

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into this 18th day of AUGUST, 2009, by and between the United States of America, including the United States Attorney's Office for the Eastern District of Pennsylvania ("USAO") and the Department of Health and Human Services, Office of Inspector General ("OIG") (collectively "United States"), and Willowcrest Nursing Home, to resolve potential civil claims more fully described herein. This Agreement is effective on the date of signature of the last signatory to the Agreement ("Effective Date"). The period of the obligations assumed by Willowcrest Nursing Home under this Agreement shall be three (3) years from the Effective Date (unless otherwise specified).

WHEREAS, Willowcrest Nursing Home is a long term care facility located at 5501 Old York Road, Philadelphia, Pennsylvania with an affiliated long care facility, Willow Terrace at Germantown, located at One Penn Boulevard, Philadelphia, Pennsylvania. Willowcrest Nursing Home and Willow Terrace are hereinafter referred to collectively as "Willowcrest";

WHEREAS, as a result of an investigation by the United States, the United States contends that it has certain civil claims against Willowcrest 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 inadequate and/or worthless services that were rendered to residents of Willowcrest from August 2005 to October 2007. Specifically, the United States contends that

Willowcrest (a) provided inadequate/worthless care regarding: pressure ulcer care, including the monitoring, documentation of, prevention and treatment of wounds; incontinence care; provision of medication to residents; monitoring weight; provision of appropriate nutrition to meet the needs of residents; infection control; diabetic care; care provided by physicians and (b) submitted and/or caused the submission of claims for reimbursement to Federal health care programs in connection therewith. All of the foregoing is hereinafter referred to as the "Covered Conduct."

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

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 Willowcrest;

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. Willowcrest agrees to satisfy the settlement amount of \$425,072 ("Settlement Amount") in settlement of its potential civil liability to the United States relating to the Covered Conduct. The settlement amount consists of two parts, a cash payment of \$305,072 and a credit of \$120,000 for the purpose

described in Paragraph 2. The cash payment in the amount of \$305,072 shall be paid no later than 30 days following the Effective Date of this Agreement by electronic funds pursuant to instructions from the United States.

2. As part of its settlement of this matter, within 30 days of the Effective Date of this agreement, Willowcrest agrees to employ a full-time qualified physician assistant or nurse practitioner whose sole responsibility will be to treat the residents of Willowcrest Nursing Home. The physician assistant or nurse practitioner shall coordinate with the Monitor (described in Paragraph 18 below) to address in a timely fashion any issues identified by the Monitor. Willowcrest agrees to employ the selected physician assistant or nurse practitioner (or successor) for at least three years continuously beginning no later than 30 days following the Effective Date.

If Willowcrest employs a physician assistant or nurse practitioner on a full-time basis for three years, then Willowcrest shall receive an annual credit in the amount of \$40,000 per year for a total credit of \$120,000 referenced above in Paragraph 1. If Willowcrest fails to employ a full-time physician assistant or nurse practitioner continuously for three years, then Willowcrest shall pay the United States the pro-rata share of the annual credit in the amount of \$769.23 for each week that Willowcrest fails to employ a full time physician assistant or nurse practitioner. In the event the physician assistant or nurse practitioner resigns, takes extended leave (30 days or more) or is terminated for cause, then Willowcrest shall not be responsible for payment of the above pro-rata share for

the period of time for which Willowcrest establishes to the satisfaction of the U.S. Attorney's Office Willowcrest's reasonable, good faith efforts to hire and credential a replacement physician assistant or nurse practitioner.

Willowcrest shall provide the U.S. Attorney's office with annual reports regarding the employment of the physician assistant or nurse practitioner and shall provide monthly reports on its efforts to hire a replacement in the event the physician assistant or nurse practitioner resigns, takes extended leave or is terminated for cause. The U.S. Attorney's office shall have the unrestricted right to audit Willowcrest in order to establish compliance with this paragraph.

3. Subject to the exceptions in Paragraph 5 (concerning excluded claims) below, in consideration of the obligations of Willowcrest set forth in this Agreement, conditioned upon Willowcrest's full payment of the Settlement Amount, and subject to Paragraph 13, 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 Willowcrest, its parent, 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. No individuals are released by this Agreement.

4. In consideration of the obligations of Willowcrest set forth in this Agreement, conditioned upon Willowcrest's full satisfaction of the Settlement Amount, and subject to Paragraph 13, below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment made under this Agreement), the OIG-HHS agrees to release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Willowcrest, its parent, successors and assigns, under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities), or 42 U.S.C. § 1320a-7(b)(6)(B) (permissive exclusion for substandard care) for the Covered Conduct, except as reserved in Paragraph 5 (concerning excluded claims), below, and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Willowcrest, its parent, successors and assigns, from Medicare, Medicaid, or other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 5, below.

5. 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 Willowcrest) 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;
- F. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- G. Any liability of individuals, including officers and employees;
- H. Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of Willowcrest) who receive written notification that they are the target of a criminal investigation (as defined

in the United States Attorneys' Manual), are indicted, charged, or convicted, or who enter into a plea agreement related to the Covered Conduct.

6. Willowcrest waives and shall not assert any defenses Willowcrest 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.

7. Willowcrest 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 Willowcrest 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.

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 carrier or intermediary or any state payer, related to the Covered Conduct; and

Willowcrest 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.

9. Willowcrest 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. §§ 1395-1395ggg and 1396-1396v; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Willowcrest, 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 investigation(s) of the matters covered by this Agreement;
 - (3) Willowcrest’s investigation, defense, and corrective actions undertaken in response to the United States’ audit(s) 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;

(5) the payment Willowcrest makes to the United States pursuant to this Agreement, including any costs and attorney's fees; and

(6) the negotiation of, and obligations undertaken pursuant to, the Settlement Agreement to:

(i) retain and pay to an independent monitor as described in Paragraph 18, below; and

(ii) prepare and submit reports to the United States.

However, nothing in this Paragraph 9(a)(6) that may apply to the obligations undertaken pursuant to the Settlement Agreement affects the status of costs that are not allowable based on any other authority applicable to Willowcrest. (All costs described or set forth in this Paragraph 9(a) are hereafter “unallowable costs.”)

B. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in nonreimbursable cost centers by Willowcrest, and Willowcrest 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 Willowcrest or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

- C. Treatment of Unallowable Costs Previously Submitted for Payment: Willowcrest further agrees that within 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 Willowcrest 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. Willowcrest agrees that the United States, at a minimum, shall be entitled to recoup from Willowcrest 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 Willowcrest or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this paragraph) on Willowcrest 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 reexamine Willowcrest's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this paragraph.

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 (waiver for beneficiaries paragraph), below.

11. Willowcrest 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.

12. Willowcrest 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 its 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 Willowcrest, 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 Willowcrest was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

13. If, within 91 days of the Effective Date of this Agreement or any payment made under this Agreement, Willowcrest 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 Willowcrest's debts, or seeking to adjudicate Willowcrest as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian,

or other similar official for Willowcrest or for all or any substantial part of Willowcrest's assets, Willowcrest agrees as follows:

- A. Willowcrest's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and Willowcrest shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) Willowcrest's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (ii) Willowcrest 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 Willowcrest.
- B. If Willowcrest'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 Willowcrest for the claims that would otherwise be covered by the releases provided in Paragraphs 3 and 4 above.

Willowcrest agrees that (i) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude Willowcrest 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 Willowcrest shall not argue or otherwise contend that the United States’ claims, actions, or proceedings are subject to an automatic stay; (ii) Willowcrest 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 30 calendar days of written notification to Willowcrest 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 valid claim against Willowcrest for \$425,072.00, 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. Willowcrest acknowledges that its agreements in this paragraph are provided in exchange for valuable consideration provided in this Agreement.

14. Willowcrest shall comply fully with the applicable laws, rules and regulations governing the Medicare and Medicaid Programs and the Nursing Home Reform Act.

15. The parties acknowledge that Willowcrest has a compliance plan. The parties agree that Willowcrest shall continue to have a compliance plan (the "Compliance Program") that incorporates the policies and principles set forth in OIG's Compliance Program Guidance for Nursing Facilities and is aimed at ensuring Willowcrest's adherence with Federal health care programs requirements. All of Willowcrest's employees shall continue to participate in the Compliance Program. The Compliance Program shall continue to include, among other things, a Code of Conduct, a Compliance Officer, a Quality Assurance Compliance Committee, policies and procedures for implementing the Compliance Program, training and education requirements, a mechanism for individuals to report incidents of non-compliance in an anonymous manner, disciplinary actions for individuals violating compliance policies and procedures, and mechanisms for the ongoing monitoring and auditing of Willowcrest's operations as they relate to quality of care. Willowcrest agrees to maintain the Compliance Program in full operation for three years from the Effective Date of

this Agreement and to update the Compliance Program pursuant to statutory and regulatory changes.

16. To the extent not already established, within 90 days of the Effective Date, Willowcrest shall develop and begin implementing written Policies and Procedures regarding the operation of Willowcrest's compliance program and its compliance with all Federal and state health care statutes, regulations, directives, and guidelines, including the requirements of the Federal health care programs. At a minimum, Willowcrest's Policies and Procedures shall specifically address:

- A. Measures designed to ensure that Willowcrest fully complies with Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and all regulations, directives, and guidelines promulgated pursuant to these statutes, including, but not limited to, 42 C.F.R. Parts 424, 482, and 483, and any other state or local statutes, regulations, directives, or guidelines that address quality of care in nursing homes;
- B. Measures designed to ensure that Willowcrest complies with all requirements applicable to Medicare's Prospective Payment System (PPS) for skilled nursing facilities, including, but not limited to: ensuring the accuracy of the clinical data required under the Minimum Data Set (MDS) as specified by the Resident Assessment Instrument User's

Manual; ensuring that staff are appropriately and accurately using the current Resource Utilization Groups (RUG) classification system; and ensuring the accuracy of billing and cost report preparation policies and procedures;

- C. Measures designed to ensure the coordinated interdisciplinary approach to providing care to nursing home residents, including, but not limited to the following areas addressed in 42 C.F.R. § 483: resident assessment and care planning; nutrition; diabetes care; wound care; infection control; fall prevention, recovery, and assessment; abuse and neglect policies and reporting procedures; protection from harm procedures; appropriate drug therapies; appropriate mental health services; provision of basic care needs; incontinence care; resident rights and restraint use; activities of daily living (ADL) care; therapy services; quality of life, including accommodation of needs and activities; and assessment of resident competence to make treatment decisions;
- D. Measures designed to ensure that accurate and complete notes of patient care are maintained and that Willowcrest complies with other clinical documentation as required by applicable Federal law, which shall include: (1) that all patient and resident care information be recorded in ink or permanent

print; (2) that corrections shall only be made in accordance with accepted health information management standards; (3) that erasures shall not be allowable; and (4) that clinical records may not be rewritten or destroyed to hide or otherwise make a prior entry unreadable or inaccessible;

- E. Measures designed to ensure that staffing needs are based first and foremost upon achieving the level of care for Willowcrest's patients and residents required by federal and state laws, including, but not limited to, 42 C.F.R. § 483.30 (nursing facilities);
- F. Measures that specify that if the director of nursing (or other person who is making staffing decisions at Willowcrest) disagrees with a staffing determination made by the Administrator or other individuals at the district, region, or corporate level, that is not in compliance with state or federal regulations or this Agreement and that significantly affects patient care, and is unable to resolve the issue through the normal chain of responsibility, then that person must immediately call the hotline and the Monitor. Nothing in this subsection prohibits or prevents such person from contacting the hotline or the Monitor without first going through the normal chain of responsibility;

- G. Measures designed to inform employees of the staffing requirements of federal and state law and this Agreement;
- H. Measures to inform employees during orientation and during other training required by this Agreement that staffing levels are a critical aspect of patient and resident care, and that if any person has a concern about the level of staffing there are many avenues available to report such concerns, including, but not limited to, the Administrator, the hotline, or direct communication with the Compliance Officer or Monitor;
- I. Measures designed to minimize the number of individuals working at Willowcrest who are on a temporary assignment or not employed by Willowcrest and measures designed to create and maintain a standardized system to track the number of individuals at Willowcrest who fall within this category so that the number/proportion of such staff, or changing trends in such staff, can be adequately identified by Willowcrest or the Monitor;
- J. Measures designed to ensure that all residents and patients are served in the least restrictive environment and most integrated setting appropriate to their needs;
- K. Measures designed to promote adherence to the compliance and quality of care standards set forth in the applicable

statutes and regulations, and this Agreement. Adherence to these quality of care standards shall be a significant factor in determining the compensation to Administrators and Directors of Nursing, and the individuals responsible for such compliance at the corporate level;

- L. Measures designed to ensure cooperation by Willowcrest and its employees with the Monitor in the performance of his or her duties as set forth herein;
- M. Measures designed to ensure that compliance issues are identified internally (*e.g.*, through reports to supervisors, hotline complaints, internal audits, patient satisfaction surveys, CMS quality indicators and quality measures, facility-specific key indicators, or internal surveys) or externally (*e.g.*, through CMS or state survey agency reports, consultants, or Monitor's Reports) and are promptly and appropriately investigated. If the investigation substantiates compliance issues, Willowcrest shall implement effective and timely corrective action plans and monitor compliance with such plans;
- N. Measures designed to ensure that contractors, subcontractors and agents are appropriately supervised to ensure that they are acting within the parameters of Willowcrest's Policies and

Procedures and the requirements of Federal health care programs;

- O. Measures designed to ensure that appropriate and qualified individuals perform the internal quality audits and reviews;
- P. Nonretaliation policies and mechanisms for employees to make disclosures or otherwise report on compliance issues through the Disclosure Program;
- Q. Disciplinary guidelines to reflect Willowcrest's Code of Conduct requirements;
- R. Measures designed to ensure that Willowcrest has a system to require and centrally collect reports relating to pressure ulcers. The reports required under this system shall provide the Quality Assurance Committee sufficiently meaningful information to determine: (1) if there is a quality of care problem; and (2) the scope and severity of the problem;
- S. Measures that define the responsibilities and role of the Willowcrest Medical Director; and
- T. Measures designed to ensure that Willowcrest has an effective quality assurance and review program that, at a minimum, performs the following functions:
 - (1) makes findings as to whether the patients and residents at Willowcrest are receiving the quality of care and quality of

life consistent with basic care, treatment, and protection from harm standards, including but not limited to, the standards set forth in 42 C.F.R. Parts 482 and 483 and any other applicable Federal and state statutes, regulations, or directives;

(2) makes findings as to whether the policies and procedures mandated by this Agreement are created, implemented, and enforced;

(3) makes findings as to whether training is performed in accordance with this Agreement;

(4) makes findings as to whether hotline complaints are appropriately investigated; and

(5) makes findings as to whether corrective action plans are timely created, implemented, and enforced.

Willowcrest shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate. The Policies and Procedures shall be available to the United States upon request. Within 90 days of the Effective Date, the relevant portions of the Policies and Procedures shall be provided to all employees. Compliance staff or supervisors shall be available to explain any and all policies and procedures.

17. Training and Education

All training required in this section shall be competency based. Specifically, training must be developed and provided in such a way as to focus on employees

achieving learning outcomes to a specified competency and to place emphasis on what an employee has learned as a result of the training.

- A. *General Training.* Willowcrest shall continue to provide at least one (1) hour of training to each employee annually. This general training shall explain Willowcrest's:
 - (1) Compliance Program (including the Policies and Procedures as they pertain to general compliance issues); and
 - (2) Code of Conduct.

- B. *Specific Training.* Willowcrest shall continue to provide specific training of each employee, contractor, and agent who is involved directly or indirectly in the delivery of patient or resident care (including individuals who are responsible for quality assurance, setting policies or procedures, or making staffing decisions). Such employees shall receive at least four (4) hours of training pertinent to their responsibilities in addition to the general training required above. This training, which shall be completed within one year of the Effective Date of the Agreement and conducted at least annually thereafter, shall include a discussion of the policies and procedures set forth in Paragraph 16, including, but not limited to:

- (1) Policies, procedures, and other requirements applicable to the documentation of medical records; and
- (2) The coordinated interdisciplinary approach to providing care to residents, including, but not limited to, resident assessment and care planning; nutrition; diabetes care; wound care; infection control; abuse and neglect policies and reporting procedures; appropriate drug therapies; appropriate mental health services; provision of basic care needs; incontinence care; resident rights and restraint use; ADL care; therapy services; quality of life, including accommodation of needs and activities; and assessment of the resident's competence to make treatment decisions.

In addition to the specific training described above, Willowcrest shall conduct periodic training on an "as needed" basis (but at least semi-annually) on those quality of care issues identified by the Quality Assurance Compliance Committee and Internal Audit Program. In determining what training should be performed, Willowcrest shall review the complaints received, satisfaction surveys, staff turnover data, any state or federal surveys, including those performed by the Joint Commission on Accreditation of Healthcare Organizations (TJC) or other such private agencies, any internal surveys, the CMS quality indicators and quality measures, and the findings, reports and recommendations of the Monitor. Such training shall be for a minimum of four hours total annually. Such training shall

be provided to all employees, contractors, and agents who are responsible for patient or resident care at Willowcrest.

All training materials shall be made available to the United States upon request. Persons providing the training must have sufficient expertise in the subject area.

18. Independent Monitor. Willowcrest has retained an appropriately qualified Independent Monitor (the "Monitor"), Sue Renz and Marie Boltz, approved by the United States after consultation with Willowcrest. The Monitor may retain additional personnel, including, but not limited to, independent consultants, if needed to help meet the Monitor's obligations under this Agreement. Willowcrest shall be responsible for all costs incurred by the Monitor, including, but not limited to, travel costs, consultants, administrative personnel, office space and equipment, additional personnel and all costs associated with fulfilling its obligations set forth in Paragraphs 18 and 19 of this Agreement. The Monitor shall charge a reasonable amount for his or her fees and expenses. Failure to pay the Monitor within 30 calendar days of submission of his or her invoices for services previously rendered shall constitute a breach of this Agreement and shall subject Willowcrest to one or more of the remedies set forth in Paragraph 20, below. The Monitor may be removed solely at the discretion of the United States. If the Monitor resigns or is removed for any reason prior to the termination of the Agreement, Willowcrest shall retain another Monitor approved by the United States, with the same functions and authorities. The Monitor may

confer and correspond with Willowcrest and the United States on an *ex parte* basis.

- A. The Monitor shall be responsible for assessing the effectiveness, reliability and thoroughness of the following:
 - (1) Willowcrest's internal quality control systems, including, but not limited to:
 - a. whether the systems in place to promote quality of care and to respond to quality of care issues are functioning in a timely and effective manner;
 - b. whether the communication system is effective, allowing for accurate information, decisions, and results of decisions to be transmitted to the proper individuals in a timely fashion; and
 - (2) Willowcrest's training programs;
 - (3) Willowcrest's response to quality of care issues, which shall include an assessment of:
 - a. Willowcrest's ability to identify each problem;
 - b. Willowcrest's ability to determine the scope of the problem, including, but not limited to whether the problem is isolated or systemic;
 - c. Willowcrest's ability to create a corrective action plan to respond to the problem;

- d. Willowcrest's ability to execute the corrective action plan; and
 - e. Willowcrest's ability to evaluate whether the assessment, corrective action plan, and execution of that plan was effective, reliable, and thorough.
- (4) Willowcrest's development and implementation of corrective action plans and the timeliness of such actions;
- (5) Willowcrest's proactive steps to ensure that each patient and resident receives care in accordance with:
- a. basic care, treatment and protection from harm standards;
 - b. the rules and regulations set forth in 42 C.F.R. Parts 482 and 483;
 - c. state and local statutes, regulations, and other directives or guidelines; and
 - d. the policies and procedures adopted by Willowcrest and set forth in this Agreement.

B. The Monitor shall have:

- (1) immediate access to Willowcrest and its facilities, at any time and without prior notice, to assess compliance with this Agreement, to assess the effectiveness of the internal

quality assurance mechanisms, and to ensure that the data being generated is accurate;

(2) immediate access to: (a) the CMS quality indicators and quality measures; (b) internal or external surveys or reports; (c) hotline complaints; (d) resident satisfaction surveys; (e) staffing data in the format requested by the Monitor, including reports of any time more than 10 percent of the staff are hired on a temporary basis; (f) reports of abuse, neglect, or an incident that required hospitalization or emergency room treatment; (g) reports of any falls; (h) reports of any incident involving a patient or resident that prompts a full internal investigation; (i) patient or resident records; (j) documents in the possession or control of any quality assurance committee, peer review committee, medical review committee, or other such committee; and (k) any other data in the format the Monitor determines relevant to fulfilling the duties required under this Agreement; and

(3) immediate access to patients, residents, and employees for interviews outside the presence of Willowcrest supervisory staff or counsel, provided such interviews are conducted in accordance with all applicable laws and the rights of such individuals. The Monitor shall give full

consideration to an individual's clinical condition before interviewing a resident or patient.

C. *Willowcrest's Obligations.* Willowcrest shall:

(1) ensure the Monitor's immediate access to Willowcrest and its facilities, individuals, and documents, and assist in obtaining full cooperation by its current employees, contractors and agents;

(2) provide the Monitor a report monthly, or sooner if requested by the Monitor, regarding each of the following occurrences:

- a. Deaths or injuries related to use of restraints;
- b. Deaths or injuries related to use of psychotropic medications;
- c. Suicides;
- d. Deaths or injuries related to abuse or neglect (as defined in the applicable Federal guidelines);
- e. Fires, storm damage, flooding, or major equipment failures at Willowcrest;
- f. Strikes or other work actions;
- g. Manmade disasters that pose a threat to residents (*e.g.*, toxic waste spills); and

h. Any other incident that involves or causes actual harm to a resident when such incident prompts a full internal investigation.

Each such report shall contain the full name, social security number, and date of birth of the resident(s) involved, the date of death or incident, a brief description of the events surrounding the death or incident, the identities of the persons involved, the status of the investigation, and any corrective action taken in response to the investigation, and any other steps taken to prevent recurrence;

- (3) assist in locating and, if requested, obtaining cooperation from past employees, contractors, agents, and residents, patients, and their families;
- (4) provide access to current residents and patients, and contact information for their families and guardians, and not impede their cooperation with the Monitor;
- (5) provide to its Quality Assurance Compliance Committee copies of all documents and reports provided to the Monitor;
- (6) provide the last known contact information for former residents, patients, their families, or guardians consistent with

the rights of such individuals under state or Federal law, and not impede their cooperation;

(7) promptly address any written recommendation made by the Monitor either by substantially implementing the Monitor's recommendations or by explaining in writing why it has elected not to do so;

(8) pay the Monitor's bills within 30 days of receipt.

While Willowcrest must pay all the Monitor's bills within 30 days, Willowcrest may bring any disputed Monitor's costs or bills to the attention of the United States; and

(9) not sue or otherwise bring any action against the Monitor related to any findings made by the Monitor or related to any exclusion or other sanction of Willowcrest under this Agreement; provided, however, that this clause shall not apply to any suit or other action based solely on the dishonest or illegal acts of the Monitor, whether acting alone or in collusion with others.

D. *The Monitor's Obligations.* The Monitor shall:

(1) respect the legal rights, privacy, and dignity of all employees, residents, and patients;

(2) where independently required to do so by applicable law or professional licensing standards, report any finding to

an appropriate regulatory or law enforcement authority, and simultaneously submit copies of such reports to the United States and to Willowcrest;

(3) at all times act reasonably in connection with its duties under this Agreement, including when requesting information from Willowcrest;

(4) simultaneously provide quarterly reports to Willowcrest and the United States concerning the findings made to date;

(5) submit bills to Willowcrest on a consolidated basis no more than once per month, and shall submit to Willowcrest and the United States an annual report representing an accounting of its costs throughout the year;

(6) not be bound by any other private or governmental agency's findings or conclusions, including, but not limited to, TJC, CMS, or the state survey agency. Likewise, such private and governmental agencies shall not be bound by the Monitor's findings or conclusions. The Monitor's reports shall not be the sole basis for determining deficiencies by the state survey agencies. The parties agree that CMS and its contractors shall not introduce any material generated by the Monitor, or any opinions, testimony, or conclusions from the

Monitor as evidence into any proceeding involving a Medicare or Medicaid survey, certification, or other enforcement action against Willowcrest, and Willowcrest shall similarly be restricted from using material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor as evidence in any of these proceedings. Nothing in the previous sentence, however, shall preclude the United States or Willowcrest from using any material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor in any action under this Agreement or pursuant to any other United States authorities or in any other situations not explicitly excluded in this subsection;

(7) abide by the legal requirements of Willowcrest to maintain the confidentiality of each resident's personal and clinical records. Nothing in this subsection, however, shall limit or affect the Monitor's obligation to provide information, including information from patient and resident clinical records, to the United States, and, when legally or professionally required, reporting to other agencies;

(8) abide by the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") to the extent required by law including, without limitation, entering

into a business associate agreement with Covered Entity facilities;

(9) except to the extent required by law, maintain the confidentiality of any proprietary financial and operational information, processes, procedures and forms obtained in connection with its duties under this Agreement and not comment publicly concerning its findings except to the extent authorized by the United States;

(10) visit Willowcrest as often as the Monitor believes it necessary to perform its functions.

19. During the three-year period of this Agreement, thirty (30) days after the first, second and third anniversary date of this Agreement, Willowcrest will submit Annual Reports to the U.S. Attorney's office regarding the status of its compliance with this Agreement. Each annual report shall include:

- A. any amendments or revisions to Willowcrest's Compliance Program 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 Agreement, including a description of the targeted audiences and a schedule of when the training sessions were held;

- C. a summary of the findings of all reviews conducted pursuant to the quality assurance and review program described in Paragraph 16, above, and a summary of any corrective actions taken as a result of such reviews;
- D. Willowcrest's responses and corrective actions taken regarding any issues raised by the Monitor; and
- E. a certification by the Compliance Officer that all applicable persons have completed the required training, that Willowcrest is in compliance with all of the requirements of this Agreement, 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.

20. In the event that Willowcrest fails to comply in good faith with any of the terms of this Agreement relating to it, or should any of Willowcrest'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 Agreement and the prevailing party shall be entitled to an award of reasonable attorney's 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 of Willowcrest's failure to comply with Paragraphs 2 and 15-19, above, pursuant to the procedures set forth in Paragraph 21 below.

21. OIG Remedy of Exclusion for Material Breach of this Agreement

A. *Definition of Material Breach.* A material breach of this Agreement means:

- (1) a failure to meet an obligation under the Agreement that has a material impact on the quality of care rendered to any resident or patient of Willowcrest;
- (2) repeated or knowing violations of the obligations under this Agreement; or
- (3) a failure to retain, pay, or use the Monitor in accordance with Paragraph 18.

- B. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this Agreement by Willowcrest constitutes an independent basis for Willowcrest's exclusion from participation in the Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f). Upon a determination by the OIG, at its sole discretion, that Willowcrest has materially breached this Agreement and that exclusion should be imposed, the OIG shall notify Willowcrest by certified mail of: (1) Willowcrest's material breach; and (2) the OIG's intent to exercise its contractual right to impose exclusion (Notice of Material Breach and Intent to Exclude).
- C. *Opportunity to cure.* Willowcrest shall have 30 days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:
- (1) Willowcrest is in full compliance with this Agreement;
 - (2) The alleged material breach has been cured; or
 - (3) The alleged material breach cannot be cured within the 30-day period, but that: (A) Willowcrest has begun to take action to cure the material breach; (B) Willowcrest is pursuing such action with due diligence; and (C) Willowcrest has provided to the

OIG a reasonable timetable for curing the material breach.

D. *Exclusion Letter.* If at the conclusion of the 30-day period, Willowcrest fails to satisfy the requirements of Section (c) above, OIG may exclude Willowcrest from participation in the Federal health care programs. The OIG shall notify Willowcrest in writing of its determination to exclude Willowcrest (Exclusion Letter). Subject to the Dispute Resolution provisions in Section e below, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusion shall have national effect and shall also apply to all other Federal procurement and non-procurement programs. If Willowcrest is excluded under the provisions of this Agreement, Willowcrest may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-3004.

E. *Dispute Resolution.*

(1) *Review Rights.* Upon the OIG's delivery to Willowcrest of its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this Agreement, Willowcrest 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 sought pursuant to this Agreement. Specifically, an action for exclusion shall be subject to review by an Administrative Law Judge (“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 shall be made within 30 days of the date of the Exclusion Letter.

(2) *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 that may be raised in a proceeding for exclusion based on a material breach of this Agreement shall be: (A) whether Willowcrest was in material breach of this 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 30-day period, but that (1) Willowcrest has begun to take action to cure the material breach, (2) Willowcrest has pursued and is pursuing such action with due diligence, and (3) Willowcrest has provided to OIG a reasonable timetable for curing the material breach and Willowcrest has complied with that timetable.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision favorable to OIG, or, if the ALJ rules for Willowcrest, only after a DAB decision in favor of OIG. Willowcrest's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude Willowcrest upon the issuance of an ALJ's decision in favor of the OIG. If the ALJ sustains the determination of OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Willowcrest may request review of the ALJ decision by the DAB. If the DAB finds in favor of OIG after an ALJ decision adverse to OIG, the exclusion shall take effect 20 days after the DAB decision. Willowcrest shall waive its right to any notice of such an exclusion if a decision upholding the exclusion is rendered by the ALJ or DAB. If the DAB finds in favor of Willowcrest, Willowcrest shall be reinstated effective on the date of the original exclusion.

(3) *Finality of Decision.* The review by an ALJ or DAB provided for above shall not be considered to be an appeal right arising under any statute or regulation. Consequently, the parties to this Agreement agree that the DAB's decision

(or the ALJ's decision if not appealed) shall be considered final for all purposes under this Agreement.

F. *Review by Other Agencies.* Nothing in this Agreement shall affect the right of CMS or any other federal or state agency to enforce any statutory or regulatory authorities with respect to Willowcrest's compliance with applicable state and Federal health care program requirements.

22. 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.

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

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 is the United States District Court for the Eastern District of Pennsylvania, except that disputes arising under the exclusion for breach provisions of Paragraph 21 shall be resolved exclusively under the dispute resolution set forth therein.

25. For purposes of construction, the 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.

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

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

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

29. This Agreement is binding on Willowcrest's successors, transferees, heirs, and assigns. Insofar as the Agreement applies to Willow Terrace, it is binding on Willow Terrace only during the period in which Willow Terrace is a part of the Albert Einstein Medical Center ("AEMC"). The Agreement shall not be binding upon a successor, transferee, heir or assign of Willow terrace, if AEMC presents proof to the U.S. Attorney's office that it has wholly divested itself of any ownership interest in the assets of Willow Terrace to a successor, transferee, heir or assign, and the successor, transferee, heir or assign is an independent entity with its own Medicare provider number.

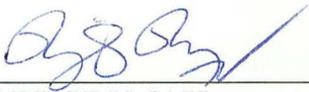
30. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

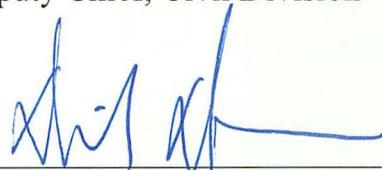
31. Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

UNITED STATES OF AMERICA:

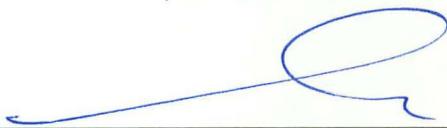

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United States Department of Health and Human Services

Dated: 8/11/09

WILLOWCREST NURSING HOME

By: Barry R. Feeder
President & CEO

Dated: 7/13/09

James M. Becker
James Becker, Esquire
Counsel for Willowcrest

Dated: 7/14/09