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"); and Ming C. Tung ("Tung") (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. Ming C. Tung, DPM is an individual who resides at 60 Mitchell Avenue, East Brunswick, New Jersey. At all times relevant to this Agreement, Defendant Ming C. Tung, DPM, ("Tung"), was a New Jersey-licensed doctor of podiatric medicine. According to state records, Tung's license is active through October 31, 2007. At all times relevant to this Agreement, Tung was a Medicare provider under Provider No. 439127. Tung provided podiatry services at a number of low-income residential buildings located in both Hudson and Middlesex Counties. Tung maintains an office at 8 Baldwin Avenue, Jersey City, New Jersey.

B. The United States contends that Tung 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.

C. The United States contends that it has certain civil claims, as specified in Paragraph 2, below, against Tung for engaging in the following conduct during the period from January 1, 2001 to December 31, 2005:

(1) Tung provided Medicare-covered patients with routine foot care services and falsely billed Medicare as though these patients suffered from systemic podiatric problems, such as diabetes;

(2) Tung provided some Medicare-covered patients with routine foot care services, such as toenail clipping and foot massage, and falsely billed Medicare as though he had provided more complex, time-consuming procedures, such as the removal of infected toenails; and

(3) Tung fraudulently obtained reimbursement from Medicare for home visits when they were not medically necessary.

These practices enabled Tung to receive Medicare reimbursements for services which otherwise would not be covered (hereinafter referred to as the "Covered Conduct").

D. The United States contends also that it has certain administrative claims against Tung for engaging in the Covered Conduct, as specified in Paragraphs 2 and 4, below.

E. 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. Tung agrees to pay to the United States EIGHT HUNDRED SIXTY EIGHT THOUSAND, THREE HUNDRED THIRTEEN DOLLARS AND THIRTY-EIGHT CENTS ($868,313.38) (the "Settlement Amount"). Tung shall pay $700,000.00 of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the District of New Jersey. Tung agrees to make this

electronic funds transfer no later than seven (7) days from the Effective Date of this Agreement. The balance of the Settlement Amount, $168,313.38 (hereinafter the "Balance"), is presently held in suspension by the Medicare program. Tung agrees that the Balance presently held in suspension by the Medicare program be released to the United States as part of the payment of the Settlement Amount under this Agreement.

2. Subject to the exceptions in Paragraph 3, below, in consideration of the obligations of Tung set forth in this Agreement, conditioned upon Tung's full payment of the Settlement Amount, and subject to Paragraph 12, below (concerning bankruptcy proceedings commenced within 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 Tung 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; the common law theories of payment by mistake, unjust enrichment, 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 (including Tung) are the following:

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; and

f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods or services.

4. Voluntary Exclusion.

a. In compromise and settlement of the rights of OIG-HHS to exclude Tung pursuant to 42 U.S.C. § 1320a-7(b)(7), and if convicted in the pending criminal action in the United States District Court for the District of New Jersey, captioned United States of America v. Ming C. Tung (D.N.J.) (hereinafter the "Criminal Action") for a criminal offense related to the delivery of an item or service under Medicare or Medicaid, 42 U.S.C. § 1320a-7(a)(1), based upon the Covered Conduct, Tung agrees to be permanently excluded under these statutory provisions from Medicare, Medicaid, and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f). The permanent exclusion shall be effective on the Effective Date of this Agreement.

b. Such exclusion shall have national effect and shall also apply to all other federal procurement and nonprocurement programs. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by Tung in any capacity while Tung is excluded. This payment

prohibition applies to Tung and all other individuals and entities (including, for example, anyone who employs or contracts with Tung, and any hospital or other provider where Tung provides services). The exclusion applies regardless of who submits the claim or other request for payment. Tung shall not submit or cause to be submitted to any Federal health care program any claim or request for payment for items or services, including administrative and management services, furnished, ordered, or prescribed by Tung during the exclusion. Violation of the conditions of the exclusion may result in criminal prosecution and the imposition of civil monetary penalties and assessments. Tung further agrees to hold the Federal health care programs, and all federal beneficiaries and/or sponsors, harmless from any financial responsibility for items or services furnished, ordered, or prescribed to such beneficiaries or sponsors after the effective date of the exclusion. Tung waives any further notice of the exclusion and agrees not to contest such exclusion either administratively or in any state or federal court.

5. Tung waives and shall not assert any defenses Tung 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 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.

6. Tung 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 Tung 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.

7. Except to the extent described in Paragraph 1 of the Settlement Agreement, 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 Tung 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.

8. Tung 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 Tung; his 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 and any related plea agreement;

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

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

(4) the negotiation and performance of this Agreement and any plea agreement; and

(5) the payment Tung makes to the United States pursuant to this Agreement, including any costs and attorneys fees.

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

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for by Tung, and Tung 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 Tung or any of his subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Tung further agrees that within 90 days of the Effective Date of this Agreement he 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 Tung or any of his agents, 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. Tung agrees that the United States, at a minimum, shall be entitled to recoup from Tung 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 Tung or any of his agents, subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Tung or any of his agents, subsidiaries or affiliates' 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. 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 10, below.

10. Tung 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.

11. Tung warrants that he has reviewed his financial situation and that he 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 his 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 Tung, 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 Tung was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

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

a. Tung's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Tung shall not argue or otherwise take the position in any such case, proceeding, or action that: (I) Tung's obligations under this Agreement may be

avoided under 11 U.S.C. §§ 547 or 548; (ii) Tung was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Tung.

b. If Tung'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 Tung for the claims that would otherwise be covered by the releases provided in Paragraph 2, above. Tung agrees that (I) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Tung 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 proceeding described in the first clause of this Paragraph, and Tung shall not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (ii) Tung 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 proceedings that are brought by the United States within 90 calendar days of written notification to Tung that the releases herein 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 claim against Tung in the amount of $1,226,000.00, 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. Tung acknowledges that his agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

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

15. 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 District of New Jersey.

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

17. The individuals signing this Agreement on behalf of Tung represent and warrant that they are authorized by Tung 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.

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

19. This Agreement is binding on Tung's successors, transferees, heirs, and assigns.

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

21. 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.

[SIGNATURE BLOCKS ON FOLLOWING PAGES]

THE UNITED STATES OF AMERICA

CHRISTOPHER J. CHRISTIE
United States Attorney
District of New Jersey

DATED: 8/24/07

BY: _____
STUART A. MINKOWITZ
Assistant United States Attorney

DATED: 8/3/07

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

MING C. TUNG - DEFENDANT

DATED: 8-8-07

BY: _____
MING C. TUNG

DATED: 8/8/07

BY: _____
DOUGLAS M. NADJARI, ESQ.
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