

RELEASE AND SETTLEMENT AGREEMENT

This Release and Settlement Agreement (hereinafter referred to as “Agreement”) is made and entered into this ___ day of _____, 2021 by and between the following: Plaintiff KATHRYN MAGILL (“Plaintiff”) and FORSYTH COUNTY, GEORGIA (“Defendant”). Plaintiff and Defendant may be collectively referred to as the “Parties to the Agreement.”

WITNESSETH:

WHEREAS, Plaintiff filed the following action, Kathryn Magill v. Forsyth County, Georgia, Civil Action File No. 18SC-1025-A, in the State Court of Forsyth County (the “Lawsuit”), same being an action for personal and other injuries arising out of a vehicle accident that occurred on November 28, 2017 (the “Incident”); and

WHEREAS, the Lawsuit asserts Plaintiff’s claims for damages, personal injuries, medical bills, lost income, physical and mental distress, future damages and suffering, compensatory special damages, general damages, medical and other expenses, past, present and future pain and suffering, past, present and future medical expenses, past, present, and future pain and suffering, costs, interest, and all other and further relief that the Court may deem just and proper under the circumstances; and

WHEREAS, Plaintiff and Defendant wish to settle the disputed claims arising out of or relating to the Lawsuit and the Incident without the necessity of further expense, and without admission of liability on the part of Defendant.

NOW, THEREFORE, in consideration of the covenants and promises set forth herein and the payment of **ONE HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$161,500.00)** (the “Settlement Amount”) to and for the benefit of Plaintiff

Kathryn Magill, the receipt and sufficiency of which is hereby acknowledged, the Parties to the Agreement do hereby agree as follows:

SETTLEMENT AMOUNT

1. **ONE HUNDRED SIXTY-ONE THOUSAND FIVE HUNDRED DOLLARS AND ZERO CENTS (\$161,500.00)** shall represent the full, final, and complete payment of all claims of Kathryn Magill relating to or arising out of the Lawsuit and Incident, as further described below.

SETTLEMENT AMOUNT PAYMENT

2. The Settlement Amount shall be issued as follows:

a. Association County Commissioners of Georgia (“ACCG”) will pay the Settlement Amount in a single check made payable to Kathryn Magill and Raymond V. Giudice, P.C.

b. The check shall be delivered to Raymond V. Giudice, P.C. and held in trust until the Lawsuit is dismissed by Plaintiff and this agreement is executed by Plaintiff and returned to counsel for Forsyth County, Georgia.

RELEASE

3. For and in consideration of the payment of the Settlement Amount described above, Plaintiff, for herself, her heirs, administrators, executors, successors, and assigns, does hereby fully release, remise, acquit, and forever discharge Forsyth County, Georgia, ACCG, and all of their respective insurers, employees, elected officials, officers, directors, shareholders, agents, servants, successors, heirs, administrators, executors, attorneys, sureties, and assigns of Forsyth County, Georgia, ACCG, and any other persons, firms, organizations, associations, partnerships, joint ventures, corporations, or entities who were, are, or may hereafter be affiliated or in privity with

Forsyth County, Georgia, ACCG (collectively, the “Released Parties”) from any and all past, present, or future claims, known and unknown, including claims for damages, personal injuries, past, present and future medical expenses, past, present, and future pain and suffering, lost wages, lost actual or potential earnings or benefits, diminished capacity to labor, property damage, repair or replacement costs, diminished value, loss of use, attorney’s fees, costs of litigation, loss of services, society or consortium, mental anguish, future wrongful death, any other pecuniary and non-pecuniary loss arising out of or relating in any way to the event or transaction identified in the Lawsuit and Incident and any and all insurance claims, indemnity claims, and contribution claims related or arising out of the event or transaction identified in the Lawsuit or Incident, any and all actual, general, special, compensatory, economic, incidental, and consequential damages, any and all other permitted damages that have been incurred or will be incurred, and any and all judgments, debts, liabilities, liens, compensation, expenses, attorney’s fees, causes of action, grievances, demands, appeals, suits, and proceedings of any kind and nature, whether based on a tort, statute, contract, vicarious liability, or other theory of recovery, whether for compensatory, treble, or punitive damages, or other relief, whether at law or equity or otherwise, whether now known or unknown to Plaintiff, which Plaintiff ever had, now has, or which may hereafter accrue or otherwise be acquired by Plaintiff, arising out of or relating in any way to the event or transaction identified in the Lawsuit and Incident, including without limitation, any and all claims against the Released Parties. This paragraph of the Agreement is intended to be a general release of all known and unknown claims against the Released Parties related in any way to the event or transaction identified in the Lawsuit and Incident.

DISMISSAL OF LAWSUIT

4. The Lawsuit shall be dismissed in its entirety, with prejudice, and the Parties to the Agreement shall bear their own costs, fees, disbursements, and expenses in the Lawsuit, including, without limitation, attorney's fees. At the time of execution of this Agreement, any documents necessary to accomplish such a dismissal of the Lawsuit in its entirety with prejudice, in a form satisfactory to Forsyth County, Georgia, shall be executed by Plaintiff and/or counsel for Plaintiff, Raymond V. Giudice, P.C., and may thereafter be filed with the Forsyth County State Court without further notice. The execution of such dismissal documents in a form satisfactory to Forsyth County, Georgia is a material precondition of the settlement contemplated by this Agreement, including, without limitation, any obligation by ACCG to make payment of the Settlement Amount specified in Paragraph 1 hereto. Within seven (7) days of receipt of the Settlement Amount specified in Paragraph 1, Plaintiff agrees to file the aforementioned documents that will dismiss the Lawsuit in its entirety with prejudice.

NO ADMISSION OF LIABILITY

5. The Parties to the Agreement hereby acknowledge and agree that payment of the Settlement Amount is not an admission of liability on the part of the Released Parties, but is made solely in order to compromise disputed claims, known and unknown, for the purpose of avoiding further litigation regarding the Lawsuit and the incident forming the basis of the Lawsuit.

FULL AND COMPLETE SETTLEMENT

6. It is understood and agreed that this settlement constitutes a full, final, and comprehensive settlement and release by Plaintiff as to the Released Parties regarding the Lawsuit, that all prior discussions and negotiations, whether written or oral, have no binding or legal effect, and that the terms of this Agreement may not be amended orally.

NO COMMENCEMENT OF CIVIL ACTION

7. The Plaintiff agrees that she will not hereafter commence any civil action or make any claims against the Released Parties arising out of or related to the claims released herein, nor will she authorize or induce any other person or entity to make or assert such claims, to specifically include any allegation or claim for a loss of consortium. The Released Parties and the Plaintiff agree that they shall retain any and all claims related to the enforcement of this Agreement.

7.1 Plaintiff acknowledges and represents that a portion or all of the consideration as hereinabove set forth may be paid by the liability insurance carrier for the Released Parties, without the written consent of the Released Parties. Plaintiff further acknowledges written notice *before* the execution of this Agreement that the said liability insurance carrier is acting as an independent contractor and not as an agent of Forsyth County, Georgia, and further understands that this Agreement is not intended to preclude or prejudice any claims that the Released Parties may have or claim to have against Plaintiff or any third persons. Plaintiff acknowledges written notice, as provided in O.C.G.A. § 33-7-12, of the fact that none of the Released Parties are precluded from assertion of claims against the Plaintiff. This paragraph is intended to fulfill the spirit and letter of O.C.G.A. § 33-7-12.

AUTHORITY TO EXECUTE

8. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the Parties to the Agreement, their respective heirs, executors, administrators, legal representatives, successors, and assigns. By signing below, each Party to this Agreement so executing specifically acknowledges and warrants that he/she has full authority to bind the Party to the terms herein.

WAIVER OF KNOWN AND UNKNOWN CLAIMS OF INJURIES

9. Plaintiff waives, and assumes the risk of, any and all claims, injuries, or damages which may exist as of this date but which Plaintiff does not know or suspect to exist, or which Plaintiff knows exist but as to which she does not know or suspect the true nature, seriousness, extent, or prognosis, whether through ignorance, oversight, error, negligence, incomplete medical or scientific knowledge or uncertain or incomplete prognosis, incomplete discovery in the Lawsuit, or otherwise, and which, if known, would materially affect Plaintiff's decision to enter into this Agreement. Plaintiff further agrees that Plaintiff has accepted payment of the sums specified herein as a complete compromise of matters involving disputed issues of law and fact. Plaintiff understands and agrees that if the law or facts with respect to which this Agreement is executed are found hereafter to be other than, or different from, the law and facts now believed by Plaintiff to be true, Plaintiff expressly accepts and assumes the risk of such possible difference in law or fact and agrees that this Agreement shall be and remain effective notwithstanding any such difference. As an inducement for the Released Parties to pay the consideration set forth above, Plaintiff voluntarily assumes any and all risks that, as a result of any of the matters alleged in the Lawsuit, Plaintiff may in the future suffer or manifest some new or further property damage, personal injury, harm, disorder, or ailment (including without limitation physical, mental, emotional, nervous, or other injury, harm, or disorder), or may sustain or incur other loss or damage, any or all of which is now unanticipated, unknown, or unsuspected to Plaintiff in kind or extent and, without limiting the generality of this Agreement, Plaintiff expressly does forever irrevocably and fully release, remit, and discharge the Released Parties from all claims, including ones having to do with any financial damage, property damage, personal injury, harm, disorder,

ailment, surgery, treatment, loss, medical expense, medical lien, or damage, and any and every risk thereof.

NO RESERVATION OF CLAIMS

10. No claims, whether known or unknown or suspected or unsuspected to Plaintiff, are reserved by Plaintiff, for herself or anyone who might claim by or through Plaintiff. Plaintiff expressly waives any and all defenses, rights, and benefits which Plaintiff may have or which may be derived from the provisions of applicable law which might otherwise limit the scope or extent of this Agreement.

MEDICARE AND MEDICAID

11. Plaintiff stipulates that there exists no Medicare or Medicaid liens or unpaid Medicare or Medicaid expenses arising out of conditional payments (42 CFR 411.24) by Medicare or Medicaid for eligible medical services received related to the incident forming the basis for the Lawsuit and the Incident. In the event that a claim or lien for any such conditional payment is pursued by any entity acting on behalf of Medicare or Medicaid, or the Georgia Department of Community Health, Plaintiff agrees to be fully responsible for payment for said claim(s) (including penalties, if any) and shall indemnify and hold the Released Parties harmless for such claim(s).

PLAINTIFF'S REPRESENTATIONS REGARDING DEBTS AND OTHER ITEMS

12. Plaintiff affirmatively declares and represents, and the Released Parties expressly rely upon, the following:

- a. Plaintiff has satisfied her responsibilities set forth in O.C.G.A. § 33-24-56.1, and the Released Parties have no responsibilities regarding the requirements of the statute or any associated financial liabilities to any entities entitled to notice;

b. Plaintiff will satisfy any legal and enforceable liens, subrogation claims, outstanding bills, or demands for payment of any expenses related to the incident forming the basis of the Lawsuit, including those regarding medical providers, hospitals, and attorneys; and,

c. Plaintiff further stipulates that there are no other pecuniary beneficiaries who might be able to bring a claim to all or some of the Settlement Amount.

EXECUTION IN COUNTERPARTS

13. This Agreement may be executed in one or more counterparts, provided that each Party to this Agreement shall sign at least one counterpart, and all such counterparts, together, shall constitute one agreement binding on each of the Parties to the Agreement, notwithstanding that all Parties are not signatories to the same counterpart.

NO TRANSFER OR SUBROGATION OF CLAIMS

14. The Parties to the Agreement further represent and warrant to each other that no claims addressed by this Agreement have been assigned or transferred, expressly or impliedly by operation of law, to any other person or party and no person or parties are subrogated to the rights of the Parties to the Agreement in this matter and that all claims released herein are owned exclusively by the Parties to the Agreement with sole authority to release them.

SEVERABILITY

15. If any Paragraph or part of this Agreement is found void or unenforceable, the remainder of the Agreement shall not be affected by such a finding.

INDEPENDENT JUDGMENT

16. The undersigned have read this Agreement and acknowledge that they have had the advice of counsel and that no promise or representation of any kind, other than as contained herein,

has been made by the Released Parties or anyone acting for them. The Parties to the Agreement have relied fully and completely on their own judgment and the advice of their attorneys in executing this Agreement.

GOVERNING LAW

17. This Agreement shall be construed in accordance with the laws of the State of Georgia.

COMPETENCY TO SIGN

18. Each of the Parties to the Agreement declares that he/she or his/her undersigned representative is eighteen (18) years of age or older, of sound mind and laboring under no disabilities.

AUTHORSHIP BY THE PARTIES TO THE AGREEMENT

19. This Agreement has been prepared with the combined efforts of all of the Parties to the Agreement and, as such, no construction of this Agreement will prejudice one Party over the other.

WE HAVE READ THIS AGREEMENT AND UNDERSTAND AND AGREE TO THE TERMS AND CONDITIONS CONTAINED IN THE AGREEMENT.

Kathryn Magill, Plaintiff

Date

Sworn to and subscribed
before me this ___ day of _____, 2021.

Notary Public
My commission expires: _____

Approved:

Cindy Jones Mills, Chair
Forsyth County Board of Commissioners

Date

APPROVED AS TO FORM ONLY:

Raymond V. Giudice, P.C.

Raymond V. Giudice
Georgia Bar Number: 296272
280 S. Atlanta Street, Suite 300
Roswell, GA 30075
Attorney for Plaintiff

APPROVED AS TO FORM ONLY:

JARRARD & DAVIS, LLP

Ken E. Jarrard
Georgia Bar No. 389550
222 Webb Street
Cumming, Georgia 30040
Attorney for Defendant