

**SETTLEMENT AGREEMENT**

**COUNTRY VILLA SERVICE CORP. DBA COUNTRY VILLA HEALTH SERVICES**

This Settlement Agreement (“Agreement”) is entered into between the United States of America, acting through the United States Department of Justice, United States Attorney’s Office for the Northern District of California, and the U.S. Department of Health and Human Services, Office of the Inspector General (“OIG-HHS”) (collectively the “United States”), the State of California acting through the California Department of Justice, Office of the Attorney General, Bureau of Medi-Cal Fraud and Elder Abuse (“California”), and Country Villa Service Corp., DBA Country Villa Health Services (“CVHS”) (hereafter collectively referred to as “the Parties”), through their authorized representatives.

**RECITALS**

A. CVHS is a California corporation based in Los Angeles, California. CVHS provided consulting services to two nursing homes, Country Villa Watsonville East Nursing Center (renamed Watsonville Nursing Center in April 30, 2014), and Country Villa Watsonville West Nursing and Rehabilitation Center (renamed Watsonville Post-Acute Center in April 30, 2014) (collectively “the nursing homes”). Through their owners, CF Watsonville East, LLC, and CF Watsonville West, LLC (jointly “CF Watsonville”), the nursing homes are licensed to operate in the State of California, and to participate in the Medicare Program, Title XVIII of the Social Security Act 42 U.S.C. § 1395 *et seq.*, and in Medi-Cal, the California Medicaid Program 42 U.S.C. § 1396 *et seq.*

B. On August 29, 2014, the United States filed a Complaint in the United States District Court for the Northern District of California, captioned *United States v. The ARBA Group*, CF Watsonville East, LLC, CF Watsonville West, LLC, Country Villa Health

Service Corporation, DBA Country Villa Health Services, 3:14-CV-03946 BLF (the “Civil Action”).

C. The United States contends that the defendants in the Civil Action, including CVHS, submitted or caused to be submitted claims for payment to Medicare and the Medicaid programs for services rendered at the nursing homes.

D. The United States contends that it has certain civil claims against CVHS under the False Claims Act, 31 U.S.C. §§ 3729-3733, and common law for the conduct alleged in Complaint filed by the United States in the Civil Action that took place between 2007 and 2012. This conduct and all the allegations specified in the Civil Action are referred to below as the “Covered Conduct.”

E. This Settlement Agreement is neither an admission of liability by CVHS nor a concession by the United States that its claims are not well founded.

F. In August 2014, in connection with the Civil Action the United States filed proofs of claims with respect to eighteen (18) of the nineteen (19) affiliated Chapter 11 debtors (“Debtors”) in Plaza Healthcare Center, LLC, Lead Case No. 8:14-bk-11335-CB, pending in the United States Bankruptcy Court for the Central District of California, Santa Ana Division. Attached hereto as Exhibit A is the list of the eighteen claims filed and their corresponding claim numbers.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation or administrative proceedings regarding the above claims, and in consideration of the mutual promises and obligations of this Agreement, the Parties agree and covenant as follows:

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## **TERMS AND CONDITIONS**

1. CVHS agree that the United States and the State of California shall be paid the total sum of \$2.38 million (“Settlement Amount”) no later than five (5) days after the Effective Date of this Agreement as follows:

(a) CVHS agrees to pay to the United States \$2,150,051.00 by electronic funds transfer pursuant to written instructions provided by the United States Attorney’s Office for the Northern District of California.

(b) CVHS agrees to pay to the State of California \$229,949.00 by electronic funds transfer pursuant to written instructions provided by the California Office of the Attorney General.

(c) The payments referenced in 1(a) and 1(b) above will be made by the Debtors from assets of the bankruptcy estates of Plaza Healthcare Center LLC, Lead Case No. 8:14-bk-11335-CB, in accordance with approval of the Bankruptcy Court provided at the hearing held on April 29, 2015 and Court Order entered on May 7, 2015.

2. Subject to the exceptions in Paragraph 5 below (concerning excluded claims), upon receipt of full payment of the Settlement Amount, and subject to Paragraph 15, below (concerning bankruptcy proceedings), the United States releases CVHS, together with its officers, agents, servants, directors, and affiliates, and the successors and assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct, under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; and the common law theories of payment by mistake and unjust enrichment.

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3. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of CVHS set forth in this Agreement, and conditioned upon CVHS payment in full of the Settlement Amount, the State of California agrees to release CVHS from any civil or administrative monetary cause of action under the California False Claims Act, Cal. Gov. Code §§ 12650-12654, or the common law theories of payment by mistake or unjust enrichment, relating to any claims submitted or caused to be submitted to the California Medi-Cal program as a result of the Covered Conduct.

4. The United States agrees that payment in full of the Settlement Amount constitutes satisfaction in full of the eighteen proofs of claims that it filed with respect to the eighteen Debtors, listed in Exhibit A hereto. Upon this satisfaction, the United States agrees that there is no further liability of the Debtors' estates on the eighteen proofs of claims filed by the United States.

5. Notwithstanding the releases given in Paragraphs 2, 3 and 4 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of California against CVHS are specifically reserved and are not released:

(a) Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or under state revenue codes;

(b) Any criminal liability;

(c) Except as explicitly stated in this Agreement, any administrative liability, including mandatory and permissive exclusion from Federal health care programs;

(d) Any liability to the United States (or its agencies) or to the State of California for any conduct other than the Covered Conduct;

(e) Any liability based upon obligations created by this Agreement;

(f) Any civil or administrative liability that any person or entity, including any released entity, has or may have to the State of California or to individual consumers or state program payors under any statute, regulation or rule not expressly covered by the release in paragraph 3 above;

(g) Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusions from the California's Medi-Cal program; and,

(h) Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

6. CVHS waives and shall not assert any defenses CVHS may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code. Nothing in this Agreement constitutes an agreement by the State of California concerning the characterization of the amounts paid hereunder for purposes of California's revenue code.

7. CVHS fully and finally releases the United States and the State of California, and the United States' and California's agencies, officers, agents, employees, and servants,

from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that CVHS has asserted, could have asserted, or may assert in the future against the United States, the State of California, and the United States' and the State of California's agencies, officers, agents, employees, and servants, related to the Covered Conduct and the United States' and the State of California's investigation and prosecution thereof.

8. CVHS has provided sworn financial disclosure statements ("Financial Statements") to the United States and the United States has relied on the accuracy and completeness of those Financial Statements in reaching this Agreement. CVHS warrants that the Financial Statements are complete, accurate. If the United States learns of assets in which CVHS had an interest at the time of the execution of this Agreement that were not disclosed in the Financial Statements, or if the United States learns of any nondisclosure or misrepresentation by CVHS on, or in connection with the Financial Statements, and if such nondisclosure or misrepresentation increases the estimated unrestricted net assets set forth in the Financial Statements by \$238,000 (10% of the Settlement Amount) or more, the United States may at its option pursue relief under this Paragraph against CVHS as follows: (a) rescind this Agreement and file suit, or reinstate suit against CVHS, based on the Covered Conduct, or (b) let the Agreement stand and collect the full Settlement Amount plus one hundred percent (100%) of unrestricted net assets of CVHS previously undisclosed. CVHS agrees not to contest any collection action undertaken by the United States pursuant to this provision, and shall immediately pay to the United States all reasonable costs incurred in such an action, including attorney's fees and expenses. CVHS further agrees that it shall not have any right or claim against any of the Debtors or their bankruptcy estates should the United States pursue rescission or any other action under this

Paragraph. The United States agrees that any rescission of this Agreement or reinstatement of any suit against CVHS based on the Covered Conduct shall not alter or have any affect upon the provisions of Paragraph 4 of this Agreement.

9. In the event that the United States, pursuant to Paragraph 8 above (concerning disclosure of assets), opts to rescind this Agreement, CVHS agrees not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any civil or administrative claims that (a) are filed by the United States within 90 calendar days of written notification to CVHS that this Agreement has been rescinded; and (b) relate to the Covered Conduct, except to the extent these defenses were available on December 2, 2013, the effective date of the initial Tolling Agreement.

10. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare or Medi-Cal contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier or any state payer), related to the Covered Conduct; and CVHS agrees not to resubmit to any Medicare or Medi-Cal contractor or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

11. CVHS agrees to the following:

(a) Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; in the Uniform Administrative Requirements for Awards and Subawards to Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations, 45 C.F.R. Part 74, OMB Circular A-122-Cost Principles for Non-Profit Organizations; in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§

1395-1395kkk-1 and 1396-1396w-5; and in the regulations and official program directives promulgated thereunder) incurred by or on behalf of CVHS, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (i) The matters covered by this Agreement;
- (ii) The United States' audits and civil investigation of the matters covered by this Agreement;
- (iii) CVHS' investigation, defense, and corrective actions undertaken in response to the United States' audits and civil investigation in connection with the matters covered by this Agreement (including attorney's fees);
- (iv) The negotiation and performance of this Agreement; and
- (v) The payment CVHS makes to the United States pursuant to this Agreement are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

(b) Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by CVHS, and CVHS shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by CVHS or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or Federal Employee Health Benefit



("FEHBP") Programs. CVHS agrees that such costs will not be included on its 2014 costs reports or any future cost reports filed by CVHS.

(c) Treatment of Unallowable Costs Previously Submitted for

Payment: CVHS reported costs related to this investigation on its 2013 Medi-Cal home office cost report. During audit, California has eliminated these costs as not related to patient care. CVHS agrees not to contest the removal of such costs. CVHS further agrees that within 90 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, Medicaid and FEHBP fiscal agents, any additional Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by CVHS or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. CVHS agrees that the United States and the State of California, at a minimum, shall be entitled to recoup from CVHS any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment. Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies, and to California pursuant to the direction of the California Department of Justice. The United States and the State of California reserve their rights to disagree with any calculations submitted by CVHS

or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on CVHS or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

(d) Nothing in this Agreement shall constitute a waiver of the rights of the United States and the State of California to audit, examine, or re-examine CVHS' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraph 13 (waiver for beneficiaries paragraph), below.

13. CVHS agrees that they waive and shall not seek payment for any of the health care billings covered by this Agreement from health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

14. The Parties warrant that, in evaluating whether to execute this Agreement, they (a) have intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to CVHS, within the meaning of 11 U.S.C. § 547(C)(1), and (B) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended to and do, in fact, represent a reasonably equivalent exchange of value that is not intended to hinder, delay, or defraud any entity to which CVHS was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

15. If within 91 days of the Effective Date of this Agreement or of any payment made under this Agreement, CVHS commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for relief of CVHS' debts, or seeking to adjudicate CVHS as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for CVHS or for all or any substantial part of CVHS' assets, CVHS agrees as follows:

(a) CVHS' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and CVHS shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) CVHS' obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) CVHS was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States or the State of California; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to CVHS.

(b) If CVHS' obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the covenant not to sue and/or releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against CVHS for the claims that would otherwise be covered by the covenant not to sue and/or releases provided in Paragraph 2 above. CVHS agrees that (i) any such claims, actions, or proceedings brought by the United States are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first

clause of this Paragraph, and CVHS shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) CVHS shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding that are brought by the United States within 91 calendar days of written notification to CVHS that the covenant not to sue and/or releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on December 2, 2013, the effective date of the first Tolling Agreement; and (iii) the United States has a valid claim against CVHS in the amount of \$4,950,000, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

(c) CVHS acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

16. Upon receipt of the Settlement Amount described in Paragraph 1 above, the United States shall promptly sign and file a Dismissal of the Civil Action with prejudice pursuant to Rule 41(a)(1).

17. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

18. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

19. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of California. For purposes of construing

this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

20. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

21. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

22. This Agreement may be executed in counterparts, each of which constitutes an original, and all of which constitute one and the same Agreement.

23. This Agreement is binding on CVHS' successors, transferees, heirs, and assigns.

24. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date of this Agreement"). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

MELINDA HAAG  
United States Attorney

DATED:

BY: \_\_\_\_\_  
GIOCONDA R.MOLINARI  
Assistant United States Attorney

DATED:

BY: \_\_\_\_\_

ROBERT K. DECONTI  
Assistant Inspector General for Legal Affairs  
United States Department of Health and Human  
Services Office of Counsel to the Inspector General

**STATE OF CALIFORNIA**

KAMALA HARRIS  
Attorney General of the State of California

DATED:

BY: \_\_\_\_\_

EMMANUEL R. SALAZAR  
Deputy Attorney General  
Bureau of Medi-Cal Fraud & Elder Abuse  
Office of the Attorney General  
California Department of Justice

**DEFENDANT**

DATED:

COUNTRY VILLA SERVICE CORP., DBA  
COUNTRY VILLA HEALTH SERVICES

BY: \_\_\_\_\_

DIANE REISSMAN, VICE PRESIDENT

DATED:

HOOPER, LUNDY & BOOKMAN, P.C.

BY: \_\_\_\_\_

MARK A. JOHNSON, ESQ.  
Attorney for Country Villa Health Service  
Corporation, DBA Country Villa Health Services

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