IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE CARLE FOUNDATION,
an Illinois not-for-profit corporation,

Plaintiff,

v.

ILLINOIS DEPARTMENT OF REVENUE; BRIAN HAMER, in His Official Capacity as Director of the Illinois Department of Revenue; THE CHAMPAIGN COUNTY BOARD OF REVIEW; ELIZABETH BURGENER-PATTON, PAUL SAILOR, and ROBERT ZEBE, in Their Official Capacity as Members of the Champaign County Board of Review; PAULA BATES, in Her Official Capacity as Champaign County Supervisor of Assessments; CUNNINGHAM TOWNSHIP; DAN STEBBINS, in His Official Capacity as Cunningham Township Assessor; JOHN FARNEY, in His Official Capacity as Champaign County Treasurer; and THE CITY OF URBANA,

Defendants,

and

CHAMPAIGN COUNTY,

Intervenor-Defendant.

Case No. 08 L 0202

Hon. Randall B. Rosenbaum

OPENING POST-TRIAL BRIEF BY THE CARLE FOUNDATION

Steven F. Pflaum
Collette A. Woghiren
Neal, Gerber & Eisenberg LLP
2 N. LaSalle Street
Suite 1700
Chicago, IL 60602
(312) 269-8000
spflaum@nge.com
cwoghiren@nge.com

Amy G. Doehring
Catherine A. Miller
Akerman LLP
71 S. Wacker Drive
47th Floor
Chicago, IL 60606
(312) 634-5700
amy.doehring@akerman.com
catherine.miller@akerman.com

William J. Brinkmann
Thomas, Mamer & Haughey, LLP
30 Main Street
5th Floor
P.O. Box 560
Champaign, IL 61824
(217) 531-6427
wjbrinkm@tmh-law.com

Attorneys for Plaintiff The Carle Foundation

TABLE OF CONTENTS

Page

I. INTRODUCTION 1

A. The Big Picture 1

B. Roadmap of This Brief 3

II. THE FOUNDATION IS ENTITLED TO EXEMPTIONS ON THE FOUR PARCELS FOR TAX YEARS 2004-2011 4

A. The Foundation Has Established Its Entitlement to Exemptions Under Section 23-25(e) of the Property Tax Code 4

B. The Foundation Has Satisfied the Statutory Exemption Criteria Contained in Section 15-86 of the Property Tax Code 8

1. The Foundation's evidence understates the extent to which the Foundation satisfies the statutory standard 10

2. There are no material differences among the years 2004-2011 11

C. The Foundation Has Satisfied the Exemption Requirement Contained in Article IX, Section 6 of the Illinois Constitution 11

1. From *Sisters* to *Oswald*: what precedent teaches about the meaning of the charitable use requirement as applied to not-for-profit hospitals 12

a. The use of hospital property exclusively for charitable purposes 12

b. The meaning, or irrelevance, of certain *Korzen* factors as applied to not-for-profit hospitals 14

2. The Foundation's charitable purposes include providing care to all, regardless of ability to pay, providing important but money-losing medical services to the community, providing medical education to healthcare professionals and the public, and conducting medical research 17

3. Application of the *Korzen* factors, to the extent they relate to the Foundation's use of the Four Parcels, reveals that the Foundation uses those properties primarily for its charitable purposes 22

TABLE OF CONTENTS (cont'd)

Page

a. *Oswald/Korzen* Factor No. 1: Providing a benefit to an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare—or in some way reducing the burdens of government 22

b. *Korzen* Factor No. 2: No capital, capital stock or shareholders 24

c. *Korzen* Factor No. 3: Earns no profits or dividends, and holds funds in trust for its charitable purposes.....24

d. *Korzen* Factor No. 4: Derives its funds mainly from public and private charity.....27

e. *Korzen* Factor No. 5: Dispenses charity to all who need and apply for it.....28

f. *Korzen* Factor No. 6: Does not provide gain or profit in a private sense to any person connected with it.....31

i. The private inurement issue concerns improper benefits received by those managing the organization.....31

ii. The defendants' arguments regarding various aspects of the relationship between the Foundation and the Clinic are both irrelevant and unfounded.....32

g. *Korzen* factor no. 7: Does not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses.....37

C. The Defendants Have Raised a Series of Red Herring Arguments, Made Out of Whole Cloth, That Do Not Affect the Foundation's Satisfaction of the Constitutional Exemption Requirement.....43

1. Comparison of charity care data to other financial information.....44

2. The Foundation does not need to tie the amount of charitable activities to any particular parcel 47

3. The Foundation's entitlement to exemptions is not undermined by the treatment of charity care in its strategic plans.....51

TABLE OF CONTENTS (cont'd)

Page

4. Charity care includes costs incurred treating patients who were not determined to be entitled to charity care until after they were treated 52

5. Charity care includes costs incurred treating patients who were not determined to be entitled to charity care until after their treatment costs had initially been deemed bad debt....55

D. Scope of Relief Warranted by the Foundation's Entitlement to Exemptions for 2004 Through 2011 56

III. THE FOUNDATION IS ENTITLED TO DAMAGES FOR THE TOWNSHIP DEFENDANTS' BREACH OF THE 2002 SETTLEMENT AGREEMENT 59

A. The Action of the Township Assessor Breached the Township's Obligation Under the Settlement Agreement....61

B. The Township and the City of Urbana Are Jointly Liable for the Breach....62

C. The 2002 Settlement Agreement Is Not an Unenforceable Payment-in-Lieu-of-Taxes Agreement in Disguise 63

D. Cunningham Township and the City of Urbana Caused, and Are Liable for, Damages Resulting from Their Breaches 64

IV. CONCLUSION....65

I. INTRODUCTION

A. The Big Picture

Theodore Roosevelt occupied the White House, the Auditorium Building opened on the campus of the University of Illinois, and the Chicago Cubs won the World Series the year the Illinois Supreme Court first determined that a not-for-profit hospital was entitled to a property tax exemption. *Sisters of Third Order of St. Francis v. Bd. of Review*, 231 Ill. 317 (1907). In the world of hospital property tax exemption, nothing material has changed in the ensuing decades. The relevant constitutional language, conditioning exemption on the use of property "exclusively for … charitable purposes," remains the same. Ill. Const. 1870 art. IX, § 3; Ill. Const. 1970 art. IX, § 6. *Sisters of Third Order* remains good law. *See, e.g.*, *Provena Covenant Med. Ctr. v. Dep't of Revenue*, 236 Ill.2d 368, 392 (2010) (relying on *Sisters*); *Oswald v. Hamer*, 2016 IL App (1st) 152691, ¶¶ 8-9, *aff'd*, 2018 IL 122203 (same). And the fact that a small portion of hospital operations typically involves the provision of free or discounted care—only 5% of the hospital's patients in *Sisters* received charity care—is no different now than it was a century ago. *See Sisters of Third Order*, 231 Ill. at 320.

It's little wonder, then, that Illinois not-for-profit hospitals continue to possess property tax exemptions. Indeed, the Illinois Department of Revenue ("DOR") has issued property tax exemptions for the very hospital system and properties involved in this litigation. Upon hearing this, a casual observer might wonder why there has been litigation stretching more than a decade, resulting in a trial lasting an entire month, regarding whether The Carle Foundation was also entitled to exemptions for the eight years immediately preceding 2012, the year for which the DOR determined that the Foundation satisfied all statutory and constitutional requirements for exemption. Had something dramatically changed that suddenly made the Foundation entitled to exemption in 2012, when it hadn't been before that?

The parties to this litigation have not agreed on much, but they do appear to agree on at least one thing: there is no material difference between 2012, on the one hand, and any of the years between 2004 and 2011, on the other hand, in terms of the Foundation's entitlement to exemptions. At no time have any of the defendants ever suggested that the Foundation was entitled to exemptions for some, but not all, of those years.

Rather than there having been a material change in 2012, the explanation for the existence of this litigation is simply that Champaign County tax officials have been singularly aggressive in challenging hospital exemptions. But unfortunately for those local officials, whose opposition to hospital exemptions is grounded in their views of policy rather than precedent, another important consideration remains unchanged: Champaign County continues to be subject to the law of the State of Illinois.

The DOR got it right when it determined that The Carle Foundation satisfied all legal requirements under Illinois law for exemptions for tax year 2012. The evidence at trial showed that the Foundation is also entitled to exemptions for 2004 through 2011 (the "subject years"), and that the grounds for exemption for the subject years are comparable to those underlying the DOR's determination for 2012. For each of those years, the Foundation satisfied both the statutory exemption criteria contained in Section 15-86 of the Property Tax Code and the constitutional exemption requirement contained in Article IX, Section 6 of the Illinois Constitution. Accordingly, judgment should be entered in the Foundation's favor on Counts III through XXXIV of the Fourth Amended Complaint restoring its exemptions on the Four Parcels for 2004-2011 and ordering a refund, with interest, of the tax that it paid on the exempt portion of those properties (minus the portion of that tax received by the Urbana School District and Urbana Park District and covered by their 2013 settlement agreement with the Foundation).

The Foundation also proved that Cunningham Township and the City of Urbana (collectively, the "Township Defendants") are liable for breaching their commitment, in a settlement agreement reached with the Foundation in 2002, to refrain from challenging the Foundation's exemptions for properties located on its Urbana campus. Beginning with the Township Assessor's decision in 2004 to assess the main hospital property, North Tower, and Power Plant at their full fair market value without regard to their exempt status, and continuing with the Township Defendants' efforts in this litigation to defeat the Foundation's entitlement to exemptions, those defendants have brazenly violated their contractual obligation. Judgment should be entered in favor of the Foundation on Count XXXV for the damages, including attorneys' fees, that it suffered due to the Township Defendants' breach of contract.

B. Roadmap of This Brief

The following section of this brief (Section II) addresses the Foundation's exemption claims, in Counts III through XXXIV, for the Four Parcels for each of the years from 2004 through 2011. We begin, in Section II(A), by explaining the requirements for obtaining exemptions in claims brought under Section 23-25(e) of the Property Tax Code, 35 ILCS 200/23-25(e). We then show, in Section II(B), that the Foundation has satisfied the statutory exemption criteria for not-for-profit hospitals and their affiliates contained in Section 15-86 of the Code—an issue about which there is no serious disagreement.[1]

Section II(C) demonstrates that the Foundation has also satisfied the constitutional exemption requirements. After summarizing how courts have applied the provision of the Illinois Constitution concerning charitable property tax exemptions to hospitals, we show that the

[1] References in this brief to statutory "Sections" are to provisions of the Property Tax Code, 35 ILCS 200/.

Foundation is entitled to exemptions in accordance with this Court's ruling that the *Korzen* factors apply to the extent they bear on the use of the Foundation's properties. The ensuing discussion reveals that the defendants' opposition to the Foundation's entitlement to exemptions hinges on a series of novel arguments, made of whole cloth, that have no basis whatsoever in Illinois law. Section II(D) then addresses the nature of the declaratory relief and corresponding tax refund, with interest, to which the Foundation is entitled on the exemption counts.

Finally, Section III shows that the Foundation is entitled to judgment in its favor, and against the Township Defendants, for the claim in Count XXXV for breach of the 2002 Settlement Agreement. Those defendants' multi-million dollar liability for flouting their contractual obligation to refrain from challenging the Foundation's exemptions in any way, shape, or form—liability imposed on top of their obligation in Counts III through XXXIV to refund, with interest, their share of the tax paid by the Foundation for the properties and tax years at issue—makes the Township Defendants' steadfast refusal to even discuss settling this controversy truly baffling, if not outright irresponsible.

II. THE FOUNDATION IS ENTITLED TO EXEMPTIONS ON THE FOUR PARCELS FOR TAX YEARS 2004-2011

A. The Foundation Has Established Its Entitlement to Exemptions Under Section 23-25(e) of the Property Tax Code

It is undisputed that the DOR, in accordance with a favorable recommendation by the Champaign County Board of Review, determined that the Foundation was entitled to exemptions under Section 15-86 for tax year 2012 for the Four Parcels and the Foundation's other properties. (TR 271 – TR 274 (2012 exemption certificates for the Four Parcels); TR 454 – TR 455 (Board of Review recommendations to approve exemptions for 2012); Jenkins 1/14/19, 89:7 – 92:6.)

Under the now-familiar provisions of Section 23-25(e), the exemptions issued by the DOR for 2012 provide the predicate for the exemption claims asserted in Counts III through XXXIV:

> "The limitation in this Section [against seeking a "judicial determination as to tax exempt status"] shall not apply to court proceedings to establish an exemption for any specific assessment year, provided that the plaintiff or its predecessor in interest in the property has established an exemption for any subsequent or prior assessment year on grounds comparable to those alleged in the court proceedings…." 35 ILCS 200/23-25(e).

Section 23-25(e) was added to the Property Tax Code in 1998. *See* P.A. 90-679, § 5. Before Section 23-25(e) was enacted, the only way to obtain a non-homestead property tax exemption was from the DOR, or on a complaint for administrative review of a DOR decision. *See* 35 ILCS 200/15-5 (exemption application is filed with county board of review); 35 ILCS 200/16-70 and /16-130 (DOR decides entitlement to exemption following non-binding recommendation by board of review); 35 ILCS 200/8-40 (DOR decision is reviewable under Administrative Review Law). *See also Illinois Bell Tel. Co. v. Allphin*, 60 Ill.2d 350, 359 (1975) (Administrative Review Act precludes common law tax injunction lawsuits to establish exemptions).

This lawsuit was apparently the first to invoke Section 23-25(e). The Appellate Court's ruling in *Carle I* established Section 23-25(e) as a vehicle to seek a judicial determination of a property's exempt status, bypassing the administrative application process. *Carle Foundation v. Illinois Dep't of Revenue*, 396 Ill.App.3d 329 (4th Dist. 2009). However, *Carle I* did not define the precise contours of a Section 23-25(e) claim—and in particular, what happens if the court determines that comparable grounds do, indeed, support exemption for the year for which the property previously received an exemption (the "base year") and the years for which exemptions are being sought in the lawsuit (the "subject years"). There are two possibilities:

- First, the court could be called upon to make a *de novo* determination of entitlement to exemption without any comparison of the facts pertaining to the base year and the subject years. *See Carle Foundation v. Cunningham Township*, 2016 IL App (4th) 140795, ¶ 91 ("*Carle II*"), *vacated on other grounds*, 2017 IL 120427.
- Second, the court could be required to focus on a comparison between the grounds supporting exemption for the base year and the subject years. The property owner would be entitled to exemptions unless either (a) the facts for the base year and the subject years are materially different, or (b) the DOR or court decision for the base year is shown to have been erroneous. *Carle II*, ¶¶ 92-95.

In *Carle II*, the Appellate Court endorsed the second alternative, opining that the focus of the Foundation's exemption claims is on a comparison between 2012 and the subject years:

> "Here, then, is the procedure the legislature must have contemplated. In an action pursuant to section 23-25(e), the plaintiff would allege and prove that, as to the subject property, a certain set of facts existed during the assessment year in question and that substantially the same facts caused that property to be exempt for a subsequent or prior assessment year. By hearing this evidence, the circuit court would not make a *de novo* determination so much as compare two sets of facts, to see if the Department is being inconsistent or arbitrary.
>
> "Unless the two sets of facts are materially different or unless the Department convinces the circuit court that the exemption for the subsequent or prior assessment year actually was unlawful …, logic would likewise require an exemption for the assessment year in question." *Carle II*, ¶¶ 94-95.

Of course, the Supreme Court's conclusion that jurisdiction was lacking under Supreme Court Rule 304 means that the decision in *Carle II* does not constitute binding precedent. *Carle Foundation v. Cunningham Township*, 2017 IL 120427, ¶ 23. *Carle II* nevertheless indicates how the Appellate Court, in any appeal from this Court's forthcoming ruling, would view the

legal framework for deciding the Foundation's Section 23-25(e) claims. And even more fundamentally, in light of the language in Section 23-25(e) conditioning the existence of a judicial exemption determination on "comparable grounds," there is much to commend the Appellate Court's focus on a comparison of the facts pertaining to the base year and the subject years.

The Foundation would easily prevail on its exemption claims under the construction of Section 23-25(e) adopted in *Carle II*. With good reason, none of the defendants has ever argued that there is a material difference between the Foundation's entitlement to exemptions in 2012, on the one hand, and any of the years between 2004 and 2011, on the other hand. Nor have any of the defendants ever contended that the DOR decision to grant exemptions for 2012—in accordance with the favorable recommendation of the Champaign County Board of Review—was erroneous. (*See* TR 271 – TR 274 (2012 exemption certificates for the Four Parcels); TR 454 – TR 455 (Board of Review recommendations to approve exemptions for 2012); Jenkins 1/14/19, 89:7 – 92:6.) Indeed, Loren Stouffe, the long-time DOR official who was primarily responsible for exemption decisions, and who personally determined that the Foundation satisfied the statutory and constitutional requirements for exemption for the Power Plant for 2012, testified that she continues to believe that determination was correct. (TR0273; Stouffe 1/14/19, 45:16 – 46:3, 53:23 – 54:3.)[2]

[2] Lest the Township Defendants reprise their ill-founded assertion that the DOR ignored constitutional requirements in making exemption decisions, it should be noted that Ms. Stouffe testified that the DOR receives information with exemption applications that enables it to determine if the constitutional requirements have been satisfied, and that it only grants exemptions if it concludes that both statutory and constitutional requirements are satisfied. (Stouffe 1/14/19, 25:3 – 28:22.)

At this point, any eleventh hour attempt by any of the defendants to assert a material difference between 2012 and any of the subject years, or to challenge the lawfulness of their own recommendation and decision regarding entitlement to exemptions for 2012, would simply smack of expedience and desperation. The defendants would be unable to muster factual or legal support for any such arguments, much less explain why they waited until after trial to raise them for the first time.

In any event, the Foundation would prevail even if this Court were to consider *de novo* the Foundation's entitlement to exemptions for 2004 through 2011. The following analysis of the Foundation's satisfaction of the statutory and constitutional requirements for exemption, while noting the absence of any material differences between 2012 and the subject years with respect to each of the statutory and constitutional considerations, demonstrates that the Foundation would prevail even if the Court were to make a *de novo* determination.

B. The Foundation Has Satisfied the Statutory Exemption Criteria Contained in Section 15-86 of the Property Tax Code

Section 15-86 of the Property Tax Code provides that a hospital applicant satisfies the conditions for a charitable exemption if, for the year for which the exemption is sought, the value of the applicant's qualifying charitable activities—*i.e.*, the aggregate value, at cost, of the various charitable services and activities listed in Section 15-86(e)—equals or exceeds the lesser of (i) the actual property tax or (ii) the estimated property tax, as calculated in accordance with Section 15-86(g), for all of the applicant's properties that are either exempt or for which it is

seeking exemptions. 35 ILCS 200/15-86(c). This is sometimes referred to as the "benefit of the bargain" test.[3]

Exhibit 409 provides the requisite straightforward quantitative comparison showing the Foundation's satisfaction of the statutory test for years 2004 through 2011. With the addition of the corresponding numbers for 2012 (*see* Exhibit 455), the relevant numbers are as follows:

Year	Exhibit No. (PTAX-300-H Form)	Charitable Activities (Line 19 of PTAX Form) (Line 18 for 2012)	Estimated Property Tax (Line 20 of PTAX Form) (Line 19 for 2012)
2004	TR 446	$5,789,063	$3,087,637
2005	TR 447	$3,627,917	$3,137,170
2006	TR 448	$4,904,086	$3,167,987
2007	TR 449	$6,874,446	$3,188,630
2008	TR 450	$8,659,332	$3,108,572
2009	TR 451	$7,831,344	$3,658,017
2010	TR 452	$9,025,099	$4,777,214
2011	TR 453	$15,753,168	$4,846,265
2012	TR 455	$33,036,433	$4,864,167

[3] Under Section 15-86(e), qualifying charitable activities include the following kinds of services that address the health care needs of low-income or underserved individuals: (i) charity care; (ii) unreimbursed costs for providing free or subsidized goods, activities or services for the purpose of addressing the health of low-income or underserved individuals, including outreach or educational services; (iii) in-kind support to affiliated or unaffiliated hospitals; (iv) community clinics or programs; and (v) prenatal or childbirth outreach. Qualifying charitable activities also include services that relieve the burden of government with respect to health care services, including emergency, trauma, burn, neonatal, medical education, and conducting medical research or training health care professionals. 35 ILCS 200/15-86(e).

Thus, the Foundation easily satisfies the statutory exemption criteria contained in Section 15-86 for each of the subject years, just as it did in 2012. In each year from 2004 through 2012 the value of the qualifying charitable activities exceeds the estimated property tax. (*See also* Hesch 1/15/19, 31:5 – 52:6.)

1. The Foundation's evidence understates the extent to which the Foundation satisfies the statutory standard

The margin by which the Foundation satisfies the statutory exemption criteria in Section 15-86 for each of the subject years becomes even more impressive when one considers the numerous ways in which the evidence understates the amount of charitable activities and overstates the amount of estimated property tax:

First, the Foundation only relied on the qualifying charitable activities of the Hospital, and not the entire System. Because the Foundation owns the Four Parcels, Section 15-86 provides that the Foundation could have included the costs associated with System-wide charitable activities. *See* 35 ILCS 200/15-86(b)(7). There was no need to do so because the value of the Hospital's charitable activities, by itself, exceeded the amount of the entire System's estimated property tax.

Second, for the years 2006-2011, evidence of the qualifying charitable activities of the Foundation was limited to charity care. The Foundation did not need to rely on any of the other kinds of qualifying charitable activities because the cost of the Hospital's charity care alone exceeded the System's estimated property tax. Section 15-86 does not require a hospital applicant to quantify all of its charitable activities in order to prove that it meets the benefit of the bargain test; an applicant need only show that the cost of the charitable activities upon which it relies equals or exceeds the lesser of its estimated or actual property tax liability.

Third, the Foundation relied upon its estimated property tax for all of its exempt properties, rather than the lesser of the actual or estimated tax. This, too, is noteworthy because the actual tax paid by the Foundation proved to be less than the estimated amount for three of the tax years at issue. (*See* TR 505.)

Fourth, the Foundation did not take into consideration partial exemptions, which would have reduced the calculation of the estimated tax. (Koch 1/17/19, 26:18 – 28:13.) The Foundation conservatively assumed all of its properties were 100 percent exempt even though many would have been only partially exempt for the subject years. (*See* TR 504.)

2. There are no material differences among the years 2004-2011

While the amount by which the Foundation's qualifying charitable activities exceeded the amount of estimated property tax varied from year-to-year, that is of no import. There is no requirement that a hospital's charitable activities must exceed its property tax liability by any minimum amount; even just equaling the property tax liability will suffice. 35 ILCS 200/15-86(c).

Consequently, for purposes of Section 23-25(e), there are no material differences between (a) any of the years between 2004 and 2011, and (b) 2012, the year for which the Foundation received exemptions from the DOR. Whether examined *de novo* or through the deferential lens favored by the Appellate Court in *Carle II*, this consideration favors determining that the Foundation was entitled to exemptions under Section 15-86 for each of the subject years. *See Carle II*, 2016 IL App (4th) 140795, ¶¶ 94-95.

C. The Foundation Has Satisfied the Exemption Requirement Contained in Article IX, Section 6 of the Illinois Constitution

The evidence at trial also shows that, for each of the subject years, the Foundation has satisfied the constitutional requirement that the Four Parcels be "used exclusively for …

charitable purposes." Ill. Const. art. IX, § 6. In ruling on cross-motions for summary determination of a major issue, this Court concluded that "all Korzen factors are a part of the constitutional 'charitable use' test," but "the Korzen factors dealing with ownership are only relevant if they can be shown to have affected the way Plaintiff uses its property." Mem. Opn. dated Nov. 26, 2018, p. 3.

Before drilling down on the evidence pertaining to the individual *Korzen* factors, Section II(C)(1) summarizes how courts have applied those considerations to hospitals' entitlement to charitable property tax exemptions. Section II(C)(2) then addresses the starting point for any discussion of whether property is being used exclusively for charitable purposes: identification of the property owner's charitable purposes. With that context, Section II(C)(3) summarizes the evidence bearing on each of the *Korzen* factors, discusses which factors affect the way the Four Parcels are used for the Foundation's charitable purposes, and shows that there are no material differences between the Foundation's satisfaction of those factors in 2012 and in any of the years between 2004 and 2011.

1. From *Sisters* to *Oswald*: what precedent teaches about the meaning of the charitable use requirement as applied to not-for-profit hospitals

a. The use of hospital property exclusively for charitable purposes

The Constitution's requirement that exempt property be used "exclusively" for charitable purposes refers to "the primary purpose for which property is used and not any secondary or incidental purpose." *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d 149, 157 (1968). As applied to hospitals, this has never been construed to require that most of their patients received charity care. Only five percent of the patients of the first hospital that obtained a property tax exemption received charity care. *Sisters of Third Order*, 231 Ill. at 320. A year later, another

hospital received an exemption despite only 20 percent of its patients receiving free care. *Board of Review v. Provident Hosp. & Training Ass'n*, 233 Ill. 242 (1908).

More recently, the Supreme Court upheld an exemption to an affiliate of Northwestern Memorial Hospital without even mentioning the percentage of charity care recipients. *Streeterville Corp. v. Dep't of Revenue*, 186 Ill.2d 534 (1999). Hospitals' entitlement to exemptions was so well-settled that the Court and the DOR took it as a given that the hospital was entitled to an exemption. The Court held that a parking lot serving the hospital and the general public could receive a partial exemption even though discrete portions of the facility were not reserved for hospital-related use. *Id.* at 535, 539.

How can one square the requirement that the primary use of exempt property be for charitable purposes with the awarding of exemptions to hospitals with a small portion of patients who received free or discounted care? The answer is that the charitable purposes of those hospitals were not limited to the provision of charity care. Under Illinois law, a not-for-profit hospital's charitable purpose, with respect to the provision of medical care, consists of the provision of care to all, regardless of ability to pay. A hospital continuously and, hence, primarily uses its property for that charitable purpose as long as it stands ready, at all times, to treat everyone who seeks care, regardless of their ability to pay. As the Supreme Court explained in *Sisters*:

> "[The Board of Review] argued that this hospital should not be held to be an institution of public charity by reason of the great disparity between the number of charity patients and those who pay for the care and attention they receive at this institution. This objection seems to us without merit, so long as charity was dispensed to all those who needed it and who applied therefor, and so long as no private gain or profit came to any person connected with the institution, and so long as it does not appear that any obstacle, of any character, was by the corporation placed in the way of those who might need charity of the kind dispensed by this

> institution, calculated to prevent such persons making application to or obtaining admission to the hospital. The institution could not extend its benefactions to those who did not need them or to those who did not seek admission." 231 Ill. at 273-74.

The defendants in his litigation have never come to grips with this bedrock principle of hospital property tax exemption law. Their preoccupation with the percentage of patients who received charity care, the percentage of expenses relating to charity care, and comparisons of charity care-related data to other financial information ignores the fact that hospitals can receive exemptions despite a "great disparity between the number of charity patients and those who pay for the care and attention they receive." *Id.* Especially now that government programs like Medicaid and Medicare cover large segments of the population, including many citizens who could not afford to pay for healthcare, a hospital's entitlement to exemptions is unaffected by its failure to "[e]xtend its benefactions to those who did not need them…." *Id.* at 274.

b. The meaning, or irrelevance, of certain *Korzen* factors as applied to not-for-profit hospitals

Not-for-profit hospitals are just one type of organization that has sought charitable property tax exemptions. Over the years, everything from an arboretum, to an association that promotes the arts, to a residential care and treatment facility for children with emotional or behavioral problems, to a masonic lodge, to an organization that operates a community center, to a YMCA, to a museum, to a group that supports Alcoholics Anonymous, and many other types of organizations, have sought charitable exemptions. *See*, *e.g.*, *People ex rel. Hellyer v. Morton*, 373 Ill. 72 (1940); *Arts Club v. Dep't of Revenue*, 334 Ill.App.3d 235 (1st Dist. 2002); *Lutheran Child & Family Servs. v. Dep't of Revenue*, 160 Ill.App.3d 420 (2d Dist. 1987); *People ex rel. Wagner v. Freeport Masonic Temple*, 347 Ill. 180 (1931); *Lena Cmty. Trust Fund v. Dep't of Revenue*, 322 Ill.App.3d 884 (2d Dist. 2001); *People v. YMCA*, 365 Ill. 118 (1936); *Vermilion*

County Museum Soc'y v. Dep't of Revenue, 273 Ill.App.3d 675 (4th Dist. 1995); *Northwest Suburban Fellowship v. Dep't of Revenue*, 298 Ill.App.3d 880 (1st Dist. 1998).

The *Korzen* factors embody the Supreme Court's attempt to distill case law regarding a wide variety of charitable organizations and uses into a single "frame of reference" for the decision of entitlement to charitable property tax exemptions. *Methodist Old Peoples Home v. Korzen*, 39 Ill.2d at 157. The significance and meaning of each *Korzen* factor varies, depending on the type of charitable organization and use to which it is applied. To understand how certain *Korzen* factors should be applied in this case, to the extent they have any bearing at all on the use of the Foundation's properties, it is important to focus on previous hospital property tax exemption cases.

Board of Review v. Chicago Policlinic, 233 Ill. 268 (1908), is noteworthy for its determination that a hospital was entitled to a property tax exemption even though donations to the hospital were less than one-sixth the amount of the hospital's revenues. *Id.* at 269. As suggested by *Chicago Policlinic*, the *Korzen* factor pertaining to whether the exemption applicant derives its funds mainly from public and private charity is no impediment to hospitals receiving exemptions. Indeed, hospitals have consistently been determined to be entitled to exemptions without proof that their funds are derived mainly from charity. *See*, *e.g.*, *People ex rel. Cannon v. Southern Illinois Hosp. Corp.*, 404 Ill. 66 (1949); *Evangelical Hosp. Ass'n v. Novak*, 125 Ill.App.3d 439 (2d Dist. 1984); *Lutheran Gen. Health Care Sys. v. Illinois Dep't of Revenue*, 231 Ill.App.3d 652, 664 (1st Dist.), *appeal denied*, 146 Ill. 2d 631 (1992).

Helpful guidance regarding the meaning of the *Korzen* factor that prohibits "plac[ing] obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses" is provided by *People ex rel. Cannon*, *supra*, 404 Ill. 66. The

Supreme Court rejected the assertion that the hospital placed obstacles to patients' receipt of charity by inquiring about nonemergency patients' ability to pay and by assisting eligible patients in receiving government benefits:

> "Sound business dictates that hospitals inquire into the ability of a prospective patient to pay, and it is the generally accepted practice of all hospitals. It is also within the realization of patients unable to pay, that they will be assisted, if eligible, by various governmental agencies, and an investigation of that possibility by the hospital would, in our opinion, induce rather than deter a destitute patient from seeking admission.… Since investigations are made only in nonemergency and nonacute cases, and treatment ensues regardless of the result, we cannot hold that the hospital has failed in its beneficent purpose, or created obstacles that would hinder or prevent needy persons from seeking and receiving the charity it dispenses." *Id.* at 73.

Finally, cases explain that the *Korzen* factor concerning private inurement is directed at hospital management, rather than third parties who do business with the hospital. According to the Supreme Court, this consideration is intended to guard against the hospital being operated to benefit "any private individual engaged in managing the charity." *Sisters of Third Order*, 231 Ill. at 321. *See also People ex rel. County Collector v. Hopedale Medical Foundation*, 46 Ill.2d 450, 463-64 (1970) (denying property tax exemption for hospital and related properties that were operated for the benefit of the individual who founded and controlled the hospital). In *Provena Covenant Medical Center v. Dep't of Revenue*, 236 Ill.2d 368, 392 (2010) (plurality opinion), the Supreme Court rejected the DOR's assertion that the hospital's entitlement to exemption was undermined by subcontracting many of its operations, including profitable laboratory and radiology services, to third-party providers who benefitted financially from those arrangements. With respect to the anti-inurement consideration, the "real concern is whether any portion of the money received by the organization is permitted to inure to the benefit of any private individual engaged in *managing* the organization." *Id.* at 392 (emphasis in original). It will be important to

keep this principle in mind when we address the defendants' arguments regarding benefits supposedly received not by those who managed the Foundation, but rather by the physicians associated with the Carle Clinic Association (the "Clinic").

2. The Foundation's charitable purposes include providing care to all, regardless of ability to pay, providing important but money-losing medical services to the community, providing medical education to healthcare professionals and the public, and conducting medical research

To understand how the Foundation used the Four Parcels primarily for charitable purposes from 2004 through 2012, one must first understand the full scope of the Foundation's charitable purposes. That begins with the Foundation's mission. As stated in the Foundation's Community Benefit Report for 2003, the Foundation's "mission [is] to provide everyone in the community regardless of financial situation with compassionate, exceptional medical care." (TR 2027A, p. 2.) James C. Leonard, M.D., President and Chief Executive Officer of the Foundation, explained that this statement embodied the heart of the Foundation's mission from when it was founded in 1931 until today. (Leonard 1/3/19, 49:17 - 50:17.)

In 2006, the Foundation's mission was revised to expressly include medical education and medical research. (TR 137 at CFCH_e021373.) Dr. Leonard testified that this formal revision of the mission essentially reflected what had already been the case. (Leonard 1/3/19, 42:19 – 43:15, 73:16 – 74:1.)

The evidence showed that there are four discrete charitable purposes associated with the Foundation's mission, as follows:

- First, the Foundation is ready around the clock to provide care to anyone who seeks it and without regard to their ability to pay. What that means, as explained by Dr. Leonard, is that there are "[n]o exceptions. The doors are open and we are

there for everyone." (Leonard, 1/3/19, 50:18 – 51:3.) Significantly, this charitable purpose does not merely consist of the provision of some free and discounted care, but entails the availability of such care (1) at all times and (2) to anyone and everyone who needs and applies for it. (*Id.*)

- Second, the Foundation devotes the resources required to provide important, but money-losing, healthcare services to the entire community. Examples include:
  - The significant resources required to maintain the Hospital's designation as a Level One Trauma Center, the highest rating for that kind of facility. That designation requires trauma surgeons and anesthesiologists in the hospital at all times, with other resources on call within a specified time and distance to provide neurosurgery, orthopedics, or other services that may be required. (Leonard 1/3/19, 27:24 – 29:10.) Providing a Level One Trauma Center, rather than requiring patients to be transported to the next-closest facilities in Peoria or Springfield, is often literally "the difference between life and death." (*Id.* at 29:16-22.)
  - The Foundation's operation of a Level Three Perinatal Center, the highest level for that kind of facility, reflects a commitment to devote resources to newborns and to mothers who are high risk. The next-closest Level Three facilities are in Springfield and Peoria. (Leonard 1/3/19, 30:1 – 32:1.)
  - The Foundation also devotes resources necessary to maintain a designation as a Primary Stroke Center. Time is of the essence in treating stroke victims. Once again, the next-closest facilities with that level of

care are located in Springfield and Peoria. (Leonard 1/3/19, 32:2-4, 34:5-8.)

- The provision of geriatric and pediatric services. (Leonard, 1/3/19, 62:4 – 63:1, 63:2-16.) The Foundation offers those services, even though they operate at a loss, because they are part of "a texture of fabric of the delivery of care that's incredibly important to the community." (*Id.* at 63:17 – 65:4.)
  - The Foundation's decision to continue the operation of a clinic in Mattoon when the Clinic wanted to get out. The Clinic had been experiencing losses at that facility. (*See* Snyder 1/23/19, 117:6-20.) The Foundation decided to continue that operation, even though it was not profitable, because there was a community need for it. (Tonkinson 1/8/19, 61:8-13.)
- The Foundation stepped up to provide the AirLife helicopter service when the State discontinued it. (Robbins 1/10/19, 171:5-13.) AirLife is operated at a loss and is available to all. Without AirLife, there would be more deaths and more extensive, permanent injuries. (Leonard 1/3/19, 86:22 – 89:23.)
- The Foundation has provided key support for the Frances Nelson Health Center, a federally qualified health center (FQHC) that cares for a low-income and underserved population. Frances Nelson had been operating out of a tiny building that could not accommodate its patient needs. The Foundation bought a building, built it out to meet Frances Nelson's needs, and leased it to Frances Nelson for $1/year. The Foundation also

facilitated the expansion of Frances Nelson's services by supporting the development of a school clinic and a program in Coles County. (Tonkinson 1/8/19, 254:22 – 255:19; Emanuel, 1/24/19, 246:4-23.) In addition, the Hospital sent medical residents to Frances Nelson to provide free prenatal care to the women there. (Robbins, 1/10/19, 61:9-17.)

- Additional money-losing programs operated by the Foundation include a Mobile Clinic (healthcare provided in the community from a vehicle), a Parish Nurse Program, a low-vision center for people with macular degeneration and decreasing vision, the ECHO (Expanding Children's Hearing Opportunities) program that provides training to deaf children with cochlear implants, and palliative medicine that helps people suffering with chronic conditions. (Leonard 1/3/19, 58:4-14, 58:15 – 59:10, 75:5-13, 80:14 – 81:11, 81:12 – 82:16.) The amount of unreimbursed costs incurred in providing these and other services that are directed to the underserved, or improve the health of the community, are tracked by the software program known as "CBISA." (*See*, *e.g.*, TR 407 (FY04), TR 408 (FY05).)
- The Foundation helped patients obtain Medicaid and other governmental benefits. This was important because Medicaid provides access to prescription medication and primary care. (Owens 1/11/19, 26:12 – 29:7.) The Foundation paid Accordis and Arc Ventures to work with patients to help them qualify for public aid. (Tonkinson 1/7/19, 183:1 – 184:4.) The

Foundation also hired someone to work in the Emergency Department to make it easier for patients to apply for Medicaid. (*Id.* at 184:1-17.)

- Third, the Foundation's charitable objectives include the provision of medical education to healthcare professionals and the general public. Healthcare outcomes "are very much impacted by education…." (Leonard 1/3/19, 78:7-17.) The Foundation's healthcare workforce education included ongoing classes for healthcare workers that were provided without charge. (*Id.* at 59:15 – 60:13.) The Foundation's community health education included (and still includes) programs regarding CPR, diabetes, hypertension, and safety. (*Id.* at 57:7-15.)
- Fourth, the Foundation's charitable objectives throughout the entire period from 2004 through 2012 included "medical research in general and translational research in particular…." (Leonard 1/3/19, 73:16 - 74:1.) Translational research impacts the everyday lives of patients in the community. It's an example of the Foundation "trying to do everything that we can about the delivery of care today and tomorrow…." (*Id.* at 75:14 – 76:5. *See also* Wellman 1/24/19, 12:6-16 (the Foundation's medical research "improved the level of care that we were able to deliver").) The Foundation's research activities are extensive. As of 2008, there were more than 100 active studies related to cancer, gastrointestinal disease, cardiovascular disease, and more. (TR 2027F; Leonard 1/3/19, 90:24 – 91:7.)

The defendants do not, and cannot, dispute that all four of the goals listed above constitute recognized charitable purposes. (*See* Tr. 1/15/19, 305:8-21; M. Hall 1/28/19, 155/6-9.) The following discussion considers the full scope of the Foundation's charitable purposes in analyzing the evidence bearing on each of the *Korzen* factors.

3. Application of the *Korzen* factors, to the extent they relate to the Foundation's use of the Four Parcels, reveals that the Foundation uses those properties primarily for its charitable purposes

a. *Oswald/Korzen* Factor No. 1: Providing a benefit to an indefinite number of persons, persuading them to an educational or religious conviction, for their general welfare—or in some way reducing the burdens of government

The first *Korzen* factor is the one that the Supreme Court expressly mentioned in *Oswald* as bearing on the constitutional requirement. There are two aspects to this factor, one that describes the types of qualifying activities, and another that addresses the number of recipients. Qualifying activities must benefit the recipients' general welfare, "persuad[e] them to an educational or religious conviction," or reduce the burdens of government. *Oswald*, 2018 IL 122203, ¶15. That benefit must be available to "an indefinite number of persons." *Id.*

All four of the Foundation's charitable purposes—*i.e.*, providing healthcare at all times regardless of ability to pay, providing important money-losing healthcare-related services, providing medical education to healthcare professionals and the general public, and conducting medical research—promote the recipients' health and well-being and relieve government of the burden of providing or funding those activities. Medical education also, to use the quaint phrasing of *Korzen*, persuades those who receive it to an educational conviction. *See*, *e.g.*, *Sisters*, 231 Ill. at 322-24 (charitable purposes included provision of charity care to all who need and apply for it, and training for nurses); *Lutheran Gen. Health Care Sys. v. Illinois Dep't of Revenue*, 231 Ill.App.3d 652 (1st Dist.), *appeal denied*, 146 Ill. 2d 631 (1992) (charitable purposes included medical education and medical research, as well as provision of care regardless of ability to pay).

It is also undisputed that these benefits were provided to an indefinite number of persons. With respect to charity care, the evidence showed that the Foundation has never placed any

limits on the number of people who can receive free or discounted care. (Leonard 1/3/19, 51:7-11; Tonkinson 1/8/19, 249-13.) Nor were there ever any limits on the costs that the Foundation was willing to absorb to provide free or discounted care. (Leonard 1/3/19, 51:12-16.) The sums for charity care expenses included in budgets were simply a "road map," "written in pencil," but never a limit on the amount of costs the Foundation was willing to incur. (*Id.* at 51:24 – 53:8.) And the Foundation was willing, around the clock, to admit and treat patients who need free or discounted care. (*Id.* at 51:17-21.) As Dr. Leonard aptly described this key aspect of the Foundation's operations, our "doors are [always] open and we treat everyone." (*Id.* at 50/23-24.)

The Foundation's charitable purpose relating to the provision of important, but money-losing services also benefitted an indefinite number of persons. There are obviously no predefined limits on the number of patients who, for example, would benefit from the enhanced level of care associated with the Hospital's Level I Trauma Center, Level III Perinatal Center, or Primary Stroke Center, or who would take advantage of the availability of geriatric or palliative care or the AirLife helicopter.

The Foundation's charitable purposes relating to the provision of medical education and the conducting of medical research likewise benefitted an indefinite number of persons. The Foundation provided medical education not just to healthcare professionals, but also to members of the community who attended programs on conditions like diabetes and hypertension. (Leonard 1/3/19, 57:7-15.) There are also no predefined limits on the number of persons who could benefit from the more than 100 active studies that were part of the Foundation's medical research program. (*Id.* at 90:24 – 91:7; TR 2027F.)

In short, there can be no serious debate about the Foundation's satisfaction of the first *Oswald/Korzen* factor. This is true for each of the years from 2004 through 2011; each of the

facts summarized above apply to each and every year. There is also no material difference between the Foundation's satisfaction of this factor in 2012, on the one hand, and in any of the years from 2004 through 2011, on the other hand. Just as the DOR concluded that the Foundation was entitled to an exemption in 2012, this consideration suggests that "logic would likewise require an exemption for the assessment year[s] in question." *Carle II*, ¶ 95.

b. *Korzen* Factor No. 2: No capital, capital stock or shareholders

The second *Korzen* factor focuses on whether the exemption applicant has capital, capital stock, or shareholders. *Korzen*, 39 Ill.2d at 157. This factor focuses on the statutory requirement in Section 15-65(a) that an exemption applicant be an institution of public charity, as opposed to whether the applicant uses its property primarily for charitable purposes in accordance with the constitutional exemption requirement. *See* 35 ILCS 200/15-65(a).

In any event, it is undisputed that the Foundation satisfies this *Korzen* factor. The Foundation has no shareholders, no person or entity has ever invested capital in the Foundation, and no capital stock has ever been issued to anyone. (Leonard 1/3/19, 98:10-21; TR 1, TR 7, TR 8 (Foundation's articles of incorporation); TR 9, TR 172, TR 196, TR 251 (Foundation's bylaws); TR 5, TR 180 (Hospital's articles of incorporation).)

There are no differences, in terms of the Foundation's satisfaction of this *Korzen* factor, among any of the 2004 through 2011 years at issue. Nor are there any differences, in this respect, between 2012 and any of the subject years. Consequently, any potential relevance of this consideration would support the Foundation's entitlement to exemptions.

c. *Korzen* Factor No. 3: Earns no profits or dividends, and holds funds in trust for its charitable purposes

The third *Korzen* factor is that the exemption applicant "earns no profits or dividends, … and holds [its funds] in trust for the objects and purposes expressed in its charter…." *Korzen*,

39 Ill.2d at 157 (emphasis omitted). Once again, the evidence is undisputed. The Foundation has never issued any dividends. (Leonard 1/4/19, 40:15-17.) All of the proceeds from the Foundation's operations were reinvested in the organization. (*Id.* at 99:7-11.) Even the defendants' expert witness, Mark Hall, conceded that he saw no evidence that the Foundation did anything other than reinvest its net income. "It kept the net earnings and applied them to various corporate purposes within the foundation." (M. Hall 1/28/19, 212:11-20.)

For purposes of this *Korzen* factor, "profit" is not synonymous with "net income." The consideration of profit relates to private gain obtained by those involved in the operation of the organization, as opposed to the organization operating in the black. *See Sisters of Third Order*, 231 Ill. at 274 (noting that there was "no private gain or profit"). No less than any other organizations, not-for-profit hospitals need to operate in the black to survive. (Cornish 1/18/19, 113:17-22.) It would not be sustainable for the Foundation to operate in the red indefinitely. (Leonard 1/4/19, 38:6-8.) Dr. Leonard explained that the Foundation needed to generate net income to meet its bond obligations, pay its bills, "invest in tomorrow," recruit top talent, purchase new technology, and continue to improve. (*Id.* at 38:9 – 39:1.)

Although the Foundation clearly satisfies this *Korzen* factor, it is questionable whether this bears on satisfaction of the constitutional charitable use requirement, as opposed to the statutory charitable ownership requirement contained in Section 15-65. What *is* clear, however, is that there is no material difference among any of the years between 2004 and 2012 regarding the Foundation's satisfaction of this factor. The Foundation has never issued any dividends. When it has generated net income, it has always reinvested it back into the organization. (Leonard 1/4/19, 40:15-17, 99:7-11.) Even the amount of net income has not varied significantly

over the years, with that for 2012 being less than that for each of the three full years that had preceded it:

THE CARLE FOUNDATION		
Period	**Exhibit and Page Number**	**Net Income From Operations**
FY 2004	TR 68, p. 4	$16,979,906
FY 2005	TR 107, p. 4	$8,903,348
FY 2006	TR 130, p. 5	$29,808,221
FY 2007	TR 151, p. 4	$33,749,000
FY 2008	TR 166, p. 4	$36,132,000
FY 2009	TR 188, p. 4	$54,304,000
FY 2010	TR 222, p. 4	$62,600,000
7/1-12/31/10 ("Stub Year")	TR 242, p. 4	$33,497,000
CY 2011	TR 252, p. 4	$41,298,000
CY 2012	TR 270 , p. CFCH_e077981	$38,553,000

In short, whatever relevance the third *Korzen* factor could conceivably have to the Foundation's use of its properties supports (1) the Foundation's entitlement to exemptions, (2) the DOR's decision to issue exemptions for 2012, and (3) the absence of any basis for reaching a different conclusion for any of the years from 2004 through 2011.

d. *Korzen* Factor No. 4: Derives its funds mainly from public and private charity

Like other hospital systems in Illinois, the Foundation does not derive its funds mainly from public and private charity. This has never been an impediment to hospitals' entitlement to property tax exemptions. As we have already seen in Section II(C)(1)(b) of this brief, above, Illinois hospitals have consistently been determined to be entitled to exemptions without proof that their funds are derived mainly from charity. *See*, *e.g.*, *Board of Review v. Chicago Policlinic*, 233 Ill. 268 (1908) (donations were less than one-sixth of hospital's revenues); *People ex rel. Cannon v. Southern Illinois Hosp. Corp.*, 404 Ill. 66 (1949) (holding that hospital was entitled to exemption without mentioning relative amount of donations and other income); *Memorial Child Care v. Dep't of Revenue*, 238 Ill.App.3d 985 (4th Dist. 1992) (holding that hospital day care center was entitled to exemption without quantifying revenue sources for hospital or day care center).

Dr. Leonard, a former Chair of the Illinois Hospital Association's Board of Trustees, testified that to his knowledge there is not a single not-for-profit hospital in the state that receives most of its revenue from donations. (Leonard 1/3/19, 121/11-22.) Mark Hall does not know of one either, with the possible exception of Shriners Children's Hospital. (M. Hall 1/28/19, 207:10-17.)

As a practical matter, for hospitals to generate a majority of its revenues from donations, they would have to eschew payments from insurance, Medicare, Medicaid, and general assistance. But in terms of entitlement to property tax exemptions, hospitals have never been faulted for declining to "extend its benefactions to those who did not need them…." *Sisters of Third Order*, 231 Ill. at 322. That explains why hospitals' entitlement to exemptions is not

undermined by even a "great disparity between the number of charity patients and those who pay for the care and attention they receive." *Id.*

In the final analysis, the Foundation's use of its property for charitable purposes depends on how it uses its property, not how it generates revenue. *Korzen* factor no. 4 relates to the charitable ownership requirement of Section 15-65(a), rather than the Constitution's charitable use requirement. But even if this factor were somehow relevant to the use of property, there is little to distinguish 2012 in this respect from any of the years involved in this litigation. Exhibit 535 compares the annual revenues and expenses of the Foundation's fundraising affiliate, the Carle Development Foundation, with those of the Foundation itself for years 2008 through 2012. Both the revenues and the expenses of the Development Corporation were small in comparison with those of the Foundation, with the figures for 2012 being among the very smallest of those during that period. (TR 535.) The DOR correctly determined that this situation did not preclude the Foundation's entitlement to exemptions in 2012—a conclusion that applies with equal, if not greater, force for the years at issue in this lawsuit.

e. *Korzen* Factor No. 5: Dispenses charity to all who need and apply for it

Korzen states that "a charitable and beneficent institution is one which dispenses charity to all who need and apply for it." *Methodist Old Peoples Home*, 39 Ill.2d 149, 157 (1968). On its face, this factor pertains to the nature of a charitable institution, *i.e.*, the charitable ownership requirement in Section 15-65(a). Regardless, overwhelming evidence demonstrates that the

Foundation assiduously recruited and identified potential applicants for charity care, and facilitated their ability to apply for and receive the benefits to which they were entitled.[4]

Hospitals are not expected to provide charity to those who fail to apply for it. *See People ex rel. Cannon*, 404 Ill. at 73 ("Sound business dictates that hospitals inquire into the ability of a prospective patient to pay"). Getting patients to apply for charity care can be a daunting challenge. As Dr. Leonard explained, "It can be very difficult to get people to interact regarding their financial or family situation…." (Leonard 1/3/19, 68:20-21.) Former Foundation Chief Financial Officer Rob Tonkinson elaborated on this conundrum:

> "[O]ne of the problems that I think all health systems had, and we certainly had, was differentiating between those who could pay and hadn't paid, and those who were unable to pay. And so identifying meant receiving an application, or other proof of the individual's qualifications under our community care policy." (Tonkinson 1/7/19, 168:10-16.)

The evidence shows that the Foundation went above and beyond in attempting to elicit applications from potential candidates for charity care. Patricia Owens, the former Director of Revenue Cycle Systems for the Foundation, testified that the Foundation hired a company called Arc Ventures to contact patients within five days of when they left the Hospital to help the patient figure out how to handle the charges for the care they had received. If Arc Ventures thought the patient would qualify for charity care—which was the case half the time—they would return the account to the Hospital for submission of a charity care application. Tearinee

[4] This *Korzen* factor has no bearing on the Foundation's use of property for charitable purposes that do not exclusively entail dispensing free or discounted medical care. The Foundation's entitlement to exemptions is also supported by charitable purposes that include the provision of important, but money-losing services like the AirLife helicopter and pediatric, geriatric care, and palliative care, the conducting of medical research, and the provision of medical education to healthcare professionals and the public. *See* Section II(C)(1)(b)(2) of this brief, above.

Boyd would then send the patient a charity care application and follow-up if the application was not returned. (Owens 1/11/19, 17:17 – 18:8, 21:3-18.)

The Foundation's outreach efforts were successful in both soliciting additional charity care applications and in generating applications that were granted. More than 56,000 charity care applications were approved from 2004 through 2012, reflecting an approval rate of over 84 percent of the completed applications. (*See* TR 509 (summarizing data in TR 333 and TR 334); Cornish 1/18/19, 71:3-11.) These robust numbers were an indication of a well-functioning application and approval process. (Cornish 1/18/19, 71:12-17.)

In addition to the high approval rate for applications, a high percentage of charity care recipients—87.5%—received a 100% discount for their care. (*See* TR 510 (summarizing data in TR 333 and TR 334); Cornish 1/18/19, 79:1-20.) This is unusually high, and speaks to the generosity of the Foundation's program and the manner in which it is implemented. (Cornish 1/18/19, 79:13 – 80:6.)

There is no evidence that the Foundation ever denied charity care to an applicant who qualified under the Foundation's charity care program. Cunningham Township Supervisor Michelle Mayol testified that she was unaware of any instance in which a person who qualified for charity care—which occurred automatically by virtue of receiving General Assistance aid from the Township (Owens 1/11/19, 40:8 – 41:10—did not receive it. (Mayol 1/23/19, 213:15-24.) Similarly, Mark Hall was unable to "point to a single instance where someone at Carle Foundation Hospital knew that a patient was in need of charity care and failed to provide it to them…." (M. Hall 1/28/18, 232/22 – 233/3.)

Similar approval rates for charity care applications existed throughout the entire period from 2004 through 2012. (TR 509.) Once again, if this *Korzen* factor has any relevance to the

Foundation's use of its property for charitable purposes, it would support entitlement to exemption for all of the subject years. Conversely, there is no basis for distinguishing, with respect to this consideration, between 2012 and any of the years between 2004 and 2011.

f. *Korzen* Factor No. 6: Does not provide gain or profit in a private sense to any person connected with it

i. The private inurement issue concerns improper benefits received by those managing the organization

The sixth *Korzen* factor states that "a charitable and beneficent institution … does not provide gain or profit in a private sense to any person connected with it…." *Methodist Old People's Home*, 39 Ill.2d at 157. Targeted at what is sometimes called "private inurement," this is another *Korzen* factor that expressly pertains to whether the property owner is an "institution[] of public charity" eligible for an exemption under Section 15-65(a). Although that charitable ownership requirement does not apply to the Foundation's applications for exemptions under Section 15-86, the following summary of the evidence demonstrates that the Foundation nevertheless satisfies this *Korzen* factor.

Case law teaches that the persons "connected with" the institution to which this factor applies are those associated with the management of the institution. "[N]o portion of the money received by [the institution] is permitted to inure to the benefit of *any private individual engaged in managing the charity*." *Sisters*, 231 Ill. at 321 (citations omitted; emphasis added). The *Provena* plurality agreed. "The real concern is whether any portion of the money received by the organization is permitted to inure to the benefit of any private individual engaged in *managing* the organization." 236 Ill.2d at 392 (emphasis in original).

The evidence shows that no one engaged in managing the Foundation received any private benefit from the Foundation. The members of the Foundation's Board of Trustees are not

compensated. (Leonard 1/3/19, 101:24 – 102:1.) The compensation of the officers of the Foundation was determined through a rigorous, independent process with a goal of compensating the officers for the fair market value of their services. (Fallon 1/14/19, 224:18 – 225:2.) The heart of that process was a report prepared by SullivanCotter, a respected consultant known nationally for its expertise regarding compensation in the healthcare industry. The SullivanCotter report addressed the compensation of all Foundation executives at or above the level of Vice President. A compensation committee composed of the members of the Foundation's executive committee would make the final decision regarding the executives' compensation. (Leonard 1/14/19, 219:23 – 228:15. *See* TR 286 (Compensation Committee Charter); TR 285 (Compensation Committee Philosophy and Strategy).)

Uncontroverted evidence established that the Foundation paid reasonable executive compensation. (Cornish 1/18/19, 104.3 – 105:24.) Accordingly, even if *Korzen* factor no. 6 were considered to bear on the Foundation's use of its exempt properties, this consideration would support its entitlement to exemptions. This holds true for each of the subject years because there was no material difference, in this respect, among any of the years from 2004 through 2011, or between 2012 and any of the subject years. (Fallon 1/14/19, 223:2-9.)

ii. The defendants' arguments regarding various aspects of the relationship between the Foundation and the Clinic are both irrelevant and unfounded

The defendants have attempted to make the relationship between the Foundation and the Clinic the centerpiece of their defense, asserting a litany of grievances that they characterize as involving improper benefits to the Clinic. Although the defendants rarely attempt to tether these arguments to any of the *Korzen* factors, they appear to assume that they bear on the anti-inurement consideration contained in *Korzen* factor no. 6. This assumption is erroneous, because

as we have seen this factor is limited to benefits received by any private individual involved in managing the Foundation. *Sisters*, 231 Ill. at 321; *Provena*, 236 Ill.2d at 392 (plurality opinion).

The following discussion demonstrates that, in addition to being legally irrelevant, the defendants' arguments that the Clinic physicians benefitted improperly from the relationship with the Foundation are also factually unsupported.

Contracts between the Foundation and the Clinic. The defendants have insinuated that there was something improper about the many contracts that existed between the Foundation and the Clinic. The evidence showed otherwise. The contracts ensured that there was little duplication of service between the Foundation and the Clinic. If one organization provided a service, it generally did so to both organizations. (Snyder 1/23/19, 78:9-12.) This was better and more efficient for patients. (Tonkinson 1/8/19, 50:6 – 51:4.) Even Mark Hall acknowledged that "efficiencies were achieved" by the contracting relationship between the Foundation and the Clinic. (M. Hall 1/28/19, 220:1-8.)

The trial testimony painted a very different picture of the relationship between the two organizations than the sweetheart arrangement portrayed by counsel for the County Defendants. Contract negotiations were at arms' length and were frequently contentious, with the Foundation representatives always striving for the best possible deal for the Foundation. (Tonkinson 1/8/19, 39:19 – 40:19.) This was exemplified by a notorious incident that occurred in a tense meeting at which rates were being negotiated for payments to the Foundation by Health Alliance, the Clinic-owned insurance carrier. The lead negotiator for the Foundation, Catherine Emanuel, stood her ground despite being yelled at by the Health Alliance CEO. Dr. Leonard, who witnessed the exchange, expressed his appreciation for Ms. Emanuel's resolve by giving her a

towel on which the word "Tenacious" was embroidered. (Leonard 1/4/19, 5:7 – 6:20; Emanuel 1/24/19, 243:14 – 244:15.)

What is perhaps most striking about the relationship between the Foundation and the Clinic is that, despite all the hype they devoted to this issue, the defendants failed to offer an iota of evidence that the Clinic ever paid less than the fair market value for anything it received from the Foundation. Nor was there any evidence that the Foundation ever paid more than the fair market value for anything it received from the Clinic. Even Mark Hall agreed that "the interorganizational agreements were designed to ensure that the services going from the hospital to the clinic and vice versa were documented and paid at fair market value…." (M. Hall 1/28/19, 220:9-14.) At the end of the day, the evidence showed that the supposed huge problems surrounding the relationship between the Foundation and the Clinic turned out, in today's parlance, to be a nothingburger.

Carle Foundation Physician Services. The defendants have suggested that there was something nefarious about the Foundation's creation of Carle Foundation Physician Services ("CFPS") and its contracting for the use of Clinic physicians to staff the Emergency Department ("ED"). John Snyder explained why the creation of CFPS was a reasonable response to a financial reality that every hospital confronts:

> ""[Y]ou cannot operate an emergency room physician group or a hospitalist group and make [money] – you just lose money. There's just no way that the professional fees generate enough to cover the salary costs. It's reality for everybody. And so that's what every hospital has to do. They either have to employ the doctors and then – and there's a subsidy there because they lose money on that or you go out and buy that service from a company and you pay them something. Called it a subsidy if you want. Every single hospital in the country has that exact situation." (Snyder, 1/23/19, 149:19-150:9.)

CFPS was a tangible expression of the Foundation's charitable purpose of ensuring that important, but money-losing medical services were provided to the community. Through the staffing of the ED and the continued operation of the Mattoon clinic, CFPS absorbed losses that the for-profit Clinic was unwilling to accept. (*Id.*; Snyder 1/23/19, 105:8-23.) In so doing, the reach of the Foundation's charity care policy was extended to the professional services associated with ED care and other areas served by CFPS physicians. (Tonkinson 1/8/19, 60:4 – 62:4.) Far from being nefarious, the creation and operation of CFPS was commendable.

The Clinic's ownership of lab and radiology facilities. The Clinic had owned the lab and radiology operations used by the Hospital from the birth of the Foundation. (Wellman 1/24/19, 49:4-18.) While the defendants frequently criticized that arrangement, they never offered any evidence that it would have been profitable for the Foundation to invest in its own duplicative lab and radiology facilities. To the contrary, the uncontroverted evidence was that the community benefitted by paying less than if the Foundation had invested in and operated its own services. (Tonkinson 1/8/19, 50:12 – 51:4.)

IRS Settlement Agreement and related subjects. Exhibit 178 contains the Closing Agreement between the Foundation and the Internal Revenue Service. That settlement agreement was reached in 2008 at the conclusion of a four-year audit during which the IRS scrutinized the relationship between the Foundation and the Clinic, including the composition of the Hospital staff, the use of medical directors, the lease, the Deferred Fee Agreement, and HSIL. (Tonkinson 1/8/19, 77:10 – 78:10, 83:7 – 98:2.) The IRS did not find any violations of law, did not assess any penalties, and did not revoke or terminate the tax-exempt status of the Foundation or the Hospital. (Tonkinson 1/8/19, 78:21 – 79:3, 86:1 – 87:8.) The lease with the Clinic and the

operation of the Foundation's off-shore captive insurance company, HSIL, continued as before. (TR 178.)

There is no substance to the concerns that the defendants have raised about the IRS settlement agreement or the subjects that it covers. To the contrary, the milquetoast resolution of the four-year audit was essentially a vindication of the propriety of the business practices that the IRS investigated—and most importantly, to the Foundation's relationship with the Clinic.

The merger. Uncontroverted evidence established that the price paid by the Foundation for the acquisition of the Clinic was reasonable and a product of arms'-length negotiation. Both parties hired respected, independent valuation consultants to help them negotiate the merger price. The Foundation hired Ernst & Young, which pegged the value of the Clinic at $224 million to $264 million. (Leonard 1/4/19, 13:2-5, 15:5-20; TR 195.) The Clinic retained Deloitte, which estimated the net value of the Clinic's assets at $255 million. (*Id.* at 13:6-8, 17:7-15; TR 204.) Negotiations between the two organizations' CEO's produced a purchase price of $250 million. (*Id.* at 17:16 – 18:2.)

Kevin Cornish testified that the purchase price for the Clinic "was a fair market value, arm's length determination." (Cornish 1/18/19, 109:9-10.) Mark Hall agreed that "there was credible documentation that the purchase price paid by the Carle Foundation to acquire the clinic reflected fair market value…." (M. Hall 1/28/19, 221:22 – 22:2.)

The defendants have stressed that the amount received by the Clinic's associates (*i.e.*, owner-physicians) due to the merger was much greater than the share price prescribed by the Clinic's bylaws. The short answer is that the bylaw price was not intended to reflect the fair market value of an associate's ownership interest. (Leonard 1/4/19, 18:23 – 24:3.) Dr. Wellman explained that the Clinic lowered the share price prescribed by the bylaws, first in the early

1990's and again in the early 2000's, so new associates could afford to purchase a share. Before it was lowered, the share price was a "major issue" that was hampering the Clinic's recruiting efforts. (Wellman 1/24/19, 44:13 – 45:15.)

The $250 million price paid by the Foundation has proven to be a bargain. The Foundation's 2017 financial statements showed that the value of Health Alliance had grown to $550 million. (Hesch 1/15/19, 28:9-11.) Even more importantly, the merger has advanced the mission of the Foundation by improving the quality, depth, and breadth of care offered by the Foundation through the addition of specialists, boosting recruiting efforts, and improving technological resources. (Leonard 1/4/19, 27:20 – 28:17.) In addition, by expanding the availability of charity care to primary care, the merger significantly increased the amount of charity care provided by the Foundation, making it more available across the enterprise to significantly more people. (*Id.* at 30:15 – 31:6.) In 2011 alone, the Foundation provided more than $25 million in charity care, measured at cost. (TR 2027J.)

One consequence of the merger that even the defendants cannot deny is that it eliminated any legal issues concerning the Foundation's relationship with the Clinic. We have seen that there was no aspect of that relationship that undermined the Foundation's entitlement to property tax exemptions. But that issue completely evaporated as of April 1, 2010, and has no conceivable bearing on the Foundation's entitlement to exemptions on and after that date.

g. *Korzen* factor no. 7: Does not place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses

Far from placing obstacles in the way of any person who needed charity care, the evidence proved that the Foundation engaged in extraordinary efforts to make the charity care program available to anyone who might need it, and went to great lengths to broadcast

information about the program. (M. Hall, 1/28/19 198:20 – 199:2.)[5] The Foundation's efforts from 2004 through 2011 to promote its program were unique and effective, according to industry expert, Kevin Cornish. (Cornish 1/18/19, 57:24 – 60:14; 88:17 – 97:4.) The Foundation was "aggressive in trying to get people to apply and to qualify for their program in any way that they reasonably could consistent with the rules of the charity care program." (*Id.* at 60:10-14.)

> "[The Foundation] widely promoted [the charity care program] . . . both within the company, within the entity as well as outside. There were frequent what I would call touch points during a patient's episode of care as well as subsequent to their episode of care in which the awareness of the charity care program was brought to light, and that happened through a variety of different mechanisms. So, the evidence in this case was clear that Carle went through significant effort, expended significant resources, both financial as well as time, individual time and the thoughtful structure process to really encourage the utilization of their charity care program as much as possible where people met the requirements." (Cornish 1/18/19, 53:3-20; *see also id.* at 57:24 – 59:16.)

Even the name, Community Care Program, was an effort to reach more patients. Rob Tonkinson testified that the Foundation believed "that calling it charity care would discourage some people from applying. There's a lot of individuals who are very proud, and didn't want to accept charity, and we wanted to make sure that those people felt comfortable applying for the program." (Tonkinson 1/7/19, 149:3-12.)

The Foundation promoted its charity care program over time in a variety of ways. Beginning in 2003, the Foundation ran newspaper advertisements about its charity care program. (Tonkinson 1/8/19, 12:24 – 13:10.) After receiving feedback that people who would benefit

[5] As with *Korzen* factor no. 5, this consideration is irrelevant to the Foundation's efforts to achieve its charitable purposes other than the provision of care to all, regardless of ability to pay. There is no evidence, nor even an allegation, that the Foundation placed obstacles in the way of patients receiving medical care generally or the benefits of the Foundation's research and education activities.

from the charity care program might not buy the newspaper, the Foundation began advertising the program on buses and on the radio in approximately 2004. (*Id.* at 13:11 – 14:15.) Starting around that same time, the Foundation included information about the community care program and a copy of the charity care application on its website. (*Id.* at 5:20 – 6:9.)

The Foundation developed advertising and marketing communications plans for the charity care program. (TR 110, TR 116, Robbins 1/10/19, 13:6 – 16:8.) This advertising effort cost the Foundation thousands of dollars each year. (*Id.*; Tonkinson 1/8/19, 14:16 – 15:6 ("we spent money to have the ads formatted and then to place them in or print them for buses … [and other] various venues").) Other components of the communications plan, as described by the Foundation's former Director of Corporate Outreach and Government Communications, Gretchen Robbins, included holding press conferences and issuing press releases. (Robbins 1/10/19, 17:8 – 17:21.)

In addition to external communications, the Foundation expended significant effort on internal communications, too. During all of the subject years, pamphlets and brochures about the charity care program were displayed at various locations in the Hospital. (Tonkinson 1/8/19, 6:14-24.) In 2003 and 2004, the Foundation expanded the locations where these pamphlets were available, and also made them more appealing visually. (*Id.* at 173:11-16.) To help reach patients for whom English was not their native tongue, in 2004-2005 the applications and brochures were translated into Spanish and Mandarin. (*Id.* at 8:12-11:5; TR 337, TR 338, TR 335.)

There were signs informing patients about the charity care program in the admitting area and in the emergency department. (Tonkinson 1/8/19, 11:6-15.) All registration staff had charity care applications and checklists available for patients, and the registration handbook,

which is given to all patients during registration, contained a full description of the program and how to apply. (Staske 1/14/19, 109:2-10, 126:9-22, 131:19 – 133:17.) During patient stays, social workers would discuss the availability of charity care with uninsured patients or any patients who expressed concerns about being able to pay their bills. (*Id.* at 131:19 – 133:17.)

The Foundation's efforts to educate its staff about the charity care program went beyond the employees whose usual job responsibilities related to that program. Beginning in 2004-2005:

> "We trained all the hospital staff on the Community Care policy, so whether you were nursing or housekeeping, so that they were aware of the policy. And our theory was that sometimes families might be talking about it and a housekeeper might be in cleaning a room and might overhear a concern expressed by the patient or the family about their ability to pay their bill, or sometimes they just engaged really well with the food service worker or something like that, and we wanted to make sure that those people were aware of our policy and were aware of then how to get resources to that patient so that they could talk with someone about who was qualified to help them with their issue. So we made that part of our annual required education and also part of the renewal education every year." (Tonkinson 1/8/19, 11:6 – 12:23.)

Throughout the collection process, efforts to reach patients continued. Beginning in mid-2003 through present, all bills and statements told patients about the availability of financial assistance and whom to call. (Tonkinson 1/8/19, 5:1-13.) When the Foundation received feedback that people struggling to pay bills often would not open their mail, the Foundation put a notice about the charity care program on the outside of the envelope in red letters. (*Id.* at 3:21 – 4:24.)

The Foundation also worked to simplify the charity care application in 2003 and 2004. (Tonkinson 1/8/19, 7:21 – 8:7; TR 336.) The application required applicants to submit income verification with documentation. However, the Foundation relaxed those requirements when it needed to and accepted less formal means of verification, like a handwritten letter or invoices,

when tax returns or pay stubs were not available. (Cornish 1/18/19, 61:14 – 62:14.) The Foundation also was flexible about when a patient could apply. As Cornish testified:

> "Most organizations that I've worked with . . . have timelines. They say you have to apply during your episode of care or within a certain number of days afterwards. And if you don't apply, you've kind of missed that window of opportunity. The documents definitely reflected that there were time aspects to Carle's policy. That it started at 14 days and then 21 and 60, but what was clear from the documents is that it really didn't matter at what point in time, either – even before an episode of care if you asked for an application, pretty much at any point, and filled it out or worked with Carle to get it completed, you could qualify I would characterize retrospectively to the episode of care and have the charity care program apply." (Cornish 1/18/19, 64:21 – 65:16.)

The charity care program was open to all, insured and uninsured alike. (Cornish 1/18/19, 63:1-6 (characterizing this aspect as "unique" because in his experience "[u]sually charity care programs, you can't be insured").) The policy also had specific provisions designed to help those with catastrophic expenses, which would discount their bills to a greater extent than the policy typically would allow. (*Id.* at 63:7-14.) There was also an appeals process that allowed the Foundation to consider a patient's extenuating circumstances and provide them a bigger discount than the policy otherwise would grant. (Owens 1/11/19, 47:16 – 49:18 ("Sometimes mathematically [the denial] was correct, but there were unusual circumstances . . . . so there may be extenuating circumstances, and that was part of that denial and appeal process, to see if there's a reason why beyond what we are just looking at on the piece of paper that that person should qualify for charity.").) Owens testified she made exceptions in those kinds of situations. (*Id.*)

In addition, there were several circumstances in which the Foundation did not even require an application to receive charity care. (Owens 1/11/19, 38:14 – 43:12.) Patients on Medicaid or who were homeless automatically qualified for charity care throughout the relevant

period. (Tonkinson 1/8/19, 19:10 – 20:21.) Beginning in approximately mid-2004, patients who received Cunningham Township General Assistance were automatically qualified for charity care. (*Id.* at 21:8-17, 21:22 – 23:4, 27:21 – 29:3.) Similarly, in approximately 2005, a mailing was sent to all those living in Section 8 housing to attempt to auto-qualify those low-income residents for charity care. (*Id.* at 20:5 – 21:2.) And as stated by the Foundation's Director of Patient Financial Services, Renita Jackson, the charity care policy was formally revised in 2011 to provide that patients referred from the Frances Nelson federally qualified health center were automatically qualified for charity care. (Jackson 1/16/19, 71:3-20; TR 2426.)

Far from creating any obstacles, the Foundation's efforts to reach patients, the application process, and the policy itself were effective. According to Cornish, the application process worked well and was "relatively user-friendly," as evidenced by (i) a significant volume of applications, (ii) more than 84% of all applications were granted, and (iii) a high rate of completed applications. (TR 507; Cornish 1/18/19, 61:14 – 62:14, 69:18 – 73:16, 76:6 – 77:15.) He noted that "the Carle charity care program was really a free insurance program because how it worked is, if an individual qualified for the program, the whole household qualified, and they qualified for a year." (*Id.* at 65:17-24.) Cornish also testified that a Hospital patient receiving a separate bill from a doctor at Carle Clinic Association was not an obstacle to receiving charity care from the Hospital. (*Id.* at 94:24 – 97:4; 98:19 – 99:16.) To the contrary, it is a common arrangement for someone who goes to a hospital to receive a bill from both the hospital and a private doctor. (*Id.* at 94:24 – 97:4, 98:19 – 99:16.) The unique situation is the one that has existed since the merger, where the physicians' professional fees both at the Hospital and in their offices are subject to the charity care program.

Another way that the Foundation endeavored to ensure that its program was obstacle-free was through its work with the community coalition. (Cornish 1/18/19, 91:18 – 93:2.) Executives at the Foundation, including Rob Tonkinson and Pat Owens, worked closely with a coalition of community leaders beginning in late 2003 or early 2004. (Tonkinson 1/7/19, 171:12-20.) They met monthly. The Foundation representatives spent time "educating them on what our policies really were. They were helping us understand how those policies—how clearly or not clearly those policies were being understood by the community and helping us understand some of the things that … might make it more difficult for those patients to receive the … discounts to which they were entitled and which we wanted them to have." (*Id.* at 171:12-20.)

The Foundation improved its procedures in response to that feedback. The partnership with the community coalition was so successful that the group gave Tonkinson an award in early 2010. (*Id.* at 175:13-23; Tonkinson 1/8/19, 119:7-18.) Tonkinson testified that he considers his work with the community coalition "the most professionally satisfying thing I've ever done." (*Id.* at 175:13-21.)

All of these features of the charity care program and the Foundation's efforts to promote the program and reach eligible patients demonstrates that the Foundation did not erect barriers to the receipt of charity care. The Foundation did not hide its program. With justifiable pride, it shined a spotlight on it.

C. The Defendants Have Raised a Series of Red Herring Arguments, Made Out of Whole Cloth, That Do Not Affect the Foundation's Satisfaction of the Constitutional Exemption Requirement

We have just seen how the *Korzen* factors support the Foundation's entitlement to exemptions for each of the subject years. While the parties have disagreed about the continued

relevance of some of the *Korzen* factors in the aftermath of *Oswald*, even the defendants have lacked the temerity to suggest that *Oswald* announced new factors bearing on the constitutional exemption requirement. But that did not stop them from repeatedly making arguments at trial that have no relevance to any of the *Korzen* factors. How many times did we hear assertions that "exemptions are all about percentages," or that the cost of charitable activities must be broken down on a parcel-by-parcel basis, or that the Foundation's entitlement to exemptions is undermined by its strategic plan? The list goes on and on. The following discussion reveals that the one thing all of these arguments have in common, aside from their lack of connection to any *Korzen* factor, is that the defendants have simply dreamed them up.

1. <u>Comparison of charity care data to other financial information</u>

The defendants, and especially the professor whom they retained as an expert witness, have attempted to draw numerical comparisons between the Foundation's charity care activities and various metrics of financial performance. Never mind, for the time being, that this is one of many instances in which the defendants have ignored the full breadth of the Foundation's charitable purposes. (*See* Section II(C)(2) of this brief, above.) The irrelevance of the defendants' comparisons was established by the Supreme Court in *Sisters*. After noting that about five percent of the patients of the hospital seeking a property tax exemption were charity patients, and another six percent had a portion of the cost of their care paid by the county, the Court held that entitlement to exemption was unaffected by the fact that the hospital charged those who were able to pay:

> "[The hospital] does not lose its immunity by reason of the fact that those patients received by it who are able to pay are required to do so." 231 Ill. at 321.

Given that nearly 90 percent of the hospital's patients were apparently able to pay, one would expect that the hospital's charitable activities, however measured, would be small in comparison with the hospital's overall activities. The Court nevertheless declined to set any numerical standard. Instead, it stressed that charity was "dispensed to all those who needed it and applied therefor…." *Id.* at 322. That consideration was later enshrined in the fifth *Korzen* factor ("a charitable and beneficent institution is one which dispenses charity to all who need and apply for it"). *Methodist Old Peoples Home*, 39 Ill.2d at 157.

By contrast, there is no *Korzen* factor that addresses the relationship between the quantity of charity dispensed by the exemption applicant and any other indicia of financial performance. The DOR understands that no such relationship has a bearing on entitlement to exemption under the Constitution. Loren Stouffe, a supervisor in the exemption section of the DOR who was responsible for making hospital property tax exemption decisions, testified that the relationship between the hospital's charity care and other expenses was unimportant:

> "Q: In evaluating whether a hospital was entitled to exemption under the standard as it existed before Section 15-86, would it be significant whether … the percentage of the hospital's expenses [for charity care] were 5 percent instead of 2.5 percent?
>
> A: No.
>
> Q: In either event, would an exemption be appropriate?
>
> A: Yes." (Stouffe 1/14/19, 66/15-24.)

The closest any court has ever come to articulating a numerical standard for charity care is the plurality decision in *Provena*, whose opinion of course did not "command a majority of the court and, therefore, is not binding under the doctrine of *stare decisis*." 236 Ill.2d at 416-17 (partial concurrence and partial dissent). While the plurality characterized the amount of the hospital's charity care as *de minimis* (*id.* at 381-82, 397), it noted that a benefit of the bargain

standard (*i.e.*, that which was later adopted in Section 15-86) was more rigorous than anything the Court had ever determined was constitutionally required:

> "Illinois law has never required that there be a direct, dollar-for-dollar correlation between the value of the tax exemption and the value of the goods or services provided by the charity…." *Id.* at 395 (plurality decision).

In short, even under the views expressed by the *Provena* plurality, satisfaction of the quantitative exemption criteria contained in Section 15-86(c)—which *does* require that there be a direct, dollar-for-dollar correlation between the value of the tax exemption (*i.e.*, the amount of tax that would have been paid if the property were not exempt) and the value of the charitable activities conducted—would ensure a sufficient amount of charitable activities to qualify for exemption under the Constitution.

The defendants' expert witness suggested a numerical comparison that he devised out of whole cloth. Professor Hall opined that "it would be nice if a majority of the institution's income ended up going towards charity care." (M. Hall 1/28/19, 141:7-9.) However, the professor was unable to point to any statute, constitutional provision, or case that makes what he would consider "nice" a legal requirement. (*Id.* at 141:14-20.)

Mr. Fletcher was also unable to identify any standard or bench mark:

> "THE COURT: Are there any standards in any case, any statute, under any regulation, that says for not-for-profits that there has to be a certain numerical amount of patient care or percentage of whatever revenue or cost, anything within even the realm of not-for-profits? Is there a standard, is there a case that says there's a benchmark of some sort?
>
> MR. FLETCHER: No, Your Honor." (Tr. 1/25/19, 106:3-11.)

Finally, it should be recognized that there is no material difference between 2012, on the one hand, and any of the years between 2004 and 2011 in terms of the various comparisons suggested by the defendants. For example, Exhibit 536 reveals that the Foundation's total

community benefit expense in 2012, as a percentage of the Foundation's operating expenses, was barely half of the average for the period from 2004 through 2011. Similarly, the community benefit expense for 2012, expressed as a percentage of the Foundation's total income, was significantly lower than the average for 2004 through 2011. Assuming *arguendo* that the comparisons contained in Exhibit 536 are legally relevant, the DOR's issuance of an exemption for 2012 supports the Foundation's entitlement to exemptions for the subject years.

2. The Foundation does not need to tie the amount of charitable activities to any particular parcel

Throughout the trial, the defendants repeatedly argued that the exact location where the Hospital delivered services at free or discounted rates under the charity care program was crucial to determining whether a given parcel was exempt from property taxes. Relatedly, the defendants argued that any charitable services that were provided on properties other than the Four Parcels should be disregarded. The defendants' arguments improperly limit the Foundation's charitable purposes to the provision of charity care and ignore Illinois law.

The central issue in this case is whether the Foundation used the Four Parcels for its charitable purposes. The evidence showed that the Foundation used the portions of the Four Parcels for which it seeks exemptions exclusively for the operations of the Hospital. Activities occurring on the main hospital and North Tower parcels served the Foundation's charitable purposes by entailing not just the provision of charity care, but also the provision of medical care at all times and to all persons without regard to their ability to pay, the provision of important but money-losing medical services, the conducting of medical research, and the provision of medical education to healthcare professionals and the general public. (Leonard, 1/3/19, 133:2-135:12 (main hospital); 136:10-139:5 (North Tower).)

The costs associated with the charity care and other charitable activities that are reported for the Hospital include activities that were conducted at the main hospital and the North Tower. (*Id.*) The precise dollar figures associated with the main hospital buildings versus the North Tower are irrelevant. No case has ever required a parcel-by-parcel breakdown of the costs associated with charitable activities on an exempt parcel.

The other two properties involved in this litigation, the Caring Place and the Power Plant, are entitled to exemption because the ancillary services provided by those properties are reasonably necessary to the operations of the Hospital. (*See* Leonard, 1/3/19, 139:6-141:21 (Power Plant); 141:22-145:21 (Caring Place).) Under Illinois law, parcels that are reasonably necessary to accomplish the charitable purposes of a hospital may be exempt from property taxes, even when "no healing, health care, or hospital administration" takes place on those parcels. *Norwegian Amer. Hosp. v. Dep't of Revenue*, 210 Ill.App.3d 318, 321-22 (1st Dist. 1991) (concluding that 24 parcels in an area surrounding a hospital were reasonably necessary to the operation of the hospital and therefore exempt from tax). Illinois courts have found that parcels containing, for example, administrative offices, childcare facilities, and parking lots were reasonably necessary to the operations of hospital. *Northwestern Mem. Found. v. Johnson*, 141 Ill.App.3d 309, 313 (1st Dist. 1986) (parking lot); *Memorial Child Care v. Dep't of Revenue*, 238 Ill.App.3d 985, 989 (4th Dist. 1992) (childcare facility); *Evangelical Hosp. Corp. v. Dep't of Revenue*, 223 Ill.App.3d 225, 226 (2d Dist. 1991) (administrative offices). The "use of the property need not be absolutely indispensable for carrying out the purposes of the hospital" to qualify for a tax exemption. *Northwestern*, 141 Ill.App.3d at 313; *Norwegian*, 210 Ill.App.3d at 324.

Here, the Power Plant is essential to the operations of the Hospital. The Power Plant provides (and throughout the entire period provided) the main hospital campus, including the main hospital building and the North Tower, "steam for sterilization, steam for salt water, steam for heat, chilled water for cooling, centralized medical waste, general waste disposal, and "emergency generators that provided emergency power for the hospital." (Lambert 1/11/19, 195:11 – 196:22.) All of these were reasonably necessary for the operations of the hospital, but as Dr. Leonard testified, back-up power generation was "absolutely critical." (Leonard 1/3/19, 141:6-21.)

The Caring Place provided childcare services to employees of the Hospital. The provision of childcare services is (and throughout the period was) reasonably necessary to the operation of the Hospital. The Caring Place provided a service to employees and helped address issues relating to the ongoing nursing shortage. (Leonard 1/3/19, 143:2 – 144:21.) As Dr. Leonard explained, the Caring Place is important "because our people are important…. [W]hen you are dealing with your child, proximity is important, availability is important . . . having a voice in the quality of what's going on, knowing what's going on is very important." (*Id.* at 143:2 – 144:21.) *See Memorial Child Care*, *supra*, 238 Ill.App.3d at 993 ("The use of the property at issue [as a childcare center] is for a purpose reasonably necessary to accomplish the efficient administration of Memorial Medical Center").

No Illinois case supports the defendants' argument that the Foundation must quantify the amount of charity that is provided on any particular parcel. The defendants have cited *Oswald* as somehow supporting this argument. *Oswald*, 2018 IL 12203, ¶ 39. *Oswald*'s statement that "the subject property" must meet the constitutional test merely means that the parcel must be primarily used for charitable purposes, which Section II(C)(3) of this brief demonstrates to have

been the case. Neither *Oswald* nor any other case requires a parcel-by-parcel quantification of the organization's charitable activities.

Likewise, no Illinois case supports the defendants' argument that all charitable activities that occur "off-site" are irrelevant. This is a non-issue, given the millions of dollars of charitable activities that occur on the Hospital properties. In any event, it should be recognized that the defendants' argument falsely assumes there is no nexus between (1) charitable and administrative activities occurring on Hospital properties and (2) charitable activities occurring elsewhere. Unlike the "off-site" activities in the *City of Lawrenceville* case relied upon by the defendants, which bore no connection to any charitable activities conducted on the property for which exemption was sought, here the "off-site" activities are administered and managed by Hospital employees on Hospital properties on which additional charitable activities take place. *See City of Lawrenceville v. Maxwell*, 6 Ill.2d 42, 49 (1955) (denying exemption to farmland that was used to generate income to help fund operation of municipal airport).

The support and work that the Foundation provided to Frances Nelson Health Center is a good example of the kind of "off-site" activity that entails the use of Hospital property. (Emanuel 1/24/19, 246:4-23.) Cathy Emanuel testified about the work she personally did to support Frances Nelson—work that she conducted from her office at the Hospital. (*Id.* at 205:13-19.) Ms. Emanuel was asked whether there was "ever an effort to quantify the activities on the main campus that served to assist Frances Nelson," and she answered: "So, for instance, as an example, like my time in helping them plan, correct, I believe we did try to estimate that." (Id.) She also described how others from Carle Foundation Hospital also used their time to support and assist Frances Nelson. (*Id.* at 204:24 – 205:7 ("There was support from administration and from staff. So, for example, the person who … developed the facilities for

Carle Hospital went out and helped them in developing their building.").) The work that the Foundation did to support Frances Nelson was central to the Foundation's charitable mission. The fact that Frances Nelson was not located on the main hospital campus is irrelevant since the Foundation's support came from employees who worked on the main hospital campus.[6]

3. The Foundation's entitlement to exemptions is not undermined by the treatment of charity care in its strategic plans

The defendants argue that the absence of goals specifically related to charity care in the Foundation's strategic plans supports their position that the Foundation is not entitled to property tax exemptions for the Four Parcels. The defendants' assertion is based on the faulty premise that each and every important issue for the Foundation must be addressed in every strategic plan. But, as Dr. Leonard testified, strategic plans do not include every single goal or even every important goal. (Leonard 1/4/19, 35:20 – 36:12.) Simply because a plan does not contain a certain goal does not indicate that the Foundation considers such a goal to be unimportant. (*Id.*) Many important activities take place even when they are not included in the strategic plan. (*Id.*) Cathy Emanuel gave the example of nursing as an activity that is critically important to the Foundation but often was not referenced in the Foundation's strategic plans. (Emanuel 1/24/19, 197:24 – 198:22.)

Like nursing, charity care was an underlying issue and assumption for all strategic plans. (Emanuel 1/24/19, 192:23 – 193:1.) In the words of Dr. Leonard:

> "[Charity care is] always there. The strategic plan as I said changes and gets adjusted every two years, three years, five years, whatever. We've already talked about how the mission is the treatment of everyone who comes to the organization. That is the

[6] As a federally qualified health center, Frances Nelson could not be located on the hospital campus. ((Emanuel 1/24/19, 204:15-23.) For that reason, the Foundation found a site off-campus, bought the building, renovated it, and leased it to Frances Nelson for $1 per year. (Tonkinson 1/8/19, 254:22 – 255:19.)

> basis of the community care program, so it's at that mission level and is always there."

(Leonard 1/4/19, 36:13 – 37:4.) But like nursing, even though it is at the "mission level," there were instances in which charity care was referenced in the strategic plan. (Emanuel 1/24/19, 200:4 – 203:21.) For instance, charity care is expressly mentioned in the 2007 strategic plan. (TR 4082; Emanuel 1/24/19, 237:14 – 239:12.)

The evidence demonstrated that there was a goal in 2007 that charity care meet or exceed 3% of gross revenue. Pat Owens testified that having goals about the amount of charity care were difficult because the Hospital could not control how many people apply for and qualify for charity care. (Owens 1/11/19, 123:6 – 126:6; TR 2378.) Rather than imposing such metrics, the Hospital worked hard during the entire period to find ways to identify potential charity care recipients and help them qualify for charity care. (*See* Section II(C)(3)(g) of this brief, above.)

Like so many of the defendants' arguments, this argument improperly assumes that the Foundation's charitable purposes are limited to the provision of charity care. It also ignores the constitutional requirement, which concerns how the Foundation was presently using its properties—not what it was planning for future organizational initiatives. Finally, even if the defendants' argument related to the Foundation's entitlement to exemptions, the defendants ignore that there was no evidence that in 2012 the Foundation had strategic goals expressly relating to charity care. Once again, this issue provides no basis for distinguishing between the Foundation's entitlement to exemptions in 2012 and in the subject years.

4. Charity care includes costs incurred treating patients who were not determined to be entitled to charity care until after they were treated

The defendants' expert witness opined that charity care is limited to "care that is provided with no intent to bill at the time the care is provided." (M. Hall 1/28/19, 136:11-16.) Such a

standard is contrary to the Foundation's mission, which includes providing care to all without regard to ability to pay. Such a standard amounts to the opposite of that mission—it would mean providing care only after determining ability to pay. Furthermore, this standard finds no support in the law. No case in Illinois speaks to any requirement that hospitals determine charity care eligibility before the delivery of care. Finally, as even Hall conceded on cross-examination, his standard is infeasible. (M. Hall 1/28/19, 137:11-23 ("That's simply not feasible in emergency situations and in other circumstances it's not the best way of handling things, so no, I don't think that's an absolute requirement.").) Backtracking during cross-examination, Hall advocated for "reasonable leeway" and the determination of eligibility for charity care should be made "at some reasonable point in time after treatment." (*Id.* at 136:17-137:10.) He insisted, however, that "a year or more" of leeway is "too long." (*Id.*)

Like much of the professor's testimony, this position ignores the realities of the delivery of healthcare at a hospital. Several witnesses, including Dr. Leonard, Rob Tonkinson and Pat Owens, testified about the difficulty that the Hospital experienced in engaging patients in the process of applying for charity care. As Tonkinson testified, "[o]ne of the problems that I think all health systems had, and we certainly had, was differentiating between those who could pay and hadn't paid, and those who were unable to pay." (Tonkinson 1/7/19, 168:20 – 169:3; *see also* Leonard 1/3/19, 68:20-21 ("It can be very difficult to get people to interact regarding their financial or family situation….").)

The Foundation's intent throughout this period was to identify and assist patients who are eligible for the charity care program as soon as possible. (Tonkinson 1/7/19, 168:4-16.) Outreach efforts began before patients walked in the door—with advertising, press releases and press conferences. (*Id.* at 173:4-10; Robbins 1/10/19, 17:8-17:21.) They continued during the

episode of care with signs in the Hospital, brochures and applications available at every registration point, and social workers who met with patients during their inpatient stay. (Tonkinson 1/7/19, 173:11-16; Tonkinson 1/8/19, 11:6-15; Staske 1/14/19, 109:2-10, 126:9-22, 131:19 – 133:17.) These efforts continued after patients left the hospital. Five days after discharge, a self-pay account was sent to an agency, Arc Ventures, that the Hospital hired to assist patients in how to pay their bills. (Owens 1/11/19, 15:21 – 18:8.) Arc Ventures returned approximately 50% of the accounts to the Hospital to have them apply for charity care. (*Id.*) Furthermore, the collection process itself contained numerous attempts to inform people about the charity care program and to have them apply, including notices on statements, billing envelopes, and calls from patients accounts personnel. (Tonkinson, 1/8/19, 3:21 – 4:24, 5:1-13.) Finally, before any account was sent to a collection agency, the policy was for staff to "make one more phone call to try to reach out to that patient and offer them the community care program." (Owens, 1/11/19, 24:16 – 25:4.) These efforts took time. The fact that they took time and that the Foundation did not know at the time of service every patient who qualified for charity care made the delivery of the care and the ultimate provision of discounts (usually 100% discounts) no less charitable.

In any event, the Foundation provided care first and sorted out the financial details after the delivery of care both in 2012, the year for which the DOR granted exemptions, and throughout the period from 2004 through 2011. (*See also* M. Hall 1/28/19, 138:13-17 (recognizing that an alternative to requiring that eligibility for charity care be determined before the delivery of care is "simply to treat and then figure out the finances afterwards.").) In light of the DOR's issuance of exemptions for 2012, this practice is consistent with the Foundation's entitlement to exemptions throughout the entire period.

5. Charity care includes costs incurred treating patients who were not determined to be entitled to charity care until after their treatment costs had initially been deemed bad debt

The defendants have argued that amounts that were "reclassified" from bad debt to charity care should not be included in the Foundation's charity care numbers. The defendants make no pretense of having any legal support for this proposition. The "reclassification" from bad debt to charity care is merely a timing issue. (Owens 1/11/19, 128:12-19; *see also* M. Hall 1/25/19, 130:17 – 131:8 (acknowledging that the timing of classifying as charity care would not affect the average amount of charity care.) The Foundation only classified an amount as charity care once it had sufficient evidence that a patient qualified. (Tonkinson 1/8/19, 116:17 – 118:5.) The Foundation endeavored to identify accounts as charity care as soon as possible and did not send accounts to collection agencies without first offering the patient a charity care application. (Owens 1/11/19, 24:16 – 25:4; 134:18 – 135:12, 136:11-16.)

Engaging patients in the application process was difficult and time consuming. (*See* Section II(C)(3)(g), above.) There were instances in which an account was written off to bad debt, but later the Foundation learned that the patient qualified for charity care. (Owens 1/11/19, 64:20 – 65:19.) As soon as the Foundation had information that patients were unable to pay due to their financial situation, all amounts then due were deemed charity care, all efforts to collect the amount stopped, and the patient was no longer responsible for the charges—including any that had already been written off to bad debt. (Owens 1/11/19, 31:6-18.)

Classifying unpaid amounts as charity care was beneficial to the patients. As Pat Owens explained, when past debts are deemed charity care, patients' quality of life improves—they get the care they need without hesitating about how to pay, they no longer have past debts hanging over their heads, they have access to care going forward, and they do not need to worry about an impact on their credit. (Owens 1/11/19, 32:24 – 34:19.)

The defendants' attempts to eliminate from the charity care numbers the amounts that previously were classified as bad debt ignore the factual reality that such amounts were charity care—all amounts were for care that once the Foundation had information about the patient's financial situation it did not attempt to collect. This was true throughout the period at issue, 2004 through 2011, and also in 2012 when the DOR granted the Foundation's exemptions on these parcels. Defendants' argument about reclassification of bad debt does not undermine the Foundation's claims for exemptions or in any way reduce its use of the Four Parcels for charitable purposes.

D. Scope of Relief Warranted by the Foundation's Entitlement to Exemptions for 2004 Through 2011

There are three components to the relief sought by the Foundation for the exemption claims contained in Counts III through XXXIV:

1. A Declaratory Judgment that the Foundation is entitled to exemptions for the Four Parcels, for each of the years from 2004 through 2011, in accordance with the exemption percentages contained in Exhibit 205 (North Tower and Main Campus), Exhibit 312 (Power Plant), and Exhibit 304 (Caring Place);
2. An order directing the Champaign County Treasurer to refund the property tax paid by the Foundation due to the loss of its exemptions on the Four Parcels for 2004 through 2011. The principal amount of the refund, for each parcel and each year, equals the total amount of tax paid by the Foundation for that parcel times the applicable exemption percentage times the percentage of tax received by all taxing districts other than the Urbana School District No. 116 and the Urbana Park District (collectively,

the "Settling Parties"). (Because the Foundation reached a settlement with the Settling Parties in 2013, the refund has to be reduced by the portion of tax received by those parties.) A calculation of the principal amount of the refund, which comes to $8,082,395.98, is contained in Appendix A.

3. An order requiring the Champaign County Treasurer to include prejudgment interest on the amount of the refund. As explained below, the amount of prejudgment interest would total $2,150,431.41 as of August 1, 2019.

The Foundation is entitled to prejudgment interest under Section 23-20 with respect to the refunds of the tax paid due to the loss of its exemptions. Section 23-20 provides in pertinent part:

> "If the final order of … a court results in a refund to the taxpayer, refunds shall be made by the collector from funds remaining in the Protest Fund until such funds are exhausted and thereafter from the next funds collected after entry of the final order until full payment of the refund and interest thereon has been made. *Interest from the date of payment … or from the date payment is due, whichever is later, to the date of refund shall also be paid to the taxpayer* at the annual rate of the lesser of (i) 5% or (ii) the percentage increase in the Consumer Price Index For All Urban Consumers during the 12-month calendar year preceding the levy year for which the refund was made, as published by the federal Bureau of Labor Statistics." 35 ILCS 200/23-20 (emphasis added).

Section 23-20 awards interest to a taxpayer "[i]f the final order of a court … results in a refund to the taxpayer.…" 35 ILCS 200/23-20. Here, the Foundation's claims under Section 23-25(e) specifically seek "a tax refund to the Foundation … plus interest from the date of each such payment by the Foundation until the refund date." (*See* Fourth Am. Comp. pp. 16, 18, 21, 23, 25, 27, 30, 35, 37, 39, 42, 44, 46, 49, 51, 54, 56, 58, 60, 62, 64, 67, 69, 73, 75, 77, 79, 81, 84, 86, 88.)

In *Evangelical Hosp. Ass'n v. Novak,* 125 Ill.App.3d 439 (2d Dist. 1984), a hospital system was awarded prejudgment interest under Section 23-20 that accrued during the pendency of its tax injunction suit for a refund of tax paid on the system's corporate headquarters. The Foundation's refund claims in this lawsuit are brought pursuant to Section 23-25(e), which effectively "revives the traditional suit in equity for injunction as one of the primary means of establishing a claim for exemption…." *Carle I*, 396 Ill.App.3d at 340 (citation omitted). Just as Section 23-20 authorized the award of prejudgment interest to the hospital system that brought the common law tax injunction action in *Evangelical Hosp. Ass'n*, Section 23-20 likewise authorizes the award of prejudgment interest to the Foundation in its statutory tax injunction action in this litigation.

For tax paid before January 1, 2006—which in this instance is limited to tax year 2004—prejudgment interest accrues at five percent (5%) per year. *GMC v. Pappas,* 242 Ill.2d 163, 187 (2011). For tax paid after that date, interest accrues at "the annual rate of the lesser of (i) 5% or (ii) the percentage increase in the Consumer Price Index For All Urban Consumers [:CPI-U"] during the 12-month calendar year preceding the levy year for which the refund was made, as published by the federal Bureau of Labor Statistics…." 35 ILCS 200/23-20. Because the percentage increase in the CPI-U was less than 5% for each year after 2005, the applicable interest rate for those years is determined by the CPI-U. Appendix B to this brief contains a table with the interest rate for the tax payments made by the Foundation for each of the years at issue. Appendix C contains a calculation of the amount of prejudgment interest through August 1, 2019, based on the refund amount for each year contained in Appendix A and the prejudgment interest rate contained in Appendix B.

III. THE FOUNDATION IS ENTITLED TO DAMAGES FOR THE TOWNSHIP DEFENDANTS' BREACH OF THE 2002 SETTLEMENT AGREEMENT

Following a dispute regarding the tax-exempt status of another parcel, the Foundation entered into a Settlement Agreement dated March 8, 2002, with four taxing districts, including Cunningham Township and the City of Urbana. (Leonard 1/4/19, 40:21 – 41:7; *see also* TR 20.) Under the Settlement Agreement, the Foundation undertook various financial obligations to the taxing bodies. Specifically the Carle Foundation agreed to pay, and did pay, the taxing districts a total of $775,000. (Leonard 1/4/19, 42:14-15, 43:12-18.)

In return, the taxing districts agreed not to challenge the Foundation's continued entitlement to exemptions for exempt properties on the Hospital's Urbana campus. (Leonard 1/4/19, 43:12-21.) Section 4 of the Settlement Agreement provided, in pertinent part:

> "[T]he Taxing Bodies agree that, throughout the entire term of this agreement, they will not challenge either directly or indirectly, publicly or privately, and through any form of cause of action of any kind available . . . the tax exempt or charitable status of Carle [Foundation] and/or Carle Foundation Hospital and the tax exempt status of the Property or any other property currently owned and/or occupied by Carle on the date of execution of this Agreement, and for which the Illinois Department of Revenue has issued a non-homestead property tax exemption certificate to Carle approving a property tax exemption.…" (TR 20 at 4.)

As of the date of the Settlement Agreement, the Four Parcels were owned by the Foundation, and the Illinois Department of Revenue had issued non-homestead property tax exemption certificates for each of them. (Leonard 1/4/19, 44:16-23.) Thus, pursuant to the Settlement Agreement, Cunningham Township and the City of Urbana both agreed that they would not contest the Carle Foundation's entitlement to property tax exemptions on the Four Parcels "in any way, shape or form." (Tr. 1/23/19, 59:6-14.)

The Township breached that contractual obligation in two ways: (1) when the Township Assessor assessed the parcels at their full value without regard to any exemption (Leonard 1/4/19, 44:24 – 45:14, 47:3-23) and (2) by repeatedly contesting the Foundation's entitlement to exemptions in this litigation since 2007 (Leonard 1/4/19, 52:3-16; TR 512-519, TR 521). Likewise, the City of Urbana breached the contract by contesting the Foundation's entitlement to exemptions in this litigation, and in addition is liable, as a joint obligor, for the breaches by the Township. (*Id.* at 52:3-16; TR 512-519, TR 521.)[7]

The Foundation has been damaged by the breaches. Not only has the Foundation been required to pay millions of dollar in property taxes on parcels that were exempt as of the date of the Settlement Agreement, it has incurred significant expenses litigating to restore its exemptions. Those expenses have been incurred and exacerbated by the continued breaches by Cunningham Township and the City of Urbana, despite the Foundation's repeated attempts to settle and mitigate its damages—attempts that were repeatedly thwarted and dismissed out of hand by the Township and the City. (Fallon 1/14/19, 230:6 – 231:11, 237:5-19, 238:19 – 240:2.)

The Township and the City of Urbana do not dispute that the Township Assessor assessed the parcels in 2004 without regard to the properties' existing exemptions. Instead, they argue that the Township Assessor is not an agent of the Township, that the City of Urbana is not

[7] Cunningham Township and the City of Urbana have argued that all they have done is defend the claim against them. This is incorrect. The only claim against the Township Defendants is Count XXXV for breach of the settlement agreement. Nevertheless, both Cunningham Township and the City of Urbana have repeatedly insinuated themselves into the litigation on the other counts and taken positions overtly challenging the Foundation's entitlement to exemptions. These acts are not defenses against the breach of settlement agreement; rather, they are actions that breach the settlement agreement. (*See* TR 512-519, TR 521.)

liable for the Township's breach, and that the Settlement Agreement is an invalid payment-in-lieu-of-taxes (PILOT) agreement in disguise. Each of these arguments fails.

A. The Action of the Township Assessor Breached the Township's Obligation Under the Settlement Agreement

Basic principles of contract law render the Township liable for the breach of contract committed by the Township Assessor. Like other public entities, a township can only enter into and breach contracts by the acts of its officials, employees, and agents. *See, e.g.*, *People ex rel. Birkett v. Chicago*, 325 Ill.App.3d 196, 204 (2d Dist. 2001) ("A municipal corporation can act only through the actions of its agents and officials."). It makes no difference, in terms of a public entity's liability for breach of contract, if the wrongful conduct was committed by an elected official, rather than another agent or employee of the public entity.

For instance, in *Mahoney Grease Service, Inc. v. City of Joliet*, 85 Ill.App.3d 578 (3d Dist. 1980), a property owner claimed that the actions of the elected officials of the city, namely the city council, breached a settlement agreement between the property owner and the city. The Appellate Court held that the city could be liable for a breach committed by its elected councilmembers. *Id.* at 582; *see also Arlington Heights Nat'l Bank v. Village of Arlington Heights*, 33 Ill.2d 557 (1965) (concluding that the conduct of the village trustees constituted a breach of contract by the village). Likewise, Cunningham Township is liable for the breach of contract committed by the Cunningham Township Assessor.

The Township's liability for breach of contract due to the actions of the Township Assessor does not involve the doctrine of *respondeat superior*, which is limited to tort claims. *See Industrial Indemnity Co. v. Vukmarkovic*, 205 Ill.App.3d 176, 187 (1st Dist. 1990) (tort doctrine of *respondeat superior* is inapplicable to contract issues). Nevertheless, public entities can only act through their officials, employees and agents. There can be no dispute that the

Cunningham Township Assessor is a Cunningham Township official. (Chester 1/24/19, 261:24 – 263:1, 270:19-23; TR 533.) Consequently, the Township Assessor's actions can, and in this case did, constitute a breach of contract by the Township.

B. The Township and the City of Urbana Are Jointly Liable for the Breach

A contract imposing joint obligations on multiple parties makes those parties jointly and severally liable for a breach of contract committed by any of the jointly obligated parties. *See Brokerage Resources, Inc. v. Jordan*, 80 Ill.App.3d 605, 608 (1st Dist. 1980). "If two or more parties to a contract owe a joint and several duty of performance to another party to the contract and the duty is not performed, each may be liable for the entire damages resulting from the failure to perform." *Id.*; *see also Pritchett v. Asbestos Claims Mgmt. Corp.*, 332 Ill.App.3d 890, 898 (5th Dist. 2002). The essence of joint and several liability is that all parties sharing the same obligation under an agreement are liable when any of those parties breaches the agreement. *Brokerage Resources*, 80 Ill.App.3d at 608.

The Settlement Agreement imposes the obligation upon the "Taxing Bodies" to refrain from taking any action that challenges directly or indirectly the Foundation's entitlement to property tax exemptions. (TR 20.) By imposing that obligations on the "Taxing Bodies" collectively, the Settlement Agreement imposes a joint obligation on each of the Taxing Bodies. Accordingly, as a matter of law, when one of the Taxing Bodies breached that obligation, all of the Taxing Bodies became jointly and severally liable for the breach. Thus, here, when the Township breached the obligation by the actions of its elected official, the City of Urbana became jointly and several liable for that breach.

C. The 2002 Settlement Agreement Is Not an Unenforceable Payment-in-Lieu-of-Taxes Agreement in Disguise

Although the Township and City of Urbana assert that the Settlement Agreement is a PILOT agreement, they cite no evidence for this proposition. The Settlement Agreement is not, and does not purport to be, a PILOT agreement. It is an agreement to settle a dispute—nothing more, nothing less. Under Section 15-30, "[a]ny taxing district may enter into a mutually acceptable agreement with the owner of any exempt property whereby the owner agrees to make payments to the taxing district *for the direct and indirect cost of services provided by the district*." 35 ILCS 200/15-30 (emphasis added). There is nothing in the Settlement Agreement that suggests that the $775,000 in payments by the Foundation represented compensation for the direct or indirect cost of services provided by the district. Indeed, it is difficult to fathom what services the Urbana Free Library or even the School and Park Districts provided to the Foundation. (TR 20 at 2 (showing the Foundation agreed to "make community service endowment grants" to Urbana Free Library Children's Programs, Urbana School District #16, and Urbana Park District).) The Settlement Agreement on its face shows that it is not, and was never intended to be, a PILOT Agreement.

The Township and the City of Urbana would like the agreement to be deemed a PILOT so the agreement's term could not exceed 5 years. Their effort to recharacterize the Settlement Agreement is futile, but in any event such a temporal restriction would not absolve them of the consequences of the Township Assessor's conduct, which breached the Settlement Agreement within two years of when it was signed.

D. Cunningham Township and the City of Urbana Caused, and Are Liable for, Damages Resulting from Their Breaches

The breaches of Settlement Agreement directly caused the Foundation to pay property taxes on parcels that had been exempt. Assuming that those exemptions are restored via Counts III through XXXIV, the Foundation will obtain a refund of the tax it paid due to the loss of its exemptions, less the portion of that tax that was paid to the School District or the Park District. *See* Section II(D) of this brief, above. The Township and the City will remain liable for the taxes that the School District and Park District were permitted to retain under their settlement agreement with the Foundation.[8] Specifically, the School District retained $5,155,500 and the Park District retained $933,500. *See* Appx. D, pp. 1-3. The Foundation's damages for those non-refunded taxes therefore come to $6,089,000.

In addition, the Foundation is entitled to reasonable attorneys' fees incurred due to the litigation that resulted from the Township's breach of the Settlement Agreement. The assessment of the main hospital, North Tower, and Power Plant properties based on their full fair market value was the precipitating cause of this litigation. Damages for breach of contract include reasonable attorneys' fees incurred in litigation with third parties. *Ritter v. Ritter*, 381 Ill. 549, 554 (1943) ("Where the wrongful acts of a defendant involve the plaintiff in litigation with third parties …, the plaintiff can then recover damages against such wrongdoer, measured by the reasonable expenses of such litigation, including attorney fees."). *See also Sorenson v. Fio Rito*, 90 Ill.App.3d 368, 372-74 (1st Dist. 1980) (awarding attorneys' fees incurred by

[8] A copy of that settlement agreement, which was previously filed with the court, is attached as Appendix D. The Court is requested to take judicial notice of that agreement. *See* Ill. R. Evid. 201.

Plaintiff in obtaining refunds of tax penalties that were assessed due to the defendant's negligence).

The Township's breach of the 2002 Settlement Agreement resulted in litigation to restore the Foundation's exemptions that it brought against third parties to that contract, namely, the Department of Revenue, the Champaign County Board of Review, the Champaign County Supervisor of Assessments, and the County Treasurer. The Foundation therefore requests entry of Judgment on Count XXXV awarding reasonable attorneys' fees, in accordance with the procedure contained in the proposed Judgment attached as Appendix E.

IV. CONCLUSION

This is not a close case. For more than a century, Illinois not-for-profit hospitals have routinely obtained property tax exemptions under the Illinois Constitution as long as they provided care to all regardless of ability to pay, publicized the existence of their charity care programs, and did not operate for the private benefit of hospital management. As evidenced by the exemptions issued by the DOR to The Carle Foundation for 2012, nothing has changed in terms of hospitals' eligibility for exemptions under Illinois law.

The position asserted by the defendants in this case, however, would change everything. Make no mistake about it: there is not a hospital in this State that would receive an exemption under the standards asserted by the defendants. The irony is that they have taken this extreme position with respect to a hospital system that has an extraordinarily generous charity care program, that has gone to extraordinary lengths to qualify patients and their families for that program, that is providing an extraordinary amount of free and discounted care, and that is also avidly pursuing additional charitable purposes that have provided important health services to the

entire community, helped educate healthcare professionals and the general public, and improved the quality of care with groundbreaking translational research.

Especially under the framework for deciding Section 23-25(e) claims articulated by the Appellate Court in *Carle II*, but even under a *de novo* consideration, the Foundation is entitled to exemptions for the Four Parcels for 2004 through 2011. In addition, the City of Urbana and Cunningham Township should be held accountable for precipitating this litigation, and for opposing the Foundation's entitlement to exemptions in these proceedings, in flagrant disregard of their obligations under the 2002 Settlement Agreement.

Accordingly, the Foundation respectfully requests that Judgment be entered in its favor on Counts III through XXXV of its Fourth Amended Complaint in accordance with the proposed Judgment attached as Appendix E to this brief.

Dated: March 22, 2019

Respectfully submitted,

THE CARLE FOUNDATION

By: /s/ Steven F. Pflaum
One of Its Attorneys

Steven F. Pflaum
Collette A. Woghiren
Neal, Gerber & Eisenberg LLP
2 N. LaSalle Street, Suite 1700
Chicago, IL 60602
(312) 269-8000
spflaum@nge.com
cwoghiren@nge.com

Amy G. Doehring
Catherine A. Miller
Akerman LLP
71 S. Wacker Drive, 47th Floor
Chicago, IL 60606
(312) 634-5700
amy.doehring@akerman.com
catherine.miller@akerman.com

William J. Brinkmann
Thomas, Mamer & Haughey, LLP
30 Main Street, 5th Floor
P.O. Box 560
Champaign, IL 61824
(217) 531-6427
wjbrinkm@tmh-law.com

Attorneys for Plaintiff The Carle Foundation

CERTIFICATE OF SERVICE

I, Amy G. Doehring, an attorney, hereby certify that before 8:00 p.m. on March 22, 2019, I caused a true and correct copy of the foregoing **Opening Post-Trial Brief by The Carle Foundation** to be electronically filed and served by e-mail on the following counsel of record:

Joel D. Fletcher
Assistant State's Attorney
Donna M. Davis
Assistant State's Attorney
Office of the Champaign County
State's Attorney
JFletcher@co.champaign.il.us
DDavis@co.champaign.il.us

David F. Buysse
Senior Assistant Attorney General
Office of the Attorney General
DBuysse@atg.state.il.us

Frederic M. Grosser
frederic.grosser@gmail.com

/s/ Amy G. Doehring
Amy G. Doehring

29074554.1

Calculation of Amount of Tax Paid by The Carle Foundation Due to the Loss of Its Exemptions, Excluding Sums Paid to Urbana School District No. 116 and the Urbana Park District

	2004	2005	2006	2007	2008	2009	2010	2011
Total Tax on North Tower Property[1] (From TR 0471)	$636,497.90	$724,662.56	$858,143.00	$1,122,741.04	$1,449,351.46	$1,489,099.70	$1,516,129.48	$1,555,102.26
School District 116 Share (From TR 0471)	$335,951.76	$379,022.96	$453,438.44	$593,268.38	$765,770.84	$770,865.46	$787,022.62	$808,313.54
Urbana Park District Share (From TR 0471)	$56,016.98	$63,360.68	$73,863.94	$96,309.26	$122,698.84	$149,145.64	$153,287.58	$167,453.08
Share of Tax Paid to School & Park Districts (the "Settling Parties")	61.5821%	61.0468%	61.4469%	61.4191%	61.3012%	61.7830%	62.0204%	62.7461%
Share of Tax Paid to Other Taxing Districts	38.4179%	38.9532%	38.5531%	38.5809%	38.6988%	38.2170%	37.9796%	37.2539%
Total Tax Paid Due to Loss of Exemptions (From TR 0504)	$1,474,715.42	$1,616,387.21	$1,770,405.25	$2,414,691.85	$2,800,948.78	$2,935,468.65	$3,857,448.80	$4,298,156.91
Amount of Tax Paid Due to Loss of Exemptions, Net of Settling Parties' Share	**$566,554.77**	**$629,633.79**	**$682,545.88**	**$931,609.42**	**$1,083,933.87**	**$1,121,846.81**	**$1,465,042.02**	**$1,601,229.42**

Total Amount of Tax Paid Due to Loss of Exemptions, Net of Settling Parties' Share: $8,082,395.98

[1] Because the taxing districts' percentage shares of the tax paid by the Foundation would be the same for all Four Parcels, for convenience the Settling Parties' shares were determined by reference to the tax paid for the North Tower only. However the figures show above for tax paid due to loss of exemptions include sums paid for all Four Parcels.

Prejudgment Interest Rates for Each Tax Year at Issue

Tax Year	Prejudgment Interest Rate[1]
2004	5%
2005	3.3%
2006	3.4%
2007	2.5%
2008	4.1%
2009	0.1%
2010	2.7%
2011	1.5%

[1] A 5% interest rate applies to payments made before January 1, 2006. *GMC v. Pappas,* 242 Ill.2d 163, 1871 (2011). The CPI-U percentage increase applies to payments in subsequent years. 35 ILCS 200/23-20. The CPI-U rates contained in this table come from *Consumer Price Index U.S. City Average, All Urban Consumers (CPI-U)*, U.S. Bureau of Labor Statistics, https://www.bls.gov/regions/midwest/data/consumerpriceindexhistorical_us_table.pdf (last visited March 15, 2019).

Prejudgment Interest Calculation

Tax Year	Amount of Tax to Be Refunded (from Appx. A)	Payment Due Dates	Prejudgment Interest Rate (from Appx. B)	Prejudgment Interest Through August 1, 2019
2004	$566,554.77	June 1 and September 1, 2005	5%	$398,062.93
2005	$629,633.79	June 1 and September 1, 2006	3.3%	$271,194.48
2006	$682,545.88	June 1 and September 4, 2007	3.4%	$279,591.36
2007	$931,609.42	June 2 and September 2, 2008	2.5%	$257,277.34
2008	$1,083,933.87	June 1 and September 1, 2009	4.1%	$446,604.51
2009	$1,121,846.81	June 1 and September 1, 2010	0.1%	$10,151.95
2010	$1,465,042.02	June 1 and September 1, 2011	2.7%	$318,399.79
2011	$1,601,229.42	June 1 and September 4, 2012	1.5%	$169,145.05
Total	**$8,082,395.98**			**$2,150,431.41**

Appendix C

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT ("Agreement") is made this __ day of _____, 2013, by and among THE CARLE FOUNDATION, an Illinois not-for-profit corporation ("Carle Foundation"), URBANA SCHOOL DISTRICT #116 ("School District"), an Illinois School District, and the URBANA PARK DISTRICT ("Park District"), an Illinois Park District (collectively, "these parties");

WHEREAS, Carle Foundation owns numerous properties consisting of, or otherwise relating to or used in conjunction with, a Hospital operated by Carle Foundation's controlled affiliate, Carle Foundation Hospital (another Illinois not-for-profit corporation) in the City of Urbana and Cunningham Township, Champaign County, Illinois;

WHEREAS, Carle Foundation filed suit in Champaign County Circuit Court, Case No. 08-L-202, ("2008 Lawsuit"), seeking (among other relief) the following as set forth in its Third Amended Complaint:

a. To restore charitable property tax exemptions pursuant to Section 23-25(e) of the Property Tax Code for four parcels of real property ("Four Parcels") in Urbana, Illinois, that are owned by Carle Foundation and that are commonly known and numbered as: (i) 611 West Park, PIN 91-21-08-310-001; (ii) 809 West Park Street, PIN 91-21-08-304-018; (iii) 503 North Coler, PIN 91-21-08-307-005; and (iv) 607 North Orchard Street, PIN 91-21-08-309-005.

b. To obtain refunds of property taxes paid on the Four Parcels for tax years 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011.

c. To obtain monetary damages against Urbana School District #116, Urbana Park District, the City of Urbana, and Cunningham Township for an alleged breach of an earlier settlement agreement ("2002 Agreement") by the Assessor for Cunningham Township;

WHEREAS, Carle Foundation also filed suit on May 31, 2013, in Champaign County Circuit Court, Case No, 13-CH-170, ("2013 Lawsuit"), to restore charitable property tax exemptions pursuant to Section 23-25(e) of the Property Tax Code with respect to twenty-nine other properties owned by Carle Foundation for tax years 2007, 2008, 2009, 2010 and 2011, and to obtain refunds of the property taxes paid for those years;

WHEREAS, the Park District received a total of approximately one million, nine hundred forty-six thousand dollars ($1,946,000) from tax payments made by the Carle Foundation for tax years 2004 through 2011 with respect to Carle Foundation property in Urbana, Illinois, that had been exempt from taxation ("Park District Tax Revenues"),

WHEREAS, the School District received a total of approximately ten million, eight hundred ninety-three thousand dollars ($10,893,000) from tax payments made by the Carle Foundation for tax years 2004 through 2011 with respect to Carle Foundation property in Urbana, Illinois, that had been exempt from taxation ("School District Tax Revenues"),

WHEREAS, these parties, without any suggestion or admission of liability or of the strength or weakness of the claims or defenses asserted in the 2008 Lawsuit or the 2013 Lawsuit, desire to settle between and among themselves all pending and potential claims, disputes, causes of action, controversies and issues relating in any manner to tax payments made by Carle Foundation and received by the Park District and the School District (collectively, the "Districts") for tax years 2004 through 2011 for properties owned by Carle Foundation located in Urbana, Illinois; and

WHEREAS, these parties, without any suggestion or admission of liability or of the strength or weakness of the claims or defenses asserted in the 2008 Lawsuit or the 2013 Lawsuit, desire to settle between and among themselves all pending and potential claims, disputes, causes of action, controversies and issues asserted, arising out of, or otherwise relating in any manner to the 2002 Agreement, the 2008 Lawsuit, and/or the 2013 Lawsuit.

NOW, THEREFORE, for good and valuable consideration, the recital provisions set forth above are incorporated into the body of this Agreement as if fully set forth herein, and these parties agree as follows:

1. PAYMENT BY PARK DISTRICT. After entry of an order dismissing with prejudice the claims asserted by Carle Foundation against the Park District in the 2008 Lawsuit pursuant to the provisions of this Agreement, the Park District will pay to Carle Foundation the total sum of one million, twelve thousand, five hundred dollars ($1,012,500) in accordance with the following schedule:

a. Two hundred fifty thousand dollars ($250,000) by the first of the month following entry of the dismissal order;

b. One hundred fifty two thousand, five hundred dollars ($152,500) by July 1, 2014;

c. One hundred fifty two thousand, five hundred dollars ($152,500) by July 1, 2015;

d. One hundred fifty two thousand, five hundred dollars ($152,500) by July 1, 2016;

e. One hundred fifty two thousand, five hundred dollars ($152,500) by July 1, 2017; and

f. One hundred fifty two thousand, five hundred dollars ($152,500) by July 1, 2018.

The Park District may retain and use any Park District Tax Revenues exceeding the amounts set forth above payable to Carle Foundation, as well as any interest earned on any Park District Tax Revenues. The Park District may not reduce or setoff, against the foregoing payments, any sums owed the Park District by Carle Foundation. The Park District may make payments in advance of the due dates set forth above. No interest shall be payable in connection with any sums that are timely paid in accordance with or earlier than the dates set forth in that schedule. Carle Foundation will be entitled to interest at the rate of one-half percent (0.5%) per month, beginning on the due date, on any payment that is not made within thirty (30) days of that due date. The respective rights and obligations of the Park District and Carle Foundation as to the foregoing payments shall not be affected by any adjudicated or negotiated resolution of any of the claims asserted in the 2008 Lawsuit or the 2013 Lawsuit.

2. PAYMENT BY SCHOOL DISTRICT. After entry of an order dismissing with prejudice the claims asserted by Carle Foundation against the School District in the 2008 Lawsuit pursuant to the provisions of this Agreement, the School District will pay to Carle Foundation the total sum of five million, seven hundred thirty seven thousand, five hundred dollars ($5,737,500) in accordance with the following schedule:

a. Three million, seven hundred fifty thousand dollars ($3,750,000) by the first of the month following entry of the dismissal order;

b. Three hundred ninety-seven thousand, five hundred dollars ($397,500) by July 1, 2014;

c. Three hundred ninety-seven thousand, five hundred dollars ($397,500) by July 1, 2015;

d. Three hundred ninety-seven thousand, five hundred dollars ($397,500) by July 1, 2016;

e. Three hundred ninety-seven thousand, five hundred dollars ($397,500) by July 1, 2017; and

f. Three hundred ninety-seven thousand, five hundred dollars ($397,500) by July 1, 2018.

The School District may retain and use any School District Tax Revenues exceeding the amounts set forth above payable to Carle Foundation, as well as any interest earned on any School District Tax Revenues. The School District may not reduce or setoff, against the foregoing payments, any sums owed the School District by Carle Foundation. The School District may make payments in advance of the due dates set forth above. No interest shall be payable in connection with any sums that are timely paid in accordance with or earlier than the dates set forth in that schedule. Carle Foundation will be entitled to interest at the rate of one-half percent (0.5%) per month, beginning on the due date, on any payment that is not made within thirty (30) days of that due date. The respective rights and obligations of the School District and Carle Foundation as to the foregoing payments shall not be affected by any adjudicated or negotiated resolution of any of the claims asserted in the 2008 Lawsuit or the 2013 Lawsuit.

3. CARLE FOUNDATION'S RELEASE AND WAIVER. Carle Foundation agrees to accept the stated sums from the Park District and the School District in total satisfaction of any and all claims Carle Foundation has asserted, could have asserted, or believes at any time in the future that it could assert against the Districts arising out of or relating to breach of the 2002 Agreement, reimbursement for amounts paid by Carle Foundation pursuant to the 2002 Agreement or in real estate taxes for tax years 2004 through 2011 on any of its real estate in the City of Urbana, Urbana School District or Urbana Park District boundaries, for interest on any of the foregoing sums, and for attorneys' fees and costs of suit incurred by Carle Foundation in the 2008 Lawsuit or the 2013 Lawsuit. Carle Foundation fully and completely waives, releases, and forever discharges the Districts, and each of their current or previous Board members, officers, employees, agents, and attorneys (collectively, the "Districts' Releasees") from any and all claims, charges, actions, causes of action, damages, interest, attorneys' fees, allegations, or demands (collectively, "Claims") that were, or could ever be,

asserted in a claim or lawsuit by Carle Foundation relating to the 2002 Agreement including, but not limited to, Claims for reimbursement of amounts paid by Carle Foundation and Claims of breach of the 2002 Agreement. Carle Foundation specifically waives any Claims it asserted, could have asserted, or believes at any time in the future that it could assert for breach of the 2002 Agreement against the Districts on any basis, including the theory of joint and several liability. Carle Foundation fully and completely waives, releases, and forever discharges the Districts' Releasees from any and all Claims that were, or could ever be, asserted by Carle Foundation related to the assessments on any of its real estate in the City of Urbana, Urbana School District or Urbana Park District boundaries, for tax years 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011, and Claims for reimbursement for any other amounts paid by Carle Foundation in real estate taxes for tax years 2004 through 2011 on any of its real estate in the City of Urbana, Urbana School District or Urbana Park District boundaries, for interest on any of the foregoing sums, and for attorneys' fees and costs of suit incurred by Carle Foundation with respect to any such claim or lawsuit. Nothing in this paragraph is intended, or shall be construed, to impair Carle Foundation's ability to enforce the terms of this Agreement or to assert any Claims against any persons other than the Districts' Releasees.

4. THE DISTRICTS' RELEASES AND WAIVERS. The Districts, and each of them, fully and completely waive, release, and forever discharge Carle Foundation and its current or former affiliates (*i.e.*, legal entities controlled by Carle Foundation or in which Carle Foundation possesses an ownership interest), and any of their Board members, officers, employees, agents, and attorneys (collectively, the "Carle Releasees") from any and all Claims that were, or could ever be, asserted against the Carle Releasees, or any of them, by the Districts arising out of or relating to (a) the 2002 Agreement, including but not limited to any Claims for additional payments under or breach of that agreement, (b) property taxes owed by Carle Foundation for tax years 2004 through 2011 for any of its real estate in the City of Urbana, Urbana School District or Urbana Park District boundaries, including but not limited to any Claims that Carle Foundation is not entitled to a refund of taxes paid, and (c) the 2008 Lawsuit or the 2013 Lawsuit. Nothing in this paragraph is intended, or shall be construed, to impair the Districts' ability to enforce the terms of this Agreement or to assert any Claims against any persons other than the Carle Releasees.

5. INDEMNIFICATION AND HOLD HARMLESS AGREEMENTS.

(a) These parties acknowledge that Carle Foundation's claims in the 2008 Lawsuit and/or the 2013 Lawsuit might cause the Champaign County Collector, Treasurer, Clerk, or other county official to pay a refund to Carle Foundation for all or part of taxes paid for tax years 2004, 2005, 2006, 2007, 2008, 2009, 2010, and 2011. If, notwithstanding Carle Foundation's waiver of its right to receive a refund from the Park District and School District, the Champaign County Collector, Treasurer, Clerk, or other county official issues a refund to Carle Foundation for tax years 2004, 2005, 2006, 2007, 2008, 2009, 2010, and/or 2011, and any portion of that refund is paid or withheld from Park District and School District funds, or results in a reduction of Park District or School District property tax revenue, Carle Foundation agrees, within 30 days of receipt and determination of the amount of such funds, to reimburse the Park District and School District for all sums that were paid or withheld from or that reduced, their respective property tax revenue; provided, however, that Carle Foundation shall not be required to reimburse any of the Districts that have not fully complied with their then-current payment obligations under Paragraphs 1 or 2 of this Agreement. After 30 days from the due date of any

reimbursement owed by Carle Foundation, the Districts will be entitled to interest on any unpaid reimbursement at the rate of one-half percent (0.5%) per month.

(b) Additionally, Carle Foundation agrees to indemnify the School District and Park District and the Districts' Releasees as to any (i) judgments entered against either or both of the Districts, (ii) interest that accrues on any such judgment against either or both of the Districts, and (iii) liability of either or both of the Districts for any amounts, including interest, pursuant to any settlement agreement entered into with the consent of Carle Foundation; provided that any such judgments, interest, or liability derives from a Claim by any person or entity relating to: (a) the 2008 or 2013 Lawsuits, (b) the assessments giving rise to the 2008 or 2013 Lawsuits, (c) the 2002 Agreement, and/or (d) the dismissal of the Districts from the 2008 Lawsuit. Carle Foundation agrees to discharge the indemnification obligation contained in the preceding sentence by paying directly to any third parties entitled to payment, pursuant to a settlement agreement or a final judgment not subject to further appellate review, all sums to which the indemnification obligation applies.

(c) In accordance with (i) the provisions regarding indemnification set forth in subparagraphs (a) and (b), above, and (ii) the provisions regarding the defense of the Park District and the School District set forth in Paragraphs 8 and 9, below, Carle Foundation agrees to hold harmless the Districts and the Districts' Releasees as to Claims filed against either or both of the Districts or the Districts' Releasees by any person or entity relating to: (a) the 2008 or 2013 Lawsuits, (b) the assessments giving rise to the 2008 or 2013 Lawsuits, (c) the 2002 Agreement, and/or (d) the dismissal of the Districts from the 2008 Lawsuit.

6. PRIOR AGREEMENTS. This Agreement contains the complete and entire agreement between these parties and supersedes any prior or contemporaneous understandings, agreements or representations by or between these parties, written or oral, which may have related to the subject matter hereof in any way. These parties each acknowledge and agree that (a) they were not induced to enter into this Agreement by any representation, promise, or statement made by any of the other parties other than what is expressly stated in this Agreement, and (b) they each waive with respect to the others any and all duties and obligations that might otherwise have arisen under the 2002 Agreement, it being the intent and understanding of these parties that the 2002 Agreement shall be void and of no further force and effect between and/or among them. Nothing in this paragraph is intended, or shall be construed, to impair Carle Foundation's ability to assert any and all Claims against any persons other than the Districts' Releasees arising out of or relating to the 2002 Agreement.

7. DISMISSAL OF CARLE FOUNDATION CLAIMS AGAINST THE DISTRICTS. Within five (5) business days of the approval and signature of this Settlement Agreement by each of these parties, Carle Foundation agrees to file a motion to dismiss with prejudice the School District and the Park District as party defendants from the 2008 Lawsuit, and the School District agrees to file a motion to dismiss with prejudice its counterclaim in the 2008 Lawsuit against Cunningham Township and the Cunningham Township Assessor. Carle Foundation and the School District agree to seek a hearing on their motions to dismiss as soon as reasonably possible. Carle Foundation agrees never to join the School District or Park District as defendants in the 2013 Lawsuit and hereby waives any right it may otherwise have to do so.

8. DEFENSE OF PARK DISTRICT. At its sole cost and expense and via counsel of its selection, Carle Foundation agrees to provide representation and defense to the Park District with respect to any Claims against the Park District with respect to the 2008 Lawsuit, the 2013 Lawsuit, the assessments giving rise to the 2008 or 2013 Lawsuits, the 2002 Agreement, or the enforcement or legality of this Agreement. With respect to any Claims to which this defense obligation applies, and to the fullest extent allowed by law, the Park District agrees to waive any conflicts of interest associated with its representation, either individually or jointly, by counsel that represents the School District and the Carle Foundation, or either of them, including but not limited to the law firms of McDermott, Will & Emery LLP, Neal, Gerber & Eisenberg LLP, and Thomas, Mamer & Haughey LLP, or any lawyers with any of those firms. This defense obligation shall not apply to (a) representation of any representatives, agents, or employees of the Park District in connection with their being called as witnesses (at depositions or otherwise) in conjunction with the 2008 or 2013 Lawsuits, (b) any Claims by Carle Foundation for breach of this Agreement, and (c) any lawsuit or other proceeding, except for the 2008 and 2013 Lawsuits, in which the Park District has asserted, or wishes to assert, any Claims, including any counterclaims, cross-claims, or third-party claims. Nothing in the preceding sentence is intended, or shall be construed, to require the Carle Foundation to defend the Park District in the 2008 or 2013 Lawsuits if the Park District files any counterclaims, cross-claims, or third-party claims in those lawsuits after the date of this Agreement.

9. DEFENSE OF SCHOOL DISTRICT. At its sole cost and expense and via counsel of its selection, Carle Foundation agrees to provide representation and defense to the School District with respect to any Claims against the School District with respect to the 2008 Lawsuit, the 2013 Lawsuit, the assessments giving rise to the 2008 or 2013 Lawsuits, the 2002 Agreement, or the enforcement or legality of this Agreement. With respect to any Claims to which this defense obligation applies, and to the fullest extent allowed by law, the School District agrees to waive any conflicts of interest associated with its representation, either individually or jointly, by counsel that represents the Park District and the Carle Foundation, or either of them, including but not limited to the law firms of McDermott, Will & Emery LLP, Neal, Gerber & Eisenberg LLP, and Thomas, Mamer & Haughey LLP, or any lawyers with any of those firms. This defense obligation shall not apply to (a) representation of any representatives, agents, or employees of the School District in connection with their being called as witnesses (at depositions or otherwise) in conjunction with the 2008 or 2013 Lawsuits, (b) any Claims by Carle Foundation for breach of this Agreement, and (c) any lawsuit or other proceeding, except for the 2008 and 2013 Lawsuits, in which the School District has asserted, or wishes to assert, any Claims, including any counterclaims, cross-claims, or third-party claims. Nothing in the preceding sentence is intended, or shall be construed, to require the Carle Foundation to defend the School District in the 2008 or 2013 Lawsuits if the School District files any counterclaims, cross-claims, or third-party claims in those lawsuits after the date of this Agreement.

10. REPRESENTATIONS AND WARRANTIES OF CARLE FOUNDATION. Carle Foundation represents and warrants that it is a duly organized, validly existing not for profit corporation in good standing under the laws of the State of Illinois and has full power and authority to enter into this Agreement. Carle Foundation further represents and warrants that the person executing and delivering this Agreement is acting pursuant to proper authorization and that this Agreement is the valid and binding obligation of Carle Foundation, enforceable in accordance with its terms.

11. REPRESENTATIONS AND WARRANTIES OF SCHOOL DISTRICT AND PARK DISTRICT. The Park District and School District represent and warrant that (a) they are units of local government organized in good standing under the laws of the State of Illinois, (b) they have full power and authority to enter into this Agreement, (c) their respective governing boards have authorized the execution of this Agreement at duly called meetings, and (d) the persons executing and delivering this Agreement on behalf of the Park District and School District, respectively, are acting pursuant to proper authorization and that this Agreement is the valid and binding obligation of the entity on whose behalf they have signed, enforceable in accordance with its terms.

12. PRESS RELEASE. These parties agree to issue a mutually acceptable press release about this settlement in connection with the approval and signing of this Agreement by their respective governing boards. These parties each acknowledge that after all these parties have signed this agreement, each of them may further discuss and/or circulate this Agreement and the terms of settlement publicly, whether by officers, elected officials, administrators, employees, agents and/or otherwise, it being the understanding of these parties that the terms of this Agreement shall not be construed to be confidential in any manner.

13. CONSTRUCTION. All headings used in this Agreement are for convenience and reference only and have no significance in the interpretation or construction of this Agreement. Unless otherwise required by context, the singular shall include the plural, and vice-versa as the context may require.

14. MODIFICATION. No amendment, modification, restatement, supplement, termination or waiver of or to, or consent to any departure from, any provisions of this Agreement shall be effective unless the same shall be in writing and signed on behalf of all these parties. Any waiver of any provision of this Agreement and any consent to any departure by a party from the terms of any provisions of this Agreement shall be effective only in the specified instance and for the specific purpose for which given.

15. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns.

16. ATTORNEYS' FEES. Each prevailing party shall be entitled to recover its reasonable attorneys' fees and other expenses in connection with any litigation between any of these parties relating to enforcement or validity of this Agreement.

17. SIGNATURES. This Agreement may be signed in counterparts and shall be as valid as if the signatures upon each counterpart were upon the same document.

IN WITNESS WHEREOF, these parties have caused this Agreement to be executed as of the date set forth above.

THE CARLE FOUNDATION

By: _____

Its: CEO

Date: 10/11/13

URBANA SCHOOL DISTRICT # 116

By: _____

Its: President

Date: 10/15/13

URBANA PARK DISTRICT

By: _____

Its: President

Date: 10/15/2013

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE CARLE FOUNDATION, an Illinois not-for-profit corporation,	)	
Plaintiff,	)	
v.	)	Case No. 08 L 0202
ILLINOIS DEPARTMENT OF REVENUE; BRIAN HAMER, in His Official Capacity as Director of the Illinois Department of Revenue; THE CHAMPAIGN COUNTY BOARD OF REVIEW; ELIZABETH BURGENER-PATTON, PAUL SAILOR, and ROBERT ZEBE, in Their Official Capacity as Members of the Champaign County Board of Review; PAULA BATES, in Her Official Capacity as Champaign County Supervisor of Assessments; CUNNINGHAM TOWNSHIP; DAN STEBBINS, in His Official Capacity as Cunningham Township Assessor; JOHN FARNEY, in His Official Capacity as Champaign County Treasurer; and THE CITY OF URBANA,	)	Hon. Randall B. Rosenbaum
Defendants,	)	
and	)	
CHAMPAIGN COUNTY,	)	
Intervenor-Defendant.	)	

[PROPOSED] JUDGMENT

This matter coming before the Court following a trial on the merits, post-trial briefing, and argument, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

1. With respect to Count I of the Fourth Amended Complaint, in accordance with the Order entered by this Court on December 4, 2018, judgment is entered in favor of Defendants the Champaign County Board of Review and its members, the Champaign County Supervisor of

Assessments, the Champaign County Treasurer, and Champaign County (collectively, the "County Defendants") and Defendant Cunningham Township Assessor, and against Plaintiff The Carle Foundation (the "Foundation"), dismissing with prejudice the claim asserted in Count I.[1]

2. With respect to Count II of the Fourth Amended Complaint, pursuant to the decision of the Illinois Supreme Court in this cause, *Carle Foundation v. Cunningham Township*, 2017 IL 120427, judgment is entered in favor of Defendants Illinois Department of Revenue (the "DOR") and Brian Hamer, in his official capacity as the Director of the DOR (the DOR and Brian Hamer are collectively referred to as the "State Defendants") and the County Defendants, and against the Foundation, dismissing with prejudice the claim asserted in Count II.

3. With respect to Counts III-X of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 ILCS 200/23-25(e), that the Foundation is entitled to exemptions for the Hospital's Main Campus parcel (PIN 91-21-08-310-001) for tax assessment years 2004 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

a. 2004 Tax Assessment Year: 62.27%

b. 2005 Tax Assessment Year: 62.30%

c. 2006 Tax Assessment Year: 62.27%

d. 2007 Tax Assessment Year: 61.85%

e. 2008 Tax Assessment Year: 61.97%

f. 2009 Tax Assessment Year: 62.74%

[1] The Foundation's proffer of a Judgment dismissing Count I is intended to ensure that a final Judgment is entered disposing of all claims. The Foundation does not intend to waive the claim asserted in Count I.

g. 2010 Tax Assessment Year: 90.99%

h. 2011 Tax Assessment Year: 99.68%

4. With respect to Counts XI-XVIII of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 ILCS 200/23-25(e), that the Foundation is entitled to exemptions for the Power Plant parcel (PIN 91-21-08-307-004 through 91-21-08-307-006) for tax assessment years 2004 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

a. 2004 Tax Assessment Year: 63.99%

b. 2005 Tax Assessment Year: 64.01%

c. 2006 Tax Assessment Year: 64.15%

d. 2007 Tax Assessment Year: 69.39%

e. 2008 Tax Assessment Year: 65.33%

f. 2009 Tax Assessment Year: 66.14%

g. 2010 Tax Assessment Year: 92.14%

h. 2011 Tax Assessment Year: 99.89%

5. With respect to Counts XIX-XXVI of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 ILCS 200/23-25(e), that the Foundation is entitled to exemptions for the North Tower parcel (PIN 91-21-08-309-001 through 91-21-08-309-009) for tax assessment years 2004 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

a. 2004 Tax Assessment Year: 98.50%

b. 2005 Tax Assessment Year: 98.73%

c. 2006 Tax Assessment Year: 99.69%

d. 2007 Tax Assessment Year: 99.86%

e. 2008 Tax Assessment Year: 99.30%

f. 2009 Tax Assessment Year: 99.30%

g. 2010 Tax Assessment Year: 99.82%

h. 2011 Tax Assessment Year: 100%

6. With respect to Counts XXVII-XXXIV of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and against the State Defendants and the County Defendants, declaring, pursuant to 735 ILCS 5/2-701 and 35 ILCS 200/23-25(e), that the Foundation is entitled to exemptions for the Caring Place parcel (PIN 91-21-08-304-018) for tax assessment years 2004 through 2011 pursuant to 35 ILCS 200/15-86, in accordance with the following exemption percentages:

a. 2004 Tax Assessment Year: 42.33%

b. 2005 Tax Assessment Year: 38.31%

c. 2006 Tax Assessment Year: 48.41%

d. 2007 Tax Assessment Year: 50.39%

e. 2008 Tax Assessment Year: 49.21%

f. 2009 Tax Assessment Year: 52.29%

g. 2010 Tax Assessment Year: 64.83%

h. 2011 Tax Assessment Year: 66.22%

7. With respect to Counts III through XXXIV, Defendant Champaign County Treasurer is ordered to issue a refund to the Foundation in the sum of Eight Million Eighty-Two Thousand Three Hundred Ninety-Five Dollars and Ninety Eight Cents ($8,082,395.82). Said refund shall be assessed on a pro rata basis against all relevant taxing districts, with the exception

of Urbana School District No. 116 and the Urbana Park District (collectively, the "Settling Parties").

8. With respect to Counts III through XXXIV, Defendant Champaign County Treasurer is ordered to issue a further refund to the Foundation in the sum of Two Million One Hundred Fifty Thousand Four Hundred Thirty One Dollars and Forty One Cents ($2,150,431.41), representing prejudgment interest through August 1, 2019, on the refund contained in Paragraph 7. Said refund shall be assessed on a pro rata basis against all relevant taxing districts, with the exception of the Settling Parties.

9. With respect to Count XXXV of the Fourth Amended Complaint, judgment is entered in favor of the Foundation, and jointly and severally against Cunningham Township and the City of Urbana, awarding the Foundation the following damages:

a. Six Million Eighty Nine Thousand Dollars ($6,089,000); and

b. Reasonable attorneys' fees, to be determined by the Court, incurred by the Foundation in pursuing all claims in this litigation with the exception of the breach of contract claim currently contained in Count XXXV of the Fourth Amended Complaint. The Foundation is directed to submit a fee petition no later than _____. Cunningham Township and the City of Urbana may file objections to the fee petition no later than _____. The Foundation may file a reply no later than _____.

10. Costs are awarded to the Foundation and against all defendants.

Dated: _____

_____
Hon. Randall B. Rosenbaum

Order Prepared by:

Steven F. Pflaum
Collette A. Woghiren
Neal, Gerber & Eisenberg LLP
2 N. LaSalle Street, Suite 1700
Chicago, IL 60602
(312) 269-8000
spflaum@nge.com
cwoghiren@nge.com

Amy G. Doehring
Catherine Miller
Akerman LLP
71 S. Wacker Drive
47th Floor
Chicago, IL 60606
(312) 634-5700
amy.doehring@akerman.com
catherine.miller@akerman.com

William J. Brinkmann
Thomas, Mamer & Haughey, LLP
30 Main Street
5th Floor
P.O. Box 560
Champaign, IL 61824
(217) 531-6427
wjbrinkm@tmh-law.com

Attorneys for Plaintiff The Carle Foundation

48369378;1