

## SETTLEMENT AGREEMENT AND MUTUAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL RELEASE (“Settlement Agreement”) is entered into this 7<sup>th</sup> day of July, 2023 (“Effective Date”) by and between 2nd Home Newark Operations, LLC, and owners, Aron Rosenberg, Albert Rosenberg, Lisa Fruchter, and Jack Fruchter (hereinafter collectively “2nd Home Newark”) represented by Shloka Joshi, Esq. of Archer & Greiner P.C., and the State of New Jersey, Office of the State Comptroller, Medicaid Fraud Division (“MFD”). 2nd Home Newark and MFD are hereinafter collectively referred to as the “Parties” and each individually as a “Party.”

WHEREAS, MFD conducted a review of Medicaid claims submitted by 2nd Home Newark between January 1, 2017 through May 31, 2022 (the “Review Period”), that were reimbursed by the Department of Human Services, Division of Medical Assistance and Health Services (DMAHS) and/or its fiscal agent and/or the Managed Care Organizations (MCO); and

WHEREAS, MFD found that some of the claims that 2nd Home Newark submitted during the Review Period should not have been submitted or paid because they were for services rendered: (1) while the recipients were admitted to an inpatient facility, such as a hospital or skilled nursing/long term care center, in violation of N.J.A.C. 10:164-1.5); (2) in excess of five (5) days per week, in violation of N.J.A.C. 10:164-1.4(a); and/or (3) while the recipients were receiving services from another adult medical day care provider, in violation of N.J.A.C. 10:49-9.8 (“Covered Conduct”); and

WHEREAS, MFD determined that, based on the Covered Conduct, 2nd Home Newark received an overpayment from the Medicaid program totaling \$15,584.40; and

WHEREAS, 2nd Home Newark expressly denies and does not admit to any wrongdoing or intentional conduct of any sort by reason of the terms and provisions of this Agreement. Payment of the sums provided in this Agreement is made solely to avoid any further controversy or appeals, and does not constitute an admission of liability; and

WHEREAS, the parties desire to amicably resolve the dispute regarding the alleged overpayment and have reached a mutually acceptable resolution of the controversies that exist

between them; and

NOW THEREFORE, in consideration of the mutual promises contained herein, as well as for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree to the following terms:

(1) 2nd Home Newark agrees to pay the total sum of fifteen thousand five hundred eighty four dollars and forty cents (\$15,584.40) (“Total Payment Amount”) to MFD within five (5) months of the execution of this Settlement Agreement. Payment shall be made to MFD in five (5) monthly payments as follows:

- (a) July 14, 2023 \$3,116.88;
- (b) August 15, 2023 \$3,116.88;
- (c) September 15, 2023 \$3,116.88;
- (d) October 16, 2023 \$3,116.88; and
- (e) November 15, 2023 \$3,116.88.

(2) Payment to MFD shall be by certified check, bank check, or attorney trust check made payable to “Treasurer, State of New Jersey,” and shall be mailed or delivered as follows:

Attention: Processing Bureau  
Treasurer, State of New Jersey  
Division of Revenue  
200 Woolverton Street, Building 20  
Lockbox 656  
Trenton, New Jersey 08646

“2nd Home Newark Operations, LLC/ [REDACTED]” must be included in the memo line so that payment is properly credited.

(3) Upon execution of this Settlement Agreement, MFD will file a Certificate of Debt against 2nd Home Newark in the amount of \$15,584.40 with the Superior Court of New Jersey for the full amount of the overpayment. As soon as practicable after receipt of the Total Payment Amount from 2nd Home Newark, MFD shall file a Warrant to Discharge with the Clerk of the Superior Court of New Jersey indicating that the Certificate of Debt filed against 2nd Home Newark is satisfied and

should be removed from the Court's docketed list of judgments, with a copy of such filing sent to 2nd Home Newark.

(4) If payment as provided for in this Settlement Agreement is more than ten (10) days late, 2nd Home Newark will be in default of this Settlement Agreement, and the total remaining unpaid balance plus interest accruing from the date of default will immediately become due ("the Default Amount"). Should 2nd Home Newark not cure the default within five (5) business days of receiving notice of default, the Default Amount immediately will be collected through any means available to MFD as provided by law.

(5) 2nd Home Newark agrees to act in full compliance with all applicable state and federal rules and regulations, including but not limited to submitting only claims that accurately and completely reflect the services provided. To that end, 2nd Home Newark, agrees to only submit claims for services provided for which 2nd Home Newark possesses sufficient documentation to support such claims and maintains policies appropriately addressing the underlying issues that caused or contributed to the Covered Conduct.

(6) The parties agree that this Settlement Agreement is intended to be a final resolution of all issues arising out of the Covered Conduct, referenced above, including MFD's review, and is intended by each party to release the other party and its representatives from liability arising out of the Covered Conduct, including MFD's review, unless MFD is mandated to act by federal or State law, or mandated by order or judgment of a court or administrative agency (other than MFD).

(7) Nothing in this Settlement Agreement waives the rights of any other state or federal agency, including, among others, the New Jersey Division of Criminal Justice, from continuing with a pending or beginning a future civil or criminal investigation or other action for alleged conduct concerning 2nd Home Newark or from taking any action for such conduct. Nothing in this Settlement Agreement waives the rights of MFD to conduct an audit or investigation for the improper submission

of any claims or conduct not specifically covered by this Settlement Agreement, and to take any action civilly or criminally for such conduct, subject to and as limited by applicable law.

(8) The terms of this Settlement Agreement may be modified only by a subsequent written agreement signed by all Parties.

(9) Subject to the express terms of this Settlement Agreement as provided for in paragraphs 1-8 above, by the signatures set forth below, the authorization of which is hereby affirmed, 2nd Home Newark and MFD agree to the following Release: in consideration of the provision hereof including this release, each party agrees to release the other party and its employees, representatives, officers and directors from liability, obligations and damages arising out of the Covered Conduct and MFD's review.

(10) Nothing herein shall constitute an admission, concession, waiver or finding of wrongdoing or liability by any party.

(11) This Settlement Agreement shall be construed, enforced and governed by the laws of the State of New Jersey.

(12) This Settlement Agreement may be executed in Counterparts.

(13) This Settlement Agreement is effective upon the Effective Date reflected on the first page of the Settlement Agreement.

(14) This Settlement Agreement sets forth the entire agreement between and among the parties hereto with respect to the claims described herein and supersedes any other written or oral understanding. This Settlement Agreement does not reflect any other terms or conditions or agreements between or among the parties with respect to any other matter.


IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto, on the following page, have executed the foregoing Settlement Agreement:

FORM AND CONTENT ACCEPTED AND AGREED TO BY:

**2nd Home Newark Operations, LLC**

7/5/2023

Signatory


By:   
Aron Rosenberg, Authorized

2nd Home Newark Operations, LLC

DATE:

7/5/23

Signatory

By:   
Albert Rosenberg, Authorized

2nd Home Newark Operations, LLC

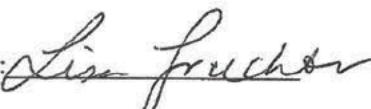
DATE:

7/6/23

By:   
Jack Fruchter, Authorized Signatory  
2nd Home Newark Operations, LLC

DATE:

7/6/23

By:   
Lisa Fruchter, Authorized Signatory  
2nd Home Newark Operations, LLC

□

**KEVIN D. WALSH  
ACTING STATE COMPTROLLER**

DATE: 7/7/2023

By: Don Catinello  
Don Catinello, Deputy Director  
Medicaid Fraud Division

DATE: 7/7/2023

By: Justin Berardo  
Justin Berardo,  
Supervising Regulatory Officer  
Medicaid Fraud Division