# CORPORATE INTEGRITY AGREEMENT

**BETWEEN THE**

**OFFICE OF INSPECTOR GENERAL**
**OF THE**
**DEPARTMENT OF HEALTH AND HUMAN SERVICES**
**AND**
**FUTURECARE HEALTH AND MANAGEMENT CORPORATION**

## I. PREAMBLE

FutureCare Health and Management Corporation ("FutureCare") hereby enters into this Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance by FutureCare, its directors, employees, staff physicians, other health care professionals, and agents who are involved in the provision of resident care, with the requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f))(hereinafter collectively referred to as the "Federal health care programs"). FutureCare's compliance with the terms and conditions in this CIA shall constitute an element of FutureCare's present responsibility with regard to participation in the Federal health care programs.

FutureCare acknowledges its accountability for the health and safety of its patients and residents. The persons covered under this CIA are those who: (1) perform patient care or resident care duties; (2) make assessments of patients or residents that affect treatment decisions or reimbursement; (3) perform billing, coding, audit, or review functions; (4) make decisions or provide oversight about staffing, patient care, resident care, reimbursement, policies and procedures, or this CIA; or (5) perform any function that relates to or is covered by this CIA , including individuals who are responsible for quality assurance, setting policies or procedures, or making staffing decisions ("Covered Persons").[1]

## II. SCOPE OF THE CIA

A. This CIA pertains to, and except as expressly stated herein, its scope is limited to the following nursing home facilities (hereinafter "the Covered Facilities"):

1. Pineview Extended Care Center, Inc.

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[1] The definition of "Covered Person" does not include any individual whose status is that of an independent contractor. However, FutureCare shall require that independent contractors follow the policies and procedures of the facility, FutureCare, and the provisions of this CIA.

2. Chesapeake Healthcare & Rehabilitation Center

3. Cherrywood Healthcare & Rehabilitation Center

4. Sandtown-Winchester Nursing & Rehabilitation Center

5. Canton Harbor Healthcare and Rehabilitation Center

6. Old Court Nursing Center

7. North Charles Healthcare & Rehabilitation Center

B. FutureCare agrees that it will implement the provisions of this CIA at each of the Covered Facilities, and cause the directors, employees, staff physicians, health care providers of the Covered Facilities, and agents involved in the provision of care services at the Covered Facilities to comply with the terms of this CIA.

C. Subject to the provisions of this sub-paragraph (C), it is expressly understood that this CIA shall not apply to any facility that is not a Covered Facility as identified above. However, if, after the effective date of this CIA, the present owners of FutureCare collectively acquire more than a fifty percent (50%) interest in any nursing home facility, that facility shall become a Covered Facility as defined by the terms of this CIA.

D. Pursuant to the terms of the Covered Facilities Agreement entered into this same date and incorporated herein by reference, FutureCare agrees that, except in the case of a bona fide sale or other arms-length transaction to a third party pursuant to Section XII.A *infra*, it will not assign its management responsibilities for any of its Covered Facilities, unless that new manager is also made a party to this CIA.

## III. TERM OF THE CIA

The period of the compliance obligations assumed by FutureCare under this CIA shall be three years from the effective date of this CIA The effective date of this CIA will be the date on which the final signatory executes this CIA (the "effective date"). Sections VII, VIII, IX, X and XI shall remain in effect until FutureCare submits all information required by OIG as part of the final Annual Report.

## IV. CORPORATE INTEGRITY OBLIGATIONS

FutureCare shall adopt a Compliance Program that includes the following elements:

### A. Compliance Officer, Committees, and Internal Audit or Review Functions.

1. *Compliance Officer.* Within 90 days of the effective date of the CIA, FutureCare shall appoint a Compliance Officer, who shall be responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements set forth in this CIA and with the requirements of the Federal health care programs. The Compliance Officer shall be a member of senior management of FutureCare (*i.e.*, not subordinate to FutureCare's chief financial officer or general counsel, if applicable), shall make regular (at least quarterly) reports regarding compliance matters directly to the CEO and/or to the Board of Directors of FutureCare, and shall be authorized to report to the Board of Directors at any time. The Compliance Officer shall be responsible for monitoring the day-to-day activities engaged in by FutureCare to further its compliance objectives as well as any reporting obligations created under this CIA. The Compliance Officer shall also ensure that quality of care issues are being appropriately addressed and corrected when necessary. In the event a new Compliance Officer is appointed during the term of this CIA, FutureCare shall notify the OIG, in writing, within fifteen (15) days of such a change.

2. *Compliance Committee.* To the extent not already established, FutureCare shall establish a Quality Assurance Compliance Committee within ninety (90) days of the effective date of this CIA. The purpose of this Compliance Committee shall be to address issues concerning quality of care at the Covered Facilities. At a minimum, the Committee shall include the Compliance Officer, the President of the Nursing Home Division, the Vice President for Clinical Operations for nursing homes, and any other appropriate officers or individuals necessary to thoroughly implement the requirements of this CIA that relate to quality of care in the nursing facilities.

3. *Board of Directors' Committee.* FutureCare shall create a committee as part of its Board of Directors to provide oversight on quality of care issues ("Quality Assurance Monitoring Committee"). This committee shall: (a) review the adequacy of FutureCare's system of internal controls, quality assurance monitoring, and patient care; (b) ensure that FutureCare's response to state, Federal, internal, and external reports of quality of care issues is complete, thorough, and resolves the issue(s) identified; and (c) ensure that FutureCare adopts and implements policies and procedures that are designed to ensure that each individual cared for at a Covered Facility receives the highest practicable physical, mental and psychosocial level of care attainable. The individuals who serve on this committee shall be readily available to the

Compliance Officer and the Monitor and shall respond to any issues or questions that might arise. The names of the Board members and the charter for the committee shall be provided to the OIG within ninety (90) days of the effective date of this CIA. When new members are appointed, or the responsibilities or authorities of the Board committee are substantially changed, FutureCare shall notify the OIG, in writing, within fifteen (15) days of such a change.

4. *Internal Audit and Review Functions*. To the extent not already established, FutureCare shall, within ninety (90) days of the effective date of this CIA, create a program for performing internal audits and reviews. The internal audits and reviews shall:

a. make findings of whether the patients and residents at FutureCare facilities are receiving the quality of care and quality of life consistent with basic care, treatment and protection from harm standards, including but not limited to, 42 C.F.R. Parts 482 and 483 and any other Federal and state statutes, regulations, and directives;

b. make findings of whether the policies and procedures mandated by this CIA are created, implemented, and enforced;

c. make findings of whether training is performed in accordance with this CIA;

d. make findings of whether hotline complaints are appropriately investigated;

e. make findings of whether the reporting obligations are complied with in accordance with this CIA; and

f. make findings of whether corrective action plans are timely created, implemented, and enforced.

B. Written Standards.

1. *Code of Conduct*. Within ninety (90) days of the effective date of this CIA, FutureCare shall establish a Code of Conduct and distribute it to all directors, employees, and Covered Persons. FutureCare shall make adherence to the Code of Conduct an element in evaluating the performance of employees and Covered Persons. The Code of Conduct shall, at a minimum, set forth:

a. FutureCare's commitment to full compliance with all statutes, regulations, directives, and guidelines applicable to Federal health care programs, including its commitment to prepare and submit accurate billings consistent with Federal health care program regulations and procedures or instructions otherwise communicated by the Health Care Financing Administration ("HCFA") (or other appropriate regulatory agencies) and/or fiscal intermediaries or carriers;

b. FutureCare's requirement that all of its directors, employees, and Covered Persons shall be expected to comply with all statutes, regulations, directives, and guidelines applicable to Federal health care programs and with FutureCare's own policies and procedures (including the requirements of this CIA);

c. the requirement that all of FutureCare's directors, employees, and Covered Persons shall be expected to report, within thirty (30) days of discovery, suspected violations of any statute, regulation, directive, or guideline applicable to Federal health care programs or of FutureCare's own policies and procedures; if there are credible allegations of patient harm, such report shall be made immediately;

d. the possible consequences to both FutureCare and any director, employee, or Covered Person of failure to comply with all statutes, regulations, directives, and guidelines applicable to Federal health care programs and with FutureCare's own policies and procedures or of failure to report such non-compliance; and

e. the right of all directors, employees, and Covered Persons to use the confidential disclosure program, as well as FutureCare's commitment to confidentiality and non-retaliation with respect to disclosures.

Within ninety (90) days of the effective date of the CIA, to the extent not already accomplished, each director, employee, and Covered Person shall certify, in writing, that he or she has received, read, understood, and will abide by FutureCare's Code of Conduct. New directors, employees, and Covered Persons shall be provided the Code of Conduct and shall

complete the required certification within two (2) weeks after the commencement of their appointment, employment, or contract or within ninety (90) days of the effective date of the CIA, whichever is later.

FutureCare will annually review the Code of Conduct and will make any necessary revisions. These revisions shall be distributed within thirty (30) days of initiating such a change. Directors, employees, and Covered Persons shall certify on an annual basis that they have received, read, understood and will abide by the Code of Conduct.

2. *Policies and Procedures*. Within ninety (90) days of the effective date of this CIA, FutureCare shall develop and initiate implementation of written Policies and Procedures regarding the operation of FutureCare's compliance program and its compliance with all Federal and state health care statutes, regulations, directives, and guidelines, including the requirements of the Federal health care programs. At a minimum, FutureCare's Policies and Procedures shall specifically address:

a. Measures designed to ensure that FutureCare fully complies with Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395ggg and 1396-1396v, and all regulations, directives, and guidelines promulgated pursuant to these statutes, including, but not limited to, 42 C.F.R. Parts 424, 482, and 483, and any other state or local statutes, regulations, directives, or guidelines that address quality of care in nursing homes;

b. Measures designed to ensure that FutureCare complies with all requirements applicable to Medicare's Prospective Payment System ("PPS") for skilled nursing facilities, including, but not limited to: ensuring the accuracy of the clinical data required under the Minimum Data Set ("MDS") as specified by the Resident Assessment Instrument User's Manual; ensuring that facilities are appropriately and accurately using the current Resource Utilization Groups ("RUG") classification system; and ensuring the accuracy of billing and cost report preparation policies and procedures;

c. Measures designed to ensure the coordinated interdisciplinary approach to providing care to nursing home residents, including, but not limited to, resident assessment and care planning; nutrition and hydration; special needs; wound care; infection control; abuse and neglect policies and reporting procedures; protection from

harm procedures; appropriate drug therapies; appropriate mental health services; provision of basic care needs; resident rights and restraint use; activities of daily living ("ADL") care, including incontinence care; therapy services; quality of life, including accommodation of needs and activities; and assessment of resident capability to make treatment decisions;

d. Measures designed to ensure that FutureCare provides appropriate wound care (decubitus ulcer) treatment and appropriate nutrition for residents with wounds;

e Measures designed to ensure that FutureCare identifies and provides timely clinical responses to all nutritionally at risk and nutritionally compromised residents at the earliest possible time;

f. Measures designed to ensure that FutureCare provides a safe and functional environment for all residents and that all residents are free from mistreatment, verbal, sexual, physical, and mental abuse, corporal punishment, involuntary seclusion, neglect, and misappropriation of property;

g Measures designed to ensure that FutureCare adequately supervises, monitors and safeguards all residents, including those with histories of exhibiting behaviors that cause injury to themselves or others;

h. Measures designed to ensure that staff members provide residents with appropriate basic care services that meet the residents' individual needs;

i Measures designed to ensure that all residents are positioned properly; receive proper oral care and are bathed as scheduled, in appropriate water temperatures and with sufficient frequency;

j. Measures designed to ensure that FutureCare provides residents with sufficient, meaningful activities both during the week and on the weekends to enable the residents to attain or maintain the highest practicable physical, mental, and psychosocial well-being;

k. Measures designed to ensure that FutureCare provides medically-related social services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident;

l. Measures designed to ensure that physical and chemical restraints are used only pursuant to accepted professional standards when less restrictive alternatives are not effective and that they are never used as punishment or for the convenience of staff;

m. Measures designed to ensure that psychotropic medication is used only in accordance with accepted professional standards and to treat a specific condition (as identified in the HCFA Regulations and Surveyors Guide) diagnosed and documented in the clinical medical record and that psychotropic medication is never used as punishment, in lieu of a training program, or for the convenience of staff;

n. Measures designed to ensure that residents receive adequate preventive, chronic, routine, acute, follow-up, and emergency medical care in accordance with generally accepted standards of care, and that residents receive the necessary health care and services to attain or maintain the highest practicable physical, mental, and psychological well being, in accordance with the comprehensive assessment and plan of care. Such measures shall include the following:

    i. Physicians and/or, if appropriate, physician extenders promptly obtain and review all laboratory and test results, document the responses in the residents' charts and take appropriate actions to address any abnormal results;

    ii. Physicians and/or, if appropriate, physician extenders complete a regular review and progress notes in the residents' charts on a timely basis based on regulatory requirements;

    iii. Physicians and/or, if appropriate, physician extenders address promptly residents' significant or undesirable

weight loss and provide continual follow-up until the situation is adequately addressed;

iv. Health care of all diabetic residents comports with generally accepted medical practice;

v. All individuals with seizure disorders are provided with adequate and appropriate seizure management in accordance with accepted professional standards of care;

vi. Residents currently receiving anti-convulsant medication receive the type of medication(s) that is (are) appropriate and effective for the type of seizure and represents the fewest number of medications appropriate for effective seizure management;

vii. As indicated by accepted professional standards of care, in the event of a medical emergency involving a resident, facility staff will call an ambulance immediately when necessary, and will initiate appropriate emergency interventions while awaiting arrival of the ambulance prior to transport of the resident;

viii. Physicians and/or, if appropriate, physician extenders conduct comprehensive health care evaluations of all residents;

ix. Physicians and/or, if appropriate, physician extenders determine what specialized medical services are required for the residents and ensure that such services are timely provided whenever necessary to evaluate or treat the resident's medical problems;

x. An integrated medical plan of care for each resident exists;

xi. Each resident's medical status and progress in response to the resident's medical plan of care is regularly and adequately reviewed and all changes appropriately documented;

xii. Each resident's drug regimen is free from unnecessary drugs;

xiii. Adequate and appropriate interdisciplinary communication exists among relevant professionals, especially between and among physicians and nurses;

xiv. Physicians and/or, if appropriate, physician extenders communicate with the pharmacist when warranted pertaining to abnormal therapeutic responses by residents to prescribed medications;

iv There are a sufficient number of neurology consult hours to meet the needs of the residents and to provide residents with neurology reviews when indicated by the resident's condition; and

xvi. Physicians do not rely inappropriately on telephone orders in treating residents.

o. Measures designed to ensure that residents receive adequate and appropriate nursing care, and that nurses perform their responsibilities in keeping with accepted professional standards of care by adequately identifying health care problems, notifying physicians of health care problems, monitoring and intervening to ameliorate such problems, and keeping appropriate records of residents' health care status;

p. Measures designed to ensure that discharges are made in accordance with applicable statutes, regulations, and guidelines;

q. Measures designed to ensure that staffing decisions are designed to meet the needs of the patients or residents at the facility;

r. Measures that identify the role of the director of nursing in determining budgeted staffing levels for the facilities;

s. Measures designed to minimize to the extent practical the number of individuals working at any Covered Facility who are on a temporary assignment or not employed by FutureCare, and measures designed to track the number of individuals at each facility who fall within this category so that the number/proportion of or changing trends in such staff can be adequately identified by FutureCare and/or the Monitor;

t. Measures designed to ensure that clinical assessments are made in accordance with applicable standards of care.

u. Measures designed to ensure that all residents and patients are served in the least restrictive environment and most integrated setting appropriate to their needs;

v. Disciplinary guidelines and methods for employees and Covered Persons to make disclosures or otherwise report on compliance issues through the Confidential Disclosure Program required by section IV.E;

w. Measures designed to promote adherence to the compliance and quality of care standards set forth in the applicable statutes, regulations, and in this CIA, by including such adherence as a significant factor in determining the compensation to Administrators of the facilities, and the individuals responsible for such compliance at the district, regional, and corporate level;

x. Measures designed to ensure cooperation by FutureCare and its employees and Covered Persons with the Monitor in the performance of his or her duties as set forth *infra*;

y. Measures designed to ensure that compliance issues identified internally (*e.g.*, through reports to supervisors, hotline complaints, internal audits, patient satisfaction surveys, CHSRA quality indicators, key indicators, or internal surveys) or externally (*e.g.*, through HCFA or state survey agency reports, consultants, audits, or monitor's reports) are promptly and appropriately investigated and, if the investigation substantiates compliance issues, FutureCare assesses the nature and scope of the issues, implements

appropriate corrective action plans, and monitors compliance with such plans. Such measures shall include the requirement that the President and Chief Executive Officer review each HCFA and state survey agency report and plan of correction;

z. Measures designed to ensure that residents are appropriately weighed and that the body weight of residents is appropriately monitored;

aa. Measures designed to ensure that FutureCare obtains serum albumin levels when appropriate and warranted to measure protein levels and performs prealbumins in accordance with professional standards;

bb. Measures designed to ensure that staffing needs are decided first and foremost upon achieving the level of care for FutureCare's patients and residents required by Federal health care program requirements and state laws, including, but not limited to, 42 C.F.R. § 483.30;

cc. Measures designed to inform Covered Persons of the staffing requirements of Federal and state law; and

dd. Measures designed to inform Covered Persons during orientation and during other training required by this CIA that staffing levels are a critical aspect of patient care, and, if any person has a concern about the level of staffing that there are many avenues available to each individual to report such concerns, including, but not limited to, the Administrator, the Hotline, individuals at the district, regional, or corporate level, or directly to the Compliance Officer. FutureCare shall assess and update as necessary the Policies and Procedures at least annually and more frequently, as appropriate.

A summary of the Policies and Procedures will be provided to OIG in the Implementation Report. The Policies and Procedures will be available to OIG upon request. Within ninety (90) days of the effective date of the CIA, the relevant portions of the Policies and Procedures shall be made available to all appropriate Covered Persons. Compliance staff or supervisors shall be available to explain any and all policies and procedures.

C. Training and Education.

1. *General Training*. Within one hundred twenty (120) days of the effective date of this CIA, FutureCare shall provide at least two (2) hours of training to each Covered Person, to explain FutureCare's:[2]

a. Compliance Program (including the Policies and Procedures as they pertain to general compliance issues and those included within Section IV of this CIA );

b. Code of Conduct; and

c. Corporate Integrity Agreement requirements.

These training material shall be made available to the OIG upon request.

New Covered Persons shall receive the general training described above within thirty (30) days of the beginning of their employment or within one hundred twenty (120) days after the effective date of this CIA, whichever is later. Every Covered Person shall receive such general training on an annual basis.

2. *Specific Training*. Within one hundred twenty (120) days of the effective date of this CIA, each Covered Person shall receive at least two (2) hours of training in addition to the general training required above. This training shall include a discussion of the policies and procedures set forth in Section IV.B., including, but not limited to:

a. policies, procedures, and other requirements applicable to the documentation of medical records;

b. the coordinated interdisciplinary approach to providing care to

[2] Any non-employee who is hired on a temporary basis (regardless of whether he or she is considered an "agent") is required to follow the policies and procedures of the facility, FutureCare, and this CIA. FutureCare shall undertake reasonable efforts to assure that there is sufficient supervision to ensure that a temporary non-employee is acting within the parameters of such policies and procedures. Any non-employee who works in a Covered Facility for more than a thirty (30) day period, regardless of how many days during that period the person is actually present in the facility, must complete the training requirements set forth herein.

residents, including, but not limited to, resident assessment and care planning; nutrition; diabetes care; wound care; infection control; abuse and neglect policies and reporting procedures; appropriate drug therapies; appropriate mental health services; provision of basic care needs; incontinence care; resident rights and restraint use; ADL care; therapy services; quality of life, including accommodation of needs and activities; and assessment of the resident's competence to make treatment decisions.

The specific training obligations outlined above may be fulfilled by an in-house training program, by any continuing education seminar attended by a Covered Person that is accredited or approved by an organization that is accepted within the industry, or by any combination of in-house training and continuing education seminar.

Affected new Covered Persons shall receive this training within thirty (30) days of the beginning of their employment or contract, or within one hundred and eighty (180) days after the effective date of this CIA, whatever is later. If a new Covered Person has any responsibility for the delivery of patient or resident care, then prior to completing this specific training, a FutureCare Covered Person who has completed the substantive training shall review all of the untrained person's work.

Every Covered Person shall receive such specific training on an annual basis.

In addition, each Covered Facility shall conduct periodic training on an "as-needed" basis (but at least annually) on those quality of care issues identified by the Board of Directors Committee and the Compliance Committee. In determining what training should be performed, these Committees will review the complaints received, satisfaction surveys, staff turnover data, any state or Federal surveys, including those performed by the Joint Commission on Accreditation of Healthcare Organizations ("JCAHO") or other such private agencies, any internal surveys, and the CHSRA quality indicators. Such training will be provided to all Covered Persons at the facility. Training materials shall be made available to OIG upon request. Persons providing the training must have sufficient expertise in the subject area.

3. *Certification.* Each Covered Person and director shall certify, in writing, that he or she has received the required training. The certification shall specify the type of training received and the date received. The Compliance Officer shall retain the certifications, along with specific course materials. These shall be made available to OIG upon request. Such training may take the form of either classroom in-service training or personal instruction by a supervisor during the Covered Person's performance of his or her duties at the Facility.

D. Review Procedures.

1. *Independent Monitor*. After consultation with FutureCare, the OIG has appointed Marie Boltz, RN, and Susan Renz, RN, (hereinafter collectively referred to as the "Monitor") to monitor FutureCare's implementation of the CIA. FutureCare shall be responsible for all costs incurred by the Monitor, including, but not limited to, travel costs, consultants, administrative personnel, office space and equipment, or additional personnel. Such costs shall not exceed $150,000 annually, except in the event that unforeseen circumstances arise. In the event FutureCare makes progress in implementing the CIA, it is anticipated that the Monitor's level of activity may decrease, thereby decreasing its costs. Failure to pay the Monitor within thirty (30) calendar days of submission of its invoices for services previously rendered shall constitute a breach of the CIA and shall subject FutureCare to one or more of the remedies set forth in Section XI *infra*.

a. The Monitor shall be responsible for assessing the effectiveness, reliability and thoroughness of the following:

i. FutureCare's internal quality control systems, including, but not limited to, whether the systems in place to promote quality of care and to respond to quality of care issues are acting in a timely and effective manner; whether the communication system is effective, allowing for accurate information, decisions, and results of decisions to be transmitted to the proper individuals in a timely fashion; and whether the training programs are effective and thorough;

ii. FutureCare's response to quality of care issues, which shall include an assessment of:

(A) FutureCare's ability to identify the issue;

(B) FutureCare's ability to determine the scope of the issue, including, but not limited to whether the issue is isolated or systemic;

(C) FutureCare's ability to create a corrective action plan to respond to the issue;

(D) FutureCare's ability to execute the corrective action plan;

(E) FutureCare's ability to evaluate whether the assessment, corrective action plan and execution of that plan was effective, reliable, and thorough.

iii. FutureCare's development and implementation of corrective action plans and the timeliness of such actions;

iv. FutureCare's proactive steps to ensure that each patient and resident receives care in accordance with: (1) basic care, treatment and protection from harm standards; (2) the rules and regulations set forth in 42 C.F.R. Parts 482 and 483; (3) state and local statutes, regulations, and other directives or guidelines; and (4) the policies and procedures adopted by FutureCare and set forth in this CIA.

b. In order to enable the Monitor to perform its responsibilities set forth above, FutureCare shall:

i. provide access, at the Monitor's request, to: (A) the CHSRA quality indicators (for long term care facilities) or other relevant indicators (for other types of facilities); (B) internal or external surveys or reports; (C) Hotline or other complaints; (D) resident or patient satisfaction surveys; (E) staffing reports setting forth the staff to patient ratios, temporary staffing levels, and staff turnover data; (F) incident, accident, abuse, neglect or death reports; (G) reports of incidents involving a patient or resident that prompt a full internal investigation; (H) patient or resident records; (I) financial data; (J) self-evaluative reports including, but not limited to, those from medical review committees, quality assurance committees, or peer review committees; and (K) any other data the Monitor may determine relevant to fulfilling the duties required under this CIA in the format requested by the Monitor, to the extent practicable;

ii. provide access to the Covered Facilities at any time and without prior notice to assess compliance with this CIA. Unless the Monitor, in his or her sole discretion, decides it is impractical to do

so, the Monitor shall provide at least 24 hours notice to FutureCare management prior to any access to the Covered Facility. The Monitor shall not interfere with the operations of any facility during the course of access.

iii. provide immediate and effective access to residents and their records, employees, and Covered Persons for interviews outside the presence of FutureCare supervisory staff or counsel, provided such interviews are conducted in accordance with all applicable laws and the rights of such individuals. The Monitor shall give full consideration to an individual's clinical condition before interviewing a resident.

iv. not impede the Monitor's access to its facilities and shall provide any requested documentation within the time frame specified by the Monitor;

v. assist in contacting and arranging interviews with Covered Persons, and not impede the cooperation by such individuals;

vi. assist in locating past employees, contractors, and agents, and not impede the cooperation from such individuals, including, but not limited to, refraining from placing confidentiality requirements in termination agreements that would limit such cooperation;

vii. assist in locating past residents, patients, their families, or guardians and not impede their cooperation; and

viii. not sue or otherwise bring any action against the Monitor related to any findings made by the Monitor or related to any exclusion or other sanction of FutureCare under this CIA; provided, however, that this clause shall not apply to any suit or other action based solely on the dishonest, fraudulent or criminal acts of the Monitor, whether acting alone or in collusion with others.

c. FutureCare shall provide to its Quality Assurance Compliance Committee or its Board of Director's Quality Assurance Monitoring Committee copies of all documents and reports provided to the Monitor.

d. The Monitor shall respect the legal rights, privacy, and dignity of all residents, patients, and Covered Persons.

e. The Monitor shall submit reports within forty-eight (48) hours (or earlier if necessary to protect the health and safety of a patient or resident or otherwise mandated by law) to OIG, FutureCare, the state survey agency, and any other appropriate regulatory or law enforcement entity, any time he or she has concerns regarding the health or safety of the residents or patients and such concerns create an obligation to report under Federal, state, or local law or professional licensing standards.[3]

f. The Monitor shall provide quarterly reports to FutureCare and OIG concerning the findings made to date.

g. The Monitor shall submit to OIG and FutureCare an annual report representing an accounting of its costs throughout the year. Such costs shall be in accordance with the budget referred to above.

h. The Monitor is not bound by any other agency's findings or conclusions, including, but not limited to, JCAHO, HCFA, or the state survey agency. HCFA and its contractors shall not introduce any material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor as evidence into any proceeding involving a Medicare or Medicaid survey, certification, or other enforcement action against FutureCare, and FutureCare shall similarly be restricted from using material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor as evidence in any of these proceedings. Nothing in the previous sentence, however, shall preclude the OIG or FutureCare from using any material generated by the Monitor, or any opinions, testimony, or conclusions from the Monitor in any action under the CIA or pursuant to other OIG authorities.

i. The Monitor must promptly report to appropriate regulatory or law enforcement entities when warranted.

j. The Monitor may confer and correspond with FutureCare and OIG on an

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[3] As defined in 42 CFR §488.1.

*ex parte* basis.

k. If the Monitor has concerns about corrective action plans that are not being enforced or systemic problems that could affect FutureCare's ability to render quality care to its patients and residents, then the Monitor shall: 1) if appropriate, report such concerns in writing to FutureCare and afford FutureCare the opportunity to respond. If the Monitor concludes that FutureCare's response is inadequate or that it is inappropriate to report such concerns to FutureCare, the Monitor shall report his or her concerns to an interagency Consortium consisting of representatives of OIG, HCFA, the Department of Justice, and the state survey agency; and 2) provide notice and a copy of the report to FutureCare's Board of Directors Quality Assurance Monitoring Committee referred to, *supra*.

l. The Monitor serves at the behest of the OIG and may be removed solely at the discretion of the OIG. If the Monitor resigns or is removed for any reason prior to the termination of the CIA, OIG, in its discretion, after consultation with FutureCare, shall appoint another appropriately qualified Monitor with the same functions and authorities, and subject to the same budgetary and hiring procedures set forth above.

m. The Monitor shall abide by all legal requirements applicable to information it receives or has access to by virtue of this CIA from the Covered Facilities and FutureCare: (1) to maintain the confidentiality of each resident's personal and clinical records; and (2) to maintain confidential and not to disclose the records of the Quality Assurance Committees of any Covered Facility and/or FutureCare (see 42 C.F.R. §§483.10 and 483.75(o)(3)). Nothing in the prior sentence, however, shall limit or affect the Monitor's obligation under applicable law to provide information, including information from resident clinical records to the OIG, and, when legally required, reporting to other governmental agencies.

n. Nothing in this CIA, or any communication or report made pursuant to this CIA, shall constitute or be construed as a waiver by FutureCare, or any of the Covered Facilities, of any attorney-client, work product, peer review, medical committee review, or other applicable privileges, including, without limitation, the protections contained in 42 C.F.R. § 473.75(o) and applicable state law. Notwithstanding that fact, the

existence of any such privilege does not affect FutureCare's obligations to comply with the provisions of this CIA.

E. Confidential Disclosure Program.

FutureCare will continue to use its Confidential Disclosure Program that provides a toll-free compliance telephone line to enable employees, contractors, agents, patients, residents, family members, or other individuals to disclose, to the Compliance Officer or some other person who is not in the reporting individual's chain of command, any issues or questions associated with FutureCare's policies, practices, or procedures with respect to quality of care or a Federal health care program, believed by the individual to have violated Federal or state criminal, civil or administrative law or the applicable standard of care. FutureCare shall publicize the existence of the hotline, and shall post notices of its existence prominently in the lobby and gathering areas (*e.g.*, dining rooms, activity rooms, waiting rooms) of each of its facilities.

The Confidential Disclosure Program shall emphasize a non-retribution, non-retaliation policy, and shall include a reporting mechanism for anonymous, confidential communication. Upon receipt of a complaint, the Compliance Officer (or designee) shall gather the information in such a way as to elicit all relevant information from the disclosing individual. The Compliance Officer (or designee) shall make a preliminary good faith inquiry into the allegations set forth in every disclosure to ensure that he or she has obtained all of the information necessary to determine whether a further review should be conducted. For any disclosure that is sufficiently specific so that it reasonably: (1) permits a determination of the appropriateness of the alleged improper practice; and (2) provides an opportunity for taking corrective action, FutureCare shall conduct an internal review of the allegations set forth in such a disclosure and ensure that proper follow-up is conducted, including that the inappropriate or improper practice ceases immediately. Nothing contained herein shall restrict the dissemination of information to employees and agents of FutureCare necessary to address the issues raised in the confidential disclosure.

The Compliance Officer shall maintain a confidential disclosure log, which shall include a record and summary of each allegation received, the status of the respective investigations, and any corrective action taken in response to the investigation.

F. Ineligible Persons.

1. *Definition*. For purposes of this CIA, an "Ineligible Person" shall be any individual or entity who: (i) is currently excluded, debarred or otherwise ineligible to participate in the Federal health care programs; or (ii) has been convicted of a criminal offense related to the provision of health care items or services, but has not yet been excluded, disbarred or otherwise

declared ineligible.

2. *Screening Requirements*. FutureCare shall not knowingly hire or engage as health care service providers any Ineligible Person. To prevent hiring or contracting with any Ineligible Person, FutureCare shall screen all prospective employees and Covered Persons prior to engaging their services by (i) requiring applicants to disclose whether they are Ineligible Persons, and (ii) reviewing the General Services Administration's List of Parties Excluded from Federal Programs (available through the Internet at http://epls.arnet.gov) and the HHS/OIG List of Excluded Individuals/Entities (available through the Internet at http://www.hhs.gov/oig) (these lists will hereinafter be referred to as the "Exclusion Lists").

In addition, FutureCare shall require employees and Covered Persons to disclose immediately any debarment, exclusion or other event that makes the employee or Covered Person an Ineligible Person.

3. *Review and Removal Requirement*. Within ninety (90) days of the effective date of this CIA, FutureCare will review its list of current employees and Covered Persons against the Exclusion Lists. Thereafter, FutureCare will review the list annually. If FutureCare has notice that an employee or Covered Person has become an Ineligible Person, FutureCare will remove such person from responsibility for, or involvement with, FutureCare's business operations related to the Federal health care programs and shall remove such person from any position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds at least until such time as the person is reinstated into participation in the Federal health care programs.

4. *Pending Charges and Proposed Exclusions*. If FutureCare has notice that an employee or Covered Person is charged with a criminal offense related to any Federal health care program, or is proposed for exclusion during his or her employment or contract, FutureCare shall take all appropriate actions to ensure that the responsibilities of that employee or Covered Person have not and will not adversely affect the quality of care rendered to any patient or resident, or the accuracy of any claims submitted to any Federal health care program.

G. Notification of Proceedings. Within thirty (30) days of discovery, FutureCare shall notify OIG, in writing, of any ongoing investigation or legal proceeding conducted or brought by a governmental entity or its agents involving an allegation that FutureCare has committed a crime or has engaged in fraudulent activities. This notification shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation or legal proceeding. FutureCare shall also provide written notice to OIG within thirty (30) days of the resolution of the matter, and shall provide OIG with a description of the findings and/or results of the proceedings, if any.

## V. NEW BUSINESS UNITS OR LOCATIONS

In the event that FutureCare purchases or establishes new business units, as set forth in Section II.C, after the effective date of this CIA, FutureCare shall notify OIG of this fact within thirty (30) days of the date of purchase or establishment. This notification shall include the type of facility, location of the new operation(s), phone number, fax number, Federal health care program provider number(s) (if any), and the corresponding payor(s) (contractor specific) that has issued each provider number. The CIA shall apply to any new nursing facility in which FutureCare acquires an ownership interest of 50% or more. All employees, staff physicians, health care providers, and agents at such locations shall be subject to the applicable requirements in this CIA (*e.g.,* completing certifications and undergoing training).

## VI. IMPLEMENTATION AND ANNUAL REPORTS

A. Implementation Report. Within one hundred fifty (150) days of the effective date of this CIA, FutureCare shall submit a written report to OIG summarizing the status of its implementation of the requirements of this CIA. This Implementation Report shall include:

1. the name, address, phone number and position description of all individuals in positions described in section IV.A;

2. the charter for the Board of Directors' Committee required in section IV.A;

3. the program for internal audits and reviews required in section IV.A;

4. a copy of FutureCare's Code of Conduct required by section IV.B.1;

5. the summary of the Policies and Procedures required by section IV.B.2;

6. a description of the training programs required by section IV.C, including a description of the targeted audiences and a schedule of when the training sessions were held;

7. a certification by the Compliance Officer that:

a. the Policies and Procedures required by section IV.B have been developed, are being implemented, and have been made available to all pertinent Covered Persons;

b. all Covered Persons have completed the Code of Conduct certification required by section IV.B.1; and

c. all Covered Persons have completed the training and executed the certification required by section IV.C.

8. a description of the confidential disclosure program required by section IV.E;

9. a summary of personnel actions, other than hiring, taken pursuant to section IV.F; and

10. a list of all of FutureCare's Covered Facilities (including mailing addresses), the
corresponding name under which each location is doing business, the corresponding telephone numbers and facsimile numbers, each location's Federal health care program provider identification numbers(s), and the name, address, and telephone number of the payor (specific contractor) that issued each provider identification number.

B. Annual Reports. FutureCare shall submit to OIG an Annual Report with respect to the status and findings of FutureCare's compliance activities over the one year period covered by the Annual Report. Each Annual Report shall include:

1. any change in the identity or position description of individuals in positions described in section IV.A., a change in any of the committees' structure or charter, or any change in the internal audit and review program;

2. a certification by the Compliance Officer that:

a. all Covered Persons have completed the annual Code of Conduct certification required by section IV.B.1;

b. all Covered Persons have completed the training and executed the certification required by section IV.C; and

c. FutureCare has effectively implemented all plans of correction related to problems identified under this CIA, FutureCare's Compliance Program, or internal audits.

3. notification of any changes or amendments to the Policies and Procedures required by section IV.B and the reasons for such changes (*e.g.*, change in contractor policy);

4. FutureCare's response/corrective active plan to any issues raised by the Monitor;

5. a description of any personnel action (other than hiring) taken by FutureCare as a result of the obligations in section IV.F, and the name, title, and responsibilities of any person that falls within the ambit of section IV.F.4, and the actions taken in response to the obligations set forth in that section;

6. a summary describing any ongoing investigation or legal proceeding conducted or brought by a governmental entity involving an allegation that FutureCare has committed a crime or has engaged in fraudulent activities, which have been reported pursuant to section IV.G. The statement shall include a description of the allegation, the identity of the investigating or prosecuting agency, and the status of such investigation, legal proceeding or requests for information;

7. a corrective action plan to address any probable violations of law identified in section IV.G;

8. a description of all changes to the most recently provided list (as updated) of FutureCare's locations (including mailing addresses), the corresponding name under which each location is doing business, the corresponding telephone numbers and facsimile numbers, each locations' Federal health care program provider identification numbers(s), and the name, address, and telephone number

of the payor (specific contractor) that issued each provider identification number;

9. a summary of the facilities audited or reviewed, a summary of the findings of such audit or review, and a summary of the corrective action taken under the program for internal audits and reviews; and

10. a copy of the confidential disclosure log required by section IV.E (excluding any calls that relate solely to human resources issues). As set forth in section X, the confidential disclosure log will be protected from mandatory public disclosure to the extent permitted by the Freedom of Information Act.

The first Annual Report shall be received by the OIG no later than one year and ninety (90) days after the effective date of this CIA. Subsequent Annual Reports shall be submitted no later than the anniversary date of the due date of the first Annual Report.

C. Certifications. The Implementation Report and Annual Reports shall include a certification by FutureCare's President and Chief Executive Officer that: (1) FutureCare is in compliance with all of the requirements of this CIA, to the best of his or her knowledge, information, and belief; and (2) the President and Chief Executive Officer have reviewed the Report and have made reasonable inquiry regarding its content and reasonably believe that, upon such inquiry, the information is accurate and truthful. Each Report shall also include a resolution (or its equivalent) from FutureCare's Board of Directors certifying that they have reviewed the Annual Report and agree, to the best of their knowledge, information, and belief, that the content of the Annual Report is accurate.

## VII. NOTIFICATIONS AND SUBMISSION OF REPORTS

Unless otherwise stated in writing subsequent to the effective date of this CIA, all notifications and reports required under this CIA shall be submitted to the entities listed below:

OIG:

Civil Recoveries Branch - Compliance Unit
Office of Counsel to the Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
Cohen Building, Room 5527
330 Independence Avenue, SW
Washington, DC 20201
Phone 202.619.2078

Fax 202.205.0604

FutureCare:

FutureCare Health & Management Corporation
c/o Chief Executive Officer
8028 Ritchie Highway, Suite 210B
Pasadena, Maryland 21122
Phone: 410 766-1995
Fax: 410 761-6095

With a copy to:

Ira L. Oring
Fedder and Garten Professional Association
Suite 2300
36 S. Charles Street
Baltimore, Maryland 21201
Phone: 410 539-2800
Fax: 410 659-0543

Unless otherwise specified, all notifications and reports required by this CIA may be made by certified mail, overnight mail, hand delivery or other means, provided that there is proof that such notification was received. For purposes of this requirement, internal facsimile confirmation sheets do not constitute proof of receipt.

## VIII. OIG INSPECTION, AUDIT AND REVIEW RIGHTS

In addition to any other rights OIG may have by statute, regulation, or contract, OIG or its duly authorized representative(s), may examine and photocopy FutureCare's books, records, and other documents and supporting materials that FutureCare is obligated to make available to any government and/or regulatory agency, and/or conduct an onsite review of FutureCare's operations for the purpose of verifying and evaluating FutureCare's compliance with the terms of this CIA. The documentation described above shall be made available by FutureCare to OIG or its duly authorized representative(s) at all reasonable times for inspection, audit, or reproduction. Furthermore, for purposes of this provision, OIG or its duly authorized representative(s) may interview any of FutureCare's employees, contractors, or agents who consent to be interviewed at the individual's place of business during normal business hours or at such other place and time as may be mutually agreed upon between the employee, contractor, or agent and OIG. FutureCare agrees to assist OIG in contacting and arranging interviews with such employees, contractors, or

agents upon OIG's request. FutureCare's employees may elect to be interviewed with or without a representative of FutureCare present.

## IX. DOCUMENT AND RECORD RETENTION

FutureCare shall maintain for inspection all documents and records relating to compliance with this CIA for one year longer than the term of this CIA (or longer if otherwise required by law).

## X. DISCLOSURES

Consistent with HHS's FOIA procedures, set forth in 45 C.F.R. Part 5, OIG shall make a reasonable effort to notify FutureCare prior to any release by OIG of information submitted by FutureCare pursuant to its obligations under this CIA and identified upon submission by FutureCare as trade secrets, or information that is commercial or financial and privileged or confidential, under the FOIA rules. With respect to such releases, FutureCare shall have the rights set forth at 45 C.F.R. § 5.65(d). FutureCare shall refrain from identifying any information as trade secrets, commercial, or financial information and privileged and confidential that does not meet the criteria for exemption from disclosure under FOIA.

## XI. BREACH AND DEFAULT PROVISIONS

FutureCare is expected to be in compliance with all requirements herein throughout the term of this CIA or other time frames herein agreed to.

A. Specific Performance of CIA Provisions. If OIG determines that FutureCare has failed to comply with a provision or provisions of this CIA and decides to seek specific performance of any of these provisions, OIG shall provide FutureCare with prompt written notification of such determination ("Noncompliance Notice"). FutureCare will have thirty five (35) days from receipt of the Noncompliance Notice within which to either: (1) cure the alleged failure to comply, (2) if FutureCare contends that the alleged material breach cannot be cured within the thirty-five (35) day period, to demonstrate as such and that: (i) FutureCare has begun to take action to cure the material breach; (ii) FutureCare is pursuing such action with due diligence; and (iii) FutureCare has provided to OIG a reasonable timetable for complying with the provision at issue, or (3) to reply in writing that FutureCare disagrees with the determination of noncompliance and request a hearing before an HHS Administrative Law Judge ("ALJ"), pursuant to the provisions set for in section XI.E of this CIA. The purpose of this hearing is to determine whether

FutureCare has failed to comply with the CIA and whether FutureCare shall be required to implement the particular provisions at issue.

B. Stipulated Penalties for Failure to Comply with Certain Obligations. As a contractual remedy, FutureCare and OIG agree that failure to comply with certain obligations set forth in this CIA may lead to the imposition of the following monetary penalties ("Stipulated Penalties") in accordance with the following provisions.

1. A Stipulated Penalty of $2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day, beginning one hundred and twenty (120) days after the effective date of this CIA and concluding at the end of the term of this CIA, FutureCare fails to have in place any of the following:

a. Compliance Officer required by Section IV.A.1;
b. Compliance Committee required by Section IV.A.2;
c. Compliance Committee of the Board of Directors required by Section IV.A.3;
d. Program for performing internal audits and reviews as required by Section IV.A.4;
e. Written Code of Conduct required by Section IV.B.1;
f. Written Policies and Procedures required by Section IV.B.2;
g. Training program required by Section IV.C (except as provided by Section IV.C.(2); and
h. Confidential Disclosure Program required by Section IV.E.

2. A Stipulated Penalty of $2,500 (which shall begin to accrue on the day after the date the obligation became due) for each day FutureCare fails meet any of the deadlines to submit the Implementation Report or the Annual Reports to the OIG.

3. A Stipulated Penalty of $2,000 (which shall begin to accrue on the date that failure to comply began) for each day FutureCare employs or contracts with an Ineligible Person and that person: (i) has a material responsibility for, or a material involvement with, FutureCare's business operations related to the Federal health care programs and (ii) is in a position for which the person's salary or the items or services rendered, ordered, or prescribed by the person are paid in whole or part, directly or indirectly, by Federal health care programs or otherwise with Federal funds.

4. A Stipulated Penalty of $1,000 (which shall begin to accrue on the date that FutureCare fails to grant access) for each day FutureCare fails to grant access to the information

or documentation as required in section V of this CIA.

5. A Stipulated Penalty of $3,000 (which shall begin to accrue ten (10) days after the date FutureCare receives notice from the OIG in writing of the failure to comply) for each day FutureCare fails to comply fully and adequately with an obligation of this CIA that is widespread or systemic in nature or reflective of a pattern or practice. In its notice to FutureCare, the OIG shall state the specific grounds for its determination that the FutureCare has failed to comply fully and adequately with the provision of the CIA at issue.

6. A Stipulated Penalty of $1,000 (which shall begin to accrue ten (10) days after the date FutureCare receives written notice from OIG of the failure to comply) for each day FutureCare fails to comply fully and adequately with any other obligation of this CIA. In its notice to FutureCare, OIG shall state the specific grounds for its determination that the FutureCare has failed to comply fully and adequately with the CIA obligation(s) at issue.

7. A Stipulated Penalty of $1,000 (which shall begin to accrue on the day after the obligation becomes due) for each day FutureCare fails to pay the Monitor within the time period specified in Section IV.D.1.

8. With regard to subparagraphs 1-7 above, the Stipulated Penalties described in each subparagraph shall apply to the breach described in said subparagraph. There will not be more than one Stipulated Penalty for any one breach.

C. Payment of Stipulated Penalties.

1. *Demand Letter*. Upon a finding that FutureCare has failed to comply with any of the obligations described in section XI.B and determining that Stipulated Penalties are appropriate, OIG shall notify FutureCare of: (a) FutureCare's failure to comply; and (b) the OIG's exercise of its contractual right to demand payment of the Stipulated Penalties (this notification is hereinafter referred to as the "Demand Letter").

Within fifteen (15) days of the date of the Demand Letter, FutureCare shall either: (a) cure the breach to the OIG's satisfaction and pay the applicable stipulated penalties; (b) commence cure if the breach is not susceptible to immediate cure; or (c) request a hearing before an HHS administrative law judge ("ALJ") to dispute the OIG's determination of noncompliance, pursuant to the agreed upon provisions set forth below in section XI.D. In the event FutureCare elects to request an ALJ hearing, the Stipulated Penalties shall continue to accrue until FutureCare cures, to the OIG's satisfaction, the alleged breach in dispute.

2. *Timely Written Requests for Extensions.* FutureCare may submit a timely written request to the OIG for an extension of time to perform any act or file any notification or report required by this CIA. OIG shall reasonably consider all such requests for extension of time. Notwithstanding any other provision in this section, if OIG grants the timely written request with respect to an act, notification, or report, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until one day after FutureCare fails to meet the revised deadline as agreed to by the OIG-approved extension. Subject to the provisions of the preceding paragraph, if OIG denies such a timely written request, Stipulated Penalties for failure to perform the act or file the notification or report shall not begin to accrue until two (2) business days after FutureCare receives OIG's written denial of such request or when the original obligation becomes due, whichever is later. A "timely written request" is defined as a request in writing received by OIG at least five (5) business days prior to the date by which any act is due to be performed or any notification or report is due to be filed.

3. *Form of Payment.* Payment of the Stipulated Penalties shall be made by certified or cashier's check, payable to "Secretary of the Department of Health and Human Services," and submitted to OIG at the address set forth in section VI.

4. *Independence from Material Breach Determination.* Except as otherwise noted, these provisions for payment of Stipulated Penalties shall not affect or otherwise set a standard for the OIG's determination that FutureCare has materially breached this CIA, which decision shall be made at the OIG's discretion and governed by the provisions in section XI.D, below.

D. Exclusion for Material Breach of this CIA

1. *Notice of Material Breach and Intent to Exclude.* The parties agree that a material breach of this CIA by FutureCare, as defined in paragraph D4 below, constitutes an independent basis for FutureCare'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 FutureCare has materially breached this CIA and that exclusion should be imposed, the OIG shall notify FutureCare of: (a) FutureCare'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.* FutureCare shall have thirty-five (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. FutureCare had complied with the provision of the CIA at issue;

b. the alleged material breach has been cured; or

c. the alleged material breach cannot be cured within the thirty-five (35) day period, but that: (i) FutureCare has begun to take action to cure the material breach; (ii) FutureCare is pursuing such action with due diligence; and (iii) FutureCare has provided to OIG a reasonable timetable for complying with the provision at issue.

3. *Exclusion Letter*. If at the conclusion of the thirty-five (35) day period, FutureCare fails to satisfy the requirements of section XI.D.2, OIG may exclude FutureCare from participation in the Federal health care programs. OIG will notify FutureCare in writing of its determination to exclude FutureCare ("Exclusion Letter"). Subject to the Dispute Resolution provisions in section XI.D, below, the exclusion shall go into effect thirty (30) days after the date of the Exclusion Letter. The exclusion shall have national effect and will also apply to all other Federal procurement and non-procurement programs. If FutureCare is excluded under the provisions of this CIA, FutureCare may seek reinstatement pursuant to the provisions at 42 C.F.R. §§ 1001.3001-.3004.

4. *Material Breach*. A material breach of this CIA means:

a. a failure to meet an obligation under the CIA that has materially and substantially impacted the quality of care rendered to any residents or patients of FutureCare;

b. repeated or flagrant violations of the provisions of the CIA, after notice to FutureCare, including, but not limited to, the obligations addressed in section XI of this CIA;

c. a failure to respond to a Demand letter concerning the payment of Stipulated Penalties in accordance with section XI.C above;

d. a failure to fund the Monitor in accordance with section IV.D;

e. a failure to respond to a Noncompliance Notice in accordance with section XI.A above.

E. Dispute Resolution

1. *Review Rights*. Upon the OIG's delivery to FutureCare of its Noncompliance Notice or Demand Letter or its Exclusion Letter, and as an agreed-upon contractual remedy for the resolution of disputes arising under the obligation of this CIA, FutureCare 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 specific performance, Stipulated Penalties, or exclusion sought pursuant to this CIA. Specifically, an action for specific performance, a demand for payment of Stipulated Penalties, or an action for exclusion shall be subject to review by an 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 specific performance or Stipulated Penalties shall be made within fifteen (15) days of the date of the Demand Letter, and a request for a hearing involving exclusion shall be made within thirty (30) days of the date of the Exclusion Letter.

2. *Specific Performance 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 specific performance of CIA provisions shall be: (a) whether, at the time specified in the Noncompliance Notice, FutureCare was in full and timely compliance with the provision or provisions for which the OIG seeks specific performance; and (b) whether FutureCare failed to cure, or commence cure if cure was not possible within the applicable time period provided. FutureCare shall have the burden of proving full and timely compliance and the steps taken to cure noncompliance, if any. If the ALJ finds for the OIG, FutureCare shall take those actions the OIG deems necessary to cure within (20) days after the ALJ issues such a decision, notwithstanding that FutureCare may request review of the ALJ decision by the DAB.

3. *Stipulated Penalties 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 stipulated penalties under this CIA shall be: (a) whether FutureCare was in full and timely compliance with the provision or provisions for which the OIG demands payment ; and (b) the period of noncompliance. FutureCare shall have the burden of proving its full and timely compliance with the obligations of the CIA for which the OIG demands payments; and the steps taken to cure the noncompliance, if any. If the ALJ finds for the OIG with regard to a finding of a breach of this CIA and orders FutureCare to pay Stipulated Penalties, such Stipulated Penalties shall become due and payable upon the later of twenty (20) days after the ALJ issues such a decision notwithstanding that FutureCare may appeal to the DAB.

4. *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 this CIA shall be: (a) whether FutureCare was in material breach of this CIA; (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) FutureCare has begun to take action to cure the material breach, (ii) FutureCare is pursuing such action with due diligence, and (iii) FutureCare has provided to OIG a reasonable timetable for curing the material breach.

For purposes of the exclusion herein, exclusion shall take effect only after an ALJ decision that is favorable to the OIG. FutureCare's election of its contractual right to appeal to the DAB shall not abrogate the OIG's authority to exclude FutureCare 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 twenty (20) days after the ALJ issues such a decision, unless stayed, notwithstanding that FutureCare may request review of the ALJ decision by the DAB.

5. *Review by Other Agencies*. Nothing in this CIA shall affect the right of HCFA or any other Federal or State agency to enforce any statutory or regulatory authorities with respect to FutureCare's compliance with applicable Federal and state health care program requirements.

## XII. EFFECTIVE AND BINDING AGREEMENT

A. This CIA shall be binding upon the successors, assigns, and transferees of FutureCare as provided in the Covered Facilities Agreement signed this same date. However, OIG may waive this successor liability provision upon verified proof that FutureCare has wholly divested itself of any interest or involvement, direct or indirect, in the entity, that the successor is an independent entity unrelated in any manner to FutureCare, that the successor has acquired its interest at fair market value in an arms' length transaction, and that the successor has policies, procedures and practices in effect to ensure its compliance with the requirements of Medicare, Medicaid and all other Federal health care programs. It is expressly understood and agreed that this CIA shall not be applicable to or binding upon FutureCare's management of any facility other than those specifically defined herein as Covered Facilities, subject to the provisions of the Covered Facilities Agreement entered into this same date.

B. This CIA shall become final and binding on the date the final signature is obtained on the CIA;

C. Any modifications to this CIA shall be made with the prior written consent of the parties to this CIA; and

D. The undersigned FutureCare signatories represent and warrant that they are authorized to execute this CIA on behalf of FutureCare. They are not personally obligated under the terms of the CIA. The undersigned OIG signatory represents that he is signing this CIA in his official capacity and that he is authorized to execute this CIA.

**ON BEHALF OF FUTURECARE:**

GARY L. ATTMAN
Vice President

DATE 6/8/01

IRA ORING, ESQ.
Counsel for FutureCare

DATE 6/8/01

**ON BEHALF OF THE OFFICE OF INSPECTOR GENERAL OF THE DEPARTMENT OF HEALTH AND HUMAN SERVICES:**

LEWIS MORRIS
Assistant Inspector General for Legal Affairs
Office of Inspector General
U. S. Department of Health and Human Services

DATE 6/01/01

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# FUTURECARE COVERED FACILITIES AGREEMENT

Whereas on this same date FutureCare Health and Management Corporation ("FutureCare") has entered into a Corporate Integrity Agreement ("CIA") with the Office of Inspector General ("OIG") of the United States Department of Health and Human Services ("HHS") to ensure compliance by FutureCare, its directors, employees, staff physicians, other health care professionals, and agents who are involved in the provision of resident care, with the requirements of Medicare, Medicaid and all other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) in their management and operation of certain specified "Covered Facilities" as defined in Section II.A of the CIA.

Whereas the Covered Facilities agree to be managed by an entity that shall be bound by the Corporate Integrity Agreement in the event that either the ownership of the Covered Facilities is changed, or in the event that a manager other than FutureCare assumes the management responsibility of any such facility.

Wherefore, the undersigned hereby agree as follows:

1. Subject to the provisions of Section XII.A of the CIA regarding successor liability, in the event that the ownership of a Covered Facility is sold or otherwise transferred, and FutureCare is retained as the manager of the Covered facility by the new owner, the Covered Facility agrees that, as a condition of the transfer to any new owner, FutureCare shall be expressly authorized by the new owner to continue to manage the Covered Facility and shall continue to be bound by the terms of the CIA until its expiration. Any such new owner shall be required to execute such documentation as deemed necessary by the OIG to signify such agreement.

2. Subject to the provisions of Section XII.A of the CIA regarding successor liability, in the event that the management responsibilities of any of the Covered Facilities are transferred to a manager other than FutureCare, the Covered Facility agrees that any successor manager shall be bound by the provisions of the CIA until its expiration. Any such successor manager shall be required to execute such documents as deemed necessary by the OIG to signify such agreement.

3. FutureCare and the Covered Facilities agree to execute and deliver, after the date hereof, without additional consideration, such further assurances, instruments and documents, and to take such further actions, as the OIG may reasonably request, in order to fulfill the intent of this Agreement, including furnishing appropriate corporate resolutions.

4. Nothing contained in this Agreement shall be construed to affect the express provisions of Section XII.A of the CIA, governing those circumstances under which successor liability will not be imposed in the event of a bona-fide transfer of management responsibility together with a transfer of ownership of the facilities themselves.

5. Breach of this Agreement shall subject the allegedly breaching party to the same remedies as set forth in Section XI of the CIA.

6. The undersigned signatories represent and warrant that they are authorized to execute this Agreement. The undersigned OIG signatory represents that he is signing this Agreement in his official capacity and that he is authorized to execute this Agreement.

United States Department of Health
and Human Services Office of Inspector General

By: _____ 6/5/01
Lewis Morris, Assistant Inspector General Date
for Legal Affairs

Future Care Health and Management Corporation

By: _____ 6/8/01
Gary L. Attman, Managing Principal Date

Pineview Extended Care Centre, Inc.

By: _____ 6/8/01
Gary L. Attman, Vice President Date

Cherrywood Limited Partnership
By: Bent Nursing Home, Inc., General Partner

By: _____ 6/8/01
Gary L. Attman, Secretary + V. P. Date

Canton Harbor Healthcare Center, Inc.

By: _____ 6/8/01
Gary L. Attman, Vice President Date

Future Care-Old Court, Inc.

By: _____ 6/8/01
Gary L. Attman, Vice President Date

Bay Manor Nursing Home, Inc.

By: _____ 6/8/01
Gary L. Attman, Secretary & V.P. Date

Charles Street Health Care, LLC

By: _____ 6/8/01
Gary L. Attman, Member Date

Sandtown-Winchester Nursing Home, LLC

By: _____ 6/8/01
Gary L. Attman, Member Date