

\_\_\_\_\_ 2013

**CONFIDENTIAL**

Mr. Efraim Steif, CEO  
Upstate Service Group, LLC  
ACRNC, LLC  
One Hillcrest Center Drive,  
Suite 225  
Spring Valley, New York 10977

Re: Albany County Nursing Home located at 780 Albany Shaker Road, Albany, New York 12211 (the “**Facility**”), leased by ACRNC from the County pursuant to that certain Lease Agreement (the “**Lease**”) made and entered into as of \_\_\_\_\_, 2013, by and among the County, ACRNC, USG and FRS.

Dear Mr. Steif:

This letter confirms the agreement of Albany County, a New York municipal corporation (the “**County**”), ACRNC, LLC, a New York limited liability company (“**ACRNC LLC**”), Upstate Service Group, LLC, a New York limited liability company (“**USG**”) and FRS Healthcare Consultants, Inc., a New York corporation (“**FRS**”) (ACRNC LLC, USG and FRS are referred to herein, jointly and severally as, “**ACRNC**”) with respect to the matters set forth herein. This letter is intended to set forth the rights and obligations of the County, ACRNC, USG and FRS with respect to the matters described herein, in each case as they relate to the transactions contemplated by the Lease. Capitalized terms not defined herein, have such meaning as set forth in the Lease.

**1. Transfer of Patient Trust Funds.**

- a.** At least three (3) business days prior to the Commencement Date, the County shall provide to ACRNC LLC a true, correct and complete accounting (properly reconciled of any patient trust funds (the “**Patient Trust Funds and Property Report**”) and an inventory of all residents’ property held by the County at the Facility on such date (“**Patient Trust Funds and Property**”).
- b.** On the Commencement Date, all of the Patient Trust Funds and Property set forth on the Patient Trust Funds and Property Report shall be transferred to ACRNC LLC to be held by ACRNC LLC for the benefit of the applicable patient.
- c.** The County will indemnify, defend and hold ACRNC harmless from any and all liabilities, including reasonable attorneys’ fees, arising from any third party claim: (i) in the event the amount of Patient Trust Funds and Property set forth on the Patient Trust Funds and Property Report, if any, and transferred to ACRNC LLC did not represent the full amount of the Patient Trust Funds and

Property held or possessed by the County as of the date of the Patient Trust Funds and Property Report, (ii) with respect to any Patient Trust Funds and Property delivered, or claimed to have been delivered, to the County, but which were not delivered by the County to ACRNC LLC, or (iii) for claims which arise from actions or omissions of the County with respect to the Patient Trust Funds and Property prior to the Commencement Date.

- d. ACRNC will indemnify, defend and hold the County harmless from all liabilities, claims, demands and causes of action of any nature whatsoever, including reasonable attorneys' fees, in the event a claim is made against the County with respect to the Patient Trust Funds and Property where said funds were transferred to ACRNC LLC pursuant to the terms hereof, or for claims which arise from actions or omissions of ACRNC LLC after the Commencement Date with respect to Patient Trust Funds and Property actually received by ACRNC LLC.
- e. Any claim for indemnification under this Section 1 shall be governed by the terms of Section 18.3 of the Lease.

## **2. Cost Reports; Overpayments, Civil Monetary Penalties.**

- a. The County shall prepare and file with the appropriate Medicare and Medicaid agencies its final cost reports in respect to its operation of the Facility as soon as practicable after the Commencement Date, but in any event prior to the expiration of the period of time as may be required by law for the filing of each such final cost report under the applicable third party payor program. ACRNC LLC shall cooperate with the reasonable requests of the County and shall permit the County to have access to such records and documents of the Facility, in each case as necessary for the County to prepare and file such final cost report.
- b. The County and ACRNC LLC each agree to notify the other within three (3) calendar days after receipt of any written notice of any claim by the DOH, CMS, OIG or any other governmental or quasi-governmental authority with respect to any of the following, relating to periods prior to the Commencement Date: (i) an alleged Medicare or Medicaid overpayment, or any other recoupment or adjustment to reimbursement, (ii) an alleged underpayment of any tax or assessment or (iii) any other governmental claims for money (collectively "**Recapture Claim**").
- c. The County shall remain liable for any Recapture Claim and for any civil penalties imposed by the DOH for any violation of applicable law that occurred prior to the Commencement Date and agrees to save, indemnify, defend and hold ACRNC LLC harmless from and against any loss, damage, injury or expense incurred by ACRNC LLC to the extent caused by any such Recapture Claim or civil penalty, but only to the extent that such Recapture Claim or civil penalty relates solely to the period prior to the Commencement Date. In connection with the foregoing indemnification obligation, in the event that the DOH, CMS, OIG or any other governmental or quasi-governmental authority or agency or other third party payor source withholds

amounts from ACRNC LLC's reimbursement checks as a result of a Recapture Claim or civil penalty that relates solely to the period prior to the Commencement Date, the County shall pay such amounts to ACRNC LLC within three (3) business days following ACRNC LLC's demand therefor.

- d. Any claim for indemnification under this Section 2 shall be governed by the terms of Section 18.3 of the Lease.

- 3. **Employment Records.** To the extent permitted by applicable law, the County shall deliver to ACRNC LLC on or promptly following the Commencement Date, either the originals or full and complete copies of all employee records in the County's possession or control for all employees at the Facility hired by ACRNC LLC (including, without limitation, all employee employment applications, W-4's, I-9's and any disciplinary reports). ACRNC LLC shall, and USG shall cause ACRNC to, (i) use such records only as necessary for the employment of employees at the Facility hired by ACRNC LLC, and otherwise in accordance with applicable law, and (ii) not disclose such records other than as permitted by applicable law.

- 4. **Access to Records.**

- a. To the extent permitted by applicable law, on the Commencement Date or promptly thereafter, the County shall deliver to ACRNC LLC either the originals or full and complete copies of all of the medical and financial records for patients of the Facility on the Commencement Date. ACRNC LLC shall, and USG shall cause ACRNC LLC to, (i) use such records only as necessary for the treatment of patients at the Facility, and otherwise in accordance with applicable law, (ii) not disclose such records other than as permitted by applicable law.
- b. Following the Commencement Date, ACRNC LLC shall allow the County and its agents and representatives to have reasonable access to (upon reasonable prior notice and during normal business hours), and to make copies of, the books and records and supporting material of the Facility relating to the period prior to and including the Commencement Date, at its own expense, to the extent reasonably necessary to enable the County to investigate and defend malpractice, employee or other claims, to file or defend cost reports and tax returns and to verify accounts receivable and collections due the County.
- c. The County shall, if allowed by applicable law and subject to the terms of such applicable law, be entitled to remove any records delivered to the County for purposes of litigation involving a resident or employee to whom such record relates, as certified to ACRNC LLC in writing prior to removal by an officer of or counsel for the County in connection with such threatened or actual litigation. Any record so removed shall promptly be returned to ACRNC LLC following its use.
- d. ACRNC LLC shall, and USG shall cause ACRNC LLC to, maintain all books, records and other material comprising records of the Facility's operations prior to the Commencement Date that have been received by ACRNC LLC from the County or otherwise, including patient records and

records of patient funds, to the extent required by law, but in no event less than three (3) years following the Commencement Date.

5. **Provider Agreements and License.** For any periods following the Commencement Date that ACRNC LLC is not yet able to bill for matters related to the Facility under its own Medicare and Medicaid provider numbers and provider agreements (the “**Provider Agreements**”), the County shall allow ACRNC LLC to bill under the County’s Provider Agreements and promptly forward to ACRNC LLC any payments received with respect thereto within five (5) business days of receipt. ACRNC LLC agrees to save, indemnify, defend and hold the County harmless from and against any loss, liability, damage, injury or expense, including reasonable attorney’s fees, incurred by the County to the extent caused by ACRNC LLC’s billing or other activities under the County’s Provider Agreements. Any claim for indemnification under this Section 5 shall be governed by the terms of Section 18.3 of the Lease.
6. **Telephone Number.** The County shall cooperate with ACRNC LLC, as reasonably requested by ACRNC LLC and at ACRNC LLC’s cost and expense, to allow all County owned telephone numbers exclusively used at the Facility to be transferred to ACRNC LLC for its use at the Facility as of the Commencement Date.
7. **Cooperation.** Upon the request of Lessee, Lessor shall reasonably cooperate with Lessee, at Lessee’s sole cost and expense, with respect to any audit, appeal or other proceedings relating to periods prior to the Commencement Date.
8. **Employee Accruals.** Pursuant to the Albany County Rules and Regulations and existing labor agreements at the Facility, it shall be the obligation of the Lessor to liquidate all eligible but unused accrual balances of Facility employees that exist upon the Commencement Date.
9. **Commencement Date.** Should the Commencement Date not occur and the Lease be terminated in accordance with Exhibit C thereof, this letter shall be void and of no further force or effect.

This letter contains all of the agreements of the parties with respect to the matters contained herein, and no prior agreement or understanding pertaining to the matters contained herein shall be effective for any purpose. This letter may be signed by the parties in different counterparts and the signature pages combined to create a document binding on all parties. A facsimile or electronic copy of this letter showing the signatures of each of the parties, or, when taken together, multiple facsimile or electronic copies of this letter showing the signatures of each of the parties, respectively, where such signatures do not appear on the same copy, will constitute an original copy of this letter requiring no further execution.

[Signature Page Follows]

If you have any questions or need additional information, please contact me.

Very truly yours,

ALBANY COUNTY

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

**AGREED**

ACRNC, LLC

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

UPSTATE SERVICES GROUP, LLC

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

FRS HEALTHCARE CONSULTANTS, INC.

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