EXECUTION VERSION

SETTLEMENT AGREEMENT

This Settlement Agreement ("Agreement") is entered into among the United States of America, acting through the United States Department of Justice, the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS"), Alan "Ari" Schwartz, and Saratoga Center for Care LLC (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. Alan "Ari" Schwartz ("Ari Schwartz") is an individual who resides in Miami Beach, Florida. Ari Schwartz and his business partner, Jeffrey Vegh ("Vegh"), have worked in the nursing home industry since at least 2009. Saratoga Center for Care LLC ("Saratoga Center") is a limited liability company organized under New York state law. Ari Schwartz and Vegh each own 50% of Saratoga Center, and both are managing members.

B. The United States contends that Ari Schwartz and Saratoga Center submitted or caused to be submitted claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 ("Medicaid").

C. The United States contends that Ari Schwartz and Saratoga Center knowingly presented or caused to be presented false and fraudulent claims for payment to the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5, in violation of the federal False Claims Act, ("FCA"), 31 U.S.C. §§ 3729 *et seq*., and common law and that it has certain civil claims under the FCA and common law against Saratoga Center and Ari Schwartz individually and as a member and owner of Saratoga Center arising from the Covered Conduct defined below.

D. The conduct described in paragraphs E through V below is referred to hereinafter as the "Covered Conduct."

E. In or around 2013, Ari Schwartz, Vegh, and a third person entered into a business arrangement with respect to the operation of two nursing homes in Massachusetts and one in Pennsylvania, all three of which were owned by a third-party entity (hereinafter referred to as "the landlord"). The three nursing homes paid rent to the landlord pursuant to a lease. That rent was derived in large part from government healthcare programs.

F. Ari Schwartz and Vegh lacked adequate financial resources to fund the initial operating costs of the three nursing homes. At the landlord's request, the landlord advanced them a line of credit through one of his wholly-owned entities rather than Vegh and Ari Schwartz obtaining a bank line of credit. The landlord also allowed Ari Schwartz and Vegh each to draw $15,000 per month from the line of credit to pay for their living expenses. As collateral, Ari Schwartz and Vegh, along with their spouses, executed a document stating that they pledged "all personal and fixture property of every kind and nature," including their interests in the nursing home operating entities.

G. In 2013, Ari Schwartz, Vegh, and the landlord became interested in acquiring a nursing home, then known as Maplewood Manor, located at 149 Ballston Ave, Ballston Spa, New York (the "Nursing Home"), which was for sale by Saratoga County through a local development corporation.

H. Following a months-long vetting process conducted by a national broker and the County, the County selected Schwartz and Vegh to operate the Nursing Home and the landlord to purchase the real estate associated with the Nursing Home. Following a series of negotiations with the County's local development corporation, the development corporation declared Ari Schwartz and Vegh, under the corporate name Saratoga Center, as the "Selected Operator" and the landlord, under the corporate name 149 Ballston Ave LLC ("149 Ballston"), as the "Real

Property Purchaser." The landlord owned and controlled 149 Ballston, the real property purchaser.

I. To complete the transaction, Saratoga Center and its principals – Ari Schwartz and Vegh – needed the approval of the New York State Public Health and Health Planning Council ("PHHPC") to operate the Nursing Home. *See* New York Public Health Law § 2801-a(1), (4). When the PHHPC approves applicants, they receive an "operating certificate," which is akin to a license from New York State to operate a nursing home. An operating certificate is also required to participate in government health insurance programs, including Medicaid, and to obtain payment for patients covered by those programs. *See* 42 U.S.C. § 1396r(d)(2)(A); 42 C.F.R. §§ 442.12, 483.1, 483.70; 18 NYCRR §§ 504.1(c), 505.9(a)(1)(i). The New York State Department of Health ("NYSDOH") administers the application process for PHHPC approval. This process requires applicants to submit a "Certificate of Need" (CON) application to NYSDOH. Among other factors considered as part of the CON application process are: (1) the character, competence, and standing in the community, of the proposed operator and its owners; and (2) the financial resources of the proposed operator. New York Public Health Law § 2801-a(3)(b), (c).

J. Ari Schwartz and Vegh executed the CON application, which a law firm prepared and submitted to NYSDOH. In the application, Ari Schwartz and Vegh, as the proposed operator of the Nursing Home and owners of Saratoga Center, sought to demonstrate that they had the character, competence, standing in the community, and financial resources to operate the Nursing Home, as required under New York Public Health Law § 2801-a(3). Ari Schwartz and Vegh then certified, under penalty of perjury, that the information provided in their application was true, correct, and complete.

K. Ari Schwartz and Vegh's CON application misrepresented their relationship with 149 Ballston and the landlord as "strictly that of Landlord and Tenant" in that they failed to disclose their business relationship with the landlord involving three other nursing homes and various financial relationships that left them indebted to the landlord. Further, Ari Schwartz and Vegh's CON application represented that they were seeking financing from an unrelated lender, but during the pendency of the CON application, they accepted financing from the landlord and did not affirmatively notify NYSDOH of such change.

L. In October 2014, PHHPC approved Saratoga Center's application for an operating certificate. Once Saratoga Center had the operating certificate, it then pursued enrollment of the Nursing Home in the Medicaid program, which required disclosure of anyone with an ownership or control interest in the Nursing Home. 42 C.F.R §§ 455.104, 483.70(k), 420.206; 18 NYCRR § 504.1. Ari Schwartz and Vegh disclosed only themselves as having an ownership interest, materially omitting that the landlord had a contractual right to exercise a control interest in certain circumstances.

M. In February 2015, NYSDOH granted Ari Schwartz and Vegh the operating certificate, and they assumed responsibility for the Nursing Home's operations. They became the "governing body," also known as the "governing authority"—those legally responsible for establishing and implementing policies regarding the management and operation of the facility. 42 C.F.R. § 483.70(d); 10 NYCRR § 415.26(b). As the governing body, Ari Schwartz and Vegh had the non-delegable authority to: (1) hire and fire key management employees, (2) maintain books and records, (3) dispose of the Nursing Home's assets and incur liabilities on its behalf, and (4) adopt and enforce policies regarding the Nursing Home's operations. 10 NYCRR § 600.9.

N. Even though Ari Schwartz and Vegh were the governing body, they lacked autonomy over the operation of the Nursing Home when the landlord decided to exercise his rights arising from the debt instruments. When the Nursing Home began to experience financial problems, the landlord demanded more control, and his agents made decisions detrimental to the well-being of the sick and disabled patients residing at the Nursing Home.

O. Around November 2016, the landlord required that Ari Schwartz and Vegh surrender control of Saratoga Center to a potential purchaser of the landlord's choosing. Ari Schwartz and Vegh agreed, as part of a negotiated resolution of a lawsuit that one of the landlord's wholly-owned entities had filed to collect the debt owed by Ari Schwartz, Vegh and their wives. Ari Schwartz and Vegh authorized the transfer of all funds in the four nursing homes' bank accounts, in which Medicaid payments were deposited, to the landlord. They did not inform NYSDOH about the agreement or the transfer.

P. Around early 2017, the landlord chose a prospective purchaser, Skyline Management Group LLC ("Skyline"), to operate Saratoga Center and the three other nursing homes. Skyline worked with Jack Jaffa ("Jaffa"), who agreed to buy the real estate from the landlord, and who operated Saratoga Care and Rehabilitation Center LLC ("SCRC"). To facilitate the transfer of control, Ari Schwartz and Vegh signed several documents that stated SCRC would "consult," "assist," "advise," and provide various "administrative services" to Saratoga Center. Instead of abiding by the terms of these documents, Ari Schwartz and Vegh acquiesced to Joseph Schwartz, Skyline, Jack Jaffa, and SCRC exercising complete control over Saratoga Center, including all of the non-delegable duties enumerated in 10 NYCRR § 600.9.

Q. From February 2017 until the closure of the Nursing Home in February 2021, Saratoga Center was operated by individuals and entities who lacked legal authority over the Nursing Home. Joseph Schwartz, Skyline, Jaffa, and SCRC operated the Nursing Home from February

2017 until approximately April 2018 when Skyline, which owned many nursing homes nationwide, ceased operating. Jack Jaffa and SCRC then partnered with Chaim "Mutty" Scheinbaum ("Scheinbaum") and his company, Alliance Healthcare Management LLC ("Alliance"), to operate the Nursing Home until it closed in February 2021.

R. From February 2017 to February 2021, the care provided to Saratoga Center's residents did not meet federal and state standards of care for nursing homes. Among other problems during that time, the Nursing Home did not consistently: staff the Nursing Home sufficiently; ensure resident safety and attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; ensure that residents were free of any significant medication errors; prevent residents from unnecessarily falling and injuring themselves; prevent residents from developing avoidable pressure ulcers; adequately treat pressure sores that developed; and ensure that residents were regularly toileted and/or bathed.

S. From February 2017 through February 2021, the physical conditions at Saratoga Center did not consistently meet federal and state requirements for a safe, healthy, functional, sanitary, and comfortable environment for residents. Among other problems, Saratoga Center did not consistently do the following: maintain plumbing and plumbing fixtures, and sometimes there was no hot water in parts of the facility; maintain an adequate linen inventory and sometimes make-shift linens were created; and dispose of solid waste. Many of these problems resulted from the Nursing Home's failure to pay vendors from February 2017 through February 2021.

T. In 2017, NYSDOH concluded that medication errors at the Nursing Home posed "immediate jeopardy to resident health or safety." In 2018, Saratoga Center was assessed substantial fines by NYSDOH and the federal government because of the serious deficiencies at the Nursing Home. In 2019, it was placed on the Centers for Medicare and Medicaid Services

("CMS") Special Focus Facility list—a list of the most poorly performing nursing homes in the United States.

U. Even though Skyline, Jaffa, and Scheinbaum took control of the facility, their applications for a CON were either withdrawn or incomplete and were never approved. As a result, the operating certificate for the facility remained with Ari Schwartz and Vegh. Pursuant to 10 NYCRR § 415.26(b), those on the operating certificate are responsible "for establishing and implementing policies regarding the management and operation of the facility."

V. The Government contends that Ari Schwartz and Saratoga Center submitted or caused the submission of false claims (1) when Ari Schwartz made misrepresentations in 2014 to obtain the Operating Certificate for Saratoga Center, which allowed Saratoga Center to participate in the Medicaid Program, and (2) because Ari Schwartz was the licensed operator from February 17, 2017, to its closure in February 2021, during which time worthless services were provided to residents of the Nursing Home.

W. Saratoga Center and Ari Schwartz individually, and as a member of Saratoga Center for Care LLC, admit, acknowledge, and accept responsibility for their roles in the Covered Conduct as set forth in Paragraphs E through U.

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. Ari Schwartz shall pay to the United States and the State of New York, $1,100,000 ("Total Settlement Amount"). Of the Total Settlement Amount, Ari Schwartz shall pay $440,000 to the United States ("Federal Settlement Amount"), of which $220,000 is restitution, no later than 21 days after the Effective Date of this Agreement by electronic funds transfer pursuant to

written instructions to be provided by the United States Attorney's Office for the Northern District of New York.

2. Subject to the exceptions in Paragraph 3 (concerning reserved claims) below, and upon the United States' receipt of the Federal Settlement Amount, the United States releases: (1) Saratoga Center and (2) Ari Schwartz individually, and as a member of Saratoga Center for Care LLC, from any civil or administrative monetary claim the United States has 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. Saratoga Center and Ari Schwartz will hereinafter be referred to as the "Settling Parties."

3. Notwithstanding the release given in Paragraph 2 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States 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 or enforcement right, 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 obligations created by this Agreement;

f. Any liability of individuals or entities other than the Settling Parties; and

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

4. Voluntary Exclusion

   a. In compromise and settlement of the rights of OIG-HHS to exclude the Settling Parties pursuant to 42 U.S.C. §§ 1320a-7(b)(7) and 1320a-7(b)(6)(B), based upon the Covered Conduct, the Settling Parties agree to be excluded under this statutory provision from Medicare, Medicaid, and all other Federal health care programs, as defined in 42 U.S.C. § 1320a-7b(f), for a period of ten (10) years. The exclusion shall be effective upon the Effective Date of this Agreement.

   b. Such exclusion shall have national effect. Federal health care programs shall not pay anyone for items or services, including administrative and management services, furnished, ordered, or prescribed by the Settling Parties in any capacity while the Settling Parties are excluded. This payment prohibition applies to the Settling Parties and all other individuals and entities (including, for example, anyone who employs or contracts with the Settling Parties, and any hospital or other provider where the Settling Parties provide services). The exclusion applies regardless of who submits the claim or other request for payment. Violation of the conditions of the exclusion may result in criminal prosecution, the imposition of civil monetary penalties and assessments, and an additional period of exclusion. The Settling Parties further agree 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. The Settling Parties waive any further notice of the exclusion and agrees not to contest such exclusion either administratively or in any state or federal court.

c. Reinstatement to program participation is not automatic. If the Settling Parties wish to be reinstated, they must submit a written request for reinstatement to the OIG in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005. Such request may be made to the OIG no earlier than 90 days prior to the expiration of the 10-year period of exclusion. Reinstatement becomes effective upon application by the Settling Parties, approval of the application by the OIG, and notice of reinstatement by the OIG. Obtaining another license, moving to another state, or obtaining a provider number from a Medicare contractor, a state agency, or a Federal health care program does not reinstate the Settling Parties' eligibility to participate in these programs.

5. The Settling Parties 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.

6. The Settling Parties fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Settling Parties have asserted, could have asserted, or may assert in the future against the United States, and its agencies, officers, agents, employees, and servants related to the Covered Conduct and the United States' investigation and prosecution thereof.

7. The Federal 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 the Settling Parties agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, agree not to appeal any such denials of claims, and agree to withdraw any such pending appeals.

8. The Settling Parties agree to the following:

   a. Unallowable Costs Defined: 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. §§ 1395-1395lll and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Ari Schwartz, Saratoga Center, or its present or former officers, directors, employees, shareholders, and agents in connection with:

      1) the matters covered by this Agreement;

      2) the United States' audit and civil investigations of the matters covered by this Agreement;

      3) The Settling Parties' investigation, defense, and corrective actions undertaken in response to the United States' civil investigation in connection with the matters covered by this Agreement (including attorneys' fees);

      4) the negotiation and performance of this Agreement; and

      5) the payment Ari Schwartz makes to the United States pursuant to this Agreement,

   are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal

Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by the Settling Parties, and the Settling Parties 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 the Settling Parties to the Medicare or Medicaid Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: the Settling Parties further agree that, within 90 days of the Effective Date of this Agreement, they shall identify to applicable Medicare 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 the Settling Parties or any of their entities 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. The Settling Parties agree that the United States, at a minimum, shall be entitled to recoup from them 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 the Settling Parties or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this paragraph) on the Settling Parties or any of their entities' 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 re-examine the Settling Parties' books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this paragraph.

9. The Settling Parties agree to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. The Settling Parties further agree to furnish to the United States, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in their possession, custody, or control concerning any investigation of the Covered Conduct that they have undertaken, or that has been performed by another on their behalves. Ari Schwartz will make himself available to testify in any deposition or court proceeding relating to the Covered Conduct, including in-person testimony, even if his appearance cannot be compelled under the rules applicable to the proceeding. Ari Schwartz will also make himself available to the United States, its attorneys, and its investigators for informal interviews.

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. Ari Schwartz reserves the right to contest the use or application of this document in any future litigation to which the United States is not a party.

11. The Settling Parties 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 he and it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

14. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the Northern District of New York. 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 individuals and counsel 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 the Settling Parties' successors, transferees, heirs, and assigns.

19. All Parties consent to the United States' 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 of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

****** SIGNATURES APPEAR ON FOLLOWING PAGES******

FOR THE UNITED STATES OF AMERICA

CARLA B. FREEDMAN
United States Attorney
Northern District of New York

DATED: February 27, 2023

CHRISTOPHER R. MORAN
Assistant United States Attorney

DATED: 2/17/2023

LISA M. RE
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

FOR ALAN "ARI" SCHWARTZ

DATED: 2/15/13

ALAN "ARI" SCHWARTZ

DATED: 02.23.2023

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DATED: 02.23.2023

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DATED: 2/15/13

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AUTHORIZED MEMBER

DATED: 02.23.2023

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