

1 Timothy M. Swanson (*pro hac vice* admission)  
2 MOYE WHITE LLP  
3 1400 16th Street, Suite 600  
4 Denver, CO 80202  
5 Telephone: (303) 292-2900  
6 Fax: (303) 292-4510  
7 tim.swanson@moyewhite.com

Honorable Whitman L. Holt

8 **IN THE UNITED STATES BANKRUPTCY COURT**  
9 **EASTERN DISTRICT OF WASHINGTON**  
10 **SPOKANE/YAKIMA DIVISION**

11 In re: ) Lead Case No. 19-01189-11  
12 )  
13 ASTRIA HEALTH, *et al.*,<sup>1</sup> ) Chapter 11  
14 )  
15 Debtors and Debtors-in-Possession. ) Jointly Administered

16 **DAVITA, INC.’S OBJECTION TO CURE AMOUNT IDENTIFIED IN DEBTORS’**  
17 **AMENDED SCHEDULE OF ASSUMED AGREEMENTS [DOCKET NO. 2082]**

18 COMES NOW DaVita, Inc., on behalf of its subsidiaries Renal Treatment Centers–  
19 West, Inc. and Total Renal Care, Inc. (collectively, “**Creditor**”), by and through its  
20 undersigned counsel, Moye White LLP, for its objection (the “**Objection**”) to the Debtors’  
21 amended Schedule of Assumed Agreements [Docket No. 2082], filed in conjunction with the

22 <sup>1</sup> The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier  
23 Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit,  
24 LLC (19-01195- 11), SHS Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-  
25 11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-  
26 01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside  
27 Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home  
28 Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).

29 DAVITA, INC.’S OBJECTION TO CURE  
30 AMOUNT IDENTIFIED IN DEBTORS’  
31 AMENDED SCHEDULE OF ASSUMED  
32 AGREEMENTS [DOCKET NO. 2082]– Page 1

Timothy M. Swanson  
MOYE WHITE LLP  
1400 16<sup>th</sup> Street, Suite 600



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1 Second Amended Joint Chapter 11 Plan of Reorganization of Astria Health and its Debtor  
2 Affiliates [Docket No. 1987] (the “**Plan**”). In support of the Objection, Creditor states as  
3 follows:

#### 4 **BACKGROUND**

5  
6 1. Creditor is engaged in the business of, among other things, providing hospitals  
7 with necessary non-physician professional personnel, including registered nurses and patient  
8 care technicians, to perform in- and out-patient services that treat blood, such as dialysis,  
9 continuous renal replacement therapies, apheresis, and isolated ultrafiltration therapies for  
10 renal failure and non-renal failure patients.

11  
12 2. Creditor, either directly, or indirectly through its various subsidiaries, is party to  
13 the following agreements (as each may have been subsequently modified or amended) with the  
14 Debtors (collectively, the “**Creditor Agreements**”)<sup>2</sup>:

- 15  
16 a. Acute Services Agreement dated November 5, 2013 between Sunnyside  
17 Community Hospital Association and Renal Treatment Centers West,  
18 Inc., as amended on July 17, 2014 and January 22, 2018 [Docket No.  
19 2082, at 10, 17] (the “**Acute Services Agreement**”);  
20 b. Business Associate Agreement between Sunnyside Community Hospital  
21 Association and DaVita Inc. [Docket No. 2082, at 10];  
22 c. Acute Services Agreement between Sunnyside Community Hospital  
23 Association and Renal Treatment Centers West, Inc., a subsidiary of  
24 DaVita Healthcare Partner Inc. [Docket No. 2082, at 14]; and

25 <sup>2</sup> Due to their voluminous nature, copies of the Creditor Agreement may be provided upon request to  
26 the undersigned.

1 d. Patient Transfer Agreement dated June 4, 2018 between Sunnyside  
2 Community Hospital Association and Total Renal Care, Inc., subsidiary  
of DaVita Inc. [Docket No. 2082, at 19].

3 3. On May 6, 2019, the Debtors commenced these chapter 11 cases. The Debtors  
4 are operating their businesses and managing their properties as debtors in possession pursuant  
5 to sections 1107(a) and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”).  
6

7 4. The Debtors filed their Plan on November 11, 2020. Pursuant to the Plan, the  
8 Debtors agreed to file a Schedule of Assumed Agreements, which identifies all the executory  
9 contracts the Debtor would assume, on or before the Voting Deadline. (Plan at 45.) The Plan  
10 further stated that “[a]ny monetary amounts by which each Executory Contract to be assumed  
11 is in default shall be satisfied, pursuant to § 365(b)(1).” (*Id.*)

12 5. On November 25, 2020, the Debtors filed the Schedule of Assumed Agreements  
13 [Docket No. 2043]. That schedule was subsequently replaced by the Amended Schedule of  
14 Assumed Agreements (the “**Schedule**”), which was filed by the Debtors on December 4,  
15 2020.<sup>3</sup>  
16

17 6. The Schedule alleges that a total payment of \$207,000.00 would cure all defaults  
18 under the Acute Services Agreement (the “**Proposed Cure Amount**”). (Schedule at 10.)  
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24 \_\_\_\_\_  
25 <sup>3</sup> Pursuant to the Plan, if the Debtors file an amended Schedule of Assumed Agreements, then a party  
has ten business days to file any objection. (*See* Plan at 45.)

7. Creditor disputes the Proposed Cure Amount, and identifies \$264,535.18 as due and owing under the Acute Services Agreement (the “Correct Cure Amount”), as shown below:

Date	Invoice Number <sup>4</sup>	Amount
10/31/2018	00107327	\$29,204.00
12/21/2018	00108265	\$31,722.00
12/30/2018	014760IN	\$1,222.87
12/31/2018	014894IN	\$1,690.28
01/24/2019	00109831	\$21,932.00
01/31/2019	015064IN	\$853.27
02/13/2019	00111179	\$29,162.00
02/28/2019	00111634	\$31,547.00
02/28/2019	015252IN	\$967.01
03/31/2019	00113102	\$26,466.00
03/31/2019	015444IN	\$2,413.04
04/30/2019	00114684	\$24,297.00
06/10/2019	00116914	\$5,652.00
09/30/2020	00135836	\$31,369.00
11/30/2020	023380IN	\$485.71
12/07/2020	00138926	\$25,552.00
		<b>\$264,535.18</b>

8. Creditor neither disputes the cure amounts for nor otherwise objects to the remaining Creditor Agreements.

### OBJECTION

9. Creditor objects to the assumption of the Acute Services Agreement unless the Debtors make a prompt cure of all defaults existing thereunder by paying the Correct Cure Amount. A debtor-in-possession that seeks to assume an executory contract must (i) cure, or

<sup>4</sup> Due to their confidential nature, copies of the invoices may be provided to parties in interest upon request to the undersigned.

1 provide adequate assurance that it will promptly cure, any defaults in the executory contract,  
2 (ii) compensate the counterparty to the executory contract for any actual pecuniary loss to such  
3 party resulting from such defaults, and (iii) provide adequate assurance of future performance  
4 under such agreement. 11 U.S.C. §§ 365(b)(1). Creditor objects to the assumption of the Acute  
5 Services Agreement unless it is paid the entirety of the Correct Cure Amount identified above  
6 in order to cure the defaults under the Acute Services Agreement pursuant to sections 365(b)(1)  
7 of the Bankruptcy Code. *See, e.g., Alvarado v. Walsh (In re LCO Enters.)*, 12 F.3d 938, 941  
8 (9th Cir. 1993) (“If the lease is assumed, the debtor must cure any default.” (citing 11 U.S.C.  
9 § 365(b)).  
10

11  
12 10. Furthermore, the Acute Services Agreement requires the Debtors to compensate  
13 Creditor for its attorneys’ fees incurred with filing this Objection and protecting its interests  
14 under the agreements in these bankruptcy cases. *See In re Am. the Beautiful Dreamer, Inc.*,  
15 No. 05-47435, 2006 Bankr. LEXIS 1371, at \*10–11 (Bankr. W.D. Wash. May 18, 2006)  
16 (“[W]hen the terms of a lease provide for attorney fees and costs, and these are permitted by  
17 state law, a [party] is entitled to them under 11 U.S.C. § 365(b)(1)(B) as a condition of a  
18 debtor’s assumption of the lease.” (citations omitted)). Accordingly, pursuant to the terms of  
19 the Acute Services Agreement, Creditor requests the payment of its attorneys’ fees incurred in  
20 filing this Objection as part of any cure payment.  
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## RESERVATION OF RIGHTS

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2 11. Creditor reserves its rights to assert any and all other claims against the Debtors  
3 arising out of or related to the Acute Services Agreement, including without limitation, claims  
4 for (a) outstanding prepetition charges that have not yet posted to the Debtors' account or been  
5 discovered by Creditor; (b) post-petition charges accruing that Creditor has yet to discover and  
6 not yet identified; (c) pecuniary losses suffered by Creditor as a result of any defaults by  
7 Debtors, including, but not limited to, future attorneys' fees and costs incurred as a direct result  
8 of any further defaults by Debtors; (d) non-monetary defaults of which Creditor does not have  
9 knowledge at this time; (e) any proposed assumption and assignment not complying with the  
10 terms of section 365(b)(3) of the Bankruptcy Code; and (f) the Debtors' or any assignee's  
11 inability to provide adequate assurance of future performance as required under section 365(f)  
12 of the Bankruptcy Code.

13  
14  
15  
16 WHEREFORE, Creditor respectfully requests that the Court sustain this Objection, as  
17 provided for herein, and for all such other and further relief this Court deems fair and equitable  
18 under the circumstances.

1 Dated: December 17, 2020.

2 **MOYE WHITE LLP**

3 /s/ Timothy M. Swanson

4 Timothy M. Swanson, Colorado No. 47267

5 1400 16th Street, Suite 600

6 Denver, CO 80202

7 (303) 292-2900

8 (303) 292-4510 *facsimile*

9 tim.swanson@moyewhite.com

10 *Counsel for Renal Treatment Center–West,*

11 *Inc., a subsidiary of DaVita, Inc.*

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**CERTIFICATE OF SERVICE**

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Timothy Swanson declares:

1. I am an employee of Moye White LLP which represents Da Vita, Inc., on behalf of its subsidiaries Total Renal Treatment Centers – West, Inc. and Total Renal Care, Inc.

2. I am over the age of 18, and competent to make this Declaration.

3. On December 17, 2020, I electronically filed with the Clerk of the Court (using the CM/ECF System) DAVITA, INC.’S OBJECTION TO CURE AMOUNT IDENTIFIED IN DEBTORS’ AMENDED SCHEDULE OF ASSUMED AGREEMENTS [DOCKET NO. 2082].

4. It is my understanding that the CM/ECF System will send notifications of this filing to all parties listed in this case to receive notice electronically.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

/s/Timothy M. Swanson  
Timothy M. Swanson