

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“**Agreement**”) is made and entered into this \_\_\_\_ day of February, 2011 by and between Washington State Nurses Association (“**WSNA**”) and King County Public Hospital District No. 2 d/b/a Evergreen Hospital Medical Center (“**Evergreen**”).

### Recitals

A. WSNA is and was the exclusive bargaining representative for all regularly scheduled full-time, regularly scheduled part-time and per diem registered nurses engaged in patient care at Evergreen Hospital, excluding supervisors, nursing care coordinators, temporary nurses, students, and all other employees at Evergreen, for the time period from September 15, 2007 through the date of this Agreement (“**the Represented Employees**”).

B. In a lawsuit filed in King County Superior Court under Cause Number 10-2-32896-3 SEA (“**the Lawsuit**”), WSNA asserted, *inter alia*, that Evergreen violated RCW 49.46.130 and RCW 49.52.050 by failing to pay the Represented Employees for missed rest breaks and violated RCW 49.46.070 by failing to maintain wage records relating to rest breaks. Evergreen answered WSNA’s complaint, denying the allegations and liability, and asserting affirmative defenses.

C. The parties desire to resolve their differences and to fully and finally settle any and all claims between them and for and on behalf of all affected employees relating to the Lawsuit.

### Agreement

WHEREFORE, in furtherance of the foregoing recitals and for valuable consideration, including but not limited to the mutual promises contained in this Agreement, and the receipt and sufficiency of which consideration is hereby acknowledged, the parties agree as follows, to wit:

1. Evergreen’s Obligations. Evergreen agrees to both retroactive and prospective relief for the benefit of its current and past nurse employees (*i.e.*, the Represented Employees).

a. Missed Breaks Process (to be put into effect by June 1, 2011):

(1) Evergreen’s Managers will adopt procedures to assure that the Represented Employees receive their rest breaks. Staffing for the Represented Employees on break will include consideration of current Evergreen staffing patterns in accordance with its Plan for Provision of Care.

(2) Evergreen will keep records of missed rest breaks. Evergreen will modify its Time and Attendance System (“**TAS**”) to provide a

method for the Represented Employees to record missed rest breaks.

- (a) For each shift, Evergreen will indicate the number of rest breaks to which each Represented Employee is entitled.
  - (b) If a Represented Employee is unable to take a rest break, the Represented Employee will enter a notation into the TAS.
- (3) Evergreen will compensate each Represented Employee for all missed rest breaks. If Evergreen denies payment for a missed rest break, the Represented Employee's supervisor shall insert a notation in the TAS stating the reason for the denial. Both the Represented Employee and WSNA will be notified in writing on a bi-weekly basis of denials and the reason for the denial.
  - (4) If feasible and practicable based on Evergreen's payroll system, all paychecks given to the Represented Employees will reflect payments for missed rest breaks on a separate category on the paycheck.
  - (5) Missed rest breaks shall be treated as hours worked and will be compensated at the rate of 15 minutes of straight time. If, however, the missed rest break extends beyond the normal work day (as defined in Section 7.1 of the Collective Bargaining Agreement), then compensation will be at the overtime rate for that 15 minutes. For example, if a Represented Employee is scheduled for an 8-hour shift and misses one 15-minute rest break, he or she will be paid for 8 hours and 15 minutes, and 15 minutes of that time will be paid at the overtime rate. However, if a Represented Employee is scheduled for an 8-hour shift and misses one 15-minute rest break but works only 6 hours, he or she will be paid for 6 hours and 15 minutes at straight time. Provided, however, that in the event of legislative or judicial (Division I of the Court of Appeals or Washington Supreme Court) action which states that a missed rest break may be compensated at straight time rates, a missed rest break shall then be at straight time rates.
  - (6) In the event a rest break is interrupted within the first 10 minutes thereof, the Represented Employee will have the option of a new rest break or electing to be paid for a missed rest break. In the event a rest break is interrupted after the first 10 minutes thereof, the Represented Employee may resume and complete the remaining time of the 15 minute break when feasible or elect to be paid for a missed rest break.
  - (7) Evergreen will promptly investigate any accusation of retaliation

against a Represented Employee for exercising the rights stated hereinabove and if substantiated will provide retraining to ensure that retaliation does not reoccur. Recognizing the possibility of abuse of rest breaks, Evergreen reserves the right to employ corrective action as it deems necessary and appropriate.

- (8) Evergreen will provide WSNA on request department-level data on missed rest breaks.
  - (9) Evergreen and WSNA agree to bring to the Conference Committee for discussion and potential solutions any concern about departments with excessive missed rest breaks and any concern about compliance with this Agreement.
- b. Education Process (to be put into effect prior to June 1, 2011): Evergreen will conduct mandatory staff meetings in all departments to train all employees on the procedures for missed breaks. Topics to be covered will include:
- (1) Use of the TAS for documenting missed breaks.
  - (2) Each unit's/department's determination as to how it will comply with the process and create unit specific procedures for assuring that the Represented Employees receive rest breaks.
  - (3) Education on the importance of Represented Employees taking all their rest breaks and the right of the Represented Employees to record and be paid for missed rest breaks without fear of retaliation.
  - (4) Education on the importance of assuring that the Represented Employees take all rest breaks free from interruption unless patient needs demand otherwise.
  - (5) Training of managers of their responsibility to create conditions which allow the Represented Employees to take their rest breaks.
  - (6) Training of managers that emphasizes that Evergreen will not tolerate retaliation against any Represented Employee who records a missed rest break; as well as when and how to employ corrective action for abuse of rest breaks if determined necessary and appropriate.
- c. Back Wages, Attorneys' Fees and Costs:
- (1) Evergreen will pay the sum of \$375,000 to WSNA as and for

reimbursement for all past rest breaks that may have been missed by the Represented Employees and for all of WSNA's attorneys' fees and costs in this matter. WSNA will inform Evergreen of the amount of its attorney's fees, costs and participation incentive awards and Evergreen will provide WSNA with a check for this amount. Evergreen will retain the remaining amount and distribute it to the Represented Employees as described below. A judgment will be presented to the Court for entry.

- (2) WSNA shall be solely responsible for determining the amount of back wages to be paid to each of the Represented Employees but shall do so on a fair and equitable basis and shall only distribute back wages to those Represented Employees who have executed a release of any further entitlement to back wages for missed rest breaks. Within five (5) days of receiving the statement of the amount due per Represented Employee from WSNA, Evergreen will issue checks with release language to the Represented Employees. Any taxes and authorized deductions from wages shall be withheld and paid appropriately by Evergreen. The release language on the check will include a release of Evergreen for further entitlement to back wages for missed rest breaks. Any Represented Employee who affirmatively refuses and returns the check within sixty (60) days of issuance is not bound by this settlement. Evergreen will retain the funds attributable to checks that have been affirmatively refused and returned.
- (3) WSNA will save, indemnify and hold Evergreen harmless from any claims of Represented Employees who have received back wages in accordance with and pursuant to this Agreement.

2. Release and Discharge.

- a. WSNA hereby releases and discharges Evergreen from any and all actions, claims and demands, known or unknown, anticipated or unanticipated, of whatsoever kind or nature, including, but not limited to, those which any way relate to, bear upon or are on account of the Lawsuit, that have accrued or may accrue through the implementation of the provisions of this Agreement.
- b. This Release and Discharge by WSNA shall also and does hereby apply to and is for the benefit of all of Evergreen's past, present and future officers, directors, attorneys, agents, servants, representatives, employees, subsidiaries, affiliates, partners, predecessors and successors in interest, insurers and assigns and all other persons, firms or corporations with whom any of the former have been, are now, or may hereafter be affiliated.

- c. This Release and Discharge is and shall be a fully binding and complete settlement between WSNA and Evergreen and their respective assigns and successors and the parties acknowledge and agree that the Release and Discharge set forth above is a general release, not contingent on any future event, action or inaction. The parties expressly waive and assume the risk of any and all claims for damages which exist as of this date with respect to each other, but of which the parties do not know or suspect to exist, whether through ignorance, oversight, error, negligence, or otherwise, and which, if known, would materially affect their decision to enter into this Agreement. The parties further agree that this Agreement constitutes a complete compromise of matters involving disputed issues of law and fact and all parties hereto assume the risk that the facts or law may be other than they believe. It is understood and agreed to by the parties that this settlement is a compromise of disputed claims, and this Agreement is not to be construed as an admission of liability by any party, by whom liability is expressly denied.

3. Future Conduct. WSNA agrees that it will not in any manner or by any means, directly or indirectly, instigate, initiate, promote, or encourage any investigations, actions, suits, causes of action or claims relating to obtaining back pay for missed rest breaks for the Represented Employees.

4. Additional Provisions.

- a. Each of the individuals signing this Agreement on behalf of a party warrants that he or she has the authority to sign the Agreement and thereby to bind the party on whose behalf he or she signs, and each party hereto warrants that it has the authority to enter into this Agreement and thereby to bind it. This Agreement shall be binding upon the successors and assigns of the parties.
- b. This Agreement is designed strictly for the purpose of compromising and settling disputed claims and matters and avoiding the expense, delay and risks of continued and protracted litigation. It is expressly understood and agreed, as a condition hereof, that this Agreement is not, and shall not, constitute or be construed or characterized as an admission of liability or wrongdoing on the part of any party, nor shall this Agreement be construed to be or characterized as a victory for one party over another, or an admission of any sort by any party hereto or as evidencing or indicating in any degree an admission of the truth or correctness of any claims asserted or facts alleged.
- c. This Agreement contains the entire understanding between the parties in connection with the subject matter and it supersedes or replaces all prior negotiations, agreements, or representations, whether oral or written. The Agreement may not be modified in any way unless such modification is in a writing which has been executed by all parties affected by said modification

- d. Each party acknowledges that no other party, agent, or attorney for any party has made any promise, representation, or warranty whatsoever, express or implied, not contained herein, concerning the subject matter hereof, to induce it to execute this Agreement, and each party acknowledges that it has not executed this Agreement in reliance on any such promise, representation, or warranty not contained herein.
- e. To be effective, any notice of breach or default under this Agreement shall be in writing and delivered to the appropriate party at the addresses set forth below, or to such other address as the parties may hereinafter designate. All such notices and other written communications shall be effective upon three (3) business days after having been correctly addressed, postmarked and delivered to the Post Office (or postmarking by the Post Office):

If to WSNA:

Christine Himmelsbach  
Assistant Executive Director of Labor Relations  
575 Andover Park West, Suite 101  
Seattle, WA 98188

And to:

Carson Glickman-Flora  
Schwerin Campbell Barnard Iglitzin & Lavitt LLP  
18 West Mercer Street, Suite 400  
Seattle, Washington 98119-3971

If to Evergreen, to:

Neil A. Johnson, Chief Operating Officer  
12040 N.E. 128th St.  
Kirkland, WA 98034-3098

Kathleen C. Groen, Director of Human Resources  
12040 N.E. 128th St.  
Kirkland, WA 98034-3098

And to:

James S. Fitzgerald, District General Counsel  
Kevin B. Hansen  
Livengood, Fitzgerald & Alskog, PLLC

121 Third Avenue  
P.O. Box 908  
Kirkland, WA 98083-0908

- f. Time is of the essence of this Agreement and the performance of each term hereof.
- g. The interpretation and enforcement of this Agreement shall be governed by the laws of the State of Washington. Any disputes arising out of this Agreement that have not been resolved in the Conference Committee shall first be submitted to mediation, and such mediation shall occur within thirty (30) days of submission unless the parties mutually agree to extend this deadline. In the event the dispute is not resolved in mediation, it shall be resolved through the expedited dispute resolution procedure under Sections 6.6 and 16.2 of the Collective Bargaining Agreement.
- h. This Agreement has been jointly drafted by the parties and their counsel following negotiations between them. It shall be construed according to the fair intent of the language as a whole and not for or against any party.
- i. The parties hereto declare that the terms and conditions of this Agreement have been completely read, reviewed and are fully understood and voluntarily accepted.
- j. This Agreement may be signed in counterpart copies and shall be effective when each party hereto has signed at least one copy. This Agreement is executed by the parties in duplicate, each copy of which shall have the same force and effect as an original. Signatures transmitted by facsimile or PDF (via e-mail) shall be acceptable and just as binding as a signature on the original hereof.
- k. Except as otherwise provided herein, all of the parties hereto agree to bear their own costs and expenses of the litigation, including fees of attorneys, to and including the effective date of this Agreement and the fulfillment of the terms hereof.
- l. This Agreement is subject to the approval of the Board of Commissioners of Evergreen as required by law. The parties agree to fully cooperate to obtain the approval of the Board.
- m. This Agreement is contingent in its entirety upon approval by the King County Superior Court in the Lawsuit as may deemed appropriate and necessary and/or required. The parties agree to fully cooperate to obtain the approval of the Court.

- n. If any phrase, sentence or paragraph of this Agreement shall to any extent be held invalid, then the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and all other phrases, sentences and paragraphs of this Agreement shall be valid and enforced to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the date first appearing herein above.

**Washington State Nurses Association**

By: Christine Himmekbaach

Printed Name: Christine Himmekbaach

Its: Assistant Executive Director of Labor

Date signed: February 10, 2011

**King County Public Hospital District No. 2 d/b/a  
Evergreen Hospital Medical Center**

By: Robert Malte

Printed Name: ROBERT MALTE

Its: CEO

Date signed: 2/11/11