

PROJECT AUTHORIZING RESOLUTION
(Wayne County Dialysis Properties, LLC Project)

A regular meeting of the Wayne County Industrial Development Agency was convened on January 11, 2013 at 9:30 a.m.

The following resolution was duly offered and seconded, to wit:

Resolution No. 1/2013 - __

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") (i) ACCEPTING THE APPLICATION OF WAYNE COUNTY DIALYSIS PROPERTIES, LLC (THE "COMPANY"); (ii) AUTHORIZING THE UNDERTAKING OF A CERTAIN PROJECT TO BE LOCATED WITHIN THE VILLAGE OF NEWARK, NEW YORK (AS FURTHER DESCRIBED HEREIN) BY AND FOR THE BENEFIT OF THE COMPANY; (iii) ADOPTING FINDINGS OF THE AGENCY PURSUANT TO THE STATE ENVIRONMENTAL QUALITY REVIEW ACT; (iv) ACCEPTING THE MINUTES OF A PUBLIC HEARING HELD BY THE AGENCY IN CONNECTION WITH THE PROJECT; (v) APPROVING THE PROVISION OF FINANCIAL ASSISTANCE TO THE COMPANY IN THE FORM OF (A) A SALES TAX EXEMPTION FOR PURCHASES AND RENTALS RELATED TO THE ACQUISITION, PLANNING, CONSTRUCTION AND EQUIPPING OF THE PROJECT, (B) A PARTIAL REAL PROPERTY TAX ABATEMENT THROUGH A PAYMENT-IN-LIEU-OF-TAX AGREEMENT, AND (C) MORTGAGE RECORDING TAX EXEMPTION(S) FOR THE FINANCING OR REFINANCING RELATED TO THE PROJECT; AND (vi) AUTHORIZING THE EXECUTION AND DELIVERY OF A LEASE AGREEMENT, LEASEBACK AGREEMENT, PAYMENT-IN-LIEU-OF-TAX AGREEMENT AND RELATED DOCUMENTS RELATING TO THE PROJECT

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 916 of the Laws of 1969 of the State of New York, (the "Act"), the **WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (the "Agency") was created with the authority and power to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, civic, research, and recreational facilities as authorized by the Act, and in connection therewith to issue its revenue bonds, and/or enter into straight lease transactions and provide other forms of financial assistance; and

WHEREAS, **WAYNE COUNTY DIALYSIS PROPERTIES, LLC** (the "Company"), has submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in an approximately 1.5 acre parcel of real property located on West Shore Boulevard within the Newark Industrial Park (the "Land", referred to as Lot 8); (ii) the planning, design, construction

and operation of an approximately 7,500 square foot building to be operated as a renal dialysis center leased to and operated by FCM – Northern Finger Lakes Dialysis, Inc. (the “Improvements”); (iii) the acquisition of and installation in and around the Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land and Improvements, the “Facility”); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, the Agency is contemplating providing financial assistance to the Company with respect to the Project (collectively, the “Financial Assistance”) in the form of: (A) an exemption from all State and local sales and use taxes with respect to qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility; (B) mortgage recording tax exemptions relating to secured financings undertaken by the Company in furtherance of the Project; and (C) a partial real property tax abatement through a payment-in-lieu-of-tax agreement (the “PILOT Agreement”), pursuant to which the Company would make payments in lieu of real property taxes to each affected tax jurisdiction (the “Affected Tax Jurisdictions”); and

WHEREAS, the Village of Newark Planning Board reviewed the proposed Project pursuant to the State Environmental Quality Review Act, as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, “SEQRA”) and related Environmental Assessment Form (“EAF”) and issued a negative declaration, dated January 7, 2013 (the “Negative Declaration”), a copy of which, along with the EAF, are attached hereto as Exhibit A; and

WHEREAS, pursuant to General Municipal Law Section 859-a, the Agency duly scheduled, provided notice and conducted the Public Hearing on January 8, 2013, at 9:30 a.m. local time, at the Village of Newark Village Hall, 100 East Miller Street, Newark, New York 14513 at which time the Agency presented a copy of the Company’s project Application (including a cost-benefit analysis) and heard and accepted written and oral comments from all persons with views in favor of, opposed to, or otherwise relevant to the proposed Financial Assistance being contemplated by the Agency (the “Public Hearing”) (a copy of the Minutes of the Public Hearing along with the Notice of Public Hearing published and forwarded to the affected taxing jurisdictions thirty (30) days prior to said Public Hearing are attached hereto as Exhibit B); and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring the Land, constructing the Improvements, and equipping the Facility, (ii) enter into a lease agreement (the “Lease Agreement”), leaseback agreement (the “Leaseback Agreement”), payment-in-lieu-of-tax agreement (the “PILOT Agreement”) and related documents in furtherance of acquiring a leasehold interest in the Land, the Improvements, Equipment and personal property constituting the Project, and lease same back to the Company in furtherance of the Act; and

WHEREAS, the Agency desires to approve (i) the undertaking of the Project, including the Straight Lease Transaction, (ii) the appointment of the Company agent of the Agency to undertake the Project, and (iii) the execution and delivery of the Straight Lease Documents (as defined herein).

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Company has presented an Application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's Application and any other correspondence submitted by the Company to the Agency, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent and to (i) acquire title to or other interest in the Land, the Improvements and the Equipment constituting the Facility, (ii) lease or sell the Agency's interest in the Land, Improvements and Equipment constituting the Facility to the Company pursuant to a lease agreement or sale agreement to be negotiated, and (iii) enter into a Straight Lease Transaction pursuant to the Act with the Company; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to undertake the Project, thereby increasing employment opportunities in the Village of Newark, which is located within Wayne County, New York, and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) Although the Project will result in the abandonment of one or more plants or facilities of the Company located within the State, the Agency hereby finds that, based on the Company's Application, the Project is reasonably necessary to discourage the Company from removing such other plant or facility to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Company in its industry; and

(F) Based upon a review of the Application, the EAF and the Negative Declaration issued by the Planning Board of the Village of Newark and submitted to the Agency, the Agency hereby:

(i) consents to and affirms the status of Village of Newark as Lead Agency for the Facility, within the meaning of, and for all purposes of complying with SEQRA;

(ii) ratifies the proceedings undertaken by the Village of Newark as Lead Agency under SEQRA with respect to the acquisition, construction and equipping of the Facility pursuant to SEQRA; and

(iii) finds that the Project involves an “unlisted action” (as such quoted term is defined under SEQRA). The review is “uncoordinated” (as such quoted term is defined under SEQRA). Based upon the review by the Agency of the EAF and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a “significant effect on the environment” (as such quoted term is defined under SEQRA); and (iii) no “environmental impact statement” (as such quoted term is defined under SEQRA) need be prepared for this action. This determination constitutes a “negative declaration” (as such quoted terms are defined under SEQRA) for purposes of SEQRA.

Section 2. The proposed financial assistance being contemplated by the Agency includes (i) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included within the Project or used in the acquisition, construction or equipping of the Project; (ii) mortgage recording tax exemptions relating to secured financings undertaken by the Company in furtherance of the Project; and (iii) a partial real property tax abatement through a payment-in-lieu-of-tax agreement (the “PILOT Agreement”), pursuant to which the Company would make payments in lieu of real property taxes to the Affected Tax Jurisdictions.

Section 3. The Agency hereby accepts the verbal summary report of comments and questions received by the Agency at the Public Hearing.

Section 4. Subject to the Company executing the Leaseback Agreement along with the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company, as agent of the Agent, to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, renovate, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf.

Section 5. The Chairman (or Vice Chairman), Executive Director (or the Deputy Executive Director) of the Agency are hereby authorized, on behalf of the Agency to execute and deliver: (A) the Lease Agreement whereby the Company leases the Facility to the Agency, (B) the related Leaseback Agreement conveying the Facility back to the Company, (C) the PILOT Agreement, and (D) related documents associated with the Straight Lease Transaction

(collectively, the "Straight Lease Documents"); provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project.

Section 6. The Chairman (or Vice Chairman), Executive Director (or Deputy Executive Director) of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver any mortgage, assignment of leases and rents, security agreement, UCC-1 Financing Statements and all documents reasonably contemplated by these resolutions or required by any lender identified by the Company (the "Lender") up to a maximum principal amount necessary to undertake the Project, acquire the Facility and/or finance or refinance equipment and other personal property and related transactional costs (hereinafter with the Straight Lease Documents, the "Agency Documents"); and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency to the Agency Documents and to attest the same, all with such changes, variations, omissions and insertions as the Chairman (or Vice Chairman), Executive Director (or Deputy Executive Director) of the Agency shall approve, the execution thereof by the Chairman (or Vice Chairman), Executive Director (or Deputy Executive Director) of the Agency to constitute conclusive evidence of such approval; provided, that, in all events, recourse against the Agency is limited to the Agency's interest in the Project.

Section 7. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 8. Harris Beach PLLC, as Transaction Counsel for the Agency, is hereby authorized to work with counsel to the Company and others to prepare for submission to the Agency all documents necessary to effect the authorization and undertaking of the Project.

Section 9. The Chairman, the Executive Director and/or the Deputy Executive Director of the Agency are hereby authorized and directed to distribute copies of this Resolution to the Company and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution.

Section 10. This Resolution shall take effect immediately.

The question of the adoption of the foregoing resolutions was duly put to vote on roll call, which resulted as follows:

	<i>Yea</i>	<i>Nay</i>	<i>Absent</i>	<i>Abstain</i>
David Spickerman, Sr.	XX			
James Hoffman				XX
Willard Milliman	XX			
Robert Havrilla			XX	
Pamela Heald	XX			

The resolutions were thereupon duly adopted.

STATE OF NEW YORK)
COUNTY OF WAYNE) ss:

I, the undersigned Secretary of the Wayne County Industrial Development Agency, DO HEREBY CERTIFY:

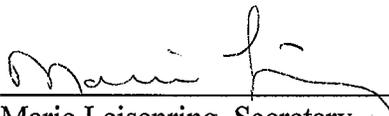
That I have compared the foregoing extract of the minutes of the meeting of the Wayne County Industrial Development Agency (the "Agency") including the resolution contained therein, held on January 11, 2013, with the original thereof on file in my office, and that the same is a true and correct copy of the proceedings of the Agency and of such resolution set forth therein and of the whole of said original insofar as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that all members of said Agency had due notice of said meeting, that the meeting was in all respects duly held and that, pursuant to Article 7 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public, and that public notice of the time and place of said meeting was duly given in accordance with Article 7.

I FURTHER CERTIFY that there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that as of the date hereof, the attached resolution is in full force and effect and has not been amended, repealed or modified.

IN WITNESS WHEREOF, I have hereunto set my hand and seal of said Agency this 11th day of January, 2013.



Marie Leisenring, Secretary

[SEAL]