

## **SETTLEMENT AGREEMENT**

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 the Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) and the Defense Health Agency (DHA), acting on behalf of the TRICARE program (collectively, the United States); the State of Texas, by and through the Attorney General of Texas (Texas); Flower Mound Hospital Partners, LLC d/b/a Texas Health Presbyterian Hospital Flower Mound (Flower Mound Hospital); and Leslie Jennings, M.D. (Relator) (hereafter collectively referred to as the Parties), through their authorized representatives.

### **RECITALS**

A. Flower Mound Hospital is a hospital partially-owned by physicians that is located in Flower Mound, Texas and that provides care to beneficiaries covered by the Medicare Program, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 (Medicare); the Medicaid Program, 42 U.S.C. §§ 1396-1396w-5 (Medicaid); and the TRICARE Program, 10 U.S.C. §§ 1071-1110b (TRICARE) (collectively, Federal Health Care Programs).

B. On November 8, 2019, the Relator filed a *qui tam* action in the United States District Court for the Northern District of Texas captioned *United States ex rel. Jennings v. Flower Mound Hospital Partners, LLC, et al.*, Civil Action No. 3-19-CV-02676-B (N.D. Tex.), pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action).

C. The United States contends that Flower Mound Hospital submitted or caused to be submitted claims for payment to Federal Health Care Programs. Texas contends that Flower Mound Hospital submitted or caused to be submitted claims for payment to Medicaid.

D. The United States contends that between July 1, 2019 and June 30, 2021, Flower Mound Hospital violated the Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b) (the AKS) and the Physician Self-Referral Law, 42 U.S.C. § 1395nn (commonly referred to as the Stark Law), and caused the submission of false claims to Federal Health Care Programs, as follows:

1. In June 2019, Flower Mound Hospital repurchased 20 percent of the shares of each physician-owner age 63 and older. These shares were then resold to the physicians listed in the letter dated November 19, 2021 from Jonathan Thrope to counsel for Flower Mound Hospital (the Side Letter). Flower Mound Hospital took referrals into account when it (1) selected the physicians to whom the shares would be resold and (2) determined the number of shares each physician would receive. The resold shares induced physician-owners to refer patients to Flower Mound Hospital. The United States contends that these actions violated the AKS. The United States further contends that, because of these AKS violations, Flower Mound Hospital violated the False Claims Act by submitting, or causing to be submitted, false claims to Federal Health Care Programs for services referred or ordered by the physician-owners listed in the Side Letter.
2. Due to the conduct described in paragraph D(1), above, the United States contends that Flower Mound Hospital's financial relationships with its physician-owners violated the Stark Law. The United States contends that the relationships failed to satisfy the requirements of the exception to the Stark Law detailed at 42 U.S.C. § 1395nn(d)(3) and 42 C.F.R. § 411.356(c)(3) (collectively, the Whole Hospital Exception). Specifically, as described in paragraph D(1), Flower Mound Hospital conditioned physician ownership or investment interests either directly or indirectly on the physician-owners or investors making or influencing referrals

to Flower Mound Hospital or otherwise generating business for Flower Mound Hospital. Flower Mound Hospital physician-owners made referrals to Flower Mound Hospital for designated health services from July 1, 2019 through June 30, 2021, and Flower Mound Hospital submitted claims to Medicare for payment for such designated health services. The United States further contends that, because of the Stark Law violations, Flower Mound Hospital violated the False Claims Act by submitting, or causing to be submitted, false claims to Medicare for services referred or ordered by Flower Mound Hospital's physician-owners.

The United States contends that it has certain civil claims against Flower Mound Hospital arising from this conduct. This conduct is collectively referred to below as the "Covered Conduct."

E. Texas contends that during the same time period (between July 1, 2019 and June 30, 2021), Flower Mound Hospital knowingly provided improper remuneration to the physician-owners listed in the Side Letter in exchange for referrals, in violation of the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code §§ 36.001 *et seq.* (the TMFPA), when it repurchased 20 percent of the shares of each physician-owner age 63 and older and then resold those shares to the physician-owners listed in the Side Letter. This conduct is referred to below as the "State Covered Conduct."

F. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the federal proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees, and costs.

G. This Settlement Agreement is neither an admission of liability by Flower Mound Hospital nor a concession by the United States or Texas that their claims are not well founded. Flower Mound Hospital denies the allegations in Paragraph D and E.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. Flower Mound Hospital shall pay to the United States and Texas the sum of \$18,200,000 (the Settlement Amount), and interest on the Settlement Amount at a rate of 1.325% per annum from October 22, 2021, until and including the date of final payment. Of the Settlement Amount, \$17,713,476 will be allocated to resolution of the United States' claims discussed herein (the Federal Allocation), \$8,856,738 of which constitutes restitution to the United States; and \$486,524 will be allocated to resolution of Texas's claims discussed herein (the Texas Allocation). Flower Mound Hospital shall pay the Settlement Amount in accordance with the following payment schedule:

A. No later than December 1, 2021, Flower Mound Hospital will make a payment to the United States in the amount of \$8,954,065 and a payment to Texas in the amount of \$245,935, plus interest at a rate of 1.325% per annum.

B. No later than February 1, 2022, Flower Mound Hospital will make a payment to the United States in the amount of \$2,919,804 and a payment to Texas in the amount of \$80,196, plus interest at a rate of 1.325% per annum.

C. No later than April 1, 2022, Flower Mound Hospital will make a payment to the United States in the amount of \$2,919,804 and a payment to Texas in the amount of \$80,196, plus interest at a rate of 1.325% per annum.

D. No later than June 1, 2022, Flower Mound Hospital will make a payment to the United States in the amount of \$2,919,803 and a payment to Texas in the amount of \$80,197, plus interest at a rate of 1.325% per annum.

E. A payment schedule, consistent with the payments described in Paragraphs 1.A, 1.B, 1.C and 1.D, is attached hereto as Exhibit A.

F. The Settlement Amount may be prepaid, in whole or in part, without any penalty. All amounts paid after the initial payment described in Paragraph 1.A., above, shall be subject to interest at the rate of 1.325% per annum.

G. Payment to the United States shall be made by electronic funds transfer pursuant to written instructions to be provided by the Civil Division of the United States Department of Justice.

H. Payment to Texas shall be made by electronic funds transfer pursuant to written instructions to be provided by the Office of the Attorney General of Texas.

2. Conditioned upon the United States receiving the Federal Allocation payments described above, the United States agrees that it shall pay to Relator by electronic funds transfer 17% of each such payment received under the Settlement Agreement as soon as feasible after receipt of the payment. A payment schedule, consistent with the payments described in this Paragraph, is included in Exhibit A.

3. Flower Mound Hospital shall pay to Relator's counsel the sum of \$220,000 in full satisfaction of statutory attorneys' fees and expenses under the False Claims Act. Payment of this amount will be made directly to Relator's counsel pursuant to a separate settlement agreement between Relator and Defendants.

4. Subject to the exceptions in Paragraph 9 (concerning excluded claims) below, and conditioned upon Flower Mound Hospital's full payment of the Federal Allocation, plus interest due under Paragraph 1, the United States releases Flower Mound Hospital, together with its current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations; divisions; current or former corporate owners; and the corporate successors and

assigns of any of them, from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the civil monetary provisions of the Stark Law at 42 U.S.C. §§ 1395nn(g)(3) and (4); or the common law theories of payment by mistake, unjust enrichment and fraud.

5. Subject to the exceptions in Paragraph 9 (concerning excluded claims) below, and conditioned upon Flower Mound Hospital's full payment of the Texas Allocation, plus interest due under Paragraph 1, Texas releases Flower Mound Hospital and Texas Health Resources from any civil or administrative monetary claim Texas has for the State Covered Conduct under the Texas Medicaid Fraud Prevention Act, Tex. Hum. Res. Code §§ 36.001 *et seq.*; any other statutory or regulatory cause of action for the State Covered Conduct that Texas has authority to assert or compromise; or the common law theories of payment by mistake, unjust enrichment, and fraud.

6. In consideration of the obligations of Flower Mound Hospital in this Agreement and the Corporate Integrity Agreement (CIA), entered into between OIG-HHS and Flower Mound Hospital, and upon the United States' receipt of full payment of the Federal Allocation, plus interest due under Paragraph 1, the OIG-HHS shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against Flower Mound Hospital under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in this paragraph and in Paragraph 9 (concerning reserved claims), below. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude Flower Mound Hospital from Medicare, Medicaid, and other Federal

health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

7. In consideration of the obligations of Flower Mound Hospital set forth in this Agreement, and upon the United States' receipt of full payment of the Federal Allocation, plus interest due under Paragraph 1, DHA shall release and refrain from instituting, directing, or maintaining any administrative action seeking exclusion from the TRICARE Program against Flower Mound Hospital under 32 C.F.R. § 199.9 for the Covered Conduct, except as reserved in this paragraph and in Paragraph 9 (concerning reserved claims), below. DHA expressly reserves authority to exclude Flower Mound Hospital from the TRICARE Program under 32 C.F.R. §§ 199.9 (f)(1)(i)(A), (f)(1)(i)(B), and (f)(1)(iii) (mandatory exclusion), based upon the Covered Conduct. Nothing in this paragraph precludes DHA or the TRICARE Program from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 9, below.

8. In consideration of their promises and agreements in this Agreement and their separate settlement agreement with Relator, Relator, individually and on behalf of any other person(s) (not including the United States or Texas) who may have an interest in the above-referenced qui tam action ("Civil Action") and on behalf of all entities in which Relator has a legal or beneficial interest, his heirs, executors, agents, representatives, attorneys, insurers, successors and assigns, all in their capacities as such, hereby knowingly, voluntarily, irrevocably, and unconditionally fully and forever releases and discharges each and all of the Civil Action Defendants, including their current and former members, owners, affiliates (including parents, subsidiaries, brother and sister entities), directors, officers, employees, representatives, agents,

attorneys, insurers, successors and assigns, all in their capacities as such, with respect to any and all claims, demands, contracts, actions, suits, causes of action, costs, expenses, attorneys' fees, damages, judgments, orders and liabilities of any kind or nature in law, arbitration, equity or otherwise, whether now known or unknown, suspected or unsuspected, including but not limited to claims that Relator brought or could have brought in the Civil Case, or which Relator now owns or holds, or has at any time heretofore owned or held, or may hereafter claim to have held, against the Civil Case Defendants, or any of them, and further including but not limited to claims that involve or relate in any way to any agreements, transactions, occurrences, events, facts, acts or omissions, on or before the date of full execution of this Agreement.

9. Notwithstanding the releases given in Paragraphs 4-5 of this Agreement, or any other term of this Agreement, the following claims of the United States and Texas are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code) or any Texas tax or revenue law;
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory or permissive exclusion from Federal and state health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability to Texas (or its agencies) for any conduct other than the State Covered Conduct;
- f. Any liability based upon obligations created by this Agreement;
- g. Any liability of individuals;



- h. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- i. Any liability for failure to deliver goods or services due;
- j. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- k. Any liability for claims involving unfair and/or deceptive acts and practices or violations of Texas consumer protection laws.

10. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payments described in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge: (a) the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730; (b) Texas, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under the TMFPA, and (c) the United States and Texas from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

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

12. Flower Mound Hospital fully and finally releases the United States along with its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Flower Mound Hospital has asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

13. Flower Mound Hospital fully and finally releases Texas along with its agencies, officers, agents, employees, and servants, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that Flower Mound Hospital has asserted, could have asserted, or may assert in the future against Texas, its agencies, officers, agents, employees, and servants, related to the State Covered Conduct or Texas's investigation or prosecution thereof.

14. Flower Mound Hospital fully and finally releases the Relator from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that Flower Mound Hospital has asserted, could have asserted, or may assert in the future against the Relator, related to the Civil Action and the Relator's investigation and prosecution thereof.

15. 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 or Medicaid contractor (*e.g.*, Medicare Administrative Contractor, fiscal intermediary, carrier), any state payer or contractor, or any TRICARE payer or contractor, related to the Covered Conduct or State Covered Conduct; and Flower Mound Hospital agrees not to resubmit to any Medicare or Medicaid contractor, state payer, or TRICARE payer any previously denied claims related to the Covered Conduct or State Covered Conduct, agrees not to appeal any such denials of claims, and agrees to withdraw any such pending appeals.

16. Flower Mound Hospital agrees to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of Flower Mound Hospital, its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' and/or Texas's audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Flower Mound Hospital's investigation, defense, and corrective actions undertaken in response to the United States' and/or Texas's 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 payments Flower Mound Hospital makes to the United States pursuant to this Agreement and any payments that Flower Mound Hospital may make to Relator, including costs and attorney's fees

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for by Flower Mound Hospital, and Flower Mound Hospital 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 Flower Mound Hospital or any of its subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment:

Flower Mound Hospital further agrees that within 120 days of the Effective Date of this Agreement it shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by Flower Mound Hospital 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. Flower Mound Hospital agrees that the United States and Texas, at a minimum, shall be entitled to recoup from Flower Mound Hospital 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 and/or Texas pursuant to the direction of the Department of Justice and/or the affected agencies. The United States and Texas reserve their rights to disagree with any calculations submitted by Flower Mound Hospital or any of its subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on Flower Mound Hospital 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 or Texas to audit, examine, or re-examine Flower Mound Hospital's books and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

17. Flower Mound Hospital agrees to cooperate fully and truthfully with the United States' and Texas's investigation of individuals and entities not released in this Agreement. Upon reasonable notice, Flower Mound Hospital shall encourage, and agrees not to impair, the cooperation of its directors, officers, and employees, and shall 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. Flower Mound Hospital further agrees to furnish to the United States and Texas, upon request, complete and unredacted copies of all non-privileged documents, reports, memoranda of interviews, and records in its possession, custody, or control concerning any investigation of the Covered Conduct that it has undertaken, or that has been performed by another on its behalf.

18. 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 19 (waiver for beneficiaries paragraph), below.

19. Flower Mound Hospital agrees that it 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 or State Covered Conduct.

20.

a. In the event that Flower Mound Hospital fails to pay the Settlement Amount as provided in Paragraph 1 above, Flower Mound Hospital shall be in Default of its

payment obligations (Default). The United States will provide a written Notice of Default to Flower Mound Hospital, and Flower Mound Hospital shall have an opportunity to cure such Default within seven (7) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Flower Mound Hospital, or to such other representative as Flower Mound Hospital shall designate in advance in writing. If Flower Mound Hospital fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States and Texas to a modified payment schedule (Uncured Default), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 12% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

b. In the event of Uncured Default, Flower Mound Hospital agrees that the United States and Texas, at their sole discretion, may (i) retain any payments previously made, rescind this Agreement and pursue the Civil Action or bring any civil and/or administrative claim, action, or proceeding against Flower Mound Hospital for the claims that would otherwise be covered by the releases provided in Paragraphs 4-5 above, with any recovery reduced by the amount of any payments previously made by Flower Mound Hospital to the United States and Texas under this Agreement; (ii) take any action to enforce this Agreement in a new action or by reinstating the Civil Action; (iii) offset the remaining unpaid balance from any amounts due and owing to Flower Mound Hospital and/or affiliated companies by any department, agency, or agent of the United States or Texas at the time of Default or subsequently; and/or (v) exercise any other right granted by law, or under the terms of this Agreement, or recognizable at common

law or in equity. The United States and Texas shall be entitled to any other rights granted by law or in equity by reason of Default, including referral of this matter for private collection. In the event the United States or Texas pursues a collection action, Flower Mound Hospital agrees immediately to pay the United States and Texas the greater of (i) a ten-percent (10%) surcharge of the amount collected, as allowed by 28 U.S.C. § 3011(a), or (ii) the United States' and Texas's reasonable attorneys' fees and expenses incurred in such an action. In the event that the United States and Texas opt to rescind this Agreement pursuant to this paragraph, Flower Mound Hospital waives and agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are (i) filed by the United States or Texas against Flower Mound Hospitals within 120 days of written notification that this Agreement has been rescinded, and (ii) relate to the Covered Conduct or State Covered Conduct, except to the extent these defenses were available on the Effective Date. Flower Mound Hospital agrees not to contest any offset, recoupment, and /or collection action undertaken by the United States or Texas pursuant to this paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States or Texas.

c. In the event of Uncured Default, OIG-HHS may exclude Flower Mound Hospital from participating in all Federal health care programs until Flower Mound Hospital pays the Settlement Amount, with interest, as set forth above (Exclusion for Default). OIG-HHS will provide written notice of any such exclusion to Flower Mound Hospital. Flower Mound Hospital waives any further notice of the exclusion under 42 U.S.C. § 1320a-7(b)(7), and agrees not to contest such exclusion either administratively or in any state or federal court. Reinstatement to program participation is not automatic. If at the end of the period of exclusion, Flower Mound Hospital wishes to apply for reinstatement, it must submit a written request for reinstatement to OIG-HHS in accordance with the provisions of 42 C.F.R. §§ 1001.3001-.3005.

Flower Mound Hospital will not be reinstated unless and until OIG-HHS approves such request for reinstatement. The option for Exclusion for Default is in addition to, and not in lieu of, the options identified in this Agreement or otherwise available.

21. In exchange for valuable consideration provided in this Agreement, Flower Mound Hospital acknowledges the following:

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

b. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Flower Mound Hospital, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

c. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

d. The Parties do not intend to hinder, delay, or defraud any entity to which Flower Mound Hospital was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

e. If Flower Mound Hospital'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) or if, before the Settlement Amount is paid in full, Flower Mound Hospital or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Flower Mound Hospitals' debts, or to adjudicate Flower Mound Hospital as bankrupt or insolvent; or



seeking appointment of a receiver, trustee, custodian, or other similar official for Flower Mound Hospital or for all or any substantial part of Flower Mound Hospitals' assets:

(i) the United States and Texas may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Flower Mound Hospital for the claims that would otherwise be covered by the releases provided in Paragraphs 4 and 5 above;

(ii) the United States and Texas have an undisputed, noncontingent, and liquidated allowed claim against Flower Mound Hospital in the amount of \$27,300,000, less any payments received pursuant to this agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States and Texas by Flower Mound Hospital, a receiver, trustee, custodian, or other similar official for Flower Mound Hospital;

(iii) if any payments are avoided and recovered by Flower Mound Hospital, a receiver, trustee, custodian, or similar official for Flower Mound Hospital, Relator shall, within thirty days of written notice from the United States and Texas to the undersigned Relator's counsel, return any portions of such payments already paid by the United States to the Relator pursuant to Paragraph 2.

f. Flower Mound Hospital agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 21.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Flower Mound Hospital shall not argue or otherwise contend that the United States' and Texas's claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Flower Mound Hospital waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any

such civil or administrative claim, action, or proceeding brought by the United States and Texas within 120 days of written notification to Flower Mound Hospital that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of this Agreement.

22. Upon receipt of the initial payment described in Paragraph 1, above, the Relator and the United States shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action, pursuant to Rule 41(a)(1). The dismissal shall be: (a) with prejudice to the United States for the Covered Conduct; (b) without prejudice to the United States for all other conduct; and (c) with prejudice to the Relator as to all claims or causes of action arising from or related to the Civil Action.

23. Subject to the exception in Paragraph 3, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

24. Each party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

25. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Northern District of Texas. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

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

27. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

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

29. This Agreement is binding on Flower Mound Hospital's successors, transferees, heirs, and assigns.

30. This Agreement is binding on Relator's successors, transferees, heirs, attorneys, servants, and assigns.

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

32. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles and electronic transmissions of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

**THE UNITED STATES OF AMERICA**

DATED: 11/30/2021

BY:

Jonathan Thrope  
Jonathan Thrope  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 11/30/2021

BY:

Kenneth Coffin  
Kenneth Coffin  
Assistant U.S. Attorney  
~~Eastern~~ District of Texas  
Northern

DATED: 11/24/2021

BY:

Lisa M. Re  
Lisa M. Re  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

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

BY:

Salvatore M. Maida  
Salvatore M. Maida  
General Counsel  
Defense Health Agency  
United States Department of Defense

**THE UNITED STATES OF AMERICA**

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

BY: \_\_\_\_\_  
Jonathan Thrope  
Trial Attorney  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

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

BY: \_\_\_\_\_  
Kenneth Coffin  
Assistant U.S. Attorney  
Eastern District of Texas

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

BY: \_\_\_\_\_  
Lisa M. Re  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the Inspector General  
Office of Inspector General  
United States Department of Health and Human Services

DATED: 11/19/2021

BY: \_\_\_\_\_  
BLEY.PAUL.NICHOLAS.1099873821  
LAS.1099873821  
for Salvatore M. Maida  
General Counsel  
Defense Health Agency  
United States Department of Defense

Digitally signed by  
BLEY.PAUL.NICHOLAS.10998738  
21  
Date: 2021.11.19 13:10:43 -05'00'

**THE STATE OF TEXAS**

**OFFICE OF THE ATTORNEY GENERAL**

DATED: \_\_\_\_\_ BY: Raymond Charles Winter  
Raymond C. Winter  
Chief, Civil Medicaid Fraud Division  
P.O. Box 12548  
Austin, TX 78711-2548

Digitally signed by Raymond Charles Winter  
Date: 2021.11.30 14:01:22 -0600

**TEXAS HEALTH & HUMAN SERVICES COMMISSION**

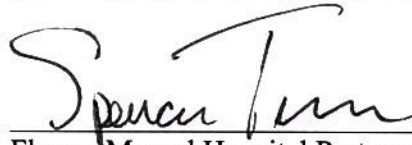
DATED: \_\_\_\_\_ BY: Karen Ray  
Karen Ray  
Chief Counsel  
Brown-Heatly Building  
4900 North Lamar Boulevard  
Austin, TX 78751-2361

Digitally signed by Karen Ray  
Date: 2021.11.30 12:21:57  
-06'00'

**DEFENDANT FLOWER MOUND HOSPITAL PARTNERS, LLC**

DATED: 11.24.21

BY:

A handwritten signature in black ink, appearing to read "Spencer Turner", written over a horizontal line.

Flower Mound Hospital Partners, LLC

By: Spencer Turner, President

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

BY:

\_\_\_\_\_  
Chris Davis, Partner

Gray Reed

Counsel for Flower Mound Hospital Partners, LLC,

d/b/a Texas Health Presbyterian Hospital Flower Mound

**DEFENDANT FLOWER MOUND HOSPITAL PARTNERS, LLC**


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

BY: \_\_\_\_\_

Flower Mound Hospital Partners, LLC  
By: Spencer Turner, President

DATED: 11/29/21

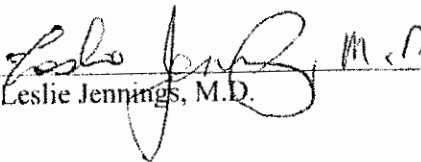
BY: \_\_\_\_\_

  
Chris Davis, Partner  
Gray Reed  
Counsel for Flower Mound Hospital Partners, LLC,  
d/b/a Texas Health Presbyterian Hospital Flower Mound



RELATOR LESLIE JENNINGS

DATED: 11/22/21

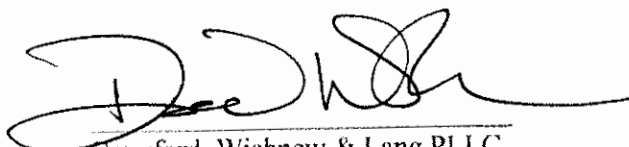
BY:  M.D.  
Leslie Jennings, M.D.

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

\_\_\_\_\_  
Rachel V. Rose -- Attorney at Law, PLLC

By: Rachel V. Rose, Esq.  
Its: Principal

DATED: 11/22/21

  
Crawford, Wishnew & Lang PLLC

By: Dave Wishnew, Esq.  
Its: Partner

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

\_\_\_\_\_  
Hilder & Associates, P.C.

By: Philip H. Hilder, Esq.  
Its: Principal

**RELATOR LESLIE JENNINGS**

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

BY: \_\_\_\_\_  
Leslie Jennings, M.D.

DATED: 11/19/21

  
Rachel V. Rose – Attorney at Law, PLLC

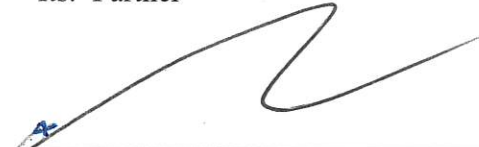
By: Rachel V. Rose, Esq.  
Its: Principal

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

\_\_\_\_\_  
Crawford, Wishnew & Lang PLLC

By: Dave Wishnew, Esq.  
Its: Partner

DATED: 11/19/21

  
\_\_\_\_\_  
Hilder & Associates, P.C.

By: Philip H. Hilder, Esq.  
Its: Principal

## **EXHIBIT A**

### **Flower Mound Hospital Federal Allocation Payments**

<b>Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Payment Due</b>
December 1, 2021	\$8,954,065.00	\$25,720.94	\$8,979,785.94
February 1, 2022	\$2,919,804.00	\$19,714.67	\$2,939,518.67
April 1, 2022	\$2,919,804.00	\$12,507.16	\$2,932,311.16
June 1, 2022	\$2,919,803.00	\$6,465.56	\$2,926,268.56

### **Flower Mound Hospital State Allocation Payments**

<b>Date</b>	<b>Principal</b>	<b>Interest</b>	<b>Payment Due</b>
December 1, 2021	\$245,935.00	\$706.46	\$246,641.46
February 1, 2022	\$80,196.00	\$541.49	\$80,737.49
April 1, 2022	\$80,196.00	\$343.53	\$80,539.53
June 1, 2022	\$80,197.00	\$177.59	\$80,374.59

### **Relator Share Payments**

<b>Date</b>	<b>Total Payment</b>
December 1, 2021	\$1,526,563.61
February 1, 2022	\$499,718.17
April 1, 2022	\$498,492.90
June 1, 2022	\$497,465.66