

## **CLASS ACTION SETTLEMENT AGREEMENT**

This Class Action Settlement Agreement (“Settlement Agreement”) is entered into between and among plaintiffs Sarah Conte, Joanne Touchberry, Tekisha L. Nicholson, Toby Beliveau, Alexander Carlisle and Earlene N. Hunter, individually and on behalf of the proposed Settlement Class, and WakeMed.

### **1. Article 1 – Recitals**

**1.1** In March and June 2020, attorneys representing Sarah Conte, Joanne Touchberry, Tekisha L. Nicholson, Toby Beliveau, Alexander Carlisle and Earlene N. Hunter (together, “Plaintiffs”) issued a request to WakeMed for Plan-related documents pursuant to ERISA §104(b)(4), 29 U.S.C. §1024(b)(4). WakeMed produced the documents to Plaintiffs’ counsel as required by law.

**1.2** On August 25, 2020, Plaintiffs, through counsel, informed WakeMed of their intent to initiate litigation and sent a draft complaint naming as defendants WakeMed and certain affiliates, committees, and individuals. Plaintiffs, individually and as representatives of a putative class of participants and beneficiaries of the Plan, threatened to bring claims under §§502(a)(2) and (a)(3) of the Employee Retirement Income Security Act of 1974 (“ERISA”), 29 U.S.C. §§1132(a)(2)-(3). Plaintiffs allege that the defendants identified in the draft complaint breached their fiduciary duties relating to the management, operation, and administration of the Plan, and seek to recover all alleged losses resulting from each breach of duty under 29 U.S.C. §1109(a) and for other equitable and remedial relief.

**1.3** At the same time, Plaintiffs’ counsel inquired about WakeMed’s interest in determining whether this matter might be resolved before initiating formal litigation. Thereafter, Plaintiffs and WakeMed, through counsel, engaged in a series of discussions and arm’s-length

negotiations over several weeks regarding the basis for Plaintiffs' claims, additional details about the Plan's operations and administration, and other related issues.

**1.4** In December 2020, the parties agreed to participate in a private mediation in an effort to resolve all claims raised in Plaintiffs' draft complaint or that they could raise in formal litigation on behalf of all Settlement Class Members. On January 21, 2021, the parties engaged in a mediation supervised by a nationally-recognized mediator, David Geronemus, Esq., who has had extensive experience handling similar types of cases. During the mediation, the parties reached agreement on certain terms of the Settlement, and agreed to continue further discussions as to other terms. After further negotiations, the parties reached a Settlement, the terms of which are memorialized in this Settlement Agreement.

**1.5** The Plaintiffs and Lead Counsel consider it desirable and in the Settlement Class Members' best interests that the claims against WakeMed and the Released Defendant Parties be settled on behalf of the Plaintiffs and the Settlement Class Members upon the terms set forth below, and they have concluded that such terms are fair, reasonable, and adequate and that this Settlement will result in significant benefits to the Settlement Class Members and the Plan.

**1.6** WakeMed and all Released Defendant Parties admit no wrongdoing or liability with respect to any of the allegations or claims in this action and expressly deny any and all alleged breaches of fiduciary duties. WakeMed maintains that it and the Released Defendant Parties are without fault or liability and are settling the threatened Class Action solely to avoid substantial litigation costs and operational impact during a global pandemic, and with the advice and consent of its insurer(s). WakeMed contends that the Plan has been managed, operated, and administered at all relevant times reasonably and prudently, in the best interest of the Plan and Plan participants, and in compliance with ERISA and applicable regulations, including the fiduciary-duty provisions

of ERISA. This Settlement Agreement, and the discussions between the Settling Parties preceding it, shall in no event constitute, be construed as, or be deemed evidence of, an admission, or concession of fault or liability of any kind by WakeMed or any individual named in the draft complaint and identified in the Settlement Agreement.

**1.7** The Settling Parties, as defined below, have concluded it is desirable that this matter be finally settled upon the terms and conditions set forth in this Settlement Agreement.

**1.8** Therefore, the Settling Parties, in consideration of the promises, covenants, and agreements herein described, acknowledged by each of them to be satisfactory and adequate, and intending to be legally bound, do hereby mutually agree to the terms of this Settlement Agreement.

## **2. Article 2 – Definitions**

As used in this Settlement Agreement and the Exhibits hereto, unless otherwise defined, the following terms have the meanings specified below:

**2.1** “Active Account” means an individual investment account in the Plan with a balance greater than \$0 as of the date the Plan’s recordkeeper prepares the list of Settlement Class Members for delivery to the Settlement Administrator.

**2.2** “Administrative Expenses” means expenses incurred in the administration of this Settlement Agreement, including (a) all fees, expenses, and costs associated with providing the Settlement Notices to the Settlement Class Members, including but not limited to the fees of the Plan’s recordkeeper to identify the names and addresses of Settlement Class Members; (b) related tax expenses (including taxes and tax expenses as described in Paragraph 5.3); (c) all expenses and costs associated with the distribution of funds under the Plan of Allocation, including but not limited to the fees of the Plan’s recordkeeper associated with implementing this Settlement Agreement, facilitating the distribution of funds under the Plan of Allocation, and gathering the data necessary to prepare the Plan of Allocation; and (d) all fees and expenses of the Independent

Fiduciary, Settlement Administrator, and Escrow Agent. Excluded from Administrative Expenses are WakeMed's internal expenses and the Settling Parties' respective legal expenses. ***All Administrative Expenses shall be paid solely from the Settlement Amount.***

**2.3** "Alternate Payee" means a person other than a participant or Beneficiary in the Plan who is entitled to a benefit under the Plan as a result of a Qualified Domestic Relations Order.

**2.4** "Attorneys' Fees and Expenses" means the amount awarded by the Court as compensation for the services provided by Lead Counsel. The amount of attorneys' fees for Lead Counsel shall be recovered from the Settlement Amount.

**2.5** "Authorized Former Participant" means a Former Participant who has submitted a completed, satisfactory Former Participant Claim Form with a postmarked date by the Claims Deadline, or electronically submitted the same Form online no later than the Claims Deadline, set by the Court in the Preliminary Approval Order, and whose Former Participant Claim Form is accepted by the Settlement Administrator.

**2.6** "Beneficiary" means a person who currently is entitled to receive a benefit under the Plan upon the death of a Plan participant, other than an Alternate Payee. A Beneficiary includes, but is not limited to, a spouse, surviving spouse, domestic partner, or child who currently is entitled to a benefit.

**2.7** "CAFA" means the Class Action Fairness Act of 2005, 28 U.S.C. §§1711–15.

**2.8** "Claims Deadline" means a date that is no later than ten (10) calendar days before the Fairness Hearing.

**2.9** "Class Action" means the putative class action lawsuit filed by Plaintiffs against WakeMed, including the claims asserted in Plaintiffs' complaint, styled *Conte, et al. v. WakeMed, et al.* in the United States District Court for the Eastern District of North Carolina and all other

claims Plaintiffs could have brought against WakeMed or any of the Released Defendant Parties in this matter.

**2.10** “Lead Counsel” means Robbins Geller Rudman & Dowd LLP, 58 South Service Road, Suite 200, Melville, NY 11747.

**2.11** “Court” means the United States District Court for the Eastern District of North Carolina.

**2.12** “Current Participant” means a member of the Settlement Class who has an Active Account, as defined above.

**2.13** “Defendant” means WakeMed.

**2.14** “Defendant’s Released Claims” means all claims, whether known or unknown, and whether arising under federal, state, or any other law, which have been, or could have been, asserted in this matter or in any court or forum, by Defendant against Plaintiffs or any Settlement Class Members, or their attorneys (including Lead Counsel), which arise out of or relate to the institution, prosecution, or settlement of this matter, except for claims to enforce the Settlement Agreement. For the avoidance of doubt, Defendants’ Released Claims do not include any claims WakeMed may have against any Plaintiff or Settlement Class Member that WakeMed would have had against such individual even if this action had never been instituted, prosecuted, or settled.

**2.15** “Defense Counsel” means counsel for Defendant including Morgan, Lewis & Bockius LLP.

**2.16** “Escrow Agent” means Robbins Geller Rudman & Dowd LLP.

**2.17** “Fairness Hearing” means the hearing scheduled by the Court to consider (a) any objections from Settlement Class Members to the Settlement Agreement; (b) Lead Counsel’s

petition for Attorneys' Fees and Expenses and Plaintiffs' Compensation; and (c) whether to finally approve the Settlement under Rule 23 of the Federal Rules of Civil Procedure.

**2.18** "Final" means with respect to any judicial ruling, order, or judgment that the period for any motions for reconsideration, motions for rehearing, appeals, petitions for certiorari, or the like ("Review Proceeding") has expired without the initiation of a Review Proceeding, or, if a Review Proceeding has been timely initiated, that it has been fully and finally resolved, either by court action or by voluntary action of any party, without any possibility of a reversal, vacatur, or modification of any judicial ruling, order, or judgment, including the exhaustion of all proceedings in any remand or subsequent appeal and remand. The Settling Parties agree that absent an appeal or other attempted Review Proceeding, the period after which the Final Order becomes Final is thirty-five (35) calendar days after its entry by the Court.

**2.19** "Final Order" means the entry of the order and final judgment approving the Settlement Agreement, implementing the terms of this Settlement Agreement, and dismissing the Class Action with prejudice, to be proposed by the Settling Parties for approval by the Court, in substantially the form attached as Exhibit 4 hereto.

**2.20** "Former Participant" is a member of the Settlement Class who does not have an Active Account.

**2.21** "Former Participant Claim Form" means the form described generally in Paragraph 3.4.2 and substantially in the form attached as Exhibit 1.

**2.22** "Independent Fiduciary" means an independent fiduciary who will serve as a Plan fiduciary for purposes of approving and authorizing the settlement of Released Claims on behalf of the Plan in accordance with Article 3 that has no relationship or interest in any of the Settling Parties and upon which the Settlement Parties mutually agree.

**2.23** “Mediator” means David Geronemus, Esq., JAMS, 620 Eighth Avenue, 34th Floor, New York, New York 10018. If Mr. Geronemus is not available, then “Mediator” shall mean another mediator agreed to by the Settling Parties.

**2.24** “Net Settlement Amount” means the Settlement Amount minus: (a) all Attorneys’ Fees and Expenses approved by the Court and paid to Lead Counsel; (b) all Plaintiffs’ Compensation as authorized by the Court; (c) all Administrative Expenses; and (d) any appropriate reserves.

**2.25** “Plaintiffs” means Sarah Conte, Joanne Touchberry, Tekisha L. Nicholson, Toby Beliveau, Alexander Carlisle and Earlene N. Hunter.

**2.26** “Plaintiffs’ Compensation” means an amount to be determined by the Court for each Plaintiff, which shall be paid from the Settlement Amount directly to each Plaintiff.

**2.27** “Plaintiffs’ Released Claims” means any and all actual or potential claims, actions, demands, rights, obligations, liabilities, damages, attorneys’ fees, expenses, costs, and causes of action, whether arising under federal, state, or local law, whether by statute, contract, or equity, whether brought in an individual or representative capacity, whether known or unknown, suspected or unsuspected, foreseen or unforeseen, for actions during the Settlement Class Period:

**2.27.1** That were asserted in the Class Action, or that arise out of, relate to, or are based on any of the allegations, acts, omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in the Plaintiffs’ complaint; or

**2.27.2** That were asserted in any complaint filed in *Nicholson, et al. v. WakeMed, et al.*, No. 5:20-cv-00662, in the United States District Court for the Eastern District of North Carolina, or that arise out of, relate to, or are based on any of the allegations, acts,

omissions, facts, matters, transactions, or occurrences that were alleged, asserted, or set forth in any *Nicholson* complaint; or

**2.27.3** That arise out of, relate in any way to, are based on, or have any connection with the Plan's management or administration, including but not limited to: (a) the selection, oversight, retention, monitoring, compensation, fees, or performance of the Plan's investment options or service providers or advisors; (b) fees, costs, or expenses charged to, paid, or reimbursed by the Plan or any Settlement Class Member; (c) disclosures or failures to disclose information regarding the Plan's investment options or service providers; (d) the investment options offered to the Plan's participants; (e) the compensation received by the Plan's service providers; (f) the selection of service providers or advisors to the Plan; (g) the services provided to the Plan or the costs of those services; (h) the payment of compensation based on a percentage of total assets; (i) the Plan's investment structure(s); or (j) alleged breach of the duty of loyalty, care, prudence, diversification, or any other fiduciary duties or prohibited transactions; or

**2.27.4** That would be barred by *res judicata* based on entry of the Final Order; or

**2.27.5** That relate to the direction to calculate, the calculation of, and/or the method or manner of allocation of the Qualified Settlement Fund to the Plan or any member of the Settlement Class in accordance with the Plan of Allocation; or

**2.27.6** That relate to the approval by the Independent Fiduciary of the Settlement Agreement, unless brought against the Independent Fiduciary alone.

**2.28** "Plan" means the WakeMed Retirement Savings Plan, together with all other defined contribution plans sponsored by WakeMed including, but not limited to, plans offered under §457 of the Internal Revenue Code.



**2.29** “Plan of Allocation” means the methodology for allocating and distributing the Net Settlement Amount pursuant to Article 6 herein, as it may be presented, modified, or revised by the Court.

**2.30** “Preliminary Approval Order” means the order proposed by the Settling Parties and approved by the Court in connection with the Motion for Entry of the Preliminary Approval Order to be filed by Plaintiffs through Lead Counsel, as described in Paragraph 3.2 and in substantially the form attached hereto as Exhibit 2.

**2.31** “Qualified Settlement Fund” or “Settlement Fund” means the interest-bearing settlement fund account to be established and maintained by the Escrow Agent in accordance with Article 5 herein and referred to as the Qualified Settlement Fund (within the meaning of Treas. Reg. §1.468B-1).

**2.32** “Released Defendant Parties” means (a) Defendant; (b) its insurers, co-insurers, and reinsurers; (c) its past, present, and future parent corporation(s); (d) its past, present, and future affiliates, subsidiaries, divisions, joint ventures, predecessors, successors, successors-in-interest, and assigns; (e) for each of (a)–(d), its past, present, and future agents, officers, employees, boards of directors, members of their board of directors, independent contractors, representatives, attorneys, administrators, fiduciaries, accountants, auditors, advisors, consultants, personal representatives, spouses, heirs, executors, administrators, associates, employee benefit plan fiduciaries (with the exception of the Independent Fiduciary), employee benefit plan administrators, service providers to the Plan (including their owners and employees), consultants, subcontractors, and all persons acting under, by, through, or in concert with any of them; and (f) the Plan and the Plan’s fiduciaries, administrators, plan administrators, recordkeepers, service providers, consultants, and parties-in-interest.

**2.33** “Settlement” or “Settlement Agreement” refers to the compromise and agreement embodied in this agreement and its exhibits.

**2.34** “Settlement Administrator” means an independent contractor to be retained by Lead Counsel and approved by the Court to administer the Settlement and Plan of Allocation.

**2.35** “Settlement Agreement Execution Date” means that date on which the final signature is affixed to this Settlement Agreement.

**2.36** “Settlement Amount” means the sum of nine hundred and seventy-five thousand dollars (\$975,000), to be contributed to the Qualified Settlement Fund in accordance with Article 5. The Settlement Amount shall be the full and sole monetary payment to the Plan, Settlement Class, Plaintiffs, and Lead Counsel made on behalf of Defendant in connection with the Settlement effectuated through this Settlement Agreement. Defendant, and its insurer will make no additional payment in connection with the Settlement of the Class Action.

**2.37** “Settlement Class” means a settlement class certified under Rule 23(b)(1) of the Federal Rules of Civil Procedure, consisting of all persons who participated in the Plan at any time during the Settlement Class Period, including any Beneficiary of a deceased person who participated in the Plan at any time during the Settlement Class Period, and any Alternate Payee of a person subject to a Qualified Domestic Relations Order who participated in the Plan at any time during the Settlement Class Period.

**2.38** “Settlement Class Members” means all individuals in the Settlement Class, including the Plaintiffs. Settlement Class Members shall not be permitted to exclude themselves from the Settlement Class.

**2.39** “Settlement Class Period” means the period from August 25, 2014, through the date of entry of the Preliminary Approval Order.

**2.40** “Settlement Effective Date” means the date on which the Final Order becomes Final, provided that by such date the Settlement has not been terminated in accordance with Article 11.

**2.41** “Settlement Notice” means the Notice of Class Action Settlement and Fairness Hearing to be sent to Settlement Class Members identified by the Settlement Administrator after the Court’s issuance of the Preliminary Approval Order, in substantially the form attached hereto as Exhibit 3. The Settlement Notice also shall inform Settlement Class Members of a Fairness Hearing to be held before the Court, on a date to be determined by the Court, at which any Settlement Class Member satisfying the conditions set forth in the Preliminary Approval Order and the Settlement Notice may be heard regarding: (a) the terms of the Settlement Agreement; (b) the petition of Lead Counsel for award of Attorneys’ Fees and Expenses; (c) payment of Administrative Expenses; and (d) Plaintiffs’ Compensation. The Settlement Notice shall inform Former Participants of the Claims Deadline by which they must file a completed Former Participant Claim Form to be eligible for a distribution in accordance with the Plan of Allocation.

**2.42** “Settlement Period” shall be from the Settlement Effective Date and continuing for a period of six years thereafter.

**2.43** “Settlement Website” means the internet website established in accordance with Paragraph 12.3.

**2.44** “Settling Parties” means the Defendant and the Plaintiffs, on behalf of themselves, the Plan, and each of the Settlement Class Members.

**2.45** “Zero Account Balance Current Participant” means a Current Participant with an individual investment account in the Plan with a balance equal to or less than \$0 as of the date the

Settlement Administrator provides the Current Participant information to the Plan's recordkeepers in accordance with Paragraph 6.4.1.

**3. Article 3 – Review and Approval by Independent Fiduciary, Preliminary Settlement Approval, and Notice to the Settlement Class**

**3.1** The Independent Fiduciary, agreed to by Lead Counsel and Defendant, and retained by Defendant on behalf of the Plan, shall have the following responsibilities, including whether to approve and authorize the settlement of Released Claims on behalf of the Plan.

**3.1.1** The Independent Fiduciary shall comply with all relevant conditions set forth in Prohibited Transaction Class Exemption 2003-39, "Release of Claims and Extensions of Credit in Connection with Litigation," issued December 31, 2003, by the United States Department of Labor, 68 Fed. Reg. 75,632, as amended ("PTE 2003-39"), in making its determination.

**3.1.2** The Independent Fiduciary shall memorialize its determination in writing, and such notification shall be delivered no later than thirty (30) calendar days before the Fairness Hearing.

**3.1.3** All fees and expenses associated with the Independent Fiduciary's determination and performance of its other obligations in connection with the Settlement will constitute Administrative Expenses to be paid and deducted solely from the Settlement Amount.

**3.1.4** WakeMed, Defense Counsel, and Lead Counsel shall respond to reasonable requests by the Independent Fiduciary for information so the Independent Fiduciary can review and evaluate the Settlement Agreement.

**3.1.5** If WakeMed concludes that the Independent Fiduciary's determination does not comply with PTE 2003-39 or is otherwise deficient, WakeMed shall so inform the

Independent Fiduciary within fifteen (15) calendar days of receipt of the determination, copying Lead Counsel.

**3.2** Plaintiffs, through Lead Counsel, shall file with the Court motions seeking preliminary approval of this Settlement Agreement and for entry of the Preliminary Approval Order in substantially the form attached as Exhibit 2.

**3.3** WakeMed shall use reasonable efforts to cause the recordkeeper (or its designee) to provide to the Settlement Administrator all information necessary to disseminate the Settlement Notice to Settlement Class Members and implement the Plan of Allocation no later than fourteen (14) calendar days after the entry of the Preliminary Approval Order.

**3.4** WakeMed and Defense Counsel shall use reasonable efforts to respond timely to written requests, including by e-mail, from the Settlement Administrator for readily accessible data that are reasonably necessary to determine the feasibility of administering the Plan of Allocation or to implement the Plan of Allocation. The actual and reasonable expenses of any third party, including the Plan's recordkeeper, that are necessary to perform such work shall be Administrative Expenses to be deducted and paid solely from the Settlement Amount.

**3.4.1** The Settlement Administrator shall maintain the confidentiality of any data or information provided by WakeMed and the Plan's recordkeeper, and the Settlement Administrator shall be bound by any non-disclosure or security protocol required by the Settling Parties.

**3.4.2** The Settlement Administrator shall use the data provided by WakeMed and the Plan's recordkeeper solely for the purpose of meeting its obligations as Settlement Administrator, and for no other purpose.

**3.4.3** At the request of the Settling Parties, the Settlement Administrator shall provide a written protocol concerning how the Settlement Administrator will maintain and store information provided to it in order to ensure that reasonable and necessary precautions are taken to safeguard the privacy and security of such information.

**3.5** By the date and in the manner set by the Court in the Preliminary Approval Order or at least twenty-one (21) calendar days after entry of the Preliminary Approval Order, and unless otherwise set forth below, the Settlement Administrator shall:

**3.5.1** Cause to be sent to each Settlement Class Member identified by the Settlement Administrator a Settlement Notice in the form and manner to be approved by the Court, which shall be in substantially the form attached hereto as Exhibit 3 or a form subsequently agreed to by the Settling Parties and approved by the Court. The Settlement Notice shall be sent to the last known e-mail address or, absent a known e-mail address (or where a known e-mail address is determined to be invalid), then mailed by first-class mail to the last-known address, of each Settlement Class Member provided by the Plan's recordkeeper (or its designee(s)) through Defense Counsel, unless an updated address is obtained by the Settlement Administrator through its efforts to verify the last known addresses provided by the Plan's recordkeeper (or its designee(s)). Lead Counsel also shall post a copy of the Settlement Notice on the Settlement Website. The Settlement Administrator shall use commercially reasonable efforts to locate any Settlement Class Member whose Settlement Notice is returned and re-send such documents one additional time.

**3.5.2** Cause the Former Participant Claim Form, which shall be in substantially the form attached as Exhibit 1, or a form subsequently agreed to by the Settling Parties and

approved the Court, to be included with the Settlement Notice that is sent by electronic means or mailed to the Former Participants.

**3.6** No later than ten (10) calendar days after the filing of the motion for preliminary approval of the Settlement, Defense Counsel shall serve the CAFA notices in substantially the form attached as Exhibit 5 hereto on the Attorney General of the United States, the Secretary of the Department of Labor, and the attorneys general of all states in which members of the Settlement Class reside, as specified by 28 U.S.C. §1715.

#### **4. Article 4 – Final Settlement Approval**

**4.1** No later than thirty-five (35) calendar days before the Fairness Hearing, Lead Counsel shall submit to the Court a motion for final approval of the proposed Settlement and entry of the Final Order (Exhibit 4).

**4.2** The Final Order entered by the Court approving the Settlement Agreement shall provide that upon its entry all Settling Parties, the Settlement Class, and the Plan shall be bound by the Settlement Agreement and by the Final Order. The Court shall retain jurisdiction solely to enforce the Settlement Agreement, but such retention of jurisdiction shall not affect the finality of the Final Order and judgment.

#### **5. Article 5 – Establishment of Qualified Settlement Fund**

**5.1** No later than five (5) business days after entry of the Preliminary Approval Order, the Escrow Agent shall establish an escrow account at Citibank. Robbins Geller Rudman & Dowd LLP, acting as Escrow Agent, is subject to the provisions in this Settlement, and accordingly, this does not increase the risks associated with maintaining the escrow account. Robbins Geller Rudman & Dowd LLP, in its role as Escrow Agent, shall not receive any fees, in addition to attorneys' fees and expenses discussed in Article 7 below, for this service. The Settling Parties agree that the escrow account is intended to be, and will be, an interest-bearing Qualified

Settlement Fund within the meaning of Treas. Reg. §1.468B-1. In addition, the Escrow Agent timely shall make such elections as necessary or advisable to carry out the provisions of this Paragraph 5.1, including the “relation-back election” (as defined in Treas. Reg. §1.468B-1) back to the earliest permitted date. Such elections shall be made in compliance with the procedures and requirements contained in such regulations. It shall be the responsibility of the Escrow Agent to prepare and deliver, in a timely and proper manner, the necessary documentation for signature by all necessary parties, and thereafter to cause the appropriate filing to occur.

**5.2** For the purpose of §468B of the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the “administrator” shall be the Escrow Agent. The Escrow Agent, or the Settlement Administrator on its behalf, shall timely and properly cause to be filed all informational and other tax returns necessary or advisable with respect to the Qualified Settlement Fund (including without limitation applying for a Taxpayer Identification Number for the Qualified Settlement Fund and filing the returns described in Treas. Reg. §1.468B-2(k)). Such returns as well as the election described in Paragraph 5.1 shall be consistent with this Article 5 and, in all events, shall reflect that all taxes (as defined in Paragraph 5.3 below) (including any estimated taxes, interest, or penalties) on the income earned by the Qualified Settlement Fund shall be deducted and paid solely from the Qualified Settlement Fund as provided in Paragraph 5.3 hereof.

**5.3** Taxes and tax expenses are Administrative Expenses to be deducted and paid from the Qualified Settlement Fund, including but not limited to: (a) all taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by the Qualified Settlement Fund, including any taxes or tax detriments that may be imposed upon Defendant or Defense Counsel with respect to any income earned by the Qualified Settlement Fund for any period during



which the Qualified Settlement Fund does not qualify as a “qualified settlement fund” for federal or state income tax purposes; and (b) all tax expenses and costs incurred in connection with the operation and implementation of this Article 5 (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) the returns described in this Article 5). Such taxes and tax expenses shall be Administrative Expenses and shall be paid timely by the Escrow Agent solely out of the Qualified Settlement Fund without prior order from the Court. The Escrow Agent shall be obligated (notwithstanding anything herein to the contrary) to withhold from distribution to any Settlement Class Member any funds necessary to pay such amounts, including the establishment of adequate reserves for any taxes and tax expenses (as well as any amounts that may be required to be withheld under Treas. Reg. §1.468B-2(1)(2)); neither the Released Defendant Parties, Defense Counsel, nor Plaintiffs, the Settlement Class or Lead Counsel are responsible nor shall they have any liability therefor. The Settling Parties agree to cooperate with the Escrow Agent, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions of this Article 5.

**5.4** Within ten (10) calendar days after the later of (a) the date the Preliminary Approval Order is entered, or (b) the date the escrow account described in Paragraph 5.1 is established and the Escrow Agent shall have furnished to WakeMed in writing the escrow account name, IRS W-9 Form, and all necessary wiring instructions, WakeMed and/or its insurer(s) shall deposit the Settlement Amount into the Qualified Settlement Fund.

**5.5** The Escrow Agent shall invest the Qualified Settlement Fund in short-term United States Agency or Treasury Securities or other instruments backed by the Full Faith and Credit of the United States Government or an Agency thereof, or fully insured by the United States

Government or an Agency thereof, and shall reinvest the proceeds of these investments as they mature in similar instruments at their then-current market rates.

**5.6** The Escrow Agent shall not disburse the Qualified Settlement Fund or any portion except as provided in this Settlement Agreement, in an order of the Court, or in a subsequent written stipulation between Lead Counsel and Defense Counsel. Subject to the orders of the Court, the Escrow Agent is authorized to execute such transactions as are consistent with the terms of this Settlement Agreement.

**5.7** As soon as practicable, but in no event later than one-hundred fifty (150) calendar days after the Settlement Effective Date, the Net Settlement Amount will be distributed in accordance with the Plan of Allocation. Pending final distribution of the Net Settlement Amount in accordance with the Plan of Allocation, the Escrow Agent will maintain the Qualified Settlement Fund.

**5.8** The Escrow Agent, or the Settlement Administrator on its behalf, shall be responsible for making provision for the payment from the Qualified Settlement Fund of all taxes and tax expenses, if any, owed with respect to the Qualified Settlement Fund, and for all tax reporting, remittance, and/or withholding obligations, if any, for amounts distributed from it. The Released Defendant Parties, Defense Counsel, Plaintiffs, the Settlement Class and/or Lead Counsel have no responsibility or any liability for any taxes or tax expenses owed by, or any tax reporting or withholding obligations, if any, of the Qualified Settlement Fund.

**5.9** No later than February 15 of the year following the calendar year in which Defendant, its insurers, or agents make a transfer to the Qualified Settlement Fund in accordance with the terms of this Article 5, Defendant, its insurers, or agents shall timely furnish a statement to the Escrow Agent, or the Settlement Administrator on its behalf, that complies with Treas. Reg.

§1.468B-3(e)(2), which may be a combined statement under Treas. Reg. §1.468B3(e)(2)(ii), and shall attach a copy of the statement to their federal income tax returns filed for the taxable year in which Defendant, its insurers, or agents make a transfer to the Qualified Settlement Fund.

**6. Article 6 – Plan of Allocation**

**6.1** After the Settlement Effective Date, the Settlement Administrator shall cause the Net Settlement Amount to be allocated and distributed to Current Participants, Authorized Former Participants, and their Beneficiaries or Alternate Payees, in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court.

**6.2** To be eligible for a distribution from the Net Settlement Amount, a person must be a Current Participant, an Authorized Former Participant, or a Beneficiary or Alternate Payee of such a person.

**6.2.1** Current Participants shall receive their Settlement payments as contributions to their Plan account(s), as provided in Paragraph 6.4, unless the Current Participant is a Zero Account Balance Current Participant entitled to a payment by check in accordance with Paragraph 6.5.

**6.2.2** Authorized Former Participants shall receive their Settlement payments in the form of a check, as provided in Paragraph 6.6 below.

**6.2.3** Beneficiaries shall receive payments by check in amounts corresponding to their entitlement as beneficiaries of the Current Participant or of the Authorized Former Participant with respect to which the payment is made. Alternate Payees shall receive payments by check if and to the extent they are entitled to receive a portion of a Current Participant's or Authorized Former Participant's allocation under this Article 6 in accordance with the terms of the applicable Qualified Domestic Relations Order on file with the Plan's recordkeeper. The Settlement Administrator shall have sole and final

discretion to determine the amounts to be paid to Beneficiaries and Alternate Payees in accordance with the Plan of Allocation set forth in this Article 6 and as ordered by the Court, and the Settling Parties shall have no liability for such determinations.

**6.3 Calculation of Settlement Payments.** Payments to Settlement Class Members shall be calculated by the Settlement Administrator in accordance with the Plan of Allocation as follows:

**6.3.1** The Settlement Administrator shall obtain from Lead Counsel, WakeMed, or the Plan's recordkeeper the quarter-ending account balances invested in the Plan for each Settlement Class Member during the Settlement Class Period. WakeMed agrees to provide the necessary approvals authorizing transmission of such information to the Settlement Administrator.

**6.3.2** Payments to Settlement Class Members shall be calculated by the Settlement Administrator as follows:

1. The end-of-quarter balances for the Settlement Class Period of each Current Participant and each Authorized Former Participant are identified for each quarter;
2. All end-of-quarter balances identified in step 1 are summed together for each Settlement Class Member;
3. An average end-of-quarter balance for each Settlement Class Member is calculated for the Settlement Class Period;
4. For each Settlement Class Member, the average end-of-quarter balance of step 3 is divided by the sum of all of the average end-of-quarter balances of all Settlement Class Members for the Settlement Class Period;
5. Each Settlement Class Member will receive the fraction of the total Net Settlement Amount which is calculated in step 4
6. For purposes of these calculations, a zero should be included as the balance for any quarter during which an individual had no account balance, or did not participate in the Plan, at the quarter-end.

**6.3.3** No amount shall be distributed to an Authorized Former Participant, or Beneficiary or Alternate Payee, that is ten dollars (\$10.00) or less, because such an amount is *de minimis* and would cost more in processing than its value.

**6.3.4** The Settlement Administrator shall determine the total Settlement payment available to each Settlement Class Member by calculating each such individual's share of the Net Settlement Amount as set forth above.

**6.3.5** The Settlement Administrator shall complete all payment calculations for all Settlement Class Members within thirty (30) calendar days after the Settlement Effective Date.

**6.3.6** The Settlement Administrator shall utilize the calculations required to be performed herein for: (a) making the required payments to Settlement Class Members under Paragraphs 6.5 and 6.6 of the Settlement Agreement; and (b) instructing the Plan as to the amounts to be distributed to the Current Participants under Paragraph 6.4 of the Settlement Agreement and calculating the total amount to deposit into each Current Participant's Active Account(s) to fulfill this instruction.

**6.3.7** The total amount of all checks to be written by the Settlement Administrator plus the total amount of all credits that the Plan is instructed to make to Current Participants may not exceed the Net Settlement Amount. Nothing in this Paragraph is intended to modify the requirements of Paragraph 6.7 below. In the event that the Settlement Administrator determines that the Plan of Allocation would otherwise require payments exceeding the Net Settlement Amount, the Settlement Administrator is authorized to make such changes as are necessary to the Plan of Allocation such that said totals do not exceed the Net Settlement Amount.

**6.3.8** The Released Defendant Parties shall not have any responsibility for or liability whatsoever with respect to the Plan of Allocation, including, but not limited to, the determination of the Plan of Allocation or the reasonableness of the Plan of Allocation.

**6.4 Payments to Current Participants.** Current Participants will not be required to submit a Former Participant Claim Form to receive a Settlement payment.

**6.4.1** Within two (2) business days after the Settlement Administrator has completed all payment calculations for all Current Participants, the Settlement Administrator will provide notice to Defendant and send to the Plan's recordkeeper an Excel spreadsheet in a form requested by the Plan's recordkeeper containing the name and the amount of the Settlement payment to be made for each Current Participant, along with other identifying information as requested by the recordkeeper.

**6.4.2** Within ten (10) business days after the Settlement Administrator provides the Current Participant information detailed in Paragraph 6.4.1 to the Plan's recordkeeper, the recordkeeper will provide the Settlement Administrator a list of which Current Participants (if any) is a Zero Account Balance Current Participant.

**6.4.3** Thereafter, within twenty (20) business days after written notice to Defendant (or its designee) as provided in Paragraph 6.4.1, the Settlement Administrator shall effect a transfer from the Qualified Settlement Fund to the Plan's recordkeeper of the aggregate amount of all Settlement payments payable to Current Participants, as reflected in the spreadsheets provided by the Settlement Administrator, less the amount of all Settlement payments payable to Zero Account Balance Current Participants.

**6.4.4** Defendant (or its designee) shall direct the Plan's recordkeeper to credit the individual Active Account(s) of each Current Participant who is not a Zero Account

Balance Current Participant in an amount equal to that stated on the spreadsheets provided by the Settlement Administrator in relation to such Current Participant.

**6.4.5** The Settlement payment for each Current Participant who is not a Zero Account Balance Current Participant will be invested in the Plan's "Qualified Default Investment Alternative" as defined in 29 C.F.R. §2550.404c-5.

**6.5 Payments to Zero Account Balance Current Participants.** For each Zero Account Balance Current Participant, the Settlement Administrator shall issue a check from the Qualified Settlement Fund and mail the check to the address of the Zero Account Balance Current Participant then on file. Zero Account Balance Current Participants need not complete a Former Participant Claim Form.

**6.5.1** For each check issued, the Settlement Administrator shall: (a) calculate and withhold any applicable taxes associated with the payments allocable to the Current Participant; (b) report such payments and remit such tax withholdings to the Internal Revenue Service and applicable state revenue agents; and (c) issue appropriate tax forms to the Current Participant.

**6.6 Payments to Authorized Former Participants.** For each Authorized Former Participant, the Settlement Administrator will issue a single check from the Qualified Settlement Fund and mail it to the address of such Authorized Former Participant listed in his or her Former Participant Claim Form or, in the case of ambiguity or uncertainty, to the address of such person as determined by the Settlement Administrator using commercially reasonable means. The check shall be issued as follows:

**6.6.1** For each check issued, the Settlement Administrator shall: (a) calculate and withhold any applicable taxes associated with the payments allocable to the Authorized Former Participant; (b) report such payments and remit such tax withholdings to the Internal Revenue

Service and applicable state revenue agents; and (c) issue appropriate tax forms to the Authorized Former Participants.

**6.7** This Plan of Allocation is based upon preliminary data regarding the Settlement Class Members who may be entitled to Settlement payments. If the Settlement Administrator concludes that it is impracticable to implement any provision of this Plan of Allocation, the Settling Parties will modify promptly the terms of this Plan of Allocation and present such modified terms, first, to the Independent Fiduciary for its review and approval and, second, to the Court for its approval. Direct mailed or electronic notice to Settlement Class Members of such proposed modification of the Plan of Allocation shall not be required. However, notice of such proposed modification shall be posted on the Settlement Website within five (5) business days of the date that the proposed modification is submitted to the Court for its approval. If the proposed modification is implemented, notice of such modification shall be posted on the Settlement Website within five (5) business days of the date that the Court approves the modification.

**6.7.1** The Settlement Administrator shall be solely responsible for performing any calculations required by this Plan of Allocation and for posting any necessary documents to the Settlement Website.

**6.8** Promptly after completing all aspects of this Plan of Allocation, the Settlement Administrator shall send to Lead Counsel, Defense Counsel, and WakeMed one or more affidavits stating the following: (a) the name of each Settlement Class Member to whom the Settlement Administrator sent the Settlement Notice or the Former Participant Claim Form, and the address of such mailing; (b) the date(s) upon which the Settlement Administrator sent the Settlement Notice or the Former Participant Claim Form; (c) the name of each Settlement Class Member whose Settlement Notice or Former Participant Claim Form was returned as undeliverable; (d) the



efforts made by the Settlement Administrator to find the correct address and to deliver the Settlement Notice or Former Participant Claim Form for each such Settlement Class Member; and (e) the name of each Settlement Class Member to whom the Settlement Administrator made a distribution from the Net Settlement Amount, together with the amount of the distribution, the name of the payee, the date of distribution, the amount of tax withholdings, if applicable, and the date of remittance of tax withholdings to the appropriate tax authority, if applicable. These affidavits and the accompanying information shall be considered and treated as confidential by all parties and, if applicable, pursuant to any non-disclosure or security protocol required by the Settling Parties as referenced in Paragraph 3.3.1.

**6.9** The Settling Parties acknowledge that any payments to Settlement Class Members or their attorneys may be subject to applicable tax laws. Defendant, Defense Counsel, Lead Counsel, and Plaintiffs will provide no tax advice to the Settlement Class Members and make no representation regarding the tax consequences of any of the Settlement payments described in this Settlement Agreement. To the extent that any portion of any Settlement payment is subject to income or other tax, the recipient of the payment shall be responsible for payment of such tax. Deductions will be made, and reporting will be performed by the Settlement Administrator, as required by law in respect of all payments made under the Settlement Agreement. Payments from the Qualified Settlement Fund shall not be treated as wages by the Settling Parties.

**6.10** Each Settlement Class Member, Beneficiary, or Alternate Payee who receives a payment under this Settlement Agreement shall be fully and ultimately responsible for payment of any and all federal, state, or local taxes resulting from or attributable to the payment received by such person. Each such Settlement Class Member, Beneficiary, or Alternate Payee shall hold the Released Defendant Parties, Defense Counsel, Lead Counsel, and the Settlement Administrator

harmless from any tax liability, including penalties and interest, related in any way to payments under the Settlement Agreement, and shall hold the Released Defendant Parties, Defense Counsel, Lead Counsel, and the Settlement Administrator harmless from the costs (including, for example, attorneys' fees and disbursements) of any proceedings (including, for example, investigation and suit), related to such tax liability.

**6.11** All checks issued in accordance with this Plan of Allocation shall expire no later than one hundred twenty (120) calendar days after their issue date. All checks that are undelivered or are not cashed before their expiration date shall revert to the Qualified Settlement Fund.

**6.12** No sooner than thirty (30) calendar days following the end of the Settlement Period, any Net Settlement Amount remaining in the Qualified Settlement Fund after distributions, including costs, taxes and interest-earned on the Qualified Settlement Fund, shall be paid to the Plan for the purpose of defraying administrative fees and expenses of the Plan.

## **7. Article 7 – Attorneys' Fees and Expenses**

**7.1** Lead Counsel may submit an application for an award from the Settlement Fund for their reasonable Attorneys' Fees and Expenses, and any interest on such attorneys' fees and expenses at the same rate and for the same periods as earned on the Qualified Settlement Fund. Defendant reserves all rights with respect to such application. The fee and expense award shall be paid to Lead Counsel from the Qualified Settlement Fund immediately upon the Court's execution of an order awarding such fees and expenses, notwithstanding the existence of any appeal therefrom. The Court's failure to approve in part any application for Attorneys' Fees and Expenses sought by Lead Counsel shall not prevent the Settlement Agreement from becoming effective, nor shall it be grounds for termination of the Settlement.

**7.2** In the event that the Settlement Agreement does not become effective, or the Judgment or the order making the fee and expense award is reversed or modified, or the Settlement

Agreement is canceled or terminated for any other reason, and such reversal, modification, cancellation or termination becomes final and not subject to review, and in the event that the fee and expense award has been paid to any extent, then Lead Counsel with respect to the entire fee and expense award shall within thirty (30) business days from receiving notice from the Defendants' counsel or from a court of appropriate jurisdiction, refund to the Settlement Fund such fees and expenses previously paid to it from the Settlement Fund plus interest thereon at the same rate as earned on the Settlement Fund in an amount consistent with such reversal or modification. Lead Counsel, as a condition of receiving such fees and expenses, on behalf of itself and each partner and/or shareholder of it, agrees that the law firm and its partners and/or shareholders are subject to the jurisdiction of the Court for the purpose of enforcing the provisions of this paragraph. Lead Counsel and Defendant each agree to pay or reimburse the other party for attorneys' fees and expenses such other party is required to incur by reason of any formal motion, suit, or action brought to enforce this Paragraph 7.2 of the Settlement Agreement.

**7.3** Lead Counsel also intends to seek Plaintiffs' Compensation, in an amount not to exceed \$5,000 each for Plaintiffs Sarah Conte, Joanne Touchberry, Tekisha L. Nicholson, Toby Beliveau, Alexander Carlisle and Earlene N. Hunter, which shall be recovered from the Qualified Settlement Fund.

**7.4** Lead Counsel will file a motion for an award of Attorneys' Fees and Expenses at least fourteen (14) calendar days before the deadline set in the Preliminary Approval Order for objections to the proposed Settlement, which may be supplemented thereafter.

## **8. Article 8 – Release and Covenant Not to Sue**

**8.1** As of the Settlement Effective Date, the Plan and the Settlement Class Members (and their respective heirs, beneficiaries, executors, administrators, estates, past and present partners, officers, directors, agents, attorneys, predecessors, successors, and assigns), on their own

behalfes and on behalf of the Plan, shall be deemed to have fully, finally, and forever settled, released, relinquished, waived, and discharged all Released Defendant Parties from the Plaintiffs' Released Claims, whether or not such Settlement Class Members have received a monetary benefit from the Settlement, whether or not such Settlement Class Members have executed and delivered a Former Participant Claim Form, whether or not such Settlement Class Members have filed an objection to the Settlement or to any application by Lead Counsel for an award of Attorneys' Fees and Expenses, and whether or not the objections or claims for distribution of such Settlement Class Members have been approved or allowed.

**8.2** As of the Settlement Effective Date, the Plaintiffs, the Settlement Class Members, and the Plan expressly agree that they, acting individually or together, or in combination with others, shall not sue or seek to institute, maintain, prosecute, argue, or assert in any action or proceeding (including but not limited to an IRS determination letter proceeding, a Department of Labor proceeding, an arbitration or a proceeding before any state insurance or other department or commission), any cause of action, demand, or claim on the basis of, connected with, or arising out of any of the Plaintiffs' Released Claims. Nothing herein shall preclude any action to enforce the terms of this Settlement Agreement in accordance with the procedures set forth in this Settlement Agreement.

**8.3** As of the Effective Date, Defendant shall be deemed to fully, finally and forever release, relinquish and forever discharge each and every Defendant's Released Claims, as to Plaintiffs, the Settlement Class and their attorneys (including Lead Counsel). Nothing herein shall preclude any action to enforce the Settlement Agreement.

**8.4** Defendant, Lead Counsel, the Plaintiffs, Settlement Class Members, or the Plan may hereafter discover facts in addition to or different from those that they know or believe to be

true with respect to the Defendant's Released Claims and Plaintiffs' Released Claims. Such facts, if known by them, might have affected the decision to settle with Plaintiffs and the Defendant, or the decision to release, relinquish, waive, and discharge Plaintiffs and the Plaintiffs' Released Claims and Defendant's Released Claims, or the decision of a Settlement Class Member not to object to the Settlement. Notwithstanding the foregoing, Defendant, Plaintiffs, each Settlement Class Member and the Plan shall expressly, upon the entry of the Final Order, be deemed to have, and, by operation of the Final Order, shall have fully, finally, and forever settled, released, relinquished, waived, and discharged any and all Plaintiffs' Released Claims and Defendant's Released Claims. Defendant, Plaintiffs, Settlement Class Members, and the Plan acknowledge and shall be deemed by operation of the Final Order to have acknowledged that the foregoing waiver was bargained for separately and is a key element of the Settlement embodied in this Settlement Agreement of which this release is a part.

**8.5** Without admitting that California law applies to this Settlement Agreement, Defendant, each Plaintiff, each Settlement Class Member, and the Plan hereby stipulate and agree with respect to any and all Plaintiffs' Released Claims and Defendant's Released Claims that, upon entry of the Final Order, Defendant and Settlement Class Members shall be conclusively deemed to, and by operation of the Final Order shall, settle, release, relinquish, waive, and discharge any and all rights or benefits they may now have, or in the future may have, under any law relating to the releases of unknown claims, including §1542 of the California Civil Code, which provides:

A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Also, Defendant, Plaintiffs, and Settlement Class Members shall, upon entry of the Final Order with respect to the Plaintiffs' Released Claims and Defendant's Released Claims, waive any and

all provisions, rights, and benefits conferred by any law or of any State or territory within the United States or any foreign country, or any principle of common law, which is similar, comparable or equivalent in substance to §1542 of the California Civil Code.

**9. Article 9 – Representations and Warranties**

**9.1** The Settling Parties represent:

**9.1.1** That they are voluntarily entering into this Settlement Agreement as a result of arm's-length negotiations among their counsel, and that in executing this Settlement Agreement they are relying solely upon their own judgment, belief, and knowledge, and upon the advice and recommendations of their own independently selected counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof;

**9.1.2** That they assume the risk of mistake as to facts or law;

**9.1.3** That they recognize that additional evidence may have come to light, but that they nevertheless desire to avoid the expense and uncertainty of litigation by entering into the Settlement;

**9.1.4** That they have read carefully the contents of this Settlement Agreement, and this Settlement Agreement is signed freely by each individual executing this Settlement Agreement on behalf of each of the Settling Parties; and

**9.1.5** That they have made such investigation of the facts pertaining to the Settlement and all matters pertaining thereto, as they deem necessary.

**9.1.6** That at all relevant times the parties and their respective counsel have complied with Rule 11 of the Federal Rules of Civil Procedure.

**9.2** Each individual executing this Settlement Agreement on behalf of a Settling Party does hereby personally represent and warrant to the other Settling Parties that he/she has the

authority to execute this Settlement Agreement on behalf of, and fully bind, each principal that each such individual represents or purports to represent.

**10. Article 10 – Additional Terms**

**10.1** There will be a Settlement Period of six years from the Settlement Effective Date during which Defendant will comply with the terms set forth in this Article 10.

**10.2** Within eighteen (18) months after the Settlement Agreement Execution Date, the Plan fiduciaries will conduct a request for proposals (“RFP”) for investment advisory services for the Plan. The RFP shall be issued to at least three qualified service providers. After the RFP, the Plan fiduciaries may decide to retain their current consultant for investment advisory services or select a different consultant for such services.

**10.3** Within thirty-six (36) months after the Settlement Effective Date, the Plan fiduciaries or their consultant will initiate a RFP for recordkeeping and administrative services for the Plan. The RFP shall be made to at least three qualified service providers. After the RFP, the Plan fiduciaries may decide to retain their then existing service providers for recordkeeping and administrative services or select different service providers for such services.

**10.4** Within seventy-two (72) months after the Settlement Effective Date, the Plan fiduciaries or their consultant will initiate a second RFP for respectively recordkeeping and for administrative services for the Plan. The RFP shall be made to at least three qualified service providers. After the RFP, the Plan fiduciaries may decide to retain their then existing service providers for recordkeeping and administrative services or select different service providers for such services.

**11. Article 11 – Termination, Conditions of Settlement, and Effect of Disapproval, Cancellation, or Termination**

**11.1** Plaintiffs or Defendant shall have the right to terminate the Settlement Agreement, which thereby would become null and void with no further force or effect, if:

**11.1.1** Under Paragraph 3.1, (a) either the Independent Fiduciary does not approve the Settlement Agreement or disapproves the Settlement Agreement for any reason whatsoever, or WakeMed reasonably concludes that the Independent Fiduciary’s approval does not include the determinations required by the PTE 2003-39; and (b) the Settling Parties do not mutually agree to modify the terms of this Settlement Agreement to facilitate (i) an approval by the Independent Fiduciary or (ii) the Independent Fiduciary’s determinations required by PTE 2003-39;

**11.1.2** The Preliminary Approval Order or the Final Order is not entered by the Court in substantially the form submitted by the Settling Parties or in a form which is otherwise agreed to by the Settling Parties;

**11.1.3** The Settlement Class is not certified as defined herein or in a form which is otherwise agreed to by the Settling Parties;

**11.1.4** This Settlement Agreement is disapproved by the Court or fails to become effective for any reason whatsoever; or

**11.1.5** The Preliminary Approval Order or Final Order is finally reversed on appeal, or is modified on appeal, and the Settling Parties do not mutually agree to any such modifications.

**11.2** If the Settlement Agreement is terminated, deemed null and void, or has no further force or effect, the Class Action and the Released Claims asserted by Plaintiffs shall for all purposes with respect to the Settling Parties revert to their status as though the Settling Parties



never executed the Settlement Agreement. Except as provided for in Paragraph 11.4, all funds deposited in the Qualified Settlement Fund, and any interest earned thereon, less any Administrative Expenses paid or incurred, and any taxes and tax expenses paid or incurred, shall be returned to Defendant, its agents, or insurers pro rata based on their contributions to the Qualified Settlement Fund within thirty (30) calendar days after the Settlement Agreement is finally terminated or deemed null and void.

**11.3** It shall not be deemed a failure to approve the Settlement Agreement if the Court denies, in whole or in part, Lead Counsel's request for Attorneys' Fees and Expenses and/or Plaintiffs' Compensation and/or modifies any of the proposed orders relating to Attorneys' Fees and Expenses and/or Plaintiffs' Compensation.

**11.4** In the event that the Settlement Agreement is terminated, Administrative Expenses paid or incurred and taxes and tax expenses paid or incurred prior to the termination shall be paid from the Qualified Settlement Fund.

**12. Article 12 – Confidentiality of the Settlement Negotiations and Permitted Settlement-Related Communications**

**12.1** The Plaintiffs and Lead Counsel agree that they will not at any time publicly disparage or encourage or induce others to publicly disparage any of the Released Defendant Parties.

**12.2** Except as set forth explicitly below, the Settling Parties, Lead Counsel, and Defense Counsel agree to keep confidential all positions, assertions, and offers made during settlement negotiations relating to the Class Action and the Settlement Agreement, except that they may discuss the negotiations with the Settlement Class Members, the Independent Fiduciary, and the Settling Parties' tax, legal, and regulatory advisors, provided in each case that they: (a) secure

written agreements with such persons or entities that such information shall not be further disclosed; and (b) comply with this Article 12 in all other respects.

**12.3** Lead Counsel will establish a Settlement Website on which it will post the following documents or links to the following documents on or following the date of the Preliminary Approval Order: the operative Complaint, Settlement Agreement and its Exhibits, Settlement Notice, Former Participants Claim Form, Plaintiffs' Motion for Attorneys' Fees and Expenses and Award of Compensation to Plaintiffs, any Court orders related to the Settlement, any amendments or revisions to these documents, and any other documents or information mutually agreed upon by the Settling Parties ("Settlement Website Information"). No other information or documents will be posted on the Settlement Website unless agreed to in advance by the Settling Parties in writing. Lead Counsel will take down the Settlement Website ninety (90) calendar days after the receipt of the affidavit(s) referenced in Paragraph 6.8.

**12.4** Other than the Settlement Website Information and a description of the Settlement Agreement's terms and status on Lead Counsel's individual website or in its firm resume or similar types of materials, the Plaintiffs and Lead Counsel agree that they will not issue any other public statement regarding the Settlement, including press releases.

**12.5** The Plaintiffs and Lead Counsel agree that they will keep the Settlement confidential and will not disclose the fact of the Settlement to anyone, except for counsel in the *Nicholson* case, until after the motion for preliminary approval of the Settlement has been filed with the Court, other than as necessary for the administration of the Settlement including to the Settlement Administrator.

### **13. Article 13 – General Provisions**

**13.1** The Settling Parties agree to cooperate fully with each other in seeking Court approvals of the Preliminary Approval Order and the Final Order, and to do all things as may

reasonably be required to effectuate preliminary and final approval and the implementation of this Settlement Agreement according to its terms. The Settling Parties agree to provide each other with copies of any filings necessary to effectuate this Settlement reasonably in advance of filing. Lead Counsel further agrees to cooperate fully with Defense Counsel in securing dismissal of the *Nicholson* complaint.

**13.2** This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder are not, and shall not be construed as, deemed to be, or offered or received as evidence of an admission by or on the part of any Released Defendant Party of any wrongdoing, fault, or liability whatsoever by any Released Defendant Party, or give rise to any inference of any wrongdoing, fault, or liability or admission of any wrongdoing, fault, or liability in the Class Action or any other proceeding, and Defendant and Released Defendant Parties admit no wrongdoing, fault, or liability with respect to any of the allegations or claims in the Class Action. This Settlement Agreement, whether or not consummated, and any negotiations or proceedings hereunder, shall not constitute admissions of any liability of any kind, whether legal or factual. Subject to Federal Rule of Evidence 408, the Settlement and the negotiations related to it are not admissible as substantive evidence, for purposes of impeachment, or for any other purpose. Defendant denies all allegations of wrongdoing. Defendant contends that the Plan has been managed, operated, and administered at all relevant times reasonably and prudently, in the best interest of the Plan's participants, and in accordance with ERISA, including that statute's fiduciary duty provisions.

**13.3** Neither the Settling Parties, Lead Counsel, nor Defense Counsel shall have any responsibility for or liability whatsoever with respect to: (a) any act, omission, or determination of the Settlement Administrator, or any of their respective designees or agents, in connection with

the administration of the Settlement Amount or otherwise; (b) the determination of the Independent Fiduciary; (c) the management, investment, or distribution of the Qualified Settlement Fund; (d) the Plan of Allocation as approved by the Court; (e) the determination, administration, calculation, or payment of any claims asserted against the Qualified Settlement Fund; (f) any losses suffered by, or fluctuations in the value of, the Qualified Settlement Fund; or (g) the payment or withholding of any taxes, expenses, and/or costs incurred in connection with the taxation of the Qualified Settlement Fund or tax reporting, or the filing of any returns. Further, neither Defendant nor Defense Counsel shall have any responsibility for, or liability whatsoever with respect to, any act, omission, or determination of Lead Counsel in connection with the administration of the Settlement Amount or otherwise.

**13.4** Only Lead Counsel shall have standing to seek enforcement of this Settlement Agreement on behalf of Plaintiffs and Settlement Class Members. Any individual concerned about Defendant's compliance with this Settlement Agreement may so notify Lead Counsel and direct any requests for enforcement to them. Lead Counsel shall have the full and sole discretion to take whatever action they deem appropriate, or to refrain from taking any action, in response to such request. Any action by Lead Counsel to monitor or enforce the Settlement Agreement shall be done without additional fee or reimbursement of expenses beyond the Attorneys' Fees and Expenses determined by the Court.

**13.5** This Settlement Agreement shall be interpreted, construed, and enforced in accordance with applicable federal law and, to the extent that federal law does not govern, North Carolina law.

**13.6** The Settling Parties agree that any and all disputes concerning compliance with the Settlement Agreement, with the exception of any and all disputes concerning compliance with Article 8, shall be exclusively resolved as follows:

**13.6.1** If a Settling Party has reason to believe that a legitimate dispute exists concerning the Settlement Agreement, other than any and all disputes concerning compliance with Article 8, the party raising the dispute shall first promptly give written notice under the Settlement Agreement to the other party including in such notice: (a) a reference to all specific provisions of the Settlement Agreement that are involved; (b) a statement of the alleged non-compliance; (c) a statement of the remedial action sought; and (d) a brief statement of the specific facts, circumstances, and any other arguments supporting the position of the party raising the dispute;

**13.6.2** Within twenty-one (21) calendar days after receiving the notice described in Paragraph 13.6.1, the receiving party shall respond in writing with its position and the facts and arguments it relies on in support of its position;

**13.6.3** For a period of not more than twenty-one (21) calendar days following mailing of the response described in Paragraph 13.6.2, the Settling Parties shall undertake good-faith negotiations, which may include meeting in person or conferring by telephone, to attempt to resolve the dispute;

**13.6.4** If the dispute is not resolved during the period described in Paragraph 13.6.3, the parties shall conduct a mediation of the dispute with the Mediator on the earliest reasonably practicable date; provided, however, that the scope of such mediation shall be expressly limited to the dispute;

**13.6.5** The Settling Parties intend to resolve any disputes quickly, expeditiously, and inexpensively. Accordingly, there shall be no discovery allowed in connection with mediation under Paragraphs 13.6.4, and no witnesses shall be presented or examined during the mediation. The Mediator will make a final decision resolving the dispute based solely on the papers, documents, testimony, and arguments of counsel presented to him.

**13.6.6** In any mediation under Paragraphs 13.6.4, each Settling Party shall bear its own fees and costs.

**13.7** The Settling Parties agree that the Court has personal jurisdiction over the Settlement Class and Defendant and shall maintain personal and subject-matter jurisdiction for purposes of resolving any disputes between the Settling Parties concerning compliance with this Settlement Agreement that are not resolved under Paragraph 13.6. Any motion or action to enforce this Settlement Agreement—including by way of injunction—may be filed in the U.S. District Court for the Eastern District of North Carolina, or asserted by way of an affirmative defense or counterclaim in response to any action asserting a violation of the Settlement Agreement.

**13.8** The Settlement Agreement may be executed by exchange of executed signature pages, and any signature transmitted by facsimile or e-mail attachment of scanned signature pages for the purpose of executing this Settlement Agreement shall be deemed an original signature for purposes of this Settlement Agreement. The Settlement Agreement may be executed in any number of counterparts, and each of such counterparts shall for all purposes be deemed an original, and all such counterparts shall together constitute the same instrument.

**13.9** Each party to this Settlement Agreement hereby acknowledges that he, she, or it has consulted with and obtained the advice of counsel prior to executing this Settlement Agreement and that this Settlement Agreement has been explained to that party by his, her, or its counsel.

**13.10** Any headings included in this Settlement Agreement are for convenience only and do not in any way limit, alter, or affect the matters contained in this Settlement Agreement or the Articles or Paragraphs they caption. References to a person are also to the person's permitted successors and assigns, except as otherwise provided herein. Whenever the words "include," "includes," or "including" are used in this Settlement Agreement, they shall not be limiting but shall be deemed to be followed by the words "without limitation."

**13.11** Before entry of the Preliminary Approval Order and approval of the Independent Fiduciary, this Settlement Agreement may be modified or amended only by written agreement signed by or on behalf of all Settling Parties. Following approval by the Independent Fiduciary, this Settlement Agreement may be modified or amended only if such modification or amendment is set forth in a written agreement signed by or on behalf of all Settling Parties and only if the Independent Fiduciary approves such modification or amendment in writing. Following entry of the Preliminary Approval Order, this Settlement Agreement may be modified or amended only by written agreement signed on behalf of all Settling Parties, and only if the modification or amendment is approved by the Court.

**13.12** This Settlement Agreement and the exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any party concerning the Settlement other than those contained in this Settlement Agreement and the exhibits thereto.

**13.13** The provisions of this Settlement Agreement may be waived only by an instrument in writing executed by the waiving party and specifically waiving such provisions. The waiver of any breach of this Settlement Agreement by any party shall not be deemed to be or construed as a

waiver of any other breach or waiver by any other party, whether prior, subsequent, or contemporaneous, of this Settlement Agreement.

**13.14** Each of the Settling Parties agrees, without further consideration, and as part of finalizing the Settlement hereunder, that it will in good faith execute and deliver such other documents and take such other actions as may be necessary to consummate and effectuate the subject matter of this Settlement Agreement.

**13.15** All of the covenants, representations, and warranties, express or implied, oral or written, concerning the subject matter of this Settlement Agreement are contained in this Settlement Agreement. No party is relying on any oral representations or oral agreements. All such covenants, representations, and warranties set forth in this Settlement Agreement shall be deemed continuing and shall survive the Effective Date of Settlement.

**13.16** All of the exhibits attached hereto are incorporated by reference as though fully set forth herein. The exhibits shall be: Exhibit 1 – Former Participant Claim Form; Exhibit 2 – Preliminary Approval Order; Exhibit 3 – Notice of Class Action Settlement and Fairness Hearing; Exhibit 4 – Final Order; and Exhibit 5 – Form of CAFA Notice.

**13.17** No provision of the Settlement Agreement or of the exhibits attached hereto shall be construed against or interpreted to the disadvantage of any party to the Settlement Agreement because that party is deemed to have prepared, structured, drafted, or requested the provision.

**13.18** Any notice, demand, or other communication under this Settlement Agreement (other than the Settlement Notice, or other notices given at the direction of the Court) shall be in writing and shall be deemed duly given upon receipt if it is addressed to each of the intended recipients as set forth below and personally delivered, sent by registered or certified mail postage prepaid, or delivered by reputable express overnight courier;



IF TO THE PLAINTIFFS:

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IF TO DEFENDANT:

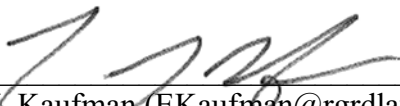
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Dated: April 26, 2021

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