

LEASE AGREEMENT

by and among

ALBANY COUNTY, a New York municipal entity,
as Lessor,

ACRNC, LLC, a New York limited liability company,
as Lessee,

and

UPSTATE SERVICE GROUP, LLC, a New York limited liability company, and **FRS
HEALTHCARE CONSULTANTS, INC.**, a New York corporation,
as Guarantor

_____, 2013

ALBANY COUNTY NURSING HOME
780 ALBANY SHAKER ROAD
ALBANY, NEW YORK 12211

LEASE AGREEMENT

THIS LEASE AGREEMENT (this "**Lease**") is made and entered into as of this _____ day of February, 2013 (the "**Effective Date**") by and among ALBANY COUNTY, a New York municipal corporation ("**Lessor**"), ACRNC, LLC, a New York limited liability company ("**Lessee**"), and Upstate Service Group, LLC, a New York limited liability company ("**USG**"), and FRS Healthcare Consultants, Inc., a New York corporation ("**FRS**") and together with USG, ("**Guarantor**").

RECITALS :

A. Lessor owns fee simple title in and to that certain tract of land which is improved with a two hundred and fifty (250) bed skilled nursing facility ("**Facility**") commonly known as Albany County Nursing Home and located at 780 Albany Shaker Road, Albany, New York 12211, all as more particularly depicted and described in **Exhibit A** attached hereto and made a part hereof ("**Demised Premises**").

B. Lessor owns certain personal property assets that are used and located at the Facility, as more particularly described in **Exhibit A-1** (the "**Assets**"). This Lease specifically contemplates the possibility of a sale of the personal property Assets prior to the Commencement Date, as set forth in **Section 1.4** below. Upon the occurrence of any such sale, the term "Assets" shall cease to include any assets sold in that sale.

C. Lessor desires to lease the Demised Premises and sell the Assets to Lessee and Lessee desires to lease the Demised Premises and purchase the Assets from Lessor.

D. The parties hereto have agreed to the terms and conditions of this Lease.

E. The parties hereto have agreed that the tenancy described in this Lease shall become effective on the Commencement Date but only after satisfaction or waiver of the conditions described in **Exhibit C**, and if those conditions are not satisfied, the parties shall have only those rights and obligations as set forth in **Exhibit C**.

F. By this Lease the parties understand and contemplate that while the Lessor is leasing the Demised Premises to Lessee, a private organization, Lessee will continue to operate the skilled nursing care facility at the Demised Premises during the Term in the public interest by keeping all current patients who reside at the Facility, by adopting admission standards historically employed by the Lessor at the Facility since its inception, by accepting those Albany County residents that because of their unique disabilities are hard to place in private sector nursing facilities, and by maintaining Lessor's public property and assets at Lessee's expense, all as set forth in more detail herein. The parties agree that Lessee will continue to operate the Demised Premises and Facility to benefit the indigent and severely infirmed residents of Albany County and to operate the Facility to maintain a safety net for the least able and sickest of Albany County, as set forth in more detail herein. In consideration of Lessee operating a Facility without pure private profit motives and in recognition that but for the financial incentives provided herein, Lessee would not operate the Facility in the manner that the Facility historically operated and would not agree to maintain and improve a public facility,

the County deems that any and all financial assistance provided to Lessee as part of this Lease comports with the New York State Constitution.

NOW THEREFORE, in consideration of the above Recitals which are incorporated herein and made a part of this Lease by this reference and of the mutual covenants, agreements and undertakings hereinafter set forth, it is agreed that the use and occupancy of the Demised Premises and the Assets shall be subject to and in accordance with the terms, conditions and provisions of this Lease.

ARTICLE I - DEMISED PREMISES/RENTAL OF LEASED ASSETS

1.1 Lessor, for and in consideration of the rents, covenants and agreements hereinafter reserved, mentioned and contained on the part of the Lessee, its successors and permitted assigns as stated in Article 12, to be paid, kept and performed, does hereby lease unto Lessee the Demised Premises, to be used in and upon the Demised Premises for the term hereinafter specified, for use and operation therein and thereon of a skilled care nursing home, in material compliance with all applicable laws, including the rules and regulations and minimum standards applicable thereto, as prescribed by the State of New York and such other governmental authorities having jurisdiction thereof.

1.2 Title to the Demised Premises is, and shall at all times be and remain, the sole and exclusive property of Lessor; and Lessee shall have no right, title or interest therein or thereto, except as may be expressly set forth in this Lease.

1.3 Lessor shall be permitted to display notice of its ownership of the Demised Premises and the Assets by affixing thereto an identifying stencil or plate or any other indicia of ownership, to the extent the same does not interfere with Lessee's operation of the Demised Premises, and Lessee will not alter, deface, cover or remove such ownership identification.

1.4 Should either Lessor or Lessee desire at any time prior to the Commencement Date, that Lessor sell the Assets (including inventory) to Lessee, the party desiring the same shall notify the other party in writing and for a period of not less than sixty (60) days thereafter, the parties shall negotiate, in good faith, the sale and purchase of such assets by Lessor to Lessee.

ARTICLE II - TERM OF LEASE

2.1 The term of this Lease shall begin and be effective as of the date set forth on the Commencement Date Rider, attached hereto as **Exhibit C** and made a part hereof ("**Commencement Date**"), and shall expire on the day prior to the ten (10) year anniversary of the Commencement Date (the "**Initial Term**"), unless sooner terminated or extended as hereinafter provided. The foregoing notwithstanding, the parties agree that the terms of this Lease (other than the terms set forth in **Exhibit C**) shall be effective only after satisfaction or waiver of the conditions described in **Exhibit C**, and if those conditions are not satisfied or waived and the Commencement Date does not occur as described in **Exhibit C**, the parties shall have only those rights and obligations as set forth in **Exhibit C**.

2.2 At least one-hundred and eighty (180) days prior to the end of the Initial Term, and any subsequent Extension Term, provided that no Event of Lessee Default has occurred and is continuing, Lessee may, in its discretion, provide written notice of its election to extend the term of this Lease for an additional term of five (5) years (each an “**Extension Term**”), for up to a total term of twenty (20) years from the Commencement Date (the Initial Term, together with any extensions hereunder, the “**Term**”). Lessee and Lessor agree that the terms of this Lease for any such Extension Term shall be the same term as set forth in this Lease, provided that Base Rent shall be equal to the greater of (a) the Base Rent for the year ending immediately prior to the Extension Term, plus an amount equal to ten percent (10%) of the average annual Base Rent for the ten (10) years immediately prior to such Extension Term, or (b) the Base Rent for the year ending immediately prior to the Extension Term, plus the CPI Adjustment. For purposes of the foregoing, the “**CPI Adjustment**” shall mean an amount calculated by multiplying (i) the increase in the CPI from the applicable Base Date through the first day of the applicable Extension Term, by (ii) the Base Rent for the year ending immediately prior to applicable Extension Term. The “**Base Date**” for the first Extension Term shall be Commencement Date and the “**Base Date**” for the second Extension Term shall be the first day of the first Extension Term. “**CPI**” shall mean the United States Department of Labor’s Bureau of Statistics’ Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items.

ARTICLE III - RENT

3.1 Lessee shall pay to Lessor or as Lessor shall direct, in equal monthly installments with respect to each calendar year of the Term, as fixed annual base rental (“**Base Rent**”) for the Demised Premises over and above all other and additional payments to be made by Lessee as provided in this Lease, an amount equal to the Medicaid reimbursable amount for such calendar year in the Term, but not less than the Minimum Amount. The “**Minimum Amount**” shall initially equal Four Hundred Thousand Dollars (\$400,000.00); provided however, that for any calendar year in the Term when the annual Medicaid reimbursable amount is an amount that is more than fifteen percent (15%) less than the Minimum Amount, the Minimum Amount shall be reduced to the Medicaid reimbursable rate and after such reduction the Minimum Amount shall be reset to equal such amount.

Base Rent shall be paid in equal monthly installments in advance on the first day of each month. Unless otherwise notified in writing, all checks shall be made payable as directed by Lessor and shall be sent to Lessor at: Commissioner of Management & Budget, 112 State Street, Albany, New York 12207. If the first or last month of the term of this Lease shall be a partial calendar month, Base Rent for such month shall be pro-rated on a daily basis, such daily rate being calculated by dividing Base Rent by the number of calendar days in such month. In addition, in the event any year of the Term shall not be a full calendar year, the Base Rent set forth herein shall be prorated for such calendar year.

For purposes of calculating the Base Rent hereunder, the Medicaid reimbursable amount shall mean the real property component (Land, Building and Improvements) of the Medicaid Allowable Transfer Price (MATP). The MATP shall be adjusted downward for any non-real property items (i.e. Movable Equipment) as well as any capital additions made during periods following the Commencement Date that may be added to MATP in subsequent years. For each

calendar year of the Term, the Medicaid reimbursable amount shall be based on the rate sheet issued by DOH during the prior year, adjusted in accordance with the foregoing.

ARTICLE IV - PAYMENT OF TAXES AND UTILITIES

4.1 Subject to the provisions hereof, Lessee shall pay to Lessor an amount equal to all real estate taxes which during the Term of this Lease may have been, or may be assessed, levied, confirmed, imposed upon or become due and payable out of or in respect of, or become a lien on the Demised Premises or any part thereof (collectively, "**Taxes**").

4.2 Any Taxes or assessments relating to a fiscal period of any authority, a part of which is included within the Term of this Lease and a part of which is included in a period of time before or after the Term of this Lease, shall be adjusted pro rata between Lessor and Lessee as of the commencement and expiration or termination of this Lease Term and each party shall be responsible for its pro rata share of any such Taxes and assessments.

4.3 If permitted by the terms of any mortgage, Lessee shall have the right to contest the amount or validity, in whole or in part, of any Taxes by appropriate proceedings diligently conducted in good faith, but only after payment of such Taxes, unless such payment would operate as a bar to such contest or interfere materially with the prosecution thereof, in which event, Lessee may postpone or defer such payment only if neither the Demised Premises, nor any material license or certification nor any part thereof would, by reason of such postponement or deferment, be in danger of being forfeited or lost; and

4.4 Upon the termination of any such proceedings, Lessee shall pay the amount of such Taxes or part thereof, as finally determined in such proceedings, to the extent due to be paid pursuant to this Lease, together with any interest, penalties and other charges which have accrued thereon during the pendency of such proceeding.

4.5 Lessor shall not be required to join in any proceedings referred to in this Article, unless the provisions of any law, rule or regulation at the time in effect shall require that such proceedings be brought by or in the name of Lessor in which event Lessor shall join in such proceedings or permit the same to be brought in its name. The foregoing notwithstanding, Lessee shall provide Lessor, at least ninety (90) days written notice of Lessee's intention to commence any proceedings referred to in this Article and shall permit Lessor to participate in such proceedings at its own cost and expense. Lessee shall be entitled to any refund of any real estate taxes and penalties or interest thereon received by Lessor but previously paid for by Lessee.

4.6 In the event that Lessor determines, in its reasonable judgment, that it is not being adequately represented by Lessee's counsel in any proceedings referred to in this Article, Lessor may, upon ten (10) days prior written notice to Lessee, obtain separate counsel to represent it in such action. In such event, the cost of such counsel shall be paid by Lessor.

4.7 Lessee shall pay all expenses incidental to the possession, use, and operation (including all utilities) of the Demised Premises.

ARTICLE V - OCCUPANCY

5.1 During the Term of this Lease, the Demised Premises shall only be used and occupied by Lessee, its employees, contractors and patients for and as a skilled care nursing home. Lessee shall at all times during the Term maintain in good standing and full force an operating certificate (the “**License**”) issued by the State of New York Department of Health (the “**DOH**”) and all other licenses or permits issued by any other governmental agencies permitting the operation on the Demised Premises of a skilled nursing home facility and use of the Assets in connection therewith.

5.2 Lessee will not suffer any act to be done or any condition to exist on the Demised Premises, which may be dangerous or which may, in law, constitute a public or private nuisance or which may void, make voidable or make substantially more expensive any insurance then in force on the Demised Premises.

5.3 Upon any expiration or termination of this Lease for any reason, Lessee will (a) return to Lessor the Demised Premises in the same condition as existed on the Commencement Date, reasonable wear and tear excepted, and licensed by the DOH and by any governmental agencies having jurisdiction over the Demised Premises as a skilled bed nursing facility (subject to any reduction in the number of licensed beds required by any governmental authority solely as a result of changes in laws, rules and regulations relating to the physical attributes of the improvements on the Demised Premises, casualty or eminent domain proceedings) with an unrestricted license in full force and good standing for no less than two hundred and fifty (250) skilled beds (subject to any reduction in the number of licensed beds required by any governmental authority solely as a result of changes in laws, rules and regulations relating to the physical attributes of the improvements on the Demised Premises, casualty or eminent domain proceedings), and (b) shall complete, if requested by Lessor in writing, at Lessee’s sole cost and expense, an orderly closure of the nursing facility then conducted by Lessee at the Demised Premises in accordance with applicable law. Lessor and Lessee shall use their best efforts to negotiate and agree on all matters with respect to such orderly closure at least ninety (90) days in advance of any expiration or termination of this Lease, provided that any such agreement shall not be a condition upon or otherwise restrict or limit Lessee’s obligations under Section 5.3(b) hereof. Notwithstanding anything set forth in this Agreement, Lessee agrees that it shall be obligated to perform all of the terms of this Lease, including payment of Base Rent and all other amounts due under this Lease, until the conclusion of the orderly closure of the nursing facility conducted by Lessee at the Demised Premises in accordance with applicable law. Except as otherwise specifically provided herein, no reduction in the number of licensed beds shall entitle Lessee to any reduction or adjustment of the Base Rent payable hereunder, which shall be and continue to be payable by Lessee in the full amount set forth herein notwithstanding any such reduction in the number of licensed beds. Lessee shall, within ten (10) days following its receipt thereof, provide Lessor with a copy of any notice from the DOH or any federal, state or municipal governmental agency or authority with respect to the nursing facility then conducted by Lessee at the Demised Premises, including regarding any reduction in the number of licensed beds, and Lessor shall have the right to contest, by appropriate legal or administrative proceedings, any such matter or reduction.

5.4 During the Term of this Lease, Lessee shall only use the Demised Premises in accordance with Environmental Laws (as hereinafter defined) and shall not use nor permit the Demised Premises to be used for the treatment, storage or disposal of any Hazardous Substances (as hereinafter defined) nor for any purpose involving the use of the Hazardous Substances; provided, however, that Lessee may use in and store at the Facility such materials and substances as are customarily used in nursing homes but only in such quantities as are reasonably necessary for the routine business operation of the Facility. For purposes hereof “**Hazardous Substances**” shall mean any toxic or hazardous waste or pollutants, or substances, including, without limitation, asbestos, PCB’s, petroleum products and byproducts, substances defined or listed as: “Hazardous Substances” or “Toxic Substances” in the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*, “Hazardous Materials” in the Hazardous Materials Transportation Act, 49 U.S.C. § 1802, *et seq.*, “Hazardous Waste” in The Resource Conservation and Recovery Act, 42 U.S.C. § 6901, *et seq.*, any chemical substance or mixture regulated under the Toxic Substance Control Act of 1976, as amended, 15 U.S.C. § 2061, *et. seq.*, any “Toxic Pollutant” under the Clean Water Act, 33 U.S.C. § 1251, *et seq.*, as amended, any “Hazardous Air Pollutant” under the Clean Air Act, 42 U.S.C. § 7401, *et seq.*, and any hazardous or toxic substance or pollutant regulated under any other applicable federal, state or local Environmental Laws. “**Environmental Laws**” as used in this Lease means all federal, state and local environmental, health, or safety laws or regulations applicable to the Demised Premises or the Facility, now or hereafter enacted. Lessee hereby agrees to indemnify, defend and hold Lessor harmless from and against, and shall reimburse Lessor for, any loss, claim, liability, damages, injunctive relief, injuries to persons, property or natural resources, costs, expense, action and causes of action in connection with the use, generation, treatment, storage, release or disposal of Hazardous Substances at or from the Demised Premises during the Term hereof, including, without limitation, the cost of any required or necessary repair, cleanup or detoxification and the preparation of any closure or other required work to be performed, to the full extent that such action is attributable, directly or indirectly, to the use, generation, treatment, storage, release or disposal of Hazardous Substances on the Demised Premises during the Term hereof.

ARTICLE VI - INSURANCE

6.1 From and after the Commencement Date, all risk of loss, damage, theft or destruction to the Demised Premises shall be borne and assumed by Lessee. No such loss, damage, theft or destruction of the Demised Premises, in whole or in part, shall impair the obligations of Lessee under this Lease, all of which shall continue in full force and effect: and Lessee, at Lessor’s option, shall either (a) place the affected equipment in good repair, condition and working order, or (b) replace the same with like equipment in good repair, condition and working order, or (c) pay the Lessor an amount equal to all unpaid rent due and to become due under this Lease with respect to the affected equipment, less the net amount of the recovery, if any, actually received by Lessor from insurance or otherwise for such loss, theft or destruction. Notwithstanding the foregoing, in the event the Demised Premises are subject to a casualty resulting in a total loss of the Facility, to the extent Lessee can no longer carry on operation of the Facility in accordance with prior practice, after complying with the terms of this Section 6.1, Lessee may terminate this Lease in accordance with Section 5.3.

6.2 Lessee shall, at its sole cost and expense, as of the Commencement Date and during the Term, maintain fire, and casualty insurance with extended coverage endorsement, which includes coverage for malicious mischief and vandalism on the Demised Premises on the New York standard form. Prior to the Commencement Date, Lessee shall provide Lessor with copies of all such insurance policies for Lessor's review and shall cooperate with any reasonable request of Lessor to modify any such insurance policies.

6.3 The insurance maintained hereunder shall provide coverage of at least the below:

(a) A public liability policy naming Lessor, its beneficiary and Lessee, as insured, and insuring them against claims for bodily injury, or property damage occurring upon, in or about the Demised Premises, or in or upon the adjoining streets, sidewalks, passageways and areas, and including professional malpractice insurance covering employees of the Facility, such insurance to afford protection to the limits reasonably established by Lessee in the operation of its business, but not less than Three Million Dollars (\$3,000,000.00) per each occurrence and Five Million Dollars (\$5,000,000.00) in the aggregate or any greater amount required by a mortgage encumbering the Demised Premises.

(b) If there is a boiler, air conditioner or water heater located on the Demised Premises, the Lessee will be required to carry boiler explosion insurance, under the terms of which Lessor and Lessee will be indemnified, as their interests may appear, against any loss or damage which may result from any accident or casualty in connection with any boiler used in the Demised Premises, whereby any person or persons may be injured or killed or property damaged in or about the Demised Premises.

6.4 All policies of insurance shall provide:

(a) They are carried in favor of Lessor, Lessee, and any mortgagee, as their respective interests may appear, provided that Lessor may act as attorney for Lessee in making, adjusting or settling any claims under any such insurance policies, and Lessee assigns to Lessor all of its right, title and interest in and to any such insurance policies, including all rights to receive the proceeds of insurance, not in excess of the unpaid obligations under this Lease, and directs any insurer to pay all such proceeds directly to Lessor and authorizes Lessor to endorse Lessee's name on any draft or other instrument for such proceeds; and

(b) They shall not be canceled, terminated, reduced or materially modified without at least thirty (30) days' prior written notice to Lessor.

6.5 Certificates of insurance policies required by this Article shall be delivered to Lessor prior to or on the Commencement Date. Upon receipt thereof, Lessee shall deliver copies of the actual policies to Lessor, which certificates and policies shall be updated annually prior to the expiration of any previously issued certificate with copies of the same provided to the County.

6.6 Lessee shall at all times keep in effect business interruption insurance with loss of rents endorsement naming Lessor as an insured in an amount at least sufficient to cover:

(a) The cost of all insurance premiums for insurance required to be carried by Lessee for such twelve (12) month period; and

(b) The aggregate of the amount of the monthly Base Rent for the next succeeding twelve (12) month period.

6.7 If permitted by Lessor and its insurer, Lessee, in its discretion, may assume all or any part of Lessor's present insurance, in which case Lessee shall pay the prepaid portion of the premium therefor to Lessor as of the Commencement Date, and Lessor shall add Lessee as a party under such insurance.

6.8 All insurance required by this Article VI shall be procured and maintained in financially sound and generally recognized responsible insurance companies authorized to write such insurance in New York State and shall be rated "A" or better by A.M. Best Co., Inc. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. Lessee shall provide such further information with respect to the insurance coverage required by this Article VI as the Lessor may from time to time reasonably require.

ARTICLE VII - REPAIRS AND MAINTENANCE

7.1 Throughout the Term of this Lease, Lessee, at its sole cost, will keep and maintain, or cause to be kept and maintained, the Demised Premises (including the grounds, roadways, sidewalks and curbs abutting the same), in good order and condition without waste and in a suitable state of repair at least comparable to that which existed immediately prior to the Commencement Date (ordinary wear and tear excepted), and will make or cause to be made, as and when the same shall become necessary, all structural and nonstructural, ordinary and extraordinary, exterior and interior, replacing, repairing and restoring necessary to that end. All replacing, repairing and restoring required of Lessee shall be (in the reasonable opinion of Lessee) of comparable quality equal to the original work and shall be in compliance with all standards and requirements of law, licenses and municipal ordinances necessary to operate the Demised Premises in a skilled nursing home.

ARTICLE VIII - COMPLIANCE WITH LAWS AND ORDINANCES

8.1 Throughout the Term of this Lease, Lessee, at its sole cost and expense, will, in all material respects, obey, observe and promptly comply with all present and future laws, ordinances, orders, rules, regulations and requirements of any federal, state and municipal governmental agency or authority having jurisdiction over the Demised Premises and the operation thereof as a skilled nursing home, , which may be applicable to the Demised Premises and the nursing home located therein, and including, but not limited to, the sidewalks, alleyways, passageways, vacant land, parking spaces, curb cuts, curbs adjoining the Demised Premises,

whether or not such law, ordinance, order, rules, regulation or requirement shall necessitate structural changes or improvements.

8.2 Lessee shall likewise, in all material respects, observe and comply with the requirements of all policies of public liability and fire insurance and all other policies of insurance at any time in force with respect to the Demised Premises.

ARTICLE IX - DISCHARGE OF LIENS

9.1 Subject to the right to contest provided herein, Lessee will not create or permit to be created or to remain, and Lessee will discharge, any lien, encumbrance or charge levied on account of any mechanic's, laborer's or materialman's lien or any conditional sale, security agreement or chattel mortgage, or otherwise, which might be or become a lien, encumbrance or charge upon the Demised Premises, or any part thereof or the income therefrom, for work or materials or personal property furnished or supplied to, or claimed to have been supplied to or at the request of Lessee. Lessee shall have the right to purchase equipment, furniture, or furnishings from third parties (other than as a replacement for any personal property owned by Lessor and leased to Lessee hereunder) which may be subject to a security agreement or chattel mortgage to such third parties provided that all payments for any such equipment, furniture or furnishings shall be paid and Lessee shall indemnify Lessor against all charges, costs and expenses that may be incurred by Lessor with respect to such security agreement or chattel mortgage, and provided further than the documentation with respect to such security interests shall clearly indicate that the security interest is limited specifically to property of Lessee and not of Lessor.

9.2 If any mechanic's, laborer's or materialman's lien caused or charged to Lessee shall at any time be filed against any portion of the Demised Premises, if allowed by the terms of any mortgage and the applicable mortgagee, Lessee shall have the right to contest such lien or charge, provided Lessee, within sixty (60) days after notice of the filing thereof, will cause the same to be discharged of record or in lieu thereof to secure Lessor against said lien by deposit with Lessor of such security as may be reasonably demanded by Lessor to protect against such lien.

9.3 In the event that Lessor determines, in its reasonable judgment, that it is not being adequately represented by counsel for Lessee in any contest referred to in Section 9.2 hereof, Lessor may, upon ten (10) days prior written notice to Lessee, obtain separate counsel to represent it in such contest. In such event, the cost of such counsel shall be paid by Lessor.

ARTICLE X - INSPECTION OF PREMISES BY LESSOR

10.1 At any time, during reasonable business hours and upon two (2) business days prior notice to Lessee, Lessor or its authorized representatives shall have the right to enter and inspect the Demised Premises.

10.2 Lessor agrees that upon entering and inspecting the Demised Premises, Lessor shall take all reasonable measures to avoid disruption to Lessee's routine business operation during any such entries and the person or persons will cause as little inconvenience to the Lessee,

its employees and residents of the Facility as may reasonably be possible under the circumstances.

ARTICLE XI - CONDEMNATION

11.1 If all of the Demised Premises is taken by the exercise of the power of eminent domain, or sold under eminent domain proceedings, this Lease shall terminate as of the date possession is taken by the condemnor.

11.2 If less than all of the Demised Premises are taken by the exercise of the power of eminent domain or sold under eminent domain proceedings and Lessee reasonably believes that, in light of such exercise of eminent domain or sale pursuant to eminent domain proceedings, it can no longer operate the Facility in materially the same manner as prior to the exercise of eminent domain and such belief is consistent with reasonable business practices, then Lessee may either (a) terminate this Lease or (b) subject to the consent and approval of Lessor and any mortgagee, with reasonable diligence, restore or rebuild to the extent reasonably practicable any improvements upon the Demised Premises affected by the taking with the proceeds from the condemnation award, to the extent of such available proceeds.

11.3 In the event that all or less than all of the Demised Premises are taken or so sold, and this Lease shall terminate as provided herein, then Lessor shall be entitled to the award with respect to the real estate and improvements thereof and Lessee shall be entitled to the award with respect to its leasehold interest.

ARTICLE XII - ASSIGNMENT AND SUBLETTING

12.1 During the Term of this Lease, Lessee shall not assign this Lease or in any manner whatsoever sublet, assign, encumber or transfer all or any part of the Demised Premises or in any manner whatsoever transfer, assign or encumber any interest in the Demised Premises (whether by management agreement, or otherwise) or any interest in this Lease (an "**Assignment**") without the prior written consent of Lessor, the Albany County Legislature, the New York State Public Health and Health Planning Counsel and the DOH. Lessee acknowledges and agrees that Lessor has specifically chosen Lessee to operate the Facility based upon the skill and expertise of Lessee and its principals and the Guarantors, including, without limitation, USG, in operating nursing homes in the State of New York and upon the character, reputation and competence of such principals. Any violation or breach or attempted violation or breach of the provisions of this Article by Lessee, or any acts inconsistent herewith, shall be void and shall vest no right, title or interest herein or hereunder or in the Demised Premises in any such transferee or assignee; and Lessor may, at its exclusive option, invoke the provisions of this Lease relating to default.

ARTICLE XIII - EVENTS OF DEFAULT

13.1 The occurrence of any of the following acts or events shall be deemed to be a default on the part of the Lessee ("**Event of Lessee Default**"):

(a) The failure of Lessee to pay when due any Base Rent payment, or any part thereof, or any other sum or sums of money due or payable to Lessor under the provisions of this Lease when such failure shall continue for a period of sixty (60) calendar days after written notice from Lessor to Lessee;

(b) The failure of Lessee to perform, or the violation by Lessee of, any of the covenants, terms, conditions or provisions of this Lease (other than the failure to pay money due which is covered by Section 13.1(a)), if such failure or violation shall not be cured within thirty (30) days after written notice thereof by Lessor to Lessee, provided however that in the event a cure is being diligently pursued, such period shall be extended for up to an additional sixty (60) days, and further provided however that if Lessee has failed to comply with applicable law regarding the operation of the nursing home at the Demised Premises or the License, Lessee shall cure such failure immediately or within any cure period allowed by applicable law or the DOH;

(c) The making by Lessee of an assignment for the benefit of creditors, any dissolution of Lessee or liquidation of Lessee's assets or the cessation of Lessee's business;

(d) If proceedings are instituted in a court of competent jurisdiction for the reorganization, liquidation or involuntary dissolution of the Lessee or any Guarantor or for its or their adjudication as a bankrupt or insolvent, or for the appointment of a receiver of the property of Lessee or any Guarantor or the Facility, and said proceedings, if commenced by a third party, are not dismissed and any receiver, trustee or liquidator appointed therein discharged within sixty (60) days after the institution of said proceedings;

(e) The sale of the interest of Lessee in the Demised Premises under execution or other legal process;

(f) Any assignment, subcontract, conveyance or transfer in violation of Article XII hereof;

(g) The abandonment of the Demised Premises by Lessee;

(h) Any breach of a Term Loan agreement by Lessee or Guarantor, that remains uncured after any cure period set forth in a Term Loan agreement; or

(i) Any permanent or indefinite termination, revocation or suspension of the License.

13.2 The occurrence of any of the following acts or events shall be deemed to be a default on the part of Lessor ("**Event of Lessor Default**"):

(a) Lessor's material interference with Lessee's quiet enjoyment of the Demised Premises which is not cured within thirty (30) days after written notice thereof by Lessee to Lessor, provided however that in the event a cure is being diligently pursued, such period shall be extended for up to an additional sixty (60) days; or

(b) The failure of Lessor to perform, or the violation by Lessor of, any of the other covenants, terms, conditions or provisions of this Lease, if such failure or violation shall not be cured within thirty (30) days after written notice thereof by Lessee to Lessor.

ARTICLE XIV - RIGHT TO CONTEST/CURE

14.1 Anything to the contrary stated herein notwithstanding, Lessee shall have the right, upon written notice thereof to Lessor, to contest by appropriate administrative or legal proceedings, diligently conducted in good faith, the validity or application of any law, ordinance, regulation or rule mentioned herein, and to delay compliance therewith pending the prosecution of such proceedings; provided, that such contest does not jeopardize the License, and provided further that during said contest: (a) no civil or criminal liability would thereby be incurred by Lessor and no lien or charge would thereby be imposed upon or satisfied out of the Demised Premises; (b) there continues during the course of such contest authority to continue operations of the Demised Premises as a nursing home (which may be temporary or provisional); (c) Lessee pays all amounts due, including fines, fees, penalties and interest for non-compliance with such applicable laws; and (d) Lessee performs all of its obligations under this Lease. The foregoing notwithstanding, Lessee shall provide Lessor, at least ninety (90) days written notice of Lessee's intention to undergo any such contest and shall permit Lessor to participate in such proceedings at its own cost and expense.

ARTICLE XV - LESSOR'S REMEDIES UPON DEFAULT

15.1 Upon the occurrence of an Event of Lessee Default, Lessor may, if it so elects, and with notice of such election to Lessee, and upon demand of Lessee, forthwith terminate this Lease and Lessee's right to possession of the Demised Premises, or, at the option of Lessor, terminate Lessee's right to possession of the Demised Premises without terminating this Lease. Upon any such termination of this Lease, or upon any such termination of Lessee's right to possession without termination of this Lease, Lessee shall (subject to any of its continuing obligations under this Lease, including Section 5.3(b)) vacate the Demised Premises, and shall quietly and peaceably deliver possession thereof to Lessor, and Lessee hereby grants to Lessor full and free license to enter into and upon the Demised Premises in such event with process of law and to repossess the Demised Premises. In the event of any such termination of this Lease, Lessor shall again have possession and enjoyment of the Demised Premises to the extent as if this Lease had not been made, and thereupon this Lease and everything herein contained on the part of Lessee to be done and performed shall cease and terminate.

15.2 Upon the occurrence of an Event of Lessee Default and Lessor elects either to terminate this Lease or to terminate Lessee's right to possession of the Demised Premises, then all licenses, certifications, permits and authorizations issued by any governmental agency, body or authority in connection with or relating to the Demised Premises and the Facility thereon, shall be deemed as being assigned to Lessor to the extent the same are legally assignable. Lessor shall also have the right to continue to utilize the telephone numbers and name used by Lessee in connection with the operation of the Facility. In connection with the foregoing clauses of this Section 15.2, this Lease shall be deemed and construed as an assignment for purposes of vesting in Lessor all right, title and interest in and to (a) all licenses, certifications, permits and authorizations obtained in connection with the operation of the Facility and (b) the names and

telephone numbers used in connection with the operation of the Facility. Lessee hereby agrees to take such other action and execute such other documents as may be reasonably necessary in order to vest in Lessor all right, title and interest to the items specified herein.

15.3 No receipt of funds by Lessor from Lessee after service of any notice of an Event of Lessee Default, termination of this Lease or of possession of the Demised Premises or after commencement of any suit or proceeding of Lessee shall in any way reinstate, continue or extend this Lease or in any way affect the notice of the Event of Lessee Default or demand or in any way be deemed a waiver by Lessor of any of its rights unless consented to in writing by Lessor.

15.4 Lessor acknowledges that Lessor's rights of reentry into the Demised Premises set forth in this Lease do not confer on Lessor the authority to operate a hospital as defined in article 28 of the Public Health Law on the Demised Premises and agrees that Lessor will give the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, notification by certified mail of Lessor's intent to reenter the Demised Premises or to initiate dispossession proceedings or that the Lease is due to expire, at least thirty (30) days prior to the date on which Lessor intends to exercise a right of reentry or to initiate such proceedings or at least sixty (60) days before expiration of the Lease. Upon receipt of notice from Lessor of its intent to exercise its right of reentry or upon the service of process in dispossession proceedings and sixty (60) days prior to the expiration of the Lease, provided that such notice and/or process are properly provided pursuant to the term of this Lease, Lessee shall immediately notify by certified mail the New York State Department of Health, Tower Building, Empire State Plaza, Albany, NY 12237, of the receipt of such notice or service of such process or that the Lease is about to expire.

ARTICLE XVI - LIABILITY OF LESSOR

It is expressly agreed by the parties that, except as otherwise provided for in this Lease, Lessor shall not be liable for any damages whatsoever to Lessee beyond the loss of Base Rent reserved in this Lease accruing after or upon any act or breach hereunder on the part of Lessor and for which damages may be sought or recovered by Lessor. Should Lessor be obligated to indemnify Lessee pursuant to Section 2 of that certain Side Letter agreement between Lessee and Lessor of even date herewith (the "**Side Letter**") after giving effect to Section 2(d) of such Side Letter, with respect to any Recapture Claim (as defined in the Side Letter) imposed by the final determination of the governmental authority imposing such Recapture Claim, Lessee may offset payments of Base Rent hereunder by any amounts so owed by Lessor to Lessee, provided that Lessee delivers written notice to Lessor of such offset and the amount of such offset, prior to the date that any payment to Lessor is due against which Lessee desires to offset, and provided further that such offset shall be in Lessee's discretion and Lessee may elect to enforce obligations of Lessor to Lessee through other measures.

ARTICLE XVII - CUMULATIVE REMEDIES OF LESSOR

The specific remedies to which Lessor may resort under the terms of this Lease are cumulative and are not intended to be exclusive of any other remedies or means of redress to which Lessor may be lawfully entitled in case of any breach or threatened breach by Lessee of any provision or provisions of this Lease. The failure of Lessor to insist, in any one or more

cases, upon the strict performance of any of the terms, covenants, conditions, provisions or agreements of this Lease, or to exercise any option herein contained, shall not be construed as a waiver or relinquishment for the future of any such term, covenant, condition, provisions, agreement or option.

ARTICLE XVIII - INDEMNIFICATION

18.1 Lessee agrees to protect, indemnify and save harmless Lessor from and against any claims, demands and causes of action of any nature whatsoever asserted against or incurred by Lessor, and any resulting losses, liabilities or damages, on account of: (a) any failure on the part of Lessee during the Term of this Lease to perform or comply with any of the terms of this Lease; (b) injury to or death of persons or loss of or damage to property, occurring on the Demised Premises or any adjoining sidewalks, streets or ways or in any manner growing out of or connected with the use or occupation of the Demised Premises or the condition thereof, or the use of any existing or future sewer system, or the use of any adjoining sidewalks, streets or ways occurring after the Commencement Date; and (c) Lessee's operation of the Facility and use of the Demised Premises on and after the Commencement Date. Lessee further agrees to pay any reasonable attorneys' fees and expenses incident to the defense by Lessor of any such claims, demands or causes of action or of the enforcement by Lessor of this indemnity.

18.2 Lessor agrees to indemnify, defend and save harmless Lessee from and against any liabilities, claims, demands and causes of action whatsoever asserted against or incurred by Lessee, and any resulting losses, liabilities or damages, on account of: (a) any failure on the part of Lessor during the Term of this Lease to perform or comply with any of the terms of this Lease; (b) injury to or death of persons or loss of or damage to property, occurring on the Demised Premises or any adjoining sidewalks, streets or ways or in any manner growing out of or connected with the use or occupation of the Demised Premises or the condition thereof, or the use of any existing or future sewer system, or the use of any adjoining sidewalks, streets or ways occurring prior to the Commencement Date; (c) any failure on the part of Lessor to perform or comply with the terms of any mortgage (unless such failure is caused in whole or in part by acts or omissions of Lessee); and (d) Lessor's operation of the Facility and use of the Demised Premises prior to the Commencement Date. Lessor further agrees to pay any reasonable attorneys' fees and expenses incident to the defense by Lessee of any such claims, demands or causes of action or the enforcement by Lessee of this indemnity.

18.3 In the event that any liability, claim, demand or cause of action which is indemnified against by or under any term, provision, section or paragraph of this Lease ("**Indemnitee's Claim**") is made against or received by any indemnified party (hereinafter "**Indemnitee**") hereunder, said Indemnitee shall notify the indemnifying party (hereinafter "**Indemnitor**") in writing within thirty (30) calendar days of Indemnitee's receipt of written notice of said Indemnitee's Claim, provided, however, that Indemnitee's failure to timely notify Indemnitor of Indemnitee's receipt of an Indemnitee's Claim shall not impair, void, vitiate or invalidate Indemnitor's indemnity hereunder nor release Indemnitor from the same, which duty, obligation and indemnity shall remain valid, binding, enforceable and in full force and effect so long as Indemnitee's delay in notifying Indemnitor does not, solely by itself, directly and materially prejudice Indemnitor's right or ability to defend the Indemnified Claim. Upon its receipt of any or all of Indemnitee's Claim(s), Indemnitor shall, diligently and vigorously defend,

compromise or settle said Indemnitee's Claim at Indemnitor's sole and exclusive cost and expense and shall promptly provide Indemnitee evidence thereof within fourteen (14) calendar days of the final, unappealable resolution of said Indemnitee's Claim. Upon the receipt of the written request of Indemnitee, Indemnitor shall within five (5) business days provide Indemnitee a true, correct, accurate and complete written status report regarding the then current status of said Indemnitee's Claim. Indemnitor may not settle or compromise an Indemnitee's Claim without Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed and prior to an Indemnification Default (as defined herein), Indemnitee may not settle or compromise an Indemnitee's Claim without Indemnitor's prior written consent which shall not be unreasonably withheld or delayed. In the event that Indemnitor fails or refuses to indemnify, save, defend, protect or hold Indemnitee harmless from and against an Indemnitee's Claim and/or to diligently pursue the same to its conclusion, or in the event that Indemnitor fails to timely report to Indemnitee the status of its efforts to reach a final resolution of an Indemnitee's Claim, which failure to report causes Indemnitee material harm, on seven (7) calendar days prior written notice to Indemnitor during which time Indemnitor may cure any alleged default hereunder, the foregoing shall immediately, automatically and without further notice be an Event of Default (with respect to Lessee or Lessor, depending on which defaults as Indemnitor) hereunder (an "**Indemnification Default**") and thereafter Indemnitee may, but shall not be obligated to, immediately and without notice to Indemnitor, except such notice as may be required by law and/or rule of Court, intervene in and defend, settle and/or compromise said Indemnitee's Claim at Indemnitor's sole and exclusive cost and expense, including but not limited to attorneys' fees, and, thereafter, within seven (7) calendar days of written demand for the same, Indemnitor shall promptly reimburse Indemnitee all said Indemnitee's Claims and the reasonable costs, expenses and attorneys' fees incurred by Indemnitee to defend, settle or compromise said Indemnitee's Claims. Indemnitee shall be permitted to participate in any Indemnitee claim with legal counsel of its choosing and at its sole cost and expense.

ARTICLE XIX - FUNDING OF CAPEX IMPROVEMENTS AND FACILITY OPERATIONS

19.1 Lessor shall allocate Two Million Dollars (\$2,000,000.00) (the "**CapEx Funds**") as funding for, and shall undertake and use commercially reasonable efforts to complete, certain capital improvements and repairs with respect to the Facility as identified by Lessee and provided to Lessor in writing. The repairs for which the CapEx Funds are used shall be subject to the approval of Lessor, which approval shall not be unreasonably withheld or delayed and shall be set forth in a written agreement between Lessor and Lessee (the "**CapEx Agreement**"); provided that in all events the full amount of the CapEx Funds shall be made available on the Commencement Date and the full amount of the CapEx Funds shall be utilized for capital improvements at the Demised Premises (the "**CapEx**"). Lessor shall use commercially reasonable efforts to have the CapEx completed in a prompt and expeditious manner.

19.2 The Lessor and the Lessee acknowledge and understand that the Albany County Elderly Aid and Support Corporation (the "**Corporation**"), a local development corporation created by Albany County under Section 1411 of the New York Not-for-Profit Corporation, has agreed to make a loan to the Lessee, in one or more tranches in the amount of Twelve Million Dollars (\$12,000,000.00) (the "**Term Loan**") pursuant to a Loan Agreement to be dated as of the Commencement Date by and between the Corporation and the Lessee, to which Lessor shall be

joined in order to provide its guaranty of the obligations of the Corporation thereunder (the "**Loan Agreement**"). The Term Loan shall be repaid by the Lessee to the Corporation pursuant to the terms of the Loan Agreement. The proceeds of the Term Loan shall be used by the Lessee to enable the Lessee to operate the Facility so as to maintain a safety net for the least able and sickest residents of the County.

ALT: Lessor shall loan to Lessee, or shall arrange for a loan to Lessee by and through the Local Development Corporation known as "Albany County Elderly Aid and Support Corporation" upon the following terms for the purpose of permitting the Facility to benefit the indigent and severely infirmed in Albany County and to permit the Lessee to operate the facility to maintain a safety net for the least able and sickest residents of Albany County: the aggregate amount of Twelve Million Dollars (\$12,000,000.00) (the "**Term Loans**"), to be funded Eight Million Dollars (\$8,000,000.00) in the 2014 calendar year (Four Million Dollars (\$4,000,000.00) on March 1, 2014, and an additional One Million Dollars (\$1,000,000.00) on each of April 1, May 1, June 1 and July 1, of 2014) and an additional Four Million Dollars (\$4,000,000.00) on April 1, 2015, pursuant to the terms of a loan agreement to be agreed upon by the parties, which shall incorporate the following provisions: i) interest rate of two and 38/100 percent (2.38%) per annum, ii) term of fifteen (15) years (or termination of this Lease, if earlier), iii) interest-only payments for the initial five (5), years, then payments based on twenty-five (25) year amortization, iv) guaranteed by the Guarantor. In the event the Lessor loans any portion of the Term Loans directly to Lessee, such Term Loan so loaned shall be subject to appropriations through the annual budget process and, under no circumstances, shall Lessor incur general obligation debt for the express purpose of providing a Term Loan.\

19.3 The Lessor and the Lessee acknowledge and understand, that the Corporation has approved a grant in the amount of Four Million Dollars (\$4,000,000.00) to be advanced in one or more tranches (the "**Elderly Aid and Support Grant**"), pursuant to the terms of an Elderly Aid and Support Grant Agreement, dated as of _____, by and between the Corporation and the Lessee, to which Lessor shall be joined in order to provide its guaranty of the obligations of the Corporation thereunder (the "**Grant Agreement**"). The proceeds of the Elderly Aid and Support Grant will be used by the Lessee to operate the Facility to benefit the indigent and severely infirmed residents of the County and to maintain a safety net for the least able and sickest residents of Albany County.

ALT: Lessor shall provide, or help secure, a grant through the Local Development Corporation known as "Albany County Elderly Aid and Support Corporation" (the "**County Elderly Aid & Support Grant**") to Lessee to continue to operate the Facility to benefit the indigent and severely infirmed of Albany County and to maintain a safety net for the least able and sickest residents of Albany County, in the amount of Three Million Dollars (\$3,000,000.00) payable on the Commencement Date, and an additional One Million Dollars (\$1,000,000.00) on February 1, 2014. Lessor shall use the County Elderly Aid & Support Grant to fund operation of the Facility. In the event the Lessor provides any portion of the County Elderly Aid & Support Grant directly to Lessee, such County Elderly Aid & Support Grant so provided shall be subject to appropriations through the annual budget process and, under no circumstances, shall Lessor incur

general obligation debt for the express purpose of providing the County Elderly Aid & Support Grant.

19.4 Lessee shall provide to the Lessor and the Corporation an attestation within six (6) months after the first Elderly Aid & Support Grant and within six (6) months after the second Elderly Aid & Support Grant each confirming that the Elderly Aid & Support Grants have been used as required by this Lease and the Grant Agreement and each including documentation demonstrating such use. Lessor and the Corporation shall review the attestation and supporting documentation and may, in their sole discretion, cost and expense, audit Lessee's records solely in connection with the use of the Elderly Aid & Support Grant. If Lessor reasonably demonstrates that any amount of the Elderly Aid & Support Grant has not been used by Lessee as required by the Lease, Lessee shall immediately return such amount to Lessor. If Lessee fails to return such amount to Lessor, Lessor may, without limitation to any other remedies available under this Lease or applicable law, reduce any CapEx Funds, Elderly Aid & Support Grant or Term Loans by such amount.

ALT: Lessee shall provide an attestation within six (6) months after the first County Elderly Aid & Support Grant and within six (6) months after the second County Elderly Aid & Support Grant each confirming that the County Elderly Aid & Support Grant has been used as required by this Lease and each including documentation demonstrating such use. Lessor shall review the attestation and supporting documentation and may, at its sole discretion, cost and expense, audit Lessee's records solely in connection with the use of the County Elderly Aid & Support Grant. If Lessor reasonably demonstrates that any amount of the County Elderly Aid & Support Grant has not been used by Lessee as required by the Lease, Lessee shall immediately return such amount to Lessor. If Lessee fails to return such amount to Lessor, Lessor may, without limitation to any other remedies available under this Lease or applicable law, reduce any CapEx Funds, County Elderly Aid & Support Grant or Term Loans by such amount.

ARTICLE XX - SUBORDINATION PROVISIONS

20.1 Notwithstanding any provision of this Lease to the contrary, this Lease (and Lessee's interest in the Demised Premises) shall be subject and subordinate to any existing mortgage or other debt obligation and to any mortgage or other debt obligation given by Lessor to any lender which may affect the Demised Premises, and to all renewals, modifications, consolidations, replacements, refinancings and extensions thereof. Lessee shall execute and deliver such documents as may be required in order to evidence such subordination; provided that such documents shall not affect any of the provisions of this Lease relating to the amount of payments due from Lessee, the purposes for which the Demised Premises may be used, the size or location of the Demised Premises, the duration or Commencement Date of the Term, nor modify any representations, covenants or warranties made by Lessor hereunder, and provided further, Lessor shall ensure such documents shall contain such customary non-disturbance provisions whereby, provided Lessee is not in default under this Lease, Lessee shall have the right to remain in possession of the Facility without disturbance after default by Lessor of the mortgage.

20.2 Notwithstanding anything to the contrary contained herein, it is understood, agreed and acknowledged that Lessor shall have the right to finance, refinance and guaranty such financing or refinancing, from time to time, the Demised Premises, and grant a mortgage, bond, deed of trust or security interest thereon, to assign or pledge any or all of its interest in this Lease and to assign or pledge the revenues and receipts to be received by Lessor hereunder to a third party, if Lessor obtains a customary form of subordination, nondisturbance and attornment agreement from such mortgagee, reasonably satisfactory to Lessee.

20.3 Upon Lessee's request, Lessor shall secure from mortgagee a standard form non-disturbance agreement whereby, provided Lessee is not in default under this Lease, Lessee shall have the right to remain in possession of the Facility without disturbance after any default by Lessor of the mortgage.

ARTICLE XXI - LESSEE'S ATTORNMENT

21.1 Lessee covenants and agrees that, if by reason of a default upon the part of Lessor herein in the performance of any of the terms and conditions of the mortgage or other debt obligation and the mortgagee forecloses on the estate of Lessor in the Demised Premises, Lessee will attorn to the then holder of such mortgage or other debt obligation or the purchaser in such foreclosure proceedings, as the case may be, and will recognize such holder of the mortgage or such purchaser as Lessor under this Lease. Lessee covenants and agrees to execute and deliver, at any time and from time to time, upon the request of Lessor, or of the holder of such mortgage or other debt obligation or the purchaser in foreclosure proceedings, any instrument which may be necessary or appropriate to evidence such attornment. In the event any such proceedings are brought against Lessor under such mortgage or other debt obligation or the holder of any such mortgage, then Lessee further waives the provisions of any statute or rule or law now or hereafter in effect which may terminate this Lease or give or purport to give Lessee any right of election to terminate this Lease or to surrender possession of the Demised Premises and agrees that, pending any final order, this Lease shall not be affected in any way whatsoever by any such proceedings.

21.2 If Lessor shall default in the performance of any of the terms, provisions, covenants or conditions under any mortgage or other debt obligation, or fails to pay the amounts due thereunder when due, then, upon notice of such default or failure on the part of Lessor, Lessee shall have the right, in its discretion, upon five (5) days' prior written notice thereof to Lessor (or such shorter period as permitted under any mortgage or other debt obligation), to cure such defaults, and to make such payments as are due from Lessor, directly to the holder of any mortgage or other debt obligation, as the case may be, and to the extent such payments are accepted by the holder of such mortgage, to deduct the amounts expended by Lessee to cure such defaults from the next succeeding Base Rent payment or payments due under this Lease, and such deductions shall not constitute an Event of Lessee Default under this Lease. Lessor shall promptly provide Lessee with copies of any notice of default received by Lessor with respect to any mortgage.

ARTICLE XXII - REPRESENTATIONS

22.1 Lessor represents and warrants as follows:

(a) Lessor is a municipal entity, is duly organized and validly existing under the laws of the State of New York, and, subject to the satisfaction of the conditions set forth in **Exhibit C**, has (i) the full right and power to enter into, and perform its obligations under this Lease and all agreements or documents entered into or executed in connection therewith, and (ii) taken all requisite actions to authorize the execution, delivery and performance of this Lease and all agreements and documents entered into or executed in connection therewith.

(b) Except for any mortgage and except as set forth on **Exhibit B**:

(i) Lessor has or, on the Commencement Date, will have valid title to the Demised Premises, free and clear of all liens, charges, security interests, leasehold rights or interests, reservation, restrictions, adverse claims, encumbrances and other defects in or limitations on title other than liens for taxes not yet due and payable (collectively, "**Encumbrances**");

(ii) Lessor has or will on the Commencement Date have, subject to the satisfaction of the conditions set forth in **Exhibit C**, authority to convey a leasehold interest in and to the Demised Premises to Lessee, free and clear of all Encumbrances.

(c) No consent, order, approval or authorization of, or declaration, filing or registration with, any governmental or regulatory authority (other than the approval of the Albany County Legislature or as otherwise set forth on **Exhibit C**) is required in connection with the execution or delivery by Lessor of this Lease, or the performance by Lessor of this Lease, or for the consummation by Lessor of transactions contemplated hereby, except (i) receipt by Lessee of an operating certificate for the Facility from the DOH, and (ii) such other consents, certifications or licenses from the DOH, the Center for Medicaid and Medicare Services (**the "CMS"**) or any other governmental agency with jurisdiction over the Facility as necessary to permit Lessee to operate the Facility after the Commencement Date.

22.2 Lessee represents and covenants to Lessor as follows:

(a) Lessee is a New York limited liability company, duly organized and validly existing in good standing under the laws of the State of New York, and has full right and power to enter into, or perform its obligations under this Lease and has taken all requisite actions to authorize the execution, delivery and performance of this Lease.

(b) In addition to all other covenants contained herein, Lessee expressly covenants that they shall keep and maintain at the Facility at all times in good order and repair all items necessary for operating the Facility for not less than two hundred and fifty (250) skilled beds in full compliance with all material laws, rules and regulations of the DOH and the State of New York. Lessee shall maintain all such items and the Demised Premises in good order and repair, subject to reasonable wear and tear, and shall promptly replace any such items which

become obsolete, damaged or destroyed with substitute items equivalent to that which has been replaced and such replacement items shall become and be deemed the personal property of Lessor.

(c) At all times during the term of this Lease, Lessee shall (i) continue the current mission and admission standards of the Facility as set forth in attached hereto as **Exhibit D** (the “**Admission Standards**”), and (ii) ensure that all patients at the Facility as of the Commencement Date, shall be entitled to remain patients of the Facility and shall receive the same or better level of care from the Facility as they receive as of the Commencement Date, subject to such patient’s compliance with the Admission Standards.

(d) Lessee agrees to recognize and engage in collective bargaining for a new labor agreement with the existing Facility’s collective bargaining representative, provided that the request for recognition is for a bargaining unit that is appropriate for collective bargaining under the National Labor Relations Act or other applicable law.

(e) At the Commencement Date, Lessee shall hire or extend offers of employment to as many of Lessor’s former employees at the facility as is practicable, in Lessee’s sound business judgment, but in no event less than the number of employees required by the DOH or the Facility’s operating certificate.

(f) During the Term, Lessee shall allow the Albany County Director of the Department of Residential Health Care Facilities (the “**Director**”) to take all commercially reasonable steps to ensure that the Lessee operates the Facility consistent with the historical mission of the Facility as reflected in the Admissions Standards, and that the Admissions Standards are maintained with particular attention to hard to place patients and Lessee agrees to comply with such Admission Standards. To ensure Lessee’s compliance with the Admission Standards, the Director, upon reasonable notice to Lessee, shall be permitted to inspect the Facility, review its operations and review all documents relevant thereto. The Director shall report his findings regarding Lessee compliance to the Albany County Executive and the Albany County Legislature at their request but in no event less than annually.

22.3 OTHER THAN AS EXPRESSLY SET FORTH IN THIS LEASE, NEITHER LESSOR NOR LESSEE MAKES ANY REPRESENTATIONS OR WARRANTIES TO EACH OTHER WITH RESPECT TO THE DEMISED PREMISES OR THE ASSETS, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.

ARTICLE XXIII - LICENSURE/TERMINATION

23.1 Upon the expiration or termination of this Lease (whether by reason of default, the natural expiration of the Term or otherwise), the following provisions shall be applicable:

(a) Upon the expiration or other termination of this Lease, Lessee shall return to Lessor the Demised Premises and the leased assets in a condition similar to that which existed on the Commencement Date, licensed by the DOH and by any governmental agencies having jurisdiction over the Demised Premises with at least two hundred and fifty (250) licensed beds

(subject to any reduction in the number of licensed beds required by any governmental authority solely as a result of changes in laws, rules and regulations relating to the physical attributes of the improvements on the Demised Premises, eminent domain proceedings or casualty), reasonable wear and tear excepted, and free of liens or encumbrances arising through Lessee except for tax liens for current general real estate taxes or special assessments, personalty leases and other expenses incurred in the ordinary course of business which shall be pro-rated.

(b) Lessor shall remit to Lessee any Base Rent paid by Lessee in advance of the date of such termination which refund shall be pro-rated for any partial month. Lessee shall pay all bills incurred in the lease and use of the Demised Premises and operation of the Facility from the Commencement Date through the termination date, and shall receive and keep all income and suffer all losses incurred during its lease and use of the Demised Premises and operation of the Facility from the Commencement Date through the termination date.

23.2 IN THE EVENT OF LESSOR DEFAULT, LESSEE'S SOLE AND EXCLUSIVE REMEDY IS TO SEEK SPECIFIC ENFORCEMENT OF LESSOR'S BREACH OR MONETARY DAMAGES ARISING OUT OF LESSOR'S BREACH SUBJECT TO THE TERMS OF THIS LEASE. HOWEVER, LESSEE MAY NOT TERMINATE THIS LEASE OR TERMINATE OR FAIL TO PERFORM ANY OF LESSEE'S OBLIGATIONS UNDER THIS LEASE. IN NO CASE SHALL LESSOR BE RESPONSIBLE FOR (A) CONSEQUENTIAL DAMAGES OF LESSEE, OR (B) DAMAGES IN EXCESS OF AN AMOUNT EQUAL TO ALL AMOUNTS PAID TO LESSOR AS BASE RENT UNDER THIS LEASE.

ARTICLE XXIV - CONDITIONS PRECEDENT TO COMMENCEMENT DATE

24.1 The matters set forth in **Exhibit C** shall be conditions precedent to the establishment of the Commencement Date and Lessee's and Lessor's obligations set forth in this Lease (other than as set forth in **Exhibit C**). If such conditions have not been satisfied or waived and the Lease is terminated as set forth in **Exhibit C**, this Lease shall terminate and be of no force or effect, provided that Lessor and Lessee shall have such rights as set forth in **Exhibit C**. As of the Commencement Date, the terms and conditions set forth in **Exhibit C** shall terminate and be of no further force or effect.

24.2 Notwithstanding anything contained in ARTICLE XXIV or **Exhibit C** to the contrary, Lessee may, in its sole discretion, waive any conditions precedent or conditions concurrent, to the obligations of Lessee, contained in **Exhibit C**.

24.3 Notwithstanding anything contained in ARTICLE XXIV or **Exhibit C** to the contrary, Lessor may, in its sole discretion, waive any conditions precedent or conditions concurrent, to the obligations of Lessee, contained in **Exhibit C**.

ARTICLE XXV - GUARANTY

Guarantor hereby unconditionally and irrevocably guarantees to Lessor the full and prompt performance of all of Lessee's obligations set forth in this Lease (including the Commencement Date Rider) and payment of all amounts required to be paid by Lessee as set forth in this Lease or otherwise owed to Lessor (collectively, the "**Guaranteed Obligations**"). The foregoing

constitutes a guarantee of payment, and not of collection. The liability of Guarantor hereunder is direct and unconditional, and may be enforced without requiring Lessor first to resort to any other right, remedy, or security. Lessor agrees to give Guarantor written notice of any failure of Lessee to perform any of the Guaranteed Obligations (provided, however, that any delay of Lessor in providing such written notice shall not affect Guarantor's obligations hereunder except to the extent Guarantor has been actually and adversely prejudiced by such delay). Other than as set forth in the previous sentence, Guarantor hereby waives all rights of notice or demand, including, without limitation, presentment, demand for payment and protest of any instrument, and notice of dishonor or nonpayment, notice of default or nonpayment by Lessee and all other notices to which Guarantor may otherwise be entitled. In addition, Guarantor waives all suretyship defenses it may have, whether now or in the future, and waives any right to seek contribution, indemnification, subrogation or reimbursement from Lessee, until all of the Guaranteed Obligations have been indefeasibly paid in full. The execution of this Lease by and on behalf of Guarantor has been authorized by all necessary corporate action and will not violate Guarantor's charter or by-laws or any material agreement, instrument, order, judgment or decree to which it is a party or by which it is bound.

THE PARTIES HERETO AGREE AND ACKNOWLEDGE THAT FINANCIAL STATEMENTS SETTING FORTH THE FINANCIAL CONDITION OF GUARANTOR HAVE BEEN PROVIDED TO LESSOR, AND LESSOR HAS BEEN PROVIDED WITH THE OPPORTUNITY TO REVIEW SUCH FINANCIAL INFORMATION AND ASK ANY QUESTIONS IT DEEMED APPROPRIATE. LESSOR HAS DETERMINED, IN ITS SOLE DISCRETION, AND ON THE BASIS OF THE FINANCIAL STATEMENTS PROVIDED, TO ACCEPT THE GUARANTY OF GUARANTORS WITH RESPECT TO THE LEASE.

ARTICLE XXVI - LIABILITIES

Lessee shall not assume and shall not be liable for, any debts, liabilities or obligations of Lessor including, but not limited to, any (i) any expenses of Lessor that accrue or arise prior to the closing, (ii) liabilities or obligations of Lessor with respect to any contracts, acts, events or transactions, or (iii) any other liabilities of Lessor.

ARTICLE XXVII - MISCELLANEOUS

27.1 Lessee, upon paying the Base Rent and all other charges and amounts herein provided, and for observing and keeping the covenants, agreements, terms and conditions of this Lease on its part to be performed, shall lawfully and quietly hold, occupy and enjoy the Demised Premises during the Term of this Lease, and subject to its terms, without hindrance by Lessor or by any other person or persons claiming under Lessor.

27.2 It is understood and agreed that the granting of any consent by Lessor to Lessee to perform any act of Lessee requiring Lessor's consent under the terms of this Lease, or the failure on the part of Lessor to object to any such action taken by Lessee without Lessor's consent, shall not be deemed a waiver by Lessor of its rights to require such consent for any further similar act by Lessee, and Lessee hereby expressly covenants and warrants that as to all matters requiring Lessor's consent under the terms of this Lease, Lessee shall secure such consent for each and

every happening of the event requiring such consent, and shall not claim any waiver on the part of Lessor of the requirement to secure such consent.

27.3 Lessor and Lessee agree that, at the request of either party, this Lease may be recorded, to be filed in the real property records of the county in which the Demised Premises are located.

27.4 All notices, demands or other communications given hereunder shall be in writing and shall be deemed to have been duly delivered (i) upon the delivery (or refusal to accept delivery) by personal delivery, messenger or overnight express delivery service (or, if such date is not on a business day, on the business day next following such date), (ii) on the third (3rd) business day next following the date of its mailing by certified mail, postage prepaid, at a post office maintained by the United States Postal Service, or (iii) by facsimile or electronic mail transmission (followed by delivery by one of the other means identified in (i)-(ii)), addressed as follows:

If to Lessor:

Albany County
112 State Street
Albany, New York 12207
Attn: Thomas Marcelle
Fax: 518.447.5564
Email:
Thomas.Marcelle@albanycounty.com

If to Lessee:

ACRNC, LLC
One Hillcrest Center Drive,
Suite 225
Spring Valley, New York 10977
Fax: _____
Email: _____

with a copy to:

Abraham Gutnicki, Esq.
8320 Skokie Boulevard
Skokie, Illinois 60077
Fax: 847.-933.-9285
Email: agutnicki@gutnicki.com

or such other address that any party designates to the other by written notice given in the manner stated above. Any notice sent by facsimile or electronic mail shall be deemed delivered upon transmission, so long as said transmission is evidenced by proof of said transmittal, and sent before 5:00 p.m. local time at the place of the recipient and, if sent after 5:00 p.m., shall be deemed delivered on the next business day. Notices from counsel to Lessor shall for all purposes hereunder constitute notice from Lessor. Notices from counsel to Lessee shall for purposes hereunder constitute notice from Lessee.

27.5 Upon demand by either party, Lessor and Lessee agree to record this Lease in the real property records of the county in which the Demised Premises is located.

27.6 Each party agrees at any time, and from time to time, upon not less than ten (10) days prior written request from the other party, to execute, acknowledge and deliver to the other

party a statement in writing, certifying that this Lease is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified, and stating the modifications), the dates to which the Base Rent has been paid, the amount of the additional rent held by Lessor, and whether to the best knowledge of such party an Event of Lessee Default has occurred or whether any events have occurred which, with the giving of notice or the passage of time, or both, could constitute an Event of Lessee Default hereunder, it being intended that any such statement delivered pursuant to this section may be relied upon by any prospective assignee, mortgagee or purchaser of the fee interest in the Demised Premises or of this Lease.

27.7 All of the provisions of this Lease shall be deemed and construed to be “conditions” and “covenants” as though the words specifically expressing or importing covenants and conditions were used in each separate provision hereof.

27.8 Any reference herein to the termination of this Lease shall be deemed to include any termination thereof by expiration, or pursuant to Articles referring to earlier termination.

27.9 The headings and titles in this Lease are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Lease, nor in any way affect this Lease.

27.10 This Lease contains the entire agreement between the parties and any executory agreement hereafter made shall be ineffective to change, modify or discharge it in whole or in part unless such executory agreement is in writing and signed by the party against whom enforcement of the change, modification or discharge is sought. This Lease cannot be changed orally or terminated orally.

27.11 Except as otherwise herein expressly provided, the covenants, conditions and agreements in this Lease shall bind and inure to the benefit of Lessor and Lessee and their respective successors and permitted assigns.

27.12 All nouns and pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular or plural as the identity of the person or persons, firm or firms, corporation or corporations, entity or entities or any other thing or things may require. “Any” or “any” shall mean “any and all”; “or” shall mean “and/or”; “including” shall mean “including, but not limited to.”

27.13 This Lease may be executed in counterparts, each of which shall for all purposes be deemed an original, and all of such counterparts shall together constitute one and the same agreement. Counterparts may be executed and delivered via exchange of fax or pdf₂ copies of original signature pages.

27.14 If any term or provision of this Lease shall to any extent be held invalid or unenforceable, the remaining terms and provisions of this Lease shall not be affected thereby, but each term and provision shall be valid and be enforced to the fullest extent permitted by law.

27.15 This Lease shall be construed in accordance with the laws of the State of New York, without giving effect to principles of conflict of laws.

27.16 IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN AND EXCEPT IN THE CASE OF FRAUD OR INTENTIONAL MISREPRESENTATION BY LESSOR OR ANY OTHER PERSON OR ENTITY RELATED TO LESSOR IN CONNECTION WITH THIS LEASE, THIS LEASE SHALL NOT BE CONSTRUED AS CREATING ANY PERSONAL LIABILITY WHATSOEVER AGAINST ANY MEMBER, OFFICER, DIRECTOR, SHAREHOLDER OR AGENT OF LESSOR AND/OR OF LESSEE AND IN PARTICULAR WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THERE SHALL BE NO PERSONAL LIABILITY TO PAY ANY OBLIGATIONS SET FORTH HEREIN OR TO PERFORM ANY COVENANT, EITHER EXPRESSED OR IMPLIED, HEREIN CONTAINED, AND THAT, EXCEPT AS OTHERWISE PROVIDED HEREIN OR IN THE CASE OF FRAUD OR INTENTIONAL MISREPRESENTATION AS SET FORTH ABOVE, ALL PERSONAL LIABILITY OF ANY MEMBER, OFFICER, DIRECTOR, SHAREHOLDER OR AGENT OF LESSOR AND/OR OF LESSEE OF EVERY SORT, IF ANY, IS HEREBY EXPRESSLY WAIVED BY THE OTHER PARTY HERETO.

27.17 If Lessee shall fail to duly and properly perform any of its obligations under this Lease, with respect to the Demised Premises, Lessor may, at its option, perform any act or make any payment which Lessor deems necessary or advisable for the maintenance and preservation of the Demised Premises and Lessor's title thereto including, but not limited to, payments for satisfaction of liens, repairs, taxes, levies and insurance, and all sums so paid or incurred by Lessor, shall be additional rent under this Lease and payable by Lessee to Lessor with the next installment of rent after demand. The performance of any act or payment by Lessor as aforesaid, shall not be deemed a waiver or release of any obligation or default on the part of Lessee.

27.18 Notwithstanding anything set forth in this Lease, (a) neither this Lease nor the transactions described therein is intended, nor shall it ever be construed so as, to create a partnership by and between Lessor and Lessee, nor to make Lessor and Lessee joint venturers or subcontractors, it being expressly understood and agreed that the relationship between the parties hereto is and shall at all times remain that of Lessor and Lessee, and (b) Lessee shall have no authority to bind Lessor to any obligation or liability whatsoever or to take any action for or on behalf of Lessor, and (c) Lessor shall not be responsible in any manner for any acts or omissions of Lessee, including any related to the operation of the Facility.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be signed by persons authorized so to do on behalf of each of them respectively the day and year first above written.

LESSOR:

ALBANY COUNTY, a New York municipal entity

By: _____
Name:
Its:

LESSEE:

ACRNC, LLC, an New York limited liability company

By: _____
Name:
Its:

GUARANTOR:

UPSTATE SERVICE GROUP, LLC, a New York limited liability company

By: _____
Name:
Its:

FRS HEALTHCARE CONSULTANTS, INC., a New York corporation

By: _____
Name:
Its:

EXHIBIT A

LEGAL DESCRIPTION

All that certain tract, piece or parcel of land situate in the Town of Colonie, County of Albany, State of New York, lying westerly of Heritage Lane, formerly known as Albany-Shaker Road and being more particularly bounded and described as follows:

Beginning at a point in the westerly line of Heritage Lane at the intersection of lands of the County of Albany on the south formerly known as Heritage Park and recorded in the Albany County Clerk's Office in Liber 2932 of deeds at page 96 on September 23, 2008 and lands of the County of Albany on the north known as the Albany County Nursing Home and recorded in the Albany County Clerk's Office in Liber 768 of deeds at page 394 on September 28, 1925, thence along said division line and in part the southerly edge of the Albany County Nursing Home Parking Lot Pavement a distance of 375 feet more or less to a point; thence in a northerly direction through the lands of the County of Albany as recorded in Liber 768 of deeds at page 394 on September 28, 1925 the following 4 courses and distances which are all parallel to the edge of the pavement of the Albany County Nursing Home Parking Lot and 10 feet more or less westerly and northerly therefrom: 1) thence in northerly direction a distance of 18 feet more or less to a point; 2) thence in a westerly direction a distance of 11 feet more or less to a point; 3) thence in a northwesterly direction a distance of 75 feet more or less to a point; 4) thence in a northerly direction a distance of 91 feet more or less to a point which is 10 feet more or less from the edge of the pavement of the emergency service road; thence continuing through the lands of the County of Albany the following 8 courses and distances which are all parallel to the edge of pavement of the emergency service road and 10 feet more or less westerly and northerly therefrom: 1) thence in a westerly direction a distance of 15 feet more or less to a point; 2) thence in a northwesterly direction a distance of 8 feet more or less to a point; 3) thence in a northwesterly direction a distance of 72 feet more or less to a point; 4) thence along a curve to the right a distance of 192 feet more or less to a point; 5) thence in a northerly direction a distance of 343 feet more or less to a point; thence along a curve to the right a distance of 250 feet more or less to a point; 6) thence in a easterly direction a distance of 108 feet more or less to a point; 7) thence in a southeasterly direction a distance of 8 feet more or less to a point; 8) thence along a curve to the right a distance of 200 feet more or less to the intersection of said course with a point 10 feet more or less north of the edge of pavement of the north parking area; 9) thence continuing through the lands of the County of Albany along the following 2 courses which are parallel to the edge of pavement of the north parking area and 10 feet more or less therefrom: 1) thence in a easterly direction a distance of 103 feet more or less to a point; 2) thence in a southerly direction a distance of 22 feet more or less to a point which is 10 feet more or less from the northerly edge of the pavement of the emergency service road: thence continuing through the lands of the County of Albany in a easterly direction on a course parallel with the northerly edge of pavement of the emergency service road and 10 feet more or less northerly therefrom for a distance of 165 feet more or less to a point in the westerly line of Heritage Lane, formerly Albany-Shaker Road; thence in a southerly direction along the westerly line of Heritage Lane a distance of 630 feet more or less to the point of place of beginning and containing 10.2 acres more or less.



EXHIBIT A-1

ASSETS

To be completed prior to the Commencement Date if applicable (See Recital B and Section 1.4).

EXHIBIT B

ADDITIONAL ENCUMBRANCES

To be completed prior to the Commencement Date.

EXHIBIT C

COMMENCEMENT DATE RIDER

This Commencement Date Rider is entered into as of _____, 2013 between **ALBANY COUNTY**, a New York municipal entity (“**Lessor**”), **ACRNC, LLC**, a New York limited liability company (“**Lessee**”), and Upstate Service Group, LLC, a New York limited liability company and FRS Healthcare Consultants, Inc., a New York corporation (“**Guarantor**”).

WHEREAS, Lessor and Lessee entered into that certain Lease Agreement (the “**Lease**”) dated _____, 2013, pursuant to which Lessor has agreed to lease to Lessee and Lessee has agreed to lease from Lessor the Demised Premises as described therein; and

WHEREAS, The parties hereto have agreed that the tenancy described in this Lease shall become effective on the Commencement Date (defined below) but only after satisfaction or waiver of the conditions described in this Commencement Date Rider, and if those conditions are not satisfied, the parties shall have only those rights and obligations as set forth in this Commencement Date Rider;

WHEREAS, Guarantor agrees to guaranty the performance of Lessee’s obligations hereunder;

WHEREAS, capitalized terms used herein and not otherwise defined shall have the definitions ascribed to them in the Lease;

NOW, THEREFORE, in consideration of the mutual covenants herein, the parties hereto agree as follows:

1. Commencement Date. The “**Commencement Date**” shall be the first day of the first month that is five (5) business days following the date that each of the conditions set forth in Section 1 of this Commencement Date Rider have been satisfied or waived, or such other date as mutually agreed by the parties, provided that if the Commencement Date has not occurred by September 15, 2013, (the “**Outside Date**”), the Lease may be terminated as follows: i) by Lessee if the conditions pursuant to Section 1(b) of this Commencement Date Rider have not been satisfied, ii) by Lessor if the conditions pursuant to Section 1(c) of this Commencement Date Rider have not been satisfied, and iii) by either party if the condition that has not been satisfied is that which is set forth in Section 1(a) of this Commencement Date Rider; provided however that with respect to Section 1(a)(ii) or 1(a)(iii) of this Commencement Date Rider, the Outside Date shall be extended so long as the applicable authority has not provided its final rejection of the matters referenced therein. Upon any termination of the Lease as set forth in this Section of this Commencement Date Rider, Lessee and Lessor shall only have the right to pursue all available legal remedies against any party that breached its obligations under Section 2 of this Commencement Date Rider.

(a) Mutual Conditions of both Parties.

- (i) Litigation. There shall not be any lawsuits filed against Lessee or Lessor, or injunctions or orders applicable to Lessee or Lessor, to restrain or prohibit the consummation of the transactions contemplated by the Lease.
 - (ii) CON Approval. Lessee shall have received approval from the New York State Public Health Planning Counsel to be the operator of the Facility and for the License.
 - (iii) Legislative Approval. The Albany County Legislature, in their sole and absolute discretion, shall have taken all necessary action to approve the Lease and the Term Loan and the transactions contemplated thereby.
 - (iv) Funds and Records. Lessor and Lessee shall enter into a letter agreement governing their mutual obligations with respect to the disclosure, maintenance and allocation of employment records, patient records and Medicare and Medicaid claims, in form and substance, reasonably acceptable to Lessor and Lessee.
 - (v) CapEx Agreement. Lessor and Lessee shall have executed and delivered the CapEx Agreement as contemplated by Section 19.1 of the Lease.
 - (vi) Loan Agreement. Lessor, the Corporation and Lessee shall have executed and delivered the Loan Agreement as contemplated by Section 19.2 of the Lease, reflecting terms acceptable to Lessor, the Corporation and Lessee.
 - (vii) Grant Agreement. Lessor, the Corporation and Lessee shall have executed and delivered the Grant Agreement as contemplated by Section 19.3 of the Lease, reflecting terms acceptable to Lessor, the Corporation and Lessee.
 - (viii) Exhibits and Schedules. Lessor and Lessee shall have approved, in their reasonable discretion, any Schedules and/or Exhibits attached to the Lease following the Effective Date.
- (b) Lessee's Conditions.
- (i) Assigned Contracts. Lessor shall have disclosed to Lessee all material contracts to which Lessor is a party, with respect to the operation of the Facility and for each such contract that Lessee desires to assume, in its sole discretion, Lessor shall have executed and delivered an assignment and assumption agreement, in form and substance reasonably acceptable to Lessee and Lessor, provided that Lessor shall have no obligation to obtain any consent, approval or authorization from any third party with

respect to the assignment of any contract (the “**Assignment Agreement**”). For any such assigned contracts, the Assignment Agreement shall provide that Lessor shall remain liable for any breach or performance obligation thereof arising out of facts that occurred prior to the Commencement Date and Lessee shall assume all performance obligations thereof on and after the Commencement Date.

(ii) **Representations and Warranties.** The following representations and warranties shall be true and correct in all material respects.

a. **Litigation.** There are no pending, nor to Lessor’s knowledge, threatened claims, lawsuits, governmental actions or other proceedings, including, without limitation, any desk audit or full audit involving the Facility or the operation thereof before any court, agency or other judicial, administrative or other governmental body or arbitrator.

b. **Licensure.** The Facility is licensed by the DOH as a skilled nursing facility of two hundred and fifty (250) skilled nursing beds. Such license is unrestricted, unconditional, in good standing and in full force and effect and subject to no waivers or limitations. Lessor has not received any written notice from the DOH or any other governmental agency requiring the correction of any condition with respect to such license which has not been the subject of a plan of correction for which compliance has been affected and Lessor has no reason to believe that the good standing of any such license is in jeopardy.

c. **Certification.** The Facility is certified for participation in the Medicare and Medicaid reimbursement programs. Such certification is in good standing and in full force and effect and subject to no restrictions or limitations. Lessor has not received any written notice from the DOH, the CMS or any other governmental agency requiring the correction of any condition with respect to such certification which has not been the subject of a plan of correction for which compliance has been affected and Lessor has no reason to believe that the good standing of such certification is in jeopardy.

- d. Personal Needs Allowance. Lessor is currently in material compliance with all state and federal regulations relating to maintaining and accounting for the personal needs allowance (“PNA”) for residents who request the establishment of a PNA account. Lessor has no knowledge of and has not received any written notice from any governmental authority citing or alleging any violation by Lessor or the Facility of any state or federal PNA regulations.
- e. Physical Condition of Facility. The Demised Premises are in the same operation and repair as they existed on the Effective Date, reasonable wear and tear accepted.
- f. Labor Unions. Other than 1199 SEIU and NYSUT, Lessor is not party to any collective bargaining agreement with any labor union or similar organization, nor does Lessor know of any such organization which represents or claims to represent any of Lessor’s employees at the Facility or intends to organize any of Lessor’s employees at the Facility.
- g. Employee Benefit Plans. Lessee shall have no liability for any employment benefit for of any of Lessor’s employees at the Facility arising out of facts that occurred prior to the Commencement Date.
- h. Environmental Condition. Lessor has not generated, stored or disposed of any Hazardous Substances on the Facility or the adjoining property, and Lessor does not have any knowledge of any previous or present generation, storage, disposal or existence of any hazardous waste on the Facility or the adjoining property, except in such quantities that is customary in the operation of a skilled nursing facility and in all events in accordance with all Environmental Laws.
- i. Compliance with Applicable Laws. The Facility has been and is presently used and operated in compliance in all material respects with all applicable statutes, laws, regulations, rules,

licensing requirements, ordinances, orders and permits of any kind whatsoever affecting the Facility or any part thereof, and any rules or regulations promulgated thereunder.

- j. Status of Residents. To the knowledge of Lessor, all of the residents at the Facility have full legal status as citizens of the United States of America.

 - (iii) Termination of Employees. Lessor shall have terminated, or shall have made adequate provision for, as of the Commencement Date, all of its employees at the Facility and paid or made adequate provision for payment of all wages and employment benefits due to each of them as of the Commencement Date.

 - (iv) Performance of Obligations. Lessor shall have complied with its obligations set forth in this Commencement Date Rider, in all material respects.

 - (v) County Elderly Aid & Support Grant. Lessor shall have delivered to Lessee, or shall have made adequate provision to deliver to Lessee on the Commencement Date, the County Elderly Aid & Support Grant in accordance with the terms of Article XIX of the Lease.

 - (vi) Personal Property. The sale of personal property contemplated by Section 1.4 of the Lease, shall have been consummated upon terms satisfactory to Lessor and Lessee.
- (c) Lessor's Conditions.
- (i) Assigned Contracts. Lessee shall have executed and delivered to Lessor, the Assignment Agreement; provided that this condition shall only apply in the event that Lessee elects to assume contracts of Lessor.

 - (ii) Payment of Base Rent. Lessee shall have delivered, or be prepared to deliver upon commencement, to Lessor Base Rent for the month in which the Commencement Date occurs.

 - (iii) CapEx Funds. Lessor and Lessee shall have entered into the CapEx Agreement, in accordance with the terms of Article XIX of the Lease.

 - (iv) Employees. At the Commencement Date, Lessee shall hire or extend offers of employment to as many of Lessor's former employees at the facility as is practicable, in Lessee's sound business judgment, but the number of offers made to current

County employees shall be in no event less than the number of employees required by the DOH or the Facility's operating certificate.

- (v) Performance of Obligations. Lessee shall have complied with its obligations set forth in this Commencement Date Rider, in all material respects.

2. Performance Obligations.

(a) Lessor's Performance Obligations.

- (i) From the Effective Date until the Commencement Date, Lessor shall operate the Facility in substantially the same manner as it has heretofore operated, including, (1) operating the Facility in material compliance with all applicable laws, (2) using commercially reasonable efforts to preserve intact the business operations and relationships of the Facility with third parties, (3) using commercially reasonable efforts to keep available the services of all of the Facility's employees, (4) not selling, transferring or otherwise disposing of any of the Demised Premises except in the ordinary course of business consistent with the prior practices of Lessor, (5) not entering into any material contract which shall become the obligation of Lessee without Lessee's prior written consent, and (6) not increase or promise to increase any wages or benefits of, or grant or promise to grant any bonuses to, any of the employees of the Facility, other than as required by applicable law or contract entered into as of the Effective Date.
- (ii) Lessor shall permit Lessee to conduct reasonable due diligence of the Demised Premises for the purpose of confirming the veracity of the representations and warranties set forth in Section 1(b)(ii) of this Commencement Date Rider, it being agreed that all such due diligence activities shall be conducted in coordination with Lessor and in accordance with Lessor's instructions, Lessee shall take all reasonable measures to avoid disruption to Lessor's operation of the Facility and Lessee may not contact any employees, vendors or patients of the Facility or conduct any environmental testing without Lessor's prior written approval, not to be unreasonably withheld or delayed. In all cases, all environmental testing or other matters shall be at Lessee's sole cost and expense, including any required by the State Environmental Quality Review Act and all regulations related thereto.
- (iii) Lessor shall use commercially reasonable efforts to cause all of the conditions set forth in Section 1(a) and Section 1(b) of this Commencement Date Rider to be satisfied, and shall notify Lessee

promptly after obtaining knowledge of any matter that will, or will be reasonably likely to, cause any of the conditions set forth in Section 1(a) or Section 1(b) of this Commencement Date Rider not to be satisfied by the Outside Date.

(b) Lessee's Performance Obligations.

- (i) Within thirty (30) days following the Effective Date, Lessee shall submit to the DOH, at its sole cost and expense, all necessary applications and papers to obtain the License; provided however, that Lessor shall provide to Lessee all materials and documentation required from Lessor with respect to such application within three (3) business days of request, and in the event Lessor does not timely provide such document then the thirty (30) day period shall be extended accordingly. At least ten (10) days prior to submitting any such applications or papers, Lessee shall provide a copy thereof to Lessor and shall effectuate any reasonable comments thereto provided by Lessor. Lessee shall provide Lessor with a copy of all correspondence from the DOH relating to the License and Lessee's application therefor. Prior to the Commencement Date, Lessee shall, at its sole cost and expense, take all steps reasonably necessary to obtain the License and all necessary approvals, certifications and licenses from all appropriate governmental agencies necessary to permit Lessee to operate the Facility as a skilled care nursing facility.
- (ii) Lessee shall use commercially reasonable efforts to cause all of the conditions set forth in Section 1(a) and Section 1(c) of this Commencement Date Rider to be satisfied and shall notify Lessor promptly after obtaining knowledge of any matter that will, or will be reasonably likely to, cause any of the conditions set forth in Section 1(a) or Section 1(c) of this Commencement Date Rider not to be satisfied by the Outside Date.

(c) Guarantor's Performance Obligations. Guarantor unconditionally and irrevocably guarantees to Lessor the full and prompt performance of all of Lessee's obligations set forth in this Commencement Date Rider (including all damages arising out of any breach thereof), in accordance with the terms of Article XXV of the Lease.

3. THE PARTIES HERETO AGREE AND ACKNOWLEDGE THAT FINANCIAL STATEMENTS SETTING FORTH THE FINANCIAL CONDITION OF GUARANTOR HAVE BEEN PROVIDED TO LESSOR, AND LESSOR HAS BEEN PROVIDED WITH THE OPPORTUNITY TO REVIEW SUCH FINANCIAL INFORMATION AND ASK ANY QUESTIONS IT DEEMED APPROPRIATE. LESSOR HAS DETERMINED, IN ITS SOLE DISCRETION, AND ON THE BASIS OF THE FINANCIAL STATEMENTS

PROVIDED, TO ACCEPT THE GUARANTY OF GUARANTOR WITH RESPECT TO THE LEASE.

4. IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN AND EXCEPT IN THE CASE OF FRAUD OR INTENTIONAL MISREPRESENTATION BY LESSOR OR ANY OTHER PERSON OR ENTITY RELATED TO LESSOR IN CONNECTION WITH THIS LEASE, THIS LEASE SHALL NOT BE CONSTRUED AS CREATING ANY PERSONAL LIABILITY WHATSOEVER AGAINST ANY MEMBER, OFFICER, DIRECTOR, SHAREHOLDER OR AGENT OF LESSOR AND/OR OF LESSEE AND IN PARTICULAR WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, THERE SHALL BE NO PERSONAL LIABILITY TO PAY ANY OBLIGATIONS SET FORTH HEREIN OR TO PERFORM ANY COVENANT, EITHER EXPRESSED OR IMPLIED, HEREIN CONTAINED, AND THAT, EXCEPT AS OTHERWISE PROVIDED HEREIN OR IN THE CASE OF FRAUD OR INTENTIONAL MISREPRESENTATION AS SET FORTH ABOVE, ALL PERSONAL LIABILITY OF ANY MEMBER, OFFICER, DIRECTOR, SHAREHOLDER OR AGENT OF LESSOR AND/OR OF LESSEE OF EVERY SORT, IF ANY, IS HEREBY EXPRESSLY WAIVED BY THE OTHER PARTY HERETO.

5. General. The provisions of Sections 26.2, 26.4, 26.7, 26.9-26.16 and 26.18 of Article XXVI of the Lease shall be applicable to this Commencement Date Rider.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have caused this Commencement Date Rider to be signed by persons authorized so to do on behalf of each of them respectively the day and year first above written.

LESSOR:

ALBANY COUNTY, a New York municipal entity

By: _____

Name:

Its:

LESSEE:

ACRNC, LLC, a New York limited liability company

By: _____

Name:

Its:

GUARANTOR:

UPSTATE SERVICE GROUP, LLC, a New York limited liability company

By: _____

Name:

Its:

FRS HEALTHCARE CONSULTANTS, INC., a New York corporation

By: _____

Name:

Its:

EXHIBIT D

ADMISSION STANDARDS

Albany County Department of Residential Health Care Facilities **Albany County Nursing Home** **Admission Policy**

Purpose: To establish guidelines and parameters for the admission of new residents to Albany County Nursing Home, consistent with historic mission since its inception.

1. Albany County Nursing Home shall not discriminate in admission or retention or care of its residents because of race, creed, color, national origin, sex, disability, age*, source of payment**, marital status, or sexual preference.
2. *The Facility will not consider anyone for admission who is not at least twenty-one (21) years of age.
3. **All prospective admissions must have a verifiable source of payment. In those instances wherein a prospective admission is determined to be "Medicaid pending," the admission must be approved by the Director of Fiscal Operations and/or the Executive Director (provided, for avoidance of doubt, that for purposes of Lessee's adherence hereto, such approval must be obtained from the management of Lessee). In those cases where the resident's stay may be reimbursed by a third party payor with which the Facility has no contract, the admission must be approved by the Director of Fiscal Operations and/or the Executive Director (provided, for avoidance of doubt, that for purposes of Lessee's adherence hereto, such approval must be obtained from the management of Lessee).
4. All prospective admissions must undergo a clinical review prior to admission to insure the Facility is capable of providing service(s) to meet resident need.
5. Admission to the Facility shall require the order of a physician.
6. The Facility shall not consider for admission those applicants who may have clinical conditions that require services not routinely provided by the Facility. Examples of such services include, but are not limited to: ventilator care; patients who have experienced traumatic brain injury and/or exhibit the symptomology of traumatic brain injury; residents afflicted with cognitive impairment of any kind that renders them combative or aggressive; residents who require placement in a secured or locked unit; residents who may have psychiatric diagnoses but do not have accompanying clinical/medical diagnoses that qualify for a skilled nursing facility; any resident who is declined admission by the Facility's process of pre-admission clinical review.
7. Unless a patient has clinical complications and/or diagnostic conditions not normally reflected in a PRI score which would contribute to that patient's ability to achieve or require a skilled level of care, Albany County Nursing Home will not consider admission inquiries for any admission candidate who has a PRI score of eight (8) or less.

8. No one shall be admitted to the Facility without a willingness to sign the Facility's Admission Agreement (which includes a "consent to treat") as well as the accompanying exhibits and addenda.
9. If applicable, preference in admissions will be given to residents of Albany County.
10. Admissions staff shall be responsible for:
 - a. Providing a tour of the Facility to inquiring parties and providing Facility information to inquiring parties.
 - b. Insuring appropriate signatures are obtained for the Admission Agreement and all other applicable documents.
 - c. Providing the new admission with the appropriate admission packet of information.
 - d. Verifying financial resources and reimbursement program eligibility (i.e., Medicare, Medicaid, insurers).
 - e. Disseminating new admission information to other disciplines including, but not limited to, the Business Office, Administration, Nursing (including Unit Nurse, Supervising Nurse, Director of Nursing, Assistant Director of Nursing, Wound Nurse, Rehab. Nurse, Clinic), Rehabilitation Services, Dietary, Housekeeping, Laundry, Maintenance, Social Services, Resident Care Coordinators, and Activities.
 - f. Making transportation arrangements (if necessary) for new admissions.
 - g. Providing initial orientation to the Facility for the new resident.
 - h. Insuring the resident's accommodations are in order for the new admission.
 - i. Coordinating the admission with the hospital (if applicable).