

**CLASS SETTLEMENT AGREEMENT AND RELEASE/WAIVER**

*Constanza Kiran, on behalf of herself and others similarly situated v. Atkinson Concessions, Inc.*  
Rockingham Superior Court Civil Action No. 218-2021-CV-01175

This Settlement Agreement (the “Agreement”) is entered into by and between (i) named plaintiff and class representative Constanza Kiran (“Plaintiff” or “Settlement Class Representative”), on behalf of herself and the settlement class she seeks to represent (as defined below) and (ii) defendant Atkinson Concessions, Inc. (“Defendant”), subject to the approval of the Superior Court for Rockingham County, New Hampshire, and subject to the additional conditions set forth herein. Plaintiff and Defendant are hereinafter referred to collectively as the “Parties.”

**RECITALS**

WHEREAS, on or about November 21, 2021, Plaintiff commenced an action by filing a Complaint in the Superior Court for Rockingham County, New Hampshire, captioned *Constanza Kiran, on behalf of herself and others similarly situated v. Atkinson Concessions, Inc.*, Rockingham Superior Court, Civil Action No. 218-2021-CV-01175 (the “Civil Action”);

WHEREAS, the Civil Action alleged, among other things, that Defendant had violated N.H. Stat. §§ 275:42, *et seq.* and 279:1, *et seq.* by allegedly retaining a portion of gratuities and service charges and by allegedly operating a mandatory tip pool;

WHEREAS, counsel for Parties have engaged in discovery, followed by good faith, arms-length negotiations to settle the Civil Action and ultimately reached agreement on the terms and conditions of a settlement on a class wide basis as set forth herein (the “Settlement”);

WHEREAS, in agreeing to the Settlement embodied in this Agreement, Plaintiff and her counsel have considered: (i) the facts developed during their investigation and the law applicable thereto; (ii) the attendant risks of continued litigation and the uncertainty of the outcome of their claims; (iii) the desirability of permitting the Settlement to be consummated according to the terms of this Settlement; and (iv) the conclusion of Plaintiff and her counsel that the terms and conditions of this Settlement are fair, reasonable, adequate, and that it is in the best interests of Plaintiff and the Settlement Class Members (as defined below) to settle their claims against the Defendant as set forth herein; and

WHEREAS, Defendant denies the material allegations of the Civil Action, including all allegations of wrongdoing, fault, liability, or damage to Plaintiff and the Settlement Class Members (as defined below); denies that it engaged in any wrongdoing; denies that it committed any violation of law; denies that it acted improperly in any way; believes that it acted properly at all times; and believe the Civil Action has no merit, but are entering into this Settlement solely because the proposed Settlement would eliminate the burden, risk, and expense of further litigation.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each Party to the

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other, IT IS HEREBY STIPULATED AND AGREED, by and between Plaintiff (individually and on behalf of each of the Settlement Class Members) and Defendant, subject to the final approval by the Court and the other conditions set forth herein, Plaintiff's and the Settlement Class Members' claims against Defendant shall be settled, compromised, and dismissed, on the merits and with prejudice, and that the Released Claims (as defined below) shall be finally and fully compromised, settled and dismissed as to the Releasees (as defined below), in the manner and upon the terms and conditions hereafter set forth.

**TERMS AND CONDITIONS****DEFINITIONS**

1. Capitalized terms used in this Agreement shall have the meanings ascribed to them herein. In addition, the following capitalized terms shall have the meanings specified below:

(a) "Administrator" is the third-party administrator who will be charged with administering this Agreement, in concert with the Parties and their counsel. The Parties have selected Optime Administration, LLC to act as Administrator.

(b) "Administrative Costs" means the amount to be paid to the Administrator for all costs in connection with consummating the terms of this Agreement.

(c) "Settlement Class" means the class, to be certified for settlement purposes only pursuant to Rule 16 of the Rules of the Superior Court of the State of New Hampshire, which consists of:

All individuals whom Defendant employed as banquet service employees in the following roles: servers and bartenders at the Atkinson Resort and Country Club from November 22, 2018, through October 2, 2022 (the "Settlement Class Period").

The Parties agree to the certification of the Settlement Class solely for purposes of the Settlement of the Civil Action, and the agreement of the Parties to the Settlement Class shall not be used for any purpose whatsoever in any proceeding other than the Civil Action, including but not limited to any other action asserting the same or similar claims or causes of action. Should the Court deny approval of this Settlement, such stipulation of class certification shall become null and void *ab initio* and shall have no bearing on, and shall not be admissible in connection with, the issue of whether certification would be appropriate in a non-settlement context.

(d) "Settlement Class Members" means Plaintiff and each and every member of the Settlement Class who does not request exclusion from the Settlement Class.

(e) "Settlement Account" means the interest-bearing account controlled by the Administrator at a federally insured bank, mutually acceptable to the Parties and to the Administrator, into which the Gross Settlement Amount is or will be deposited. No other funds shall be commingled within the Settlement Account.

(f) "Settlement Class Releasees" means Plaintiff and all other Settlement Class Members.

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**(g)** “Releasees” and “Released Parties” means Atkinson Concessions, Inc., and its non-Settlement Class employees, managers, officers, directors, and shareholders.

**(h)** “Released Claims” means all actions, claims, demands or causes of action, whether known or unknown, contingent or absolute, that were, or could have been, asserted in the Civil Action; including without limitation such claims pursuant to N.H. Stat. §§ 275:42, *et seq.* and 279:1, *et seq.*

**(i)** “Prohibited Action” means any action or proceeding (regardless of jurisdiction or venue) seeking any form of relief, recovery, or remedy, whether legal, equitable or otherwise, brought on an individual basis, a group or collective basis, or on a class-wide basis or on any other putative or purported “representative” basis (including, but not limited to, any claims brought on a “representative,” “derivative” and/or “private attorney general” basis), against any of the Releasees asserting the Released Claims.

**(j)** “Effective Date” means the first business day following the date the Court’s final approval of the Settlement is finally affirmed on appeal and/or is no longer subject to appeal or certiorari, and the time for any petition for re-argument, appeal, or review, by certiorari or otherwise, has expired (i.e., more than thirty days from final approval). The Parties, other than any Settlement Class Member who makes a timely and valid objection, agree to waive all rights to appeal upon entry of a Final Judgment and dismissal of the case with prejudice.

**(k)** “Final Judgment” means the Order which the Parties agree to seek, following the execution of this Agreement, resulting in the dismissal with prejudice of all claims against the Releasees in the Civil Action.

**(l)** “Settlement Class Counsel,” or “Plaintiffs’ Counsel,” means Hillary Schwab and Rachel Smit of Fair Work, P.C. and Ian Russell of Pyle, Rome & Ehrenberg, P.C.

**(m)** “Gross Settlement Amount” means the cash amount of no more than \$240,000 (two hundred and forty thousand dollars), which includes, without limitation, attorneys’ fees and costs (to be approved by the Court); all interest, liquidated, and/or multiple damages; all costs of the settlement including Administrative Costs, and all cash distributions to the Settlement Class.

**NO ADMISSION OF LIABILITY**

**2.** The Defendant in the Civil Action expressly denies any wrongdoing or any violation of law as alleged in the Civil Action. Nothing contained in this Agreement shall be construed as an admission of any liability by any party, and all Parties agree not to offer this Agreement as evidence or otherwise use it in any judicial or administrative proceeding, except that this Agreement may be introduced in any proceeding for the sole purpose of enforcing its terms.

**SETTLEMENT AMOUNT**

**3. Settlement Amount.** Defendant will pay the Gross Settlement Amount as consideration for the dismissal of the Civil Action with prejudice and as consideration for the other claims released pursuant to this Agreement. The Gross Settlement Amount shall be Defendant’s total

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obligation to Class Counsel, the Settlement Class, and the Plaintiff, except for the employer's share of payroll taxes attributable to the settlement payments to the Settlement Class, for which Defendant will make payment to the Administrator. All other state and federal taxes shall solely be the responsibility of the Settlement Class members who receive a Settlement Amount distribution.

**4. Distribution of Settlement Amount.** The Gross Settlement Amount will be distributed in the following manner.

**(a)** Subject to Court approval, no more than \$80,000 (one-third) of the Gross Settlement Fund will be paid as attorneys' fees and costs to Settlement Class Counsel.

**(b)** Subject to Court approval, no more than \$5,000 of the Gross Settlement Fund will be paid to Constanza Kiran as an incentive payment.

**(c)** Subject to Court approval, no more than \$10,000 will be used for Administrative Costs associated with the Settlement, which shall come from the Gross Settlement Amount and be paid to the Administrator, who will be responsible for disseminating notices to eligible Settlement Class Members, distribution of attorneys' fees, calculation and distribution of awards to Settlement Class Members, employee tax withholding payments, employer payroll taxes, and tax reporting related to the settlement payments.

**(d)** The "Net Settlement Amount" is that portion of the Gross Settlement Amount remaining after the payments referenced in subparagraphs (a) – (c). To the extent that the Court reduces the incentive award, attorneys' fees and costs, or the costs of settlement administration, those monies shall become part of the Net Settlement Amount. To the extent that any of the approved Administrative Costs are not used, those monies shall also become part of the Net Settlement Amount.

**SETTLEMENT APPROVAL PROCEDURES**

**5. Contingency of Agreement.** This Agreement will become final and effective only upon the occurrence of all of the following events: (a) this Agreement is executed by Plaintiff, Defendant, and Settlement Class Counsel; (b) the Court approves the material terms of the Settlement as set forth in this Agreement and enters, without material change, the Preliminary Approval Order attached as Exhibit A; (c) the Notice Packet is sent to the Settlement Class Members by the Administrator; (d) Settlement Class Members are afforded the opportunity to file written objections; and (e) the Court holds the Final Approval Hearing and enters, without material change, the Final Approval Order attached as Exhibit C.

**6. Settlement Approval Procedures.** This Settlement requires approval by the Court. The Parties agree to the following steps in the sequence set forth below to effectuate the Settlement and to obtain Court approval. The Parties and their attorneys agree to cooperate fully and to use all reasonable efforts and due diligence to effectuate the terms and conditions of this Agreement, including the execution of all necessary documents, in order to obtain approval of the Settlement.

**(a) Preliminary Approval.**

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(1) Promptly after the execution of this Agreement by the Parties, Settlement Class Counsel shall prepare a Motion for Preliminary Approval of the Settlement, which will be consistent with the terms of this Agreement and subject to review by Defendant's counsel. Plaintiffs' Counsel agrees that they will file the Motion for Preliminary Approval with the Court within fourteen (14) days after all Parties have executed this Agreement. The Preliminary Approval Motion also shall seek approval of the Notice and Claim Form (together, "Notice Packet"), attached as Exhibit B to this Agreement. The Notice shall inform Class Members of their opportunity to (a) request exclusion from the Settlement Class, or (b) submit a Claim Form and/or object to the Settlement and/or enter an Appearance through counsel; set forth deadlines for requesting exclusion, submitting a claim form, and/or objecting to the Settlement (which shall be 45 days from the date the Notices are mailed), and describe the scope of the Released Claims. The Notice will also provide the date and location of the Final Approval Hearing (once that date is set by the Court). The form, content, timing, and all other aspects of the Notice will be negotiated and agreed upon by the Parties.

(2) In conjunction with the filing of the Motion for Preliminary Approval, the Parties shall request that the Court schedule a hearing regarding the Parties' request for final approval of their proposed settlement, to be set no earlier than 90 days after entry of the Order of Preliminary Approval. Counsel for the Parties will communicate with the Clerk of the Court and make any further filings necessary to secure the approval of their request.

(3) This Agreement shall become null and void in the event that the Court fails to enter the Order of Preliminary Approval in substantially the same form agreed to by the Parties, or an appeal is taken from the Order of Preliminary Approval and such Order of Preliminary Approval is modified in any material respect or vacated or reversed and such order modifying, reversing or vacating the Order of Preliminary Approval becomes final by lapse of time or because such order is no longer subject to any appeal. However, the Parties agree to work cooperatively to attempt to address any concerns raised by the Court, provided that they do not change the material terms of the Parties' Agreement. If preliminary approval is not granted, this Agreement shall not be deemed to prejudice in any way any of the Parties' rights, and the Parties shall be restored to their respective positions in the Civil Action, as they existed immediately prior to the execution of this Agreement. Further, this Settlement, the Agreement, and the terms contained herein may not be used for any purpose whatsoever in this Civil Action or any other lawsuit.

**(b) Final Approval.** Settlement Class Counsel shall prepare a Motion for Final Approval of the Settlement, which will be consistent with the terms of this Agreement and subject to review by Defendant's counsel. The Motion for Final Approval of the Settlement shall seek approval of the terms of this Agreement, certification of the Settlement Class pursuant to Rule 16 of the Rules of the Superior Court of the State of New Hampshire, and entry of an Order of Final Approval, substantially in the same form as attached hereto as Exhibit C. Settlement Class Counsel shall provide a draft of the Motion to Defendant's Counsel for review no later than seven (7) days in advance of the date it will be filed with the Court. Defendant's assent to such motion shall not be unreasonably withheld.

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**7. Provision of Class List and Data by Defendant.** Within seven (7) days after the entry of an Order of Preliminary Approval of the Settlement from the Court, the Defendant, to the extent it can reasonably locate such information in its business records, will provide to Plaintiffs' counsel a spreadsheet that contains (i) the names of the Settlement Class Members, (ii) their last known addresses, (iii) their phone numbers, and (iv) their email addresses. Other than sharing this data with the Administrator, Plaintiffs' counsel and the Administrator will keep this contact information confidential and use it only for purposes of performing their duties to the Settlement Class Members. The data shall not be used for purposes other than this Settlement.

**8. Mailing of Notice Packets.** The Administrator will effectuate mailing of the Notice Packets. The Administrator will send the Court-approved Notice Packets by first class mail to Settlement Class Members within fourteen (14) days of receiving an Order of Preliminary Approval of the Settlement from the Court. Unless a Notice Packet is returned to the Administrator by U.S. Postal Service as undeliverable, each Notice shall be deemed received by the Settlement Class Member to whom it was sent, and the date of mailing shall control calculation of the objection deadline. With regard to any settlement documents that are returned to the Administrator as undeliverable, the Administrator will perform customary database searches to locate a current address and, if a current address is located, shall promptly re-mail the settlement documents. Defendant agrees to provide promptly all information within its possession and requested by the Administrator to research a correct address. The Administrator will also create a website ("Settlement Website") that contains the contents of the Notice Packets and provides Settlement Class members the opportunity to submit a claim form online using an electronic signature. The Settlement Website shall be [www.AtkinsonSettlement.com](http://www.AtkinsonSettlement.com) or something similar. For all Settlement Class Members for whom a phone number is provided, the Administrator shall distribute notice of the settlement by a text message that includes a link to the Settlement Website. For all Settlement Class Members for whom an email address is provided, the Administrator shall distribute notice of the settlement by an email that includes a link to the Settlement Website. The Administrator shall take down and cease operating the Settlement Website within fourteen (14) days after the Effective Date. Thereafter, the Administrator shall not use the domain for any purpose and shall let the domain registration expire at the next annual renewal date.

**9. Requests for Exclusion.** Settlement Class Members may request exclusion from the Settlement by submitting a statement, in writing, that is postmarked no later than forty-five (45) days from the date the Notice Packets are mailed. The request for exclusion must include the requestor's full name, address, telephone number, and (if available) email address. In addition, the requestor must personally sign the request for exclusion. The Administrator shall provide copies of each request for exclusion received to the Parties' counsel within two business days of receipt of such request for exclusion. To the extent either Party or its counsel receives requests for exclusion directly from Settlement Class Members, they agree to provide copies of each request received to the other Party within two business days after receiving the request.

**10. Claim Forms.** The Claim Form will include a specific release consistent with the Release provided for by this Agreement even though Settlement Class Members who do not request

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exclusion from the Settlement Class will be deemed to have released the Released Claims regardless of whether they return a Claim Form. Settlement Class Members will have forty-five (45) days from the date the Notice Packets are mailed in the first mailing to return their completed Claim Form to the Administrator. In order to be valid and effective, a Claim Form must be unaltered, signed, dated, and postmarked or otherwise returned to the Administrator within forty-five (45) days after the first mailing of the Notice Packets by the Administrator. At the discretion of Plaintiffs' counsel and upon notice to Defendant's counsel, late claims may be deemed timely. If an alteration to the Claim Form does not affect the material terms, the Claim Form shall be deemed valid

**11. Objections.** Settlement Class Counsel and the Settlement Class Representative agree that they will not object to this Settlement. Objections from Settlement Class Members who do not request exclusion from the Settlement must be made in writing, include a statement of the objection, as well as the specific reasons the Settlement Class Member is objecting to the Settlement, and be postmarked no later than forty-five (45) days from the date the Notice Packets are mailed. The Objection also must include the Settlement Class Member's full name, address, telephone number, and (if available) email address. In addition, the Settlement Class Member must personally sign the Objection. The Administrator shall provide copies of each Objection received to the Parties' counsel within two business days of receipt of such Objection. To the extent either Party or its counsel receives Objections directly from Settlement Class Members, they agree to provide copies of each Objection received to the other Party within two business days after receiving the Objection.

**SETTLEMENT FUNDING AND DISTRIBUTION OF PAYMENTS****12. Funding of Settlement.**

**(a) Payment Schedule.** The Gross Settlement Amount (which shall include, without limitation, distributions to Settlement Class Members, payment of attorneys' fees and costs to Settlement Class Counsel, and distributions from the Net Settlement Fund) shall be paid by Defendant to the Administrator within seven (7) days after the Effective Date.

**(b) Settlement Account.** With respect to the Settlement Account, the Administrator shall: (1) open and administer the Settlement Account in such a manner as to qualify and maintain the qualification of the Settlement Account as a "Qualified Settlement Fund" under Section 468B of the Code and Treas. Reg. § 1.468B-1; (2) calculate, withhold, remit, and report each Claimant's share of applicable payroll taxes in connection with the Settlement Payment; (3) invoice Defendant for the amount of payroll taxes; (4) satisfy all tax reporting, return and filing requirements with respect to the Settlement Account and any interest or other income earned by the Settlement Account; and (5) satisfy out of the Settlement Account all taxes (including any estimated taxes, interest or penalties) with respect to the interest or other income earned by the Settlement Account. Fees, expenses, and costs incurred in connection with the opening and administration of the Settlement Account shall be treated as, and included in, the costs of administering the Settlement Account and as Administrative Costs. The Parties and the Administrator shall elect to treat the Settlement Account as coming into existence as a Qualified Settlement Fund on the earliest date set forth in 26 CFR § 1.468B-1(j)(2)(i), and such election

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statement shall be attached to the appropriate returns as required by 26 CFR § 1.468B-1(j)(2)(ii). The Parties agree to cooperate with the Administrator and one another as necessary to effectuate the terms of this Settlement Agreement. In no event shall the Administrator withdraw, transfer, pledge, impair, or otherwise make use of the funds in the Settlement Account except as expressly provided in this Agreement.

**13. Distributions to Class Members.**

**(a) Calculation of Distributions.** Settlement shares shall be calculated by Plaintiffs' counsel using a formula that reasonably approximates each Settlement Class member's share of class damages for the time period from November 22, 2018 through October 2, 2022. To the extent not already provided, Defendant shall provide Plaintiffs' counsel with records from which such calculations may be performed. Plaintiffs' counsel agrees to keep such records confidential and shall use them solely for purposes of calculating the Settlement Class members' settlement payments. Plaintiffs' counsel shall then calculate the individual awards to the Settlement Class Members by dividing the Net Settlement Amount (after subtracting any amounts held in reserve for a Dispute Fund pursuant to subparagraph (d)) among the Settlement Class Members proportionally according to their estimated damage amount (the "Initial Amount"). Any unclaimed funds, with the exception of funds held in reserve to resolve disputes, shall be distributed to claiming Settlement Class Members in proportion to their Initial Amount resulting in the final amount of their settlement check (the "Final Amount"). The Settlement Class Representative may not object to her individual award.

**(b) Disbursement of Settlement Funds.** Within fourteen (14) days after receiving the Gross Settlement Amount from Defendant, the Administrator shall disburse from the Qualified Settlement Fund the following: (1) to Plaintiffs' counsel, the amount for attorneys' fees and costs approved by the Court, in accordance with the Order of Approval; (2) to Settlement Class Members who returned timely, valid, and complete claim forms, settlement checks for the Final Amount for each such Settlement Class Member less applicable taxes and withholdings appropriate for W-2 wages; and (3) to the Administrator, no more than the amount approved by the Court for costs incurred by the Administrator in connection with the administration of this Agreement. The Administrator also will issue W-2 tax forms to the participating Settlement Class Members for their Final Amounts and a 1099 tax form to the Settlement Class Representative for her incentive payment, to be paid as Box 3 "other income."

**(c) Payments To Settlement Class Members.** To receive a share of the Net Settlement Amount, Settlement Class Members must file claims within forty-five (45) days after notice is first mailed. The Administrator shall withhold from payments to settlement class members the employee's share of payroll taxes and other withholdings as required by state or federal law.

**(d) No Tax Form or Withholding Responsibility.** Defendant shall have no responsibility for issuing tax forms or making withholdings from payments to Settlement Class Members. The Administrator will be solely responsible for any withholdings and issuance or collection of state or federal tax forms associated with the Settlement Funding and Distribution of Payments. The Administrator will issue an invoice to Defendant for the employer's share of payroll taxes, which must be paid within seven (7) days of receipt by Defendant.



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(e) **Dispute Fund.** Any unclaimed funds shall be redistributed to claiming Settlement Class Members in proportion to their original payments, except that no more than \$7,500 may be held in reserve by the Administrator to resolve disputes about late-filed claims, eligibility of individuals receive a share of the Net Settlement Amount, or other unanticipated issues. All payments from the dispute fund must be issued within 90 days of issuance of settlement checks for the Final Amount to Settlement Class Members.

(f) **Expiration of Settlement Checks.** All checks issued in connection with the settlement shall expire ninety (90) days after they are issued. At the close of the 90-day period, the Administrator will issue a stop payment order on all uncashed or returned checks. In the event a Settlement Class Member reports a lost or destroyed check within the 90-day period, the Administrator shall issue a stop order on the original check and issue a new check. If a check is reported as lost or stolen during the final fourteen (14) days of the 90-day period, the Settlement Class Member will receive an additional 14-day grace period to cash the check, but in no event will a check issued remain valid beyond one hundred four (104) days after the date the original check was issued. A failure by a Settlement Class Member to deposit or cash a check within the time period allotted shall have no effect on that individual's release of claims pursuant to this Agreement. Funds from any remaining uncashed checks shall revert to the *cy pres* fund (as defined below).

(g) **Cy Pres Fund.** Subject to Court approval, any funds remaining upon the expiration of all checks issued (e.g., from the dispute fund or from uncashed checks) will revert to the *cy pres* fund chosen by the Parties. The Parties will propose that New Hampshire Legal Aid be the *cy pres* recipient. The *cy pres* funds shall be distributed no later than thirty days after the expiration of the uncashed settlement checks.

## RELEASE AND WAIVER

14. **General Release by Constanza Kiran.** In consideration for payment of the incentive award, Constanza Kiran will release all claims against the Defendant.

15. **Limited Release by Settlement Class Members.** The claim form shall include a release of claims in the form set forth below.

I acknowledge that as a Settlement Class Member entitled to receive a pro rata share of the Net Settlement Funds in this matter, I am releasing Atkinson Concessions, Inc. from any and all legal claims that I may have, whether known or unknown, contingent or absolute, that were or could have been asserted in *Constanza Kiran, on behalf of herself and others similarly situated v. Atkinson Concessions, Inc.*, Rockingham Superior Court. Civil Action No. 218-2021-CV-01175. The claims that I am releasing include any claims concerning improper distribution of tips, gratuities, and/or service charges, or maintenance of an unlawful tip pool, at the Atkinson Resort and Country Club from November 22, 2018, through October 2, 2022.

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**16.** Upon entry of the Order of Final Approval (a copy of which is attached as Exhibit C), all claims for relief asserted in the Civil Action will be dismissed with prejudice and on the merits. All such dismissals shall be without costs to any Party.

**17.** As of the entry date of the Order of Final Approval, the Plaintiff, as Settlement Class Representative, and the Settlement Class Members shall have, and by operation of the Order of Final Approval shall be deemed to have, completely, voluntarily, knowingly, unconditionally and forever, released, acquitted and discharged the Released Parties from the Released Claims.

**18.** As of the entry date of the Order of Final Approval, the Plaintiff, as Settlement Class Representative, and the Settlement Class Members shall have, and by operation of the Order of Final Approval shall be deemed to have, released, waived and abandoned all rights to commence, institute or prosecute, and shall be forever barred and enjoined from commencing, instituting, or prosecuting any Prohibited Action.

**19.** As of the entry date of the Order of Final Approval, the Plaintiff, as Settlement Class Representative, and the Settlement Class Members shall have, and by operation of the Order of Final Approval shall be deemed to have, waived and relinquished, to the fullest extent permitted by law, any and all rights which may have the effect of nullifying or otherwise limiting the releases set forth herein.

**OTHER PROVISIONS**

**20. No Admission of Liability.** Neither this Settlement Agreement (and any provisions contained therein) nor any negotiations, statements, or proceedings in connection therewith, shall be construed, or deemed to be evidence of, an admission or concession on the part of Plaintiff, Defendant, Settlement Class Member, or any other person or entity of any liability or wrongdoing by them, or any of them as to any claim alleged or asserted in the Civil Action or otherwise, and shall not be offered or received in evidence in any action or proceeding (except in an action or proceeding to enforce the terms and conditions of the Agreement), or be used in any way as an admission, concession or evidence of any liability or wrongdoing of any nature, and shall not be construed as, or deemed to be evidence of, an admission or concession that Plaintiff or any Settlement Class Member or any other person or entity, has or has not suffered any damage.

**21. Governing Law.** This Agreement and all exhibits hereto and any related settlement document shall be governed and interpreted in accordance with the laws of the State of New Hampshire, without regard to the conflict of law provisions thereof.

**22. Complete Agreement.** This Agreement, along with all exhibits hereto, constitutes the entire agreement and understanding of the Parties and supersedes any prior agreements or understanding between the Parties with respect to the Settlement. The Settlement is not subject to any term or condition not contained in this Agreement. There are no collateral or oral agreements between the Parties that are not stated in this Agreement. In entering into this Agreement, no Party is relying on any promise, warranty, inducement, or representation other than those set forth in this Agreement. All the Exhibits hereto are incorporated in and constitute an integral part of this Agreement.

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**23. Amendments.** This Agreement may be amended or modified only by a written instrument signed by all Parties hereto. No Party shall have any obligation whatsoever to proceed with the Settlement under any terms other than substantially in the form provided and agreed to in this Agreement.

**24. Resolution of Disputes Regarding Agreement.** The Court shall retain jurisdiction for purposes of resolving any disputes under this Agreement without affecting the finality of the Settlement or the Order of Final Approval. All Parties to this Agreement shall be subject to the jurisdiction of the Court for all purposes related to this Agreement.

**25. Binding on Successors.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, managers, officers, directors, partners, investors, legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos, predecessors, successors, transferees, assigns and insurers, and upon any corporation or other entity with which any party hereto may merge, consolidate, or reorganize.

**26. Cooperation in Drafting.** This Agreement, together with any Exhibits, shall be deemed to have been mutually prepared by the Parties and shall not be construed against any of them by reason of authorship. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a Settlement that was reached voluntarily based upon adequate information, sufficient discovery, and after consultation with experienced legal counsel.

**27. Non-Waiver.** The waiver by one Party of any breach of the Agreement by any other Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement. If any Party hereto engages in a material breach of the terms hereof, the other Party, provided that it is in substantial compliance with the terms of this Agreement, may terminate this Agreement on notice to the breaching Party or sue for enforcement.

**28. Severability.** If any part of this Agreement is found to be illegal, invalid, inoperative, or unenforceable in law or equity, such finding shall not affect the validity of any other provisions of this Agreement, which shall be construed, reformed, and enforced to effect the purposes thereof to the fullest extent permitted by law. If one or more of the provisions contained in the Agreement shall for any reason be held to be excessively broad in scope, subject matter or otherwise, so as to be unenforceable at law, the Parties agree that such provision(s) shall be construed to be limited or reduced so as to be enforceable to the maximum extent under the applicable law.

**29. Knowing and Voluntary Agreement.** Plaintiff and Settlement Class Counsel each agree that they are entering into this Agreement knowingly, voluntarily, and with full knowledge of its significance. Plaintiff further affirms that she has not been coerced, threatened, or intimidated into signing this Agreement; that she has been advised to consult with an attorney; and that she has consulted with an attorney before signing this Agreement. Settlement Class Counsel represents that they have conducted a thorough investigation into the facts of the Action and have diligently pursued an investigation of the claims asserted on behalf of Settlement Class Members against Defendant. Based on their own independent investigation and evaluation, Settlement Class Counsel state that they are of the opinion that the settlement is fair, reasonable, and adequate and

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is in the best interest of the Settlement Class Members, in light of all known facts and circumstances, including the risks of significant delay and defenses asserted by Defendant.

**30. Notices.** Any notices issued pursuant to the terms of this Agreement shall be sent to the Parties at the addresses of their respective counsel as follows.

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|---|--|
| For Plaintiff and Settlement Class<br>Members:<br><br>Rachel Smit, Esq.<br>Fair Work, P.C.<br>192 South Street, Suite 450<br>Boston, MA 02111<br>(617) 841-8188<br>rachel@fairworklaw.com | For Defendant:<br><br>Demetrio F. Aspiras<br>Drummond Woodsum & MacMahon<br>670 N. Commercial Street, Suite 207<br>Manchester, NH 03101<br>(603) 716-2895<br>daspiras@dwmlaw.com |
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**31. Time Periods.** In the event that any time period described in this Agreement expires on a Saturday, Sunday or legal holiday, such time period shall be extended through the next subsequent business day.

**32. Authority to Execute.** Each of the individuals executing this Agreement warrants and represents that he or she has been duly authorized and empowered to (a) execute this Agreement on behalf of such Party and (b) take appropriate action required or permitted to be taken pursuant to the Agreement to effectuate its terms.

**33. Execution in Counterparts.** This Agreement may be executed in two or more counterparts, all of which shall be considered one and the same agreement provided that counsel for the Parties shall exchange among themselves original signed counterparts. This Agreement also may be executed by and through electronic signature technology which is in compliance with New Hampshire law governing electronic signatures, including but not limited to, DocuSign®. Electronic signatures shall be considered as valid and binding as original, wet signatures.

[THIS SECTION INTENTIONALLY LEFT BLANK]

**SETTLEMENT AGREEMENT AND RELEASE/WAIVER**

IN WITNESS WHEREOF, the Parties each voluntarily and without coercion, have caused this Agreement to be signed and entered under seal as of the respective dates written below as their free acts and deeds.

**PLAINTIFF/ SETTLEMENT CLASS REPRESENTATIVE/SETTLEMENT CLASS COUNSEL**

Individually and on behalf of the Settlement

Class Signed by:

  
F58A82DBA0544ED

Constanza Kiran

Date: 11/3/2022

On behalf of the Settlement Class,

  
4CD9765211D2453

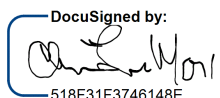
Rachel Smit  
Fair Work, P.C.

Date: 11/4/2022

**DEFENDANT**

Atkinson Concessions, Inc.

By: its President

DocuSigned by:  
  
518F31F3746148E

Christine Lewis Morse, duly authorized

11/9/2022