

## SETTLEMENT AGREEMENT

### I. PARTIES

This Settlement Agreement (“Agreement”) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (“OIG-HHS”) of the Department of Health and Human Services (“HHS”) (collectively the “United States”); and the Saint Barnabas Corporation d/b/a Saint Barnabas Health Care System (“SBHCS”) (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. SBHCS is a duly authorized nonprofit New Jersey corporation that provides acute and non-acute healthcare services through its hospital centers<sup>1</sup> in New Jersey. SBHCS has a principal place of business at 95 Old Short Hills Road, West Orange, New Jersey 07052.

B. The United States contends that SBHCS 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.

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<sup>1</sup>For part of the time of the covered conduct, SBHCS operated ten hospital centers. On or about January 23, 2001, SBHCS divested its ownership interest in Wayne General Hospital (“Wayne”). For purposes of this Settlement Agreement, the Covered Conduct defined herein includes claims paid by Medicare during the time that SBHCS owned and operated Wayne.

C. The United States contends that it has certain civil claims, as specified in Paragraph 1.a. below, against SBHCS under the False Claims Act, 31 U.S.C. §§ 3729-3733, other federal statutes and/or common law doctrines, for engaging in the following conduct during the period from January 1, 1992 to December 31, 1999: (a) billing outpatient services as inpatient services in violation of Sec. 210 and 230.1 of the Medicare Hospital Manual (the “One-Day Stay Conduct”); and, (b) submitting, or causing to be submitted, claims to Medicare with the principal diagnosis code of 482.89 or 482.83 and other pneumonia codes that were not supported by the corresponding medical records (the “Pneumonia Coding Conduct”) (the One-Day Stay Conduct and the Pneumonia Coding Conduct are hereinafter collectively referred to as the “Covered Conduct”).

D. The United States also contends that it has certain administrative claims, as specified in Paragraph 2 below, against SBHCS under the provisions for permissive exclusion from the Medicare, Medicaid and other federal healthcare programs, 42 U.S.C. § 1320a-7(b), and the provisions for civil monetary penalties, 42 U.S.C. § 1320a-7a, for engaging in the Covered Conduct.

E. This Agreement is neither an admission of liability by SBHCS nor a concession by the United States that its claims are not well-founded. SBHCS does not admit that it engaged in the Covered Conduct. Nothing contained in this Agreement is to be construed as an admission of any liability.

F. To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, the Parties reach a full and final settlement pursuant to the Terms and Conditions 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. SBHCS agrees to pay to the United States THREE MILLION, EIGHT HUNDRED SEVENTY SEVEN THOUSAND, SIX HUNDRED AND NINETY FOUR dollars (\$3,877,694) (the "Settlement Amount").<sup>2</sup> SBHCS agrees to pay the Settlement Amount by electronic funds transfer pursuant to written instructions to be provided by the United States. SBHCS agrees to make this electronic funds transfer no later than thirty days from the Effective Date of this Agreement.

a Subject to the exceptions in Paragraphs 2 and 3 below, in consideration of the obligations of SBHCS set forth in this Agreement, conditioned upon SBHCS's full payment of the Settlement Amount, and subject to Paragraph 12 below (concerning bankruptcy proceedings commenced within 91 days of the Effective Date of this Agreement or any payment under this Agreement), the United States (on behalf of itself, its officers, agents, agencies, and departments) agrees to release SBHCS, and its subsidiaries and affiliates, 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

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<sup>2</sup> The Settlement Amount is comprised of \$2,837,694 attributable to the One-Day Stay Conduct and \$1,040,000 attributable to the Pneumonia Coding Conduct.

mistake, unjust enrichment, breach of contract and fraud, for the Covered Conduct. No individuals are released by this Agreement.

2.       OIG-HHS expressly reserves all rights to institute, direct, or to maintain any administrative action seeking exclusion against SBHCS and/or its officers, directors and employees from Medicare, Medicaid, or other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) under 42 U.S.C. § 1320a-7(a) (mandatory exclusion), or 42 U.S.C. § 1320a-7(b) (permissive exclusion).

3.       Notwithstanding any term of this Agreement, specifically reserved and excluded from the scope and terms of this Agreement as to any entity or person (including SBHCS) are the following:

a.       Any civil, criminal, or administrative liability arising under Title 26, U.S. Code (Internal Revenue Code);

b.       Any criminal liability;

c.       Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;

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

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

f.       Any civil or administrative liability of individuals (including current or former directors, officers, employees, agents, or shareholders of SBHCS).

4. SBHCS waives and will not assert any defenses SBHCS may have to any criminal prosecution or administrative action relating to the Covered Conduct, which defenses may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. SBHCS agrees that this Agreement 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.

5. SBHCS fully and finally releases the United States, its agencies, employees, servants, and agents from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) which SBHCS 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.

6. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare carrier or intermediary or any State payer, related to the Covered Conduct; and SBHCS shall not resubmit to any Medicare carrier or intermediary or any State payer any previously denied claims related to the Covered Conduct, and shall not appeal any such denials of claims.

7. SBHCS agrees to the following:

a. Unallowable Costs Defined: that all costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47, and in Titles XVIII and XIX of the Social

Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and the regulations and official program directives promulgated thereunder) incurred by or on behalf of SBHCS, its present or former officers, directors, employees, shareholders, and agents in connection with the following shall be "unallowable costs" on government contracts and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP):

- (1) the matters covered by this Agreement,
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement,
- (3) SBHCS's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees),
- (4) the negotiation and performance of this Agreement, and
- (5) the payment SBHCS makes to the United States pursuant to this Agreement.

All costs described or set forth in this Paragraph 7.a. are hereafter, "unallowable costs".

b. Future Treatment of Unallowable Costs: These unallowable costs shall be separately determined and accounted for in nonreimbursable cost centers by SBHCS, and SBHCS 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

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

c. Treatment of Unallowable Costs Previously Submitted for

Payment: SBHCS further agrees that within 180 days of the Effective Date of this Agreement it shall 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 SBHCS or any of its subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the unallowable costs. SBHCS agrees that the United States, at a minimum, shall be entitled to recoup from SBHCS 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 SBHCS or any of its subsidiaries or affiliates on the effect of inclusion of unallowable costs (as defined in this Paragraph) on SBHCS or any of its subsidiaries or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine SBHCS's books and records to determine that no unallowable costs have been claimed in accordance with the provisions of this Paragraph.

8. SBHCS agrees to cooperate fully and truthfully with the United States' investigation of individuals and entities not released in this Agreement. Upon reasonable notice, SBHCS will encourage, and agrees not to impair, the cooperation of, its directors, officers, and employees and use its best efforts to make available, and encourage the cooperation of former directors, officers, and employees for interviews and testimony, consistent with the rights and privileges of such individuals, and will furnish to the United States, upon reasonable request, all non-privileged documents and records in its possession, custody, or control relating to the Covered Conduct.

9. 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 10 below.

10. SBHCS waives and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

11. SBHCS warrants that it has reviewed its financial situation and that it currently is solvent within the meaning of 11 U.S.C. §§ 547(b)(3) and 548(a)(1)(B)(ii)(I), and will remain solvent following its payment to the United States of the Settlement Amount.

Further, the Parties warrant that, in evaluating whether to execute this Agreement, they (a) have

intended that the mutual promises, covenants, and obligations set forth constitute a contemporaneous exchange for new value given to SBHCS, within the meaning of 11 U.S.C. § 547(c)(1); and (b) conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange. Further, the Parties warrant that the mutual promises, covenants, and obligations set forth herein are intended and do, in fact, represent a reasonably equivalent exchange of value which is not intended to hinder, delay, or defraud any entity to which SBHCS was or became indebted, on or after the date of this transfer, all within the meaning of 11 U.S.C. § 548(a)(1).

12. If, within 91 days of the Effective Date of this Agreement or of any payment made hereunder, SBHCS commences, or a third party commences, any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors, (a) seeking to have any order for relief of SBHCS's debts, or seeking to adjudicate SBHCS as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for SBHCS or for all or any substantial part of SBHCS's assets, SBHCS agrees as follows:

a. SBHCS's obligations under this Agreement may not be avoided pursuant to 11 U.S.C. §§ 547 or 548, and SBHCS will not argue or otherwise take the position in any such case, proceeding, or action that: (1) SBHCS's obligations under this Agreement may be avoided under 11 U.S.C. §§ 547 or 548; (2) SBHCS was insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment made to the United States hereunder; or (3) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to SBHCS.

b. If SBHCS's obligations under this Agreement are avoided for any reason, including, but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code, the United States, at its sole option, may rescind the releases in this Agreement, and bring any civil and/or administrative claim, action, or proceeding against SBHCS for the claims that would otherwise be covered by the releases provided in Paragraph 1.a., above. SBHCS agrees that (1) any such claims, actions, or proceedings brought by the United States (including any proceedings to exclude SBHCS from participation in Medicare, Medicaid, or other Federal health care programs) are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceeding described in the first clause of this Paragraph, and that SBHCS will not argue or otherwise contend that the United States' claims, actions, or proceedings are subject to an automatic stay; (2) that SBHCS will not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claims, actions, or proceeding which are brought by the United States within 90 calendar days of written notification to SBHCS that the releases herein have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (3) the United States has a valid claim against SBHCS in the amount of \$5,760,000, and the United States may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

c. SBHCS acknowledges that its agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

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

14. 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 shall be the United States District Court for the District of New Jersey.

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 individuals signing this Agreement on behalf of SBHCS represent and warrant that they are authorized by SBHCS to execute this Agreement. The United States signatories represent that they are signing this Agreement in their official capacities and that they are authorized to execute this Agreement.

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 SBHCS's 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.

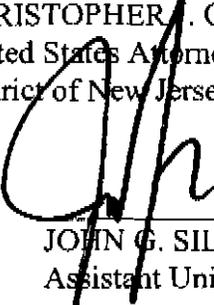
20. The "Effective Date" of this Agreement shall be the date of signature of the last signatory to the Agreement. Facsimiles of signatures shall constitute acceptable, binding

signatures for purposes of this Agreement.

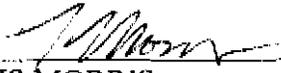
**FOR THE UNITED STATES OF AMERICA**

CHRISTOPHER J. CHRISTIE  
United States Attorney  
District of New Jersey

DATED: 11/1/05

BY:   
JOHN G. SILBERMANN  
Assistant United States Attorney

DATED: 10/3/05

BY:   
LEWIS MORRIS  
Chief Counsel to the Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

**FOR THE SAINT BARNABAS CORPORATION**

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
BARRY OSTROWSKY  
Executive Vice President and General Counsel  
Saint Barnabas Corporation

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
ROBERT S. SALCIDO, ESQ.  
Akin, Gump, Hauer, & Feld, L.L.P.  
Counsel for the Saint Barnabas Corporation

signatures for purposes of this Agreement.

**FOR THE UNITED STATES OF AMERICA**

CHRISTOPHER J. CHRISTIE  
United States Attorney  
District of New Jersey

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
JOHN G. SILBERMANN  
Assistant United States Attorney

DATED: \_\_\_\_\_

BY: \_\_\_\_\_  
LEWIS MORRIS  
Chief Counsel to the Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

**FOR THE SAINT BARNABAS CORPORATION**

DATED: 11/21/05

BY: \_\_\_\_\_  
BARRY OSTROWSKY  
Executive Vice President and General  
Counsel  
Saint Barnabas Corporation

DATED: 11/23/05

BY: \_\_\_\_\_  
ROBERT S. SALCIDO, ESQ.  
Akin, Gump, Hauer, & Feld, L.L.P.  
Counsel for the Saint Barnabas  
Corporation