

SETTLEMENT AGREEMENT

I. PARTIES

This settlement agreement ("Agreement") is entered into by and among the following parties and their authorized representatives (hereafter referred to as "the Parties"):

(A) The United States of America, acting through the Civil Division of its Department of Justice on behalf of the Office of Inspector General of the United States Department of Health and Human Services ("HHS-OIG");

(B) Mark Thornton ("Relator"); and

(C) Adventist Health System Sunbelt Healthcare Corporation ("Sunbelt"), a Florida not-for-profit corporation with its principal place of business in Winter Park, Florida, and the following associated or subsidiary corporations

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(collectively with Sunbelt, "Adventist Health"):

(i) Adventist Health System/Sunbelt Inc., a Florida not-for-profit corporation and affiliate of Sunbelt with its principal place of business in Orlando, Florida;

(ii) Florida Hospital Waterman Inc., a Florida not-for-profit corporation and affiliate of Sunbelt doing business as a hospital located in Eustis, Florida;

(iii) Huguley Memorial Medical Center (Huguley Health Systems), an affiliate of Adventist Health doing business as a hospital located in Fort Worth, Texas; and

(iv) Metroplex Adventist Hospital, Inc., a Texas not-for-profit corporation and affiliate of Adventist Health doing business as a hospital located in Killeen, Texas.

## II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

(A) Florida Hospital Waterman, Inc. ("Waterman"), operates as a hospital in Eustis, Florida. Huguley Memorial Medical Center ("Huguley") operates as a hospital in Fort Worth, Texas. Metroplex Adventist Hospital, Inc. ("Metroplex") operates as a ~~hospital in Killeen, Texas.~~ Each of these hospitals provides or provided ambulance transport and related services to patients covered by the federal Medicare program and reports or reported the costs of providing these ambulance services on annual cost reports submitted to Medicare and thereby receives reimbursement for those costs or some portion thereof.

(B) On or about February 19, 1997, Relator filed a Complaint (the Complaint or Civil Action) in the United States District Court for the Middle District of Florida on behalf of the United States and the State of Florida against Adventist Health, Civil Action No. 97-146-CV-ORL-19, alleging that

Adventist Health violated the civil False Claims Act, 31 U.S.C. §§ 3729-3733, in claims, statements, and cost reports filed with Medicare since January 1, 1993.

(C) The United States contends that it has certain civil claims against Adventist Health under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, arising from statements or information contained in cost reports filed by or on behalf of (i) Waterman for fiscal years 1993 through 1997, and in the cost report for the three-month period ending December 31, 1992, (ii) Huguley for fiscal years 1993 through 1997, and (iii) Metroplex for fiscal years 1995 through 1999, where the cost reports, statements, and/or claims were false or fraudulent in one or more of the following ways (hereafter referred to as "the Covered Conduct"):

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(1) the cost reports included management fees paid to Florida Regional Emergency Services and Western Regional Emergency Services and their successor organization, Regional Emergency Services, relating to the ambulance services operated by Waterman, Huguley, and Metroplex and sought reimbursement or payment for the management fees or some portion thereof notwithstanding that Adventist Health knew that the amounts of the fees were not reasonable, as that term is used in applicable federal regulations and guidance issued by the Health Care Financing Administration;

(2) the cost reports included management fees paid to Florida Regional Emergency Services and Western Regional Emergency Services or their successor organization, Regional Emergency Services, relating to the ambulance services operated by Waterman, Huguley, and Metroplex and sought reimbursement or payment for the management fees or some portion thereof notwithstanding that Adventist Health knew that the management fees included amounts not related to patient care.

The Covered Conduct includes the allegations and claims in the Complaint that relate to Adventist Health.

(D) The United States also contends that it has certain administrative claims against Adventist Health under the provisions for permissive exclusion from the Medicare, Medicaid and other federal health care programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for the Covered Conduct.

(E) Adventist Health does not admit the contentions set forth in paragraph C, above.

(F) In order to avoid the delay, uncertainty, inconvenience, and expense of litigation of these claims, the Parties reach a final settlement as set forth below.

### III. TERMS AND CONDITIONS

NOW THEREFORE, in consideration of the mutual promises, covenants and obligations set forth below, and for good and valuable consideration, the Parties agree as follows:

(1) Waterman, Huguley and Metroplex agree to pay to the United States the sum of \$8,714,740 (the "Settlement Amount"). Adventist Health System Sunbelt Healthcare Corporation and Adventist Health System/Sunbelt, Inc., agree that they shall be jointly and severally liable with Waterman, Huguley, and Metroplex to the United States for payment of the full Settlement Amount.

(2) The Settlement Amount shall be paid by wire transfer pursuant to instructions provided by the Department of Justice.

Waterman, Huguley, and Metroplex agree to make the electronic  
funds transfer by no later than the effective date of this Agreement.

(3) Contingent upon the United States receiving the payment set forth in Paragraph 1, above, and as soon thereafter as feasible, the United States agrees to pay to Relator \$1,525,079.00 (the "Relator Share of Proceeds") by electronic funds transfer pursuant to written instructions provided by Relator's counsel.

(4) Following the full execution of this Settlement Agreement, the United States and Relator shall execute the

Stipulation of Dismissal attached hereto as Exhibit 1. Within five business days after receipt of the Settlement Amount, the United States shall file the Stipulation of Dismissal with the United States District Court for the Middle District of Florida.

(5) Subject to the exceptions in paragraph 7 of this Agreement, in consideration of the obligations of Adventist Health set forth in this Agreement, and conditioned upon payment in full of the Settlement Amount, the United States releases Adventist Health, its parent, subsidiary, and affiliated corporations, its current and former directors, trustees, officers, and employees, with the exception of any individuals who were named as defendants in the Complaint referenced in paragraph II(B), above, from any civil or administrative monetary claim the United States has or may have under the False Claims

Act, 31 U.S.C. §§ 3729-3733, as amended; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of fraud, payment by mistake, unjust enrichment and breach of contract, for the Covered Conduct. No other individuals are released by this Agreement.

(6) In consideration of the obligations of Adventist Health set forth in this Agreement, and conditioned upon payment in full of the Settlement Amount, HHS-OIG agrees to release and refrain from instituting, directing, or maintaining any administrative

claim or action seeking exclusion from the Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Adventist Health under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law); or 42 U.S.C. § 1320a-7(b) (permissive exclusion) for the Covered Conduct except as reserved in this paragraph and in paragraph 7, below. HHS-OIG expressly reserves all rights to comply with any statutory obligations to exclude Adventist Health from the Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) for the Covered Conduct. Nothing in this paragraph precludes HHS-OIG from taking action against entities or persons, or for conduct and practices, for which civil claims have been reserved in paragraph 7, below.

(7) Notwithstanding any other provision in this Agreement,  
the United States in this Settlement Agreement specifically does not release Adventist Health and/or its subsidiaries or any other entity or individual under this Agreement from:

- (a) any criminal liability;
- (b) any criminal, civil or administrative claims arising under Title 26 U.S. Code (Internal Revenue Code);
- (c) any liability to the United States (or any agencies thereof) for any conduct other than the Covered Conduct;

- (d) except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
  - (e) any civil or administrative claims against any defendants named in the Complaint who are not parties to this Agreement;
  - (f) any claims based upon obligations created by this Agreement;
  - (g) any express or implied warranty claims or other claims for defective or deficient products or services, including the quality of goods and services, provided by Adventist Health;
  - (h) Any claims based on a failure to deliver items or services due;
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- (i) Any claims against any individuals, including current or former directors, officers, employees, agents or shareholders of Adventist Health who are indicted or convicted or who enter into a criminal plea agreement related to the Covered Conduct.

(8) Adventist Health has entered into a Corporate Integrity Agreement with HHS-OIG, which is incorporated into this Agreement by reference. Adventist Health will immediately upon execution of this Agreement implement its obligations under the Corporate Integrity Agreement.



(9) Relator agrees that the settlement of his Complaint against Adventist Health is fair, adequate and reasonable under all the circumstances, and that he will not challenge the settlement pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon receipt of the payment described in Paragraph 3, above, the Relator, for himself, and for his heirs, successors, attorneys, agents, and assigns, will release and forever discharge the United States, its officers, agents and employees, from any and all claims, including claims pursuant to 31 U.S.C. § 3730 or any sub-provision thereof, for a share of the proceeds of the Civil Action, the Settlement Amount, or of any other recovery by the United States arising from the Civil Action.

(10) After receipt of the Settlement Amount by the United States, and effective upon the filing of the Stipulation of Dismissal of the Complaint described in paragraph 4, Relator, on his own behalf and on behalf of his descendants, dependents, heirs, executors, administrators, agents, assigns and successors, hereby releases and forever discharges Adventist Health, its successor, affiliated, parent, subsidiary and related corporations, their officers, trustees, directors and employees, and any personal representative, administrator, executor, successor, heir or assign of any of the foregoing entities or persons from any and all monetary claims, civil and administrative causes of action, liabilities, rights or claims,

whether statutory or at common law, including claims, damages, recoupments, overpayments, rights, penalties, or interests arising under the False Claims Act, 31 U.S.C. §§ 3729-3733, as amended, which the Relator has asserted or could have asserted as of the date of this Agreement and which concern, relate to, arise out of, or are connected with (i) any of the Covered Conduct, (ii) any and all claims asserted in the Complaint, and (iii) all matters, known or unknown, from the inception of time until the date of this Agreement, other than qui tam claims which Relator could assert on behalf of the United States. Notwithstanding any other provision in this agreement, Relator and his attorneys do not release any claims that can be asserted against Adventist Health for payment of the Relator's attorneys fees and costs pursuant to 31 U.S.C. § 3730(d).

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Notwithstanding any other provision in this Agreement, in the event any person or entity who would otherwise be released by Relator initiates or pursues any claim or cause of action of any kind against Relator, which claim or cause of action could have been asserted against Relator as of the date of this Agreement, then Relator's release as to that person or entity is null and void and Relator may pursue any counterclaim against such person or entity. In the event that Relator's release of any individual is rendered void under this paragraph, that occurrence shall not

affect the finality of this Agreement between the United States and Adventist Health.

(11) Effective on full execution of this agreement, Adventist Health waives, releases, and forever discharges, and promises to refrain from instituting, prosecuting or maintaining any civil claim, action, suit, or administrative proceedings, common-law, statutory, or otherwise, against the Relator, his heirs, successors, assigns, beneficiaries, agents and attorneys, for actions occurring prior to the date of the full execution of this Agreement.

(12) Adventist Health waives and will not assert any defenses that Adventist Health may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. Adventist Health agrees that this settlement is not punitive in purpose or effect. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by any party concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

(13) Adventist Health fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Adventist Health has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Covered Conduct and the United States' investigation and prosecution thereof.

(14) The Settlement Amount that Adventist Health must pay pursuant to this Agreement will not be decreased as a result of the denial of any claims which may have been withheld from payment by any Medicare carrier or fiscal intermediary or any state payer. Adventist Health agrees not to resubmit to any Medicare carrier or intermediary or any State payer any claims or amended cost reports related to the Covered Conduct and agrees not to appeal, seek reopening or, or otherwise contest any such denials of claims or adjustments except that Adventist Health may appeal the intermediaries' failure to credit portions of the amount recovered pursuant to this Settlement Agreement as returns of program funds related to excess ambulance management fees paid by Waterman, Huguley and Metroplex to Florida Regional Emergency Services, Western Regional Emergency Services, or their successor organization, Regional Emergency Services.

(15) Adventist Health agrees that all costs (as defined in the Federal Acquisition Regulations ("FAR") § 31.205-47 and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations promulgated thereunder) incurred by or on behalf of Adventist Health in connection with: (1) the matters covered by this Agreement, (2) the Government's audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement, (3) Adventist Health's investigation, defense, and corrective actions undertaken in response to the Government's audit(s) and civil and any criminal investigation(s) in connection with the matters covered by this Agreement and the Corporate Integrity Agreement (including attorney's fees), (4) the negotiation of this ~~Agreement and the Corporate Integrity Agreement~~, (5) the payment made pursuant to this Agreement, and (6) the obligations under the Corporate Integrity Agreement to (i) perform review procedures as described in the Corporate Integrity Agreement (except to the extent that such review procedures are performed by Adventist Health); and (ii) prepare and submit reports to the HHS-OIG, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, Veterans Affairs Program (VA) and Federal Employees Health Benefits Program (FEHBP) (hereafter, "unallowable costs"). These unallowable costs will be separately estimated and accounted for

by Adventist Health, and Adventist Health will 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 Adventist Health or any of its subsidiaries to the Medicare, Medicaid, TRICARE, VA or FEHBP programs.

Adventist Health further agrees that within 60 days of the effective date of this Agreement it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers and/or contractors, and Medicaid, VA and FEHBP fiscal agents, any 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 Adventist Health or any of its subsidiaries, and will 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. Adventist Health agrees that the United States will be entitled to recoup from Adventist Health any overpayment 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. The United States reserves its rights to disagree with any calculations submitted by Adventist Health or any of its subsidiaries on the effect of inclusion of unallowable costs (as defined in this paragraph) on Adventist Health or any of its subsidiaries' cost reports, cost statements or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

(16) This Agreement is intended to be for the benefit of the Parties only, and by this instrument the Parties do not release any claims against any other person or entity.

(17) Adventist Health agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Adventist Health waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

(18) Adventist Health expressly warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. § 547(b)(3), and will remain solvent following its payment to the United States hereunder.

Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (a) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Adventist Health, within the meaning of 11 U.S.C. § 547(c)(1), and (b) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

(19) Each party to this Agreement agrees to bear its own legal and other costs, with the exception of the issue of payment of the Relators' attorneys fees and costs pursuant to 31 U.S.C. § 3730(d).

(20) Adventist Health and Relator represent that this ~~Agreement is freely and voluntarily entered into without any~~ degree of duress or compulsion whatsoever.

(21) This Agreement is governed by the laws of the United States. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the United States District Court for the Middle District of Florida, except that any dispute arising under the Corporate Integrity Agreement shall be resolved exclusively under the breach and dispute provisions of the Corporate Integrity Agreement.



(22) This Agreement shall be binding upon the Parties, their successors, assigns and heirs.

(23) The undersigned individuals signing this Agreement on behalf of Adventist Health represent and warrant that they are authorized by Adventist Health to execute this Agreement. The undersigned United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

(24) This Agreement and the Corporate Integrity Agreement constitute the full and complete agreement among the Parties. This Agreement may not be amended except by written consent of the Parties; except that only Adventist Health and HHS-OIG must agree in writing to modification of the Corporate Integrity Agreement.

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(25) This Settlement Agreement may be executed in counterparts each of which shall constitute an original and all of which shall constitute one and the same agreement.

(26) This Agreement is effective on the date of signature of the last signatory to it.

IN WITNESS WHEREOF, the parties hereto affix their signatures.

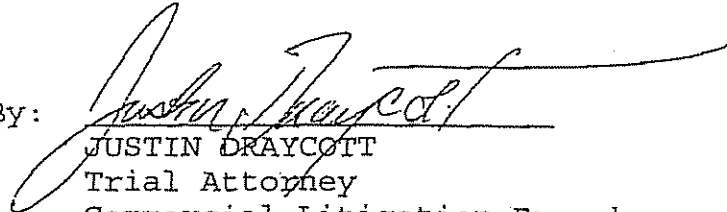
UNITED STATES OF AMERICA

UNITED STATES DEPARTMENT OF JUSTICE, CIVIL DIVISION

DATED:

11/29/00

By:



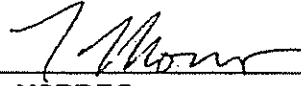
JUSTIN DRAYCOTT  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
U.S. Department of Justice  
P.O. Box 261  
Ben Franklin Station  
Washington, D.C. 20044  
(202) 305-9300

on behalf of  
THE UNITED STATES OF AMERICA

THE INSPECTOR GENERAL OF THE  
UNITED STATES DEPARTMENT OF HEALTH AND HUMAN SERVICES

DATED:

11/28/00



LEWIS MORRIS  
Assistant Inspector General  
for Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of the Inspector General  
United States Department of  
Health and Human Services  
330 Independence Avenue, S.W.  
Room 5619  
Washington, D.C. 20201

RELATOR

DATED: 11/27/00

Mark P. Thornton  
MARK THORNTON

APPROVED AS TO FORM AND CONTENT:

DATED: 11/28/00

By: Robert L. Vogel  
ROBERT VOGEL  
1225 19th Street, N.W.  
Suite 300  
Washington, DC 20036

ADVENTIST HEALTH SYSTEM SUNBELT HEALTHCARE CORPORATION

DATED: 11/28/00

By: *James R. Warner*

President & Chief Executive  
Officer

on behalf of  
ADVENTIST HEALTH SYSTEM SUNBELT  
HEALTHCARE CORPORATION

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_

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

~~JOHN W. LITTLE, III~~  
Steel, Hector, & Davis, LLP  
1900 Phillips Point West  
777 South Flagler Dr.  
West Palm Beach, FL 33401  
and -  
EDWARD HOPKINS  
Broad & Cassel  
400 Australian Ave. South  
West Palm Beach, FL 33401

ADVENTIST HEALTH SYSTEM/SUNBELT, INC

DATED: 11/28/00

By: Thomas J. Weimer

President & Chief Executive  
Officer

on behalf of  
ADVENTIST HEALTH SYSTEM/SUNBELT,  
INC.

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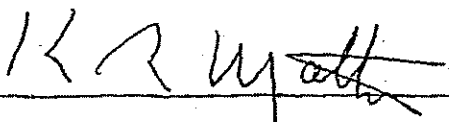
DATED: \_\_\_\_\_

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

JOHN W. LITTLE, III  
Steel, Hector, & Davis, LLP  
1900 Phillips Point West  
777 South Flagler Dr.  
West Palm Beach, FL 33401  
and  
EDWARD HOPKINS  
Broad & Cassel  
400 Australian Ave. South  
West Palm Beach, FL 33401

FLORIDA HOSPITAL/WATERMAN, INC.

DATED: 11-27-00

By: 

President & Chief Executive  
Officer

on behalf of  
FLORIDA HOSPITAL WATERMAN, INC.

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_

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

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and  
EDWARD HOPKINS  
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400 Australian Ave. South  
West Palm Beach, FL 33401

HUGULEY MEMORIAL MEDICAL CENTER

DATED: 11/28/00

By: 

President & Chief Executive  
Officer

on behalf of  
HUGULEY MEMORIAL MEDICAL CENTER

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_

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

JOHN W. LITTLE, III  
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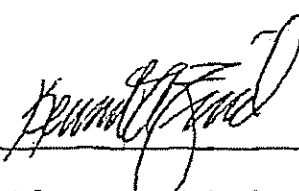
and  
EDWARD HOPKINS  
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West Palm Beach, FL 33401



METROPLEX ADVENTIST HOSPITAL, INC.

DATED: 11-28-00

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

  
President & Chief Executive  
Officer

on behalf of  
METROPLEX ADVENTIST HOSPITAL, INC.

APPROVED AS TO FORM AND CONTENT:

DATED: \_\_\_\_\_

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

JOHN W. LITTLE, III  
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and  
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ADVENTIST HEALTH SYSTEM SUNBELT HEALTHCARE CORPORATION

DATED: \_\_\_\_\_

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

President & Chief Executive  
Officer

on behalf of  
ADVENTIST HEALTH SYSTEM SUNBELT  
HEALTHCARE CORPORATION

APPROVED AS TO FORM AND CONTENT:

DATED: 11/29/00

By: Edward Hopkins

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ADVENTIST HEALTH SYSTEM/SUNBELT, INC

DATED: \_\_\_\_\_

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

President & Chief Executive  
Officer

on behalf of  
ADVENTIST HEALTH SYSTEM/SUNBELT,  
INC.

APPROVED AS TO FORM AND CONTENT:

DATED: 4/22/00

By: Edward Hopkins

JOHN W. LITTLE, III  
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~~1900 Phillips Point West~~  
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and  
EDWARD HOPKINS  
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West Palm Beach, FL 33401

FLORIDA HOSPITAL/WATERMAN, INC.

DATED: \_\_\_\_\_

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

President & Chief Executive  
Officer

on behalf of  
FLORIDA HOSPITAL WATERMAN, INC.

APPROVED AS TO FORM AND CONTENT:

DATED: 11/29/00

By: *Edward Hopkins*

JOHN W. LITTLE, III  
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1900 Phillips Point West  
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and

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HUGULEY MEMORIAL MEDICAL CENTER

DATED: \_\_\_\_\_

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

President & Chief Executive  
Officer

on behalf of  
HUGULEY MEMORIAL MEDICAL CENTER

APPROVED AS TO FORM AND CONTENT:

DATED: 11/29/00

By: Edward Hopkins

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West Palm Beach, FL 33401

METROPLEX ADVENTIST HOSPITAL, INC.

DATED: \_\_\_\_\_

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

President & Chief Executive  
Officer

on behalf of  
METROPLEX ADVENTIST HOSPITAL, INC.

APPROVED AS TO FORM AND CONTENT:

DATED: 11/29/00

By:



JOHN W. LITTLE, III  
Steel, Hector, & Davis, LLP

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and

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