

**SETTLEMENT AGREEMENT
BETWEEN THE UNITED STATES OF AMERICA AND
ESSEX REHABILITATION & CARE CENTER, LLC d/b/a CARRINGTON PLACE AT
TAPPAHANNOCK**

U.S. DEPARTMENT OF JUSTICE DJ # 202-79-384

BACKGROUND

1. The parties (“Parties”) to this Settlement Agreement (“Agreement”) are the United States of America (“United States”), Essex Rehabilitation & Care Center, LLC d/b/a Carrington Place at Tappahannock (“CPOT”), and nursing facilities that are owned and/or operated by the same principles as CPOT: (1) Essex Rehabilitation & Care Center, LLC d/b/a Tappahannock Post Acute Care; (2) LA First Street, LLC d/b/a Springhill Post Acute & Memory Care; (3) LA Westfork, LLC d/b/a White Oak Post Acute Care; (4) LA Old Hammond HWY, LLC d/b/a Pines Retirement Center of Baton Rouge; (5) LA Park Manor, LLC d/b/a Lafrenier Assisted Living and Memory Care; (6) Cplace Zachary ALF, LLC d/b/a Oakwood Village; (7) East Lake Rehab & Care Center, LLC d/b/a Trinity Regional Rehab Center; (8) Cplace of St. Pete, LLC d/b/a St. Pete Post Acute Care; (9) Birdmont Health Care, LLC d/b/a Carrington Place at Wytheville; (10) Botetourt health Care, LLC d/b/a Botetourt Post Acute Care; (11) Norfolk Area Senior Care, LLC d/b/a Chesapeake Post Acute Care; and (12) Cambridge Sierra Holdings, LLC d/b/a Reche Canyon Regional Rehab Center (“Nursing Facilities”).
2. This matter was initiated by a complaint filed with the United States, alleging violations of title III of the Americans with Disabilities Act of 1990, as amended (the “ADA”), 42 U.S.C. §§ 12181-12189, and its implementing regulation, 28 C.F.R. Part 36. The United States Attorney’s Office received a complaint alleging that CPOT refused to accept the aggrieved individual, who is deaf and uses American Sign Language (“ASL”) as her primary means of communication, because she needed sign language interpretive services to ensure effective communication.

TITLE III COVERAGE

3. The United States Attorney for the Eastern District of Virginia (“U.S. Attorney’s Office”) is authorized to investigate alleged violations of Title III of the ADA, to use alternative means of dispute resolution, where appropriate, including settlement negotiations, to resolve disputes, and to bring a civil action in federal court in any case that raises issues of general public importance. 42 U.S.C. §§ 12188(b), 12212; 28 C.F.R. §§ 36.502, 503, 506.

4. The aggrieved individual is deaf, and as such, is an individual with a “disability” within the meaning of the ADA. 42 U.S. C. § 12102; 28 C.F.R. § 36.104.
5. CPOT and the Nursing Facilities are owned and/or operated by the same principles as CPOT are public accommodations because their facilities are places of public accommodation and it owns, operates, leases or leases places that provide healthcare and social services to its Residents. 42 U.S.C. § 12181(7)(F) & (K); 28 C.F.R. § 36.104.
6. Ensuring that medical care providers, including nursing facilities, do not discriminate on the basis of disability is an issue of general public importance. The United States is authorized to investigate alleged violations of Title III of the ADA and to bring a civil action in federal court in any case that involves a pattern or practice of discrimination or that raises issues of general public importance. 42 U.S.C. § 12188(b).
7. The ADA prohibits discrimination on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation. 42 U.S.C. § 12182(a); 28 C.F.R. § 36.201(a). Discrimination includes: (1) imposition or application of eligibility criteria that screen out or tend to screen out an individual with a disability or any class of individuals with disabilities from fully and equally enjoying any goods, services, facilities, privileges, advantages, or accommodations; and (2) failing to take such steps as necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than any other individual because of the absence of auxiliary aids and services, unless the entity can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A) (i) & (iii); 28 C.F.R. §§ 36.301(a) & 36.303.
8. On the basis of its investigation, the U.S. Attorney’s Office has determined that:
 - a. CPOT maintained admission criteria for its nursing facility that screen out or tend to screen out individuals who are deaf;
 - b. CPOT refused to offer to furnish a qualified sign language interpreter or otherwise provide an effective method of communicating with the aggrieved individual and when its staff learned that the aggrieved individual would need sign language services for effective communication, it refused to accept her as a Patient.
9. CPOT’s use of impermissible eligibility criteria and its failure to offer to furnish appropriate auxiliary aids and services to ensure effective communication with the

aggrieved individual violates 42 U.S.C. § 12182; 28 C.F.R. §§ 36.301(a) & 36.303.

10. The Parties have determined that the complaint filed with the United States can be resolved without litigation and have agreed to the terms of this Agreement, including Equitable Relief obligations on Nursing Facilities.

DEFINITIONS

11. The term “auxiliary aids and services” includes qualified interpreters on-site or through video remote interpreting (VRI) services; notetakers; real-time computer-aided transcription services; written materials; exchange of written notes; telephone handset amplifiers; assistive listening devices; assistive listening systems; telephones compatible with hearing aids; closed caption decoders; open and closed captioning, including real-time captioning; voice, text, and video-based telecommunications products and systems, including text telephones (TTYs), videophones, and captioned telephones, or equally effective telecommunications devices; videotext displays; accessible electronic and information technology; or other effective methods of making aurally delivered information available to individuals who are deaf or hard of hearing. 28 C.F.R. § 36.303(b)(1).
12. The term “CPOT Personnel” means all employees, both full and part-time, and employees of independent contractors with contracts to work for or with CPOT, including, without limitation, nurses, physicians, social workers, activities department employees, administrative staff, technicians, admitting personnel, billing staff, security staff, therapists, and volunteers, who have or are likely to have direct contact with Patients or Companions as defined herein.
13. The term “qualified interpreter” means an interpreter who, via a VRI service or an on-site appearance, is able to interpret effectively, accurately, and impartially, both receptively and expressively, using any necessary specialized vocabulary. Qualified interpreters include, for example, sign language interpreters, oral transliterators, and cued-language transliterators. 28 C.F.R. § 36.104.
14. The terms “Patient” and “Resident” may be used interchangeably in this agreement and shall be broadly construed to include any individual who is seeking or receiving the goods, services, facilities, privileges, advantages, or accommodations of CPOT.
15. The term “Companion” means a person who is deaf or hard of hearing and is a family member, friend, or associate of an individual seeking access to, or participating in, the goods, services, facilities, privileges, advantages, or accommodations of a public accommodation, who, along with such individual, is an appropriate person with whom the public accommodation should communicate. 28 C.F.R. § 36.303(c)(1)(i).

16. “Patient medical files, records or charts” means the medical files and related records for an individual patient, including both the paper and electronic records.
17. In only the Equitable Relief section of this agreement, when the term “CPOT” is used, it also refers to Nursing Facilities. Thus, each of these facilities is subject to the Equitable Relief provisions of this Agreement

EQUITABLE RELIEF

A. Prohibition of Discrimination

18. Nondiscrimination. CPOT shall take those steps that may be necessary to ensure that no individual with a disability is excluded, denied services, segregated or otherwise treated differently than other individuals because of the absence of auxiliary aids and services, unless CPOT can demonstrate that taking such steps would fundamentally alter the nature of the good, service, facility, privilege, advantage, or accommodation being offered or would result in an undue burden, as defined in 42 U.S.C. § 12182(b)(2)(A)(iii). Pursuant to 42 U.S.C. § 12182(a), CPOT shall also provide Patients and Companions, who are deaf or hard of hearing, with the full and equal enjoyment of the services, privileges, facilities, advantages, and accommodations of the hospital as required by this Agreement and the ADA.
19. Discrimination by Association. CPOT shall not exclude or otherwise deny equal goods, services, facilities, privileges, advantages, accommodations, or other opportunities to an individual or entity because of the known disability of an individual with whom the individual or entity is known to have a relationship or association. *See* 42 U.S.C. § 12182(b)(1)(E).
20. Retaliation and Coercion. CPOT shall not retaliate against or coerce in any way any person who made, or is making, a complaint according to the provisions of this Agreement or exercised, or is exercising, his or her rights under the ADA or this Agreement. *See* 42 U.S.C. § 12203.

B. Effective Communication

21. Appropriate Auxiliary Aids and Services. Pursuant to 42 U.S.C. § 12182(b)(2)(A)(iii), CPOT will provide to Patients and Companions, who are deaf or hard of hearing, any appropriate auxiliary aids and services that are necessary for effective communication after making the assessment described in paragraph 22 of this Agreement. Appropriate auxiliary aids and services will be provided as soon as practicable (without compromising patient care), except that the provision of on-site interpreters must be within the time frame described in paragraph 31 of this Agreement. CPOT will advise Patients and

Companions who require auxiliary aids or services, in writing, that these are available throughout the Patient's stay.

22. General Assessment Criteria. The determination of appropriate auxiliary aids or services, and the timing, duration, and frequency with which they will be provided, will be made by CPOT in consultation with the person with a disability. The assessment made by CPOT Personnel will take into account all relevant facts and circumstances, including, but not limited to the following:
- a. The method of communication used by the individual and the individual's communication skills, which may, but is not required to, include a professional assessment of the individual's communication skills conducted by a clinician, who is qualified to perform such an assessment;
 - b. The nature, length, complexity, and importance of the communication at issue, and the context in which the communication is taking place;
 - c. The Resident's health status or changes thereto; and
 - d. The Resident's and Companion's request for, or statement of need for, auxiliary aids or services, including a qualified interpreter.

CPOT recognizes that some individuals that it serves may have a disability that interferes with his/her ability to articulate a request for an auxiliary aid or service, including sign language interpreting services, and will ensure that CPOT furnishes such individuals appropriate auxiliary aids or services, including sign language interpreting services. CPOT will use the attached Communication Assessment Form or an electronic version thereof as a part of this assessment process. Exhibit A. CPOT shall ensure that, for any individual or third party on behalf of an individual with a disability, who requests an auxiliary aid or service, or who CPOT reasonably believes may need an auxiliary aid or service based on objective factors, to enjoy equal access to the goods, services, facilities, privileges, advantages, or accommodations offered by CPOT, a Form shall be provided to each individual Resident or Companion for completion." CPOT shall provide assistance in completing the Form at the Resident's or Companion's request. After being completed, the Form(s) shall be maintained in the Resident's file, whether kept in paper or electronic form. If a Resident identifies a Companion who is not presently at CPOT but is expected at CPOT during the time when the Resident will be receiving services, CPOT Personnel shall provide the Resident with the contact information of CPOT Personnel who can assist the Companion in completing the Form. As part of this Agreement, CPOT agrees that if at any point during a Resident's stay, a Companion identifies themselves as deaf or hard of hearing, CPOT shall promptly provide them with the Form, if it has not done so already.

23. Time for Assessment. The determination of which appropriate auxiliary aids and services are necessary, and the timing, duration, and frequency with which they will be provided, must be made at the time CPOT learns that a Patient or Companion who is deaf or hard of hearing will be using its services or on the arrival of the Patient or Companion who is deaf or hard of hearing at CPOT, whichever is earlier. CPOT Personnel will perform an assessment (see paragraph 22) as part of each initial inpatient assessment and document the results in the Patient's medical chart (including the results of the assessments of companion's need for auxiliary aids and services). CPOT Personnel will reassess, as appropriate, which appropriate auxiliary aids and services are necessary, in consultation with the person with a disability, where possible, and provide such aid or service based on the reassessment.
24. ADA Administrators. CPOT will designate at least one employee as an ADA Administrator and will have someone designated to act in his absence such that someone will always be on duty or available (including by telephone) twenty-four (24) hours a day, seven (7) days a week, to answer questions and provide appropriate assistance regarding prompt access to, and proper use of, the appropriate auxiliary aids and services, including qualified interpreters. The ADA Administrator or his designee will know where the appropriate auxiliary aids are stored and how to operate them and will be responsible for their maintenance, repair, replacement, and distribution. CPOT will circulate and post in public locations, including public bulletin boards and its main notice board within CPOT the name, telephone number, function, and office location of the Administrator(s), including a TTY telephone number, through which the ADA Administrator or designee on duty can be contacted twenty-four (24) hours a day seven days a week by Patients and Companions who are deaf or hard of hearing. CPOT's ADA Administrator will be responsible for the complaint resolution mechanism described in paragraph 26 of this Agreement. The ADA Administrator will be designated by CPOT no later than 30 days following execution of this Agreement and will be subject to approval by the U.S. Attorney's Office.
25. Auxiliary Aid and Service Log. CPOT will maintain a log in which requests for auxiliary aids or services will be documented. The log will indicate:
- a. The name of the Resident or Companion who is deaf or hard of hearing, who made the request;
 - b. The time and date the request was made;
 - c. The time and date the request was made for, i.e., for immediate use (emergent need) or for a scheduled meeting (stating the date and time of the meeting);
 - d. The identity of the CPOT personnel who conducted the assessment and made the determination of which auxiliary aid or service to provide;
 - e. The name of the staff member making the request and time and date the

request was made by staff;

- f. The auxiliary aid or service provided; and
- g. All times and dates the auxiliary aid or service was provided.

If the requested Auxiliary Aid or Service was not provided, another auxiliary aid or service was selected by CPOT, or was provided outside of the timeliness provisions contained in paragraph 31 of this agreement, the log shall contain a statement explaining why. Such logs will be maintained by the ADA Administrator or designee for the entire duration of the Agreement, and will be incorporated into the semi-annual Compliance Reports as described in paragraph 52 of this Agreement.

- 26. Complaint Resolution. CPOT will establish a grievance resolution mechanism for the investigation of disputes regarding effective communication with Patients and Companions who are deaf or hard of hearing. CPOT will maintain records of all grievances regarding effective communication, whether oral or written, made to CPOT and actions taken with respect thereto. At the time CPOT completes its assessment described in paragraph 22 and advises the Patient and/or Companion of its determination of which appropriate auxiliary aids and services are necessary, CPOT will notify deaf and hard of hearing persons of its grievance resolution mechanism, to whom complaints should be made, and of the right to receive a written response to the grievance. A written response to any grievance filed shall be completed promptly, but no later than within seven (7) days of receipt of the complaint. Copies of all grievances related to provision of services for Patients or Companions who are deaf or hard of hearing and the responses thereto will be maintained by the ADA Administrator or designee for the entire duration of the Agreement, and will be incorporated into the semi-annual Compliance Reports as described in paragraph 52 of this Agreement.
- 27. Prohibition of Surcharges. All appropriate auxiliary aids and services provided by CPOT will be provided free of charge to the Patient or Companion who is deaf or hard of hearing.
- 28. Record of Need for Auxiliary Aid or Service. CPOT will take appropriate steps to ensure that all CPOT Personnel are made aware of a Patient or Companion's disability and auxiliary aid and services needed so that effective communication with such person will be achieved. These steps will include designating this information in the medical record. The Patient's medical record shall be conspicuously labeled (such as with a sticker, indicator, or label on the cover) to alert CPOT Personnel to the fact that the Patient and/or Companion is deaf or hard of hearing. The medical record shall indicate the mode of communication requested by and provided to the Patient or Companion.

C. Qualified Interpreters

29. Circumstances Under Which Interpreters Will Be Provided. Depending on the complexity and nature of the communication, a qualified interpreter may be necessary to ensure effective means of communication for Patients and Companions. When an interpreter is needed, the CPOT shall provide qualified sign language interpreters to Patients and Companions who are deaf or hard of hearing and whose primary means of communication is sign language, and qualified oral interpreters to such Patients and Companions who rely primarily on lip reading as necessary for effective communication. Examples of circumstances when the communication may be sufficiently lengthy or complex so as to require an interpreter include the following:
- a. When federal and/or state regulations and/or state manuals and/or CPOT's policies require Residents to have a meaningful opportunity to participate in discussions regarding services that affect them;
 - b. When federal and/or state regulations and/or state manuals and/or CPOT's policies require Residents to have access to information that is in a language that is understandable to the Resident;
 - c. Providing admission tours of CPOT to potential patients and companions;
 - d. Initial orientation discussions including explanations of program services, policies, rules, and the Resident handbook;
 - e. Discussing a patient's symptoms and medical condition, medications, and medical history;
 - f. Notices and explanations of legal, civil and human rights;
 - g. When CPOT conducts its initial and periodic assessments of a patient;
 - h. Meetings in which care and service planning is discussed;
 - i. Interviews of patients as a part of incident investigations, including but not limited to those that involve injury of a patient;
 - j. Execution of legal documents;
 - k. Explaining medical conditions, treatment options, tests, medications, surgery and other procedures;
 - l. Providing a diagnosis and recommendation for treatment;
 - m. Communicating with a patient during treatment, including physical and occupational therapies, testing procedures, and during physician's rounds;
 - n. Obtaining informed consent for treatment;
 - o. Providing instructions for medications, pre- and post-surgery instructions, post-

treatment activities and follow-up, treatments;

- p. Providing mental health services, including group or individual counseling for patients and family members;
- q. Providing information about blood or organ donations;
- r. Discussing powers of attorney, living wills and/or complex billing and insurance matters;
- s. During educational presentations;
- t. Discussing discharge planning and discharge instructions; and
- u. When CPOT provides religious services and spiritual counseling.

In the above circumstances, CPOT will presume that a qualified interpreter is necessary for effective communication with a Patient or Companion who relies upon such Auxiliary Aid and Service.

30. Chosen Method for Obtaining Interpreters.

Within thirty (30) days after execution of this Agreement, CPOT agrees:

- a. To have written agreements with multiple interpreter services to ensure that interpreting services will be available on a priority basis, twenty-four hours per day, seven days a week.
- b. To select qualified interpreters or interpreter services that have been screened for the quality and skill of its interpreters to work with CPOT's residents. CPOT will review and update this list annually.
- c. To establish internal procedures for its personnel to order interpreting services that are consistent with the interpreter or interpreter agencies' procedures. At a minimum, all of CPOT's requests for interpreters, including the time, date and location, will be confirmed in writing at the time of the request. If CPOT receives verbal confirmation or speaks with the vendor regarding the CPOT's request for an interpreter, CPOT will confirm such conversations in writing and this information will be documented in the Interpreter's Log. CPOT will retain a copy of all written correspondence with interpreting services. Additionally, for the duration of this Agreement, CPOT will file a copy of its written correspondence with interpreters and interpreting agencies in the Auxiliary Aid and Service Log discussed in paragraph 25.

CPOT may also hire qualified sign language interpreter(s) to be staff interpreter(s) that have been screened for the quality and skill of its interpreters to work with the population that resides at CPOT.

31. Provision of Interpreters in a Timely Manner.

- a. Non-scheduled Interpreter Requests: A “non-scheduled interpreter request” means a request for an interpreter made by a Patient or Companion who is deaf or hard of hearing with less than two (2) hours advance notice. For non-scheduled interpreter requests, CPOT Personnel will complete the assessment described in paragraph 22 above. The interpreter shall be provided no more than (a) two hours from the time CPOT completes the assessment if the service is provided through a contract interpreting service or a staff interpreter who is located off-site or (b) 15 minutes from the time CPOT completes the assessment if the service is provided through a Video Remote Interpreting service as described in paragraph 32 below. Deviations from this response time will be addressed with the interpreting service provider, and performance goals will be reviewed with the U.S. Attorney’s Office. If no interpreter can be located, CPOT Personnel will take the following additional steps:
 - i. CPOT Personnel will exert reasonable efforts (which shall be deemed to require no fewer than five (5) telephone inquiries and/or emails and/or text messages unless exceptional circumstances intervene) to contact any interpreters or interpreting agencies already contracted with CPOT and request their services;
 - ii. Inform the ADA Administrator of the efforts made to locate an interpreter and solicit assistance in locating an interpreter;
 - iii. Inform the Patient or Companion of the efforts taken to secure a qualified interpreter and that the efforts have failed, and follow up on reasonable suggestions for alternate sources of qualified interpreters; and
 - iv. Document all of the above efforts.
 - b. Scheduled Interpreter Requests. A “scheduled interpreter request” is a request for an interpreter made two (2) or more hours before the services of the interpreter are required. For scheduled interpreter requests, CPOT will complete the assessment described in paragraph 22 above in advance, and, when an interpreter is appropriate, CPOT will make a qualified interpreter available at the time of the scheduled appointment. If an interpreter fails to arrive for the scheduled appointment, upon notice that the interpreter failed to arrive, CPOT will immediately contact an interpreter service for another qualified interpreter.
 - c. Data Collection on Interpreter Response Time and Effectiveness. CPOT will monitor the performance of each qualified interpreter it uses to provide communication to Patients or Companions who are deaf or hard of hearing by monitoring their response time and seeking feedback from the individual who requires the services of the interpreter. As part of the Auxiliary Aid and Service Log, described in paragraph 25, CPOT shall collect and maintain information regarding response times and effectiveness for requests for interpreters.
32. Video Remote Interpreting (VRI). VRI can provide immediate, effective access to interpreting services in a variety of situations including emergencies and unplanned incidents. When using VRI services, CPOT shall ensure that it provides: (1) Real-time, full-motion video and audio over a dedicated high-speed, wide-bandwidth video

connection or wireless connection that delivers high-quality video images that do not produce lags, choppy, blurry, or grainy images, or irregular pauses in communication; (2) A sharply delineated image that is large enough to display the interpreter's face, arms, hands, and fingers, and the participating individual's face, arms, hands, and fingers, regardless of his or her body position; (3) A clear, audible transmission of voices; and (4) Adequate training to users of the technology and other involved individuals so that they may quickly and efficiently set up and operate the VRI. 28 C.F.R. § 36.303(f). VRI shall not be used when it is not effective due, for example, to a patient's limited ability to move his or her head, hands or arms; vision or cognitive issues; significant pain; or due to space limitations in the room. If, based on the circumstances, VRI is not providing effective communication after it has been provided or is not available due to circumstances outside of CPOT's control, VRI shall not be used as a substitute for an on-site interpreter, and an on-site interpreter shall be provided in accordance with the timetable set forth above in which case the determination that VRI is not effective shall count as the completion of assessment for timing purposes. Further, if the VRI device is not functioning properly and CPOT's staff is unable to get the VRI device to function properly within 30 minutes of when it started to malfunction, it will call for an on-site interpreter.

33. Notice to Patients and Companions Who are Deaf or Hard of Hearing. As soon as CPOT Personnel have determined that auxiliary aids or services are necessary for effective communication with a Patient (and his or her authorized representative) or Companion who is deaf or hard of hearing, CPOT will inform the Patient or Companion of the current status of efforts being taken to secure such auxiliary aids or services on his or her behalf. CPOT will provide additional updates to the Patient or Companion as necessary until the auxiliary aids or services are secured. Notification of efforts to secure a qualified interpreter does not lessen CPOT's obligation to provide qualified interpreters in a timely manner as required by paragraph 31 of this Agreement.
34. Other Means of Communication. CPOT agrees that between the time an interpreter is requested and the interpreter is provided, CPOT Personnel will continue to try to communicate with the Patient or Companion who is deaf or hard of hearing for such purposes and to the same extent as they would have communicated with the person but for the disability, using all available methods of communication, including using sign language pictographs. This provision in no way lessens CPOT's obligation to provide qualified interpreters in a timely manner as required by paragraph 31 of this Agreement.
35. Restricted Use of Certain Persons to Facilitate Communication.
 - a. CPOT shall not require an individual who is deaf or hard of hearing to bring another individual to interpret for him or her. 28 C.F.R. § 36.303(c)(2).
 - b. CPOT shall not rely on an adult accompanying an individual with a disability to interpret or facilitate communication, except –
 - (1) In an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available; or
 - (2) Where the individual with a disability specifically requests that the

accompanying adult interpret or facilitate communication, the accompanying adult agrees to provide such assistance, and reliance on that adult for such assistance is appropriate under the circumstances. 28 C.F.R. § 36.303(c)(3). Consent of, and for, the accompanying adult to facilitate communication must be provided freely and voluntarily both by the individual with a disability and the accompanying adult. CPOT may not coerce or attempt to persuade another adult to provide effective communication for the individual with a disability. See 28 C.F.R. Part 36, App. A.

- c. CPOT will not rely on a minor child or another Resident to interpret or facilitate communication, except in an emergency involving an imminent threat to the safety or welfare of an individual or the public where there is no interpreter available. 28 C.F.R. § 36.303(c)(4). The imminent threat exception in this paragraph and its subparts is not intended to apply to the typical and foreseeable emergency situations that are a part of the normal operations of the CPOT's programs, services, and activities. Personnel may rely on an accompanying individual to interpret or facilitate communication under this paragraph only in truly emergency circumstances, i.e., where any delay in providing immediate services to the individual could have life-altering or life-ending consequences. See 28 C.F.R. Part 36, App. A (discussion of 28 C.F.R. § 36.303(c)(3)-(4)). Once the emergency has lifted, personnel should revisit the decision of what auxiliary aids and services are appropriate.
 - d. CPOT will not use its personnel as sign language interpreters unless, as discussed in paragraph 30 above, the employee's sign language interpreting skills have been evaluated and CPOT can document that the individual is a "qualified interpreter" pursuant to 28 C.F.R. §36.104. Further, CPOT will not use its personnel as sign language interpreters or oral transliterators if the employee's presence poses a conflict of interest or raises confidentiality and privacy concerns. 28 C.F.R. § 36.303(c)(1)(ii).
36. Individuals May Revise Their Communication Requests. If a Patient or Companion indicates to CPOT Personnel that he or she wants an auxiliary aid or service, including an interpreter, after failing to request one on the Deaf or Hard of Hearing Communication Request Form, CPOT Personnel shall conduct a new assessment as required by paragraph 22.

D. Telephones and Related Equipment

37. Telephones in Patient Rooms. Within sixty (60) days of the Effective Date of this Settlement Agreement:
- a. Portable access technology – defined. CPOT will make available portable access technology. Such technology, as referred to in this section, shall include TTY's with printout capability, other electronic devices, visual notification devices for incoming telephone calls, volume control telephones, and telephones that are hearing aid compatible. CPOT will ensure that each volume control telephone complies fully with § 704.3 of the 2010 Standards.

- b. Portable access technology - general obligation. CPOT will make portable access technology available to Patients and Companions who are deaf or hard of hearing who are admitted to (or are accompanying Patients who are admitted to) rooms equipped with a telephone. In units where patients normally do not have telephones in their rooms, if hearing patients are given access to common area telephones other than the public phones identified in this Settlement Agreement. CPOT will maintain appropriate portable access technology that can be used by Patients and Companions so that such persons have equal access to make outgoing calls and receive incoming calls as do hearing persons.
 - c. Electrical Outlets. Each patient room with a telephone shall have an electrical outlet or power strip within sufficient distance of the telephone connection to facilitate the use of a TTY device or other portable access technology.
 - d. Timeliness. Within sixty (60) days of the Effective Date of this Settlement Agreement, CPOT will make the equipment required by this section available within thirty (30) minutes of a Patient's arrival in a patient room when requested, regardless of the hour of the day or night. CPOT will notify all relevant Personnel of the availability and location of this equipment.
38. Televisions and Caption Decoders. Within sixty (60) days of the Effective Date of this Settlement Agreement, CPOT will ensure that Patients and Companions with who are deaf or hard of hearing have priority use of televisions with closed captioning capabilities. 28 C.F.R. § 36.303(e).
39. Visual Alert Notifications.
- a. CPOT Residents who are deaf or hard of hearing should not miss announcements, alarms, or any other auditory information from CPOT staff because of the lack of effective communication of their disability. 2010 ADA Standards for Accessible Design, § 215.
 - b. CPOT shall provide an effective visual notification system that will notify Residents who are deaf or hard of hearing, of nursing facility events. *Id.*
 - c. CPOT will provide Residents who are deaf or hard of hearing with an effective visual notification system, which will advise them of an emergency evacuation or other emergency. *Id.*

E. Effective Communication Policies and Procedures

40. Within thirty (30) days of the effective date of this Agreement, CPOT will submit for review and approval to the United States its policies and procedures to implement fully the Settlement Agreement. The United States Attorney's Office will not unreasonably withhold approval. Upon receipt of the United States' comments, CPOT will address all of the United States' concerns, if any, and will resubmit a draft for final approval, if any changes are needed. The adoption of the final policies and procedures will occur within 30 days of the CPOT's receipt of approval by the United States.

F. Notice to Community

41. Policy Statement. Within sixty (60) days of the entry of this Agreement, CPOT shall post and maintain signs of conspicuous size and print in CPOT admissions area and wherever a Patient's Bill of Rights is required by law to be posted. Such signs shall be to the following effect (and shall include the appropriate contact information):

Sign language and oral interpreters, TTYs, and other auxiliary aids and services are available free of charge to people who are deaf or hard of hearing. For assistance, please contact any CPOT Personnel or the Information Office at _____(voice/TTY), room _____.

42. Website. CPOT will include on its website the policy statement described in paragraph 41 above.

43. Patient Handbook. Within sixty days of executing this agreement, CPOT will include in its Patient Handbook (or equivalent) and all similar publications a statement to the following effect:

To ensure effective communication with Patients and their Companions who are deaf or hard of hearing, we provide appropriate auxiliary aids and services free of charge, such as: sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with caption capability or closed caption decoders, and open and closed captioning of most CPOT programs.

Please ask your nurse or CPOT Personnel for assistance, or contact the Information Office at _____(voice/TTY), room _____.

CPOT will also include in its Patient Handbook (or equivalent) a description of its complaint resolution mechanism.

G. Notice to CPOT Personnel and Physicians

44. Policy Statement. CPOT shall publish on its intranet or post on its main notice board a policy statement regarding the CPOT's policy for effective communication with persons who are deaf or hard of hearing. This policy statement shall include, but is not limited to, language to the following effect:

If you recognize or have any reason to believe that a Patient or a relative, close friend, or Companion of a Patient is deaf or hard of hearing, you must advise the person that appropriate auxiliary aids and services, such as sign language and oral interpreters, video remote interpreting services, TTYs, note takers, written materials, telephone handset amplifiers, assistive listening devices and systems, telephones compatible with hearing aids, televisions with captioning or closed caption decoders, and open and closed captioning of most programs, will be provided free of charge

when appropriate. If you are the responsible health care provider, you must ensure that such aids and services are provided when appropriate. All other personnel should direct that person to the appropriate ADA Administrator at _____ and reachable at _____.

CPOT will deploy this policy on the intranet within thirty (30) days of the Effective Date of this Agreement to all CPOT Personnel and to physicians who provide services to Patients at CPOT.

H. Training

45. Training of ADA Administrator. CPOT will provide mandatory training for the ADA Administrator(s) within thirty (30) days of designation as provided in paragraph 24 of this Agreement. Such training will be sufficient in duration and content to train the ADA Administrator(s) in the following areas:
- a. Ensuring that CPOT is in compliance with all aspects of this settlement agreement;
 - b. to promptly identify communication needs of Patients and Companions who are deaf or hard of hearing and which auxiliary aids are effective in different circumstances;
 - c. the mandatory use of the Communication Assessment form in Exhibit A

- d. to secure qualified interpreter services as quickly as practicable when necessary;
 - e. the need to document all communications with sign language interpreting services, including the order and confirmation that the service will be sending an interpreter at the time, date and location requested;
 - f. to encourage clinical staff members to notify CPOT's ADA Administrator of Patients and Companions who are deaf or hard of hearing as soon as Patients schedule admissions, tests, rehabilitation, or other health care services at the CPOT;
 - g. to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will ensure the effectiveness of the communication);
 - h. if CPOT decides to use VRI, how and when to use this service and the appropriate use of VRI;
 - i. making and receiving calls through portable access, including TTYs and the relay service; and
 - j. CPOT's complaint resolution procedure described in paragraph 26 of this Agreement.
46. Training of CPOT Personnel. CPOT will provide mandatory annual in-service training to all CPOT Personnel.
- a. The training will address the needs of Patients and Companions who are deaf or hard of hearing and will include the following objectives:
 - i. Ensuring CPOT personnel are complying with the terms of this Settlement Agreement;
 - ii. to promptly identify communication needs of Patients and Companions who are deaf or hard of hearing;
 - iii. the mandatory use of the Communication Assessment Form referenced in Exhibit A;
 - iv. to secure qualified interpreter services or video remote interpreting services as quickly as possible when necessary;

- v. the need to document all communications with sign language interpreting services, including the order and confirmation that the service will be sending an interpreter at the time, date and location requested; and to use, when appropriate, flash cards and pictographs (in conjunction with any other available means of communication that will augment the effectiveness of the communication).
 - b. Such training must be provided within ninety (90) days of the Effective Date of this Agreement.
 - c. New employees must be trained within thirty (30) days of their hire. A screening of a video of the original training will suffice to meet this obligation.
- 47. Training of Telephone Operators. All CPOT Personnel who receive incoming telephone calls from the public will receive instructions by CPOT on using TTYs or relay services to make, receive, and transfer telephone calls and will receive training generally on the existence in CPOT of an ADA Administrator, as detailed in paragraph 24 of this Agreement, and the complaint resolution process, as described in paragraph 26 of this Agreement. Such training must be provided within 90 days of the Effective Date of this Agreement and will be conducted annually thereafter.
- 48. Training Attendance Sheets. CPOT will maintain in electronic form for the duration of this Agreement, confirmation of training conducted pursuant to paragraphs 45, 46 and 47 of this Agreement, which will include the names, signature, and respective job titles of the attendees, as well as the date and time of the training session.
- 49. Notice to Active Medical Staff. In addition to providing the training in paragraph 46 above, CPOT will create and send an email blast advising active healthcare staff of its policy on the communication needs of Patients or Companions who are deaf or hard of hearing and will invite physicians with active medical staff privileges at CPOT to complete ADA specific training. This email will direct active healthcare staff to CPOT's web page which will include: (1) CPOT's Policy Statement on addressing the needs of individuals who are deaf or hard of hearing; and (2) a request that active healthcare staff notify CPOT of Patients and Companions who are deaf or hard of hearing as soon as they schedule admissions, tests, or other health care services at the hospital.
- 50. Use of Outside Trainer. CPOT will use an independent agency or group to conduct the initial trainings described in this Agreement. The independent agency used to train CPOT shall be subject to the approval of the U.S. Attorney's Office. For the required annual trainings thereafter, CPOT may conduct trainings without the assistance of an independent group, but must sufficiently update and/or create training materials in order to ensure the trainings include any new developments to the ADA and its

requirements. CPOT may also videotape the initial trainings for annual trainings as long as CPOT also ensures that it supplements such training with any new developments to the ADA and its requirements.

I. Reporting, Monitoring, and Violations

51. Training Materials. Within sixty (60) days of the effective date of this Agreement, CPOT will provide the United States with a copy of all training materials used to train its staff, training attendance sheets required in Paragraph 45, 46 and 47 above, and photographs of the notices posted in its offices pursuant to this Agreement.
52. Compliance Reports. Beginning six months after the Effective Date of this Agreement and every six months thereafter for the entire duration of the Agreement, CPOT will provide a written report (“Compliance Report”) to the U.S. Attorney’s Office regarding the status of its compliance with this Agreement. The Compliance Report will include data relevant to the Agreement, including but not limited to:
 - a. the Auxiliary Aid and Service Log described in paragraph 25; and
 - b. the number of complaints received by CPOT from Patients and Companions who are deaf or hard of hearing regarding auxiliary aids and services and/or effective communication, and the resolution of such complaints including any supporting documents, as described in paragraph 26.

CPOT will maintain records to document the information contained in the Compliance Reports and will make them available, upon request, to the U.S. Attorney’s Office.

53. Complaints. During the term of this Agreement, CPOT will notify the U.S. Attorney’s Office if any person files a lawsuit, complaint or formal charge with a state or federal agency, alleging that CPOT failed to provide auxiliary aids and services to Patients or Companions who are deaf or hard of hearing, or otherwise failed to provide effective communication with such Patients or Companions. Such notification must be provided in writing via certified mail within twenty (20) days of the date CPOT received notice of the allegation and will include, at a minimum, the nature of the allegation, the name of the person making the allegation, and any documentation possessed by CPOT relevant to the allegation CPOT will reference this provision of the Agreement in the notification to the U.S. Attorney’s Office.

J. Compensatory Relief for Complainants and Release

54. Within ten (10) days after receiving the complainants’ signed releases (a blank release form is at Exhibit B), CPOT will send a check in the amount of forty-thousand dollars

(\$40,000) made out to the aggrieved individual, whose name will be provided by the United States. This check is compensation to the aggrieved party pursuant to 42 U.S.C. § 12188(b)(2)(B), for the effects of the alleged discrimination suffered as described in paragraph 2 above. The checks shall be mailed to:

Financial Litigation Unit
United States Attorney's Office for
Eastern District of Virginia
101 W. Main Street #8000
Norfolk, VA 23510

A copy of the checks shall be sent to:

Steven Gordon
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, VA 22314

K. Payment of Civil Penalty to the United States

55. Within ten (10) days of the Effective Date of this Agreement, the CPOT will pay to the United States of America the sum of fifty thousand dollars (\$50,000.00) pursuant to 42 U.S.C. §12188(b)(2)(C). The check shall be mailed to:

Financial Litigation Unit
United States Attorney's Office
for Eastern District of Virginia
101 W. Main Street #8000
Norfolk, VA 23510

A copy of the check shall be sent to:

Steven Gordon
Assistant United States Attorney
2100 Jamieson Avenue
Alexandria, VA 22314

L. Enforcement and Miscellaneous

56. This Agreement will be in effect for three (3) years from the Effective Date.
57. In consideration of the terms of this Agreement as set forth above, the Attorney General agrees to refrain from undertaking further investigation or from filing a civil suit under

title III of the ADA related to the allegations in paragraph 2, except as provided in paragraph 58. Nothing contained in this Agreement is intended or shall be construed as a waiver by the United States of any right to institute proceedings against CPOT for violations of any statutes, regulations, or rules administered by the United States or to prevent or limit the right of the United States to obtain relief under the ADA.

58. The United States may review compliance with this Agreement at any time and can enforce this Agreement if the United States believes that it or the requirements thereof has been materially violated by instituting a civil action in the U.S. District Court. If the United States believes that this Agreement or the requirements thereof have been materially violated, it will raise its claim(s) in writing CPOT, and the parties will attempt to resolve the concern(s) in good faith. The United States will allow CPOT thirty (30) days from the date it notifies CPOT of any breach of this Agreement to cure said breach, prior to instituting any court action to enforce the ADA or the terms of the Agreement.
59. This Agreement and the attachments hereto constitute the entire agreement between the parties on the matters raised herein, and no other statement, promise, or agreement, either written or oral, made by either party or agents of either party, that is not contained in this written agreement, shall be enforceable. This Agreement is limited to the facts set forth herein and does not purport to remedy any other potential violations of the ADA or any other federal law.
60. This Agreement is final and binding on the parties, including all principals, agents, executors, administrators, representatives, successors in interest, beneficiaries, assigns, heirs and legal representatives thereof. CPOT has a duty to so inform any such successor in interest of this Agreement.
61. Failure by the United States to seek enforcement of this Agreement pursuant to its terms with respect to any instance or provision shall not be construed as a waiver to such enforcement with regard to other instances or provisions.
62. The effective date of this Settlement Agreement is the date of the last signature below.
63. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement. Electronically transmitted signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

FOR THE UNITED STATES:

JESSICA D. ABER

United States Attorney Eastern District of Virginia

By: _____

STEVEN GORDON

Assistant United States Attorney United States Attorney's

Office Eastern District of Virginia

Justin W. Williams U.S. Attorney's Bldg. 2100 Jamieson Avenue

Alexandria, Virginia 22314

Telephone: 703-299-3817

steve.gordon@usdoj.gov

DATED: _____

For CPOT and the other nursing facilities identified in paragraph one:

DATED _____