SETTLEMENT AGREEMENT

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); the West Virginia Department of Health and Human Resources (WVDHHR), Bureau for Medical Services on behalf of the West Virginia Medicaid Program (WV Medicaid) (collectively the State of West Virginia); Trivillian's Pharmacy of Kanawha City, Inc. (Trivillian's); and Paula J. Butterfield (Butterfield) (hereafter collectively referred to as the Parties), through their authorized representatives.

RECITALS

A. Butterfield is a duly licensed pharmacist, and the sole owner and operator of Trivillian's. Trivillian's is a registered West Virginia corporation that operates a retail and compounding pharmacy with its primary place of business at 215 35th Street, SE, Charleston, West Virginia.

B. The United States contends that Butterfield and Trivillian's 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. §§ 1395-1395kkk-1 and the Medicaid Program (Medicaid), 42 U.S.C. §§ 1396-1396w-5.

C. The United States and the State of West Virginia contend that they have certain civil claims against Butterfield and Trivillian's arising from conduct described below:

> From as early as January of 2010 continuing through September of 2014, Butterfield and Trivillian's submitted or caused the submission of false

and fraudulent claims to Medicare and WV Medicaid by billing for non-compounded and FDA-approved drugs while dispensing less expensive compounded drugs; billing for brand name drugs while dispensing generic drugs; and billing for drugs that were not dispensed. Butterfield and Trivillian's also billed WV Medicaid for drugs that had expired. Medicare and WV Medicaid relied on the claims submitted or caused to be submitted by Butterfield and Trivillian's and paid them money to which they were not entitled.

This conduct is referred to below as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by Butterfield nor a concession by the United States or the State of West Virginia that their claims are not well founded. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Butterfield and Trivillian's agree to pay the United States $1,100,000.00 (Settlement Amount) as follows:

A. On the Effective Date of this Agreement, Butterfield and Trivillian's will make a payment to the United States in the amount of $200,000 pursuant to written instructions to be provided by the Office of the United States Attorney for the Southern District of West Virginia.

B. Butterfield and Trivillian's will pay the remaining $900,000, plus interest at 2.25% per annum, within 18 months of the Effective Date of this Agreement. Payments by Butterfield and Trivillian's shall include, but not be limited to, the net proceeds after taxes and ordinary and reasonable costs of closing realized by Butterfield and Trivillian's from the sale of the real estate

identified on Exhibit 1 to this Agreement. With respect to each sale, Butterfield and Trivillian's shall provide the United States with a copy of the sale contract, the appraisal (if any) and the HUD-1 form prior to closing. The net proceeds realized after taxes and ordinary and reasonable costs of closing by Butterfield and Trivillian's shall be remitted to the United States within 5 business days pursuant to written instructions to be provided by the Office of the United States Attorney for the Southern District of West Virginia.

2. In the event that Butterfield and/or Trivillian's fails to pay any amount as provided in Paragraph 1 within fifteen (15) business days of the date on which such payment is due, Butterfield and Trivillian's shall be in default of its payment obligations (Default). The United States shall provide written notice of the Default to Butterfield and Trivillian's and they shall have the opportunity to cure such Default within five (5) business days from the date of receipt of the notice. Notice of Default shall be delivered to Butterfield by certified mail, return receipt requested, or to such representative as Butterfield and Trivillian's shall designate in advance in writing.

If Butterfield and/or Trivillian's fails to cure such Default within five (5) business days of receiving the Notice of Default, the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest shall accrue at the rate of 12% per annum compounded daily from the date of Default on the remaining unpaid total (principal and interest balance). In the event of Default, Butterfield and Trivillian's shall consent to the entry of a pre-authorized Consent Judgment in the amount of the unpaid balance, and the United States, at its sole option, may: (a) offset the remaining unpaid balance from any amounts due and owing to Butterfield and/or Trivillian's by any

department, agency, or agent of the United States at the time of Default; (b) collect the entire unpaid balance of the Settlement Amount, plus interest, including 12% interest from the date of Default, and all other amounts due upon the event of Default as specified in this Paragraph; (c) file a civil action for the Covered Conduct; or (d) exercise any other rights granted by law or in equity, including referral of this matter for private collection.

In the event a complaint is filed pursuant to subsection (c) of this Paragraph, Butterfield and Trivillian's agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories to the allegations in the complaint, except to the extent such defenses were available to them on December 1, 2014. Butterfield and Trivillian's agree not to contest any consent judgment, offset, or any collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court. Butterfield and Trivillian's shall pay the United States all reasonable costs of collection and enforcement under this Paragraph, including attorneys' fees and expenses.

3. Notwithstanding the foregoing, in the event of Default as defined in Paragraph 2, above, OIG-HHS may exclude Butterfield and Trivillian's from participating in all Federal health care programs until Butterfield and Trivillian's pays the Settlement Amount and reasonable costs as set forth in Paragraph 2, above. OIG-HHS will provide written notice of any such exclusion to Butterfield and Trivillian's. Butterfield and Trivillian's waive any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agree not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion Butterfield and/or Trivillian's wishes to apply for

reinstatement, Butterfield and/or Trivillian's must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Butterfield and Trivillian's will not be reinstated unless and until OIG-HHS approves such request for reinstatement.

4. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, and conditioned upon Butterfield and Trivillian's full payment of the Settlement Amount, the United States and the State of West Virginia release Butterfield and Trivillian's from any civil or administrative monetary claim the United States or the State of West Virginia 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, state law, or the common law theories of payment by mistake, unjust enrichment, and fraud.

5. Notwithstanding the releases given in paragraph 3 of this Agreement, or any other term of this Agreement, the following claims of the United States and the State of West Virginia are specifically reserved and are not released:

a. Any 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 or permissive exclusion from Federal health care programs;

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

e. Any liability based upon obligations created by this Agreement;

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

g. Any liability for failure to deliver goods or services due;

h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct; or

i. Any liability of individuals except as provided herein with respect to Butterfield.

6. Butterfield and Trivillian's waive and shall not assert any defenses they 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 or the State of West Virginia concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

7. Butterfield and Trivillian's fully and finally release the United States and the State of West Virginia, their agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the United States or the State of West Virginia, and their agencies, employees, servants, and agents, related to the Covered Conduct and the investigation and prosecution thereof.

8. 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 contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and Butterfield and Trivillian's agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

9. Butterfield and Trivillian's agree to cooperate fully and truthfully with the investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Butterfield and/or Trivillian's shall encourage, and agree 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. Butterfield and Trivillian's further agree to furnish to the United States or the State of West Virginia, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or

control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

10. 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 11, below.

11. Butterfield and Trivillian's agree that they waive 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.

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

13. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of West Virginia. For purposes of construing this Agreement, 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.

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

16. The undersigned represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

18. This Agreement is binding on Butterfield and Trivillian's successors, transferees, heirs, and assigns.

19. The parties consent to the disclosure of this Agreement, and information about this Agreement, to the public.

20. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 12/22/2014 BY: _____

JOHN F. GIANOLA
Assistant United States Attorney
Southern District of West Virginia

DATED: _____ BY: _____

ROBERT K. DECONTI
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

STATE OF WEST VIRGINIA

DATED: _____ BY: _____

KAREN L. BOWLING
Cabinet Secretary
West Virginia Department of Health
and Human Resources

DATED: _____ BY: _____

CYNTHIA E. BEANE
Commissioner, Bureau of Medical Services
West Virginia Department of
Health and Human Resources

DATED: _____ BY: _____

CELESTE WEBB-BARBER
Deputy Director, West Virginia
Medicaid Fraud Control Unit

PAULA J. BUTTERFIELD AND TRIVILLIAN'S

DATED: 12-10-14 BY: _____
PAULA J. BUTTERFIELD
Individually and on behalf of Trivillian's

DATED: 12/10/14 BY: _____
Ralph W. Hoyer
Hoyer, Hoyer & Smith PLLC
22 Capitol Street
Charleston, WV 25301
Phone: 304-344-9821
E-mail: ralph@hhsmlaw.com

Counsel for Paula J. Butterfield and Trivillian's

EXHIBIT 1

PROPERTIES FOR SALE

Trivillian's Pharmacy

Myrtle Beach Condo - Cherry Grove

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____

JOHN F. GIANOLA
Assistant United States Attorney
Southern District of West Virginia

DATED: 12/18/14 BY: Robert K. DeConti

ROBERT K. DECONTI
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

STATE OF WEST VIRGINIA

DATED: _____ BY: _____

KAREN L. BOWLING
Cabinet Secretary
West Virginia Department of Health
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DATED: _____ BY: _____

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West Virginia Department of
Health and Human Resources

DATED: _____ BY: _____

CELESTE WEBB-BARBER
Deputy Director, West Virginia
Medicaid Fraud Control Unit

THE UNITED STATES OF AMERICA

DATED: _____ BY: _____

JOHN F. GIANOLA
Assistant United States Attorney
Southern District of West Virginia

DATED: _____ BY: _____

ROBERT K. DECONTI
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

STATE OF WEST VIRGINIA

DATED: 12-18-14 BY: _____

KAREN L. BOWLING
Cabinet Secretary
West Virginia Department of Health
and Human Resources

DATED: 12-18-14 BY: _____

CYNTHIA E. BEANE
Commissioner, Bureau of Medical Services
West Virginia Department of
Health and Human Resources

DATED: 12·11·14 BY: _____

CELESTE WEBB-BARBER
Deputy Director, West Virginia
Medicaid Fraud Control Unit