

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this day of July, 2002, by and between the United States of America, including the Department of Health and Human Services, Office of Inspector General ("HHS-OIG") (collectively "United States"), and Suburban Woods, LLC ("Suburban Woods") ("the Provider") to resolve potential civil claims more fully described herein.

WHEREAS, as of December 1998, Suburban Woods operated as a long-term care/skilled nursing facility engaged in the provision of health care services to Medicare and Medicaid beneficiaries located at 2751 DeKalb Pike, Norristown, PA 19401; and

WHEREAS, Suburban Woods was surveyed by the Pennsylvania Department of Health in November 1999 that led to the citation of the facility for alleged deficient care and the imposition of civil money penalties by the Centers for Medicare and Medicaid Services (CMS);

WHEREAS, Suburban Woods paid the sum of \$225,875 to CMS in settlement of the civil money penalties imposed by CMS;

WHEREAS, as a result of an investigation by the United States Attorney's Office for the Eastern District of Pennsylvania and the HHS-OIG, the United States of America contends that it has certain civil claims against Suburban Woods under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or at common law, for submitting or causing to be submitted, claims for payment for allegedly inadequate services relating to assessment, dehydration, staffing, documentation, pain management, pressure ulcers and monitoring of fluid intake and output rendered from June 1999 to January 2000 to those individuals identified in paragraph 12 of Attachment A to the United States Subpoena dated November 16, 1999 (hereinafter the "Covered Conduct");

WHEREAS, Suburban Woods denies any wrongdoing, inadequacy, or liability in regard to the care rendered to the residents of Suburban Woods;

WHEREAS, the parties agree that this Settlement Agreement does not constitute and shall not be construed as an admission of any liability, inadequacy, or wrongdoing on the part of Suburban Woods;

WHEREAS, the parties wish to resolve this matter in an amicable manner without the need for protracted litigation;

NOW THEREFORE, for and in consideration of the mutual covenants and conditions contained herein and other good and valuable consideration, the parties, intending to be legally bound, enter into the following:

1. Provider agrees to pay the sum of Seventy-Five Thousand Dollars (\$75,000) with interest computed at 6% per annum in settlement of its potential civil liability to the United States relating to the Covered Conduct. These payments shall be made in monthly installments in the amount of Six Thousand Four Hundred Twenty-Two Dollars and Twenty-Two Cents (\$6,422.22) commencing on August 1, 2002.

2. Provider has established and agrees to continue to maintain and further implement as necessary the following care initiatives and will provide training to all professional and direct care personnel on the following issues within seventy-five (75) days from the date of execution of this Settlement Agreement:

(A) Provision of wound care (decubitus ulcer) prevention, and treatment that meets or exceeds the Agency for Healthcare Research and Quality (formerly Agency for Health Care Policy and Research) Clinical Practice Guidelines for the Prediction, Prevention, and Treatment of Pressure Ulcers. Provider shall continue to implement protocols and procedures for skin and

wound care that reflect the standards set forth in the Guidelines and will use the Guidelines as a basis to establish individualized care plans for skin and wound care residents. For purposes of ensuring that appropriate medical nutrition therapy for pressure ulcers/wounds occurs, Provider agrees to abide by the protocol attached hereto as Exhibit A.

(B) Provision of appropriate incontinence care in accordance with all applicable statutes and regulations.

(C) At the time of each resident's admission to Suburban Woods and periodically thereafter (at least annually and promptly after a significant change in the resident's physical or mental condition), Suburban Woods will conduct a comprehensive, accurate, standardized assessment of each resident's functional capacity with input by all relevant disciplines. This assessment will be monitored by the facility's quality assurance committee on a weekly basis for a period of three (3) months from the date of execution of this Settlement Agreement and monthly thereafter to ensure that each resident's assessments are accurate and that the care plan developed affords each resident the best opportunity to attain or maintain the highest practicable level of physical, mental and psychosocial well-being.

(D) Provision of pain management in accordance with Exhibit B.

(E) Provider shall continue to maintain a quality assessment and assurance committee that develops and implements appropriate plans of action to correct identified quality deficiencies. Provider shall continue to implement a system that reviews resident outcomes and improves upon those outcomes through analysis and modification of care processes. Upon modification of care processes, Provider shall re-analyze the outcomes to ensure that care has been improved. Care protocols are a tool that may be used to attain improved outcomes but

Provider shall ensure that residents' outcomes are determinative of the adequacy of the care rendered and not compliance with the protocol.

All protocols and procedures addressing the issues contained in this Paragraph 2, except for those protocols attached hereto, shall be submitted to the United States in a format to be discussed and mutually agreed upon by consultants appointed pursuant to paragraph 7 *infra* and within 30 days of execution of this Settlement Agreement and the United States' review and comment shall occur within thirty (30) days thereafter. All comments made by the United States shall be considered in good faith by Provider.

3. Provider agrees that within seventy-five (75) days from the date of execution of this Settlement Agreement, all licensed staff who provide services related to the provision of care to residents of Suburban Woods will receive in-service instruction regarding the relevant care initiatives under the terms of this Settlement Agreement. Such training will be updated and provided on an annual basis. All newly hired licensed staff will receive such training within 30 days of their employment.

4. Upon execution of this Agreement, Provider agrees to establish a "Quality of Care/Quality of Life Fund" ("the Fund") in the amount of \$75,000. The Fund is in addition to programs, services and equipment that have already been budgeted by Provider. The Fund shall be used to enhance the quality of life of the residents of Suburban Woods and the quality of care provided to them. To that end, within eighteen (18) months from the date of execution of this Agreement, Provider shall expend all monies from the Fund on programs, services and equipment that will improve the quality of life and care rendered to Suburban Woods residents. In the event that the Fund amount is not expended within the 18-month period, the Provider agrees to remit the remainder to the United States.

5. Provider agrees to provide notice to the United States and the consultant(s) appointed pursuant to Paragraph 7 *infra* of their plan on expenditure of funds from the Fund. The United States and the consultants will provide input into the expenditures and all comments made by the government and the consultants will be considered in good faith by the Provider. Monthly updates on the progress of any environmental changes or any other improvements will be provided to the United States and the consultants. Evidence and a certification by Suburban Woods' licensed administrator of all expenditures from the Fund shall be submitted to the United States on a quarterly basis commencing on the effective date of this Settlement Agreement.

6. Provider agrees that it will comply fully with the applicable statutes, rules and regulations governing the Medicare and Medicaid Programs and the Nursing Home Reform Act. Suburban Woods has already developed a Corporate Compliance Program incorporating the policies and principles set forth in HHS-OIG's Compliance Program Guidance for Nursing Facilities, 65 Federal Register 14289 (daily ed. March 16, 2000), and has submitted that Corporate Compliance Program to HHS-OIG, which has reviewed it. The Corporate Compliance Program shall remain in effect for the duration of this Agreement.

7. Provider agrees to employ an independent third party consultant or consultants, to assist and monitor Provider's compliance with the terms of this Settlement Agreement and the provision of quality care. The consultant(s) shall be chosen by the United States after consultation with the Provider. If the consultant(s) resigns or is/are removed for any reason by the United States prior to the termination of their term of appointment, the United States, after consultation with the Provider, shall appoint another consultant(s) with the same functions and authorities. The consultant(s) shall visit Suburban Woods for a period of at least one (1) year from the first monitoring visit and shall have access, at any time, to all current nursing home

residents, their medical records, records in the possession or control of the Provider (e.g. quality assurance reviews) and the Provider's staff and employees, for purposes of ensuring coordination of responses to identified problems and enabling the consultant(s) to fulfill his/her duties. In addition, the consultant(s) shall advise management and staff as to possible procedures that, in the consultant's view, may be implemented to facilitate compliance with this Settlement Agreement. The consultant(s) may confer and correspond with the parties on an ex parte basis. Within five (5) days from the final execution of this Settlement Agreement, the consultant(s) shall submit a budget to the United States and the Provider for a one (1) year monitoring period. The consultant(s) shall visit Suburban Woods as consultants deem appropriate.

8. At the conclusion of each visit, the consultant(s) will meet with the Provider's personnel and their designees to discuss any adverse findings that have been identified and make suggestions related to how these findings could be remedied and care improved in the facility. The consultant(s) shall create a report documenting any adverse findings relating to compliance with this Settlement Agreement and shall present the report within ten (10) calendar days of the site visit to the Provider, the United States Attorney's Office, and the U.S. Department of Health and Human Services, Office of Inspector General. Upon receipt of the report, the Provider will have an opportunity to submit a response, with the assistance of the consultant(s), as requested, to address any concerns raised by the consultant(s) and actions taken by the Provider in response to such concerns. Such response, if any, shall be submitted within ten (10) business days of receipt by the Providers of the report. Any such response shall be considered in good faith by the United States. The Provider and the United States agree that, at the request of either party, they shall meet promptly to discuss any issues or concerns raised by the consultant(s). The Provider is not bound by the consultants' recommendations or conclusions but must address

them in good faith. In the event the United States believes there has been a breach of this Settlement Agreement, nothing in this Settlement Agreement shall prevent the United States from calling the consultant(s) as witnesses or from submitting their written findings in any proceeding. In the event that the Provider wishes to call the consultant(s) as witnesses in any proceeding, Provider will compensate the consultant(s) for their appearance.

9. The consultant(s) shall be compensated at the rate of \$75.00/hour for performance of the consulting activities set forth herein. The consultant(s) may retain independent consultants, as needed, to meet his/her obligations. The Provider shall bear all reasonable costs of the consultant(s) consistent with the hourly rate. Failure to pay the consultant(s) within thirty (30) calendar days of submission of his/her invoice shall constitute breach of this Settlement Agreement. At all times the consultant(s) shall attempt to coordinate his or her activities with relevant Suburban Woods personnel in order to minimize disruption in the day-to-day operations of the facility.

10. In the event that the Provider fails to comply in good faith with any of the terms of this Settlement Agreement, or should any of the Provider's representations or warrants be materially false, the United States may, at its sole discretion, exercise one or more of the following rights:

- (a) seek specific performance of this Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys fees and costs in its favor; or
- (b) exercise any other right granted by law; or
- (c) seek exclusion by the OIG for material breach pursuant to the following procedures:

(1) Notice of Material Breach and Intent to Exclude. The United States and the Provider agree, as a contractual remedy, that a material breach of this Settlement Agreement by the Provider constitutes an independent basis for the Nursing Facility's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)). Upon a determination by OIG that the Provider has materially breached this Settlement Agreement and that exclusion should be imposed, the OIG shall notify the Provider by certified mail of: (a) the Provider's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion ("Notice of Material Breach and Intent to Exclude").

(2) Opportunity to Cure. The Provider shall have thirty-five (35) days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:

- (a) Provider is in compliance with the obligations of this Agreement cited by the OIG as being the basis for the material breach;
- (b) the alleged material breach has been cured; or
- (c) the alleged material breach cannot be cured within the 35-day period, but that: (i) the Provider has begun to take action to cure the material breach; (ii) the Provider is pursuing such action with due diligence; and (iii) the Provider has provided to OIG a reasonable timetable for curing the material breach.

(3) Exclusion Letter. If at the conclusion of the 35-day period, the Provider fails to satisfy the requirements of this Paragraph, OIG may exclude Suburban Woods

from participation in the Federal health care programs. OIG will notify the Provider in writing of its determination to exclude Suburban Woods. Subject to the provisions in this Paragraph, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusion of Suburban Woods will have national effect and will also apply to all other federal procurement and non-procurement programs. If Suburban Woods is excluded under the provisions of this Settlement Agreement, Suburban Woods may seek reinstatement by submitting a written request pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004. Reinstatement is not automatic.

(4) Review Rights. Upon the OIG's delivery to the Provider of the Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligations of this Settlement Agreement, the Provider shall be afforded certain review rights comparable to those set forth in 42 U.S.C. § 1320a-7(f) and 42 C.F.R. Part 1005 as if they applied to the exclusion for breach of this Order. Specifically, an action for exclusion shall be subject to review by an ALJ and, in the event of an appeal, the Departmental Appeals Board ("DAB"), in a manner consistent with the provisions in 42 C.F.R. §§ 1005.2-1005.21.

Notwithstanding the language in 42 C.F.R. § 1005.2(c), a request for a hearing involving exclusion for breach shall be made within 30 days of the date of the Exclusion Letter.

(5) Exclusion Review. Notwithstanding any provision of Title 42 of the United States Code or Chapter 42 of the Code of Federal Regulations, the only issues in a proceeding for exclusion based on a material breach of the Settlement Agreement shall be: (a) whether the Provider was in material breach of this Settlement Agreement; (b) whether such breach was continuing on the date of the Exclusion Letter; and (c) whether the alleged material breach cannot be cured within the 35-day period, but that (i) the Provider has begun to take

action to cure the material breach, (ii) the Provider is pursuing such action with due diligence, and (iii) the Provider has provided to OIG a reasonable timetable for curing the material breach.

(6) For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to the OIG. The Provider's election of its contractual rights to appeal to the DAB shall not abrogate the OIG's authority to exclude Suburban Woods upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Suburban Woods may request review of the ALJ decision by the DAB.

11. In the event that the United States exercises any of its rights under Paragraph 10 of this Settlement Agreement, the Provider specifically reserves all of its rights to challenge, defend, and contest any such action.

12. Each party to this Settlement Agreement shall bear its own costs except as otherwise provided herein.

13. The Provider and its agents, employees, contractors and/or subcontractors agree that they have not and will not intimidate or retaliate against any individual or individuals who cooperated with this investigation.

14. This Settlement Agreement with respect to the consultant(s) shall be in effect for at least a one-year period. At the conclusion of the one-year period, the consultant(s) will provide the United States and the Provider with a report summarizing the Provider's compliance with this Settlement Agreement. If, in the reasonable judgment of the United States, the Provider has implemented all provisions contained in this Settlement Agreement and there are no unresolved issues that have a material impact on care to the residents of Suburban Woods, the consulting

project shall terminate. If the United States determines that the Provider is not in compliance with this Settlement Agreement, after good faith discussion with the Provider, the United States shall promptly notify the Provider and consulting activities shall continue. The Provider agrees to compensate the consultant(s) at their hourly rate until termination of the monitoring project.

The remaining obligations imposed by this Settlement Agreement on the Provider shall be in effect for a period of three (3) years from the effective date of this Settlement Agreement.

During that three-year period, thirty (30) days after the first, second, and third anniversary date of this Settlement Agreement, the Providers will submit Annual Reports to the OIG regarding the status of its compliance with this Settlement Agreement. Each annual report shall include: (a) any amendments or revisions to Suburban Woods' Compliance Plan made during the preceding year and the reasons for such changes (e.g., change in contractor policy); (b) a description of the training programs implemented pursuant to this Settlement Agreement and a summary of the activities undertaken in furtherance of these programs; and (c) a certification by the Compliance Officer that all applicable persons have completed the required training; that the Provider is in compliance with all of the requirements of this Settlement Agreement, to the best of his or her knowledge; and that the Compliance Officer has reviewed the Annual Report and has made reasonable inquiry regarding its content and believes that the information is accurate and truthful.

15. In consideration of the promises made by the Provider in this Settlement Agreement and conditioned upon payment in full of the settlement amount referenced in Paragraph 1, the United States, on behalf of itself, its officers, agents, agencies, and departments, hereby releases and discharges the Provider, its parents, successors and assigns, and its and their present and former officers, directors, and employees from any and all civil or administrative monetary claims (including recoupment claims), actions, causes of action, liabilities, losses, and damages,

including attorneys' fees, costs and expenses, which the United States has asserted or could have asserted against them 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 common law theories of payment by mistake, unjust enrichment, breach of contract, and fraud for the Covered Conduct.

16. In consideration of the obligations of the Provider as set forth in this Settlement Agreement, and conditioned upon payment in full of the settlement amount referenced in Paragraph 1, 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 the Provider, its parents, successors and assigns, and its and their present and former officers and directors 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 specifically reserved in Paragraph 17.

17. The parties agree that the releases given in the preceding two paragraphs specifically exclude the following:

- (a) Any civil, criminal, or administrative disputes or claims arising under the Internal Revenue Code, Title 26 of the United States Code.
- (b) Any disputes or claims arising under any express or implied warranties relating to products or services other than those released in Paragraphs 15 and 16.
- (c) Any disputes or claims arising under the criminal laws of the United States.

(d) Subject to the enforcement provisions of Paragraph 10, any obligations created by this Settlement Agreement.

(e) Any civil or administrative disputes, adjustments, claims, or CMS enforcement actions relating to matters other than the Covered Conduct.

(f) Except as explicitly stated herein, any administrative liability, including mandatory exclusion from Federal health care programs pursuant to 42 U.S.C. §1320a-7(a).

18. To the extent applicable, Provider agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation ("FAR"), 48 C.F.R. § 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 and official program directives promulgated thereunder) incurred by or on behalf of the Provider and its present or former officers and directors, in connection with: (1) the United States' audit(s) and civil and any criminal investigations of the Covered Conduct, (2) the Provider's investigation and defense of this matter (including attorney's fees), (3) the negotiation and performance of this Settlement Agreement, (4) the payment the Provider makes to the United States pursuant to this Settlement Agreement, and (5) corrective actions taken pursuant to this Settlement Agreement, including but not limited to the cost of the consultant(s) and the cost of preparing and submitting annual reports to the OIG, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph that may apply to compliance costs affects the status of costs that are not allowable based on any other authority

applicable to Suburban Woods. All costs described or set forth in this Paragraph 15(a) are hereafter "unallowable costs".

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by the Provider, and the Provider 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 the Provider or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Provider further agrees that within ninety (90) days of the effective date of this Settlement 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 the Provider or any of their 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. The Provider agrees that the United States, at a minimum, will be entitled to recoup from the Provider any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously submitted cost reports, information reports, cost statements, or request for payment. Any payment 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 the Provider or any of their subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on the Provider or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Settlement Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

19. In consideration for such repose and on the terms and conditions contained herein, the Provider fully and finally releases, dismisses, and forever discharges the United States, its agencies, employees, servants, and agents, from any and all claims, causes of action, liabilities, losses, appeals of remedies imposed by HHS-OIG, and damages, including attorneys' fees, costs, and expenses, which Suburban Woods has asserted or could have asserted against the United States, its agencies, employees, servants, and agents before the effective date of this Settlement Agreement for the Covered Conduct.

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

21. The undersigned individuals signing this Settlement Agreement on behalf of the Provider represent and warrant that they are authorized by the Provider to execute this Settlement Agreement. The undersigned United States signatories represent that they are signing this Settlement Agreement in their official capacities and that they are authorized to execute this Settlement Agreement.

22. This Settlement Agreement shall be binding on the heirs, administrators, executors, successors, and transferees of the Provider.

23. This Settlement Agreement is effective on the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Settlement Agreement.

24. 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 Eastern District of Pennsylvania, except that disputes pertaining to the exclusion remedy set forth in Paragraph 10.c shall be governed by the provisions set forth therein.

UNITED STATES OF AMERICA:

PATRICK L. MEEHAN
UNITED STATES ATTORNEY

JAMES G. SHEEHAN
ASSISTANT U.S. ATTORNEY
CHIEF, CIVIL DIVISION

DATE

DAVID R. HOFFMAN
ASSISTANT U.S. ATTORNEY

DATE

LEWIS MORRIS
ASSISTANT INSPECTOR GENERAL
OFFICE OF COUNSEL TO THE
INSPECTOR GENERAL
DEPARTMENT OF HEALTH AND
HUMAN SERVICES

DATE

SUBURBAN WOODS, LLC

DATE

SAUL EWING LLP

JAMES M. BECKER, ESQUIRE
ATTORNEYS FOR SUBURBAN
WOODS, LLC

DATE
