

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between 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"); and Greater Philadelphia Health Services Corporation d/b/a Elmira Jeffries Memorial Home ("Elmira Jeffries"), and Greater Philadelphia Health Services III Corporation d/b/a Temple Continuing Care Center, (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. Elmira Jeffries was a 180-bed long-term care facility located at 1500-1514 North 15th Street, Philadelphia, PA. Elmira Jeffries closed on September 13, 2002 and ceased providing health care services on that date. Elmira Jeffries was affiliated with Temple University Hospital as of December 31, 1993 and subsequently became affiliated with the Temple University Health System on July 1, 1996.

B. Temple Continuing Care Center was a 538-bed nursing facility located at 5301 Old York Road, Philadelphia, PA.

Temple Continuing Care Center closed on February 5, 2003 and ceased providing health care services of that date. Greater Philadelphia Health Services III Corporation, an affiliate of the Temple University Health System, acquired the assets controlled by the Philadelphia Geriatric Center, Inc. on July 1, 1999.

C. The United States contends that Elmira Jeffries and Temple Continuing Care Center 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. §§ 1395-1395ggg and/or the Medical Assistance Program ("Medicaid"), Title XIX of the Social Security Act, Title 42 U.S.C. §§ 1396-1396v.

D. The United States contends that it has certain civil monetary claims against Elmira Jeffries and Temple Continuing Care Center under the False Claims Act, other federal statutes and/or common law doctrines, for failing to provide adequate: (1) resident assessments and evaluations, (2) nutrition, (3) hydration, (4) pressure ulcer prevention and treatment, (5) dental care, (6) falls prevention, (7) pain management, and (8) investigation and reporting of incidents, for the residents identified in the subpoenas dated March 27, 2002, September 4, 2002 and October 1, 2002, and for the period from January 2001 to December, 2002, and submitted or caused to be submitted claims for reimbursement to Federal healthcare programs in connection therewith (hereinafter referred to as the "Covered Conduct").

E. Elmira Jeffries and Temple Continuing Care Center do not admit the contentions of the United States as set forth in Paragraph D, above and to the contrary, contend that their conduct was at all times lawful and appropriate.

F. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and 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 as stated herein, the Parties agree as follows:

1. In settlement of the claims asserted by the United States, the Parties agree that a total settlement amount of Five Hundred Thousand Dollars (\$500,000)(the "Settlement Amount") will be disbursed as follows:

A. Upon execution of the Agreement, a payment to the United States in the sum of Two Hundred Fifty Thousand Dollars (\$250,000.00), by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney.

B. Upon execution of the Agreement, the creation of a fund (the "Fund")in the amount of Two Hundred Fifty Thousand Dollars (\$250,000) for purposes of studying the effects of

potential relocation stress syndrome on residents of Temple Continuing Care Center. Temple Continuing Care Center began relocating 450 residents in January 2003 and all residents were ultimately re-located by February 5, 2003. The Parties have selected Elizabeth Capezuti, Ph.D, RN, FAAN, to serve as the principal investigator for the relocation project. At a minimum, the project will be identifying safe and efficacious interventions to reduce relocation stress syndrome while comparing outcomes associated with participation in an Advanced Practice Nurse Intervention with outcomes associated with a control group among a sample of 450 nursing home residents. At the direction of the United States, the Fund will be administered by counsel for Temple Continuing Care Center. The Parties agree that any unspent monies from the Fund will be dedicated to addressing the needs of potential nursing home and/or actual nursing home residents of the North Philadelphia area at the direction of the United States, after consultation with counsel for the entities.

2. Subject to the exceptions in Paragraph 3 below, in consideration of the obligations of Temple Continuing Care Center and Elmira Jeffries set forth in this Agreement, conditioned upon payment in full of the Settlement Amount, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release Temple Continuing Care Center and Elmira Jeffries together with their current and

former parent corporations, and their successors and assigns 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; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; civil money penalties imposed by the Centers for Medicare and Medicaid Services (CMS); or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

3. Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person are any and all of the following:

(A) Any civil, criminal or administrative claims 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 claims based upon such obligations as are created by this Agreement;

(F) Any civil or administrative claims against individuals, including former directors, officers, employees, or

agents of Temple Continuing Care Center and Elmira Jeffries who receive written notification that they are the target of a criminal investigation (as defined in the United States Attorneys' Manual), are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

4. In the event that Temple Continuing Care or Elmira Jeffries fail to comply in good faith with any of the terms of this Settlement Agreement relating to it, or should any of the defendants' 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.

5. In the event that the United States exercises any of its rights under Paragraph 4 of this Settlement Agreement, Temple Continuing Care Center and Elmira Jeffries specifically reserve all of their rights to challenge, defend and contest any such action.

6. Temple Continuing Care Center and Elmira Jeffries waive and will not assert any defenses they 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. Temple Continuing Care Center and Elmira Jeffries agree 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 the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue Laws, Title 26 of the United States Code.

7. Temple Continuing Care Center and Elmira Jeffries fully and finally release 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 those entities have 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.

8. Temple Continuing Care Center and Elmira Jeffries agree 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 Temple Continuing Care Center and Elmira Jeffries, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the Covered Conduct,
- (2) the United States' audit(s) and civil investigation(s) of the Covered Conduct,
- (3) Temple Continuing Care Center and Elmira Jeffries' investigation, defense and any corrective actions if applicable, undertaken in direct response to the United States' audits and civil investigation(s) 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 made to the United States pursuant to this Agreement.

All costs described or set forth in this Paragraph 8(a) are hereafter, "unallowable costs".

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by Temple Continuing Care Center and Elmira Jeffries and those entities 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 Temple Continuing Care Center and Elmira Jeffries or any of their subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Temple Continuing Care Center and Elmira Jeffries further agree that within 90 days of the effective date of this Agreement, they 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 Temple Continuing Care Center and Elmira Jeffries 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. Temple Continuing Care Center and Elmira Jeffries agree that the United States, at a minimum, will be entitled to recoup 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 Temple Continuing Care Center and Elmira Jeffries or any of their subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Temple Continuing Care Center and Elmira Jeffries or any of their 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.

9. Temple Continuing Care Center and Elmira Jeffries and Temple University Health System covenant to cooperate fully and truthfully with the United States' investigation of individuals and entities not specifically released in this Agreement. Upon reasonable notice, counsel for Temple Continuing Care Center and Elmira Jeffries will make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and former employees for interviews and testimony, consistent with the rights and privileges of such individuals.

10. 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.

11. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

12. Temple Continuing Care Center and Elmira Jeffries represent that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

13. 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.

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

15. The undersigned individuals signing this Agreement on behalf of Temple Continuing Care Center and Elmira Jeffries represent and warrant that they are authorized 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.

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

17. This Agreement is effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

JAMES G. SHEEHAN
Associate United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

DAVID R. HOFFMAN
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

LARRY J. GOLDBERG
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

GREATER PHILADELPHIA HEALTH SERVICES CORPORATION d/b/a
ELMIRA JEFFRIES MEMORIAL HOME

DATED: _____ BY: _____

GREATER PHILADELPHIA HEALTH SERVICES III CORPORATION
TEMPLE CONTINUING CARE CENTER

DATED: _____ BY: _____

