

SETTLEMENT AGREEMENT

I. PARTIES

This Settlement Agreement ("Agreement") is entered into between the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General ("OIG-HHS") of the Department of Health and Human Services ("HHS")(collectively the "United States") and Mary J. Drexel Home ("Mary Drexel")(hereafter referred to as "the Parties"), through their authorized representatives.

II. PREAMBLE

As a preamble to this Agreement, the Parties agree to the following:

A. Mary Drexel is a 30-bed long-term care facility located at 238 Belmont Avenue, Bala Cynwyd, PA 19004. Mary Drexel also operates as an assisted living facility. The allegations resolved by this Agreement pertain only to the long-term care services provided by the skilled nursing facility.

B. The United States contends that Mary Drexel submitted or caused to be submitted claims for payment to the Medicare Program ("Medicare"), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and/or the Medical Assistance Program ("Medicaid"), Title XIX of the Social Security Act, Title 42 U.S.C. §§ 1396-1396v.

C. The United States contends that it has certain civil monetary claims against Mary Drexel under the False Claims Act, other federal statutes and/or common law doctrines, for engaging in the following conduct, during the period from April, 2000 to September, 2001, for the residents set forth in the subpoena dated March 7, 2002, relating to alleged inadequate services regarding: (1) the development of resident care plans, (2) nutrition and hydration, (3) pressure ulcer care including prevention and treatment, (4) falls, (5) restorative therapy, and (6) pain management, and submitted and/or caused the submission of claims for reimbursement to Federal health care programs in connection therewith (hereinafter referred to as the "Covered Conduct").

D. Mary Drexel does not admit the contentions of the United States as set forth in Paragraph C, above and to the contrary, contends that its conduct was at all times lawful and appropriate.

E. In order to avoid the delay, uncertainty, inconvenience and expense of protracted litigation of these claims, the Parties reach a full and final settlement as set forth below.

III. TERMS AND CONDITIONS

NOW, THEREFORE, in consideration of the mutual promises, covenants, and obligations set forth below, and for

good and valuable consideration as stated herein, the Parties agree as follows:

1. At the time of execution of this Agreement, Mary Drexel agrees to pay to the United States, Seventy-Five Thousand Dollars (\$75,000.00) (the "Settlement Amount"). Mary Drexel agrees to make payment of the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the Office of the United States Attorney.

2. At the time of execution of this Agreement, Mary Drexel agrees to establish a "Quality of Care/Quality of Life Fund" ("the Fund") in the amount of Twenty-Five Thousand Dollars (\$25,000). The Fund is in addition to programs, services and equipment that have already been budgeted by Mary Drexel. The Fund shall be used to enhance the quality of life of the residents of Mary Drexel and the quality of care provided to them. To that end, within twelve(12) months from the date of execution of this Agreement, Mary Drexel shall expend all monies from the Fund on programs, services and equipment that will improve the quality of life and care rendered to Mary Drexel residents. Mary Drexel agrees to confer with the Consultants (as described in Paragraph 8) in determining how the Fund is to be spent. Mary Drexel agrees to provide the United States with quarterly reports regarding the expenditure of monies from the Fund. In the event that the Fund amount is not expended within

the 12-month period, Mary Drexel agrees to remit the remainder to the United States.

3. Subject to the exceptions in Paragraph 5 below, in consideration of the obligations of Mary Drexel set forth in this Agreement, conditioned upon Mary Drexel's payment in full of the Settlement Amount and creation of the Fund, the United States (on behalf of itself, its officers, agents, agencies and departments) agrees to release Mary Drexel together with its current and former parent corporations, and the successors and assigns of any of them from any civil or administrative monetary claim the United States has or may have under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of payment by mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct.

4. In consideration of the obligations of Mary Drexel set forth in this Agreement, conditioned upon Mary Drexel's payment in full of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting, directing or maintaining any administrative action seeking exclusion from the Medicare, Medicaid or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Mary Drexel, together with its current and former parent corporations, and the successors and assigns of any of them under 42 U.S.C. § 1320a-7a (Civil Monetary

Penalties Law), or 42 U.S.C. § 1320a-7(b)(7)(permissive exclusion), for the Covered Conduct, except as 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 are any and all of the following:

(A) Any civil, criminal or administrative claims 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 claims based upon such obligations as are created by this Agreement;

(F) Any claims based on a failure to deliver items or services due, except as set forth in the Covered Conduct;

(G) Any civil or administrative claims against individuals, including former directors, officers, employees, agents or shareholders of defendant Mary Drexel who are criminally indicted or charged, or are convicted, or who enter into a criminal plea agreement related to the Covered Conduct.

6. Mary Drexel agrees to adopt a Corporate Compliance Program ("Compliance Program") that sets forth the structure for reporting and addressing all components relevant to the provision of adequate care, e.g., medical, nursing, nutrition, wound care, dietary, housekeeping, laundry, infection control, plant operations and facility management services and shall incorporate the principles and policies set forth in the HHS-OIG's Compliance Program Guidance for Nursing Facilities, 65 Federal Register 14289 (daily ed. March 16, 2000). Within sixty (60) days from the date of execution of this Agreement, Mary Drexel shall submit the Compliance Program for approval by the Office of Counsel to the Inspector General, Administrative and Civil Remedies Branch, Department of Health and Human Services. The Office of Counsel to the Inspector General shall have sixty (60) days from receipt of Mary Drexel's Compliance Program within which to review and either accept or reject the Program. If, after reasonable attempts have been made to obtain an acceptable Compliance Program, and this Program is not approved by October 31, 2003, the United States may treat this failure as a material breach under paragraph 13 of this Agreement and as grounds for exclusion from the Medicare Program.

7. Mary Drexel agrees that it will comply fully with the applicable statutes, rules and regulations governing the Medicare and Medicaid Programs and the Nursing Home Reform Act.

8. Mary Drexel agrees to employ independent third-party consultants, to assist in and assess Mary Drexel's compliance with the terms of this Settlement Agreement. The consultants shall be chosen by the United States after consultation with Mary Drexel. Pursuant to this selection process, Marie Boltz, MSN, NHA and Susan Renz, MSN, RNCS have been chosen as the Consultants. If the Consultants resign or are removed for any reason by the United States prior to the termination of their term of appointment, the United States, after consultation with Mary Drexel, shall appoint other consultants with the same functions and authorities. The Consultants shall visit Mary Drexel for a period of at least one (1) year from the first monitoring visit and shall have access, at any time, to all current nursing home residents, their medical records, staff and employees and all records in the possession or control of Mary Drexel staff and employees (e.g., quality assurance records). In addition, the Consultants shall advise management and staff as to possible procedures which, in the Consultants' view, may facilitate compliance with this Settlement Agreement. The Consultants may confer and correspond with the parties on an *ex parte* basis.

9. The parties acknowledge that the proposed Consultants have submitted an acceptable budget (to the United States and Mary Drexel) for a one (1) year consulting period. The United States and Mary Drexel agree that the total annual

consulting fee for the Consultants shall not exceed \$50,000 without prior approval of the parties. The Consultants shall be compensated at the budgeted rate (\$100.00 per hour) for performance of the consulting activities set forth herein. The Consultants may retain independent consultants, as needed, to meet their obligations, provided that the Consultants do not exceed the proposed annual budget without prior approval of the parties. Mary Drexel shall bear all reasonable costs of the Consultants consistent with the hourly rate, not to exceed the budget limits set forth above. Failure to pay the Consultants within thirty (30) calendar days of submission of their invoice shall constitute a breach of this Settlement Agreement subject to paragraph 13.

10. The Consultants shall visit Mary Drexel as they deem appropriate. At all times the Consultants shall attempt to coordinate their activities with relevant Mary Drexel personnel in order to minimize disruption in the day-to-day operations of the facility. At the conclusion of each visit, the Consultants will meet with Mary Drexel's Administrator (or her designee) to discuss any observations and recommendations that have been identified and make suggestions related to how Mary Drexel can address these observations and recommendations. The Consultants shall create a report (the "Consultants' Report") documenting any observations and recommendations relating to compliance with this Settlement Agreement and shall present the report within ten (10)

calendar days of the site visit to Mary Drexel, the United States Attorney's Office, and the U.S. Department of Health and Human Services, Office of Inspector General. Upon receipt of the Consultants' Report, Mary Drexel will have an opportunity to submit a response, with the assistance of the Consultants, as requested, to address any concerns raised by the Consultants and actions taken by Mary Drexel in response to such concerns. Such response, if any, shall be submitted within ten (10) business days of receipt by Mary Drexel of the Consultants' Report. Mary Drexel and the United States agree that, at the request of either party, they shall meet promptly to discuss any issues or concerns raised by the Consultants. Mary Drexel is not bound by the Consultants' observations and recommendations but must address them in good faith. In the event the United States believes there has been a breach of this Settlement Agreement, nothing in this Settlement Agreement shall prevent the United States from calling the Consultants as witnesses or from submitting their written observations and recommendations in any proceeding. In the event that Mary Drexel wishes to call the Consultants as witnesses in any proceeding, Mary Drexel will compensate the Consultants for their appearance.

11. If, after one (1) year and in the reasonable judgment of the United States, Mary Drexel has implemented all provisions contained in this Settlement Agreement and there are no unresolved issues that have a material impact on care to the

residents of Mary Drexel, the consulting project shall terminate. If the Consultants recommend that the consulting project should be extended beyond the one-year term, the Consultants shall state the basis for such recommendation and the reasons and circumstances for the proposed extension, as well as any proposal they may have for the duration and nature of the proposed extension and a reasonable budget for their services during the proposed extension. Such proposed extension must be reasonable under the circumstances and Mary Drexel shall continue to compensate the Consultants at the same hourly rate as stated above and at the same annual cap as stated above.

12. The obligations imposed by this Settlement Agreement on Mary Drexel, except for the consulting project, shall be in effect for a period of three (3) years from the effective date of this Settlement Agreement. During that three-year period, thirty (30) days after the first, second, and third anniversary of the effective date of this Settlement Agreement, Mary Drexel shall submit Annual Reports to the OIG regarding the status of its compliance with this Settlement Agreement. Each annual report shall include: (a) any amendments or revisions to Mary Drexel's Compliance Program made during the preceding year and the reasons for such changes (e.g., change in contractor policy); (b) a description of training programs that address the issues identified as a result of the government's investigation, when the training programs were implemented, and a summary of the

activities undertaken in furtherance of these programs; and (c) a certification by the Compliance Officer that all applicable persons have completed the training; that Mary Drexel is in compliance with all of the requirements of this Settlement Agreement, to the best of his or her knowledge; 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.

13. In the event that Mary Drexel fails to comply in good faith with any of the terms of this Settlement Agreement relating to it, or should any of Mary Drexel'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 Settlement Agreement and the prevailing party shall be entitled to an award of reasonable attorneys 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 pursuant to the following procedures:

(1) Notice of Material Breach and Intent to Exclude. The United States and Mary Drexel agree, as a contractual remedy, that a material breach of this Settlement Agreement by Mary Drexel constitutes an independent basis for the Nursing Facility's exclusion from participation in the Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)).

Upon a determination by OIG that Mary Drexel have materially breached this Settlement Agreement and that exclusion should be imposed, the OIG shall notify Mary Drexel by certified mail of: (a) Mary Drexel's material breach; and (b) OIG's intent to exercise its contractual right to impose exclusion ("Notice of Material Breach and Intent to Exclude").

(2) Opportunity to Cure. Mary Drexel shall have 35 days from the date of the Notice of Material Breach and Intent to Exclude Letter to demonstrate to the OIG's satisfaction that:

- (a) Mary Drexel is in compliance with the obligations of this Agreement cited by the OIG as being the basis for the material breach;
- (b) the alleged material breach has been cured; or
- (c) the alleged material breach cannot be cured within the 35-day period, but that: (i) Mary Drexel has begun to take action to cure the material breach; (ii) Mary Drexel is pursuing such action with due diligence; and (iii) Mary Drexel has provided to OIG a reasonable timetable for curing the material breach.

(3) Exclusion Letter. If at the conclusion of the 35-day period, Mary Drexel fails to satisfy the requirements

of this Paragraph, OIG may exclude Mary Drexel from participation in the Federal health care programs. OIG will notify Mary Drexel in writing of its determination to exclude Mary Drexel. Subject to the provisions in this Paragraph, the exclusion shall go into effect 30 days after the date of the Exclusion Letter. The exclusion of Mary Drexel will have national effect and will also apply to all other federal procurement and non-procurement programs. If Mary Drexel is excluded under the provisions of the Settlement Agreement, Mary Drexel may seek reinstatement by submitting a written request pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004. Reinstatement is not automatic.

(4) Review Rights. Upon the OIG's delivery to Mary Drexel of the Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligations of this Settlement Agreement, Mary Drexel 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 for breach of this Order. 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 for breach shall be made within 30 days of the date of the Exclusion Letter.

(5) 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 in a proceeding for exclusion based on a material breach of the Settlement Agreement shall be: (a) whether Mary Drexel was in material breach of this Settlement 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 35-day period, but that (i) Mary Drexel has begun to take action to cure the material breach, (ii) Mary Drexel is pursuing such action with due diligence, and (iii) Mary Drexel has provided to OIG a reasonable timetable for curing the material breach.

(6) For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to the OIG. Mary Drexel's election of its contractual rights to appeal to the DAB shall not abrogate the OIG's authority to exclude Mary Drexel upon the issuance of the ALJ's decision. If the ALJ sustains the determination of the OIG and determines that exclusion is authorized, such exclusion shall take effect 20 days after the ALJ issues such a decision, notwithstanding that Mary Drexel may request review of the ALJ decision by the DAB.

14. In the event that the United States exercises any of its rights under paragraph 13 of this Settlement Agreement,

Mary Drexel specifically reserves all of its rights to challenge, defend and contest any such action.

15. Mary Drexel waives and will not assert any defenses Mary Drexel 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 Settlement bars a remedy sought in such criminal prosecution or administrative action. Mary Drexel agrees that this settlement is not punitive in purpose or effect. 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.

16. Mary Drexel fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorneys fees, costs, and expenses of every kind and however denominated) which Mary Drexel 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.

17. The Amount that Mary Drexel must pay pursuant to this Agreement by electronic wire transfer pursuant to Paragraph 1 above, will 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 Mary Drexel 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.

18. Mary Drexel agrees to the following:

(a) Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulations (FAR), 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 on Mary Drexel, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the Covered Conduct,
- (2) the United States' audit(s) and civil investigations(s) of the Covered Conduct,
- (3) Mary Drexel's investigation, defense, and any corrective actions undertaken in direct 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 Mary Drexel makes to the United States pursuant to this Agreement,

(6) the third party consultant costs incurred pursuant to paragraph 8 of this Agreement, and

(7) the negotiation of the Compliance Program, and the obligation to prepare and submit annual reports to the OIG, are unallowable costs on Government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP). However, nothing in this sub-paragraph that may apply to compliance costs affects the status of costs that are not allowable based on any other authority applicable to Mary Drexel.

All costs described or set forth in this Paragraph 18(a) are hereafter, "unallowable costs".

(b) Future Treatment of Unallowable Costs: These unallowable costs will be separately estimated and accounted for by Mary Drexel, and Mary Drexel will 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 Mary

Drexel or any of its subsidiaries to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

(c) Treatment of Unallowable Costs Previously Submitted for Payment: Mary Drexel further agrees that within 90 days of the effective date of this Agreement, it will identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid, VA 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 Mary Drexel or any of its subsidiaries, and will 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. Mary Drexel agrees that the United States, at a minimum, will be entitled to recoup from Mary Drexel any overpayment plus applicable interest as a result of the inclusion of such unallowable costs on previously-submitted cost reports, information reports, cost statements, or request for payment. Any payment 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 Mary Drexel or any of

its subsidiaries on the effect of inclusion of unallowable costs (as defined in this Paragraph) on Mary Drexel or any of its subsidiaries' cost reports, cost statements, or information reports. Nothing in this Agreement shall constitute a waiver of the rights of the United States to examine or reexamine the unallowable costs described in this Paragraph.

19. Mary Drexel covenants to cooperate fully and truthfully with the United States' investigation of individuals and entities not specifically released in this Agreement. Upon reasonable notice, Mary Drexel will make reasonable efforts to facilitate access to, and encourage the cooperation of, its directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals.

20. This Agreement is intended to be for the benefit of the Parties, only, and by this instrument the Parties do not release any claims against any other person or entity.

21. Mary Drexel agrees that it will not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents or sponsors. Mary Drexel waives any causes of action against these beneficiaries or their parents or sponsors based upon the claims for payment covered by this Agreement.

22. Mary Drexel expressly 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 will remain

solvent following its payment to the United States hereunder. Further, the Parties expressly warrant that, in evaluating whether to execute this Agreement, the Parties (i) have intended that the mutual promises, covenants and obligations set forth herein constitute a contemporaneous exchange for new value given to Mary Drexel, within the meaning of 11 U.S.C. § 547(c)(1), and (ii) have concluded that these mutual promises, covenants and obligations do, in fact, constitute such a contemporaneous exchange.

23. Each party to this Agreement will bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

24. Mary Drexel represents that this Agreement is freely and voluntarily entered into without any degree of duress or compulsion whatsoever.

25. 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 will be the United States District Court for the Eastern District of Pennsylvania, except that exclusion by the OIG pursuant to paragraph 13(c) shall be resolved pursuant to the procedures set forth in that paragraph.

26. This Agreement may not be amended except by written consent of the Parties.

27. The undersigned individuals signing this Agreement on behalf of Mary Drexel represent and warrant that they are authorized by Mary Drexel to execute this Agreement. The undersigned 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 effective on the date of signature of the last signatory to the Agreement.

THE UNITED STATES OF AMERICA

PATRICK L. MEEHAN
United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

JAMES G. SHEEHAN
Associate United States Attorney
United States Attorney's Office
Eastern District of Pennsylvania

DATED: _____

BY: _____

DAVID R. HOFFMAN
Assistant United States Attorney
Eastern District of Pennsylvania

DATED: _____

BY: _____

LARRY J. GOLDBERG
Assistant Inspector General for
Legal Affairs
Office of Inspector General
United States Department of
Health and Human Services

MARY DREXEL HOME

DATED: _____

BY: _____

DATED: _____

BY: _____

