CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement ("Settlement") is entered into by Lisa Nix Green, Kim Franklin, Brian McVeigh, Nina McGinnis, and Allen Hudson ("Class Members"), on the one hand, both individually and as designated class representatives,[1] and Hon. Young Boozer, Gen. Paul Hankins, Gwen Appling, Roger Bedford, Gregory Fitch, Rep. Craig Ford, Karen Gandy, Marc Green as designee for Dr. David Bronner, Dr. Freida Hill, Dr. Richard Huckaby, Patti Lambert, Dr. William Meehan, David Perry, James Stubbs, and Mark Sullivan ("Board Members"), on the other hand, in their official capacities as members of the Board of Directors and Trustees of the PACT Trust Fund serving pursuant to ALA. CODE § 16-33C-4.1 ("PACT Board"). Class Members and Board Members are collectively referred to herein as the "Parties."

RECITALS

This class action lawsuit involves claims by Class Members and counterclaims by the PACT Board, all of which seek declarations and guidance from the court as to the rights, duties, and obligations of the Parties under the statutes, rules, contracts and other documents governing the PACT Program. Resolution of those claims is necessary because the PACT Trust Fund, on an actuarial basis, lacks sufficient assets to pay full benefits under PACT Contracts to all Class Members. Moreover, if a final resolution is not reached by Fall 2012, the PACT Trust Fund might not have sufficient assets to provide Class Members with full cancellation refunds as permitted under PACT Contracts. Thus, the Parties are timely entering into this Settlement in order to provide Class Members with the maximum amount of benefits from the available assets. This Settlement will provide the following general benefits, among others:

1. A long-term plan for the financial viability of the PACT Program.

2. Defined benefits that will enable Class Members to make sound fiscal decisions regarding the financing of higher education.

3. Provision for an increase in benefits if the actuarial condition of the PACT Program improves.

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[1] By Order dated December 13, 2010 as amended on March 4, 2011, the following classes have been certified and the following class representatives have been designated by the trial court:

Class A – All persons who purchased a PACT contract before May 9, 2001 and all designated beneficiaries of those contracts.

Subclass A1 – All those members of Class A whose PACT contracts were purchased before September 1, 1996 (Lisa Nix Green).

Subclass A2 – All those members of Class A whose PACT contracts were purchased on or after September 1, 1996 (Kimberly Franklin).

Class B – All persons who purchased a PACT contract after May 9, 2001 and all designated beneficiaries of those contracts (Brian McVeigh, Nina McGinnis, and Allen R. Hudson).

4. Retention of tax benefits on qualified withdrawals for tuition and fee payments under PACT Contracts as defined in this Settlement.

5. Avoidance of the risks, uncertainty, costs and delay associated with prolonged litigation.

6. Retained jurisdiction by the court to ensure that the terms of this Settlement are fulfilled.

TERMS OF SETTLEMENT

1. **Modification of Tuition and Fees Payments.** The purpose and effect of this Settlement shall be to modify the dispositive terms of the PACT Trust Fund and/or the terms of the contractual relationships between Class Members and the PACT Board. Specifically, this Settlement establishes a baseline monetary amount that shall be remitted in the future as payment of tuition and fees under PACT Contracts (regardless of the year of matriculation), with Class Members assuming responsibility for the payment of any tuition and fees above the specified amount. It is expressly agreed that the PACT Program and PACT Board will be completely discharged and relieved of any and all obligations under a PACT Contract once full payment as specified herein has been made.

To the extent this Settlement is inconsistent with the terms of any existing PACT Contract, any PACT Program Rules (as amended from time to time), any PACT Disclosure Statement (as amended from time to time), ALA. CODE § 16-33C-1 *et seq.* (as amended from time to time), and/or any other prior or current related authority, the Parties hereby waive such prior terms and consent that the terms of this Settlement shall control. It is understood and agreed that the PACT Board shall be permitted to amend the PACT Program Rules and all related authorities as necessary to implement the terms of this Settlement and shall not be precluded in the future from making additional amendments and/or seeking instructions under the Uniform Trust Code as codified at ALA. CODE § 19-3B-101 *et seq.* However, no amendments or other changes shall be made that are inconsistent with or contrary to this Settlement or any final judgment entered by the court.

A. **Definitions.** The definitions included in the provisions of ALA. CODE § 16-33C-1 *et seq.* (as last amended), in the applicable provisions of the PACT Program Rules (as last amended), and in the applicable provisions of the PACT Disclosure Statement (as last amended) shall apply to this Settlement and are incorporated herein by reference, except that the terms of this Settlement shall control over any inconsistent definitions. For purposes of this Settlement, Beneficiary is defined as the individual designated to receive benefits under a PACT Contract, whether a member of Class A (including any subclass thereof) or Class B. Amended definitions of Tuition and Fees are set forth below.

B. **Alabama Public Eligible Educational Institution.** The PACT Program shall provide payment of Tuition and Fees as defined below on behalf of the Beneficiary to the Alabama public Eligible Educational Institution in which the Beneficiary matriculates.

i. Tuition is defined as the Fall 2010 basic undergraduate tuition (on a per-hour basis) certified by each respective Alabama public Eligible Educational Institution as set forth in the charts attached hereto, which are expressly incorporated into this Settlement. If the actual tuition charged by the Alabama public Eligible Educational Institution which the Beneficiary attends is less than Tuition as defined herein, then the PACT Program shall pay the lesser amount.

ii. Fees are defined as the Fall 2010 Qualified Fees certified by each respective Alabama public Eligible Educational Institution as set forth in the charts attached hereto, which are expressly incorporated into this Settlement. The PACT Program shall remit payment for Fees as defined herein for each semester or equivalent academic term purchased on behalf of the Beneficiary, even if the Alabama public Eligible Educational Institution does not impose a separate charge for fees after Fall 2010.

C. **Alabama Independent/Private, Out-of-State, or Foreign Eligible Educational Institution.** The PACT Program shall provide payment of Tuition and Fees as defined below on behalf of the Beneficiary to the Alabama Independent/Private, Out-of-State, or Foreign Eligible Educational Institution in which the Beneficiary matriculates.

i. Tuition is defined as the weighted average (by resident headcount) of basic instate tuition at the Alabama Four-Year Universities as certified for the Fall 2010 semester. That figure has been determined to be $228.74 per hour. If the actual tuition charged by the Eligible Educational Institution which the Beneficiary attends is less than Tuition as defined herein, then the PACT Program shall pay the lesser amount.

ii. Fees are defined as the weighted average (by resident headcount) of the Qualified Fees at the Alabama Four-Year Universities as certified for the Fall 2010 semester. That figure has been determined to be $144.45 per registration period. The PACT Program shall remit payment for Fees as defined herein for each semester or equivalent academic term purchased on behalf of the Beneficiary, even if the Alabama public Eligible Educational Institution does not impose a separate charge for fees after Fall 2010.

iii. The PACT Program shall charge a fee for all payments made to Alabama Independent/Private, Out-of-State, or Foreign Eligible Educational Institutions for Tuition (on a per hour basis) and Fees (on a per registration basis), the amount of which shall be determined at the discretion of the PACT Board and deducted from the Tuition and Fees payments made on behalf of the Beneficiary.

D. **Future Adjustments.** Beginning in Fall 2011, payments by the PACT Program for Tuition and Fees as defined herein may be increased annually by an Adjustment Rate as approved at the discretion of the PACT Board based upon the actuarial projections of its professional advisors. The Adjustment Rate, if any, shall be determined annually prior to commencement of the Fall semester or equivalent term and shall be applied to the amount

of Tuition and Fees which would have been payable by the PACT Program for the Fall semester or term of the prior academic year. The Adjustment Rate for Fall 2011, if any, shall apply to the baseline Tuition and Fees amounts defined herein. The attached charts shall be updated on an annual basis to reflect application of the Adjustment Rate, if any.

E. **Class Member Responsibility.** Class Members hereby waive the provisions of ALA. CODE § 16-33C-17 and expressly agree to bear exclusive responsibility for the payment of tuition and fees which any Eligible Educational Institution might charge in excess of the amounts to be paid by the PACT Program hereunder. Class members further waive all provisions of any existing PACT Contract, any PACT Program Rules (as amended from time to time), ALA. CODE § 16-33C-1 *et seq*. (as amended from time to time), and/or any other authority, as well as all contractual, statutory, and/or constitutional rights, which are inconsistent with the terms of this Settlement.

F. **Future Receipts.** In the event that funds are in the future received through litigation, legislation, contribution, or other sources, said funds shall be deposited into the PACT Trust Fund to be administered in a manner which is deemed by the PACT Board at its discretion to fulfill the purposes of the PACT Program and which is consistent with the duties and obligations of the PACT Board. The PACT Board will use its best efforts to ensure that any additional funding is used for paying benefits under PACT Contracts, subject to the PACT Board's discretion based upon maintaining the actuarial soundness of the PACT Trust Fund.

G. **Payment Schedule.** Nothing in this Settlement shall be construed to alter the obligation of Class Members to make payments as required under the terms of their respective PACT Contracts, and all conditions regarding timely payment shall continue to apply in a manner unaffected by this Settlement.

H. **Benefits Period.** Tuition shall be paid on behalf of the Beneficiary for not more than one hundred thirty-five (135) hours, one hundred twenty-eight (128) hours, or thirty-two (32) hours, depending upon the total hours purchased on behalf of the Beneficiary, OR the award of a baccalaureate degree to the Beneficiary, OR ten (10) years after the projected college entrance date of the original Beneficiary, whichever comes first. Fees shall be paid on behalf of the Beneficiary for not more than eight (8) registrations on a semester system or twelve (12) registrations on a quarter system or two (2) registrations on a one-year contract, depending on the PACT Contract purchased, OR the award of a baccalaureate degree to the Beneficiary, OR ten (10) years after the projected college entrance date of the original Beneficiary, whichever comes first.

I. **No Opt Out Rights.** Per the court's class certification order, Class Members shall not be permitted to opt out of this Settlement.

J. **Right of Cancellation.** Class Members shall have the right to voluntarily cancel PACT Contracts as set forth in the PACT Program Rules (as last amended) and shall receive a refund of the Redemption Value as defined therein and subject to the limitations

of the Disclosure Statement (as last amended). The PACT Board, at its discretion, may pay any refund in installments rather than as a lump sum.

K. **Other Provisions Unaffected.** The provisions of existing PACT Contracts, the PACT Program Rules (as last amended), PACT Disclosure Statement (as last amended), and/or ALA. CODE § 16-33C-1 *et seq.* (as last amended) shall be unaffected by this Settlement and binding upon Class Members unless inconsistent with the terms hereof, in which case this Settlement shall control. Nothing contained herein shall limit the right of the PACT Board to promulgate and/or amend the Program Rules and all related authorities in a more restrictive manner as deemed necessary for operation of the PACT Program.

2. **Payment to Class Representatives.** In addition to the consideration otherwise set forth herein, each class representative (Lisa Nix Green, Kim Franklin, Brian McVeigh, Nina McGinnis, and Allen Hudson) shall receive a separate payment from the PACT Trust Fund in the amount of $2,500 as compensation for the time and expense of prosecuting this lawsuit, including (but not limited to) sitting for deposition, preparing responses to written discovery, attending mediation, and assisting with the preparation of this Settlement. Said payments shall be due and payable at the same time, upon the same conditions, and in the same manner as set forth in paragraph 8 for the payment of attorney's fees and expenses.

3. **Finality.** This Settlement is subject to final approval by the court. In the event that the Settlement is not approved by the court, then the entirety of this Settlement shall be deemed null, void, and of no binding effect on any of the Parties (nor can the Settlement be used as an admission by any of the Parties).

A. **Fairness Hearing.** It is expressly understood that the court shall conduct a hearing on whether this Settlement is fair, adequate, and reasonable. No less than thirty (30) days prior to the hearing, notice shall be provided to Class Members in a manner directed by the court. Reasonable costs for providing notice shall be paid from the PACT Trust Fund.

B. **Constitutionality.** The terms of this Settlement are further conditioned upon an adjudication that Act 2010-725 is constitutional and provides a present appropriation of earmarked funds to the PACT Trust Fund. The Parties agree that the $547,629,100 in legislative funding provided under Act 2010-725 serves as a material basis for this Settlement and further acknowledge that the Tuition and Fees payments as set forth herein have been calculated based upon (and are wholly dependent upon) legislative funding being provided in said amount. Thus, this Settlement is expressly conditioned upon the appropriations set forth in Act 2010-725. Class Members hereby authorize the PACT Board to rely in good faith on the legislative funding of Act 2010-725 in carrying out the terms of this Settlement.

C. **Waiver of Appeal.** The Parties will make diligent efforts to obtain approval of this Settlement at the fairness hearing and, upon approval, shall not seek an appeal. In the

event that an appeal is filed by an objector or other non-party, the Parties agree to request expedited appellate proceedings and to oppose any such challenge at their own expense.

D. **Effective Date**. No action shall be taken to implement the terms of this Settlement unless and until an order approving the Settlement has been entered by the court and has become final. Such an order shall be deemed to be final (1) if no objections to the proposed Settlement have been filed within the time specified by the court, (2) if forty-three days have elapsed since the entry of such judgment and no notice of appeal has been filed, or (3) if a notice of appeal is filed, upon the appeal being dismissed or upon the court's judgment being affirmed, whichever shall first occur. In the event that an order approving this Settlement has not become final and non-appealable prior to commencement of the Fall 2011 semester or equivalent term, then the payments to be made by the PACT Program hereunder for Tuition and Fees shall not begin until the semester or equivalent term immediately following the date at which the approval order becomes final and non-appealable. In that event, the PACT Program shall in the interim continue to make payment of tuition and fees pursuant to Act 2010-725.

4. **Conclusion of the PACT Trust Fund**. Upon fulfillment of the obligations to make payment of Tuition and Fees on behalf of all Class Members as specified in this Settlement and any judgment of the court approving same, any funds remaining in the PACT Trust Fund shall be transferred to the Education Trust Fund in the fiscal year immediately following the year in which the last obligations are met. The PACT Board at that time shall be discharged of all obligations and the PACT Program shall be dissolved.

5. **Continuing Jurisdiction**. The court shall retain jurisdiction over this lawsuit to make such other and further orders, decrees, and findings as it shall determine necessary to implement the terms of this Settlement, effectuate the purposes of this Settlement and/or to enforce any judgment entered which adopts or approves this Settlement.

6. **Complete Agreement**. The Parties acknowledge that this Settlement constitutes the entire Settlement between them and supersedes any prior agreement, understanding, promise, and/or representation. The Parties hereby agree that there is no promise of further consideration other than as expressed herein.

7. **Warranty of Authorization**. The Parties represent and warrant that they have full power and authority to sign this Settlement and bind, on the one hand, Class A (including subclasses thereof) and Class B, and, on the other hand, the PACT Board, all subject to court approval. It is acknowledged and agreed that the obligations herein to make payments of Tuition and Fees are undertaken by the PACT Board as agents of the State of Alabama pursuant to ALA. CODE § 16-33C-5.

8. **Attorneys' Fees and Expenses**. Counsel for Class Members shall receive an aggregate award of attorneys' fees in the amount of Four Million Nine Hundred Fifty Thousand and 00/100 dollars ($4,950,000.00) and shall receive reimbursement for itemized expenses not to exceed Fifteen Thousand dollars ($15,000.00). The Parties agree that the award of attorneys' fees is fair and reasonable based on the risks to class counsel in undertaking this litigation and

the results achieved by class counsel for the benefit of the PACT holders under this Settlement. The amounts awarded herein for attorney's fees and expenses shall not be increased in the future for any reason, including (but not limited to) in the event of an appeal.[2] All such sums shall be paid from the PACT Trust Fund and shall be divided as agreed by and among said counsel; provided, however, that no award of attorney's fees or expenses shall be due and payable until an order approving this Settlement has become final as defined in paragraph 3.D. Upon said occurrence, the award of the aforementioned attorneys' fees and expenses shall be satisfied by directing payment to J. Doyle Fuller (counsel for Class A) within 14 days thereof, which will then be shared among said counsel as agreed. Any remaining unpaid costs of mediation shall also be paid at that time from the PACT Trust Fund to the Honorable Bernard Harwood.

9. **Governing Law**. This Settlement shall be governed by the laws of the State of Alabama, without regard to Alabama conflict of laws provisions.

10. **Construction**. This Settlement is deemed to have been drafted equally by the Parties and shall not be construed strictly for or against either.

11. **Non-severability**. The terms of this Settlement shall be non-severable. If any provision of this Settlement should be determined invalid or unenforceable, or should otherwise not be approved pursuant to paragraph 3, then the entirety of the Settlement shall be voidable at the election of either (1) a majority of the PACT Board or (2) class counsel.

12. **Binding Effect**. The terms of this Settlement shall be binding upon the Parties and their respective heirs, executors, administrators, representatives, agents, predecessors, successors, assigns, designees, and other persons claiming any interest through them.

13. **Release of Claims.** For and in consideration of the promises and covenants set forth herein, Class Members do finally and forever release Board Members, along with their predecessors, successors, assigns, designees, estates, executors, administrators, representatives, next of kin, insurers, attorneys, and all other related persons and entities (including, but not limited to, the State of Alabama, the Alabama Office of State Treasurer, the Alabama Department of Finance, the Risk Management Division for the State of Alabama, the Wallace-Folsom College Savings Investment Plan, the Alabama Prepaid Affordable College Tuition Program ("PACT Program"), the PACT Board, the PACT Trust Fund, the PACT Administrative Fund, and all related entities, subsidiaries, agencies, directors, officers, employees, administrators, members, and representatives thereof, whether past, current, or future and whether in an individual or official capacity) from any and all matters, demands, liabilities, actions, lawsuits, liens, debts, damages, obligations, claims, and any other expenses, charges, or costs of every kind and nature, known or unknown, suspected or unsuspected, howsoever arising, at law or in equity, whether on an individual or representative basis, which were asserted or which could have been asserted as of the execution of this Settlement, including (but not limited to) those claims which were asserted or which could have been asserted in that lawsuit presently

[2] However, nothing in this Settlement shall prevent class counsel from seeking additional fees if they are required to bring further action to enforce the provisions of the Settlement and any judgment that might be entered in this case.

pending in the Circuit Court of Montgomery County, Alabama styled *Lisa Nix Green, et al. v. Kay Ivey, et al.*, Case No.:CV-2010-900013 (hereinafter referred to as the "Lawsuit"), as well as any and all other claims relating to the operation and administration of the PACT Program and/or the PACT Trust Fund, including (but not limited to) the payment/non-payment of tuition and fees and all claims available under the Uniform Trust Code as codified at ALA. CODE § 19-3B-101 *et seq.*, other than the obligations embodied in this Settlement and any judgment entered by the court approving or adopting this Settlement.

14. **Stipulation of Dismissal with Prejudice.** This Settlement and all promises to be performed hereunder are expressly conditioned upon class counsel entering into a Joint Stipulation of Dismissal dismissing with prejudice all other claims against Board Members not resolved or adjudicated herein, whether of an equitable or legal nature. The Joint Stipulation of Dismissal shall be filed as soon as practicable after any judgment approving this Settlement has become final as defined in paragraph 3.D. above.

15. **Counterparts.** The Settlement may be executed in multiple counterparts and/or by facsimile transmission, each of which shall be deemed an original. The receipt of a copy of a signature shall be just as binding as an original signature.

IN WITNESS WHEREOF, the Parties have executed this Settlement as of this 4th day of MAY 2011.

THE PARTIES TO THIS SETTLEMENT CERTIFY THAT THEY HAVE CAREFULLY REVIEWED THIS SETTLEMENT WITH THE ASSISTANCE OF COUNSEL AND ARE EXECUTING THIS SETTLEMENT VOLUNTARILY AND WITH A FULL UNDERSTANDING OF ITS PROVISIONS.

APPROVED:

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(Printed)

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