primary Obligation is otherwise permitted under the terms of the Loan Documents;

(viii) Unsecured Debt not otherwise permitted under this Section 5.02(b) in an aggregate amount not to exceed $50,000,000 at any time outstanding;

(ix) Endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business;

(x) Debt comprised of indemnities given by the Borrower or any of its Subsidiaries, or guarantees or other similar undertakings by the Borrower or any of its Subsidiaries entered into in lieu thereof, in favor of the purchaser of property and assets of the Borrower and its Subsidiaries being sold, leased, transferred or otherwise disposed of in accordance with this Agreement and covering liabilities incurred by the Borrower or its applicable Subsidiary in respect of such property and assets prior to the date of consummation of the sale, lease, transfer or other disposition thereof, which indemnities, guarantees or undertakings are required under the terms of the documentation for such sale, lease, transfer or other disposition;

(xi) Debt comprised of liabilities or other Obligations assumed or retained by the Borrower or any of its Subsidiaries from Subsidiaries of the Borrower that are, or all or substantially all of the property and assets of which are, sold, leased, transferred or otherwise disposed of pursuant to Section 5.02(e)(iii) or (vi); *provided* that such liabilities or other Obligations were not created or incurred in contemplation of the related sale, lease, transfer or other disposition;

(xii) Unsecured Subordinated Debt or Redeemable Preferred Interests not otherwise permitted under this Section 5.02(b), *provided* that the aggregate amount of the outstanding principal amount of such unsecured Subordinated Debt and the maximum amount of the purchase price, redemption price or liquidation value (whichever is greater) of such Redeemable Preferred Interests does not exceed $400,000,000 at any time; *provided further* that the Net Cash Proceeds thereof are applied to prepay the Advances to the extent provided in Section 2.06(b);

(xiii) Debt extending the maturity of, or refunding, refinancing or replacing, in whole or in part, any Debt incurred under clause (ii) of this Section 5.02(b); *provided*, *however*, that (A) the aggregate principal amount of such extended, refunding, refinancing or replacement Debt shall not be increased above the principal amount thereof and the premium, if any, thereon outstanding immediately prior to such extension, refunding, refinancing or replacement, (B) the direct and contingent obligors therefor shall not be changed as a result of or in connection with such extension, refunding, refinancing or replacement, (C) such extended, refunding, refinancing or replacement Debt shall not mature prior to the stated maturity date or mandatory redemption date of the Debt being so extended, refunded, refinanced or replaced, and (D) if the Debt being so extended, refunded, refinanced or replaced is subordinated in right of payment or otherwise to the Obligations of the Borrower or any of its Subsidiaries under and in respect of the Loan Documents, such extended, refunding, refinancing or replacement Debt shall be subordinated to such Obligations to at least the same extent; and

(xiv) Debt comprised of guarantees given by the Borrower or any of its Subsidiaries in respect of any Special Purpose Licensed Entity which obligations, when aggregated with the aggregate amount of all Investments made under Section 5.02(f)(ix) hereof, shall not exceed $30,000,000 at any time.

(c) *Change in Nature of Business*. Engage or permit any of its Subsidiaries to engage in any business other than the businesses carried on at the date hereof and any businesses incidental or related thereto.

(d) *Mergers, Etc*. Merge into or consolidate with any Person or permit any Person to merge into it, or permit any of its Subsidiaries to do so, except that:

(i) any of the Subsidiaries may merge into or consolidate with the Borrower, *provided* that the Borrower is the surviving corporation;

(ii) any Subsidiary of the Borrower may merge into or consolidate with any other Subsidiary of the Borrower, *provided* that, in the case of any such merger or consolidation involving a wholly-owned Subsidiary, the Person formed by or surviving such merger or consolidation shall be a wholly-owned Subsidiary of the Borrower, *provided further* that, in the case of any such merger or consolidation to which a Subsidiary Guarantor is a party, the Person formed by such merger or consolidation shall be a Subsidiary Guarantor;

(iii) in connection with any purchase or other acquisition of Equity Interests in, or property and assets of, any Person permitted under Section 5.02(f)(v), the Borrower may permit any other Person to merge into or consolidate with it (*provided* that the Borrower is the surviving entity), and any of the Subsidiaries of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; *provided* that the Person with which such Subsidiary is merging or consolidating (1) shall be engaged in substantially the same lines of business as one or more of the businesses of the Borrower and the Subsidiaries or in an incidental or related business and (2) shall not have any contingent liabilities that could reasonably be expected to be material and adverse to the Borrower and its Subsidiaries, taken as a whole (as determined in good faith by the board of directors (or persons performing similar functions) of the Borrower or such Subsidiary if the board of directors is otherwise approving such transaction, and in each other case, by a Responsible Officer), and (3) in the case of any wholly-owned Domestic Subsidiary, such Person shall take all actions required under Section 5.01(j); and

(iv) in connection with any sale, transfer or other disposition of all or substantially all of the Equity Interests in, or the property and assets of, any Person permitted under Section 5.02(e)(vi), any of the Subsidiaries of the Borrower may merge into or consolidate with any other Person or permit any other Person to merge into or consolidate with it; and

provided, *however*, that in each case, immediately after giving effect thereto, no event shall occur and be continuing that constitutes a Default.

(e) *Sales, Etc., of Assets*. Sell, lease, transfer or otherwise dispose of, or permit any of its Subsidiaries to sell, lease, transfer or otherwise dispose of, any assets, or grant any option or other right to purchase, lease or otherwise acquire any assets, except:

(i) the Borrower and its Subsidiaries may sell inventory in the ordinary course of business;

(ii) (A) the Borrower may sell, lease, transfer or otherwise dispose of any of its property or assets to any of the Subsidiaries, and (B) any of the Subsidiaries may sell, lease, transfer or otherwise dispose of any of its property or assets to the Borrower or any of the other Subsidiaries; *provided* that, in each case, no such sale, lease, transfer or other disposition to non-wholly-owned Subsidiaries shall be made unless, after giving *pro forma* effect thereto, the Borrower and its Subsidiaries would be in compliance with Section 5.02(l) and Section 5.04(d);

(iii) any Subsidiary of the Borrower that is no longer actively engaged in any business or activities and does not have property and assets with an aggregate book value in excess of $1,000,000 may be wound up, liquidated or dissolved so long as such winding up, liquidation or dissolution is determined in good faith by management of the Borrower to be in the best interests of the Borrower and its Subsidiaries;

(iv) the Borrower and its Subsidiaries may sell, lease, transfer or otherwise dispose of any obsolete, damaged or worn out equipment thereof or any other equipment that is otherwise no longer useful in the conduct of their businesses;

(v) the Borrower and its Subsidiaries may lease or sublease real property to the extent required for their respective businesses and operations in the ordinary course so long as such lease or sublease is not otherwise prohibited under the terms of the Loan Documents;

(vi) the Borrower and its Subsidiaries may sell, lease, transfer or otherwise dispose of property and assets not otherwise permitted to be sold, leased, transferred or disposed of pursuant to this Section 5.02(e) so long as the aggregate book value of all of the property and assets of the Borrower and its Subsidiaries sold, leased, transferred or otherwise disposed of pursuant to this clause (vi) does not exceed $300,000,000 in the aggregate during the term of this Agreement; *provided* that:

(A) the gross proceeds received from any such sale, lease, transfer or other disposition shall be at least equal to the fair market value of the property and assets so sold, leased, transferred or otherwise disposed of, determined at the time of such sale, lease, transfer or other disposition;

(B) at least 75% of the value of the aggregate consideration received from any such sale, lease, transfer or other disposition shall be in cash, *provided*, that up to one-third of such 75% may consist of notes or other obligations received by the Borrower or such Subsidiary that are due and payable or otherwise converted by the Borrower or such Subsidiary into cash within 365 days of receipt, which cash (to the extent received) shall constitute Net Cash Proceeds attributable to the original transaction; and *provided further* that any Debt of the Borrower or any of its Subsidiaries (as shown on the Borrower's or such Subsidiary's most recent balance sheet) that is assumed by the transferee of any such assets shall constitute cash for purposes of this Section 5.02(e)(vi), so long as the Borrower and all of its Subsidiaries are fully and unconditionally released therefrom;

(C) immediately before and immediately after giving *pro forma* effect to any such sale, lease, transfer or other disposition, no Default shall have occurred and be continuing;

(D) within fifteen Business Days after each disposition under this subsection, the Borrower shall deliver to the Administrative Agent, on behalf of the Lender Parties, a certificate identifying the property disposed of and stating (a) that immediately before and after giving effect thereto, no Default or Event or Default existed, (b) that the consideration received or to be received by the Borrower or such Subsidiary for such property has been determined by the Borrower or the applicable Subsidiary to be not less than the fair market value of such property and (c) the total consideration to be paid in respect of such disposition and (d) the Net Cash Proceeds resulting from such disposition; and

(E) if and to the extent that the Net Cash Proceeds of any transaction effected pursuant to this Section 5.02(e)(vi) shall not have been reinvested in assets or property of the Borrower or any of its Subsidiaries with respect to any transaction completed (1) on or prior to December 31, 2002, by December 27, 2003 and (2) thereafter, within 360 days after the date of receipt thereof, then such uninvested Net Cash Proceeds shall be applied on the first Business Day following December 27, 2003 or the applicable 360-day period, as the case may be, to prepay Advances in accordance with Section 2.06(b); and

(vii) the Borrower and its Subsidiaries may exchange assets and properties with another Person; *provided* that:

(A) the assets or properties received by the Borrower or its Subsidiaries shall be used in the business of the Borrower or such Subsidiary as conducted immediately prior to such transaction, or in an incidental or related business;

(B) the total consideration received by the Borrower or such Subsidiary for such assets or property shall have been determined by the Borrower or such Subsidiary to be not less than the fair market value of the assets or property exchanged;

(C) immediately before and immediately after giving *pro forma* effect to any such exchange, no Default shall have occurred and be continuing;

(D) any cash received by the Borrower or any such Subsidiary in connection with such exchange shall be treated as Net Cash Proceeds subject to Section 2.06(b) and any cash paid by the Borrower or any Subsidiary in connection with such exchange shall be treated as an acquisition expenditure under Section 5.02(f)(v); and

(E) within fifteen Business Days after each exchange under this Section 5.02(e)(vii), the Borrower shall deliver to the Administrative Agent, on behalf of the Lender Parties, a certificate identifying the assets or property disposed of and acquired in such exchange, and stating (a) that immediately before and after giving effect thereto, no Default or Event or Default existed, (b) that the total consideration received by the Borrower or such Subsidiary for such assets or property has been determined by the Borrower or such Subsidiary to be not less than the fair market value of the assets or property exchanged, and (c) the amount, if any, of the cash paid or Net Cash Proceeds received in connection with such exchange.

(f) *Investments in Other Persons*. Make or hold, or permit any of its Subsidiaries to make or hold, any Investment in any Person, except:

(i) Investments by the Borrower and its Subsidiaries in Cash Equivalents;

(ii) Investments existing on the Closing Date and described on Schedule 4.01(r) hereto;

(iii) Investments by the Borrower in Hedge Agreements permitted under Section 5.02(b) (iii);

(iv) Investments in accounts and notes payable in the ordinary course of business, including notes received in transactions permitted under Section 5.02(e)(vi);

(v) the purchase or other acquisition of (1) Equity Interests in any Domestic Person that, upon the consummation thereof, will be more than 50% owned by the Borrower or one or more of its wholly owned Subsidiaries (including, without limitation, as a result of a merger or consolidation) or (2) all or substantially all the property and assets of a Person or consisting of a line of business or business unit of a Person; *provided* that, with respect to each purchase or other acquisition made pursuant to this clause (v):

(A) the lines of business of the Person to be (or the property and assets of which are to be) so purchased or otherwise acquired shall be substantially the same lines of business as one or more of the businesses of the Borrower and its Subsidiaries or a business that is incidental or related thereto;

(B) such purchase or other acquisition shall not include or result in any contingent liabilities that could reasonably be expected to be material and adverse to the business, financial condition, operations or prospects of the Borrower and its Subsidiaries, taken as a whole (as determined in good faith by the board of directors (or the persons performing similar functions) of the Borrower or such Subsidiary if the board of directors is otherwise approving such transaction and, in each other case, by a Responsible Officer);

(C) the total cash consideration (excluding all Equity Interests issued or transferred to the sellers thereof but including the aggregate amounts paid or to be paid under deferred purchase price, noncompete, consulting and other similar agreements with the sellers thereof and all assumptions of debt, liabilities and other obligations in connection therewith) paid by or on behalf of the Borrower and its Subsidiaries (1) for any such purchase or other acquisition (or any series of related purchases or acquisitions) shall not exceed $50,000,000 unless such purchase or acquisition has been approved by the Required Lenders, and (2) for all such purchases or acquisitions effected during the term of this Agreement (excluding those purchases and acquisitions subject to a letter of intent or definitive agreement entered into prior to the date hereof) shall not exceed $200,000,000; *provided* that such amount shall be increased to $400,000,000 at all times after the Leverage Ratio is less than or equal to 2.75:1.00;

(D) (1) immediately before and immediately after giving *pro forma* effect to any such purchase or other acquisition, no Default shall have occurred and be continuing and (2) immediately after giving effect to such purchase or other acquisition, the Borrower and its Subsidiaries shall be in pro forma compliance with all of the covenants set forth in Section 5.04, such compliance to be determined on the basis of the Required Financial Information most recently delivered to the Administrative Agent and the Lender Parties as though such purchase or other acquisition had been consummated as of the first day of the fiscal period covered thereby; and

(E) the Borrower shall have delivered to the Administrative Agent, on behalf of the Lender Parties, at least three Business Days prior to the date on which any such purchase or other acquisition in which the total cash consideration is more than $30,000,000 is to be consummated, a certificate of a Responsible Officer, in form and substance reasonably satisfactory to the Administrative Agent, certifying that all of the requirements set forth in this clause (v) have been satisfied or will be satisfied on or prior to the consummation of such purchase or other acquisition;

(vi) Investments by the Borrower or any Subsidiary in 50% or less of the Equity Interests in another Person (the "***Minority Investment***"), *provided* that (i) the Borrower or any Subsidiary owns at least 20% (on a fully diluted basis) of the issued and outstanding Equity Interests in such Person, (ii) the aggregate outstanding amount of Minority Investments made by the Borrower and any Subsidiary shall not exceed $60,000,000 at any one time, (iii) the Borrower or any Subsidiary shall have full control over all bank accounts of such Person if the Borrower or any Subsidiary is the largest holder of Equity Interests in such Person, (iv) the Borrower or any Subsidiary shall control or act as the managing general partner of such Person if such Person is a partnership and if the Borrower or any Subsidiary is the largest holder of Equity Interests in such Person, and (v) immediately before and after giving effect thereto, no Default or Event of Default shall exist;

(vii) notes from employees issued to the Borrower representing payment for capital stock of the Borrower or representing payment of the exercise price of options to purchase capital stock of the Borrower, and employee relocation expenses incurred in the ordinary course of business, in an aggregate amount at any time outstanding not to exceed $10,000,000;

(viii) Investments of the Borrower or any of its Subsidiaries in any Subsidiary of the Borrower; *provided* that no such Investments in non-wholly-owned Subsidiaries shall be made unless, after giving *pro forma* effect thereto, the Borrower and its Subsidiaries would be in compliance with Section 5.02(l) and Section 5.04(d); and

(ix) Investments of the Borrower or any of its Subsidiaries in any Special Purpose Licensed Entity which, when aggregated with the aggregate amount of all obligations guaranteed under Section 5.02(b)(xiv) hereof, shall not exceed $30,000,000 at any time.

(g) *Restricted Payments*. Declare or pay any dividends, purchase, redeem, retire, defease or otherwise acquire for value any of its Equity Interests now or hereafter outstanding, return any capital to its stockholders, partners or members (or the equivalent Persons thereof) as such, make any distribution of assets, Equity Interests, obligations or securities to its stockholders, partners or members (or the equivalent Persons thereof) as such, or permit any of its Subsidiaries to do any of the foregoing, or permit any of its Subsidiaries to purchase, redeem, retire, defease or otherwise acquire for value any Equity Interests in the Borrower, except that, so long as no Default shall have occurred and be continuing at the time of any action described below or would result therefrom:

(i) the Borrower may (A) declare and pay dividends and distributions payable in its common Equity Interests, (B) except to the extent the Net Cash Proceeds thereof are required to be applied to the prepayment of the Advances pursuant to Section 2.06(b), purchase, redeem, retire, defease or otherwise acquire Equity Interests with the proceeds received contemporaneously from the issue of new Equity Interests with equal or inferior voting powers, designations, preferences and rights, and (C) repurchase its Equity Interests owned by management or employees and physicians under contract with the Borrower or any of its Subsidiaries in an amount not in excess of $10,000,000 in any twelve month period;

(ii) any Subsidiary of the Borrower may (A) declare and pay cash dividends to the Borrower, and (B) declare and pay cash dividends to any other Loan Party of which it is a Subsidiary;

(iii) any of the non-wholly owned Subsidiaries of the Borrower may declare and pay or make dividends and other distributions to its shareholders, partners or members (or the equivalent persons thereof) generally so long as the Borrower and each of the Subsidiaries that own any of the Equity Interests therein receive at least their respective proportionate shares of any such dividend or distribution (based upon their relative holdings of the Equity Interests therein and taking into account the relative preferences, if any, of the various classes of the Equity Interests therein);

(iv) purchase, redeem or otherwise acquire for value any of the subordinated notes referred to in clause (i) or (ii) of the definition of "Subordinated Notes", *provided* that immediately prior to each such transaction and after giving effect thereto the aggregate amount of the Unused Revolving Credit Commitment is not less than $75,000,000;

(v) the Borrower may from time to time, during the period from the Closing Date to December 31, 2004, (A) purchase its common stock, or (B) declare and pay dividends and distributions payable in cash, in an aggregate amount for all such purchases and payments not in excess of $150,000,000; and

(vi) in addition to the purchase by the Borrower of its common stock or the payment by the Borrower of cash dividends or distributions pursuant to Section 5.02(g)(v) above, the Borrower may (A) purchase, redeem or otherwise acquire for value any of its Equity Interests or (B) declare and pay dividends and distributions payable in cash:

(A) in an aggregate amount for all such purchases, redemptions, acquisitions and payments not in excess of $50,000,000, *provided* that such amount shall increase to $125,000,000 if at least 95% of the outstanding subordinated notes of the Borrower referred to in clause (i) of the definition of "Subordinated Notes" have been converted into common stock of the Borrower as permitted by Section 5.02(i);

(B) in an aggregate amount for all such purchases, redemptions, acquisitions and payments not in excess of $75,000,000 in any Fiscal Year, or $300,000,000 during the term of this Agreement, *provided* that at the time of each such transaction and immediately after giving *pro forma* effect to each such transaction the Senior Leverage Ratio is less than 2.25:1.00, and

(C) without being subject to the restrictions in this Section 5.02(g), *provided* that (1) at least three Business Days prior to the initial such transaction under this subsection 5.02(g)(vi)(C) the Administrative Agent has received from a Responsible Officer of the Borrower a Notice of Covenant Reduction, and (2) at the time of each such transaction and immediately after giving *pro forma* effect to each such transaction the Leverage Ratio is less than 3:00:1:00 and the Senior Leverage Ratio is less than 1.75:1.00,

provided further, in the case of each transaction under this subsection 5.02(g)(vi), immediately prior to each such transaction and after giving effect thereto the aggregate amount of the Unused Revolving Credit Commitment is not less than $75,000,000.

(h) *Accounting Changes*. Make or permit, or permit any of its Subsidiaries to make or permit, any change in (i) accounting policies or reporting practices, except as allowed by generally accepted accounting principles, or (ii) Fiscal Year.

(i) *Prepayments, Etc., of Subordinated Debt*. Except as permitted under Section 5.02(g)(iv) or (vi) and except for the purchase of the 2001 Subordinated Notes, including those purchased pursuant to an Offer to Purchase and Consent Solicitation dated March 21, 2002, (i) prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of any subordination terms of, any Subordinated Debt, or give any notice in respect thereof, or (ii) amend, modify or change in any manner any term or condition of any of the Subordinated Notes Documents, or permit any of its Subsidiaries to do any of the foregoing, *except* that if such Subordinated Debt is convertible into

common stock of the Borrower, the Borrower, subject to the approval of the Administrative Agent (which approval shall not unreasonably be withheld), may give notice with respect thereof if the purpose of such notice is to force the holders of such Subordinated Debt to convert such Subordinated Debt into common stock of the Borrower and thereafter the Borrower may exercise any right it may have to so redeem all or any part of such Subordinated Debt.

(j) *Negative Pledge*. Enter into or suffer to exist, or permit any of its Subsidiaries to enter into or suffer to exist, any agreement prohibiting or conditioning the creation or assumption of any Lien upon any of its property or assets except (i) in favor of the Secured Parties or (ii) in connection with (A) any Debt permitted by Section 5.02(b)(v) solely to the extent that the agreement or instrument governing such Debt prohibits a Lien on the property acquired with the proceeds of such Debt, or (B) any Capitalized Lease permitted by Section 5.02(b)(vi) solely to the extent that such Capitalized Lease prohibits a Lien on the property subject thereto, or (C) any Debt outstanding on the date any Subsidiary of the Borrower becomes such a Subsidiary (so long as such agreement was not entered into solely in contemplation of such Subsidiary becoming a Subsidiary of the Borrower), or (D) solely with respect to Subsidiaries that are not Guarantors, restrictions contained in the Constitutive Documents of such Subsidiaries.

(k) *Payment Restrictions Affecting Subsidiaries*. Directly or indirectly, enter into or suffer to exist, or permit any of its Subsidiaries to enter into or suffer to exist, any agreement or arrangement limiting the ability of any of its Subsidiaries to declare or pay dividends or other distributions in respect of its Equity Interests or repay or prepay any Debt owed to, make loans or advances to, or otherwise transfer assets to or invest in, the Borrower or any Subsidiary of the Borrower (whether through a covenant restricting dividends, loans, asset transfers or investments, a financial covenant or otherwise), except (i) the Loan Documents, (ii) any agreement in effect at the time such Subsidiary becomes a Subsidiary of the Borrower, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (iii) restrictions on transfer contained in Debt incurred pursuant to Sections 5.02(b)(v) and (vi); provided, that such restrictions relate only to the transfer of the property financed with such Debt; (iv) in connection with and pursuant to refinancing Debt under Section 5.02(b)(xiii), replacements of restrictions that are not more restrictive than those being replaced and do not apply to any other Person or assets than those that would have been covered by the restrictions in the Debt so refinanced; (v) solely with respect to Subsidiaries that are not Guarantors, restrictions under the Constitutive Documents governing such Subsidiary: (A) with respect to existing Subsidiaries, existing on the date of this Agreement; and (B) with respect to Subsidiaries created or acquired after the date of this Agreement: (1) prohibiting such Subsidiary from guaranteeing Debt of the Borrower or another Subsidiary; (2) on dividend payments and other distributions solely to permit pro rata dividends and other distributions in respect of any Equity Interests of such Subsidiary; (3) limiting transactions with the Borrower or another Subsidiary to those with terms that are fair and reasonable to such Subsidiary and no less favorable to such Subsidiary than could have been obtained in an arm's length transaction with an unrelated third party; and (4) limiting such Subsidiary's ability to transfer assets or incur Debt without the consent of the holders of the Equity Interests of such Subsidiary; and (vi) encumbrances or restrictions (A) that restrict in a customary manner the subletting, assignment or transfer of any property or asset that is subject to a lease, license or similar contract entered into in the ordinary course of business, or the assignment or transfer of any lease, license or contract entered into in the ordinary course of business and (B) arising by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Borrower or any Subsidiary.

(l) *Non-Wholly-Owned Subsidiaries*. Permit at any time (x) the aggregate total assets (calculated without duplication) at such time of all Subsidiaries of the Borrower formed or acquired after April 30, 1998 that are not Guarantors, *plus* (y) the aggregate total Investments made during the period from April 30, 1998 to such time (calculated without duplication and excluding Investments made pursuant to Section 5.02(f)(vi) to the extent the proceeds thereof were used to acquire Equity Interests or assets included in (x) above) by the Loan Parties in all Subsidiaries of the Borrower that are not Guarantors, *less* (z) the aggregate total assets at such time of all Subsidiaries of the Borrower existing on April 30, 1998 that became Guarantors after April 30, 1998, to exceed 10% of the Consolidated total assets of the Borrower and its Subsidiaries.

(m) *Issuance of Additional Stock*. Permit any of its Subsidiaries to issue any additional Equity Interests, except as follows:

(i) in connection with a permitted Investment or to employees or consultants in the ordinary course of business;

(ii) the Borrower and any Subsidiary thereof may organize new wholly-owned Subsidiaries and any Subsidiary may issue additional Equity Interests to the Borrower or to a wholly-owned Subsidiary of the Borrower;

(iii) subject to compliance with the provisions this Agreement, including Section 5.02(1) and Section 5.04(d), the Borrower and its Subsidiaries may (A) organize new non-wholly-owned Subsidiaries, and (B) (i) cause Subsidiaries to issue additional Equity Interests or (ii) sell outstanding Equity Interests therein, in each case to Persons other than Affiliates of the Borrower or its Subsidiaries.

SECTION 5.03. *Reporting Requirements*. So long as any Advance or any other Obligation of any Loan Party under any Loan Document shall remain unpaid, any Letter of Credit shall be outstanding or any Lender Party shall have any Commitment hereunder, the Borrower will furnish to the Administrative Agent (for distribution to the agents and Lender Parties):

(a) *Default Notice*. As soon as possible and in any event within five days after the Borrower knows or reasonably should have known of the occurrence of a Default or any event, development or occurrence reasonably likely to have a Material Adverse Effect continuing on the date of such statement, a statement of the chief financial officer of the Borrower setting forth details of such Default or other event, development or occurrence and the action that the Borrower has taken and proposes to take with respect thereto.

(b) *Annual Financials*. As soon as available and in any event within 90 days after the end of each Fiscal Year, a copy of the annual audit report for such year for the Borrower and its Subsidiaries, including therein Consolidated and consolidating balance sheets of the Borrower and its Subsidiaries as of the end of such Fiscal Year and a Consolidated and consolidating statements of income and a Consolidated statement of cash flows of the Borrower and its Subsidiaries for such Fiscal Year, in each case accompanied by an unqualified opinion of KPMG LLP or other independent public accountants of recognized national standing, together with (i) a certificate of such accounting firm to the Lender Parties stating that in the course of the regular audit of the business of the Borrower and its Subsidiaries, which audit was conducted by such accounting firm in accordance with generally accepted auditing standards, such accounting firm has obtained no knowledge that a Default has occurred and is continuing, or if, in the opinion of such accounting firm, a Default has occurred and is continuing, a statement as to the nature thereof, (ii) a schedule in form satisfactory to the Administrative Agent of the computations used by such accountants in determining, as of the end of such Fiscal Year, compliance with the covenants contained in Section 5.04, *provided* that in the event of any change in generally accepted accounting principles used in the preparation of such financial statements, the Borrower shall also provide, if necessary for the determination of compliance with Section 5.04 from GAAP, a statement of reconciliation conforming such financial statements to GAAP and (iii) a certificate of the Chief Financial Officer of the Borrower stating that to the best of such officer's knowledge, no Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto.

(c) *Quarterly Financials*. As soon as available and in any event within 45 days after the end of each of the first three quarters of each Fiscal Year, Consolidated and consolidating balance sheets of the Borrower and its Subsidiaries as of the end of such quarter and Consolidated and consolidating statements of income for the period commencing at the end of the previous fiscal quarter and ending with the end of such fiscal quarter and Consolidated and consolidating statements of income and a Consolidated statement of cash flows of the Borrower and its Subsidiaries for the period commencing at the end of the previous Fiscal Year and ending with the end of such quarter, setting forth in each case in comparative form the corresponding

figures for the corresponding date or period of the preceding Fiscal Year, all in reasonable detail and duly certified (subject to normal year-end audit adjustments) by the Chief Financial Officer of the Borrower as having been prepared in accordance with generally accepted accounting principles (except that such financial statements may not contain all required notes and may be subject to year end audit adjustments), together with (i) a certificate of said officer stating that to the best of such officer's knowledge, no Default has occurred and is continuing or, if a Default has occurred and is continuing, a statement as to the nature thereof and the action that the Borrower has taken and proposes to take with respect thereto, (ii) a schedule in form satisfactory to the Administrative Agent of the computations used by the Borrower in determining compliance with the covenants contained in Section 5.04, *provided* that in the event of any change in generally accepted accounting principles used in the preparation of such financial statements as compared to GAAP, the Borrower shall also provide, if necessary for the determination of compliance with Section 5.04, a statement of reconciliation conforming such financial statements to GAAP, and (iii) a report (in a form satisfactory to the Administrative Agent) specifying all permitted Investments made during such quarter and during the period from the date hereof to the end of such quarter and specifying the total consideration paid with respect to each such Investment.

(d) *Annual Forecasts*. As soon as available and in any event no later than 30 days after the end of each Fiscal Year, forecasts prepared by management of the Borrower, in form satisfactory to the Administrative Agent, of Consolidated balance sheets, income statements and cash flow statements of the Borrower and its Subsidiaries on a quarterly basis for the Fiscal Year following such Fiscal Year and on an annual basis for each Fiscal Year thereafter until the Termination Date.

(e) *Litigation*. (i) Promptly after the commencement thereof, notice of all actions, suits, investigations, litigation and proceedings before any Governmental Authority or arbitrator, affecting any Loan Party or any of its Subsidiaries of the type described in Section 4.01(f), and promptly after the occurrence thereof, notice of any material adverse change in the status or the financial effect on any Loan Party or any of its Subsidiaries of the litigation from that described on Schedule 4.01(f) hereto, and (ii) prompt written notice of: (A) any citation, summons, subpoena, order to show cause or other document naming the Borrower or any of its Subsidiaries a party to any proceeding before any Governmental Authority that could reasonably be expected to have a Material Adverse Effect or that expressly calls into question the validity or enforceability of any of the Loan Documents, and include with such notice a copy of such citation, summons, subpoena, order to show cause or other document, (B) any lapse or other termination of any material intellectual property, license, permit, franchise or other authorization issued to the Borrower or any of its Subsidiaries by any Person or Governmental Authority, or (C) any refusal by any Person or Governmental Authority to renew or extend such material intellectual property, license, permit, franchise or other authorization, which lapse, termination, refusal or dispute could reasonably be expected to have a Material Adverse Effect.

(f) *Securities Reports*. Promptly after the sending or filing thereof, copies of all proxy statements, financial statements and reports that any Loan Party or any of its Subsidiaries sends to its stockholders, and copies of all regular, periodic and special reports, and all registration statements, that any Loan Party or any of its Subsidiaries files with the Securities and Exchange Commission or any governmental authority that may be substituted therefor, or with any national securities exchange.

(g) *ERISA*.

(i) *ERISA Events and ERISA Reports*. (A) Promptly and in any event within 10 days after any Loan Party or any ERISA Affiliate knows or has reason to know that any ERISA Event has occurred, a statement of the Chief Financial Officer of the Borrower describing such ERISA Event and the action, if any, that such Loan Party or such ERISA Affiliate has taken and proposes to take with respect thereto and (B) on the date any records, documents or other information must be furnished to the PBGC with respect to any Plan pursuant to Section 4010 of ERISA, a copy of such records, documents and information.

(ii) *Plan Terminations*. Promptly and in any event within two Business Days after receipt thereof by any Loan Party or any ERISA Affiliate, copies of each notice from the PBGC stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan.

(iii) *Plan Annual Reports*. Promptly and in any event within 30 days after the filing thereof with the Internal Revenue Service, copies of each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) with respect to each Plan.

(iv) *Multiemployer Plan Notices*. Promptly and in any event within five Business Days after receipt thereof by any Loan Party or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (A) the imposition of Withdrawal Liability by any such Multiemployer Plan, (B) the reorganization or termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan or (C) the amount of liability incurred, or that may be incurred, by such Loan Party or any ERISA Affiliate in connection with any event described in clause (A) or (B).

(h) *Environmental Conditions*. Promptly after the assertion or occurrence thereof, notice of any Environmental Action against or of any noncompliance by any Loan Party or any of its Subsidiaries with any Environmental Law or Environmental Permit that could reasonably be expected to have a Material Adverse Effect.

(i) *Other Information*. Such other information respecting the business, condition (financial or otherwise), operations, performance, properties or prospects of any Loan Party or any of its Subsidiaries as any Agent or any Lender Party, through the Administrative Agent, may from time to time reasonably request.

SECTION 5.04. *Financial Covenants*. So long as any Advance or any other Obligation of any Loan Party under any Loan Document shall remain unpaid, any Letter of Credit shall be outstanding or any Lender Party shall have any Commitment hereunder, the Borrower will:

(a) *Leverage Ratio*. Maintain a Leverage Ratio at all times during each Measurement Period set forth below of not more than the amount set forth below opposite such Measurement Period:

Measurement Period Ending In	Ratio
September 30, 2003	4.00:1.00
December 31, 2003	4.00:1.00
March 31, 2004	3.75:1.00
June 30, 2004	3.75:1.00
September 30, 2004	3.50:1.00
December 31, 2004	3.50:1.00
March 31, 2005	3.50:1.00
June 30, 2005	3.50:1.00
September 30, 2005	3.25:1.00
December 31, 2005	3.25:1.00
March 31, 2006 and thereafter	3.00:1.00

provided, *however*, that upon receipt by the Administrative Agent of a Notice of Covenant Reduction, the Leverage Ratio thereafter for purposes of this covenant shall at all times be 3.00:1.00.

(b) *Fixed Charge Coverage Ratio*. Maintain a Fixed Charge Coverage Ratio as of the last day of each Measurement Period set forth below of not less than the amount set forth below opposite such Measurement Period:

Measurement Period Ending In	Ratio
September 30, 2003	1.20:1.00
December 31, 2003	1.20:1.00
March 31, 2004	1.20:1.00
June 30, 2004	1.20:1.00
September 30, 2004	1.20:1.00
December 31, 2004	1.20:1.00
March 31, 2005	1.25:1.00
June 30, 2005	1.25:1.00
September 30, 2005	1.25:1.00
December 31, 2005	1.25:1.00
March 31, 2006	1.30:1.00
June 30, 2006	0.90:1.00
September 30, 2006	0.90:1.00
December 31, 2006	0.90:1.00
March 31, 2007	0.90:1.00
June 30, 2007 and thereafter	0.70:1.00

(c) *Minimum Net Worth*. Maintain at all times a Consolidated net worth of the Borrower and its Subsidiaries of not less than (negative $250,000,000), *plus* the sum of 75% of Consolidated Net Income of the Borrower and its Subsidiaries (determined as of the end of each Fiscal Quarter, but excluding net losses in any Fiscal Quarter) and 100% of the Net Cash Proceeds received by the Borrower from its issuance of Equity Interests, in each case determined on a cumulative basis for the period commencing April 1, 2002, *minus* non-recurring charges incurred not exceeding in the aggregate $45,000,000 resulting from the write-off of accounts receivable and other related charges as a result of the pending third party carrier review of claims for Medicare reimbursement submitted by the Subsidiary of the Borrower operating the Borrower's Florida laboratory or other Governmental Reimbursement Program Costs.

(d) *Minimum Consolidated EBITDA Ratio*. Maintain at all times a ratio of Consolidated EBITDA to Consolidated Pre-Minority EBITDA of not less than 0.8:1.0.

(e) *Senior Leverage Ratio*. Maintain a Senior Leverage Ratio at all times during each Measurement Period set forth below of not more than the amount set forth below opposite such period.

Measurement Period Ending In	Ratio
September 30, 2003	3.25:1.00
December 31, 2003	3.25:1.00
March 31, 2004	3.10:1.00
June 30, 2004	3.10:1.00
September 30, 2004	2.85:1.00
December 31, 2004	2.85:1.00
March 31, 2005	2.60:1.00
June 30, 2005	2.50:1.00
September 30, 2005	2.25:1.00
December 31, 2005	2.15:1.00
March 31, 2006 and thereafter	2.00:1.00

provided, however, that upon receipt by the Administrative Agent of a Notice of Covenant Reduction, the Leverage Ratio thereafter for purposes of this covenant shall at all times be 2.00:1.00.

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.01. *Events of Default*. If any of the following events ("***Events of Default***") shall occur and be continuing:

(a) the Borrower shall fail to pay (i) any principal of any Advance when the same shall become due and payable, or (ii) within three Business Days after the date due and payable, any interest on any Advance; or any of the Loan Parties shall fail to make any other payment under or in respect of any of the Loan Documents required to have been made by it, within three Business Days after the same shall become due and payable, in each case whether by scheduled maturity or at a date fixed for prepayment or by acceleration, demand or otherwise; or

(b) any representation or warranty made by any of the Loan Parties (or any of their respective officers) under or in connection with any of the Loan Documents (including, without limitation, in any certificate, report, statement or other writing at any time furnished (or deemed to have been furnished) to the Administrative Agent or any of the Lender Parties by or on behalf of any of the Loan Parties) shall prove to have been incorrect in any material respect on the date as of which it was made or deemed made; or

(c) (i) the Borrower shall fail to perform or observe any term, covenant or agreement contained in Section 5.01(e) or Section 5.02, 5.03 or 5.04 or (ii) any of the other Loan Parties shall fail to perform or observe any term, covenant or agreement contained in Section 4 or 7 of the Subsidiary Guarantee on its part to be performed or observed; or

(d) any of the Loan Parties shall fail to perform or observe any term, covenant or agreement contained in any of the Loan Documents on its part to be performed or observed that is not otherwise referred to in Section 6.01(c) if such failure shall remain unremedied for at least 30 consecutive days after the earlier of the date on which (i) a Responsible Officer of the Borrower or any of its Subsidiaries first becomes aware of such failure and (ii) written notice thereof shall have been given to the Borrower by the Administrative Agent or any of the Lender Parties; or

(e) (i) the Borrower or any of its Subsidiaries shall fail to pay any principal of, premium or interest on, or any other amount payable in respect of, one or more items of Debt of the Borrower and its Subsidiaries (excluding Debt outstanding hereunder) that is outstanding (or under which one or more Persons have a commitment to extend credit) in an aggregate principal amount (or, in the case of any Hedge Agreement, having an Agreement Value) of at least $10,000,000 at the time of such failure, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreements or instruments relating to all such Debt; or (ii) any other event shall occur or condition shall exist under the agreements or instruments relating to one or more items of Debt of the Borrower and its Subsidiaries (excluding Debt outstanding hereunder) that is outstanding (or under which one or more Persons have a commitment to extend credit) in an aggregate principal amount (or, in the case of any Hedge Agreement, having an Agreement Value) of at least $10,000,000 at the time of such other event or condition, and shall continue after the applicable grace period, if any, specified in all such agreements or instruments, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt or otherwise to cause, or to permit the holder thereof to cause, such Debt to mature; or (iii) one or more items of Debt of the Borrower and its Subsidiaries (excluding Debt outstanding hereunder) that is outstanding (or under which one or more Persons have a commitment to extend credit) in an aggregate principal amount (or, in the case of any Hedge Agreement, having an Agreement Value) of at least $10,000,000 shall be declared to be due and payable or required to be prepaid or redeemed (other than by a regularly scheduled or required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(f) the Borrower or any Material Subsidiary or Subsidiaries shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general

assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Borrower or any Material Subsidiary or Subsidiaries seeking to adjudicate it a bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, administrator or other similar official for it or for any substantial part of its property and assets and, in the case of any such proceeding instituted against it (but not instituted by it) that is being diligently contested by it in good faith, either such proceeding shall remain undismissed or unstayed for a period of at least 60 consecutive days or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or any substantial part of its property and assets) shall occur; or any event or action analogous to or having a substantially similar effect to any of the events or actions set forth above in this Section 6.01(f) (other than a solvent reorganization) shall occur under the Requirements of Law of any jurisdiction applicable to the Borrower or any Material Subsidiary or Subsidiaries; or the Borrower or any Material Subsidiary or Subsidiaries shall take any corporate, partnership, limited liability company or other similar action to authorize any of the actions set forth above in this Section 6.01(f); or

(g) one or more judgments or orders for the payment of money in excess of $10,000,000 in the aggregate shall be rendered against one or more of the Borrower and its Subsidiaries and shall remain unsatisfied and there shall be any period of at least 30 consecutive Business Days during which a stay of enforcement of any such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; *provided*, *however*, that any such judgment or order shall not give rise to an Event of Default under this Section 6.01(g) if and for so long as (A) the amount of such judgment or order which remains unsatisfied is covered by a valid and binding policy of insurance between the defendant and the insurer covering full payment thereof and (B) such insurer has been notified, and has not disputed the claim made for payment, of the amount of such judgment or order; or

(h) one or more nonmonetary judgments or orders (including, without limitation, writs or warrants of attachment, garnishment, execution, distraint or similar process) shall be rendered against the Borrower or any of its Subsidiaries that, either individually or in the aggregate, is reasonably expected to have a Material Adverse Effect and there shall be any period of at least 30 consecutive Business Days during which a stay of enforcement of any such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(i) any provision of any of the Loan Documents after delivery thereof pursuant to Sections 3.01, 5.01(j) or 5.01(k) shall for any reason (other than pursuant to the terms thereof) cease to be valid and binding on or enforceable against any of the Loan Parties intended to be a party to it, or any such Loan Party shall so state in writing; or

(j) any Collateral Document or financing statement after delivery thereof pursuant to Sections 3.01, 5.01(j) or 5.01(k) shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected Lien on any material portion of the Collateral purported to be covered thereby subject only to Liens permitted thereby; or

(k) any of the following events or conditions shall have occurred and such event or condition, when aggregated with any and all other such events or conditions set forth in this subsection (k), has resulted or is reasonably expected to result in liabilities of the Loan Parties and/or the ERISA Affiliates in an aggregate amount exceeding $10,000,000 at any time:

(i) any ERISA Event shall have occurred with respect to a Plan; or

(ii) any of the Loan Parties or any of the ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan; or

(iii) any of the Loan Parties or any of the ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization, is insolvent or is being terminated, within the meaning of Title IV of ERISA, and, as a result of such reorganization, insolvency or termination, the aggregate annual contributions of the Loan Parties and the ERISA

Affiliates to all of the Multiemployer Plans that are in reorganization, are insolvent or being terminated at such time have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such reorganization, insolvency or termination occurs; or

(iv) any "*accumulated funding deficiency*" (as defined in Section 302 of ERISA and Section 412 of the Internal Revenue Code), whether or not waived, shall exist with respect to one or more of the Plans, or any Lien shall exist on the property and assets of any of the Loan Parties or any of the ERISA Affiliates in favor of the PBGC or any Plan; or

(l) the Borrower or any of its Subsidiaries shall suspend or discontinue all or any part of its businesses and operations other than in the ordinary course of business and such suspension or discontinuance, in the aggregate, is reasonably expected to have a Material Adverse Effect; or

(m) a Change of Control shall occur; or

(n) an "*Event of Default*" (as defined in any of the Subordinated Notes Documents) shall have occurred and be continuing under the respective Subordinated Notes Documents; or

(o) The Borrower or any Subsidiary, in each case to the extent it is engaged in the business of providing services for which Medicare or Medicaid reimbursement is sought, shall for any reason, including, without limitation, as the result of any finding, designation or decertification, lose its right or authorization, or otherwise fail to be eligible, to participate in Medicaid or Medicare programs or to accept assignments or rights to reimbursements under Medicaid regulations or Medicare regulations, or the Borrower or any Subsidiary has, for any reason, had its right to receive reimbursements under Medicaid or Medicare regulations suspended, and such loss, failure or suspension (together with all such other losses, failures and suspensions continuing at such time) shall have resulted in (x) a Material Adverse Effect or (y) Consolidated net operating revenues for the immediately preceding four fiscal quarter period of the Borrower constituting less than 95% of Consolidated net operating revenues for any preceding four fiscal quarter period of the Borrower;

then, and in any such event, the Administrative Agent (i) shall at the request, or may with the consent, of the Required Lenders, by notice to the Borrower, declare the Commitments of each of the Lender Parties and the obligation of each of the Lender Parties to make Advances (other than Letter of Credit Advances by the Issuing Bank or any of the Revolving Credit Lenders pursuant to Section 2.03(c) and Swing Line Advances by any of the Revolving Credit Lenders pursuant to Section 2.02(b)(ii)) and of the Issuing Bank to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, and (ii) shall at the request, or may with the consent, of the Required Lenders, (A) by notice to the Borrower, declare the Notes, all interest thereon and all other amounts payable under or in respect of this Agreement and the other Loan Documents to be forthwith due and payable, whereupon the Notes, all such interest and all such other amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by the Borrower and (B) by notice to each party required under the terms of any agreement in support of which a Letter of Credit is issued, request that all of the Obligations under such agreement be declared to be due and payable; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to any Loan Party under the United States Federal Bankruptcy Code or a similar order or action under any other Requirements of Law covering the protection of creditors' rights or the relief of debtors applicable to any Loan Party, (1) the Commitments of each of the Lender Parties and the obligation of each of the Lender Parties to make Advances (other than Letter of Credit Advances by the Issuing Bank or any of the Revolving Credit Lenders pursuant to Section 2.03(c) and Swing Line Advances by any of the Revolving Credit Lenders pursuant to Section 2.02(b)(ii)) and of the Issuing Bank to issue Letters of Credit shall automatically be terminated and (2) the Notes, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by the Borrower.

SECTION 6.02. *Actions in Respect of the Letters of Credit upon Default.* If any Event of Default shall have occurred and be continuing, the Administrative Agent may, or shall at the request of the Required Lenders,

irrespective of whether it is taking any of the actions described in Section 6.01 or otherwise, make demand upon the Borrower to, and forthwith upon such demand the Borrower will, pay to the Administrative Agent in same day funds at the Administrative Agent's office designated in such demand, for deposit in the L/C Cash Collateral Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding; *provided*, *however*, that in the event of an actual or deemed entry of an order for relief with respect to any Loan Party under the United States Federal Bankruptcy Code or a similar order or action under any other Requirements of Law covering the protection of creditors' rights or the relief of debtors applicable to any Loan Party, the Borrower, without requirement of demand by the Administrative Agent or any other Person, will forthwith pay to the Administrative Agent in same day funds at the Administrative Agent's office for deposit in the L/C Cash Collateral Account an amount equal to such aggregate Available Amount. If at any time the Administrative Agent determines that any funds held in the L/C Cash Collateral Account are subject to any right or claim of any Person other than the Secured Parties or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, the Borrower will, forthwith upon demand by the Administrative Agent, pay to the Administrative Agent, as additional funds to be deposited and held in the L/C Cash Collateral Account, an amount equal to the excess of (a) such aggregate Available Amount over (b) the total amount of funds, if any, then held in the L/C Cash Collateral Account that the Administrative Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit for which funds are on deposit in the L/C Cash Collateral Account, such funds shall be applied to reimburse the Issuing Bank or Revolving Credit Lenders, as applicable, in the manner provided for in the Security Agreement and to the extent permitted by applicable law.

ARTICLE VII

THE AGENTS

SECTION 7.01. *Appointment, Powers and Immunity.*

(a) Each Lender Party (in its capacities as a Lender, the Swing Line Bank (if applicable), the Issuing Bank (if applicable) and on behalf of itself and its Affiliates as potential Hedge Banks) hereby appoints and authorizes the Administrative Agent to act as its agent under this Agreement and the other Loan Documents with such powers and discretion as are specifically delegated to the Administrative Agent by the terms of this Agreement and the other Loan Documents, together with such other powers as are reasonably incidental thereto. The Administrative Agent (which term as used in this sentence and in Section 7.05(a) and Section 7.06 shall include its affiliates and its own and its affiliates' officers, directors, employees, and agents): (i) shall not have any duties or responsibilities except those expressly set forth in this Agreement and shall not be a trustee or fiduciary for any Lender Party; (ii) shall not be responsible to the Lender Parties for any recital, statement, representation, or warranty (whether written or oral) made in or in connection with any Loan Document or any certificate or other document referred to or provided for in, or received by any of them under, any Loan Document, or for the value, validity, effectiveness, genuineness, enforceability, or sufficiency of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, any Loan Document, or any other document referred to or provided for therein or for any failure by any Loan Party or any other Person to perform any of its obligations thereunder; (iii) shall not be responsible for or have any duty to ascertain, inquire into, or verify the performance or observance of any covenants or agreements by any Loan Party or the satisfaction of any condition or to inspect the property (including the books and records) of any Loan Party or any of its Subsidiaries or Affiliates; (iv) shall not be required to initiate or conduct any litigation or collection proceedings under any Loan Document; and (v) shall not be responsible for any action taken or omitted to be taken by it or any of its directors, officers, agents or employees under or in connection with any Loan Document, except for its or their own gross negligence or willful misconduct.

(b) The Administrative Agent shall also act as the "*collateral agent*" under the Loan Documents, and each of the Lender Parties (in its capacities as a Lender, the Swing Line Bank (if applicable), Issuing Bank (if applicable) hereby appoints and authorizes the Administrative Agent to act as the agent of such Lender Party for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the

Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto. The Administrative Agent may from time to time in its discretion appoint any of the other Lender Parties or any of the affiliates of a Lender Party to act as its co-agent or sub-agent or its attorney-in-fact for any purpose, including for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents or of exercising any rights and remedies thereunder at the direction of the Administrative Agent, and the Administrative Agent shall not be responsible for the negligence or misconduct of any such co-agents, sub-agents or attorneys-in-fact selected by it with reasonable care. In this connection, the Administrative Agent, as "collateral agent", and such co-agents, sub-agents and attorneys-in-fact shall be entitled to the benefits of all provisions of this Article VII (including, without limitation, Section 7.05, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

(c) The Book Managers, the Documentation Agents and the Syndication Agents shall not have any powers or discretion under this Agreement or any of the other Loan Documents other than those bestowed upon it as a co-agent or sub-agent from time to time by the Administrative Agent pursuant to subsection (b) of this Section 7.01, and each of the Lender Parties hereby acknowledges that the Book Managers, the Documentation Agents and the Syndication Agents shall not have any liability under this Agreement or any of the other Loan Documents.

SECTION 7.02. *Reliance by Agent.* The Administrative Agent shall be entitled to rely upon any certification, notice, instrument, writing, or other communication (including, without limitation, any thereof by telephone or telecopy) believed by it to be genuine and correct and to have been signed, sent or made by or on behalf of the proper Person or Persons, and upon advice and statements of legal counsel (including counsel for any Loan Party), independent accountants, and other experts selected by the Administrative Agent. The Administrative Agent may deem and treat the payee of any Note as the holder thereof for all purposes hereof unless and until the Administrative Agent receives and accepts an Assignment and Assumption executed in accordance with Section 8.07. As to any matters not expressly provided for by this Agreement, the Administrative Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders or, to the extent any action requires the consent of all Lenders as specifically provided in Section 8.01, upon the instructions of all Lenders, and such instructions shall be binding on all of the Lender Parties; *provided*, *however*, that the Administrative Agent shall not be required to take any action that exposes the Administrative Agent to personal liability or that is contrary to any Loan Document or applicable Requirements of Law or unless it shall first be indemnified to its satisfaction by the Lender Parties against any and all liability and expense which may be incurred by it by reason of taking any such action.

SECTION 7.03. *Defaults.* The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of a Default or Event of Default unless the Administrative Agent has received written notice from a Lender Party or the Borrower specifying such Default or Event of Default and stating that such notice is a "Notice of Default". In the event that the Administrative Agent receives such a notice of the occurrence of a Default or Event of Default, the Administrative Agent shall give prompt notice thereof to the Lender Parties. The Administrative Agent shall (subject to Section 7.02) take such action with respect to such Default or Event of Default as shall reasonably be directed by the Required Lenders or, to the extent any action requires the consent of all Lenders as specifically provided in Section 8.01, then as directed by all Lenders; *provided* that, unless and until the Administrative Agent shall have received such directions, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lender Parties.

SECTION 7.04. *CSFB and Affiliates.* With respect to its Commitments, the Advances made by it and the Note or Notes issued to it, CSFB (and any successor acting as the Administrative Agent) in its capacity as a Lender Party hereunder shall have the same rights and powers under the Loan Documents as any other Lender Party and may exercise the same as though it were not acting as the Administrative Agent; and the term "Lender Party" or "Lender Parties" shall, unless otherwise expressly indicated, include CSFB in its individual capacity.

CSFB (and any successor acting as the Administrative Agent), and its affiliates may (without having to account therefor to any Lender Party) accept deposits from, lend money to, make investments in, provide services to, and generally engage in any kind of lending, trust, or other business with any Loan Party or any of its Subsidiaries or Affiliates as if it were not acting as an Agent, and CSFB (and any successor acting as the Administrative Agent), and its affiliates may accept fees and other consideration from any Loan Party or any of its Subsidiaries or Affiliates, or any Person that may do business with or own securities of any Loan Party or any such Subsidiary or Affiliate, for services in connection with this Agreement or otherwise without having to account for the same to the Lender Parties.

SECTION 7.05. *Indemnification.*

(a) The Lenders severally agree to indemnify the Administrative Agent (to the extent not promptly reimbursed under Section 8.04, but without limiting the obligations of the Borrower under such Section) ratably in accordance with their respective Commitments, for any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses (including attorneys' fees), or disbursements of any kind and nature whatsoever that may be imposed on, incurred by or asserted against the Administrative Agent in any way relating to or arising out of any Loan Document or the transactions contemplated thereby or any action taken or omitted by the Administrative Agent under any Loan Document (collectively, the "***Indemnified Costs***"); *provided* that no Lender shall be liable for any of the foregoing to the extent they arise from the gross negligence or willful misconduct of the Person to be indemnified. In the case of any claim, investigation, litigation or proceeding for which indemnity under this Section 7.05(a) applies, such indemnity shall apply whether or not such claim, investigation, litigation or proceeding is brought by the Administrative Agent, any of the other Agents, any of the Lender Parties or a third party. Without limitation of the foregoing, each Lender severally agrees to reimburse the Administrative Agent promptly upon demand for its ratable share of any costs or expenses payable by the Borrower under Section 8.04, to the extent that the Administrative Agent is not promptly reimbursed for such costs and expenses (including, without limitation, fees and expenses of counsel) by the Borrower. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 7.05 applies whether any such investigation, litigation or proceeding is brought by any Lender Party or any other Person. The failure of any Lender Party to reimburse the Administrative Agent promptly upon demand for its ratable share of any amount required to be paid by the Lender Party to the Administrative Agent as provided herein shall not relieve any other Lender Party of its obligation hereunder to reimburse the Administrative Agent for its ratable share of such amount, but no Lender Party shall be responsible for the failure of any other Lender Party to reimburse the Administrative Agent for such other Lender Party's ratable share of such amount. Without prejudice to the survival of any other agreement of any Lender Party hereunder, the agreement and obligations of each Lender contained in this Section 7.05(a) shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

(b) The Revolving Credit Lenders severally agree to indemnify the Issuing Bank (to the extent not promptly reimbursed under Section 8.04, but without limiting the obligations of the Borrower under such Section) for such Revolving Credit Lender's Pro Rata Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Issuing Bank in any way relating to or arising out of the Loan Documents or the transactions contemplated thereby or any action taken or omitted by the Issuing Bank under the Loan Documents; *provided*, *however*, that no Revolving Credit Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from the Issuing Bank's gross negligence or willful misconduct. In the case of any claim, investigation, litigation or proceeding for which indemnity under this Section 7.05(b) applies, such indemnity shall apply whether or not such claim, investigation, litigation or proceeding is brought by the Issuing Bank, any of the other Lender Parties or a third party. Without limitation of the foregoing, each Revolving Credit Lender severally agrees to reimburse the Issuing Bank promptly upon demand for its Pro Rata Share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Borrower under Section 8.04, to the extent that the Issuing

Bank is not promptly reimbursed for such costs and expenses by the Borrower. The failure of any Revolving Credit Lender to reimburse the Issuing Bank promptly upon demand for its Pro Rata Share of any amount required to be paid by the Revolving Credit Lenders to the Issuing Bank as provided herein shall not relieve any other Revolving Credit Lender of its obligation hereunder to reimburse the Issuing Bank for its Pro Rata Share of such amount, but no Revolving Credit Lender shall be responsible for the failure of any other Revolving Credit Lender to reimburse the Issuing Bank for such other Revolving Credit Lender's Pro Rata Share of such amount. Without prejudice to the survival of any other agreement of any Revolving Credit Lender hereunder, the agreement and obligations of each Revolving Credit Lender contained in this Section 7.05(b) shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the other Loan Documents.

SECTION 7.06. *Non-Reliance on Agent and Other Lender Parties.* Each Lender Party agrees that it has, independently and without reliance on any Agent or any other Lender Party, and based on such documents and information as it has deemed appropriate, made its own credit analysis of the Loan Parties and their Subsidiaries and decision to enter into this Agreement and that it will, independently and without reliance upon any Agent or any other Lender Party, and based on such documents and information as it shall deem appropriate at the time, continue to make its own analysis and decisions in taking or not taking action under the Loan Documents. Except for notices, reports, and other documents and information expressly required to be furnished to the Lender Parties by the Administrative Agent hereunder, the Administrative Agent shall not have any duty or responsibility to provide any Lender Party with any credit or other information concerning the affairs, financial condition, or business of any Loan Party or any of its Subsidiaries or Affiliates that may come into the possession of the Administrative Agent or any of its affiliates.

SECTION 7.07. *Resignation of Administrative Agent.* The Administrative Agent may resign at any time by giving notice thereof to the Lender Parties and the Borrower. Upon any such resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent. If no successor Agent shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent's giving of notice of resignation, then the retiring Administrative Agent may, on behalf of the Lender Parties, appoint a successor Administrative Agent which shall be a commercial bank organized under the laws of the United States of America or of any state thereof and having combined capital and surplus of at least $100,000,000. If within 30 days after written notice is given of the retiring Administrative Agent's resignation under this Section 7.07 no successor Administrative Agent shall have been appointed and shall have accepted such appointment, then on such 30th day (a) the retiring Administrative Agent's resignation shall become effective, (b) the retiring Administrative Agent shall thereupon be discharged from its duties and obligations under the Loan Documents and (c) the Required Lenders shall thereafter perform all duties and obligations of the retiring Administrative Agent under the Loan Documents until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided above in this Section 7.07. Upon the acceptance of any appointment as Administrative Agent hereunder by a successor and upon the execution and filing or recording of such financing statements, or amendments thereto, and such other instruments or notices, as may be necessary or desirable, or as the Required Lenders may request, in order to continue the perfection of the Liens granted or purported to be granted by the Collateral Documents, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, discretion, privileges, and duties of the retiring Agent, and the retiring Administrative Agent shall be discharged from its duties and obligations under the Loan Documents. After any retiring Agent's resignation hereunder as Administrative Agent, the provisions of this Article VII shall continue in effect for its benefit in respect of any actions taken or omitted to be taken by it while it was acting as Administrative Agent.

SECTION 7.08. *Release of Collateral.* Upon the payment of all Notes and all other amounts payable under the Loan Documents, the termination of all Letters of Credit and the termination of all commitments of the Lender Parties hereunder, the Lender Parties hereby agree that all Collateral is released from the security interest granted under the respective Collateral Documents, and upon (i) the sale, lease, transfer or other disposition of any item of Collateral of any Loan Party, (ii) the issuance or sale pursuant to Section 5.02(m)(iii) of any Equity

Interests causing a Subsidiary of the Borrower to cease to be wholly-owned by the Borrower or any of its Subsidiaries, in each case in accordance with the terms of the Loan Documents, the Lender Parties hereby agree that such item of Collateral in the case of clause (i), or all Collateral owned by such Subsidiary in the case of clause (ii), shall be released from the security interest granted under the respective Collateral Documents. In connection therewith, the Lender Parties hereby irrevocably authorize the Administrative Agent to release any such Collateral. The Administrative Agent will, at the Borrower's expense, execute and deliver to the respective Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the security interest granted under the Collateral Documents.

SECTION 7.09. *Release of Guarantor.* Upon the sale of outstanding shares of capital stock and other equity, ownership and profit interests in any Guarantor in a transaction which is permitted under Section 5.02(e) and, if applicable, 5.02(m)(iii), then upon request by the Borrower, the Administrative Agent, on behalf of each Lender Party, shall confirm in writing that the liability of such Guarantor under the Subsidiary Guarantee is released and discharged effective when such transaction is consummated and all requirements hereunder in connection therewith are satisfied, including with respect to the application of the proceeds of such sale. Such confirmation from the Administrative Agent (a) shall establish conclusively that the liability of such Guarantor under the Subsidiary Guarantee is released and discharged and (b) may be relied on, without further inquiry, by the purchaser in such transaction and each of its transferees. Each Lender Party hereby irrevocably authorizes the Administrative Agent to release any Guarantor from time to time to the extent provided for herein and to execute any document reasonably required in connection therewith.

SECTION 7.10. *Actions in Respect of Intercreditor Agreement.* The Lenders and the Issuing Banks hereby authorize the Administrative Agent, in its capacity as Administrative Agent on behalf of the Lenders and the Issuing Banks, to enter into the Intercreditor Agreement and hereby consent to the Administrative Agent acting as Collateral Agent under the Intercreditor Agreement.

ARTICLE VIII
MISCELLANEOUS

SECTION 8.01. *Amendments, Etc.* No amendment or waiver of any provision of this Agreement, the Notes, or any of the other Loan Documents (except to the extent otherwise expressly provided for therein), nor consent to any departure by any of the Loan Parties therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; *provided, however*, that:

(a) no amendment, waiver or consent shall, unless in writing and signed by all of the Lenders (other than any of the Lenders that is, at such time, a Defaulting Lender), do any of the following at any time:

(i) waive any of the conditions specified in Section 3.01 or, in the case of the Initial Extensions of Credit, Section 3.02;

(ii) change the number of Lenders or the percentage of the Commitments or the aggregate outstanding principal amount of Advances or the aggregate Available Amount of outstanding Letters of Credit that, in each case, shall be required for the Lender Parties or any of them to take any action hereunder;

(iii) except to the extent contemplated herein, release all or substantially all of the Guarantors that are a party to the Subsidiary Guarantee from their Obligations thereunder in any transaction or series of related transactions;

(iv) release all or substantially all of the Collateral in any transaction or series of related transactions;

(v) amend Section 2.13 or this Section 8.01; or

(vi) amend the definition of Interest Period to include additional monthly periods for setting the duration of an Interest Period.

(b) no amendment, waiver or consent shall, unless in writing and signed by the Required Lenders and each of the Lenders (other than any of the Lenders that is, at such time, a Defaulting Lender) that has a Commitment under the Term Facilities or the Revolving Credit Facility or is owed any amounts under or in respect thereof, if such Lender is directly affected by such amendment, waiver or consent:

(i) increase the Commitments of such Lender or subject such Lender to any additional Obligations;

(ii) reduce the principal or interest rate of, or interest on, any Advance of such Lender or any fees or other amounts payable hereunder to such Lender;

(iii) postpone any date scheduled for any payment of principal of, or interest on, any Advance of such Lender or any fees or other amounts payable to such Lender; or

(iv) change the order of application of any prepayment set forth in Section 2.06 in any manner that materially affects such Lender; and

provided further that no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Bank or the Issuing Bank, as the case may be, in addition to the Lenders required above to take such action, affect the rights or duties of the Swing Line Bank or the Issuing Bank, respectively, under this Agreement or any of the other Loan Documents; and *provided further* that no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement or any of the other Loan Documents. Notwithstanding any of the foregoing provisions of this Section 8.01, none of the defined terms set forth in Section 1.01 shall be amended, supplemented or otherwise modified hereafter in any manner that would change the meaning, purpose or effect of this Section 8.01 or any Section referred to herein unless such amendment, supplement or modification is agreed to in writing by the number and percentage of Lenders (and the Issuing Bank, the Swing Line Bank and Administrative Agent, in each case if applicable) otherwise required to amend such Section under the terms of this Section 8.01.

SECTION 8.02. *Notices, Etc.*

(a) All notices and other communications provided for hereunder shall be in writing (including telecopy communication) and mailed, telecopied or delivered, if to the Borrower, at its address at 21250 Hawthorne Blvd., Suite 800, Torrance, California 90503 (Telecopier (310) 792-9281), Attention: Chief Financial Officer with a copy to Borrower's general counsel at the same address (Telecopier (310) 792-0044); if to any Initial Lender, the Swing Line Bank or the Initial Issuing Bank, at its Base Rate Lending Office specified opposite its name on Schedule I hereto; if to any other Lender Party, at its Base Rate Lending Office specified in the Assignment and Assumption pursuant to which it became a Lender Party; and if to the Administrative Agent, at its address at Eleven Madison Avenue, New York, New York 10010-3629, Attention: Agency Group Manager; or, as to the Borrower or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties and, as to each other party, at such other address as shall be designated by such party in a written notice to the Borrower and the Administrative Agent. All such notices and other communications shall, when mailed or telecopied, be effective when deposited in the mails, or transmitted by telecopier, respectively, except that notices and communications to any Agent pursuant to Article II, III or VII shall not be effective until received by such Agent. Delivery by telecopier of an executed counterpart of a signature page to any amendment or waiver of any provision of this Agreement or the Notes or of any Exhibit hereto to be executed and delivered hereunder shall be effective as delivery of an original executed counterpart thereof.

(b) If any notice required under this Agreement is permitted to be made, and is made, by telephone, actions taken or omitted to be taken in reliance thereon by the Administrative Agent or any of the Lender

Parties shall be binding upon the Borrower and the other Loan Parties notwithstanding any inconsistency between the notice provided by telephone and any subsequent writing in confirmation thereof provided to the Administrative Agent or such Lender Party; *provided* that any such action taken or omitted to be taken by the Administrative Agent or such Lender Party shall have been in good faith and in accordance with the terms of this Agreement.

SECTION 8.03. *No Waiver; Remedies.* No failure on the part of any Lender Party or any Agent to exercise, and no delay in exercising, any right, power or privilege hereunder or under any Note or any other Loan Document shall operate as a waiver thereof or consent thereto; nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The remedies herein provided are cumulative and not exclusive of any remedies provided by applicable law.

SECTION 8.04. *Costs and Expenses.*

(a) The Borrower agrees to pay on demand (i) all costs and expenses of each Agent in connection with the syndication, preparation, execution, delivery, administration, modification and amendment of, or any consent or waiver under, the Loan Documents and the other documents to be delivered thereunder (including, without limitation, (A) all due diligence, collateral review, syndication, transportation, computer, duplication, appraisal, audit, insurance, consultant, search, filing and recording fees and expenses and (B) the reasonable fees and expenses of counsel for the Administrative Agent (including the cost of internal counsel) with respect thereto, with respect to advising such Agent as to its rights and responsibilities, or the perfection, protection or preservation of rights or interests, under the Loan Documents), and (ii) all costs and expenses of each Agent and each Lender Party in connection with the enforcement of the Loan Documents and the other documents to be delivered thereunder, whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally (including, without limitation, the reasonable fees and expenses of counsel (including the cost of internal counsel) for the Administrative Agent and each Lender Party with respect thereto).

(b) The Borrower agrees to indemnify, defend and save and hold harmless each Agent, each Lender Party and each of their affiliates and their respective affiliates, officers, directors, trustees, employees, agents and advisors (each, an "***Indemnified Party***") from and against, and shall pay on demand, any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) the Transaction (or any aspect thereof), Facilities, the actual or proposed use of the proceeds of the Advances or the Letters of Credit, the Loan Documents, or any of the transactions contemplated thereby; (ii) any acquisition or proposed acquisition by the Borrower or any of its Subsidiaries or Affiliates of all or any portion of the Equity Interests in or Debt securities or substantially all of the property and assets of any other Person; or (iii) the actual or alleged presence of Hazardous Materials on any property of any Loan Party or any of its Subsidiaries or any Environmental Action relating in any way to any Loan Party or any of its Subsidiaries, except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct or have arisen after such Loan Party or Subsidiary is dispossessed of or relinquishes its interest in such property. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 8.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, shareholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the Transaction or any of the other transactions contemplated hereby is consummated. If and to the extent that the indemnity in this subsection (b) is unenforceable for any reason other than by operation of the last clause of the first sentence of this subsection 8.04(b), the Borrower hereby agrees to make to each applicable Indemnified Party the maximum contribution to the payment of the claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and

expenses of counsel) for which the indemnity in this subsection (b) has been determined to be unenforceable that is permitted under applicable law. The Borrower also agrees not to assert any claim against any Agent, any Lender Party or any of their respective affiliates, officers, directors, trustees, employees, agents and advisors, on any theory of liability, for special, indirect, consequential or punitive damages arising out of or otherwise relating to the Transaction (or any aspect thereof) Facilities, the actual or proposed use of the proceeds of the Advances or the Letters of Credit, the Loan Documents, or any of the other transactions contemplated hereby.

(c) If any payment of principal of, or Conversion of, any Eurodollar Rate Advance is made by the Borrower to or for the account of a Lender Party other than on the last day of the Interest Period for such Advance, as a result of a payment or Conversion pursuant to Section 2.06, 2.09(b)(i) or 2.10(d), acceleration of the maturity of the Notes pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Lender Party other than on the last day of the Interest Period for such Advance upon an assignment of rights and obligations under this Agreement pursuant to Section 8.07 as a result of a demand by the Borrower pursuant to Section 8.07(a), or if the Borrower fails to make any payment or prepayment of an Advance for which a notice of prepayment has been given or that is otherwise required to be made, whether pursuant to Section 2.04, 2.06 or 6.01 or otherwise, the Borrower shall, upon demand by such Lender Party (with a copy of such demand to the Administrative Agent), pay to the Administrative Agent for the account of such Lender Party any amounts required to compensate such Lender Party for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion or such failure to pay or prepay, as the case may be, including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender Party to fund or maintain such Advance.

(d) If any Loan Party fails to pay when due, after the expiration of any grace period, if applicable, any costs, expenses or other amounts payable by it under any Loan Document, including, without limitation, fees and expenses of counsel and indemnification payments, such amount may be paid on behalf of such Loan Party by the Administrative Agent or any Lender Party, in its sole discretion.

(e) Without prejudice to the survival of any other agreement of any Loan Party hereunder or under any other Loan Document, the agreements and obligations of the Borrower contained in Sections 2.10 and 2.13 and this Section 8.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under any of the other Loan Documents.

SECTION 8.05. *Right of Set-off.* Upon (a) the occurrence and during the continuance of any Event of Default and (b) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Administrative Agent to declare the Notes due and payable pursuant to the provisions of Section 6.01, each Agent and each Lender Party and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and otherwise apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by such Agent, such Lender Party or such Affiliate to or for the credit or the account of the Borrower against any and all of the Obligations of the Borrower now or hereafter existing under the Loan Documents, irrespective of whether such Agent or such Lender Party shall have made any demand under this Agreement or such Note or Notes and although such Obligations may be unmatured. Each Agent and each Lender Party agrees promptly to notify the Borrower after any such set-off and application; *provided*, *however*, that the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Agent and each Lender Party and their respective Affiliates under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that such Agent, such Lender Party and their respective Affiliates may have.

SECTION 8.06. *Successors and Assigns.* (a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that the Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender Party and no Lender may assign or otherwise transfer any of its rights or

obligations hereunder except (i) to an Eligible Assignee in accordance with Section 8.07(a), (ii) by way of participation in accordance with Section 8.07(e), or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 8.07(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 8.07(e) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lender Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

SECTION 8.07. *Assignments and Participations.*

(a) (i) Any Lender may, and (ii) so long as no Default under Section 6.01(a) or 6.01(f) or Event of Default has occurred and is continuing, if demanded by the Borrower (following (x) a demand by such Lender for the payment of additional compensation pursuant to Section 2.10(a), 2.10(b) or 2.13 or (y) an assertion by such Lender pursuant to Section 2.10(c) or 2.10(d) that it is impractical or unlawful for such Lender to make Eurodollar Rate Advances), upon at least five Business Days' notice to such Lender and the Administrative Agent, each of the Lenders will, at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment or Commitments, the Advances owing to it, the Note or Notes held by it and its participation in reimbursement obligations of the Borrower in respect of Letters of Credit); *provided* that:

(A) except in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment or Commitments, the Advances owing to it, the Note or Notes held by it, its participation in reimbursement obligations of the Borrower in respect of Letters of Credit or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment (which for this purpose includes Advances outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Advance of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date) shall not be less than $2,500,000, in the case of any assignment in respect of the Revolving Credit Facility, or $1,000,000, in the case of any assignment in respect of the Term Loan Facility;

(B) each assignment shall require the consent of the Borrower (not to be unreasonably withheld or delayed), except for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or, if an Event of Default has occurred and is continuing, or if such assignment is made in connection with the syndication of the Revolving Credit Commitments or any Term Facility, any other assignee;

(C) each assignment will require the consent of the Administrative Agent (not to be unreasonably withheld or delayed);

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Advance or the Commitment assigned, except that this clause (B) shall not prohibit any Lender from assigning all or a portion of its rights and obligations among separate Facilities on a non-*pro rata* basis;

(E) any assignment of a Revolving Credit Commitment must be approved by the Administrative Agent and the Issuing Bank unless the Person that is the proposed assignee is itself a Lender with a Revolving Credit Commitment (whether or not the proposed assignee would otherwise qualify as an Eligible Assignee);

(F) the parties to each assignment shall (x) electronically execute and deliver to the Administrative Agent an Assignment and Assumption via an electronic settlement system acceptable to the Administrative Agent (which initially shall be Clearpar, LLC), together with any Note or Notes subject to such assignment, or (y) manually execute and deliver to the Administrative Agent an Assignment

and Assumption, together with any Note or Notes subject to such assignment and, except in the case of an assignment by any of the Lenders to an Affiliate or an Approved Fund of such Lender, a processing and recordation fee of $3,500 (and in the case of simultaneous assignments on the same day by or to more than one fund managed or advised by the same investment advisor (which funds are not then Lenders hereunder), only a single $3,500 processing and recordation fee shall be payable for all such assignments), at the discretion of the Administrative Agent, and the Eligible Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire;

(G) the Swing Line Bank may not assign or otherwise transfer to any other Person any of its rights or obligations under its Swing Line Commitment.

(H) each such assignment made as a result of a demand by the Borrower pursuant to this Section 8.07(a)(ii) shall be arranged by the Borrower after consultation with the Administrative Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Agreement or an assignment of a portion of such rights and obligations made concurrently with another such assignment or other such assignments that together cover all of the rights and obligations of the assigning Lender under this Agreement.

(b) Subject to acceptance and recording thereof by the Administrative Agent pursuant to Section 8.07(c), from and after the effective date specified in each Assignment and Assumption, the Eligible Assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender or the Issuing Bank under this Agreement, and the assigning Lender or Issuing Bank thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, relinquish its rights and be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's or Issuing Bank's rights and obligations under this Agreement, such Lender or Issuing Bank shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.10, 2.13 and 8.04 (and other similar provisions of the other Loan Documents to survive the payment in full of the Obligations of the Loan Parties under or in respect of the Loan Documents) with respect to facts and circumstances occurring prior to the effective date of such assignment. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this paragraph shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with this Section 8.07(b).

(c) The Administrative Agent, acting solely for this purpose as an agent of the Borrower, shall maintain at its office as set forth in Section 8.02, a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lender Parties, and the Commitments of, and principal amounts of the Advances owing to, each Lender pursuant to the terms hereof from time to time (the "***Register***"). The entries in the Register shall be conclusive, and the Borrower, the Administrative Agent and the Lender Parties may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender Party hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Administrative Agent shall (i) upon the request by the Borrower or any Lender Party, provide a copy of the Register to the Borrower or such Lender Party, and (ii) upon its receipt of an Assignment and Assumption executed by an assigning Lender Party or Issuing Bank and an assignee, together with any Note or Notes subject to such assignment, if such Assignment and Assumption has been completed and is in substantially the form of Exhibit C hereto, (x) accept such Assignment and Assumption, and (y) record the information contained therein in the Register. In the case of any assignment by a Lender Party, the Borrower shall, at its own expense, and upon request by the Administrative Agent or any assignee, execute and deliver to the Administrative Agent in exchange for the surrendered Note or Notes a new Note or Notes from the Borrower payable to or to the order of such Eligible Assignee in an amount equal to the Commitment assumed by it under each Facility pursuant to such assignment and Assumption and, if the assigning Lender Party has retained a Commitment under such Facility, a new Note or Notes from the Borrower payable to or to the order of the assigning Lender Party in an amount equal to the Commitment retained by it under such Facility. Each of the new Note or Notes shall be in an aggregate principal amount equal to the aggregate

principal amount of such surrendered Note or Notes, shall be dated the effective date of such Assignment and Assumption and shall otherwise be in substantially the form of Exhibit A-1, Exhibit A-2 or Exhibit A-3 hereto, as appropriate.

(d) Any Lender Party may at any time, without the consent of, or notice to, the Borrower or the Administrative Agent, sell participations to any Person (other than a natural person or the Borrower or any of the Borrower's Affiliates or Subsidiaries) (each, a "***Participant***") in all or a portion of such Lender Party's rights and/or obligations under this Agreement (including all or a portion of its Commitment or Commitments, the Advances owing to it, the Note or Notes, if any, held by it and its participation, if any, in reimbursement obligations of the Borrower in respect of Letters of Credit); *provided* that:

(i) such Lender Party's obligations under this Agreement shall remain unchanged,

(ii) such Lender Party shall remain solely responsible to the other parties hereto for the performance of such obligations and

(iii) the Borrower, the Administrative Agent and the other Lender Parties shall continue to deal solely and directly with such Lender Party in connection with such Lender Party's rights and obligations under this Agreement.

Any agreement or instrument pursuant to which a Lender Party sells such a participation shall provide that such Lender Party shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; *provided* that such agreement or instrument may provide that such Lender Party will not, without the consent of the Participant, agree to any amendment, modification or waiver described in Section 8.01(a) or (b) that affects such Participant. Subject to Section 8.07(e), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.10, 2.13 and 8.04 to the same extent as if it were a Lender Party and had acquired its interest by assignment pursuant to Section 8.07(a). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 8.05 as though it were a Lender Party.

(e) A Participant shall not be entitled to receive any greater payment under Sections 2.10, 2.13 and 8.04 than the applicable Lender Party would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent. A Participant that would be a foreign lender party if it were a Lender Party shall not be entitled to the benefits of Section 2.13 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.13 as though it were a Lender Party.

(f) Any Lender Party may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender Party, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank; *provided* that no such pledge or assignment shall release such Lender Party from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender Party as a party hereto. In the case of any Lender that is a fund that invests in bank loans, such Lender may, without the consent of the Borrower or Administrative Agent, assign or pledge all or any portion of its rights under this Agreement, including the Loans and Notes or any other instrument evidencing its rights as a Lender under this Agreement, to any holder of, trustee for, or any other representative of holders of, obligations owed or securities issued, by such fund, as security for such obligations or securities; *provided* that any foreclosure or similar action by such trustee or representative shall be subject to the provisions of this Section 8.07 concerning assignments.

(g) Notwithstanding anything to the contrary contained herein, any Lender Party (a "***Granting Lender***") may grant to a special purpose funding vehicle identified as such in writing from time to time by the Granting Lender to the Administrative Agent and the Borrower (an "***SPC***") the option to provide all or any part of any Advance that such Granting Lender would otherwise be obligated to make pursuant to this Agreement, *provided* that (i) nothing herein shall constitute a commitment by any SPC to fund any Advance, and (ii) if an SPC elects not to exercise such option or otherwise fails to make all or any part of such Advance, the Granting

Lender shall be obligated to make such Advance pursuant to the terms hereof. The making of an Advance by an SPC hereunder shall utilize the Commitment of the Granting Lender to the same extent, and as if, such Advance were made by such Granting Lender. Each party hereto hereby agrees that (i) no SPC shall be liable for any indemnity or similar payment obligation under this Agreement for which a Lender Party would be liable, (ii) no SPC shall be entitled to the benefits of Sections 2.10 and 2.13 (or any other increased costs protection provision) and (iii) the Granting Lender shall for all purposes, including, without limitation, the approval of any amendment or waiver of any provision of any Loan Document, remain the Lender Party of record hereunder. In furtherance of the foregoing, each party hereto hereby agrees (which agreement shall survive the termination of this Agreement) that, prior to the date that is one year and one day after the payment in full of all outstanding commercial paper or other senior Debt of any SPC, it will not institute against, or join any other person in instituting against, such SPC any bankruptcy, reorganization, arrangement, insolvency, or liquidation proceeding under the laws of the United States or any State thereof. Notwithstanding anything to the contrary contained in this Agreement, any SPC may (i) with notice to, but without prior consent of, the Borrower and the Administrative Agent and without paying any processing fee therefor, assign all or any portion of its interest in any Advance to the Granting Lender and (ii) disclose on a confidential basis any non-public information relating to its funding of Advances to any rating agency, commercial paper dealer or provider of any surety or guarantee or credit or liquidity enhancement to such SPC. This subsection (g) may not be amended without the prior written consent of each Granting Lender, all or any part of whose Advances are being funded by the SPC at the time of such amendment.

(h) In the event that the Borrower shall request that the Lender Parties enter into any amendment, modification, consent or waiver with respect to this Agreement or any other Loan Document, and any Lender Party elects not to enter into such amendment, modification, consent or waiver (each such Lender Party being a "***Dissenting Lender***"), then the Borrower shall have the right upon 10 days' written notice to the Administrative Agent and such Dissenting Lender, to require each such Dissenting Lender to assign 100% of the rights and obligations of the Dissenting Lender at par to any Lender or any other financial institution which satisfies the requirements of Section 8.07(a) and has been consented to by the Administrative Agent, the Swing Line Lender and in the case of any assignment of a Revolving Credit Commitment each Issuing Bank (which consents in the case of the Administrative Agent and the Swing Line Lender shall not be unreasonably withheld or delayed). Each such assignment shall be made pursuant to an Assignment and Assumption and shall comply with the other terms of this Section 8.07. The Borrower shall pay to such Dissenting Lender, concurrently with the effectiveness of such assignment, any amounts payable under this Agreement that would have been payable if the Borrower had voluntarily prepaid such Advances. The Dissenting Lender shall not be required to pay any fee relating to such assignment.

SECTION 8.08. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery by telecopier of an executed counterpart of a signature page to this Agreement shall be effective as delivery of an original executed counterpart of this Agreement.

SECTION 8.09. *No Liability of the Issuing Bank.* The Borrower assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither the Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by the Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against the Issuing Bank, and the Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Borrower that the Borrower proves were caused by (i) the Issuing Bank's willful misconduct or gross negligence, or failure to conform with the standards specified in

Section 5-108 of the UCC, as determined in a final, non-appealable judgment by a court of competent jurisdiction in determining whether documents presented under any Letter of Credit comply with the terms of the Letter of Credit or (ii) the Issuing Bank's willful failure to make lawful payment under a Letter of Credit after the presentation to it of a draft and certificates strictly complying with the terms and conditions of the Letter of Credit. In furtherance and not in limitation of the foregoing, but subject to Section 5-109(a) of the UCC, the Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary.

SECTION 8.10. *Confidentiality.* Neither any Agent nor any Lender Party shall disclose any Confidential Information to any Person without the consent of the Borrower, other than (a) to such Agent's or such Lender Party's Affiliates and their officers, directors, employees, agents and advisors, to other Lender Parties and to actual or prospective Eligible Assignees and participants, and then only on a confidential basis, (b) as required by any law, rule or regulation or judicial process, (c) as requested or required by any state, Federal or foreign authority or examiner (including the National Association of Insurance Commissioners or any similar organization or quasi-regulatory authority) regulating such Lender Party, (d) to any rating agency when required by it, *provided* that, prior to any such disclosure, such rating agency shall undertake to preserve the confidentiality of any Confidential Information relating to the Loan Parties received by it from such Lender Party in accordance with such rating agency's internal procedures generally applicable to information of the same type, (e) in connection with any litigation or proceeding to which such Agent or such Lender Party or any of its Affiliates may be a party, (f) in connection with the exercise of any remedy under this Agreement or any other Loan Document, or (g) to any direct or indirect contractual counterparty in swap agreements or such contractual counterparty's professional advisor (so long as such contractual counterparty or professional advisor to such contractual counterparty agrees to be bound by the provisions of this Section 8.10). Notwithstanding anything herein to the contrary, each Loan Party, each Lender Party and the Administrative Agent and each of their respective officers, directors, employees, accountants, attorneys and other advisors, agents and representatives, may disclose to any and all persons, without limitation of any kind, any information with respect to the United States tax treatment and tax structure of the transactions contemplated by the Loan Documents and all materials of any kind (including opinions or other tax analyses) that are provided in respect to the respective Loan Party, Lender Party or the Administrative Agent, as the case may be, relating to such United States tax treatment and tax structure.

SECTION 8.11. *Execution in Counterparts.* This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 8.12. *Governing Law, Jurisdiction, Etc.*

(a) This Agreement and the Notes shall be governed by, and construed in accordance with, the laws of the State of New York (without reference to conflict of laws provisions).

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property and assets, to the nonexclusive jurisdiction of any New York State court or any federal court of the United States of America sitting in New York City, New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party, or for recognition or enforcement of any judgment in respect thereof, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the fullest extent permitted under applicable law, in any such federal court. Each of the parties hereto hereby irrevocably consents to the service of copies of any summons and complaint and any other process which may be served in any such action or proceeding by certified mail, return receipt requested, or by delivering a copy of such process to such party, at its address specified in Section 8.02, or by any other method permitted under applicable law. Each of the parties hereto hereby agrees that a final judgment in any such action or

proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Nothing in this Agreement shall affect any right that any of the parties hereto may otherwise have to bring any action or proceeding relating to this Agreement or any of the other Loan Documents in the courts of any jurisdiction.

(c) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents to which it is a party in any New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 8.13. *Designation as Designated Senior Debt.* This Agreement, the Subsidiary Guarantee, the Loan Documents and all monetary obligations hereunder or thereunder are hereby expressly designated as "Designated Senior Indebtedness" as that term (or any comparable term) is defined in the Subordinated Notes Documents.

SECTION 8.14. *WAIVER OF JURY TRIAL.* EACH OF THE BORROWER, THE AGENTS AND THE LENDER PARTIES IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE ADVANCES, THE LETTERS OF CREDIT OR THE ACTIONS OF ANY AGENT OR ANY LENDER PARTY IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

DAVITA INC., as Borrower

By _____

Name:
Title:

FORM OF TERM A NOTE

$ Dated: November , 2003

FOR VALUE RECEIVED, the undersigned, DAVITA INC., a Delaware corporation (the "***Borrower***"), **HEREBY PROMISES TO PAY** to the order of or its registered assigns (the "***Lender***") for the account of its Applicable Lending Office (as defined in the Second Amended and Restated Credit Agreement referred to below) the lesser of (a) the principal amount of [SPECIFY PRINCIPAL AMOUNT EVIDENCED BY THIS NOTE IN WORDS] DOLLARS and (b) the unpaid principal amount of the Term A Advance (as defined below) owing to the Lender by the Borrower pursuant to the Amended and Restated Credit Agreement, on the Term A Maturity Date; *provided, however,* that, in any event, the unpaid principal amount of the Term A Advance shall be repaid in full, together with all accrued and unpaid interest thereon, on the Termination Date for the Term A Facility (each as defined in the Second Amended and Restated Credit Agreement). Capitalized terms not otherwise defined in this Term A Note shall have the same meanings as specified therefor in the Second Amended and Restated Credit Agreement.

The Borrower promises to pay to the Lender interest on the unpaid principal amount of the Term A Advance from the date of the Term A Advance until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Second Amended and Restated Credit Agreement.

Both principal and interest are payable in lawful money of the United States of America to Credit Suisse First Boston, acting through its Cayman Islands Branch ("***CSFB***"), as the Administrative Agent, at its offices at Eleven Madison Avenue, New York, New York 10010 (or at such other location as shall be designated by the Administrative Agent in a written notice to the Borrower and the Lender), in same day funds. The Term A Advance owing to the Lender by the Borrower and the maturity thereof, and all payments made on account of principal thereof, shall be recorded by the Lender in its books; *provided* that the failure of the Lender to make any such recordation shall not affect the Obligations of the Borrower under this Term A Note or the Obligations of any of the Loan Parties under or in respect of any of the Loan Documents.

Whenever any payment under this Term A Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest; *provided, however,* that if such extension would cause payment of interest on or principal of any Eurodollar Rate Advance to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

This Term A Note is one of the Notes referred to in, and is entitled to the benefits of, the Second Amended and Restated Credit Agreement dated as of November 18, 2003, (as amended, supplemented or otherwise modified from time to time, the "***Second Amended and Restated Credit Agreement***") among the Borrower, the banks, financial institutions and other institutional lenders from time to time party thereto, CSFB, as the Swing Line Bank, CSFB and Banc of America Securities LLC as the Joint Book Managers in respect of the Revolving Credit Facility and Term A Facility, Banc of America Securities, LLC as Book Manager in respect of the Term B Facility, Bank of America, N.A. as the Syndication Agent in respect of the Revolving Credit Facility, Term A Facility and the Term B Facility, The Bank of New York, The Bank of Nova Scotia and Wachovia Bank, National Association, as the Documentation Agents and CSFB, as the Administrative Agent for the Lender Parties referred to therein. The Second Amended and Restated Credit Agreement, among other things, provides (i) for the making of a Term A Advance in U.S. dollars by the Lender to the Borrower in an amount not in excess of the U.S. dollar amount first mentioned above, the indebtedness of the Borrower resulting from the Term A

Advance being evidenced by this Term A Note and (ii) that the Term A Advance is subject to optional and mandatory commitment reductions and prepayments on account of principal hereof, in whole or in part, prior to the maturity hereof on the terms and conditions specified in Sections 2.05 and 2.06 of the Second Amended and Restated Credit Agreement.

Upon the occurrence and during the continuance of one or more Events of Default, the unpaid principal amount of this Term A Note and all accrued and unpaid interest hereon and other amounts payable in respect hereof and of the other Loan Documents may become, or may be declared to be, immediately due and payable as provided in Section 6.01 of the Second Amended and Restated Credit Agreement.

The terms of this Term A Note may be amended, supplemented or otherwise modified only in the manner provided in the Second Amended and Restated Credit Agreement.

The Borrower hereby waives presentment, demand, protest and notice of any kind. No failure on the part of the holder hereof to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Term A Note shall be governed by, and construed in accordance with, the laws of the State of New York.

DAVITA INC.

By: _____

Name:
Title:

TERM B NOTE

$ Dated: , 200

FOR VALUE RECEIVED, the undersigned, DAVITA INC., a Delaware corporation (the "***Borrower***"), **HEREBY PROMISES TO PAY** to the order of CREDIT SUISSE FIRST BOSTON, acting through its Cayman Islands Branch or its registered assigns (the "***Lender***") for the account of its Applicable Lending Office (as defined in the Second Amended and Restated Credit Agreement referred to below) the lesser of (a) the principal amount of [SPECIFY PRINCIPAL AMOUNT EVIDENCED BY THIS NOTE IN WORDS] DOLLARS and (b) the unpaid principal amount of the Term B Advance (as defined below) owing to the Lender by the Borrower pursuant to the Second Amended and Restated Credit Agreement, on the Term B Maturity Date; *provided, however,* that, in any event, the unpaid principal amount of the Term B Advance shall be repaid in full, together with all accrued and unpaid interest thereon, on the Termination Date for the Term B Facility (each as defined in the Second Amended and Restated Credit Agreement). Capitalized terms not otherwise defined in this Term B Note shall have the same meanings as specified therefor in the Second Amended and Restated Credit Agreement.

The Borrower promises to pay to the Lender interest on the unpaid principal amount of the Term B Advance from the date of the Term B Advance until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Second Amended and Restated Credit Agreement.

Both principal and interest are payable in lawful money of the United States of America to Credit Suisse First Boston, acting through its Cayman Islands Branch ("***CSFB***"), as the Administrative Agent, at its offices at Eleven Madison Avenue, New York, New York 10010 (or at such other location as shall be designated by the Administrative Agent in a written notice to the Borrower and the Lender), in same day funds. The Term B Advance owing to the Lender by the Borrower and the maturity thereof, and all payments made on account of principal thereof, shall be recorded by the Lender in its books; *provided* that the failure of the Lender to make any such recordation shall not affect the Obligations of the Borrower under this Term B Note or the Obligations of any of the Loan Parties under or in respect of any of the Loan Documents.

Whenever any payment under this Term B Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest; *provided, however,* that if such extension would cause payment of interest on or principal of any Eurodollar Rate Advance to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

This Term B Note is one of the Notes referred to in, and is entitled to the benefits of, the Second Amended and Restated Credit Agreement dated as of April 26, 2002, (as amended, supplemented or otherwise modified from time to time, the "***Second Amended and Restated Credit Agreement***") among the Borrower, the banks, financial institutions and other institutional lenders from time to time party thereto, CSFB, as the Swing Line Bank, CSFB and Banc of America Securities LLC as the Joint Book Managers in respect of the Revolving Credit Facility and Term A Facility, Banc of America Securities, LLC as Book Manager in respect of the Term B Facility, Bank of America, N.A. as the Syndication Agent in respect of the Revolving Credit Facility, Term A Facility, and Term B Facility, The Bank of New York, The Bank of Nova Scotia and Wachovia Bank, National Association, as the Documentation Agents, and CSFB, as the Administrative Agent for the Lender Parties referred to therein. The Second Amended and Restated Credit Agreement, among other things, provides (i) for the deemed making of one advance (a "***Term B Advance***") in U.S. dollars by the Lender to the Borrower, on the Closing Date, in an aggregate amount not in excess of the U.S. dollar amount first mentioned above, the

indebtedness of the Borrower results from the Term B Advances being evidenced by this Term B Note and (ii) that the Term B Advance is subject to optional and mandatory commitment reductions and prepayments on account of principal hereof, in whole or in part, prior to the maturity hereof on the terms and conditions specified in Sections 2.05 and 2.06 of the Second Amended and Restated Credit Agreement.

Upon the occurrence and during the continuance of one or more Events of Default, the unpaid principal amount of this Term B Note and all accrued and unpaid interest hereon and other amounts payable in respect hereof and of the other Loan Documents may become, or may be declared to be, immediately due and payable as provided in Section 6.01 of the Second Amended and Restated Credit Agreement.

The terms of this Term B Note may be amended, supplemented or otherwise modified only in the manner provided in the Second Amended and Restated Credit Agreement.

The Borrower hereby waives presentment, demand, protest and notice of any kind. No failure on the part of the holder hereof to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Term B Note shall be governed by, and construed in accordance with, the laws of the State of New York.

DAVITA INC.

By _____

Name:
Title:

FORM OF REVOLVING CREDIT NOTE

$ Dated: , 200

FOR VALUE RECEIVED, the undersigned, DAVITA INC., a Delaware corporation (the "***Borrower***"), **HEREBY PROMISES TO PAY** to the order of or its registered assigns (the "***Lender***") for the account of its Applicable Lending Office (as defined in the Second Amended and Restated Credit Agreement referred to below) the lesser of (a) the principal amount of [SPECIFY PRINCIPAL AMOUNT EVIDENCED BY THIS NOTE IN WORDS] DOLLARS and (b) the aggregate unpaid principal amount of the Revolving Credit Advances (as defined below) owing to the Lender by the Borrower pursuant to the Second Amended and Restated Credit Agreement, on the Termination Date for the Revolving Credit Facility (each as defined by the Second Amended and Restated Credit Agreement). Capitalized terms not otherwise defined in this Revolving Credit Note shall have the same meanings as specified therefor in the Second Amended and Restated Credit Agreement.

The Borrower promises to pay to the Lender interest on the unpaid principal amount of each of the Revolving Credit Advances from the date of such Revolving Credit Advance until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Second Amended and Restated Credit Agreement.

Both principal and interest are payable in lawful money of the United States of America to Credit Suisse First Boston, acting through its Cayman Islands Branch ("***CSFB***"), as the Administrative Agent, at its offices at Eleven Madison Avenue, New York, New York 10010 (or at such other location as shall be designated by the Administrative Agent in a written notice to the Borrower), in same day funds. Each of the Revolving Credit Advances owing to the Lender by the Borrower and the maturity thereof, and all payments made on account of principal thereof, shall be recorded by the Lender in its books; *provided* that the failure of the Lender to make any such recordation shall not affect the Obligations of the Borrower under this Revolving Credit Note or the Obligations of any of the Loan Parties under or in respect of any of the Loan Documents.

Whenever any payment under this Revolving Credit Note shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest; *provided*, *however,* that if such extension would cause payment of interest on or principal of any Eurodollar Rate Advance to be made in the next succeeding calendar month, such payment shall be made on the immediately preceding Business Day.

This Revolving Credit Note is one of the Notes referred to in, and is entitled to the benefits of, the Second Amended and Restated Credit Agreement dated as of November 18, 2003, (as amended, supplemented or otherwise modified from time to time, the "***Second Amended and Restated Credit Agreement***") among the Borrower, the banks, financial institutions and other institutional lenders from time to time party thereto, CSFB, as the Swing Line Bank, CSFB and Banc of America Securities LLC as the Joint Book Managers in respect of the Revolving Credit Facility and Term A Facility, Banc of America Securities, LLC as Book Manager in respect of the Term B Facility, Bank of America, N.A. as the Syndication Agent in respect of the Revolving Credit Facility, Term A Facility and Term B Facility, The Bank of New York, The Bank of Nova Scotia and Wachovia Bank, National Association, as the Documentation Agents, and CSFB, as the Administrative Agent for the Lender Parties referred to therein. The Second Amended and Restated Credit Agreement, among other things, provides (i) for the making of advances (together with the Revolving Credit Advance (if any) deemed to have been made by the Lender to the Borrower on the Closing Date, the "***Revolving Credit Advances***") from time to

time on and after the Closing Date by the Lender to the Borrower in an aggregate amount not to exceed at any time outstanding the U.S. dollar amount first above mentioned, the indebtedness of the Borrower resulting from each of the Revolving Credit Advances being evidenced by this Revolving Credit Note, and (ii) that the Revolving Credit Advances are subject to optional and mandatory commitment reductions and prepayments on account of principal hereof, in whole or in part, prior to the maturity hereof on the terms and conditions specified in Sections 2.05 and 2.06 of the Second Amended and Restated Credit Agreement.

Upon the occurrence and during the continuance of one or more Events of Default, the aggregate unpaid principal amount of this Revolving Credit Note and all accrued and unpaid interest hereon and other amounts payable in respect hereof and of the other Loan Documents may become, or may be declared to be, immediately due and payable as provided in Section 6.01 of the Second Amended and Restated Credit Agreement.

The terms of this Revolving Credit Note may be amended, supplemented or otherwise modified only in the manner provided in the Second Amended and Restated Credit Agreement.

The Borrower hereby waives presentment, demand, protest and notice of any kind. No failure on the part of the holder hereof to exercise, and no delay in exercising, any right, power or privilege hereunder shall operate as a waiver thereof or a consent thereto; nor shall a single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

This Revolving Credit Note shall be governed by, and construed in accordance with, the laws of the State of New York.

DAVITA INC.

By _____

Name:
Title:

EXHIBIT B-1 TO THE
SECOND AMENDED AND
RESTATED CREDIT AGREEMENT

NOTICE OF BORROWING

, 200

Credit Suisse First Boston,
as the Administrative Agent for the Lender Parties
party to the Second Amended and Restated Credit Agreement
referred to below

Eleven Madison Avenue
New York, New York 10010
Attention: Agency Group Manager

Ladies and Gentlemen:

The undersigned, DAVITA INC., a Delaware corporation (the "***Borrower***"), refers to the Second Amended and Restated Credit Agreement dated as of November 18, 2003, (the "***Second Amended and Restated Credit Agreement***"; capitalized terms used therein are used herein as so defined) among the Borrower, the banks, financial institutions and other institutional lenders from time to time party thereto, Credit Suisse First Boston, acting through its Cayman Islands Branch ("***CSFB***") as the Swing Line Bank, CSFB and Banc of America Securities LLC as the Joint Book Managers in respect of the Revolving Credit Facility and Term A Facility, Banc of America Securities, LLC as Book Manager in respect of the Term B Facility, Bank of America, N.A. as the Syndication Agent in respect of the Revolving Credit Facility, Term A Facility and Term B Facility, The Bank of New York, The Bank of Nova Scotia and Wachovia Bank, National Association, as the Documentation Agents and CSFB, as the Administrative Agent for the Lender Parties referred to therein, and hereby gives you notice, irrevocably, pursuant to Section 2.02 of the Second Amended and Restated Credit Agreement, that the undersigned hereby requests a Borrowing under the Second Amended and Restated Credit Agreement and, in connection therewith, sets forth below the information relating to such Borrowing (the "***Proposed Borrowing***") as required by Section 2.02(a) of the Second Amended and Restated Credit Agreement:

(a) The Business Day of the Proposed Borrowing is requested to be r , 200 .

(b) The Facility under which the Proposed Borrowing is requested to be made is the Term B Facility.

(c) The Type of Advances requested to comprise the Proposed Borrowing is Eurodollar Rate Advances.

(d) The aggregate principal amount of the Proposed Borrowing is requested to be $.

(e) The initial Interest Period that is requested for each of the Eurodollar Rate Advances to be made as part of the Proposed Borrowing is months.

The undersigned hereby certifies that the following statements are true on and as of the date of this Notice of Borrowing and will be true on and as of the date of the Proposed Borrowing:

(i) The representations and warranties contained in each of the Loan Documents are correct in all material respects on and as of such date, before and after giving effect to the Proposed Borrowing and to the application of the proceeds therefrom, as though made on and as of such date (except (A) for any such representation and warranty that, by its terms, refers to a specific date other than the date of the Proposed Borrowing, in which case, as of such specific date, and (B) that the Consolidated financial statements and forecasts referred to in Sections 4.01(g) and 4.01(h) of the Second Amended and Restated Credit Agreement

shall be deemed to refer to the Consolidated financial statements and forecasts comprising part of the Required Financial Information most recently delivered to the Administrative Agent and the Lender Parties under Sections 5.03(b), 5.03(c) and 5.03(d) of the Second Amended and Restated Credit Agreement, respectively, (except that in the case of financial statements delivered pursuant to Section 5.03(c), such financial statements may not contain all notes and may be subject to year end audit adjustments) on or prior to the date of the Proposed Borrowing); and

(ii) No event has occurred and is continuing, or would result from the Proposed Borrowing or from the application of the proceeds therefrom, that constitutes a Default.

(a) The undersigned hereby agrees that this Notice of Borrowing shall be irrevocable and binding on the Borrower and that the Borrower shall indemnify each Appropriate Lender against any loss, cost or expense incurred by such Lender as a result of the Borrower's failure to borrow as provided herein on the date of the Proposed Borrowing or any failure to fulfill on or before the date specified in this Notice of Borrowing for the Proposed Borrowing the applicable conditions set forth in Article III of the Second Amended and Restated Credit Agreement, including, without limitation, any loss, cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Eurodollar Rate Advance to be made by such Lender as part of the Proposed Borrowing when such Advance, as a result of such failure, is not made on such date.

Very truly yours,

DAVITA INC.

By: _____

Name:
Title:

EXHIBIT B-2 TO THE
SECOND AMENDED AND
RESTATED CREDIT AGREEMENT

FORM OF NOTICE OF SWING LINE BORROWING

[Date of Notice of
Swing Line Borrowing]

Credit Suisse First Boston,
as the Administrative Agent for the Lender Parties
party to the Second Amended and Restated Credit Agreement
referred to below

Eleven Madison Avenue
New York, New York 10010
Attention: Agency Group Manger

Ladies and Gentlemen:

The undersigned, DAVITA INC., a Delaware corporation (the "***Borrower***"), refers to the Second Amended and Restated Credit Agreement dated as of November 18, 2003, (as further amended, supplemented or otherwise modified from time to time, the "***Second Amended and Restated Credit Agreement***") among the Borrower, the banks, financial institutions and other institutional lenders from time to time party thereto, Credit Suisse First Boston, acting through its Cayman Islands Branch ("***CSFB***"), as the Swing Line Bank, CSFB and Banc of America Securities LLC as the Joint Book Managers in respect of the Revolving Credit Facility and Term A Facility, Banc of America Securities, LLC as Book Manager in respect of the Term B Facility, Bank of America, N.A. as the Syndication Agent in respect of the Revolving Credit Facility, Term A Facility and Term B Facility, The Bank of New York, The Bank of Nova Scotia and Wachovia Bank, National Association, as the Documentation Agents and CSFB, as the Administrative Agent for the Lender Parties referred to therein, and hereby gives you notice, irrevocably, pursuant to Section 2.02 of the Second Amended and Restated Credit Agreement, that the undersigned hereby requests a Swing Line Borrowing under the Second Amended and Restated Credit Agreement and, in connection therewith, sets forth below the information relating to such Swing Line Borrowing (the "***Proposed Swing Line Borrowing***") as required by Section 2.02(b)(i) of the Second Amended and Restated Credit Agreement:

(a) The Business Day of the Proposed Swing Line Borrowing is requested to be , .

(b) The aggregate principal amount of the Proposed Swing Line Borrowing is requested to be $.

(c) The maturity date of the Proposed Swing Line Borrowing is requested to be , .[1]

The undersigned hereby certifies that the following statements are true on and as of the date of this Notice of Swing Line Borrowing and will be true on and as of the date of the Proposed Swing Line Borrowing:

(i) The representations and warranties contained in each of the Loan Documents are correct in all material respects on and as of such date, before and after giving effect to the Proposed Swing Line Borrowing and to the application of the proceeds therefrom, as though made on and as of such date (except (A) for any such representation and warranty that, by its terms, refers to a specific date other than the date of

[1] The maturity date of the Proposed Swing Line Borrowed may not exceed the 7th day following the date of the Proposed Swing Line Borrowing specified in clause (a) above.

the Proposed Swing Line Borrowing, in which case, as of such specific date, and (B) that the Consolidated financial statements and forecasts referred to in Sections 4.01(g) and 4.01(h) of the Second Amended and Restated Credit Agreement shall be deemed to refer to the Consolidated financial statements and forecasts comprising part of the Required Financial Information most recently delivered to the Administrative Agent and the Lender Parties under Sections 5.03(b), 5.03(c) and 5.03(d) of the Second Amended and Restated Credit Agreement, respectively, (except that in the case of financial statements delivered pursuant to Section 5.03(c), such financial statements may not contain all notes and may be subject to year end audit adjustments) on or prior to the date of the Proposed Swing Line Borrowing); and

(ii) No event has occurred and is continuing, or would result from the Proposed Swing Line Borrowing or from the application of the proceeds therefrom, that constitutes a Default.

Very truly yours,

DAVITA INC.

By: _____

Name:
Title:

FORM OF NOTICE OF CONVERSION

[Date of Notice of Conversion]

Credit Suisse First Boston,
as the Administrative Agent for the Lender
Parties party to the Second Amended and Restated
Credit Agreement referred to below

Eleven Madison Avenue
New York, New York 10010
Attention: Agency Group Manager

Ladies and Gentlemen:

The undersigned, DAVITA INC., a Delaware corporation (the "***Borrower***"), refers to the Second Amended and Restated Credit Agreement dated as of November 18, 2003, (as further amended, supplemented or otherwise modified from time to time, the "***Second Amended and Restated Credit Agreement***") among the Borrower, the banks, financial institutions and other institutional lenders from time to time party thereto, Credit Suisse First Boston, acting through its Cayman Islands Branch ("***CSFB***"), as the Swing Line Bank, CSFB and Banc of America Securities LLC as the Joint Book Managers in respect of the Revolving Credit Facility and Term A Facility, Banc of America Securities, LLC as Book Manager in respect of the Term B Facility, Bank of America, N.A. as the Syndication Agent in respect of the Revolving Credit Facility, Term A Facility and the Term B Facility, The Bank of New York, The Bank of Nova Scotia and Wachovia Bank, National Association, as the Documentation Agents and CSFB, as the Administrative Agent for the Lender Parties referred to therein, and hereby gives you notice, irrevocably, pursuant to Section 2.09 of the Second Amended and Restated Credit Agreement, that the undersigned hereby requests a Conversion of the Advances specified in clause (b) below under the Second Amended and Restated Credit Agreement and, in connection therewith, sets forth below the information relating to such Conversion (the "***Proposed Conversion***") as required by Section 2.09(a) of the Second Amended and Restated Credit Agreement:

(a) The Business Day of the Proposed Conversion is requested to be , [2].

(b) The Advances requested to be Converted as part of the Proposed Conversion are the Advances outstanding on the date of this Notice of Conversion as [Base Rate Advances] [Eurodollar Rate Advances] in an aggregate principal amount of $.

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[2] The date specified in clause (a) shall be the last day of the existing Interest Period for the Eurodollar Rate Advances requested to be Converted in the Proposed Conversion.

(c) The Advances referred to in clause (b) above are requested to be Converted as part of the Proposed Conversion into [Base Rate Advances] [Eurodollar Rate Advances] with an initial Interest Period having a duration of [one] [two] [three] [six] [twelve] month[s].[3]

Very truly yours,

DAVITA INC.

By: _____

Name:
Title:

[3] Twelve month Eurodollar Rate Advances may be requested if, at the date of such request, rates per annum for deposits in U.S. Dollars for twelve months then appear on the Dow Jones Telerate Screen or Reuters Screen LIBO page.

FORM OF ASSIGNMENT AND ASSUMPTION

This Assignment and Assumption (this "*Assignment and Assumption*") is dated as of the Effective Date set forth below and is entered into by and between [*Insert name of Assignor*] (the "*Assignor*") and [*Insert name of Assignee*] (the "*Assignee*"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (the "*Credit Agreement*"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Assumption as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent as contemplated below (i) all of the Assignor's rights and obligations as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below (including, without limitation, Letters of Credit and Guarantees included in such facilities) and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including, but not limited to, contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as, the "*Assigned Interest*"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Assumption, without representation or warranty by the Assignor.

1.	Assignor:	
2.	Assignee:	[and is an Affiliate/Approved Fund of [*identify Lender*][4]]
3.	Borrower:	[ ]
4.	Administrative Agent:	Credit Suisse First Boston, Cayman Islands Branch, as the administrative agent under the Credit Agreement
5.	Credit Agreement:	Second Amended and Restated Credit Agreement, dated as of November 18, 2003 among Davita, Inc., the Borrower, the Lenders parties thereto, Credit Suisse First Boston, acting through its Cayman Islands Branch ("*CSFB*"), as Administrative Agent, Collateral Agent and Swing Line Bank, Bank of America, N.A., as Syndication Agent in relation to the Revolving Credit Facility, the Term A Facility and the Term B Facility, CSFB and Banc of America Securities, LLC, as Joint Lead Arrangers and Joint Book Managers in relation to the Revolving Credit Facility and the Term A Facility, Banc of America Securities, LLC as Book Manager in relation to the Term B Facility, and The Bank of New York, The Bank of Nova Scotia and Wachovia Bank, National Association as Documentation Agents in relation to the Revolving Credit Facility and the Term A Facility.

[4] Select as applicable.

6. Assigned Interest:

Facility Assigned	Aggregate Amount of Commitment/Loans for all Lenders	Amount of Commitment/Loans Assigned	Percentage Assigned of Commitment/Loans[5]
[6]	$	$	%
	$	$	%
	$	$	%

Effective Date: , 20 [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Assignment and Assumption are hereby agreed to:

ASSIGNOR
[NAME OF ASSIGNOR]

By: _____

Title:

ASSIGNEE
[NAME OF ASSIGNEE]

By: _____

Title:

[Consented to and][7] Accepted:

CREDIT SUISSE FIRST BOSTON, acting
through its CAYMAN ISLANDS BRANCH,
as Administrative Agent

By: _____

Title:

---

5 Set forth, to at least 9 decimals, as a percentage of the Commitment/Loans of all Lenders thereunder.

6 Fill in the appropriate terminology for the types of facilities under the Credit Agreement that are being assigned under this Assignment (e.g. "Revolving Credit Commitment", "Term Commitment", etc.).

7 To be added only if a Revolving Credit Commitment is assigned.

[Consented to:

[ ]., as Issuing Bank

By: _____

Title:][8]

[Consented to:

DAVITA, INC.

By: _____

Title:][9]

---

8 To be added only if a Revolving Credit Commitment is assigned.

9 To be added only if the Assignee is an Eligible Assignee solely by reason of clause (a)(viii) of the definition of "Eligible Assignee" in Section 1.01 of the Credit Agreement.

ANNEX 1 TO ASSIGNMENT AND ASSUMPTION

Second Amended and Restated Credit Agreement, dated as of November 18, 2003 (as amended, restated, extended, supplemented or otherwise modified in writing from time to time, the "*Credit Agreement*"; the terms defined therein being used herein as therein defined), among Davita, Inc., a Delaware corporation, as the Borrower, the Lenders from time to time party thereto, Credit Suisse First Boston, acting through its Cayman Islands Branch ("*CSFB*"), as Administrative Agent, Collateral Agent and Swing Line Bank, Bank of America, N.A., as Syndication Agent in relation to the Revolving Credit Facility and the Term A Facility, CSFB as Syndication Agent in relation to the Term B Facility, CSFB and Banc of America Securities, LLC, as Joint Lead Arrangers and Joint Book Managers in relation to the Revolving Credit Facility and the Term A Facility, CSFB as Book Manager in relation to the Term B Facility, and The Bank of New York, The Bank of Nova Scotia and Wachovia Bank, National Association as Documentation Agents in relation to the Revolving Credit Facility and the Term A Facility

STANDARD TERMS AND CONDITIONS FOR

ASSIGNMENT AND ASSUMPTION

1. *Representations and Warranties*.

1.1. *Assignor*. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any Lien or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby; and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. *Assignee*. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Assumption and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it meets all requirements of an Eligible Assignee under the Credit Agreement (subject to receipt of such consents as may be required under the Credit Agreement), (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.03 (b), (c) and (d) thereof, as applicable, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Assumption and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender, (v) if it was not a Lender under the Credit Agreement, attached hereto is its Administrative Questionnaire duly completed by the Assignee, and (vi) if it is a Person organized under the laws of a country other than the United States of America, attached hereto is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee; and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under the Loan Documents, and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. *Payments*. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. *General Provisions*. This Assignment and Assumption shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Assumption may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Assumption by telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Assumption. This Assignment and Assumption shall be governed by, and construed in accordance with, the law of the State of New York and, to the extent applicable, the Bankruptcy Code.

EXHIBIT H TO THE
SECOND AMENDED AND
RESTATED CREDIT AGREEMENT

FORM OF NOTICE OF COVENANT REDUCTION

[Date of Notice of Covenant Reduction]

Credit Suisse First Boston,
as the Administrative Agent for the Lender Parties
party to the Credit Agreement referred to below
Eleven Madison Avenue
New York, New York 10010
Attention: Agency Group Manager

Ladies and Gentlemen:

The undersigned, DAVITA INC., a Delaware corporation (the "***Borrower***"), refers to the Second Amended and Restated Credit Agreement dated as of November 18, 2003, (as amended, supplemented or otherwise modified from time to time, the "***Credit Agreement***"; the terms defined therein are used herein as so defined) among the Borrower, the banks, financial institutions and other institutional lenders from time to time party thereto and Credit Suisse First Boston, Cayman Islands Branch, as the Administrative Agent, and hereby certifies and agrees, pursuant to Section 5.02(g)(vi)(C) of the Credit Agreement, that in connection with a proposed Restricted Payment to be made by the Borrower on [, 200][10], pursuant to Section 5.02(g)(vi)(C) of the Credit Agreement:

(a) immediately prior to such proposed Restricted Payment and after giving *pro forma* effect thereto (i) the Leverage Ratio will be less than 3.00:1.00 and the Senior Leverage Ratio will be less than 1.75:1.00 and (ii) the aggregate amount of the Unused Revolving Credit Commitment is not less than $75,000,000;

(b) at all times after the date of such proposed Restricted Payment, for purposes of Section 5.04(a) and (e) of the Credit Agreement, respectively, the Leverage Ratio shall be 3.00:1.00 and the Senior Leverage Ratio shall be 1.75:1.00; and

(c) on the date hereof and on the date of the proposed Restricted Payment, no event has occurred and is continuing which constitutes a Default or an Event of Default.

Very truly yours,

DAVITA INC.

By: _____
Name:
Title:

[10] Insert a date not earlier than three Business Days following the date of the Notice of Covenant Reduction.

ENTITIES THAT ARE NOT SUBSIDIARIES

DaVita - Riverside, LLC, a Delaware limited liability company

East Aurora, LLC, a Delaware limited liability company

Tulsa Dialysis, LLC, a Delaware limited liability company

FORM OF CONSENT AND RATIFICATION OF
COLLATERAL DOCUMENTS AND GUARANTEE

Dated as of November , 2003

In connection with the Amended and Restated Credit Agreement dated as of July 15, 2003 (the "***Existing Credit Agreement***") among DaVita Inc. (the "***Borrower***"), Credit Suisse First Boston, acting through its Cayman Islands Branch ("***CSFB***"), as administrative agent and collateral agent, and the banks, financial institutions and other institutional lenders party thereto, each of the undersigned Guarantors (as defined in the Existing Credit Agreement): (i) has executed and delivered a Security Agreement and an Intellectual Property Security Agreement in favor of CSFB, as collateral agent, and a Subsidiary Guarantee (each as defined in the Existing Credit Agreement); or (ii) is, concurrently herewith, executing and delivering a Guarantee Supplement (as defined in the Subsidiary Guarantee). The Security Agreement, the Intellectual Property Security Agreement, the Subsidiary Guarantee and the Guarantee Supplement are collectively referred to as the "***Subsidiary Documents***").

On the date hereof, the Existing Credit Agreement is being amended with such amendment being evidenced by an Second Amended and Restated Credit Agreement (the "***Second Amended and Restated Credit Agreement***") among the Borrower, CSFB as administrative agent, and the banks, financial institutions and other institutional lenders party thereto (capitalized terms not otherwise defined herein shall have the meanings as specified therefor in the Second Amended and Restated Credit Agreement).

Each of the undersigned Guarantors hereby consents to the amendment and restatement of the Existing Credit Agreement pursuant to the terms of the Second Amended and Restated Credit Agreement and hereby confirms and agrees that each of the Subsidiary Documents is, and shall continue to be, in full force and effect and is hereby ratified and confirmed in all respects, except that, on and after the effectiveness of the Second Amended and Restated Credit Agreement, each reference in each of the Subsidiary Documents to the "*Credit Agreement*", "*thereunder*", "*thereof*" or words of like import shall mean and be a reference to the Second Amended and Restated Credit Agreement.

On or prior to the date hereof, each of the undersigned Guarantors signatory to the Guarantee Supplement attached as Exhibit A hereto (the "***Additional Guarantors***") has executed and delivered to CSFB the Guarantee Supplement attached hereto as Exhibit A (the "***Additional Guarantors' Guarantee Supplement***"). CSFB, on behalf of itself as administrative agent and collateral agent, and on behalf of the banks, financial institutions and other institutional lenders party to the Existing Credit Agreement, hereby acknowledges and agrees that the execution and delivery of the Additional Guarantors' Guarantee Supplement in connection herewith shall be deemed to have been timely submitted to CSFB in accordance with Section 5.01(j) of the Existing Credit Agreement and CSFB hereby waives any breach of the Existing Credit Agreement which may have existed prior to the date hereof with respect to the Additional Guarantors' inadvertent failure to comply with all of the terms and conditions of Section 5.01(j) of the Existing Credit Agreement and Section 8 of the Subsidiary Guarantee.

This Consent and Ratification may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same Consent and Ratification. Delivery of an executed counterpart of a signature page to this Consent and Ratification by telecopier shall be effective as delivery of a manually executed counterpart of this Consent and Ratification.

This Consent and Ratification shall be governed by, and construed in accordance with, the laws of the State of New York.

IN WITNESS WHEREOF, each of the undersigned has caused this Consent and Ratification to be executed by its officer thereunto duly authorized as of the date first above written.

CREDIT SUISSE FIRST BOSTON, ACTING
THROUGH ITS CAYMAN ISLANDS BRANCH

By: _____
Name:
Title:

DAVITA INC. AND EACH OF THE DIRECT AND
INDIRECT SUBSIDIARIES OF DAVITA INC.
LISTED ON APPENDIX A HERETO:

By: _____
Guy Seay
Vice President

APPENDIX A

Subsidiaries

Astro, Hobby, West Mt. Renal Care Limited Partnership
Bay Area Dialysis Partnership
Beverly Hills Dialysis Partnership
Carroll County Dialysis Facility, Inc.
Continental Dialysis Center of Springfield-Fairfax, Inc.
Continental Dialysis Centers, Inc.
DaVita Nephrology Associates of Utah, L.L.C.
DaVita – West, LLC
Dialysis Specialists of Dallas, Inc.
East End Dialysis Center, Inc.
Elberton Dialysis Facility, Inc.
Flamingo Park Kidney Center, Inc.
Houston Kidney Center/Total Renal Care Integrated Service Network Limited Partnership
Lincoln Park Dialysis Services, Inc.
Mason-Dixon Dialysis Facilities, Inc.
Nephrology Medical Associates of Georgia, LLC
Open Access Sonography, Inc.
Peninsula Dialysis Center, Inc.
Renal Treatment Centers – California, Inc.
Renal Treatment Centers – Hawaii, Inc.
Renal Treatment Centers – Illinois, Inc.
Renal Treatment Centers – Mid-Atlantic, Inc.
Renal Treatment Centers – Northeast, Inc.
Renal Treatment Centers – Southeast, LP
Renal Treatment Centers – West, Inc.
Renal Treatment Centers, Inc.
RMS DN, LLC
RTC – Texas Acquisition, Inc.
Sierra Rose Dialysis Center, LLC
Total Acute Kidney Care, Inc.
Total Renal Care of Colorado, Inc.
Total Renal Care of Puerto Rico, Inc.
Total Renal Care of Utah, L.L.C.
Total Renal Care Texas Limited Partnership
Total Renal Care, Inc.
Total Renal Care/Peralta Renal Center Partnership
Total Renal Care/Piedmont Dialysis Partnership
Total Renal Research, Inc.
Total Renal Support Services, Inc.
TRC – Indiana, LLC
TRC of New York, Inc.
Tri-City Dialysis Center, Inc.

EXHIBIT A

Guarantee Supplement

FORM OF GUARANTEE SUPPLEMENT

November , 2003

Credit Suisse First Boston ("***CSFB***")
(as the Administrative Agent under
the Credit Agreement referred to below)
Eleven Madison Avenue
New York, New York 10010

Attention:

*Second Amended and Restated Credit Agreement dated as of November 18, 2003 (as in effect on the date hereof, the "**Credit Agreement**") among DaVita Inc., the banks, financial institutions and other institutional lenders from time to time party thereto and CSFB as the Administrative Agent for the Lender Parties thereunder*

Ladies and Gentlemen:

Reference is made to the above-captioned Credit Agreement and to the Subsidiary Guarantee referred to therein (such Subsidiary Guarantee, as in effect on the date hereof and as it may be further amended, supplemented or otherwise modified hereafter from time to time, the "***Guarantee***"). Capitalized terms not otherwise defined in this Guarantee Supplement shall have the same meanings as specified therefor in the Credit Agreement or the Guarantee.

SECTION 1. *Guarantee; Limitation of Liability*. (a) Each of the undersigned hereby unconditionally and irrevocably guarantees on a joint and several basis with the other Guarantors the punctual payment when due, whether at scheduled maturity or at a date fixed for prepayment or by acceleration, demand or otherwise, of all of the Obligations of the Borrower now or hereafter existing under or in respect of the Finance Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing Obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premium, fees, indemnification payments, contract causes of action, costs, expenses or otherwise (such Obligations being the "***Guaranteed Obligations***"), and agrees to pay any and all expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Administrative Agent or any of the Guaranteed Parties in enforcing any rights under this Guarantee Supplement or the Guarantee, on the terms and subject to the limitations set forth in the Guarantee, as if it were an original party thereto. Without limiting the generality of the foregoing, each of the undersigned's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any of the other Loan Parties to the Administrative Agent or any of the Guaranteed Parties under or in respect of the Finance Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party.

(b) Each of the undersigned, and by their acceptance of this Guarantee Supplement, the Administrative Agent and each of the Guaranteed Parties, hereby confirm that it is the intention of all such Persons that this Guarantee Supplement, the Guarantee and the Obligations of the undersigned hereunder and thereunder not constitute a fraudulent transfer or conveyance for purposes of the United States Federal Bankruptcy Code, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar federal or state Requirements of Law covering the protection of creditors' rights or the relief of debtors to the extent applicable to this Guarantee Supplement, the Guarantee and the Obligations of the undersigned hereunder and thereunder. To effectuate the foregoing intention, each of the undersigned, the Administrative Agent and each of the

Guaranteed Parties hereby irrevocably agree that the Guaranteed Obligations and all of the other liabilities of the undersigned under this Guarantee Supplement and the Guarantee shall be limited to the maximum amount as will, after giving effect to such maximum amount and all of the other contingent and fixed liabilities of the undersigned that are relevant under such Requirements of Law, and after giving effect to any collections from, any rights to receive contributions from, or any payments made by or on behalf of, any of the other Guarantors in respect of the Obligations of such other Guarantor under the Guarantee, result in the Guaranteed Obligations and all of the other liabilities of the undersigned under this Guarantee Supplement and the Guarantee not constituting a fraudulent transfer or conveyance.

(c) Each of the undersigned hereby unconditionally and irrevocably agrees that, in the event any payment shall be required to be made to the Guaranteed Parties under this Guarantee Supplement, the Guarantee or any other guarantee, the undersigned will contribute, to the fullest extent permitted by applicable law, such amounts to each of the other Guarantors and each other guarantor so as to maximize the aggregate amount paid to the Guaranteed Parties under or in respect of the Finance Documents.

SECTION 2. *Obligations Under the Guarantee*. Each of the undersigned hereby agrees, as of the date first above written, to be bound as a Guarantor by all of the terms and conditions of the Guarantee to the same extent as each of the other Guarantors. Each of the undersigned further agrees, as of the date first above written, that each reference in the Guarantee to an "*Additional Guarantor*" or a "*Guarantor*" shall also mean and be a reference to the undersigned, and each reference in any other Loan Document to a "*Guarantor*" or a "*Loan Party*" shall also mean and be a reference to the undersigned.

SECTION 3. *Governing Law; Jurisdiction; Etc.* (a) This Guarantee Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

(b) Each of the undersigned hereby irrevocably and unconditionally submits, for itself and its property and assets, to the nonexclusive jurisdiction of any New York state court or any federal court of the United States of America sitting in New York City, New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Guarantee Supplement, the Guarantee or any of the other Finance Documents to which it is a party, or for recognition or enforcement of any judgment in respect thereof, and the undersigned hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York state court or, to the fullest extent permitted by applicable law, in any such federal court. Each of the undersigned hereby irrevocably consents to the service of copies of any summons and complaint and any other process which may be served in any such action or proceeding by certified mail, return receipt requested, or by delivering a copy of such process to such party, at its address set forth below its name on the signature page to this Guarantee Supplement, or by any other method permitted by applicable law. Each of the undersigned hereby agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable law. Nothing in this Guarantee Supplement or the Guarantee shall affect any right that any party may otherwise have to bring any action or proceeding relating to this Guarantee Supplement, the Guarantee or any of the other Finance Documents in the courts of any jurisdiction.

(c) Each of the undersigned irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any action or proceeding arising out of or relating to this Guarantee Supplement or any of the other Finance Documents to which it is a party in any New York state court or federal court. Each of the undersigned hereby irrevocably waives, to the fullest extent permitted by applicable law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 4. *WAIVER OF JURY TRIAL*. EACH OF THE UNDERSIGNED IRREVOCABLY WAIVES ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM (WHETHER BASED ON CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS GUARANTEE SUPPLEMENT, THE GUARANTEE, ANY OF THE OTHER FINANCE DOCUMENTS, ANY DOCUMENTS DELIVERED PURSUANT TO THE FINANCE DOCUMENTS, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE ACTIONS OF ANY OF THE ADMINISTRATIVE AGENT OR ANY OF THE OTHER GUARANTEED PARTIES IN THE NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT THEREOF.

Each of the Direct and Indirect Subsidiaries of DaVita Inc. set forth on Appendix A hereto:

By: _____

Guy Seay
Vice President

APPENDIX A

Subsidiaries

RMS DN, LLC

Schedule II

To The Credit Agreement

Existing Letters of Credit

Outstanding Letters of Credit	As of September 30, 2003
American Casualty Company of Reading Pennsylvania	$ 2,418,000
American Casualty Company of Reading Pennsylvania	$ 5,000,000
American Casualty Company of Reading Pennsylvania	$ 6,720,000
National Union Fire Insurance Co. of Pittsburgh PA	$ 1,000,000

Schedule 4.01(b)

To The Credit Agreement

Subsidiaries of the Borrower

Name	Structure	Jurisdiction of Incorporation/ Organization	Total Authorized Shares of Each Equity Class (1)	Capital Stock Outstanding (1)	Ownership Interest	Equity Interests Covered by Outstanding Options (10)
Astro, Hobby, West Mt. Renal Care Limited Partnership	Limited Partnership	DE	N/A	N/A	(2)	None
Bay Area Dialysis Partnership	Partnership	FL	N/A	N/A	(2)	None
Beverly Hills Dialysis Partnership	Partnership	CA	N/A	N/A	(2)	None
Capital Dialysis Partnership	Partnership	CA	N/A	N/A	(2)	None
Carroll County Dialysis Facility, Inc.	Corporation	MD	50,000	100	(3)	None
Carroll County Dialysis Facility Limited Partnership	Limited Partnership	MD	N/A	N/A	(2)	None
Continental Dialysis Center, Inc.	Corporation	VA	1,000	100	(3)	None
Continental Dialysis Center of Springfield-Fairfax, Inc.	Corporation	VA	100	95	(3)	None
DaVita – Riverside, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
DaVita – West, LLC	Limited Liability Company	DE	N/A	N/A	(6)	None
DaVita Nephrology Associates of Utah, L.L.C.	Limited Liability Company	UT	N/A	N/A	(3)	None
Dialysis of Des Moines, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Dialysis of North Atlanta, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Dialysis of Northern Illinois, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Dialysis Specialists of Dallas, Inc.	Corporation	TX	1,000,000	10,000	(3)	None
East End Dialysis Center, Inc.	Corporation	VA	5,000	1,000	(3)	None
East Ft. Lauderdale, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Eastmont Dialysis Partnership	Partnership	CA	N/A	N/A	(2)	None
Elberton Dialysis Facility, Inc.	Corporation	GA	200,000	750	(3)	None
Flamingo Park Kidney Center, Inc.	Corporation	FL	100	85	(3)	None

Schedule 4.01(b)

To The Credit Agreement

Subsidiaries of the Borrower

Name	Structure	Jurisdiction of Incorporation/ Organization	Total Authorized Shares of Each Equity Class (1)	Capital Stock Outstanding (1)	Ownership Interest	Equity Interests Covered by Outstanding Options (10)
Garey Dialysis Center Partnership	Partnership	CA	N/A	N/A	(2)	None
Guam Renal Care Partnership	Partnership	GUAM	N/A	N/A	(2)	None
Houston Kidney Center/Total Renal Care Integrated Service Network Limited Partnership	Limited Partnership	DE	N/A	N/A	(2)	None
Irvine Dialysis Center, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Lincoln Park Dialysis Services, Inc.	Corporation	IL	1,000	1,000	(3)	None
Los Angeles Dialysis Center	Partnership	CA	N/A	N/A	(2)	None
Mason-Dixon Dialysis Facilities, Inc.	Corporation	MD	4,000 common 1,000 preferred	2,000	(3)	None
MD Investments, L.L.C.	Limited Liability Company	VA	N/A	N/A	(2)	None
Moncrief Dialysis Center/Total Renal Care Limited Partnership	Limited Partnership	DE	N/A	N/A	(2)	None
Nephrology Medical Associates of Georgia, LLC	Limited Liability Company	GA	N/A	N/A	(3)	None
Open Access Sonography, Inc.	Corporation	FL	2,000,000 common 500,000 preferred	20,000(4)	(3)	None
Pacific Coast Dialysis Center	Partnership	CA	N/A	N/A	(2)	None
Pacific Dialysis Partnership	Partnership	GUAM	N/A	N/A	(2)	None
Peninsula Dialysis Center, Inc.	Corporation	VA	5,000	300	(5)	None
Renal Treatment Centers - California, Inc.	Corporation	DE	1,000	100	(6)	None
Renal Treatment Centers - Hawaii, Inc.	Corporation	DE	1,000	100	(6)	None
Renal Treatment Centers - Illinois, Inc.	Corporation	DE	1,000	100	(6)	None
Renal Treatment Centers, Inc.	Corporation	DE	100	100	(8)	None

Schedule 4.01(b)

To The Credit Agreement

Subsidiaries of the Borrower

Name	Structure	Jurisdiction of Incorporation/ Organization	Total Authorized Shares of Each Equity Class (1)	Capital Stock Outstanding (1)	Ownership Interest	Equity Interests Covered by Outstanding Options (10)
Renal Treatment Centers - Mid-Atlantic, Inc.	Corporation	DE	1,000	100	(6)	None
Renal Treatment Centers - Northeast, Inc.	Corporation	DE	1,000	100	(6)	None
Renal Treatment Centers - Southeast, L.P.	Limited Partnership	DE	N/A	N/A	(2)	None
Renal Treatment Centers - West, Inc.	Corporation	DE	1,000	100	(6)	None
RMS DM, LLC	Limited Liability	DE	N/A	N/A	(3)	None
RMS Lifeline, Inc. Corporation	Corporation	DE	55,000,000	10,346,538	(1)	None
Rocky Mountain Dialysis Services, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
RTC Holdings, Inc.	Corporation	DE	100	100	(9)	None
RTC - Texas Acquisition, Inc.	Corporation	TX	1,000	1,000	(7)	None
RTC TN, Inc.	Corporation	DE	3,000	1,000	(6)	None
San Gabriel Valley Partnership	Partnership	CA	N/A	N/A	(2)	None
Sierra Rose Dialysis Center, LLC	Limited Liability Company	DE	N/A	N/A	(11)	None
Soledad Dialysis Center, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Southcrest Dialysis, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Sun City Dialysis Center, L.L.C.	Limited Liability Company	DE	N/A	N/A	(2)	None
Total Acute Kidney Care, Inc.	Corporation	FL	7,500	100	(3)	None
Total Renal Care/Eaton Canyon Dialysis Center Partnership	Partnership	CA	N/A	N/A	(2)	None
Total Renal Care/Hollywood Partnership	Partnership	CA	N/A	N/A	(2)	None
Total Renal Care, Inc.	Corporation	CA	1,000	100	(8)	None
Total Renal Care International, Limited	European Holding Company	United Kingdom	100	100	(2)	None

Schedule 4.01(b)

To The Credit Agreement

Subsidiaries of the Borrower

Name	Structure	Jurisdiction of Incorporation/ Organization	Total Authorized Shares of Each Equity Class (1)	Capital Stock Outstanding (1)	Ownership Interest	Equity Interests Covered by Outstanding Options (10)
Total Renal Care of Colorado, Inc.	Corporation	CO	50,000	18,400	(3)	None
Total Renal Care of North Carolina, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Total Renal Care of Puerto Rico, Inc.	Corporation	Puerto Rico	100	100	(3)	None
TRC of New York, Inc.	Corporation	NY	1,000	100	(3)	None
Total Renal Care of Utah, L.L.C.	Limited Liability Company	DE	N/A	N/A	(3)	None
Total Renal Care/Peralta Renal Center Partnership	Partnership	CA	N/A	N/A	(2)	None
Total Renal Care/Piedmont Dialysis Partnership	Partnership	CA	N/A	N/A	(2)	None
Total Renal Care Texas Limited Partnership	Limited Partnership	DE	N/A	N/A	(2)	None
Total Renal Laboratories, Inc.	Corporation	FL	10,000	100	(3)	None
Total Renal Research, Inc.	Corporation	DE	500	500	(3)	None
Total Renal Support Services, Inc.	Corporation	DE	1,000	1,000	(3)	None
Total Renal Support Services of North Carolina, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
TRC-Dyker Heights, L.P.	Limited Partnership	NY	N/A	N/A	(2)	None
TRC El Paso Limited Partnership	Limited Partnership	DE	N/A	N/A	(2)	None
TRC - Four Corners Dialysis Clinics, L.L.C.	Limited Liability Company	NM	N/A	N/A	(2)	None
TRC - Georgetown Regional Dialysis, LLC	Limited Liability Company	DC	N/A	N/A	(2)	None
TRC - Indiana, LLC	Limited Liability Company	IN	N/A	N/A	(2)	None
TRC - Petersburg, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None

Schedule 4.01(b)

To The Credit Agreement

Subsidiaries of the Borrower

Name	Structure	Jurisdiction of Incorporation/ Organization	Total Authorized Shares of Each Equity Class (1)	Capital Stock Outstanding (1)	Ownership Interest	Equity Interests Covered by Outstanding Options (10)
TRC West, Inc.	Corporation	DE	3,000	100	(3)	None
Tri-City Dialysis Center, Inc.	Corporation	VA	5,000	300	(5)	None
Tulsa Dialysis, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None
Tustin Dialysis Center, LLC	Limited Liability Company	DE	N/A	N/A	(2)	None

(1) Unless otherwise indicated, numbers shown for corporations refer to shares of common stock.

(2) See next pages for Ownership Interests of Borrower. The Borrower or one of its subsidiaries is a general partner of each partnership or member of each limited liability company.

(3) The Borrower owns 100% of the issued securities of Total Renal Care, Inc., which owns 100% of the issued ownership interests of the listed entity.

(4) The indicated shares are shares of preferred stock.

(5) The Borrower owns 100% of the issued securities of Renal Treatment Centers, Inc., which owns 100% of the issued shares of Renal Treatment Centers - Mid-Atlantic, Inc., which owns 100% of the issued shares of the listed entity.

(6) The Borrower owns 100% of the issued securities of Renal Treatment Centers, Inc., which owns 100% of the issued ownership interests of the listed entity.

(7) The Borrower owns 100% of the issued securities of Renal Treatment Centers, Inc., which owns 100% of the issued securities of Renal Treatment Centers - Southeast, LP, which owns 100% of the issued securities of the listed entity.

(8) The Borrower owns 100% of any equity security herein listed, which is the only class of security outstanding of such entity.

(9) The Borrower owns 100% of the issued securities of Renal Treatment Centers, Inc., which owns 100% of the issued shares of RTC - TN, Inc., which owns 100% of the issued shares of the listed entity.

(10) Other than any obligation or right of the Borrower or any of its subsidiaries to acquire any minority interest in any subsidiary that is a partnership or limited liability company.

(11) The Borrower owns 100% of the issued securities of Renal Treatment Centers, Inc., which owns 100% of the issued securities of Renal Treatment Centers – West, Inc., which owns 100% of the issued ownership interest of the listed entity.

Astro, Hobby, West Mt. Renal Care Limited Partnership	
TRC West, Inc.	99%
Total Renal Care, Inc.	1%
Bay Area Dialysis Partnership	
Total Renal Care, Inc.	99.67%
Renal Treatment Centers - Southeast, LP	0.33%
Beverly Hills Dialysis Partnership	
Total Renal Care, Inc.	99.955%
DaVita Inc.	0.045%
Capital Dialysis Partnership	
Total Renal Care, Inc.	50.10%
Capital Dialysis, LLC	49.90%
Carroll County Dialysis Facility Limited Partnership	
Carroll County Dialysis Facility, Inc.	66.67%
Carroll County Medical Services	33.33%
DaVita – Riverside, LLC	
Renal Treatment Centers – California, Inc.	60%
NAMG Dialysis Ventures, LLC	40%
DaVita - West, LLC	
Renal Treatment Centers, Inc.	100%
DaVita Nephrology Associates of Utah, L.L.C.	
Total Renal Care, Inc.	100%
Dialysis of Des Moines, LLC	
Renal Treatment Centers – Illinois, Inc.	51%
Quality Renal Services, L.L.C.	49%
Dialysis of North Atlanta, LLC	
Renal Treatment Centers – Mid-Atlantic, Inc.	70%
Dialysis of Georgia, LLC	30%
Dialysis of Northern Illinois, Inc.	
Renal Treatment Centers – Illinois, Inc.	60%
Rockford Nephrology Partners, Ltd.	40%
Dialysis of Northern Illinois, Inc.	
Renal Treatment Centers – Illinois, Inc.	60%
Rockford Nephrology Partners, Ltd.	40%
East Ft. Lauderdale, LLC	
Renal Treatment Centers – Southeast, LP	60%
Albert Casaretto, M.D.	40%
Eastmont Dialysis Partnership	
Total Renal Care, Inc.	60.78%
Eastmont Dialysis, LLC	39.22%

Garey Dialysis Center Partnership	
Total Renal Care, Inc.	60%
Victor L. Pappoe, M.D., Inc.	40%
Guam Renal Care Partnership	
Total Renal Care, Inc.	99.9%
DaVita Inc.	.1%
Houston Kidney Center/Total Renal Care Integrated Services Network, Limited Partnership	
TRC West, Inc.	99%
Total Renal Care, Inc.	1%
Irvine Dialysis Center, LLC	
Renal Treatment Centers – California, Inc.	60%
Jacob Ahdoot, M.D.	20%
Jonathan Ahdoot, M.D.	20%
Los Angeles Dialysis Center	
Total Renal Care, Inc.	68.16%
Dialysis Associates	31.84%
MD Investments, L.L.C.	
East End Dialysis Center, Inc.	50.1%
Michael Douglas	49.9%
Moncrief Dialysis Center/Total Renal Care Limited Partnership	
TRC West, Inc.	64%
Total Renal Care, Inc.	1%
Jack Moncrief, M.D.	35%
Nephrology Medical Associates of Georgia, LLC	
Total Renal Care, Inc.	100%
Pacific Coast Dialysis Center	
Total Renal Care, Inc.	93%
Randall W. Maxey, M.D.	7%
Pacific Dialysis Partnership	
Total Renal Care, Inc.	99.9%
DaVita Inc.	.1%
Renal Treatment Centers – Southeast, L.P.	
DaVita – West, LLC	99%
Renal Treatment Centers, Inc.	1%
RMS DM, LLC	
TRC, Inc.	100%
Rocky Mountain Dialysis Services, LLC	
Renal Treatment Centers – West, Inc.	51.0%
DNPC Investments, LLC	49.0%
San Gabriel Valley Partnership	
Total Renal Care, Inc.	75.0%
Nirmal Kumar, M.D.	12.5%
Ashok Sunder Raj, M.D.	12.5%

Soledad Dialysis Center, LLC	
Renal Treatment Centers – California, Inc.	60%
Soledad Dialysis Services, Inc.	40%
Southcrest Dialysis, LLC	
Renal Treatment Centers – West, Inc.	60%
Southcrest Venture, LLC	40%
Sun City Dialysis Center, L.L.C.	
Renal Treatment Centers – West, Inc.	60%
Asan M. Ariff, M.D., P.C.	7.5%
Ishan N. VKC, Inc.	7.5%
Anup Rai, M.D.	25%
Total Renal Care International Limited	
DaVita Inc.	99%
Kent Thiry	1%
Total Renal Care/Hollywood Partnership	
Total Renal Care, Inc.	65%
National Renal Transplant Services, Inc.	35%
Total Renal Care of North Carolina, LLC	
Total Renal Care, Inc.	85%
Neil Realty, Inc.	15%
Total Renal Care of Utah, L.L.C.	
Total Renal Care, Inc.	100%
Total Renal Care/Eaton Canyon Dialysis Center Partnership	
Total Renal Care, Inc.	87.5%
Pasadena Dialysis Center, Inc.	12.5%
Total Renal Care/Peralta Renal Center Partnership	
Total Renal Care, Inc.	99.9%
DaVita Inc.	0.1%
Total Renal Care/Piedmont Dialysis Partnership	
Total Renal Care, Inc.	99.9%
DaVita Inc.	0.1%
Total Renal Care Texas Limited Partnership	
TRC West, Inc.	99%
Total Renal Care, Inc.	1%
Total Renal Support Services of North Carolina, LLC	
Total Renal Support Services, Inc.	85%
Neil Realty, Inc.	15%
TRC – Dyker Heights, L.P.	
TRC of New York, Inc.	70%
New York Methodist Hospital	10%
Sonia Borra, M.D.	10%
Henry Lipner, M.D.	10%

TRC El Paso Limited Partnership	
Total Renal Care, Inc.	1.0%
TRC West, Inc.	49.1%
Dionicio Alvarez, M.D.	49.9%
TRC - Four Corners Dialysis Clinics, L.L.C.	
Total Renal Care, Inc.	51%
Mark Bevan, M.D.	49%
TRC - Georgetown Regional Dialysis, L.L.C.	
Total Renal Care, Inc.	80%
Georgetown University	20%
TRC - Indiana, LLC	
Total Renal Care, Inc.	10%
Renal Treatment Centers – Illinois, Inc.	90%
TRC – Petersburg, LLC	
East End Dialysis Center, Inc.	70%
Sandy Gibson	30%
Tulsa Dialysis, LLC	
Renal Treatment Centers – West, Inc.	60%
Sapulpa Venture, LLC	40%
Tustin Dialysis Center, LLC	
Renal Treatment Centers – California, Inc.	60%
Renal Investment Partnership	20%
NSMG Partners	20%

Schedule 4.01 (d)

To The Credit Agreement

Authorizations

1. All Existing Term B Advances made under the Existing Credit Agreement are to be paid off on the Closing Date.

2. Existing Term A Lenders, Existing Term B Lenders and Existing Revolving Credit Lenders owed or holding at least a majority in interest of the sum of (a) the aggregate principal amount of the Term A Advances and the Term B Advances outstanding as of the Closing Date and (b) the aggregate Revolving Credit Commitments as of the Closing Date shall have provided their consent to the amendments to the Existing Credit Agreement, which consent shall be evidenced by their execution of a Consent to this the Agreement.

Schedule 4.01 (f)

To The Credit Agreement

Litigation

None

Schedule 4.01 (o)

To The Credit Agreement

Environmental Laws

None

Schedule 4.01 (p)

To The Credit Agreement

Open Years

2000	**DAVITA INC. & CONSOLIDATED SUBSIDIARIES (formerly Total Renal Care Holdings, Inc. & Consolidated Subsidiaries)**		**$ 2,307,674**
	12/31/2000	Carroll County Dialysis Facility, Inc.	
	12/31/2000	Continental Dialysis Center of Springfield-Fairfax, Inc.	
	12/31/2000	Continental Dialysis Center, Inc.	
	12/31/2000	DaVita Inc. (formerly Total Renal Care Holdings, Inc.)	
	12/31/2000	Dialysis Specialists of Dallas, Inc.	
	12/31/2000	East End Dialysis Center, Inc.	
	12/31/2000	Elberton Dialysis Facility, Inc.	
	12/31/2000	Flamingo Park Kidney Center, Inc.	
	12/31/2000	Lincoln Park Dialysis Services, Inc.	
	12/31/2000	Mason-Dixon Dialysis Facilities, Inc.	
	12/31/2000	Open Access Sonography, Inc.	
	12/31/2000	Peninsula Dialysis Center, Inc.	
	12/31/2000	Renal Diagnostic Laboratories, Inc.	
	12/31/2000	Renal Treatment Centers – California, Inc.	
	12/31/2000	Renal Treatment Centers – Hawaii, Inc.	
	12/31/2000	Renal Treatment Centers – Illinois, Inc.	
	12/31/2000	Renal Treatment Centers – Management Acquisition, Inc.	
	12/31/2000	Renal Treatment Centers – Mid-Atlantic, Inc.	
	12/31/2000	Renal Treatment Centers – Northeast, Inc.	
	12/31/2000	Renal Treatment Centers – Southeast, Inc.	
	12/31/2000	Renal Treatment Centers – West, Inc.	
	12/31/2000	Renal Treatment Centers, Inc.	
	12/31/2000	RTC - Texas Acquisition, Inc.	
	12/31/2000	RTC Holdings International, Inc.	
	12/31/2000	RTC Holdings, Inc.	
	12/31/2000	RTC Supply, Inc.	
	12/31/2000	RTC TN, Inc.	
	12/31/2000	Total Acute Kidney Care, Inc.	
	12/31/2000	Total Renal Care Acquisition Corporation	
	12/31/2000	Total Renal Care of Colorado, Inc.	
	12/31/2000	Total Renal Care, Inc.	
	12/31/2000	Total Renal Laboratories, Inc. (formerly Dialysis Laboratories, Inc.)	
	12/31/2000	Total Renal Research, Inc.	
	12/31/2000	Total Renal Support Services, Inc.	
	12/31/2000	TRC of New York, Inc.	
	12/31/2000	TRC West, Inc.	
	12/31/2000	Tri-City Dialysis Center, Inc.	

Schedule 4.01 (p)

To The Credit Agreement

Open Years

2001	**DAVITA INC. & CONSOLIDATED SUBSIDIARIES (formerly Total Renal Care Holdings, Inc. & Consolidated Subsidiaries)**		**$ 58,825,031**
	12/31/2001	Carroll County Dialysis Facility, Inc.	
	12/31/2001	Continental Dialysis Center of Springfield-Fairfax, Inc.	
	12/31/2001	Continental Dialysis Center, Inc.	
	12/31/2001	DaVita Inc. (formerly Total Renal Care Holdings, Inc.)	
	12/31/2001	Dialysis Specialists of Dallas, Inc.	
	12/31/2001	East End Dialysis Center, Inc.	
	12/31/2001	Elberton Dialysis Facility, Inc.	
	12/31/2001	Flamingo Park Kidney Center, Inc.	
	12/31/2001	Lincoln Park Dialysis Services, Inc.	
	12/31/2001	Mason-Dixon Dialysis Facilities, Inc.	
	12/31/2001	Open Access Sonography, Inc.	
	12/31/2001	Peninsula Dialysis Center, Inc.	
	12/31/2001	Renal Diagnostic Laboratories, Inc.	
	12/31/2001	Renal Treatment Centers – California, Inc.	
	12/31/2001	Renal Treatment Centers – Hawaii, Inc.	
	12/31/2001	Renal Treatment Centers – Illinois, Inc.	
	12/31/2001	Renal Treatment Centers – Management Acquisition, Inc.	
	12/31/2001	Renal Treatment Centers – Mid-Atlantic, Inc.	
	12/31/2001	Renal Treatment Centers – Northeast, Inc.	
	12/31/2001	Renal Treatment Centers – Southeast, Inc.	
	12/31/2001	Renal Treatment Centers – West, Inc.	
	12/31/2001	Renal Treatment Centers, Inc.	
	12/31/2001	RTC - Texas Acquisition, Inc.	
	12/31/2001	RTC Holdings, Inc.	
	12/31/2001	RTC Supply, Inc.	
	12/31/2001	RTC TN, Inc.	
	12/31/2001	Total Acute Kidney Care, Inc.	
	12/31/2001	Total Renal Care Acquisition Corporation	
	12/31/2001	Total Renal Care of Colorado, Inc.	
	12/31/2001	Total Renal Care, Inc.	
	12/31/2001	Total Renal Laboratories, Inc. (formerly Dialysis Laboratories, Inc.)	
	12/31/2001	Total Renal Research, Inc.	
	12/31/2001	Total Renal Support Services, Inc.	
	12/31/2001	TRC of New York, Inc.	
	12/31/2001	TRC West, Inc.	
	12/31/2001	Tri-City Dialysis Center, Inc.	

Schedule 4.01 (p)

To The Credit Agreement

Open Years

2002	**DAVITA INC. & CONSOLIDATED SUBSIDIARIES (formerly Total Renal Care Holdings, Inc. & Consolidated Subsidiaries)**		**$ 26,355,706**
	12/31/2002	Carroll County Dialysis Facility, Inc.	
	12/31/2002	Continental Dialysis Center of Springfield-Fairfax, Inc.	
	12/31/2002	Continental Dialysis Center, Inc.	
	12/31/2002	DaVita Inc. (formerly Total Renal Care Holdings, Inc.)	
	12/31/2002	Dialysis Specialists of Dallas, Inc.	
	12/31/2002	East End Dialysis Center, Inc.	
	12/31/2002	Elberton Dialysis Facility, Inc.	
	12/31/2002	Flamingo Park Kidney Center, Inc.	
	12/31/2002	Lincoln Park Dialysis Services, Inc.	
	12/31/2002	Mason-Dixon Dialysis Facilities, Inc.	
	12/31/2002	Open Access Sonography, Inc.	
	12/31/2002	Peninsula Dialysis Center, Inc.	
	12/31/2002	Renal Treatment Centers – California, Inc.	
	12/31/2002	Renal Treatment Centers – Hawaii, Inc.	
	12/31/2002	Renal Treatment Centers – Illinois, Inc.	
	12/31/2002	Renal Treatment Centers – Mid-Atlantic, Inc.	
	12/31/2002	Renal Treatment Centers – Northeast, Inc.	
	12/31/2002	Renal Treatment Centers – Southeast, LP	
	12/31/2002	Renal Treatment Centers – West, Inc.	
	12/31/2002	Renal Treatment Centers, Inc.	
	12/31/2002	RTC - Texas Acquisition, Inc.	
	12/31/2002	RTC Holdings, Inc.	
	12/31/2002	RTC TN, Inc.	
	12/31/2002	Total Acute Kidney Care, Inc.	
	12/31/2002	Total Renal Care of Colorado, Inc.	
	12/31/2002	Total Renal Care, Inc.	
	12/31/2002	Total Renal Laboratories, Inc. (formerly Dialysis Laboratories, Inc.)	
	12/31/2002	Total Renal Research, Inc.	
	12/31/2002	Total Renal Support Services, Inc.	
	12/31/2002	TRC of New York, Inc.	
	12/31/2002	TRC West, Inc.	
	12/31/2002	Tri-City Dialysis Center, Inc.	

Schedule 4.01 (q)

To The Credit Agreement

Liens

In connection with the Existing Credit Agreement, the Borrower and each of the Guarantors have granted a security interest in substantially all of their respective assets to Credit Suisse First Boston, as collateral agent for the lenders party thereto. The foregoing security interests shall continue following the Closing Date as security for the Agreement.

Schedule 4.01 (r)

To The Credit Agreement

Investments

Cash and Investments	As of September 30, 2003
Credit Suisse First Boston – Auction Rate Certificates, Tax Free	$ 120,527,000
Credit Suisse First Boston-Federated Tax Free Obligation Fund	89,278,000
Janus Money Market Institutional #881	49,500,000
Bank of America Money Rate Accounts	978,000
Bank of New York late night investment	394,000
Wachovia Bank N.A. Overnight Sweep-Money Market – Evergreen Select Fund	137,000
Non-interest bearing depository/concentration	11,295,000

Schedule 4.01 (r)

To The Credit Agreement

Investments

Investment in Partnerships (50% or less)	As of September 30, 2003
Wilshire Dialysis Center	$ 1,046,000
University Park Dialysis Partnership	560,000
MHS – XIV, LLC	362,000
MD Investments, LLC	333,000
Total Renal Care/Crystal River Dialysis, L.C.	391,000
Hutchinson Dialysis, LLC	152,000
Dialysis Treatment Center of Macon, LLC	97,000
MHS – XV, LLC	62,000
Equity Investments	
H.R.G.	$ 13,700,000
Velos	1,000,000
Reserves	(14,700,000)

See also the equity interests held by Loan Parties set forth in Schedule I to the Security Agreement.

Schedule 4.01 (r)

To The Credit Agreement

Guaranties of Obligations

None.

Schedule 4.01 (r)

To The Credit Agreement

Investments

Indebtedness From Partnership Centers:	**As of September 30, 2003**
Dialysis Care of North Carolina, LLC	$ 26,061,000
Eastmont Dialysis Partnership	1,186,000
MHS XV, LLC	494,000
MHS XVi, LLC	196,000
Moncrief Dialysis Center/Total Renal Care Limited Partnership	1,387,000
Dialysis of North Atlanta, LLC	74,000
Tulsa, LLC	581,000
Soledad Dialysis Center, LLC	504,000
Irvine Dialysis Center, LLC	401,000
Tustin Dialysis Center, LLC	177,000
Managed Centers:	
Seneca County Dialysis - Tiffin OH	$ 85,000
El Camino	1,596,000
Pennisula Nephrology Inc.	1,971,000
Children’s Hospital	618,000
Summerlin	674,000

Schedule 4.01(s)

To The Credit Agreement

Exceptions to Medicare/Medicaid Participation

Each time Borrower or one of its Subsidiaries develops a new facility (a "De Novo"), it is operated for a limited period of time prior to obtaining its Medicare certification and provider number and its Medicaid provider number. Once the De Novo passes its initial survey from Medicare it is approved for billing as of the date of the survey. However, Borrower or one of its Subsidiaries will not be able to remit bills to Government Reimbursement Programs until it is actually issued a provider number, which could be several months after the initial survey.

Each time Borrower or one of its Subsidiaries acquires a new facility (an "Acquisition"), similar delays may result. While a facility remains qualified to participate in the Government Reimbursement Programs after an Acquisition, Borrower or one of its Subsidiaries cannot bill the Government Reimbursement Programs until it receives a provider number in its own name.

The listing below reflects facilities where Borrower or one of its Subsidiaries is awaiting i) an initial Medicare certification and provider number with which to bill a Medicare intermediary, ii) an initial Medicaid provider number with which to bill or iii) to have a Medicare or Medicaid provider number issued in the name of Borrower or one of its Subsidiaries after acquiring a facility. These delays in Medicare certifications and in issuing provider numbers are part of Borrower's ordinary course operations. As a result, this list is subject to change from time to time.

Schedule 4.01 (s)

To The Credit Agreement

Exceptions to Medicare/Medicaid Participation

Center	Center #	State	Project Type
Medicare			
Churchview Dialysis	1560	IL	Acquisition
Dekalb Dialysis	1561	IL	Acquisition
Flint Dialysis Center	1557	MI	Acquisition
Freeport Dialysis	1562	IL	Acquisition
Hallwood Dialysis Center	1558	MI	Acquisition
Owensboro Dialysis Center	1530	KY	Acquisition
Park Plaza Dialysis	1559	MI	Acquisition
Rockford Dialysis	1563	IL	Acquisition
Southwest Ohio Dialysis	1541	OH	Acquisition
Tell City Dialysis Center	1531	IN	Acquisition
Washington Parish Dialysis	1570	LA	Acquisition
West Detroit Dialysis	1532	MI	Acquisition
Whiteside Dialysis	1564	IL	Acquisition
Brookhollow Dialysis	2027	TX	Denovo
Copperfield Dialysis	2004	NC	Denovo
Creekside Dialysis Center	2017	CA	Denovo
Durant Dialysis Center	2024	OK	Denovo
Mt Pocono Dialysis	1504	PA	Denovo
Oak Park Dialysis	369	MI	Denovo
Palm Brook Dialysis Center	2038	AZ	Denovo
Rosemead Sprngs Dialys Ctr	1518	CA	Denovo
Sierra Rose Dialysis Center	2015	NV	Denovo
Warsaw Dialysis	567	NC	Denovo
Brighton Dialysis	325	MI	Internal Change Of Ownership
Clarkston Dialysis	152	MI	Internal Change Of Ownership
Detroit Dialysis	153	MI	Internal Change Of Ownership
Gainesville Dialysis	1527	GA	Internal Change Of Ownership
Grand Blanc Dialysis Center	156	MI	Internal Change Of Ownership
Jackson Dialysis	155	MI	Internal Change Of Ownership
Lawrenceburg Dialysis	938	IN	Internal Change Of Ownership
Macomb Kidney Center	326	MI	Internal Change Of Ownership
New Center Dialysis	151	MI	Internal Change Of Ownership
Newnan Dialysis	1528	GA	Internal Change Of Ownership
North Oakland Dialysis	327	MI	Internal Change Of Ownership
Novi Dialysis	328	MI	Internal Change Of Ownership
Southfield Dialysis Center	329	MI	Internal Change Of Ownership
Southfield West Dialysis	295	MI	Internal Change Of Ownership
Ypsilanti Dialysis	154	MI	Internal Change Of Ownership

Schedule 4.01 (s)

To The Credit Agreement

Exceptions to Medicare/Medicaid Participation

Center	Center #	State	Project Type
Medicaid			
Churchview Dialysis	1560	IL	Acquisition
Dekalb Dialysis	1561	IL	Acquisition
Dialysis Systems Of Covington	1535	LA	Acquisition
Dialysis Systems Of Hammond	1536	LA	Acquisition
Flint Dialysis Center	1557	MI	Acquisition
Freeport Dialysis	1562	IL	Acquisition
Greater Portsmouth	1544	VA	Acquisition
Hallwood Dialysis Center	1558	MI	Acquisition
Owensboro Dialysis Center	1530	KY	Acquisition
Park Plaza Dialysis	1559	MI	Acquisition
Peninsula Dialysis	1545	VA	Acquisition
Portsmouth Dialysis	2014	VA	Acquisition
Rockford Dialysis	1563	IL	Acquisition
Saginaw Dialysis Center	1540	MI	Acquisition
Southwest Ohio Dialysis	1541	OH	Acquisition
Tell City Dialysis Center	1531	IN	Acquisition
Washington Parish Dialysis	1570	LA	Acquisition
West Detroit Dialysis	1532	MI	Acquisition
Whiteside Dialysis	1564	IL	Acquisition
Bricktown Dialysis Center	563	NJ	Denovo
Brookhollow Dialysis	2027	TX	Denovo
Copperfield Dialysis	2004	NC	Denovo
Durant Dialysis Center	2024	OK	Denovo
Flushing Dialysis	298	MI	Denovo
Fowlerville Dialysis	2007	MI	Denovo
Maryville Dialysis	2002	IL	Denovo
Middletown Dialysis Center	529	NJ	Denovo
Mt Pocono Dialysis	1504	PA	Denovo
Neptune Dialysis Center	525	NJ	Denovo
Oak Park Dialysis	369	MI	Denovo
Palm Brook Dialysis Center	2038	AZ	Denovo
Pikesville Dialysis	2021	MD	Denovo
Rosemead Sprngs Dialys Ctr	1518	CA	Denovo
Scottsdale Dialysis Center	2022	AZ	Denovo
Warsaw Dialysis	567	NC	Denovo
West Detroit Dialysis	1532	MI	Denovo
Whittier Dialysis Center	2003	CA	Denovo

Schedule 4.01 (s)

To The Credit Agreement

Exceptions to Medicare/Medicaid Participation

Center	Center #	State	Project Type
Medicaid			
Bakers Ferry Dialysis	456	GA	Internal Change Of Ownership
Davison Dialysis	296	MI	Internal Change Of Ownership
Detroit Dialysis	153	MI	Internal Change Of Ownership
Gainesville Dialysis	1527	GA	Internal Change Of Ownership
Grand Blanc Dialysis Center	156	MI	Internal Change Of Ownership
Iris City Dialysis	476	GA	Internal Change Of Ownership
Lawrenceburg Dialysis	938	IN	Internal Change Of Ownership
New Center Dialysis	151	MI	Internal Change Of Ownership
Newnan Dialysis	1528	GA	Internal Change Of Ownership
North Oakland Dialysis	327	MI	Internal Change Of Ownership
Southfield Dialysis Center	329	MI	Internal Change Of Ownership
Southfield West Dialysis	295	MI	Internal Change Of Ownership

Schedule 5.02 (b)

To The Credit Agreement

Debt

Type of Debt	As of September 30, 2003
Capital Leases	8,216,614
7% Convertible Subordinated Notes	145,000,000
Deferred Purchase Price:	
Cleve Hill	405,000
Southwest Ohio Dialysis	50,000
IRA - Kenneth Hahn	10,706
East End Dialysis Center	82,564
Greater Portsmouth	50,000
Greenspring	23,682
Hurley	3,473,407
RMS Disease management	104,532

Schedule 5.02 (b)

To The Credit Agreement

Debt

Intercompany Indebtedness To Partnership Centers	As of September 30, 2003
Garey Dialysis Center Partnership	$ 350,000
Los Angeles Dialysis Center	287,000
Dialysis Treatment Centers of Macon, LLC	211,000
Total Renal Care/Crystal River Dialysis, L.C.	36,000
Total Renal Care/Eaton Canyon Dialysis Center Partnership	504,000
Total Renal Care/Hollywood Partnership	278,000
University Park Dialysis Partnership	207,000
Wilshire Dialysis Center	212,000
Dyker Heights Dialysis Center	938,000
Carroll County Dialysis Facility	594,500
Georgetown Dialysis Center	3,109,000
Four Corners Dialysis Center LLC	506,000
Riverside-Lake Elsinore	95,000
Pacific Coast Dialysis Center	90,000
TRC-Georgetown Regional Dialysis	3,973,000
Capital Dialysis Partnership	269,000
TRC El Paso Limited Partnership	536,000
East Aurora, LLC	7,000
TRC-Dyker Heights, L.P.	938,000
TRC-Petersburg, LLC	24,000

Managed Centers	
Satelite Dialysis	$ 1,115,000
Timpanogos LLC	32,000
Perry Dialysis	8,000

[AMGEN LOGO]

FREESTANDING DIALYSIS CENTER AGREEMENT

This agreement ("Agreement") between Amgen USA Inc. ("Amgen"), a wholly-owned subsidiary of Amgen Inc., and DaVita, Inc., including the freestanding dialysis center affiliate(s) listed on Appendix B, (collectively, "Dialysis Center"), sets forth the terms and conditions for the purchase of EPOGEN® (Epoetin alfa) and Aranesp®(darbepoetin alfa) by Dialysis Center, exclusively for the treatment of dialysis patients.

1. **Term of Agreement.** The "Term" of this Agreement shall be defined as January 1, 2004 ("Commencement Date") through January 31, 2006 ("Termination Date").

2. **Dialysis Center Affiliates.** Only those Dialysis Center affiliates ("Affiliates") listed on Appendix B which is incorporated by reference hereto and made a part of this Agreement will be eligible to participate under this Agreement. Affiliates eligible to participate under this Agreement shall be facilities owned in whole or in part by Dialysis Center or for which Dialysis Center provides management or administrative services including such services as the purchasing and billing of EPOGEN® (Epoetin alfa) and Aranesp®(darbepoetin alfa) (collectively, "Products"). Additions to the Affiliates listed on Appendix B may be made pursuant to the request of Dialysis Center's corporate headquarters and are subject to approval and acknowledgment by Amgen in writing, and such approval and acknowledgment shall not be unreasonably withheld, conditioned or delayed. Dialysis Center may delete Affiliates from participation in this Agreement at any time, in its sole discretion. Amgen requires reasonable notice before the effective date of change (the "Administrative Effective Date") for any addition or deletion of Affiliates. Notwithstanding the immediately preceding sentence, Amgen agrees to coordinate with Dialysis Center's Authorized Wholesalers (as defined in Section 4 of the Agreement) [DELETED] any and all purchases made by Dialysis Center [DELETED] pursuant to which Dialysis Center is legally authorized to purchase Products for such added Affiliate [DELETED]; all such purchases by Dialysis Center during such period shall constitute "Qualified Purchases" under this Agreement and shall be included for purposes of eligibility and calculation of each and every discount and incentive provided hereunder and in Appendix A which is incorporated by reference hereto and made a part of this Agreement, including but not limited to the [DELETED] set forth in Section 1 of Appendix A for Aranesp® purchases and including but not limited to the [DELETED] set forth in Section 2 of Appendix A for EPOGEN® purchases, so long as Amgen is not obligated to pay the same discount or incentive attributable to the same purchases to any person or entity other than Dialysis Center. Amgen reserves the right in its reasonable discretion to terminate any Affiliates with regard to participation in this Agreement. Termination of any Affiliate by Amgen shall be effective (a) immediately in instances in which Amgen determines, in its sole discretion, that such immediate termination is required by law or order of any court or regulatory agency or as a result of negligence or willful misconduct in the use or administration of Products by such Affiliate; or (b) upon thirty (30) days prior written notice to Dialysis Center in all other instances; provided, that such termination shall be effective before the expiration of such thirty (30) days where Dialysis Center requests or consents to such earlier termination.

3. **Own Use.** Dialysis Center hereby certifies that Products purchased hereunder shall be for Dialysis Center's "own use" for the exclusive treatment of dialysis patients.

4. **Authorized Wholesalers.** Attached hereto as Appendix C is a complete list, as of the date of execution of this Agreement, of the wholesalers from which Dialysis Center intends to purchase Products. All of the wholesalers so designated by Dialysis Center are hereby approved by Amgen to participate in this program and are deemed "Authorized Wholesalers". Notification of proposed changes to the list of Authorized Wholesalers must be provided to Amgen in writing at least thirty (30) days before the effective date of the proposed change; provided, however, that Amgen will use its best efforts to accept a change on fewer than thirty (30) days' notice. Amgen reserves the right, in its reasonable discretion, to reject or terminate, with

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[DELETED] = Portions of this exhibit are subject to a request for confidential treatment and have been redacted and filed separately with the Securities and Exchange Commission.

reasonable notice, any wholesaler with regard to participation in this Agreement, so long as (a) Amgen rejects or terminates such wholesaler with respect to providing Products to any and all purchasers of Products, or (b) such wholesaler independently requests Amgen to remove it as an Authorized Wholesaler for Dialysis Center. Amgen also reserves the right, in its reasonable discretion, to accept wholesalers with regards to participation in this Agreement, but Amgen agrees that it shall accept any wholesaler designated by Dialysis Center which provides Products to other purchasers approved by Amgen. Dialysis Center agrees to request all Authorized Wholesalers to submit product sales information to a third-party sales reporting organization designated by Amgen. In the event Amgen terminates any Authorized Wholesaler from which Dialysis Center is purchasing Products, Amgen will work with Dialysis Center to identify other possible Authorized Wholesalers from which Dialysis Center may purchase Products and/or, in the case of an emergency and subject to credit qualification as well as receipt and approval of an "Application for Direct Ship Account", use reasonable efforts in attempting to establish a temporary direct purchase relationship between Dialysis Center and Amgen until such time as an alternative Authorized Wholesaler can be secured, which in no event shall exceed sixty (60) days. If Dialysis Center purchases directly from Amgen as contemplated immediately above, all purchases made from Amgen shall be deemed "Qualified Purchases" (as defined below) and all such purchases shall be accounted for in the calculation of the discounts and incentives provided for in this Agreement and in Appendix A.

5. **Qualified Purchases.** Only Products purchased under this Agreement by Dialysis Center through Authorized Wholesalers (or directly from Amgen as provided in Section 4 above), as confirmed by Amgen based on sales tracking data, will be deemed "Qualified Purchases".

6. **Commitment to Purchase.** Subject to the terms of Section 20 below, Dialysis Center agrees to exclusively purchase Products for all of its dialysis use requirements for erythropoietic agents. Notwithstanding the foregoing, Amgen expressly acknowledges and agrees that Dialysis Center may participate in clinical trials involving the administration of other products for the management of anemia in dialysis patients. Dialysis Center may purchase another brand of recombinant human erythropoietin for its dialysis use requirements only for the time, and only to the extent, that Amgen has notified Dialysis Center's corporate headquarters in writing that Amgen cannot supply EPOGEN® or Aranesp® within and for the time period reasonably required by Dialysis Center. Any such notification shall be given by Amgen at least thirty (30) days prior to the date on which Amgen will cease supplying EPOGEN® or Aranesp® to Dialysis Center, unless an act or event described in Section 21 of the Agreement, or an order of a regulatory agency or other action arising out of patient safety concerns, requires the giving of shorter notice. In the event that Amgen fails to supply Dialysis Center with EPOGEN® or Aranesp® as ordered (including as a result of force majeure event as described in Section 21), Dialysis Center shall be entitled, at a minimum, to have the same proportion of its purchase orders fulfilled at all times as other purchasers of EPOGEN® or Aranesp® and, upon request, Amgen shall provide written assurances of same to Dialysis Center.

7. **Confidentiality.** By the nature, terms and performance of this Agreement, Amgen and Dialysis Center acknowledge and agree that the parties will exchange confidential and proprietary information (including business and clinical practices and protocols and patient information, "Confidential Information".) Confidential Information includes not only written information but also information transferred orally, visually, electronically or by any other means and includes all notes, analyses, compilations, studies and summaries thereof containing or based on, in whole or in part, any Confidential Information. Confidential Information does not include any information which the receiving party can show was publicly available prior to the receipt of such information by the receiving party, or thereafter became publicly available other than by any breach of this Agreement by the receiving party. Information shall be deemed "publicly available" if it is a matter of public knowledge or is contained in materials available to the public. Accordingly, the parties agree (a) to hold all such Confidential Information (including but not limited to

this the terms of this Agreement) received from the other in confidence and to use such Confidential Information solely for the purposes set forth in this Agreement; and (b) to not disclose any such Confidential Information received from the other, or the terms of this Agreement, to any third party (including Amgen Inc. or any other affiliate of Amgen), or otherwise make such information public without prior written authorization of the other party, except where such disclosure is contemplated hereunder or required by law or pursuant to subpoena or court or administrative order, and then only upon prior written notification to the other party (giving such party an adequate opportunity to take whatever steps it deems necessary to prevent, limit the scope of or contest the disclosure). Any party which seeks to prevent disclosure or to contest or limit the scope of any such disclosure by the other party shall pay all of the costs and expenses incurred by the other party directly related thereto, and such other party shall not unreasonably object to or interfere with the objecting party's actions it deems necessary to undertake. For purposes of the foregoing, any Confidential Information received by any employee, partner, agent, affiliate, consultant, advisor, data collection vendor or other representative (in any case, a "representative") of a party to this Agreement pursuant to the terms of this Agreement shall be deemed received by such party to this Agreement, and any breach by any such representative of the foregoing confidentiality provisions shall be deemed a breach by the respective party to this Agreement.

8. **Discounts.** Dialysis Center shall qualify for discounts and incentives subject to material compliance with the terms and conditions of this Agreement as well as the schedules and terms set forth in Appendix A. Discounts in arrears will be paid in the form of a wire transfer to Dialysis Center's corporate headquarters, and Amgen Inc. hereby guarantees Amgen's obligation to pay all discounts earned by Dialysis Center hereunder. Discounts in arrears will be calculated in accordance with Amgen's discount calculation policies based on Qualified Purchases using Amgen's standard [DELETED] as the calculation price, except as otherwise provided hereunder or as set forth in Appendix A. Payment amounts, as calculated by Amgen, must equal or exceed $100.00 for the applicable period to qualify, and are subject to audit and final determination by arbitration, as provided in Appendix A hereto. Subject to the section entitled "Termination", in the event that Amgen is notified in writing that Dialysis Center, and/or any Affiliate(s) (the "Acquired Party") is acquired by another entity or a change of control otherwise occurs with respect to any Acquired Party, any discounts which may have been earned hereunder for all periods preceding such acquisition or change of control shall be paid in the form of a wire transfer to Dialysis Center's corporate headquarters, subject to the conditions and requirements described herein. For purposes of all of the discounts paid in arrears contained herein, including, without limitation, those discounts and incentives provided in Appendix A, if any Affiliates are added to or deleted from this Agreement during any [DELETED] of the Term of this Agreement, Amgen shall appropriately adjust Dialysis Center's purchases for the relevant periods (x) for deleted Affiliates, by excluding purchases by such Affiliates effective from the effective date of their deletion and during the relevant [DELETED] used for comparison, or (y) for added Affiliates, by including any purchases made by such acquired Affiliates effective from the date they are added to the list of Affiliates on Appendix B and during the relevant [DELETED] used for comparison, and by including any purchases made by any de novo Affiliates commencing in the [DELETED] in which they commence operations. Amgen and Dialysis Center agree that, for purposes of determining eligibility for and calculation of all discounts and all incentives provided in this Agreement (including, without limitation, all discounts and incentives as are set forth in Appendix A), a Qualified Purchase of EPOGEN® or Aranesp® shall be deemed made on the date of invoice to Dialysis Center from an Authorized Wholesaler. Upon any termination of this Agreement, Amgen shall pay to Dialysis Center all discounts and incentives earned by Dialysis Center through the date of termination. Failure of Dialysis Center to qualify for or receive any particular discount or incentive hereunder shall not automatically affect its qualification for or receipt of any other discount or incentive provided under this Agreement.

9. **Treatment of Discounts.** a) Dialysis Center agrees that it will properly disclose and account for any discount or other reduction in price earned hereunder, in whatever form (i.e., pricing, discount, or

incentive), in a way that complies with all applicable federal, state, and local laws and regulations, including without limitation, Section 1128B(b) of the Social Security Act and its implementing regulations. Section 1128B(b) requires that a provider of services properly disclose and appropriately reflect the value of any discount or other reduction in price earned in the costs claimed or charges made by the provider under a federal health care program, as that term is defined in Section 1128B(f). Dialysis Center also agrees that, if required by such statutes or regulations, it will (i) claim the benefit of such discount received, in whatever form, in the fiscal year in which such discount was earned or the year after, (ii) fully and accurately report the value of such discount in any cost reports filed under Title XVIII or Title XIX of the Social Security Act, or a state health care program, and (iii) provide, upon request by the U.S. Department of Health and Human Services or a state agency or any other federally funded state health care program, the information furnished to Dialysis Center by Amgen concerning the amount or value of such discount. Dialysis Center's corporate headquarters agrees that it will advise all Affiliates, in writing, of any discount received by Dialysis Center's corporate headquarters hereunder with respect to purchases made by such Affiliates and that said Affiliates will account for any such discount in accordance with the above stated requirements.

b) In order to assist Dialysis Center's compliance with its obligations as set forth in Section 9(a) immediately above, Amgen agrees that it will fully and accurately report all discounts on the invoices or statements submitted to Dialysis Center and use reasonable efforts to inform Dialysis Center of its obligations to report such discounts; or where the value of a discount is not known at the time of sale, Amgen shall fully and accurately report the existence of the discount program on the invoices or statements submitted to Dialysis Center, use reasonable efforts to inform Dialysis Center of its obligations to report such discounts and when the value of the discount becomes known, provide Dialysis Center with documentation of the calculation of the discount identifying the specific goods or services purchased to which the discount will be applied, broken down by Affiliate. In particular, Amgen shall provide to Dialysis Center a statement on a [DELETED] basis stating the incentives and discounts earned by Dialysis Center in a particular [DELETED] with the itemization of Product purchases made in a particular [DELETED], broken down by Affiliates; and any other information that Dialysis Center may request that is reasonably available to Amgen and necessary for Dialysis Center to obtain in order to comply with its obligation as set forth in Section 9(a).

10. **Data Collection.** Dialysis Center agrees that it will at all times comply with all federal, state, or local laws or regulations relating to patient privacy of health information and medical records, and that all data to be provided to Amgen pursuant to this Agreement, shall either be pursuant to that certain Data Use Agreement to be entered into by the parties simultaneously herewith ("DUA") or in a form that meets the requirements for "de-identification" as set forth in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") codified at 45 C.F.R. parts 160 and 164 (the "Privacy Rule"). Dialysis Center acknowledges that the data to be supplied to Amgen pursuant to this Agreement shall be used to support verification of the discounts and incentives referenced herein, as well as in support of Amgen's obligations as set forth in this Agreement (a) with respect to Amgen's public health activities (as set forth in 45 C.F. R. 164.512(b)(1)(iii)), and (b) in support of Dialysis Center's Health Care Operations (as defined in the Privacy Rule). Dialysis Center shall consistently use a unique alpha-numeric code (which shall not be the same as part or all of the patient's social security number) as a "case identifier" to track the care rendered to each individual patient over time, and such case identifier shall be included in the data provided to Amgen. The key or list matching patient identities to their unique case identifiers shall not be provided to Amgen personnel. Amgen and Amgen Inc. agree that they will maintain data supplied under this Agreement in confidence, they will not use such data to identify or contact any patient, and they will at all times comply with all federal, state, or local laws or regulations relating to patient records and privacy of health information. [DELETED]. Amgen shall not sell or resell any data obtained pursuant to this Agreement. Additionally, any use or disclosure by Amgen or Amgen Inc. of any data supplied under this

Agreement, which use or disclosure shall be specifically provided for in this Agreement, shall be in a format which does not identify Dialysis Center as the source of such data, unless otherwise permitted in writing by Dialysis Center. Furthermore, no reports by Amgen or Amgen Inc. concerning analyses of the data shall disclose the identity of any patient. Nothing in this Agreement shall limit Dialysis Center's use of its own patient case data, including, without limitation, any and all data to be supplied to Amgen hereunder.

11. **Termination.** In addition to any other legal or equitable remedies which may be available to either party upon breach by the other party, such party may terminate this Agreement for a material breach upon thirty (30) days advance written notice specifying the breach, provided that such breach remains uncured at the end of the thirty (30) day period, [DELETED]. In addition, in the event that Dialysis Center materially breaches any provision of this Agreement, and such breach remains uncured for thirty (30) days following notice by Amgen specifying the breach, [DELETED], Amgen shall have no obligation to continue to offer the terms described herein or pay any further discounts or incentives to Dialysis Center, except those discounts and/or incentives earned by Dialysis Center up to the time of a breach which results in termination.

12. **Governing Law.** This Agreement shall be governed by the laws of the State of California and, except as set forth in Appendix A, the parties submit to the jurisdiction of the California courts, both state and federal.

13. **Warranties.** Each party represents and warrants to the other that this Agreement (a) has been duly authorized, executed, and delivered by it, (b) constitutes a valid, legal, and binding agreement enforceable against it in accordance with the terms contained herein, and (c) does not conflict with or violate any of its other contractual obligations, expressed or implied, to which it is a party or by which it may be bound. The party executing this Agreement on behalf of Dialysis Center specifically warrants and represents to Amgen that it is authorized to execute this Agreement on behalf of and has the power to bind Dialysis Center and the Affiliates to the terms set forth in this Agreement. The parties executing this Agreement on behalf of Amgen and Amgen Inc specifically warrant and represent to Dialysis Center that they are authorized to execute this Agreement on behalf of and have the power to bind Amgen and Amgen Inc. to the terms set forth in this Agreement. Amgen covenants and agrees that no Product is or will be adulterated or misbranded within the meaning of the Federal Food, Drug and Cosmetic Act, as amended, or within the meaning of any applicable state or municipal law, or is or will be a product which may not be introduced into interstate commerce. Amgen warrants that the Products purchased pursuant to this Agreement (a) are manufactured, and up to the time of their receipt by Authorized Wholesalers are handled, stored and transported in accordance with all applicable federal, state and local laws and regulations pertaining to the manufacturing of the Products including without limitation, the Federal Food, Drug, and Cosmetic Act and implementing regulations, and meet all specifications for effectiveness and reliability as required by the United States Food and Drug Administration, and (b) when used in accordance with the directions on the labeling, are fit for the purposes and indications described in the labeling. Amgen warrants that use of the Products by Dialysis Center shall not infringe upon any ownership rights of any other person or upon any patent, copyright, trademark, or other intellectual property or proprietary right or trade secret of any third party. Amgen agrees that it will promptly notify Dialysis Center once it determines that there has been any material defect in any of the Products delivered to Dialysis Center.

14. **Notices.** Any notice or other communication required or permitted hereunder (excluding purchase orders) shall be in writing and shall be deemed given or made three (3) days after deposit in the United States mail with proper postage for first-class registered or certified mail prepaid, return receipt requested, or when delivered personally or by facsimile (receipt verified and confirmed by overnight mail), or one (1) day following traceable delivery to a nationally recognized overnight delivery service with instructions for

overnight delivery, in each case addressed to the parties as follows (or at such other addresses as the parties may notify each other of in writing):

If to Dialysis Center:

DaVita, Inc.
601 Hawaii Street
El Segundo, CA 90245
Attn: Corporate Finance
Fax No.: (866) 309-3552

with a copy to:

DaVita, Inc.
601 Hawaii Street
El Segundo, CA 90245
Attn: General Counsel
Fax No.: (310) 536-2679

If to Amgen:

Amgen USA Inc.
One Amgen Center Drive, M/S 37-2-B
Thousand Oaks, CA 91320-1789
Attn: Gail Gilbotowski, Manager, Contract Administration
Fax No.: (805) 376-8554

with a copy to:

Amgen Inc.
One Amgen Center Drive, M/S 27-4-A
Thousand Oaks, CA 91320-1789
Attn: General Counsel:
Fax No.: (805) 447-1000

If to Amgen Inc.:

Amgen Inc.
One Amgen Center Drive, M/S 37-2-B
Thousand Oaks, CA 91320-1789
Attn: Gail Gilbotowski, Manager, Contract Administration
Fax No.: (805) 376-8554

with a copy to:

Amgen Inc.
One Amgen Center Drive, M/S 27-4-A
Thousand Oaks, CA 91320-1789
Attn: General Counsel:
Fax No.: (805) 447-1000

15. Compliance with Health Care Pricing and Patient Privacy Legislation and Statutes; Data Use Agreement. a) Notwithstanding anything contained herein to the contrary, in order to assure compliance, as determined by either party, in its sole discretion, with any existing federal, state or local statute,

regulation or ordinance, or at any time following the enactment of any federal, state, or local law or regulation that in any manner reforms, modifies, alters, restricts, or otherwise affects the pricing of or reimbursement available for any of the Products, including but not limited to the enactment of any reimbursement rule, guideline, final program memorandum, coverage decision, pricing decision, instruction or the like by the Centers for Medicare and Medicaid Services ("CMS") or any of Dialysis Center's Medicare fiscal intermediaries, or any change in reimbursement systems that in any manner reforms, modifies, alters, restricts or otherwise affects the reimbursement available to Dialysis Center for any of the Products, either party may, in its sole discretion, upon thirty (30) days notice, seek to modify this Agreement in accordance with the procedure referenced below or exclude any Affiliates from participating in this Agreement unless such Affiliate(s) certifies in writing that they are, or will be, exempt from the provisions thereunder. If such affected Affiliate(s) does not so certify and is therefore excluded from participating in this Agreement, Dialysis Center and Amgen shall meet and in good faith seek to mutually agree to modify this Agreement to accommodate any such change in law or regulation or any such change in reimbursement system, with the intent that, if possible, the essential terms and the pricing structure [DELETED] shall be retained at least at the applicable tier as in effect immediately prior to such change. If the parties in good faith determine such modification is not possible, the parties shall seek to modify the Agreement in another manner acceptable to both parties. If the parties, after thirty (30) days are unable to agree upon such a modification, Amgen or Dialysis Center shall be entitled to terminate the Agreement immediately. In the event there is a future change in Medicare, Medicaid, or other federal or state statute(s) or regulation(s) or in the interpretation thereof, which renders any of the material terms of this Agreement unlawful or unenforceable, this Agreement shall continue only if amended by the parties as a result of good faith negotiations as necessary to bring the Agreement into compliance with such statute or regulation.

b) Notwithstanding anything contained herein to the contrary, in order to assure compliance, as determined by either party in its sole discretion, with any existing federal, state or local statute, regulation or ordinance relating to patient privacy of medical records, or at any time following the enactment of any federal, state, or local law or regulation relating to patient privacy of medical records that in any manner reforms, modifies, alters, restricts, or otherwise affects any of the data received or to be received in connection with any of the incentives contemplated under this Agreement, either party may, in its discretion, upon thirty (30) days' notice, seek to modify this Agreement. Dialysis Center and Amgen shall meet and in good faith seek to mutually agree to modify this Agreement to accommodate any such change in law or regulation, with the intent to, if possible, retain the essential terms of the affected incentive and pricing structure. If the parties in good faith determine that such modification is not possible, the parties shall seek to modify the Agreement in another manner acceptable to both parties. If the parties, after ninety (90) days, are unable to agree upon such a modification, either party shall be entitled to terminate the affected incentive upon thirty (30) days' notice.

c) Both parties agree that all uses and disclosures of the information received pursuant to the DUA will be in strict compliance with the HIPAA Privacy Rule. Notwithstanding anything contained herein to the contrary, this Agreement is effective only as of the date the parties hereto execute a mutually agreeable Data Use Agreement ("DUA") pursuant to which Dialysis Center may disclose certain patient information to Amgen which meets the requirements of a Limited Data Set (as specified in the DUA and which shall include, at a minimum, the data fields to be received by Amgen in connection with this Agreement) for purposes of Amgen's public health activities (as set forth in 45 C.F.R. 164.512(b)(1)(iii))and Amgen's obligations as set forth in this Agreement in support of Dialysis Center's Health Care Operations (as defined in the Privacy Rule). Unless otherwise specifically defined in this Agreement, each term used in this Section 15(c) shall have the meaning assigned to such term by HIPAA and the Privacy Rule. The parties acknowledge and agree that they have entered into a DUA in connection with the disclosure to Amgen of certain patient information, as described in Section 10 of this Agreement. If any party terminates

the DUA for any reason, the other shall be entitled to terminate this Agreement immediately. Without limitation of the foregoing, the parties agree to negotiate in good faith to further amend this Agreement and/or enter into such additional agreements to the extent deemed necessary or appropriate by Dialysis Center or Amgen in connection with any disclosure by Dialysis Center or receipt by Amgen of any additional patient information (including any individually identifiable health information) and/or to comply with the Dialysis Center's [DELETED], the Privacy Rule or other or federal or state related regulations or statutes related to privacy of health information. Simultaneously upon execution of this Agreement, Dialysis Center has delivered to Amgen a copy of all applicable [DELETED] in effect on the date hereof, and Amgen acknowledges receipt of same and agrees to be bound by the requirements set forth therein. During the Term of this Agreement, Dialysis Center shall provide Amgen, from time to time, with additional [DELETED] as they become effective, and with [DELETED], at least thirty (30) days prior to the effective date of each [DELETED].

16. [DELETED]

17. [DELETED]

18. **Good Pharmaceutical Practice Support Services for the Products**. Without limitation of the provisions of Section 19 ["Access"], and in order to advance the common clinical objectives of the parties under this Agreement, Amgen agrees to provide to Dialysis Center those good pharmaceutical practice standard support services (the "Services"), at no additional cost or charge, but only to the extent that the delivering of such Services can be accomplished without using any individually identifiable heath information (as defined in the Privacy Rule). Any such Services shall be limited to those Services agreed to in writing from time to time (in each case, a "Services Agreement") between Amgen and Dialysis Center.

Amgen agrees to furnish such Services only in cooperation with Dialysis Center's facilities, in a manner consistent with Dialysis Center's policies and procedures and in accordance with the terms otherwise set forth in the Services Agreement and this Agreement, including without limitation Section 19 ["Access"] hereof. Further, Amgen and Dialysis Center agree to provide their respective staff members with appropriate training regarding patient privacy and confidentiality, including with respect to such party's obligations under this Agreement and the Services Agreement.

19. **Access.** Amgen acknowledges, agrees and understands that absent an applicable Services Agreement (as defined in Section 18 above), none of its agents, representatives or employees shall be permitted access at any time to any Affiliate or Dialysis Center for any reason whatsoever. In each situation in which a Services Agreement is executed and delivered, Amgen may be granted access solely for the purposes described in such Services Agreement(s). Without limitation of the foregoing, Amgen agrees that it and its agents, representatives and employees shall at all times comply with all applicable laws and regulations, and with Dialysis Center's [DELETED] (which applicable [DELETED] shall be identified to Amgen from time to time by Dialysis Center as more fully described in Section 15(c) above), and that Amgen's discussion of the Products shall be in compliance with all such [DELETED] and all applicable laws and regulations. Furthermore, Amgen acknowledges, agrees and understands that it must obtain Dialysis Center's prior written approval of all proposed educational, marketing and promotional materials and of all proposed presentations relating to anemia management, any of the Products, any other Amgen product or otherwise, whether directed toward Dialysis Center employees or any patient of Dialysis Center. Such approval may be given only by Dialysis Center's Vice President, Clinical Operations or his authorized representative. Dialysis Center's Vice President, Clinical Operations or his authorized representative agree to notify Amgen's National Account Manager of his decision within ten (10) business days after receipt of such program, material or presentation request, otherwise such request will be deemed denied.

20. **Right of First Offer.** Dialysis Center shall promptly notify Amgen in the event it receives a competing offer from any third party for the sale of any products in the same therapeutic class as any of the Products. Amgen shall have the right in such event to have sixty (60) days to respond to Dialysis Center with its own pricing terms relating to products. Dialysis Center shall consider but have no obligation to accept the terms of Amgen's new offer, if any.

21. **Force Majeure.** Neither party will be liable for delays in performance or nonperformance of this Agreement or any covenant contained herein if such delay or nonperformance is a result of Acts of God, civil or military authority, civil disobedience, epidemics, war, failure of carriers to furnish transportation, strike, lockout or other labor disturbances, inability to obtain material or equipment, or any other cause of like or different nature beyond the control of such party. In the event that there is a disruption or shortage in supply of any Product, Amgen will use reasonable efforts to notify Authorized Wholesalers as far in advance of such disruption as is commercially reasonable and in accordance with all regulatory guidelines. In addition, Dialysis Center's eligibility to receive rebates and incentives as set forth on Appendix A as determined by the [DELETED] under Section 3(b) of Appendix A shall not be affected.

22. **Miscellaneous.** No modification of this Agreement will be effective unless made in writing and executed by a duly authorized representative of each party, except as otherwise provided hereunder. Neither party may assign this Agreement to a third party without the prior written consent of the other party, which consent may not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, Amgen may assign this Agreement to any of its subsidiaries or affiliates. This Agreement may be executed in one or more counterparts, each of which is deemed to be an original but all of which taken together constitutes one and the same agreement. Whenever a party is permitted by this Agreement to act in its discretion, that party shall be required to exercise its discretion in good faith and in a reasonable manner. To the extent that any provisions of Amgen's or Amgen Inc.'s general or customary policies and procedures or any terms of any purchase order conflict with or are in addition to the terms of this Agreement or any Appendix attached hereto, the terms of this Agreement and Appendices shall govern. The parties acknowledge and understand that each has [DELETED]. Notwithstanding anything contained to the contrary in this Agreement, in the event that [DELETED] as set forth in [DELETED], Amgen and Dialysis Center will agree [DELETED], as the case may be. Notwithstanding anything contained to the contrary in this Agreement, in the event of [DELETED] the calculation of any of the incentives set forth in Appendix A, the parties shall [DELETED]. [DELETED] available to Dialysis Center [DELETED]. [DELETED]. Upon expiration or early termination of this Agreement, the rights and obligations set forth in sections 7, 8, 10, 13, 16, 17 and 23 shall survive.

23. **Open Records.** To the extent required by §1861(v)(1)(I) of the Social Security Act, as amended, the parties will allow the U.S. Department of Health and Human Services, the U.S. Comptroller General and their duly authorized representatives, access to this Agreement and all books, documents and records necessary to certify the nature and extent of costs incurred pursuant to it during the Term and for four (4) years following the last date Products or services are furnished under it. If Amgen carries out the duties of this Agreement through a subcontract worth $10,000 or more over a 12-month period with a related organization, the subcontract shall also contain an access clause to permit access by the U.S. Department of Health and Human Services, the U.S. Comptroller General, and their duly authorized representatives to the related organization's books and records.

24. **Entire Agreement.** The Agreement together with the DUA, any Services Agreement(s) and all of the Appendices attached hereto and thereto, constitutes the entire understanding between the parties and supersedes all prior or oral written proposals, agreements or commitments pertaining to the subject matter herein and therein.

Please retain one fully executed original for your records and return the other fully executed original to Amgen.

The parties executed this Agreement as of the dates set forth below.

Amgen USA Inc.

Signature:_____

Print Name:_____

Print Title:_____

Date:_____

DaVita, Inc.

Signature:_____

Print Name:_____

Print Title:_____

Date:_____

Amgen Inc. agrees to be bound by certain provisions of this Agreement as set forth herein

Amgen Inc.

Signature:_____

Print Name:_____

Print Title:_____

Date:_____

Appendix A: Discount Pricing, Schedule, and Terms

1. **Pricing – Aranesp®.** Throughout the Term of this Agreement, Dialysis Center and Affiliates may purchase Aranesp® through Authorized Wholesalers at [DELETED] which shall be equal to the [DELETED]. Amgen reserves the right to change the [DELETED] at any time. Resulting prices do not include any wholesaler markup, service fees, or other charges.

2. **Pricing – EPOGEN®.** Throughout the Term of this Agreement, Dialysis Center and Affiliates may purchase EPOGEN® directly from Amgen or through Authorized Wholesalers at [DELETED], which shall be equal to the [DELETED]. Amgen reserves the right to change the [DELETED] at any time. Notwithstanding any such change(s), the [DELETED] that is applicable to Dialysis Center throughout the Term shall be the [DELETED]. Resulting prices do not include any wholesaler markup, service fees, or other charges. All discounts earned in arrears hereunder (also known as "rebates"), through the Term of the Agreement, shall be calculated based upon the [DELETED], such that any [DELETED] contained in any of the discounts or incentives set forth in this Appendix A shall [DELETED] in the [DELETED].

3. **Rebate/Incentive Qualification Requirements.** In order for Dialysis Center to be eligible to receive any rebates or incentives described in [DELETED] (but not in [DELETED]) of this Appendix A, Dialysis Center must satisfy the following two (2) qualification requirements:

(a). [DELETED]: No more than [DELETED] of Dialysis Center's [DELETED] taken on an overall basis (and not separately for each Affiliate) may have [DELETED] (as that term is defined below) [DELETED] during the applicable [DELETED] of the Term of this Agreement. For purposes of this Agreement, the [DELETED] of this Agreement shall be measured from [DELETED]. If this criteria is not met during any given [DELETED] of the Term of the Agreement, Dialysis Center will not qualify for any rebates described in [DELETED] below in this Appendix A during that [DELETED]. Failure of Dialysis Center to qualify under this provision during a particular [DELETED] shall not affect Dialysis Center's eligibility to qualify during any other [DELETED] of the Term, nor shall Dialysis Center's qualification during a particular [DELETED] automatically result in qualification during any other [DELETED]. The [DELETED] for each dialysis patient will be based upon the average of all [DELETED] for each patient during the applicable [DELETED]. Dialysis Center and Affiliates must provide the following information for each dialysis patient to Amgen or to a data collection vendor specified and paid for by Amgen, on a [DELETED] basis, and no later than [DELETED] days after the end of each [DELETED]. In those cases in which Amgen directs Dialysis Center to submit the following information to a data collection vendor, Dialysis Center shall be deemed to have timely submitted the information to such data collection vendor so long as it does so on a [DELETED] basis and no later than [DELETED] days after the end of each [DELETED], regardless of the date on which such vendor, in turn, submits such information to Amgen: all [DELETED] for each dialysis patient, the date of each test, and a consistent, unique, alpha-numeric identifier (sufficient consistently to track an individual patient without in any way violating the de-identification provisions of HIPAA at 45 CFR 164.514), along with the name, address and phone number of the particular Affiliate at which each patient received treatment; provided, however, that Dialysis Center shall be required to submit such test results only for those dialysis patients whose test results are actually determined by laboratories owned and operated by Dialysis Center. For any period that is not equivalent to a complete [DELETED], the calculation of [DELETED] will be based on an average of all data for each dialysis patient that is available for that period. To the extent permitted by applicable law, Amgen may utilize the data it receives from Dialysis Center or any Affiliate, pursuant to and as detailed in this provision or elsewhere in this Agreement, to support verification of the discounts and incentives referenced in this Agreement, as well as for any purpose in support of Amgen's obligations as set forth in this Agreement with respect to Amgen's public health activities (as set forth in 45 CFR 164.512 (b)(1)(iii)), and (ii) in support of Dialysis Center's Health Care Operations (as defined in the Privacy Rule). In furtherance of the foregoing, Amgen reserves

the right to audit all such data, provided that any audit shall not permit access to information disclosing the identity of any patient. Under no circumstances should such data include any patient identifiable information including, without limitation, name, all or part of social security number, address, telephone, electronic mail address, birth date, medical record number, prescription number or any other unique identifying number, characteristic or code. The identity of the Affiliate and of the account submitting the data and any association with the data will remain confidential by Amgen. The [DELETED] must be derived from [DELETED] taken immediately before dialysis treatment using any [DELETED] testing method [DELETED], must be reported to the [DELETED], and must be submitted [DELETED] in a format reasonably acceptable to Amgen. Handwritten reports are not acceptable; only electronic submission of the data will be accepted; and

(b). [DELETED]: Dialysis Center's aggregate Qualified Purchases of EPOGEN® and Aranesp® during [DELETED] and during [DELETED] by all Affiliates listed on Appendix B on the Commencement Date of this Agreement and all new approved Affiliates (whether by acquisition, to the extent that either Amgen or Dialysis Center can provide adequate data concerning such Affiliates' purchases for the same time period from [DELETED] for [DELETED] and from [DELETED] for [DELETED], or de novo) must equal or exceed [DELETED] (for [DELETED]) and [DELETED] (for [DELETED]) respectively [DELETED], of the aggregate Qualified Purchases of EPOGEN® and Aranesp® by those same Affiliates for the time period from [DELETED], for [DELETED], and from [DELETED] for [DELETED]. For deleted Affiliates, Amgen shall exclude Qualified Purchases by such Affiliates effective from the effective date of their deletion and also during the relevant [DELETED] used for comparison. For purposes of calculating the [DELETED], EPOGEN® and Aranesp® base sales during each applicable time period shall be derived using the [DELETED]. All estimated payments for discounts in arrears that contain [DELETED] will be measured by using a [DELETED] that measures [DELETED]. If Dialysis Center has not satisfied the [DELETED] for any [DELETED], then at the end of the [DELETED], Amgen will determine if Dialysis Center has satisfied, in the aggregate, on a [DELETED], the [DELETED]. If the [DELETED] has been met for that given [DELETED], then Amgen will perform a [DELETED] calculations for [DELETED]. However, if [DELETED] the [DELETED] has not been met for that [DELETED], Amgen will perform a [DELETED], which may [DELETED]. The [DELETED] payments and any other discount or incentive earned in arrears corresponding to the [DELETED], respectively if any, shall not be due and owing until, and shall be subject to, such [DELETED]. [DELETED] will be made [DELETED], within [DELETED] days after the [DELETED] and receipt by Amgen of all the required data detailed in this Agreement. The determination as to Dialysis Center's attainment or failure to attain the [DELETED] shall be based upon the [DELETED]; and

(c). In addition to the above requirements and notwithstanding anything contained herein to the contrary, in the event Dialysis Center's aggregate Qualified Purchases of EPOGEN® during the period [DELETED] ("Measurement Period") by all Affiliates listed on Appendix B on the Commencement Date of this Agreement exceeds [DELETED] of the aggregate Qualified Purchases of EPOGEN® by those same Affiliates for the same time period from [DELETED] ("Base Period"), Dialysis Center shall not be eligible to receive any rebates detailed in [DELETED] below in this Appendix A for any Qualified Purchases of EPOGEN® in the aggregate made during the Measurement Period that exceed [DELETED] of the aggregate Qualified Purchases of EPOGEN® by those same Affiliates in the Base Period. For purposes of determining the foregoing, EPOGEN® base sales during each applicable time period shall be derived using the [DELETED].

4. [DELETED] . Throughout the Term of the Agreement Dialysis Center shall be eligible to receive a [DELETED] provided that Dialysis Center provides certain data elements that are transmitted to Amgen electronically. The [DELETED] will be calculated as a percentage of the Qualified Purchases of EPOGEN® attributable to Dialysis Center during the applicable [DELETED]. Failure of Dialysis Center to qualify during a particular [DELETED] shall not affect Dialysis Center's eligibility to qualify during any other

[DELETED], nor shall Dialysis Center's qualification during a particular [DELETED] automatically result in qualification during any other [DELETED]. To qualify for the [DELETED], the following [DELETED] must be submitted to Amgen by Dialysis Center and all Affiliates pursuant to Section 15(c) of the Agreement in an electronic format acceptable to Amgen (Excel; Lotus 123.wk1; or text file that is tab delimited, comma delimited, colon delimited or space delimited), provided, however, that Dialysis Center shall be required to submit such test results only for those dialysis facilities whose test results are actually determined by laboratories owned and operated by Dialysis Center :

Facility ID;
Patient ID (sufficient to consistently track an individual patient without in any way disclosing the identity of the patient);
[DELETED];
[DELETED];
Modality; Hemodialysis ("HD") ID or peritoneal dialysis ("PD") ID (a PD patient shall be defined as a patient who receives at least one (1) peritoneal dialysis treatment during a given month) – [DELETED];
[DELETED] with date [DELETED] and [DELETED];
All [DELETED] and [DELETED] with their corresponding draw dates for each patient by Patient ID;
[DELETED] delivered for each patient per treatment with date (but only for patients of Affiliates using the CRIS or Snappy systems);
[DELETED];
[DELETED];
[DELETED];
[DELETED];
[DELETED] ;
[DELETED];
[DELETED];
[DELETED];
[DELETED]; and
[DELETED]

Such patient data must be submitted, on a [DELETED] basis, and no later than [DELETED] days after the end of each [DELETED]. Each [DELETED], only the most recent test results will be submitted for each patient, and all or some of those test results may be from that [DELETED] or from [DELETED]. If such patient data is received more than [DELETED] days after the last day of any [DELETED] within a given [DELETED], the total Qualified Purchases of EPOGEN® attributable to Dialysis Center during such [DELETED] will be excluded from the calculation of the [DELETED] for that [DELETED]. Notwithstanding the foregoing, if Amgen receives all required data from a minimum of [DELETED] of all Affiliates within the definition of "Dialysis Center" within the time frame referenced above for any [DELETED] within a given [DELETED], the total Qualified Purchases of EPOGEN® attributable to Dialysis Center and all Affiliates during such [DELETED], will be included in the calculation of the [DELETED] for that [DELETED]. If Amgen receives all required data from [DELETED] of all Affiliates within the definition of "Dialysis Center" within the time frame set forth herein for any [DELETED] within a given [DELETED], the total Qualified Purchases of EPOGEN® attributable to those Affiliates that have submitted the required data during such [DELETED] will be included in the calculation of the [DELETED] for that [DELETED]. If Amgen receives all required data from less than [DELETED] of all Affiliates within the definition of "Dialysis Center" for any [DELETED] within a given [DELETED], no Qualified Purchases of Dialysis Center during such [DELETED] will be included in the calculation of the [DELETED] for that [DELETED]. However, if Amgen determines that any Affiliate is consistently not submitting the required

data, Amgen and Dialysis Center will work collaboratively in resolving such inconsistencies. Amgen will use its best efforts to notify Dialysis Center in writing, no later than [DELETED] after the receipt and acceptance by Amgen of the data, of the identity of all those Affiliates, if any, which have failed to meet the data submission requirements for that [DELETED]. Amgen reserves the right, in its sole discretion, to exclude any consistently non-reporting Affiliate's Qualified Purchases of EPOGEN® from the calculation of the [DELETED] for any relevant [DELETED].

The [DELETED] will vest on the [DELETED] of the [DELETED], and be paid [DELETED] within [DELETED] days after the receipt of data, in accordance with the terms and conditions described above. Dialysis Center shall have the right, at its own cost and expense, at all times to audit all data and all calculations relevant to the determination of eligibility for and the amount of the [DELETED] to be paid to Dialysis Center hereunder. Notwithstanding the foregoing, payment for any period that is not equivalent to a [DELETED] will be made based on the data that is available for that period.

The parties shall meet and confer in good faith to resolve any disagreements arising out of these matters. If the parties are unable to resolve any such disagreement within ninety (90) days, the parties shall submit such disagreement to binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, except that the parties shall be entitled to expanded discovery. Dialysis Center and Amgen shall each name one (1) arbitrator, and the arbitrators so chosen shall, within thirty (30) days thereafter, name a third neutral arbitrator. The arbitration award, as decided by a majority of the arbitrators, may be entered as a judgment in accord with applicable law by any court having jurisdiction. Venue for the arbitration shall be Los Angeles County, California. Each party shall be responsible for its own attorneys' fees, and the costs of the arbitration and of the arbitrators shall be shared equally by the parties; provided, however, that if the decision of the arbitrators finds that either of the parties has acted in bad faith, the party acting in bad faith alone shall be required to bear one hundred percent (100%) of the costs and expenses of the arbitration and of the arbitrators, as well as one hundred percent of the attorney's fees of the other party. The arbitrators shall have the authority to award interest in respect to any monetary award.

5. [DELETED]. Throughout the Term of the Agreement, Dialysis Center may qualify for the [DELETED] provided it meets the criteria described below in this Section 5. The [DELETED] is designed to improve patient outcomes by encouraging [DELETED]. If the [DELETED] change, then Amgen and Dialysis Center will meet and in good faith seek to mutually agree to modify this Agreement to accommodate any such change, with the intent to [DELETED] of the [DELETED].

(a) Requirements: In order to qualify for the [DELETED], Dialysis Center must [DELETED] of this Appendix A, and Dialysis Center and its Affiliates must provide Amgen the following data items, on a [DELETED] basis, and no later than [DELETED] days after the end of each month, in an electronic format acceptable to Amgen (Excel; Lotus 123.wk1; or text file that is tab delimited, comma delimited, colon delimited or space delimited) in accordance with the data submission requirements contained in Section 4 of this Appendix A for the [DELETED] and pursuant to Section 15(c) of the Agreement; provided, however, that Dialysis Center shall be required to submit such test results only for those dialysis facilities whose test results are actually determined by laboratories owned and operated by Dialysis Center : [DELETED] and date, AND [DELETED] with date for each patient by Dialysis Center and its Affiliates. In the event [DELETED] is submitted, instead of [DELETED], Amgen will convert such [DELETED] values to [DELETED] values by [DELETED]. Amgen will convert all lab values taken of [DELETED] for each patient by Dialysis Center and its Affiliates, AND all the lab values taken of [DELETED] for each patient by Dialysis Center and its Affiliates into the [DELETED] for each patient by Dialysis Center and its Affiliates, AND the [DELETED] for each patient by Dialysis Center and its Affiliates for each of the [DELETED] Measurement Periods (as defined in the

schedule immediately below). Each [DELETED], only the most recent test results will be submitted for each patient, and all or some of those test results may be from [DELETED] or from a [DELETED].

[DELETED] Measurement Periods

[DELETED]

(b) Calculation: Assuming Dialysis Center and Affiliates have fulfilled all requirements as described in Section 5(a) above, to qualify for the [DELETED], Dialysis Center must achieve [DELETED] in the [DELETED], as that term is defined below, from the [DELETED], as that term is defined below, during each [DELETED] Measurement Period, and such [DELETED] shall be defined as [DELETED].

For purposes of this Section 5, [DELETED] shall mean the [DELETED] for each patient by Dialysis Center and its Affiliates AND the [DELETED] for each patient by Dialysis Center and its Affiliates during the period [DELETED]; and [DELETED] shall mean the [DELETED] for each patient by Dialysis Center and its Affiliates AND the [DELETED] each patient by Dialysis Center and its Affiliates for each of the above referenced [DELETED] Measurement Periods.

Using the [DELETED] described above, the [DELETED] will be calculated as the percentage of patients within the [DELETED], by [DELETED], as shown below:

[DELETED]

Using the [DELETED] described above, which shall be calculated on a [DELETED] basis with the [DELETED] of the Term of this Agreement being measured from [DELETED], the [DELETED] for each [DELETED] Measurement Period will be calculated as the [DELETED], by [DELETED], as shown below:

[DELETED]

The [DELETED] shall then be calculated by [DELETED]:

[DELETED]

The [DELETED] Rebate will be calculated on a [DELETED] basis in accordance with Amgen's discount calculation policies. Following determination of the [DELETED], Amgen shall then calculate Dialysis Center's [DELETED] Rebate in accordance with the following formula and the rebate table listed below.

[DELETED] Rebate = A X B

Where:

A = [DELETED] of EPOGEN® during the relevant [DELETED] Measurement Period.
B = A percent determined from [DELETED] in accordance with the schedule below.
C = [DELETED]
D = [DELETED]

[DELETED] Measurement Rebate Table

Measurement Period	[DELETED] (C)	Rebate Percent (B)
[DELETED]		

* Subject to the terms of this Agreement, Dialysis Center will [DELETED] during the [DELETED] and [DELETED]. Notwithstanding anything contained herein to the contrary, the maximum rebate percent

payable for any [DELETED] Measurement Period shall not exceed [DELETED] under this [DELETED] program.

(c) Payment: The [DELETED] will be calculated and paid to Dialysis Center on a [DELETED] basis. Failure of Dialysis Center to qualify during a particular [DELETED] shall not affect Dialysis Center's eligibility to qualify during any other [DELETED], nor shall Dialysis Center's qualification during a particular [DELETED] automatically result in qualification during any other [DELETED]. Payment is contingent upon receipt by Amgen of the Certification Letter (attached hereto as Exhibit 1) and all required Data for the corresponding [DELETED] (including the [DELETED]). Upon execution of this Agreement, Dialysis Center shall simultaneously provide to Amgen the executed Certification Letter, and Amgen hereby acknowledges that it has received such required Certification Letter in a form and substance satisfactory to Amgen. Delivery of such Certification Letter shall serve to qualify Dialysis Center's participation in the [DELETED] throughout the Term of this Agreement for the limited purpose of certification of the accuracy of the data submitted to Amgen hereunder. Such data must be submitted, on a [DELETED] basis, and no later than [DELETED] days after the end of [DELETED]. If such data is received more than [DELETED] days after the [DELETED] within a given [DELETED], the total Qualified Purchases of EPOGEN® attributable to Dialysis Center during such [DELETED] will be excluded from the calculation of the [DELETED] for that [DELETED]. Notwithstanding the foregoing, if Amgen receives all required data from a minimum of [DELETED] of all Affiliates within the definition of "Dialysis Center" within the time frame referenced above for any [DELETED] within a given [DELETED], the total Qualified Purchases of EPOGEN® attributable to Dialysis Center and all Affiliates during such [DELETED], will be included in the calculation of the [DELETED] for that [DELETED]. If Amgen receives all required data from [DELETED] of all Affiliates within the definition of "Dialysis Center" within the time frame set forth herein for any [DELETED] within a given [DELETED], the total Qualified Purchases of EPOGEN® attributable to those Affiliates that have submitted the required data during such [DELETED] will be included in the calculation of the [DELETED] for that [DELETED]. If Amgen receives all required data from less than [DELETED] of all Affiliates within the definition of "Dialysis Center" for any [DELETED] within a given [DELETED], no Qualified Purchases of Dialysis Center during such [DELETED] will be included in the calculation of the [DELETED] for that [DELETED]. However, if Amgen determines that any Affiliate is consistently not submitting the required data, Amgen and Dialysis Center will work collaboratively in resolving such inconsistencies. Amgen will use its best efforts to notify Dialysis Center in writing, no later than [DELETED] after the receipt and acceptance by Amgen of the data, of the identity of all those Affiliates, if any, which have failed to meet the data submission requirements for that [DELETED]. Amgen reserves the right, in its sole discretion, to exclude any consistently non-reporting Affiliate's Qualified Purchases of EPOGEN® from the calculation of the [DELETED] for any relevant [DELETED]. Subject to the terms of this Agreement, Dialysis Center will [DELETED] during [DELETED] and [DELETED]. Notwithstanding the forgoing, payment for any period that is not equivalent to a complete [DELETED] will be based on the data that is available for that period.

The [DELETED] discount will vest on the [DELETED] of the [DELETED], and be paid [DELETED] within [DELETED] days after the receipt of data, in accordance with the terms and conditions described above. Dialysis Center shall have the right, at its own cost and expense, at all times to audit all data and all calculations relevant to the determination of eligibility for and the amount of the [DELETED] to be paid to Dialysis Center hereunder.

[DELETED]

6. [DELETED]. Throughout the Term of the Agreement, Dialysis Center may qualify for the [DELETED] provided it meets the criteria described below in this Section 6. The [DELETED] is designed to improve

patient outcomes. If Dialysis Center [DELETED] or otherwise [DELETED], the parties shall [DELETED]. [DELETED].

(a) Requirements: In order to qualify for the [DELETED], Dialysis Center must [DELETED] this Appendix A, and Dialysis Center [DELETED], as that term is defined below, of [DELETED]. Dialysis Center must provide Amgen the [DELETED], on a [DELETED] basis, and no later than [DELETED] days after the end of [DELETED], in a format acceptable to Amgen.

(b) Calculation: Assuming Dialysis Center has fulfilled all requirements as described in Section 6(a) above, to qualify for the [DELETED], Dialysis Center must achieve, on a [DELETED] basis, with the [DELETED] of the Term of this Agreement being measured from [DELETED], an [DELETED] of [DELETED]. The [DELETED] of the term shall be measured from [DELETED] but shall be used to calculate the discount for the period from [DELETED]. The [DELETED] shall be based upon [DELETED]. For purpose of calculating the [DELETED] for each applicable [DELETED], Dialysis Center shall use [DELETED] for each patient, [DELETED] in accordance with the [DELETED], and, in all other material respects, consistent with the [DELETED] currently employed by Dialysis Center. For each [DELETED] will be [DELETED] depending on the [DELETED], in accordance with the [DELETED]. The [DELETED] is a [DELETED] of the [DELETED]. The [DELETED] will be calculated as the [DELETED] based on [DELETED] for all patients treated at Dialysis Center and its Affiliates during each applicable [DELETED], in accordance with the [DELETED] Schedule listed below:

[DELETED] Schedule

[DELETED]

* All [DELETED] shall be counted [DELETED].
** [DELETED].
[2] [DELETED].
[3] [DELETED].

The [DELETED] will be calculated on a [DELETED] basis in accordance with Amgen's discount calculation schedules. Following the submission of the [DELETED] by Dialysis Center, Amgen shall then calculate Dialysis Center's [DELETED] in accordance with the following formula and the incentive table listed below:

[DELETED] = A X B

Where:

A = [DELETED] of EPOGEN® during the relevant [DELETED].
B = A percent in accordance with the [DELETED].
C = [DELETED]
D = [DELETED]

[DELETED] Rebate Schedule

[DELETED]

Notwithstanding anything contained herein to the contrary, the maximum rebate percent payable for any [DELETED], shall not exceed [DELETED] under this [DELETED] program.

(c) Payment: The [DELETED] will be calculated and paid to Dialysis Center on a [DELETED] basis. Payment for each applicable [DELETED] is contingent upon receipt and verification by Amgen of the [DELETED] for the applicable [DELETED]. The [DELETED] must be submitted, on a [DELETED] basis, and no later than [DELETED] days after the end of each [DELETED]. If the [DELETED] is received more than [DELETED] days after the [DELETED] of any given [DELETED], the total Qualified Purchases of EPOGEN® attributable to Dialysis Center during such [DELETED] will be excluded from the calculation of the [DELETED] for that [DELETED]. Failure of Dialysis Center to qualify during a particular [DELETED] shall not affect Dialysis Center's eligibility to qualify during any other [DELETED], nor shall Dialysis Center's qualification during a particular [DELETED] automatically result in qualification during any other [DELETED]. Notwithstanding the foregoing, payment for any period that is not equivalent to a complete [DELETED] will be made based on the data that is available for that period.

The [DELETED] discount will vest on the last day of the corresponding [DELETED], and be paid [DELETED] within [DELETED] days after the receipt of data, in accordance with the terms and conditions described above. Dialysis Center shall have the right, at its own cost and expense, at all times to audit all data and all calculations relevant to the determination of eligibility for and the amount of the [DELETED] to be paid to Dialysis Center hereunder.

[DELETED].

Appendix B: List of Dialysis Center Affiliates

Please refer to attached list of affiliates.

Center Name	Address	City	ST	Zip
Alhambra Dialysis Center, Dba: Total Renal Care—Alhambra	1315 Alhambra Boulevard, Suite 100	Sacramento	CA	95816
Antelope Dialysis Center, Dba: Total Renal Care-Antelope Clinic	6406 Tupelo Drive, Suite A	Citrus Heights	CA	95621
Antioch Dialysis Center	3100 Delta Fair Boulevard	Antioch	CA	94509
Appomattox Dialysis Center	15 West Old Street	Petersburg	VA	23803
Arcadia Dialysis Center	1341 East Oak Street	Arcadia	FL	34266
Asheville Kidney Center for Dialysis—A Total Renal Care Facility	10 Mcdowell Street	Asheville	NC	28801
Atlantic Artificial Kidney Center	6 Industrial Way West, Meridian Center #3	Eatontown	NJ	07724
Baker Place Dialysis Center	5084 Ames Avenue	Omaha	NE	68104
Bakers Ferry Dialysis # 0456	3645 Bakers Ferry Road	Atlanta	GA	30331
Baltimore County Dialysis Facility (Mason-Dixon Dialysis Facility)	9635a Liberty Road	Randallstown	MD	21133
Bardstown Dialysis Center #2055	210 West John Fitch Avenue	Bardstown	KY	40004
Batesville Dialysis Center	232 State Road 129 North	Batesville	IN	47006
Baton Rouge Clinic	7373 Perkins Road	Baton Rouge	LA	70808
Bay Area Dialysis Center, Inc.	1101 9th Street North	St. Petersburg	FL	33701
Bay Breeze Dialysis	11465 Ulmerton Road	Largo	FL	33778
Bayonet Point—Hudson Kidney Center	14144 Nephron Lane	Hudson	FL	34667
Bertha Sirk Dialysis Center, Inc.	5820 York Road, Suite 10	Baltimore	MD	21212
Bloomington Dialysis Davita	8591 Lyndale Avenue South	Bloomington	MN	55420
Boca Raton Artificial Kidney Center	998 Northwest 9th Court	Boca Raton	FL	33486
Boston Post Road Dialysis Center	4026 Boston Road	Bronx	NY	10466
Bricktown Dialysis	525 Jack Martin Boulevard, Suite 200	Brick	NJ	08724
Brookhollow Dialysis Center #2027	4918 West 34th Street	Houston	TX	77092
Burlington Dialysis Center	873 Heather Road	Burlington	NC	27215
Cambridge Dialysis Center	300 Bryn Street, First Floor	Cambridge	MD	21613
Camelback Pd Center #627	7321 East Osborne Drive	Scottsdale	AZ	85251
Catskill Dialysis and Renal Disease Center	Route 42 and Lloyd Lane	Monticello	NY	12701
Ceilo Vista Dialysis	7200 Gateway East, Suite B.	El Paso	TX	79915
Central City Dialysis Center	1300 Murchison Street, Suite 320	El Paso	TX	79902
Chadbourn Dialysis Center	210 East Strawberry Boulevard	Chadbourn	NC	28431
Chico Dialysis Center, Dba: Total Renal Care—Chico	530 Cohasset Road	Chico	CA	95926
Children’s Memorial Dialysis Center—Total Renal Care	2611 North Halsted	Chicago	IL	60614
Churchview Dialysis Unit	5970 Churchview Drive	Rockford	IL	61107
Clarkson Kidney Center #1575	987550 Nebraska Medical Center	Omaha	NE	68198
Clarkston Dialysis of Davita	6770 Dixie Highway, Suite 205	Clarkston	MI	48346
Community Hemodialysis Unit of San Francisco	1800 Haight Street	San Francisco	CA	94117
Complete Dialysis Care South	111 Southwest 23rd Street, Suite D	Fort Lauderdale	FL	33315
Complete Dialysis Care, Inc.	7850 West Sample Road	Coral Springs	FL	33065
Coney Island Dialysis	26-48 Brighton 11 Street	Brooklyn	NY	11235
Continental Dialysis Center—Alexandria	5999 Stevenson Avenue, Suite 100	Alexandria	VA	22304
Continental Dialysis Center—Manassas	8409 Dorsey Circle, Suite 101	Manassas	VA	20110
Continental Dialysis Center—Springfield Trc	8350a Traford Lane	Springfield	VA	22152
Continental Dialysis Center—Woodbridge Dialysis	2751 Killarney Drive	Woodbridge	VA	22192
Copperfield Dialysis Center #2004	1030 Binehaven Drive	Concord	NC	28026
Covina Dialysis Center	1547 West Garvey Avenue	West Covina	CA	91791
Creekside Dialysis Center #2017	141 Parker Street	Vacaville	CA	95688
Crestwood Dialysis Center #1576	9901 Watson Road, Suite 125	Crestwood	MO	63126
Crystal River Dialysis Center	7435 West Gulf To Lake Highway	Crystal River	FL	34429
Cyfair Dialysis Center	9110 Jones Road, Suite 110	Houston	TX	77065
Da Vita—Broken Arrow Dialysis Center	601 South Aspen Avenue	Broken Arrow	OK	74012
Da Vita—Claremore Dialysis Center	202 East Blue Starr Drive	Claremore	OK	74017
Da Vita—Conroe Dialysis	500 Medical Center Boulevard, Suite 175	Conroe	TX	77304
Da Vita—Corona Dialysis Center	1820 Fullerton Avenue, Suite 180	Corona	CA	92881
Da Vita—Cortez Dialysis	610 East Main Street, Suite C	Cortez	CO	81321

Center Name	Address	City	ST	Zip
Da Vita—Crescent City Dialysis	3909 Bienville Street, Suite 1b	New Orleans	LA	70119
Da Vita—East Bay Peritoneal Dialysis	13939 East 14th Street, Suite 110	San Leandro	CA	94578
Da Vita—East Wichita Dialysis	320 North Hillside	Wichita	KS	67214
Da Vita—Four Corners Dialysis Center	815/817 West Broadway	Farmington	NM	87401
Da Vita—Grant Park Dialysis	5000 Burroughs Avenue, Northeast	Washington	DC	20019
Da Vita—Indio Dialysis	46-767 Monroe Street, Suite 101	Indio	CA	92201
Da Vita—Lawrenceburg Dialysis	555 Eads Parkway, Suite 200	Lawrenceburg	IN	47025
Da Vita—Mountain Vista Dialysis Center	401 B. East Highland Avenue	San Bernardino	CA	92404
Da Vita—Okmulgee Dialysis Center	1101 South Belmont, Suite #204	Okmulgee	OK	74447
Da Vita—Tahlequah Dialysis Center	228 North Bliss Avenue	Tahlequah	OK	74464
Da Vita—Temecula Dialysis	40945 County Center Drive, Suite G.	Temecula	CA	92591
Da Vita—Tri-Parish Chronic Renal Center	2345 St. Claude Avenue	New Orleans	LA	70117
Da Vita—Westbank Chronic Renal Center	4422 General Meyer Avenue, Suite 103	New Orleans	LA	70131
Da Vita Flushing Dialysis	3469 Pierson Place	Flushing	MI	48433
Da Vita Lakewood Dialysis Center	4645 Silva Street	Lakewood	CA	90712
Da Vita Longmont Dialysis	1700 Kylie Drive, Suite 170	Longmont	CO	80501
Da Vita Neptune Dialysis	2180 Bradley Avenue	Neptune	NJ	07753
Da Vita University Dialysis Center	300 University Avenue, Suite 103	Sacramento	CA	95825
Davison Dialysis Center	1011 South State Road	Davison	MI	48423
Davita—Boulder Dialysis Center	2880 Folsom Street, Suite 110	Boulder	CO	80304
Davita—Denver Dialysis	1719 East 19th Avenue	Denver	CO	80218
Davita—Derby	250 West Red Powell Road	Derby	KS	67037
Davita—Detroit Dialysis	2674 East Jefferson	Detroit	MI	48207
Davita—Edmond Dialysis	50 South Baumann Avenue	Edmond	OK	73034
Davita—Fairfield Dialysis Center	604 Empire Street	Fairfield	CA	94533
Davita—Gary	4802 Broadway	Gary	IN	46408
Davita—Hammond	222 Douglas Street	Hammond	IN	46320
Davita—Kenneth Hahn Plaza Dialysis Center	11854 Wilmington Avenue	Los Angeles	CA	90059
Davita—Littleton	209 West County Line Road	Littleton	CO	80129
Davita—Newton	1223 Washington Road	Newton	KS	67114
Davita—North Las Vegas	2300 Mcdaniel Street	North Las Vegas	NV	89030
Davita—Peralta Renal Center	450 30th Street	Oakland	CA	94609
Davita—Provo	1134 North 500 West	Provo	UT	84604
Davita—Rialto Dialysis	1850 North Riverside Avenue, Suite 150	Rialto	CA	92376
Davita—San Leandro	198 East 14th Street	San Leandro	CA	94577
Davita—Sparks Dialysis	2345 East Prater Way, Suite 100	Sparks	NV	89434
Davita—Westminster Dialysis Center	9053 Harland Street, Unit 90	Westminster	CO	80030
Davita—Winter Haven	400 Security Square	Winter Haven	FL	33880
Davita—Altus Dialysis Center	205 South Park Lane, Suite 130	Altus	OK	73521
Davita—Arden Hills Dialysis	3900 Northwoods Drive, Suite 110	Arden Hills	MN	55112
Davita—Aurora Dialysis	1411 South Potomac, Suite 100	Aurora	CO	80012
Davita—Beverly Hills Dialysis Center	8762 West Pico Boulevard	Los Angeles	CA	90035
Davita—Bluff City Dialysis	2400 Lucy Lee Parkway, Suite E.	Poplar Bluff	MO	63901
Davita—Buena Vista	347 Highway 41 North	Buena Vista	GA	31803
Davita—Central Tulsa Dialysis	1124 South St. Louis Avenue	Tulsa	OK	74120
Davita—Cherokee Dialysis Center	53 Echota Church Road	Cherokee	NC	28719
Davita—Cincinnati	815 Eastgate Boulevard South	Cincinnati	OH	45245
Davita—Cleveland Dialysis Center	600 East Houston Street, Suite 630	Cleveland	TX	77327
Davita—Dennison	1220 Reba Macentire Lane	Denison	TX	75020
Davita—Dialysis Care of Franklin County	1706 North Carolina Highway 39 North	Louisburg	NC	27549
Davita—Doctors Dialysis Center of East Los Angeles	4036 East Whittier Boulevard, Suite 100	Los Angeles	CA	90023
Davita—Duncan Dialysis	2645 West Elk	Duncan	OK	73533
Davita—Durant #2024	411 Westside Drive	Durant	OK	74701
Davita—East Chicago	4320 Fir Street, Suite 404	East Chicago	IN	46312
Davita Easton Dialysis	402 Marvel Court	Easton	MD	21601
Davita—Eaton Canyon Dialysis Center	2551 East Washington Boulevard	Pasadena	CA	91107

Center Name	Address	City	ST	Zip
Davita—Elk City	1710 West 3rd Street, Suite 101	Elk City	OK	73644
Davita—Flint Dialysis Center #1557	Two Hurley Plaza, Suite 115	Flint	MI	48503
Davita—Forest Lake Dialysis Unit	1068 South Lake Street	Forest Lake	MN	55025
Davita Fort Pierce	1801 South 23rd Street, Suite 1	Fort Pierce	FL	34950
Davita—Greater Portsmouth Dialysis Center #1544	3516 Queen Street	Portsmouth	VA	23707
Davita Hayward Dialysis Center	22477 Maple Court	Hayward	CA	94541
Davita—Hermiston Dialysis Center	1155 West Linda Avenue	Hermiston	OR	97838
Davita—Hopewell Dialysis	301 West Broadway	Hopewell	VA	23860
Davita—Houston Kidney Center—Cypress Station	221 Fm 1960 Road West	Houston	TX	77090
Davita Jonesboro	118 Stockbridge Road	Jonesboro	GA	30236
Davita—Lamplighter Dialysis Center #2051	12654 Lamplighter Square	St. Louis	MO	63128
Davita—Las Vegas Dialysis Center	3100 West Charleston, Suite 100	Las Vegas	NV	89102
Davita—Leesburg Dialysis	801 East Dixie Avenue, Suite 108-A	Leesburg	FL	34748
Davita—Lodi Community Dialysis, Inc.	2415 West Vine Street, Suite 106	Lodi	CA	95242
Davita—Lonestar Dialysis Center	8560 Monroe Road	Houston	TX	77061
Davita—Marshall Dialysis	1301 South Washington	Marshall	TX	75670
Davita—Miami Dialysis Center	200 2nd Avenue Southwest	Miami	OK	74354
Davita—Miami Lakes Artifical Kidney Center	14600 60th Avenue Northwest	Miami Lakes	FL	33014
Davita—Michigan City	120 Dunes Plaza	Michigan City	IN	46360
Davita Midtown Atlanta	121 Linden Avenue	Atlanta	GA	30308
Davita Milledgeville	400 South Wayne Street	Milledgeville	GA	31061
Davita—Mission Dialysis Center of Oceanside	2227-B El Camino Real, Camino Town and Country Shopping Center	Oceanside	CA	92054
Davita—Mission Dialysis Center of San Diego	7007 Mission Gorge Road	San Diego	CA	92120
Davita—Mission Dialysis of El Cajon	858 Fletcher Parkway	El Cajon	CA	92020
Davita—Montclare, Aka; Belmont Avenue Dialysis Center #2030	7009 West Belmont Avenue	Chicago	IL	60634
Davita—Munster	8317 Calumet Avenue, Suite A	Munster	IN	46321
Davita—Muskogee Community Dialysis	2913 Azalea Park Boulevard	Muskogee	OK	74401
Davita—Napa Dialysis Center	3900—C Bel Aire Plaza	Napa	CA	94558
Davita—Nephrology Center of Augusta, Inc.	1238 D'Antignac Street	Augusta	GA	30901
Davita New Orleans	4528 Freret Street	New Orleans	LA	70115
Davita—Norman	1818 West Lindsey, B. 104	Norman	OK	73069
Davita—Northwest Bethany	7800 Northwest 23rd Street, Suite A	Bethany	OK	73008
Davita—Oklahoma City	4140 West Memorial Road, Suite 107	Oklahoma City	OK	73120
Davita—Omni	9350 Kirby, Suite 110	Houston	TX	77054
Davita—Owings Mills	10 Cross Road, Suite 110	Owings Mills	MD	21117
Davita Palm Desert Dialysis Center, Inc.	41-501 Corporate Way	Palm Desert	CA	92260
Davita—Panama City Dialysis	615 Highway 231	Panama City	FL	32405
Davita—Paramount Dialysis Center	8319 Alondra Boulevard	Paramount	CA	90723
Davita—Peninsula Dialysis Center #1545	2 Bernardine Drive, 1st Floor	Newport News	VA	23602
Davita—Piedmont Dialysis	2710 Telegraph Avenue	Oakland	CA	94612
Davita—Pipestone Dialysis Center	911 5th Avenue Southwest	Pipestone	MN	56164
Davita—Pompano Beach Artificial Kidney Center	1311 East Atlantic Boulevard	Pompano Beach	FL	33060
Davita—Port Charlotte Artificial Kidney Center	4300 Kings Highway, Suite 406, Box D17	Port Charlotte	FL	33980
Davita—Portsmouth Dialysis Center #2014	2000 High Street	Portsmouth	VA	23704
Davita—San Antonio Dialysis Center	1211 East Commerce Street	San Antonio	TX	78205
Davita—Santa Ana Dialysis	1820 East Deere Avenue	Santa Ana	CA	92705
Davita—Shawnee Dialysis Center	2508 North Harrison Avenue	Shawnee	OK	74804
Davita—Southwest Atlanta Nephrology	3620 Martin Luther King Drive Southwest	Atlanta	GA	30331

Center Name	Address	City	ST	Zip
Davita—Stilwell Dialysis Center	319 North 2nd Street	Stilwell	OK	74960
Davita—Summerlin Dialysis Center	653 Town Center Drive, Building 2, Suite 70	Las Vegas	NV	89144
Davita—Sunrise Dialysis Center, Inc.	13039 Hawthorne Boulevard	Hawthorne	CA	90250
Davita—Thornton Dialysis Center	8800 Fox Drive	Denver	CO	80260
Davita—Tokay Dialysis Center #2016	312 Fairmont Avenue	Lodi	CA	95240
Davita—Tulsa	4436 South Harvard	Tulsa	OK	74135
Davita—University Park Dialysis Center	3986 South Figueroa Street	Los Angeles	CA	90037
Davita—USC Kidney Center	2310 Alcazar Street	Los Angeles	CA	90089
Davita—Vacaville Dialysis Center	1241 Alamo Drive, Suite 7	Vacaville	CA	95687
Davita—Valparaiso	606 Lincolnway	Valparaiso	IN	46383
Davita—Venice Dialysis Center	816 Pinebrook Road	Venice	FL	34285
Davita—Victoria Dialysis	1405 Victoria Station Drive	Victoria	TX	77901
Davita—Warsaw Dialysis Center #0567	213 West College Street	Warsaw	NC	28398
Davita—Waynesville Dialysis Center #2000	11 Park Terrace Drive	Clyde	NC	28721
Davita—West Detroit Dialysis Center #1532	12950 West Chicago Street	Detroit	MI	48228
Davita—West Mount Houston Dialysis	2506 West Mount Houston Road, Suite A	Houston	TX	77038
Davita # 476—Iris City Dialysis	521 North Expressway Village, Suite 1509	Griffin	GA	30223
Davita Arvada Dialysis	9950 West 80th, Suite 25	Arvada	CO	80005
Davita Bountiful Dialysis	724 West 500 South, Suite 300	West Bountiful	UT	84087
Davita Brea Dialysis Center	595 Tamarack Avenue, Suite A	Brea	CA	92821
Davita Burnsville Dialysis	303 East Nicollet, Suite 363	Burnsville	MN	55337
Davita Capitol Dialysis	555 Park Street, Suite 230	St. Paul	MN	55103
Davita Cass Lake Dialysis	602 Grand Utley Street	Cass Lake	MN	56633
Davita Chinle Dialysis Facility	U.S. Highway 191, PO Box 897	Chinle	AZ	86503
Davita Clinton Dialysis Center	150 South 31st Street	Clinton	OK	73601
Davita Commerce City Dialysis	6320 Holly Street	Commerce City	CO	80022
Davita Coon Rapids Dialysis	3960 Coon Rapids Boulevard, Suite 309	Coon Rapids	MN	55433
Davita Crescent Heights Dialysis	8151 Beverly Boulevard	Los Angeles	CA	90048
Davita Deerfield Beach	1983 West Hillsboro Boulevard	Deerfield Beach	FL	33442
Davita Desert Mountain Dialysis	9220 East Mountainview Road, Suite 105	Scottsdale	AZ	85258
Davita Dialysis	5610 Almeda Road	Houston	TX	77004
Davita Dialysis	611 Electric Avenue	Lewistown	PA	17044
Davita Dialysis Center of Middle Georgia	747 Second Street	Macon	GA	31201
Davita Dialysis Eagan #2041	2750 Blue Water Road, Suite 300	Eagan	MN	55121
Davita Dialysis Unit—Hopi Health Care Center	Highway 264—Mile Marker 388	Polacca	AZ	86042
Davita Doctors Dialysis Center of Montebello	1721 West Whittier Boulevard	Montebello	CA	90640
Davita East Macon Dialysis	750 Baconsfield Drive, Suite 103	Macon	GA	31211
Davita Englewood Dialysis	3247 South Lincoln Street	Englewood	CO	80113
Davita First Landing Dialysis Center	1745 Camelot Drive, Suite 100	Virginia Beach	VA	23454
Davita Forest Park Dialysis Center	380 Forest Parkway	Forest Park	GA	30297
Davita Fort Valley Dialysis Center	557 North Bluebird Boulevard	Fort Valley	GA	31030
Davita Garey Dialysis Center	1880 North Garey Avenue	Pomona	CA	91767
Davita Garfield Hemodialysis Center	118 Hilliard Avenue	Monterey Park	CA	91754
Davita Glendora Dialysis Center	120 West Foothill Boulevard	Glendora	CA	91741
Davita Grand Blanc Dialysis	3625 Genesys Parkway	Grand Blanc	MI	48439
Davita Greater El Monte Dialysis Center	1938 Tyler Avenue, Suite J-168	El Monte	CA	91733
Davita Griffin Dialysis Center	731 South 8th Street	Griffin	GA	30224
Davita Harbor-UCLA	21602 South Vermont Avenue	Torrance	CA	90502
Davita Hemet Dialysis Center	1330 South State Street, Suite B.	San Jacinto	CA	92583
Davita Hendersonville Dialysis Center	500 Beverly Hanks Center, Highway 25 North	Hendersonville	NC	28792
Davita Hollywood Dialysis Center	5108 Sunset Boulevard	Los Angeles	CA	90027
Davita Home Dialysis	825 South Eighth Street, Sl16	Minneapolis	MN	55404
Davita Hope Dialysis Center	300 Marcella Road	Hampton	VA	23666
Davita Jackson Dialysis Center	234 West Louis Glick Highway	Jackson	MI	49201
Davita Kayenta Dialysis Facility	Highway 163, PO Box 217	Kayenta	AZ	86033

Center Name	Address	City	ST	Zip
Davita Kenner Regional Dialysis Center	200 West Esplanade Avenue, Suite 100	Kenner	LA	70065
Davita Lakewood Crossing Dialysis	1057 South Wadsworth Boulevard	Lakewood	CO	80226
Davita Lakewood Dialysis Center	1750 North Pierce Street, Suite B.	Lakewood	CO	80214
Davita Lincolnland	1112 Centre West Drive	Springfield	IL	62704
Davita Logan Square Dialysis Services, Inc.	2659 North Milwaukee Avenue	Chicago	IL	60647
Davita Los Angeles Dialysis Center	2250 South Western Avenue, Suite 100	Los Angeles	CA	90018
Davita Lowry Dialysis Center	7465 East 1st Avenue, Suite A	Denver	CO	80230
Davita Lufkin Dialysis	509 Chestnut Village	Lufkin	TX	75901
Davita Macomb Kidney Center	11885 East 12 Mile Road, Suites 100a-100b	Warren	MI	48093
Davita Main Place Dialysis	972 Town and Country Road	Orange	CA	92868
Davita Merrillville Dialysis	9223 Taft Street	Merrillville	IN	46410
Davita Michigan Kidney Center—Brighton	7960 West Grand River, Suite 210	Brighton	MI	48114
Davita Midvalley Dialysis Center	5578 South 1900 West	Taylorsville	UT	84118
Davita Minnetonka Dialysis Unit	17809 Hutchins Drive	Minnetonka	MN	55345
Davita Mission Dialysis Center	1181 Broadway	Chula Vista	CA	91911
Davita Montclair Dialysis Center	5050 Palo Verde Street, Suite 100	Montclair	CA	91763
Davita Monterey Park Dialysis Center, Inc.	2560 Corporate Place, Building D, Suites 100-101	Monterey Park	CA	91754
Davita Moultrie Dialysis Center	2419 South Main Street	Moultrie	GA	31768
Davita Newport News Dialysis	700 Newmarket Square	Newport News	VA	23605
Davita Norwalk Dialysis Center	12375 East Imperial Highway	Norwalk	CA	90650
Davita of Haines City	110 Patterson Road	Haines City	FL	33844
Davita of Sterling Dialysis Center	46396 Benedict Drive, Suite 100	Sterling	VA	20164
Davita of Vidalia	1806 Edwina Drive	Vidalia	GA	30474
Davita of Woodstock	2001 Professional Parkway, Suite 100	Woodstock	GA	30188
Davita Pacific Coast Dialysis Center	1416 Centinela Avenue	Inglewood	CA	90302
Davita Piedmont Dialysis Center	1575 Northside Drive Northeast, Suite 365	Atlanta	GA	30318
Davita Pikes Peak Dialysis Center	2002 Le Laray Street	Colorado Springs	CO	80909
Davita Pin Oak Dialysis	1302 Pin Oak Road	Katy	TX	77494
Davita Pine City Dialysis	129 East 6th Avenue	Pine City	MN	55063
Davita Pocono Dialysis Center	447 Office Plaza—100 Plaza Court, Suite B	East Stroudsburg	PA	18301
Davita Premier Dialysis	7612 Atlantic Avenue	Cudahy	CA	90201
Davita Printer's Place Dialysis Center	2802 International Circle	Colorado Springs	CO	80910
Davita Renal Care—UCLA Dialysis Center	200 UCLA Medical Plaza, Suite 565	Los Angeles	CA	90095
Davita Rockville	14915 Broschart Road, Suite 100	Rockville	MD	20850
Davita Sapulpa Dialysis Center	9647 Ridgeview Street	Tulsa	OK	74131
Davita Shiprock Dialysis Center	Us Highway 666 North, PO Box 2156	Shiprock	NM	87420
Davita South Denver Dialysis	990 East Harvard Avenue	Denver	CO	80210
Davita South San Antonio Dialysis	1313 Southeast Military Drive, Suite 111	San Antonio	TX	78214
Davita—Southwest San Antonio Dialysis	7515 Barlite Boulevard	San Antonio	TX	78224
Davita St. Louis Park Dialysis	6490 Excelsior Boulevard	Minneapolis	MN	55426
Davita St. Paul Dialysis	555 Park Street, Suite 180	St. Paul	MN	55103
Davita Swannanoa Dialysis Center #1508	2305 Us Highway 70	Swannanoa	NC	28778
Davita Valley View Dialysis	26900 Cactus Avenue	Moreno Valley	CA	92555
Davita Washington Dialysis Center	154 Washington Plaza	Washington	GA	30673
Davita Washington Plaza Dialysis Center	516-522 East Washington Boulevard	Los Angeles	CA	90015
Davita Wheaton Dialysis	11941 Georgia Avenue, Wheaton Park Shopping Center	Wheaton	MD	20902
Davita Whiteside Dialysis	2600 North Locust Avenue, Suite D	Sterling	IL	61081
Davita Whittier Dialysis Center	10055 Whittwood Drive	Whittier	CA	90603
Davita—Wichita Dialysis	909 North Topeka	Wichita	KS	67214
Davita Wilshire Dialysis Center	1212 Wilshire Boulevard	Los Angeles	CA	90017
Davita Woodbury Dialysis	1850-3 Weir Drive	St. Paul	MN	55125
Davita-South County Dialysis	4145 Union Road	St. Louis	MO	63129

Center Name	Address	City	ST	Zip
De Kalb Dialysis Unit	8 Health Services Drive, Suite C Professional Building	De Kalb	IL	60115
Delray Artificial Kidney Center	16244 South Military Trail, Suite 110	Delray Beach	FL	33484
Delta-Sierra Dialysis Center—Total Renal Care	555 West Benjamin Holt Drive, Suite 200	Stockton	CA	95207
Dialysis Associates of the Palm Beaches, Inc.	2611 Poinsettia Avenue	West Palm Beach	FL	33407
Dialysis Care of Anson County	923 East Caswell Street	Wadesboro	NC	28170
Dialysis Care of Edgecombe County	3206 Western Boulevard	Tarboro	NC	27886
Dialysis Care of Hoke County	403 South Main Street	Raeford	NC	28376
Dialysis Care of Kannapolis	1607 North Main Street	Kannapolis	NC	28081
Dialysis Care of Martin County	100 Medical Drive	Williamston	NC	27892
Dialysis Care of Mecklenburg	3515 Latrobe Drive	Charlotte	NC	28211
Dialysis Care of Montgomery County	318 North Main Street	Troy	NC	27371
Dialysis Care of Moore	#16 Regional Drive, Suite 1-4	Pinehurst	NC	28374
Dialysis Care of North Mecklenberg	9030 Glenwater Drive	Charlotte	NC	28262
Dialysis Care of Richmond	Highway 177 South, Behind Britthaven	Hamlet	NC	28345
Dialysis Care of Rockingham County	251 West King’s Highway	Eden	NC	27288
Dialysis Care of Rowan	1406 B. West Innes Street	Salisbury	NC	28144
Dialysis Care of Rutherford County	226 Commercial Drive	Forest City	NC	28043
Dialysis Care of Wayne County	2403 Wayne Memorial Drive	Goldsboro	NC	27530
Dialysis Center At Oxford Court	930 Town Center Drive, Suite G. 100	Langhorne	PA	19047
Dialysis Center At St. Mary	1205 Langhorne-Newtown Road Asb First Floor	Langhorne	PA	19047
Dialysis Center of Gonzales	428 St. Andrew Street	Gonzales	TX	78629
Dialysis Center of Middle Georgia	509 North Houston Road	Warner Robins	GA	31093
Dialysis of Des Moines	501 Southwest 7th Street, Suite B.	Des Moines	IA	50309
Dialysis of Georgia, L.L.C.	1565 East Highway 34, Suite A	Newnan	GA	30265
Dialysis of Georgia, LLC—Ellijay	91 Southside Church Street	Ellijay	GA	30540
Dialysis of Georgia, LLC—Gainesville	2545 Flintridge Road, Suite 130	Gainesville	GA	30501
Dialysis of Reading	2201 Dengler Street	Reading	PA	19606
Dialysis Specialists of Dallas, Dba: Elmbrook Kidney Center	7920 Elmbrook, Suite 108	Dallas	TX	75247
Dialysis Systems of Covington—Davita	210 Greenbriar Boulevard	Covington	LA	70433
Dialysis Systems of Hammond—Davita	2570 Southwest Railroad Avenue, Suite A	Hammond	LA	70403
Dialysis Treatment Center	745 Pine Street	Macon	GA	31201
Downey Dialysis Center	8630 Florence Avenue	Downey	CA	90240
Downtown Dialysis Center	821 North Eutaw Street, Suite 401	Baltimore	MD	21201
Dulaney Towson Dialysis Center	113 West Road	Towson	MD	21204
Dyker Heights Dialysis Center	1435 86th Street	Brooklyn	NY	11228
East Aurora Dialysis	482 South Chambers Road	Aurora	CO	80017
East End Dialysis Center of Total Renal Care, Inc.	2201 East Main Street, Suite 100	Richmond	VA	23223
East Fort Lauderdale Dialysis Center #2031	1301 South Andrews Avenue, Suite 101	Fort Lauderdale	FL	33315
East Point Dialysis	2669 Church Street	East Point	GA	30344
Eastmont Dialysis Center	7200 Bancroft Avenue, Suite 220	Oakland	CA	94605
Eden Prairie Dialysis Center #2042	14852 Scenic Heights Road, Suite 255	Eden Prairie	MN	55344
Edina Dialysis of Total Renal Care	6550 York Avenue South, Suite 100	Edina	MN	55435
El Camino Dialysis Center	2490 Grant Road	Mountain View	CA	94040
El Milagro Dialysis Center	2800 South Interstate Highway 35iii Fountain Park Plaza, Suite 120	Austin	TX	78704
Elberton Dialysis Facility, Incorporated	325 North Mcintosh Street	Elberton	GA	30635
Elk River Kidney Center, LLC	216 South Bridge Street	Elkton	MD	21921
Evergreen Dialysis Center	2240 Tully Road	San Jose	CA	95122
Faribault Dialysis of Total Renal Care	201 South Lyndale Avenue	Faribault	MN	55021
Federal Way Community Dialysis Center	1109 South 348th Street	Federal Way	WA	98003
Flamingo Park Kidney Center	901 East 10th Avenue	Hialeah	FL	33010
Florin Dialysis Center—Total Renal Care	7000 Stockton Boulevard	Sacramento	CA	95823
Forrest Park Dialysis Center #2025	1425 Hampton Avenue	St. Louis	MO	63139
Fort Lauderdale Renal Associates, Inc.	6264 North Federal Highway	Fort Lauderdale	FL	33308

Center Name	Address	City	ST	Zip
Fourth Street Dialysis	3101b North 4th Street	Longview	TX	75605
Fowlerville Dialysis	206 East Grand River	Fowlerville	MI	48836
Franconia Dialysis Center #2040	5695 King Centre Drive, 1st Floor	Alexandria	VA	22315
Franklin Dialysis Center	150 South Independence Mall West, Suite 101, Public Ledger Building	Philadelphia	PA	19106
Freeport Dialysis Unit	25 North Harlem Avenue	Freeport	IL	61032
Garden City Dialysis	1100 Stewart Avenue	Garden City	NY	11530
Garden City Dialysis Center of Total Renal Care	310 East Walnut	Garden City	KS	67846
Georgetown On the Potomac Dialysis Center	3223 K Street Northwest, Suite 110	Washington	DC	20007
Germantown Dialysis Center #2053	20111 Century Boulevard, Suite C	Germantown	MD	20874
Gettysburg Dialysis	26 Springs Avenue, Suite C	Gettysburg	PA	17325
Grand Island Kidney Center #1572	2116 West Faidley Avenue	Grand Island	NE	68803
Granite City Dialysis	#9 American Village Shopping Center	Granite City	IL	62040
Great Bridge Dialysis—Total Renal Care	745 North Battlefield Boulevard	Chesapeake	VA	23320
Greenspring Dialysis Center, Inc.	3825 Greenspring Avenue	Baltimore	MD	21211
Greer Kidney Center, Inc.	211 Village Drive	Greer	SC	29651
Gulf Breeze Dialysis	1121 Overcash Drive	Dunedin	FL	34698
Gulf Coast Dialysis, Inc.	3300 Tamiami Trail, Suite 101a	Port Charlotte	FL	33952
Hallwood Dialysis Center #1558	4929 Clio Road, Suite B.	Flint	MI	48504
Harford Road Dialysis Center	5800 Harford Road	Baltimore	MD	21214
Harlan Dialysis	1213 Garfield Avenue	Harlan	IA	51537
Henderson Dialysis Center	1002 Highway 79 North	Henderson	TX	75652
Hernando Kidney Center	2985-A Landover Boulevard	Spring Hill	FL	34608
Hill Country Dialysis	1820 Peter Garza Street	San Marcos	TX	78666
Home Pharmacy Services C/O Cvs Procare Pharmacy	6622 Fannin Street	Houston	TX	77030
Honesdale Dialysis Center—A Total Renal Care Facility	Maple Avenue—Route 6—Sturbridge Mall	Honesdale	PA	18431
Hope Again Dialysis	1207 State Route V.V.	Kennett	MO	63857
Houston Kidney Center Southwest	11111 Brooklet Drive, Building 100, Suite 100	Houston	TX	77099
Hudson Valley Dialysis Center, Inc.	155 White Plains Road, Suite 107	Tarrytown	NY	10591
Hyde Park Kidney Center	1437-39 East 53rd Street	Chicago	IL	60615
IHS—Bronx Dialysis Center	1615 Eastchester Road	Bronx	NY	10461
Imperial Care, Inc.	3680 East Imperial Highway, 2nd Floor	Lynwood	CA	90262
Independent Renal Center—Davita	12392 Highway 40	Independence	LA	70443
Interamerican Dialysis Institute, Inc.	7815 Coral Way, Suite 119	Miami	FL	33155
Ira of Celebration	1154 Celebration Boulevard	Celebration	FL	34747
Ira of Orlando, Llp	14050 Town Loop Boulevard	Orlando	FL	32837
Irvine Dialysis Center	16255 Laguna Canyon Road	Irvine	CA	92618
Jennersville Dialysis Center—A Total Renal Care Facility	1011 West Baltimore Pike Avenue	West Grove	PA	19390
Katy Dialysis Center	22233 Katy Freeway	Katy	TX	77450
Kent Community Dialysis	21501 84th Avenue South	Kent	WA	98032
Kidney Care Center	1300 Mercantile Lane, Suite 194	Upper Marlboro	MD	20774
Kidney Care Center	13970 Baltimore Boulevard	Laurel	MD	20707
Kidney Care Perry, LLC	1027 Keith Drive	Perry	GA	31069
Kidney Dialysis Care Units	3600 East Martin Luther King, Junior Boulevard	Lynwood	CA	90262
Lake County Dialysis	918 South Milwaukee	Libertyville	IL	60048
Lake Dialysis	221 North First Street	Leesburg	FL	34748
Lake Elsinore Dialysis	32291 Mission Trail Road, Building S.	Lake Elsinore	CA	92530
Lakewood Community Dialysis Center	5919 Lakewood Town Center Boulevard, Suite A	Lakewood	WA	98499
Lee Street Dialysis	5155 Lee Street Northeast	Washington	DC	20019
Lejeune Dialysis Center, Inc.	4338 Northwest 7th Street	Miami	FL	33126
Life Care Dialysis Center	221 West 61st Street	New York	NY	10023

Center Name	Address	City	ST	Zip
Lincoln Park Dialysis Services—Total Renal Care	3157 North Lincoln Avenue	Chicago	IL	60657
Linden Dialysis	522 North Wood Avenue	Linden	NJ	07036
Livingston Dialysis Center	203 North Houston Street	Livingston	TX	77351
Lynbrook Dialysis Center	147 Scranton Avenue	Lynbrook	NY	11563
Madison Dialysis Center	302 North Highway Street	Madison	NC	27025
Manzanita Dialysis Center, Dba: Total Renal Care—Manzanita	5120 Manzanita Avenue, Suites 140 and 160	Carmichael	CA	95608
Maplewood Dialysis Davita	2785 White Bear Avenue	Maplewood	MN	55109
Marianna Dialysis	4319 Lafayette	Marianna	FL	32446
Marshall Dialysis of Total Renal Care	300 South Bruce Street	Marshall	MN	56258
Maryville Dialysis Center	2130 Vadalabene Drive	Maryville	IL	62062
Mcdonough Dialysis Center	114 Dunn Avenue	Mcdonough	GA	30253
Meherrin Dialysis Center, Inc.	201-A Weaver Avenue	Emporia	VA	23847
Memorial Dialysis	10000 Old Katy Road, Suite 210b	Houston	TX	77055
Memorial Dialysis Center	4427 South Robertson Street	New Orleans	LA	70115
Miami Beach Kidney Center	400 Arthur Godfrey Road, Suite 402	Miami Beach	FL	33140
Mid-Columbia Kidney Center	117 South 3rd Avenue	Pasco	WA	99301
Middletown Dialysis Center—#529	500 Highway 35 South, Union Square, Suite 9a	Red Bank	NJ	07701
Mid-Town Macon Dialysis	657 Hemlock Street, Suite 100	Macon	GA	31201
Midwest City Dialysis Center #955	7221 East Reno Avenue	Midwest City	OK	73110
Milford Dialysis Center—A Total Renal Care Facility	10 Buist Road, County Commerce Center	Milford	PA	18337
Minneapolis Dialysis Center of Davita	825 South 8th Street, Suite Sl42	Minneapolis	MN	55404
Minneapolis North East Hennepin Dialysis	1049 10th Avenue South East	Minneapolis	MN	55414
Misson Hills Dialysis	2700 North Stanton	El Paso	TX	79902
Mitchell Community Dialysis of Davita	525 North Foster	Mitchell	SD	57301
Moncrief Dialysis Center	800 West 34th Street	Austin	TX	78705
Montevideo Dialysis Davita	824 North 11th Street	Montevideo	MN	56265
Mount Adams Kidney Center	512 2nd Avenue	Zillah	WA	98953
Mount Dora Dialysis	2735 West Old U.S. Highway 441	Mount Dora	FL	32757
Mount Pocono Dialysis Center—#1504	100 Community Drive, Suite 106	Tobyhanna	PA	18466
Nephrology Center of Louisville	1011 Peachtree Street	Louisville	GA	30434
Nephrology Center of South Augusta	1631 Gordon Highway, Suite 1b	Augusta	GA	30906
Nephrology Center of Statesboro	4b College Plaza	Statesboro	GA	30458
Nephrology Center of Waynesboro	163 South Liberty Street	Waynesboro	GA	30830
New Center Dialysis, P.C.	3011 West Grand Boulevard, Suite 650	Detroit	MI	48202
New Port Richey Kidney Center	4807 Grand Boulevard	New Port Richey	FL	34652
Newport Dialysis Center #2020	605 West Newport Pike	Newport	DE	19804
Norfolk Dialysis Center—A Total Renal Care Facility	962 Norfolk Square	Norfolk	VA	23502
North Georgia Home Dialysis	11685 Alpharetta Highway, Suite 100	Roswell	GA	30076
North Houston Kidney Center, L.L.P	380 West Little York	Houston	TX	77076
North Oakland Dialysis Facility	450 North Telegraph	Pontiac	MI	48341
North Palm Beach Dialysis Center, Inc.	3375 Burns Road, Suite 101	Palm Beach Gardens	FL	33410
Northeast Wichita Dialysis Center	2630 North Webb Road, Building 100, Suite 100	Wichita	KS	67226
Northwest Kidney Center, Llp	11029 Northwest Freeway	Houston	TX	77092
Novi Kidney Center, P.C.	47250 West Ten Mile Road	Novi	MI	48374
Oak Park Dialysis Center #369, Parkwood Plaza	13481 West Ten Mile Road	Oak Park	MI	48237
Oakland Peritoneal Dialysis Center	2633 Telegraph Avenue, Suite 115	Oakland	CA	94612
Ocala Regional Kidney—South Unit	13940 Us Highway 441	Lady Lake	FL	32159
Ocala Regional Kidney Center—East	2870 Southeast 1st Avenue	Ocala	FL	34471
Ocala Regional Kidney Center—North	2620 West Highway 316	Citra	FL	32113

Center Name	Address	City	ST	Zip
Ocala Regional Kidney Center—West	9401 Southwest Highway 200, Building 600, Suite 601	Ocala	FL	34481
Ocean Garden Dialysis Center	1738 Ocean Avenue	San Francisco	CA	94112
Olympic View Dialysis Center	125 16th Avenue East, Csb-5th Floor	Seattle	WA	98112
Orangevale Dialysis	9267 Greenback Lane, Suite A-2	Orangevale	CA	95662
Owensboro Dialysis Center #1530	1930 East Parrish Avenue	Owensboro	KY	42303
Pahrump Dialysis Center	1460 East Calvada Boulevard	Pahrump	NV	89048
Palm Brook Dialysis Center #2038	14664 North Del Webb Boulevard	Sun City	AZ	85373
Palmer Dialysis Center—A Total Renal Care Facility	30 Community Drive	Easton	PA	18045
Papago Dialysis Center	1401 North 24th Street, Suite 2	Phoenix	AZ	85008
Park Plaza Dialysis Center	G-1075 North Ballenger Highway	Flint	MI	48504
Pearland Dialysis	6516 Broadway	Pearland	TX	77581
Peekskill—Cortland Dialysis Center	Pike Plaza, Route 6, Suite 15	Cortlandt Manor	NY	10567
Pelham Parkway Dialysis Center	1400 Pelham Parkway South/ A-1, Building 5	Bronx	NY	10461
Peninsula Nephrology, Inc. Dba: San Mateo Dialysis Center	2000 South El Camino Real	San Mateo	CA	94403
Phenix City Dialysis Center	1900 Opelika Road	Phenix City	AL	36867
Pikesville Dialysis Center	1496 Reistertown Road	Pikesville	MD	21208
Pine Island Kidney Center	1871 North Pine Island Road	Plantation	FL	33322
Placerville Dialysis Center, Dba: Total Renal Care—Placerville	3964 Missouri Flat Road, Suite J.	Placerville	CA	95667
Platte Place Dialysis, A Total Renal Care Facility	2361 East Platte Place	Colorado Springs	CO	80909
Port Chester Dialysis Unit	38 Bulkley Avenue	Port Chester	NY	10573
Port Washington Dialysis	50 Seaview Boulevard	Port Washington	NY	11050
Potrero Hill Dialysis Center	1750 Cesar Chavez Street, Suite A	San Francisco	CA	94124
Pratt Dialysis Center of Total Renal Care	203 South Watson Suite 110	Pratt	KS	67124
Purcellville Dialysis Center of Total Renal Care	280 North Hatcher Avenue	Purcellville	VA	20132
Puyallup Dialysis Center	716-C South Hill Park	Puyallup	WA	98373
Queens Dialysis At South Flushing	71-12 Park Avenue	Flushing	NY	11365
Queens Dialysis Center	118-01 Guy Brewer Boulevard	Jamaica	NY	11434
Queens Village Dialysis	222-02 Hempstead Avenue	Queens Village	NY	11429
Red Wing Dialysis Davita	1407 West 4th Street	Red Wing	MN	55066
Redding Dialysis Center, Dba: Total Renal Care—Redding	1876 Park Marina Drive	Redding	CA	96001
Redwood Falls Dialysis Davita	100 Fallwood Road	Redwood Falls	MN	56283
Regional Kidney Disease Program of Total Renal Care, Dba: West St. Paul Dialysis	1555 Livingston	West St. Paul	MN	55118
Renal Care of Buffalo, Inc.	550 Orchard Park Road, Suite B104	Buffalo	NY	14224
Renal Treatment Center—St. Louis	2610 Clark Avenue	St. Louis	MO	63103
Renal Treatment Center—Columbus	6228 Bradley Park Drive, Suite B.	Columbus	GA	31904
Renal Treatment Center—Decatur	1987 Candler Road	Decatur	GA	30032
Renal Treatment Center—East St. Louis	129 North Eighth Street 3rd Floor	East St. Louis	IL	62201
Renal Treatment Center—Harrisburg	2601 North Third Street 3rd Floor, Main Building	Harrisburg	PA	17110
Renal Treatment Center—Lake Wales	1348 State Route 60 East	Lake Wales	FL	33853
Renal Treatment Center—Madison	220 Clifty Drive Unit K	Madison	IN	47250
Renal Treatment Center—Upland	1 Medical Boulevard, Professional Office Building Ii, Suite 120	Upland	PA	19013
Renal Treatment Centers—Longview	425 North Fredonia, Suite 300	Longview	TX	75601
Renal Treatment Centers—Palmerton	185-C Delaware Avenue	Palmerton	PA	18071

Center Name	Address	City	ST	Zip
Reston Dialysis Center #2059	1875 Campus Commons Drive	Reston	VA	22091
Richmond Kidney Center	1366 Victory Boulevard	Staten Island	NY	10301
River City Dialysis Center	1970 Northwestern Avenue North	Stillwater	MN	55082
Riverdale Dialysis	170 West 233rd Street	Riverdale	NY	10463
Riverside Dialysis Center	4361 Latham Street, Suite 100	Riverside	CA	92501
Riverside Dialysis Davita	606 24th Avenue South, Suite 701	Minneapolis	MN	55454
Rivertowne Dialysis Center At Oxon Hill	6192 Oxon Hill Road	Oxon Hill	MD	20745
Rockford Memorial Hospital Dialysis Unit	2400 North Rockton Avenue	Rockford	IL	61103
Rocky Hill Connecticut	1845 Silas Deane Highway	Rocky Hill	CT	06067
Rose Garden Dialysis Center	999 West Taylor Street	San Jose	CA	95126
Rosebud Dialysis of Davita	1 Soldier Creek Road	Rosebud	SD	57570
Rosemead Springs Dialysis Center #1518	3212 Rosemead Boulevard	El Monte	CA	91731
Saginaw Dialysis Clinic	1527 East Genesee	Saginaw	MI	48607
Salinas Valley Dialysis Services, Inc.	955 Blanco Circle, Suite C	Salinas	CA	93901
Satellite Dialysis	2128 Soquel Avenue	Santa Cruz	CA	95062
Satellite Dialysis Centers—Sunnyvale	155 North Wolfe Road	Sunnyvale	CA	94086
Satellite Dialysis Centers, Inc.	1175 Saratoga Avenue, Suite 14	San Jose	CA	95129
Satellite Dialysis Centers, Inc.	1255 North Dutton Avenue, Park Center 2	Santa Rosa	CA	95401
Satellite Dialysis Centers, Inc.	1329 Spanos Court, Building D	Modesto	CA	95355
Satellite Dialysis Centers, Inc.	136 East Columbia Way	Sonora	CA	95370
Satellite Dialysis Centers, Inc.	1410 Marshall Street	Redwood City	CA	94063
Satellite Dialysis Centers, Inc.	1729 North Olive Avenue, Suite 9	Turlock	CA	95382
Satellite Dialysis Centers, Inc.	2121 Alexian Drive	San Jose	CA	95116
Satellite Dialysis Centers, Inc.	393 Blossom Hill Road, Suite 110	San Jose	CA	95123
Satellite Dialysis Centers, Inc.	40 Pennylane, Suite 1	Watsonville	CA	95076
Satellite Dialysis Larkspur #771	565 Sir Francis Drake Boulevard	Greenbrae	CA	94904
Satellite Dialysis Windsor	911 Medical Center Plaza, Suite 16	Windsor	CA	95492
Satellite Home Care LLC—Modesto	1208 Floyd Avenue	Modesto	CA	95350
Scottsbluff Dialysis Center	3812 Avenue B.	Scottsbluff	NE	69361
Seneca County Dialysis	65 St. Francis Street, Betty Jane Center	Tiffin	OH	44883
Shenandoah Dialysis #1574	300 Pershing	Shenandoah	IA	51601
Sherman Dialysis Center	205 West Lamberth Road	Sherman	TX	75092
Sierra Rose Dialysis Center	685 Sierra Rose Drive	Reno	NV	89511
Sioux Falls Community Dialysis of Davita	McKennan Hospital, 800 East 21st Street, 4th Floor	Sioux Falls	SD	57105
Slidell Kidney Care	1150 Robert Boulevard, Suite 240	Slidell	LA	70458
Soledad Dialysis	901 Los Coches Drive	Soledad	CA	93960
Somerset Dialysis Center #414	240 Chruchill Avenue	Somerset	NJ	08873
Soundview Dialysis Center	1622-24 Bruckner Boulevard	Bronx	NY	10473
South Bronx Kidney Center	1940 Webster Avenue	Bronx	NY	10457
South Brooklyn Nephrology Center, Inc.	3915 Avenue V.	Brooklyn	NY	11234
South Broward Artificial Kidney Center	4401 Hollywood Boulevard	Hollywood	FL	33021
South County Dialysis	7800 Arroyo Circle	Gilroy	CA	95020
South Las Vegas Dialysis Center—Davita	4711 Industrial Road	Las Vegas	NV	89103
South Philadelphia Dialysis Center	109 Dickinson Street	Philadelphia	PA	19147
South Sacramento Dialysis Center, Dba: Total Renal Care—South Sacramento	7000 Franklin Boulevard, Suite 880	Sacramento	CA	95823
South San Francisco Dialysis	205 Kenwood Way	South San Francisco	CA	94080
Southeastern Dialysis Center	608 Pecan Lane	Whiteville	NC	28472
Southeastern Dialysis Center of Elizabethtown	101 Dialysis Drive	Elizabethtown	NC	28337
Southeastern Dialysis Center, Inc.	14 Office Park Drive	Jacksonville	NC	28546
Southeastern Dialysis Center, Inc.	704 South Dickerson	Burgaw	NC	28425
Southeastern Dialysis of Kenansville	305 Beasley Street	Kenansville	NC	28349
Southeastern Dialysis of Wilmington	2215 Yaupon Drive	Wilmington	NC	28401
Southfield Dialysis Center #329	23077 Greenfield Road, Suite 104	Southfield	MI	48075
Southfield West Dialysis Center #295	21900 Melrose, Southfield Tech Center, Building #2	Southfield	MI	48075
Southwest Ohio Dialysis #1541	215 South Allison Avenue	Xenia	OH	45385
St. Charles Dialysis Unit	3600 Prytania Street, Suite 83	New Orleans	LA	70115
St. Croix Falls Dialysis—Total Renal Care	744 Louisiana East	St. Croix Falls	WI	54024

Center Name	Address	City	ST	Zip
Sunrise Dialysis Center, Dba: Total Renal Care—Sunrise	2951 Sunrise Boulevard, Suite 145	Rancho Cordova	CA	95742
Sylva Dialysis Center	655 Asheville Highway	Sylva	NC	28779
Taylor County Dialysis Facility	101 Kingswood Drive	Campbellsville	KY	42718
Tell City Dialysis Center #1531	1602 Main Street	Tell City	IN	47586
The Center for Kidney Disease	1190 Northwest 95th Street, Suite 208	Miami	FL	33150
The New York United Dialysis Center	406 Boston Post Road	Port Chester	NY	10573
Timpanogos Dialysis Center	852 North 500 West, Suite 200	Provo	UT	84604
Total Renal Care	111 Michigan Avenue Northwest	Washington	DC	20010
Total Renal Care—Atlantic City	2720 Atlantic Avenue	Atlantic City	NJ	08401
Total Renal Care—Bedford Dba: Heb Dialysis Center	1401 Brown Trail, Suite A	Bedford	TX	76022
Total Renal Care—Bridgewater Dialysis Center	2121 Route 22 West	Bound Brook	NJ	08805
Total Renal Care—Cape May Courthouse	144 Magnolia Drive	Cape May Courthouse	NJ	08210
Total Renal Care—Carroll County Dialysis Facility	412 Malcolm Drive, Suite 310	Westminster	MD	21157
Total Renal Care—Chesapeake	1400 Crossways Boulevard, Crossways Ii, Suite 106	Chesapeake	VA	23320
Total Renal Care—Chestertown	100 Brown Street	Chestertown	MD	21620
Total Renal Care—Crystal City Dialysis	Highway 61 South and I. 55	Crystal City	MO	63019
Total Renal Care—Exton	710 Springdale Drive	Exton	PA	19341
Total Renal Care—Ghent Dialysis Center	901 Hampton Boulevard, Suite 200	Norfolk	VA	23507
Total Renal Care—Howell	3502 Route 9 South, Howell Heritage Plaza	Howell	NJ	07731
Total Renal Care—Independence Dialysis	801 West Myrtle	Independence	KS	67301
Total Renal Care—Kingwood	2300 Green Oaks, Suite 500	Kingwood	TX	77339
Total Renal Care—Lakeport	804 11th Street	Lakeport	CA	95453
Total Renal Care—Loma Vista	1382-A Lomaland	El Paso	TX	79935
Total Renal Care—Mesa Vista Dialysis Facility	2400 North Oregon, Suite C	El Paso	TX	79902
Total Renal Care—Muncy	Route 405	Muncy	PA	17756
Total Renal Care—North Houston	129 Little York	Houston	TX	77076
Total Renal Care—North Philadelphia Dialysis Center	3409-3411 Germantown Avenue	Philadelphia	PA	19140
Total Renal Care—Northeast Philadelphia	518 Knorr Street	Philadelphia	PA	19111
Total Renal Care—Northwest Baltimore Mount Washington	1340 Smith Avenue	Baltimore	MD	21209
Total Renal Care—Parsons	1902 South Highway 59, Building B. Labette County Medical Center	Parsons	KS	67357
Total Renal Care—Pleasanton, Aka: Pleasanton Dialysis Center	5720 Stoneridge Mall Road, Suites 140 and 160	Pleasanton	CA	94588
Total Renal Care—South Hayward Dialysis Center	254 Jackson Street	Hayward	CA	94544
Total Renal Care—Tamarac Artificial Kidney Center	7140-48 West Mcnab Road	Tamarac	FL	33321
Total Renal Care—Tomball Dialysis	27720-A Tomball Parkway	Tomball	TX	77375
Total Renal Care—Virginia Beach	740 Independence Circle	Virginia Beach	VA	23455
Total Renal Care—Wilmington Dialysis	700 Lea Boulevard, Suite G2	Wilmington	DE	19802
Total Renal Care—Winfield Dialysis	1315 East 4th Avenue	Winfield	KS	67156
Total Renal Care At Celia Dill Dialysis Center	Barns Office Center, Suite 206, Stoneleigh Avenue	Carmel	NY	10512
Total Renal Care At Richmond Community	1510 North 28th Street, Suite 110	Richmond	VA	23223
Total Renal Care At Union Plaza	810 First Street, Northeast, Suite 100	Washington	DC	20002
Total Renal Care Dba: Lincoln Park Capd	3929 North Central, Suite 1	Chicago	IL	60634
Total Renal Care of Fairfax	8501 Arlington Boulevard, Suite 100	Fairfax	VA	22031

Center Name	Address	City	ST	Zip
Total Renal Care Olympia Fields	4557b West Lincoln Highway	Matteson	IL	60443
Total Renal Care Union City Dialysis Center	32930 Alvarado Niles Road, Suite 300	Union City	CA	94587
Total Renal Care, Dba: Camp Hill Dialysis Center	425 North 21st Street, Plaza 21, First Floor	Camp Hill	PA	17011
Total Renal Care, Dba: Cleve Hill Dialysis Center	1461 Kensington Avenue	Buffalo	NY	14215
Total Renal Care, Dba: North Highlands Dialysis Center	4986 Watt Avenue	North Highlands	CA	95660
Total Renal Care, Dba: Scottsdale Dialysis Center	4725 North Scottsdale Road, Suite 100	Scottsdale	AZ	85251
Total Renal Care, Dba: Southeastern Dialysis Center of Shallotte	4740 Shallotte Avenue	Shallotte	NC	28470
Total Renal Care-Northwest San Antonio	8132 Fredericksburg Road	San Antonio	TX	78229
Total Renal Treatment—Berlin Dialysis Center	314 Franklin Avenue, Suite 306 Berlin Professional Center	Berlin	MD	21811
Tuba City Dialysis	500 Edgewater Drive	Tuba City	AZ	86045
Tustin Dialysis Center	2090 North Tustin Avenue	Santa Ana	CA	92705
United Dialysis Center	3111 Long Beach Boulevard	Long Beach	CA	90807
University Peritoneal Dialysis Center, Dba: Total Renal Care University Peritoneal Dialysis	300 University Avenue, Suite 122	Sacramento	CA	95825
Upstate Dialysis Center, Inc.	308 Mills Avenue	Greenville	SC	29605
Valley Dialysis Center	16149 Hart Street	Van Nuys	CA	91406
Venture Dialysis Center, Inc.	16855 Northeast 2nd Avenue, Suite 205	North Miami Beach	FL	33162
Waconia Dialysis Davita	490 Maple Street, Suite 110	Waconia	MN	55387
Walnut Creek Dialysis Center	108 La Casa Via, Suites 100 and 106	Walnut Creek	CA	94598
Washington Parish Kidney Care	724 Washington Street	Franklinton	LA	70438
Waterloo Dialysis Center	4200 North Lamar Street, Suite 100	Austin	TX	78756
Weaverville Dialysis Center—Total Renal Care	329 Merrimon Avenue	Weaverville	NC	28787
West Texas Dialysis	1250 East Cliff Drive, Building B.	El Paso	TX	79902
Western Home Dialysis	1750 Pierce Street, Suite A	Lakewood	CO	80214
White Plains Dialysis Center	200 Hamilton Avenue, Space 13b	Whiteplains	NY	10601
Woodland Dialysis Center	912 Woodland Drive	Elizabethtown	KY	42701
Yakima Dialysis Center #1539	110 South 9th Avenue	Yakima	WA	98902
Yonkers Dialysis Center	575 Yonkers Avenue	Yonkers	NY	10704
Ypsilanti Dialysis Center—Davita	2766 Washtenaw, Washetenaw Fountain Plaza	Ypsilanti	MI	48197
Yuba City Dialysis Center, Dba: Total Renal Care—Yuba City	1007 Live Oak Boulevard, Suite B-4	Yuba City	CA	95991

Appendix C: List of Authorized Wholesalers

To ensure Dialysis Center receives the appropriate discount, it is important Amgen receives Dialysis Center's current list of Authorized Wholesalers. The following list represents the Wholesalers Amgen currently has associated with Dialysis Center's contract. Please update the list by adding or deleting Wholesalers as necessary.

AMERICAN MEDICAL DISTRIBUTORS, INC.
SUBSIDIARY OF BELLCO DRUG CORPORATION
100 NEW HIGHWAY
AMITYVILLE, NY 11701
AMERISOURCE CORPORATION
100 FRIARS LANE
THOROFARE, NJ 08086

ASD SPECIALTY HEALTHCARE
SUBSIDIARY OF BERGEN BRUNSWIG DRUG CO.
4006 BELTLINE ROAD, SUITE 200, LB-21
ADDISION, TX 75001

BERGEN BRUNSWIG DRUG COMPANY
4000 METROPOLITAN DRIVE
ORANGE, CA 92868

HENRY SCHEIN INCORPORATED
135 DURYEA ROAD
MELVILLE, NY 11747

METRO MEDICAL SUPPLY, INC.
1911 CHURCH STREET
NASHVILLE, TN 37023

PRIORITY HEALTHCARE CORPORATION
CHARISE CHARLES DIVISION
250 TECHNOLOGY PARK, SUITE 124
LAKE MARY, FL 32746

Exhibit #1

Sample Certification Letter

December , 2003

DaVita Inc.
601 Hawaii Street
El Segundo, CA 90245

RE: Agreement No. 200308360

Dear :

Thank you for your participation in the [DELETED] program. In order for us to enroll you, we require that a duly authorized representative of your organization sign the certification below.

Upon receipt of this executed document, we will calculate the value of your incentive. If we do not receive the executed certification, we cannot provide you with this incentive.

If you have any questions regarding this letter please contact me at (805) 447-4134. Thank you for your assistance in returning this certification.

Sincerely,

_____
Outcomes Incentive Analyst

CERTIFICATION:

On behalf of DaVita Inc. and all eligible Affiliates participating in the [DELETED] program under Agreement No. 200308360, the undersigned hereby certifies that the data submitted (herein referred to as "Data") for each eligible Affiliate shall include the required Data from all dialysis patients of such Affiliate (excluding those patients whose data is obtained from laboratories not owned or operated by DaVita Inc.), and does not include Data from non-patients. The party executing this document also represents and warrants that it (i) has no reason to believe that the submitted Data will be incorrect, and (ii) is authorized to make this certification on behalf of all eligible Affiliates submitting Data.

DaVitaInc.

Signature:_____

Print Name:_____

Print Title:_____

Date:_____

EXHIBIT 12.1

DAVITA INC.

RATIO OF EARNINGS TO FIXED CHARGES

The ratio of earnings to fixed charges is computed by dividing earnings by fixed charges. Earnings for this purpose is defined as pretax income from operations adjusted by adding back fixed charges expensed during the period and debt refinancing charges. Fixed charges include debt expense (interest expense and the amortization of deferred financing costs), the estimated interest component of rental expense on operating leases, and capitalized interest.

	Year ended December 31,				
	2003	2002	2001	2000	1999
	(dollars in millions)				
Earnings adjusted for fixed charges:					
Income (loss) before income taxes, and cumulative effect of a change in accounting principle	$ 288,266	$ 267,257	$ 242,567	$ 39,223	$ (181,826)
Add:					
Debt expense	66,828	71,636	72,438	116,637	110,797
Interest portion of rental expense	22,927	20,336	18,116	17,140	17,501
Debt refinancing charges	26,501	48,930	(1,629)	5,712	
	116,256	140,902	88,925	139,489	128,298
	$ 404,522	$ 408,159	$ 331,492	$ 178,712	$ (53,528)
Fixed charges:					
Debt expense	66,828	71,636	72,438	116,637	110,797
Interest portion of rental expense	22,927	20,336	18,116	17,140	17,501
Capitalized interest	1,523	1,888	751	1,125	709
	$ 91,278	$ 93,860	$ 91,305	$ 134,902	$ 129,007
Ratio of earnings to fixed charges	4.43	4.35	3.63	1.32	(a)

(a) Due to the Company's loss in 1999, the ratio coverage was less than 1:1. The Company would have had to generate additional earnings of $182,535 to achieve a coverage of 1:1.

EXHIBIT 14.1

DaVita Inc.
Corporate Governance Code of Ethics

Applicability:

This code applies to and is signed annually by the CEO, CFO, Controller and Principal Accounting Officer, General Counsel, and all professional teammates involved in the accounting and financial reporting functions.

Corporate Governance Code:

As a professional with duties and responsibilities that directly or indirectly involve the integrity of DaVita's financial accounting and reporting, I personally agree to advocate and adhere to the following Corporate Governance Code of Ethics, in addition to adhering to DaVita's Code of Business Conduct which is applicable to all DaVita teammates, and to promoting DaVita's Core Values of Service Excellence, Integrity, Team, Continuous Improvement, Accountability, Fulfillment, and Fun:

- Comply with all applicable governmental laws, rules and regulations, including full, fair, accurate, timely, and understandable disclosure of material information in Exchange Act reports.

  For this purpose, information is considered material if:

  - *there is a substantial likelihood that a reasonable investor would view the information as significantly altering the total mix of information in the report; or*
  - *the report would be misleading to a reasonable investor if the information were omitted.*
- Act with honesty and integrity, avoiding conflicts of interest in personal and professional relationships.
- Provide constituents with information that is accurate, complete, objective, relevant, timely and understandable.
- Act in good faith, responsibly, with due care, competence and diligence, without misrepresenting material facts or allowing one's independent judgement to be subordinated.
- Respect the confidentiality of information acquired in the course of one's work except when authorized or otherwise legally obligated to disclose it. Confidential information acquired in the course of one's work will not be used for personal advantage.
- Achieve responsible use of and control over all assets and resources employed or entrusted.
- Proactively promote ethical behavior as a responsible partner among peers in the work environment.
- Promptly report violations to the appropriate person or persons, including my direct line management, the Vice President of Compliance, the DaVita hotline, or the Audit Committee of the Board of Directors. I understand that I have direct access to DaVita's Audit Committee if I have a Code of Ethics concern. I understand that anonymity and confidentiality will be preserved to the extent possible, and Federal law makes it illegal for any company to retaliate against an employee who reports compliance concerns relating to fraud against stockholders.
- I understand that I will be held personally accountable for adhering to this code, and failure to adhere to the Code of Ethics will result in disciplinary actions including possible termination of my employment.

_____
Signature

_____
Organization / Position

_____
Date

EXHIBIT 21.1

SUBSIDIARIES OF THE COMPANY

Name	Structure	Jurisdiction of Incorporation
Astro, Hobby, West Mt. Renal Care Limited Partnership	Limited Partnership	DE
Bay Area Dialysis Partnership	Partnership	FL
Beverly Hills Dialysis Partnership	Partnership	CA
Capital Dialysis Partnership	Partnership	CA
Carroll County Dialysis Facility, Inc.	Corporation	MD
Carroll County Dialysis Facility Limited Partnership	Limited Partnership	MD
Continental Dialysis Center, Inc.	Corporation	VA
Continental Dialysis Center of Springfield-Fairfax, Inc.	Corporation	VA
DaVita Nephrology Medical Associates of California, Inc.	Corporation	CA
DaVita Nephrology Medical Associates of Illinois, P.C.	Corporation	IL
DaVita Nephrology Associates of Utah, L.L.C.	Limited Liability Company	UT
DaVita – Riverside, LLC	Limited Liability Company	DE
DaVita – West, LLC	Limited Liability Company	DE
Dialysis of Des Moines, LLC	Limited Liability Company	DE
Dialysis of North Atlanta, LLC	Limited Liability Company	DE
Dialysis of Northern Illinois, LLC	Limited Liability Company	DE
Dialysis Specialists of Dallas, Inc.	Corporation	TX
East End Dialysis Center, Inc.	Corporation	VA
East Ft. Lauderdale, LLC	Limited Liability Company	DE
Eastmont Dialysis Partnership	Partnership	CA
Elberton Dialysis Facility, Inc.	Corporation	GA
Elk Grove Dialysis Center, LLC	Limited Liability Company	DE
Flamingo Park Kidney Center, Inc.	Corporation	FL
Garey Dialysis Center Partnership	Partnership	CA
Greenwood Dialysis, LLC	Limited Liability Company	DE
Guam Renal Care Partnership	Partnership	GU
Houston Kidney Center/Total Renal Care Integrated Service Network Limited Partnership	Limited Partnership	DE
Irvine Dialysis Center, LLC	Limited Liability Company	DE
Kidney Care Services, LLC	Limited Liability Company	DE
Kidney Centers of Michigan, L.L.C.	Limited Liability Company	DE
Knickerbocker RC, Inc.	Corporation	NY
Lawrenceburg Dialysis, LLC	Limited Liability Company	DE
Liberty RC, Inc.	Corporation	NY
Lincoln Park Dialysis Services, Inc.	Corporation	IL
Los Angeles Dialysis Center	Partnership	CA
Marysville Dialysis Center, LLC	Limited Liability Company	DE
Mason-Dixon Dialysis Facilities, Inc.	Corporation	MD
Moncrief Dialysis Center/Total Renal Care Limited Partnership	Limited Partnership	DE
Nephrology Medical Associates of California, Inc.	Professional Corporation	CA
Nephrology Medical Associates of Georgia, LLC	Limited Liability Company	GA
North Atlanta Dialysis Center, LLC	Limited Liability Company	DE
Open Access Sonography, Inc.	Corporation	FL
Orange Dialysis, LLC	Limited Liability Company	CA
Pacific Dialysis Partnership	Partnership	GU
Pacific Coast Dialysis Center	Partnership	CA
Peninsula Dialysis Center, Inc.	Corporation	VA
Renal Treatment Centers – California, Inc.	Corporation	DE

Name	Structure	Jurisdiction of Incorporation
Renal Treatment Centers – Hawaii, Inc.	Corporation	DE
Renal Treatment Centers – Illinois, Inc.	Corporation	DE
Renal Treatment Centers, Inc.	Corporation	DE
Renal Treatment Centers – Mid-Atlantic, Inc.	Corporation	DE
Renal Treatment Centers – Northeast, Inc.	Corporation	DE
Renal Treatment Centers – Southeast, LP	Limited Partnership	DE
Renal Treatment Centers – West, Inc.	Corporation	DE
Riverside County Home PD Program, LLC	Limited Liability Company	DE
RMS DM, LLC	Limited Liability Company	DE
RMS Lifeline, Inc.	Corporation	DE
Rocky Mountain Dialysis Services, LLC	Limited Liability Company	DE
RTC Holdings, Inc.	Corporation	DE
RTC-Texas Acquisition, Inc.	Corporation	TX
RTC TN, Inc.	Corporation	DE
San Gabriel Valley Partnership	Partnership	CA
Shining Star Dialysis, Inc.	Corporation	NJ
Sierra Rose Dialysis Center, LLC	Limited Liability Company	DE
Soledad Dialysis Center, LLC	Limited Liability Company	DE
Southcrest Dialysis, LLC	Limited Liability Company	DE
Southern Hills Dialysis Center, LLC	Limited Liability Company	DE
Southwest Atlanta Dialysis Centers, LLC	Limited Liability Company	DE
Spokane Dialysis, LLC	Limited Liability Company	DE
Sun City Dialysis Center, L.L.C.	Limited Liability Company	DE
Total Acute Kidney Care, Inc.	Corporation	FL
Total Nephrology Care Network Medical Associates, P.C.	Professional Corporation	IL
Total Renal Care/Eaton Canyon Dialysis Center Partnership	Partnership	CA
Total Renal Care/Hollywood Partnership	Partnership	CA
Total Renal Care, Inc.	Corporation	CA
Total Renal Care of Colorado, Inc.	Corporation	CO
Total Renal Care North Carolina, LLC	Limited Liability Company	DE
Total Renal Care of Utah, L.L.C.	Limited Liability Company	DE
Total Renal Care/Peralta Renal Center Partnership	Partnership	CA
Total Renal Care/Piedmont Dialysis Center Partnership	Partnership	CA
Total Renal Care Texas Limited Partnership	Limited Partnership	DE
Total Renal Laboratories, Inc.	Corporation	FL
Total Renal Research, Inc.	Corporation	DE
Total Renal Support Services, Inc.	Corporation	DE
Total Renal Support Services of North Carolina, LLC	Limited Liability Company	DE
TRC-Dyker Heights, L.P.	Limited Partnership	NY
TRC El Paso Limited Partnership	Limited Partnership	DE
TRC – Four Corners Dialysis Clinics, L.L.C.	Limited Liability Company	NM
TRC – Georgetown Regional Dialysis LLC	Limited Liability Company	DC
TRC – Indiana LLC	Limited Liability Company	IN
TRC – Petersburg, LLC	Limited Liability Company	DE
TRC of New York, Inc.	Corporation	NY
TRC West, Inc.	Corporation	DE
Tri-City Dialysis Center, Inc.	Corporation	VA
Tulsa Dialysis, LLC	Limited Liability Company	DE
Tustin Dialysis Center, LLC	Limited Liability Company	DE
Weston Dialysis Center, LLC	Limited Liability Company	DE
Wilshire Dialysis Facility	Partnership	CA

Exhibit 23.1

Independent Auditors' Consent

The Board of Directors and Shareholders
DaVita Inc.:

We consent to incorporation by reference in the registration statements on Form S-8 (No. 33-84610, No. 33-83018, No. 33-99862, No. 33-99864, No. 333-1620, No. 333-34693, No. 333-34695, No. 333-46887, No. 333-75361, No. 333-56149, No. 333-30734, No. 333-30736, No. 333-63158, No. 333-42653, No. 333-86550 and No. 333-86556) and Form S-3 (No. 333-69227) of DaVita Inc. of our reports dated February 20, 2004, relating to the consolidated balance sheets of DaVita Inc. and subsidiaries as of December 31, 2003 and 2002, and the related consolidated statements of income and comprehensive income, shareholders' equity, and cash flows for each of the years in the three-year period ended December 31, 2003, and the related schedule, which reports appear in this annual report on Form 10-K.

Our report refers to a change in accounting for goodwill and intangible assets resulting from business combinations.

/s/ KPMG LLP

Seattle, Washington
February 26, 2004

EXHIBIT 31.1

SECTION 302 CERTIFICATION

I, Kent J. Thiry, certify that:

1. I have reviewed this annual report on Form 10-K of DaVita Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ KENT J. THIRY

Kent J. Thiry
Chief Executive Officer

Date: February 27, 2004

EXHIBIT 31.2

SECTION 302 CERTIFICATION

I, Gary W. Beil, certify that:

1. I have reviewed this annual report on Form 10-K of DaVita Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer(s) and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and we have:

(a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

(b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

(c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer(s) and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

(a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

(b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

/s/ GARY W. BEIL

Gary W. Beil
Acting Chief Financial Officer, Vice President and Controller

Date: February 27, 2004

EXHIBIT 32.1

CERTIFICATION OF CHIEF EXECUTIVE OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of DaVita Inc. (the "Company") on Form 10-K for the year ending December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Periodic Report"), I, Kent J. Thiry, Chief Executive Officer of the Company, certify, pursuant to 18.U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Periodic Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ KENT J. THIRY

Kent J. Thiry
Chief Executive Officer

February27, 2004

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.

EXHIBIT 32.2

CERTIFICATION OF CHIEF FINANCIAL OFFICER
PURSUANT TO
18 U.S.C. SECTION 1350,
AS ADOPTED PURSUANT TO
SECTION 906 OF THE SARBANES-OXLEY ACT OF 2002

In connection with the Annual Report of DaVita Inc. (the "Company") on Form 10-K for the year ending December 31, 2003 as filed with the Securities and Exchange Commission on the date hereof (the "Periodic Report"), I, Gary W. Beil, Chief Financial Officer of the Company, certify, pursuant to 18.U.S.C. § 1350, as adopted pursuant to § 906 of the Sarbanes-Oxley Act of 2002, that:

1. The Periodic Report fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934; and
2. The information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of the Company.

/s/ GARY W. BEIL

Gary W. Beil
Acting Chief Financial Officer, Vice President and Controller

February 27, 2004

A signed original of this written statement required by Section 906 has been provided to the Company and will be retained by the Company and furnished to the Securities and Exchange Commission or its staff upon request.