SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the United States); Linda Gleason and Mary Vassar (each a Relator and collectively the Relators); and Tutera Health Care Services, L.L.C., a Missouri limited liability company, a/k/a The Tutera Group, and Geriatrics Management Company, L.L.C., a Missouri limited liability company (collectively Tutera) (the United States, Relators and Tutera are hereafter referred to as the Parties), through their authorized representatives.

II. PREAMBLE

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

A. Tutera is a diversified health care and retirement living company providing development and management services to the health care industry. Tutera's home office is located in Kansas City, Missouri. Tutera entered into an agreement with the owners of a skilled nursing facility known as Greenhill Nursing Home located in DeQuincy, Louisiana (Greenhill Nursing Home), effective on or about June 1, 1999, to manage the operations of Greenhill Nursing Home.

B. The Relators are individuals residing in the State of Louisiana. On July 10, 2003, Relators filed a qui tam action in the United States District Court for the Western District of Louisiana captioned United States ex rel. Linda Gleason, et al. v. Tutera Healthcare Services, LLC, et al., Cause No. 2:03 CV 1295 (hereinafter the Civil Action).

C. The United States contends that Tutera submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh. Tutera denies this contention.

D. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against Tutera for the time period from June 1, 1999, to August 31, 2000, with respect to the seven patients identified in Appendix A attached, for: (1) failing to provide services, goods and equipment to Louisiana Medicaid (Medicaid) beneficiaries being treated at Greenhill Nursing Home for which claims were submitted to and paid by the United States or the State of Louisiana; (2) causing such services, goods and equipment to not be furnished at a level or in a manner sufficient to maintain the health and safety of patients at the Greenhill Nursing Home; or (3) submitting, or causing to be submitted, claims for payment for services, goods and equipment that were either not provided to Medicaid beneficiaries or were provided but deemed to be worthless services, goods and equipment (hereinafter referred to as the Covered Conduct).

E. The United States also contends that it has certain administrative claims against Tutera for engaging in the Covered Conduct.

F. This Agreement is neither an admission of liability by Tutera nor a concession by the United States that its claims are not well founded. Tutera specifically denies the United States' contentions in paragraphs D and E above.

G. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions below.

III. TERMS AND CONDITIONS

1. Tutera agrees to pay to the United States the sum of $180,182.10 (the Settlement Amount). Tutera further agrees to pay Relators the sum of $5,000 for attorney's fees, costs and expenses paid pursuant to 31 U.S.C. § 3730(d)(1) (Attorney's Fees). The foregoing payments shall be made as follows:

a. Tutera agrees to pay the full Settlement Amount to the United States by electronic funds transfer pursuant to written instructions to be provided by Joyce R. Branda, Director, Commercial Litigation Branch. Tutera agrees to make this electronic funds transfer no later than ten (10) days after the Effective Date of this Agreement.

b. Contingent upon the United States receiving the Settlement Amount from Tutera and as soon as feasible after receipt, the United States agrees to pay the sum of $30,630.96 to Relators by electronic funds transfer.

c. Tutera agrees to pay Relators the Attorney's Fees by electronic funds transfer pursuant to written instructions to be provided by Joe A. Brame of Brame & McCain. Tutera agrees to make this electronic funds transfer no later than ten (10) days after the Effective Date of this Agreement.

2. Subject to the exceptions in Paragraph 5 (concerning excluded claims), below, in consideration of the obligations of Tutera in this Agreement, conditioned upon Tutera's full payment of the Settlement Amount, and subject to Paragraph 17, below (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment made under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release Tutera, and its past, present and

future executive officers (defined as a person holding the title of vice president or higher), members, owners, successors and assigns, from any civil or administrative monetary claim the United States has or may have 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; or the common law theories of payment by mistake, unjust enrichment, and fraud.

3. In consideration of the obligations of Tutera in this Agreement, and conditioned upon Tutera's full payment of the Settlement Amount, each Relator for herself and for her heirs, successors, attorneys, agents, and assigns, agrees to release Tutera and all of its past, present and future parent companies, subsidiaries, affiliates, joint venturers, partners, members, owners (direct and indirect), officers, directors, shareholders, predecessors, successors, assigns, representatives, employees, servants, agents, contractors, subcontractors, consultants, suppliers, attorneys, insurers, and any entity acting on behalf of or that has contracted with Tutera, from any and all claims, state and federal, (including attorney's fees, costs, and expenses of every kind and however denominated) under any theory, whether known or unknown, including but not limited to: all causes of action related to the Covered Conduct; any and all claims the Relators have asserted, could have asserted, or may assert in the future related to the Civil Action and the Relators' investigation and prosecution thereof; and any liability to Relators arising from the filing of the Civil Action, or under 31 U.S.C. § 3730(d) for expenses or attorney's fees and costs.

4. OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against Tutera, and/or its officers, directors, and

employees from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

5. Notwithstanding any term of this Agreement, the United States specifically reserves and excludes from the scope and terms of this Agreement as to any entity or person (including Tutera and Relators) the following claims:

a. Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);

b. Any criminal liability;

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

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

e. Any liability based upon such obligations as are created by this Agreement; or

f. Any liability of individuals, including directors, officers and employees not specifically released in paragraph 2 above.

6. Relators and their respective heirs, successors, attorneys, agents, and assigns agree not to object to this Agreement and agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B) and, conditioned upon receipt of Relators' share, Relators, for themselves individually, and for their heirs, successors, agents, and assigns, fully and finally release, waive, and forever discharge the

United States, its officers, agents, and employees, from any claims arising from or relating to 31 U.S.C. § 3730; from any claims arising from the filing of the Civil Action; and from any other claims for a share of the Settlement Amount; and in full settlement of any claims Relators may have under this Agreement. This Agreement does not resolve or in any manner affect any claims the United States has or may have against the Relators arising under Title 26, U.S. Code (Internal Revenue Code), or any claims arising under this Agreement.

7. Conditioned upon receipt of the payment described in Paragraph 1b, and in consideration thereof, Relators, for themselves, and for their heirs, successors, attorneys, agents, and assigns, agree that they will not file this Agreement with any Court and will not otherwise publish it or make it available to third parties. The Relators further agree that neither they nor their counsel shall communicate or otherwise disclose to anyone, directly or indirectly, the terms and conditions of this Agreement, except where it is necessary to do so for accounting or tax purposes, or to comply with a court order.

8. Tutera waives and shall not assert any defenses Tutera 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.

9. Tutera fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Tutera has asserted, could have asserted, or may assert in the future against the United States, its agencies, employees, servants, and agents, related to the Civil Action and the Covered Conduct and the United States' investigation and prosecution thereof.

10. Tutera fully and finally releases the Relator from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Tutera has asserted, could have asserted, or may assert in the future against the Relators, related to the Civil Action and the Relators' investigation and prosecution thereof.

11. 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 carrier or intermediary or any state payer, related to the Covered Conduct; and Tutera agrees not to resubmit to any Medicare carrier or intermediary or any state payer any previously denied claims related to the Covered Conduct, and agrees not to appeal any such denials of claims.

12. Tutera agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Tutera, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "Unallowable Costs" on government contracts and under the Medicare

Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

(1) the matters covered by this Agreement;

(2) the United States' audit(s) and civil and any criminal investigation(s) of the matters covered by this Agreement;

(3) Tutera's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil and any criminal investigations in connection with the matters covered by this Agreement (including attorney's fees);

(4) the negotiation and performance of this Agreement; and

(5) the payment Tutera makes to the United States pursuant to this Agreement and any payments that Tutera may make to Relators, including Attorneys Fees. (All costs described or set forth in this Paragraph 12.a. are hereafter collectively referred to as the Unallowable Costs.)

b. <u>Future Treatment of Unallowable Costs:</u> These Unallowable Costs shall be separately determined and accounted for by Tutera, and Tutera 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 Tutera or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. <u>Treatment of Unallowable Costs Previously Submitted for Payment</u>: Tutera further agrees that within ninety (90) days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid 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 Tutera 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. Tutera agrees that the United States, at a minimum, shall be entitled to recoup from Tutera 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. The United States reserves its rights to disagree with any calculations submitted by Tutera or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Tutera 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 to audit, examine, or re-examine Tutera's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

13. Tutera agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Tutera shall encourage, and agrees not to impair, the cooperation of its directors, officers, and

employees, and shall use its best efforts to make available, and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals.

14. 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 2, above, and Paragraph 15 (waiver for beneficiaries paragraph), below.

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

16. Tutera 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 548(a)(1)(B)(ii)(I), and shall remain solvent following payment to the United States of the Settlement Amount. Further, 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 Tutera, 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 Tutera was or became indebted to on or after the date of this transfer, within the meaning of 11 U.S.C. § 548(a)(1).

17. If within ninety-one (91) days of the Effective Date of this Agreement or of any payment made under this Agreement, Tutera 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 Tutera's debts, or seeking to adjudicate Tutera as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Tutera or for all or any substantial part of Tutera's assets, Tutera agrees as follows:

a. Tutera's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Tutera shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Tutera's obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) Tutera 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 (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Tutera.

b. If Tutera's 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 releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Tutera for the claims that would otherwise be covered by the releases provided in Paragraphs 2 - 4, above. Tutera agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Tutera from participation in Medicare, Medicaid, or other Federal health care programs) 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 Tutera shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Tutera 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 90 calendar days of written notification to Tutera that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of the Agreement; and (iii) the United States has a valid claim against Tutera in the amount of $261,495.00, 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. Tutera acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

18. Upon receipt of the payments described in Paragraph 1, above, the United States and Relators shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to the terms of the Agreement. This dismissal will be with prejudice by the Relators as to all named defendants and with prejudice by the United States as to Tutera for the Covered Conduct and without prejudice by the United States as to all other defendants and as to all conduct other than the Covered Conduct.

19. Except as expressly provided to the contrary in this Agreement, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

20. Tutera represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

21. Relators represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

22. 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 is the United States District Court for the Western District of Louisiana.

23. For purposes of construction, 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.

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

25. The individuals signing this Agreement on behalf of Tutera represent and warrant that they are authorized by Tutera to execute this Agreement. The individual signing this Agreement on behalf of Relators represents and warrants that he is authorized by Relators to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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

27. This Agreement is binding on Tutera's successors, transferees, heirs, and assigns.

28. This Agreement is binding on each Relator's successors, transferees, heirs, and assigns.

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

30. 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

DATED: 6/10/08 BY: George C Vitelli
GEORGE C. VITELLI
Senior Trial Counsel
Commercial Litigation Branch
Civil Division
United States Department of Justice

DATED: 9 June 2008 BY: A. D. Alexander AUSA
ALEC ALEXANDER
Assistant United States Attorney
Western District of Louisiana

DATED:_________ BY: ______________________________
GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

THE UNITED STATES OF AMERICA

DATED:_________ BY: ______________________________

GEORGE C. VITELLI
Senior Trial Counsel
Commercial Litigation Branch
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United States Department of Justice

DATED:_________ BY: ______________________________

ALEC ALEXANDER
Assistant United States Attorney
Western District of Louisiana

DATED: 6/2/08 BY: ______________________________

GREGORY E. DEMSKE
Assistant Inspector General for Legal Affairs
Office of Counsel to the
Inspector General
Office of Inspector General
United States Department of
Health and Human Services

TUTERA HEALTH CARE SERVICES, L.L.C. - DEFENDANT

DATED: 5/15/08 BY: Pauline F. Hardin
PAULINE F. HARDIN
Jones Walker
Counsel for Tutera Health Care Services LLC

RELATORS

DATED: 5/14/08 BY: LINDA GLEASON

DATED:_________ BY: _______________________________
MARY VASSAR

DATED: 5/14/08 BY: JOE A. BRAME
Brame & McCain
Counsel for Relators

RELATORS

DATED:________ BY: LINDA GLEASON

DATED: 5/22/08 BY: MARY VASSAR

DATED:________ BY: ____________________________
JOE A. BRAME
Brame & McCain
Counsel for Relators