

## SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (the “Agreement”) is made by and between Fred D. Bauer (“Plaintiff”) on behalf of himself and the alleged Settlement Class, as defined herein and Glenmoor Country Club (“Glenmoor” or “Defendant”) (Plaintiff and Defendant collectively referred to as “the Parties”):

This Agreement is entered into effective as of April 5, 2016, by and between Plaintiff and Defendant.

### RECITALS

A. A dispute arose between Plaintiff and Defendant due to alleged violations of the Colorado Wage Act, Colo. Rev. Stat. § 8-4-101, *et seq.*, and all applicable Colorado Minimum Wage Orders, 7 C.C.R. § 1103-1. On February 10, 2015, Plaintiff filed an alleged class action lawsuit against Defendant entitled *Fred D. Bauer v. Glenmoor Country Club*, Case Number 2015CV30354, in District Court, Arapahoe County, Colorado. On December 14, 2015, Plaintiff filed an Amended Class Action Complaint (the Complaint and Amended Complaint are collectively referred to as the “Action”).

B. Plaintiff in the Action alleged that Defendant violated the Colorado Wage Act and all applicable Colorado Minimum Wage Orders. Plaintiff asserts that Defendant allegedly (a) failed to distribute 100 percent of collected gratuities to tipped employees; (b) failed to post the notice required by law in order for an employer to keep any portion of gratuities; and (c) required employees to wear uniforms as a condition of their employment and improperly deducted uniform charges from employees’ pay. In the Action, Plaintiff alleged purported class action claims for relief on behalf of present and former employees for violations of the Colorado Wage

Act and all applicable Colorado Minimum Wage Orders. Defendant denied, and continues to deny, each and every material allegation made by Plaintiff.

C. On December 14, 2015, Plaintiff moved the Court to certify the Action as a Colo. R. Civ. P. Rule 23 class action. Discovery concerning the potential certification of a class was conducted between the parties and the matter was fully briefed. The Court held a class certification hearing on January 26, 2016. Subsequent to that time the parties conducted settlement discussions.

D. The Plaintiff, Fred D. Bauer, on behalf of himself and the Settlement Class that he purports to represent, along with the Defendant now desire to fully and finally settle and completely resolve all rights, claims, causes of action, and proceedings and avoid claims of further litigation by Plaintiff and Settlement Class members against Defendant and its past, present, and future officers and directors (in their corporate and individual capacities), and employees, and the predecessors, heirs, successors, trustees, administrators, and assigns of each of the foregoing, as to all claims which were pleaded or which could have been pleaded in the Action arising out of the facts alleged in the Complaint and the Amended Complaint, encompassing claims based on the Colorado Wage Act, Colo. Rev. Stat. § 8-4-101, *et seq.*, and all applicable Colorado Minimum Wage Orders, 7 C.C.R. § 1103-1, which claims arose on or before the date of the preliminary approval of this Agreement by the Court, including, without limitation, any failure to distribute collected gratuities to tipped employees, any failure to post the notice required by law in order for an employer to keep any portion of gratuities, and any improper deductions for uniform charges from employees' pay.

E. The Plaintiff and his counsel have fully analyzed and evaluated the putative plaintiff class's respective claims and contentions, Defendant's defenses, and this Settlement as it

affects the named Plaintiff and the members of the alleged Settlement Class. To determine the value of each Plaintiff's and each potential class member's claims, Plaintiff and his counsel reviewed thousands of pages of documents collected in discovery, including but not limited to, Defendant's pay records; spreadsheets used to calculate employee pay; policies with respect to distribution of tips, gratuities, and/or service charges; and budgets indicating the portion of collected gratuity/service charges allegedly kept by Defendant. Plaintiff has deposed the General Manager as well as the Food & Beverage Manager of the Defendant and has conducted an extensive corporate deposition pursuant to Rule 30 (b)(6) of the C.R.C.P., as well as interviewing over a dozen former employees of Defendant. Plaintiff and his counsel, after taking into account the foregoing and the substantial risks of litigation, are satisfied that the terms of this Agreement are a fair, reasonable, adequate, equitable, and complete settlement and resolution of all claims that were pleaded or that could have been pleaded in the Action arising out of the facts alleged in the Action; that Plaintiff does not seek any injunctive or other relief beyond the Settlement Payment described below; and that a settlement of the Action on the terms set forth below is in the best interest of the alleged Settlement Class (as defined in Paragraph 1 below).

F. Defendant, while continuing to deny any and all allegations of wrongdoing and disclaiming any and all liability with respect to any and all claims made against it in the Action, and contending that its pay practices were and are lawful and proper, considers it desirable to resolve the Action on the terms stated herein in order to avoid further expense, inconvenience, and interference with its ongoing business operations and to dispose of burdensome litigation, and thus has determined that settlement of the Action on the terms set forth herein is in its best interest. Defendant covenants that it will not attempt to discharge the Settlement Payment (as defined below) through bankruptcy. Defendant agrees that as part of this settlement it will make

its employee pay and distribution records available to the Plaintiff's counsel and the Settlement Administrator pursuant to Paragraph 11 below, as reasonably necessary to effectuate the terms of this Agreement.

G. This Agreement reflects a compromise between the Parties and shall in no event be construed as or be deemed an admission or concession by any party of the truth or the validity of any substantive or procedural allegation, claim, or defense asserted in the Action or in any other action or proceeding or of any fault, negligence, or breach of any alleged duty on the part of any party, and all such allegations are expressly denied. This Agreement is made without admission or waiver of any substantive or procedural fact, claim, or defense by any party, and shall not be used in evidence in any judicial or administrative proceeding, except to enforce the terms hereof.

H. This Agreement is subject to and its effectiveness conditioned upon legally final approval by the Court and other conditions precedent specified in Paragraph 9 below.

**NOW, THEREFORE**, with no admission of any substantive or procedural fact, claim, or liability by Defendant as a negotiated compromise, and in consideration of and in reliance upon the definitions, recitals, promises, covenants, understanding, and obligations set forth is this Agreement, Plaintiff and Defendant hereby agree as follows:

1. **Definitions.** The following terms shall have the following meanings:

“Plaintiffs” means Fred D. Bauer and the current and former employees who are to be mailed notice of the Action and who do not opt out of the Action (who are defined as the “Settlement Class” and “Settlement Class Members” below).

“The Settlement Administrator” is that person or entity selected by the Plaintiff's counsel, after notice to Defendant's counsel, and thereafter approved by the Court, to serve as the

administrator for the settlement of the Action who will serve as the joint agent of Plaintiffs and Defendant.

“Plaintiffs’ Counsel,” for purposes of notice or service in the Action, means David H. Miller, Sawaya & Miller Law Firm, 1600 Ogden Street, Denver, Colorado 80218.

“Defendant’s Counsel” for purposes of notice or service in the Action, means Perry L. Glantz and Tracey Donesky, Stinson Leonard Street LLP, 6400 S. Fiddlers Green Circle, Suite 1900, Greenwood Village, Colorado 80111.

“Settlement Class” and “Settlement Class Members” mean all non-management Food and Beverage employees who worked in the “front of the house” as that term is used by management at Glenmoor from February 10, 2012, until the date of the preliminary approval of this Agreement by the Court.

“Parties” refers jointly to Plaintiffs and Defendant.

The term “Final Approval Order” shall mean the order of the District Court that gives final approval to this Agreement.

The term “Final Approval Date” shall mean the occurrence of all of the conditions set forth in Paragraph 9 of this Agreement.

The term “Effective Date” shall mean the date specified in Paragraph 10 of this Agreement.

2. **Settlement Class Certification.** For purposes of settlement only, and without any admission by any party in this or any other matter, the Parties stipulate to the certification of a Class Action under the Colorado Rules of Civil Procedure, Rule 23, as described herein. The language of said stipulation is as follows: The Parties stipulate to the certification of a Rule 23 Class consisting of “all non-management Food and Beverage employees who worked in the

‘front of the house’ as that term is used by management at Glenmoor from February 10, 2012, until the date of the preliminary approval of this Agreement by the Court for settlement purposes.”

3. **The Settlement Class.** The Settlement Class shall be comprised of anyone identified in Defendant’s payroll records as having worked for Defendant as non-management Food and Beverage employees who worked in the “front of the house” as that term is used by management at Glenmoor from February 10, 2012, until the date of the preliminary approval of this Agreement by the Court who is sent notice of the Action and who does not opt out.

The above stipulation is for settlement purposes only, with no admission that the alleged class would be appropriate for class action certification for purposes of discovery or trial of the Action. If the conditions set forth in Paragraph 9 below are not met, then Glenmoor may declare the stipulation to settlement and class certification contained herein null and void and of no force and effect. Should this Agreement be declared null and void by Glenmoor pursuant to Paragraph 9, the Agreement shall not be referred to by any of the Parties or considered by any court in briefing or in evidence; the Parties shall each retain all of their rights, remedies, claims, defenses, and contentions for and against class certification and on the merits of the Action; and the Action shall continue with each party preserving all of his, her, or its claims and/or defenses.

4. **Settlement Payment.** In full settlement of Plaintiffs’ claims for the Class, without admitting any liability and only after the satisfaction of the conditions set forth in Paragraph 9 below to Glenmoor's satisfaction, Defendant shall pay an “all-inclusive,” non-reversionary Settlement Payment of \$450,000.00 plus 50% of the employer’s share of FICA and FUTA taxes and other applicable employer tax contributions and/or payments to taxing entities associated with the wage payments to Class Members at the rates required by the appropriate tax agency as

payment of all sums due under the settlement (“Settlement Payment”) in the manner described below, which amount shall be held in trust by the Settlement Administrator to be allocated as described herein. The Settlement Payment is a common fund from which will be made all settlement payments to the Settlement Class members who do not opt out of the settlement; all attorney’s fees and litigation costs and expenses that are awarded by the Court; any service awards awarded by the Court to Plaintiff Fred Bauer; all settlement administration costs, including any and all costs related to Class notice, notice of settlement, calculation of settlement payments, all payments to the Settlement Administrator and any other costs of settlement administration (“Settlement Administration Costs”). In determining the allocation of the Settlement Payment to each Settlement Class Member the Settlement Administrator, on approval by the Court, and after calculations of all distributions except the distributions to each of the Settlement Class Members shall calculate the proposed individual distributions to each of the Settlement Class Members, utilizing and applying a pro rata distribution to each of the Settlement Class Members in consideration of the number of hours worked during each payroll period and the amount and percentage that their gratuities/service charges were reduced by Defendant for allocation to itself or others. (See, e.g., unredacted Exhibit 7 to Plaintiff’s Motion for Certification and all such similar documents utilized by Defendant and affecting Class Members from February 10, 2012 until the date of the preliminary approval of this Agreement by the Court). The Settlement Class Administrator shall pay the employer’s share of FICA and FUTA taxes and other applicable employer tax contributions and/or payments to taxing entities associated with the wage payments to Class Members at the rates required by the appropriate tax agency from the proceeds of the Settlement Payment. Defendant shall pay 50% of the employer’s share of FICA and FUTA taxes and other applicable employer tax contributions

and/or payments to taxing entities associated with the wage payments to Class Members at the rates required by the appropriate tax agency to the Settlement Class Administrator after the final calculation of settlement payments has been completed. Other than as specifically set forth herein, Defendant shall not be liable for and shall make no additional payment to or on behalf of the Settlement Class or to Plaintiffs' counsel. Other than as specifically set forth herein Defendant shall not be liable for satisfaction of any taxes, contributions to any employment security funds, contributions to any retirement plans or employee benefit funds, liens or for any pre- or post-judgment interest, liquidated damages, or penalties in addition to the Settlement Payment.

5. **Procedure for Payment.** The procedure for calculating and making the Settlement Payment shall be:

a. Within 10 days after the Court's preliminary approval of the Settlement Agreement, Defendant shall supply the Settlement Administrator with a listing of the Settlement Class Members and their dates of employment for the Class Members who do not opt out of the settlement, as necessary to make calculations of payments to Class Members in accordance with Paragraph 4.

b. Within ten days following entry of the Final Approval Order, the Settlement Administrator shall determine the estimated Settlement Administration Costs pursuant to Paragraph 12, the attorney's fees, the litigation costs and expenses awarded by the Court pursuant to Paragraph 13, and the service awards to named Plaintiff Fred Bauer, if any, ordered by the Court pursuant to Paragraph 4, and shall report said figures to the Parties.

c. Within five days of entry of the Final Approval Order, the Settlement Administrator shall make calculations of payments to Settlement Class Members, including



withholding for taxes; adjust said payments to equal the Net Settlement Fund in accordance with Paragraph 4; and finalize and report said calculations to the Parties in a consolidated report that states the final Settlement Administration Costs, attorney's fees, costs, and expenses, and Class representative's service award, all as ordered by the Court, and shall describe the method of calculation of the Net Settlement Fund, required tax withholdings, and the amounts to be distributed to each Class Member.

d. Within five days of the Effective Date as defined in Paragraph 10 below, Defendant will pay the total \$450,000.00 Settlement Payment plus 50% of the employer's share of FICA and FUTA taxes and other applicable employer tax contributions and/or payments to taxing entities associated with the wage payments to Class Members at the rates required by the appropriate tax agency into an account held by the Settlement Administrator.

e. Within ten days of the Court's Final Approval of the Settlement Agreement, the Settlement Administrator shall distribute the Settlement Administration Costs; the Plaintiffs' counsel attorney's fees, costs, and expenses; and the distributions to Class Members and/or others under this Settlement from the Net Settlement Fund, all as authorized by the Court and pursuant to the terms of this Settlement. Checks paid by the Settlement Administrator shall require the payee to cash said checks within 90 days of the date of the check.

f. Within 120 days following the Effective Date, the Settlement Administrator shall provide to the Parties and file with the Court a final accounting and certificate of completion of the administration of the settlement.

g. In the event that the absence of a signed order by the Court on a point that requires an order of the Court delays performance of any of the above settlement administration or payment obligations by the date specified in the above schedule, then (a) upon receipt of such

Court order(s) as the time interval that existed in the original schedule between the immediately preceding settlement administration or payment obligation and the next settlement administration or payment obligation to be performed and (b) the dates for the ensuing steps of settlement administration or payment obligations in the above schedule shall be adjusted accordingly based upon the new date for performing the next step of settlement administration or payment obligation, maintaining the same intervals between steps as in the original schedule.

6. **Taxes.** As noted in in section 4 above, the Settlement Class Administrator shall pay the employer's share of Social Security, FUTA, Medicare, SDI, EDD and state unemployment taxes as applicable for Settlement Class Members from the proceeds of the Settlement Payment as described in section 5.d. above. The Settlement Class Members shall each be responsible for payment of the employees' share of all applicable taxes and/or required withholdings on any settlement payments they receive from the Settlement Administrator using the same rates at which such deductions were made in the last paycheck for each such Settlement Class Member..

7. **Release.** Plaintiff Class Representative Fred Bauer on behalf of himself and the Settlement Class he purports to represent and all individuals who do not timely opt out of the Settlement Class and each of their respective agents, attorneys, employees, successors, heirs, spouses, administrators, executors, partners, assigns and each of their past, present, and future representatives (the "Releasers") hereby release and forever discharge Defendant its past, present and future agents, representatives, shareholders, principals, attorneys, affiliates, parent corporations, subsidiaries, officers, and directors in both their corporate and individual (personal) capacities, members, predecessors and successors and heirs, executors, and assigns of each of the foregoing (the "Releasees") of and from all claims, known or unknown, suspected or

unsuspected, which were pleaded or which could have been pleaded in the Action arising out of the facts alleged in the Action, including, without limitation, any alleged failure to distribute all collected gratuities and/or deduction of uniform fees from pay and/or any other wage or compensation due for employment, or making any other payment due under the Colorado Wage Act and/or all applicable Colorado Minimum Wage Orders, which claims arose on or before the date of preliminary approval of the Settlement by the Court (“Released Claims”).

a. With regard to the claims encompassed in Paragraph 7 above, the Releasors acknowledge that they are aware that they may later discover facts in addition to or different from those that they know or believe to be true with regard to the subject of this Agreement but that, upon the effective date of this Settlement, they intend fully, finally, and forever to settle and release all disputes and differences, known or unknown, suspected or unsuspected, that now exist or formerly existed between the Parties and/or any of the Releasees with respect to the Released Claims listed in Paragraph 7. In furtherance of this intention, this release will be and will remain a full and general release of the subject matter of the Released Claims notwithstanding the discovery or existence of any additional or different facts relating to the Released Claims or the subject of this Agreement. The Releasors also expressly waive all rights or benefits to which they may be entitled under the Colorado Wage Act, all applicable Colorado Minimum Wage Orders, or any other state law of similar effect.

8. **Allocation and Distribution of Net Settlement Fund.** The Parties will seek Court approval for the following plan of allocation to distribute the Net Settlement Fund (*i.e.*, the Settlement Payment to the Settlement Class Members who do not opt out.)

a. The Parties propose the allocation of all funds remaining in the Net Settlement Fund after the payment of approved attorney’s fees, litigation costs, and settlement

costs. The Parties agree that this allocation will not be less than \$280,000. The Parties propose that the allocation shall be made as set forth in Paragraph 4, above. Settlement Class Member payments will be attributable to back wages, will be subject to payroll tax withholding, and will be reported by Defendant and the Settlement Administrator by IRS Form W-2.

b. Any amount remaining in the Settlement Fund after distribution to the Settlement Class Members as set forth above based upon the agreed upon formula (for example, due to settlement checks returned as undeliverable or the failure of Class Members to cash settlement checks) will be paid on behalf of Defendant as a charitable contribution to: Towards Justice, a Colorado charitable 501(c)(3) corporation that provides non-profit legal and advocacy services to recover unpaid wages for low income workers.

c. No modifications can be made to the plan of allocation unless jointly agreed upon in writing by the Parties and approved by the Court.

9. **Conditions Precedent and Final Approval Date.** The settlement of the Action and the Settlement Payment are conditioned upon:

a. The number of potential members of the Settlement Class that opt-out of the Settlement Class not being equal to or exceeding five percent (5%) of the total number of potential members of the Settlement Class. If the number of potential members of the Settlement Class that opts-out of the Settlement Class is equal to or exceeds five percent (5%) of the total number of potential members of the Settlement Class then the stipulation to settlement and class certification contained herein may be declared null and void and of no force and effect by Glenmoor. If Glenmoor elects to declare the stipulation to settlement null and void and of no force and effect pursuant to this provision notice of said declaration shall be given within ten

days after the end of the opt-out period approved by the Court. Any costs of administration incurred up to the time of such declaration shall be borne by Glenmoor.

b. The entry of a Final Approval Order by the Court that gives final Court approval of this Agreement, including, without limitation, the dismissal with prejudice of any claims by Settlement Class Members as to all claims that were pleaded or that could have been pleaded in the Action arising out of the facts alleged in the Action, including claims filed in the Action, including, without limitation, any alleged failure to distribute collected gratuities and/or deduction of uniform fees from employee pay and/or any other wage or compensation due for employment and/or any other payment due under the Colorado Wage Act and/or Colorado Minimum Wage Orders, which claims arose on or before the date of preliminary approval of the Settlement by the Court.

c. The legal finality of this Agreement by virtue of entry of the Final Approval Order and no objections or upon entry of the Final Approval Order and its affirmance on appeal, if any.

10. **Effective Date.** The effective date of the Settlement will be the later of the following dates: (a) the date of an order by the Court granting final approval of the Settlement, if there are no objections; or (b) if there are objections and an appeal of the Court's decision granting final approval, the day after all appeals are finally resolved in favor of final approval. Upon the effective date, the Plaintiff's Action shall be dismissed with prejudice, without costs, and with all appeals waived, and the release set forth in Paragraph 7 above shall be effective.

11. **Class Notice, Opt-out, and Objections to the Settlement.** Within ten days (10) days of the preliminary approval of this Agreement by the Court, Defendant will provide the Settlement Administrator a list, in machine readable agreeable format, of the names, last known

addresses and telephone numbers, dates of birth, and social security numbers of the Settlement Class Members, to the extent known. Within twenty (20) days of Preliminary Approval of this Settlement, the Claims Administrator shall mail Notice of this Settlement to all putative Settlement Class Members by first-class mail in the form approved by the Court the Notice of Proposed Settlement of Class Action and Settlement Hearing (“Settlement Class Notice”). The mailing of the Settlement Class Notice will commence at the beginning of the sixty (60) day class and opt-out period, and any opt-outs must be postmarked or received by the Settlement Administrator no later than sixty (60) days after the Settlement Class Notice is mailed. In addition to the procedures set out above, the Settlement Administrator will also send a reminder postcard to all Class Members who have not responded with the return of a Receipt of Notice Form or a request for exclusion fifteen days before the expiration of the exclusion period, reminding them of the deadline. The Settlement Class Notice will be approved by the Court and shall contain a description of the case and the allocation procedures and shall state that Defendant disputes all liability in the Action. The Settlement Class Notice will inform Settlement Class Members that: (a) there are potential tax consequences to each Settlement Class Member associated with the settlement, including receipt of a lump sum payment, the potential payment of up to one-third (1/3) of the Settlement Amount to Plaintiff’s attorneys of attorney’s fees and costs, payment of a service or incentive award to the named Plaintiff by Defendant of up to \$7,500.00 as a service or incentive payment, and other issues; and (b) each Settlement Class Member is advised to consult with her or her own tax advisor concerning the tax consequences of the settlement to him or her. The Settlement Class Notice will state that both Parties support the settlement and encourage participation in the settlement and that Defendant will not retaliate against any Settlement Class Member for participating in the settlement.

Neither named Plaintiff nor Defendant nor their or its counsel will encourage any Settlement Class Member to opt-out of the settlement. The Parties agree that Plaintiff's counsel may contact and have communication with Settlement Class Members to consult with them about this Agreement. The Settlement Class Notice shall be provided to the Settlement Class within the timeframe set out above by:

a. A Settlement Class Notice mailed first class to each Settlement Class Member by United States Postal Service ("USPS") at his/her last known address or such other more current address as determined by the Settlement Class Administrator with notice of the terms of the Agreement and its legal effect, the date, time, and place of the Final Approval and Fairness Hearing, the Settlement Class Member's right to object and appear at the hearing individually or through counsel, and the procedure for opting-out or filing an objection to this Agreement.

b. As to any Settlement Class Notice that is Returned Undeliverable Mail ("RUM"), within ten (10) days of receipt of such RUM notice, the Settlement Administrator shall update that Settlement Class Member's address by using the USPS National Change of Address List and the Defendant shall forthwith provide to the Settlement Administrator for all such Settlement Class Members any additional contact information that the Defendant possesses in its personnel files, including but not limited to email, text and emergency contact information. The Settlement Administrator shall re-mail the Settlement Class Notice to such person only once via USPS first class mail or otherwise attempt to contact such Settlement Class Members and provide Settlement Class Notice via email and text. No further address checking, re-mailing or contacting Settlement Class Members shall be required or performed by the Class Administrator.

c. Any Settlement Class Member wishing to object to the Court's approval of this Settlement shall be required to follow the procedures set forth in the Settlement Class Notice,

including filing and serving any objections on Plaintiff's Counsel no later than sixty (60) days from the original mailing of the Settlement Class Notice. A Settlement Class Member who has submitted an opt-out request may not submit any objections to the Settlement. Any Settlement Class Member who fails to file a timely written objection shall be foreclosed from objecting to this Settlement unless otherwise ordered by the Court. Counsel for the Parties may file a response to objections filed by objecting Settlement Class Members as part of or contemporaneous with Plaintiff's application for final settlement approval. Plaintiff's Counsel may communicate with Settlement Class Members regarding their objections and may advise the Court of any Settlement Class Members who have communicated that they wish to withdraw their objections.

12. **Settlement Administrator.** Subject to approval of the Court, and having notified Defendant's counsel, the Plaintiff has selected the CPT Group, Inc., as the Settlement Administrator to perform the functions such as mailing and providing the Settlement Class Notice, providing and receiving opt-out notices and/or objections, if any, performing the settlement calculations set forth in paragraph 4, above, and mailing out settlement payments to Settlement Class Members and making such other payments or taking such other action as the Court may instruct. The class action administrator shall be compensated from the Settlement Payment in accordance with the procedure set forth in paragraph 4.

13. **Plaintiff's Attorneys' Fees, Costs, and Expenses.** Prior to the Final Fairness and Approval Hearing, Plaintiff's counsel will apply to the Court for an amount not to exceed one-third (1/3) of the Settlement Payment as an award of attorneys' fees, to be paid from the Settlement Payment for good cause shown according to applicable law. Plaintiff's counsel will also ask the Court to order reimbursement for their reasonable out-of-pocket litigation costs and



expenses to be paid from the Settlement Payment. Any fees and/or costs or expenses awarded by the Court will be paid from, and not in addition to, the Settlement Payment in accordance with the procedure set forth in paragraph 4. Plaintiff's counsel will be issued an IRS Form 1099 for these amounts.

14. **Settlement Administration Costs.** The Settlement Administrator shall maintain records for the Settlement Administration Costs associated with the Action. The actual and reasonable Settlement Administration Costs payable the Settlement Administrator shall be payable from the Settlement Payment in amounts to be determined by the Court for good cause shown according to applicable law and shall be paid in accordance with the procedure set forth in paragraph 4.

15. **No Admission of Liability.** Any and all agreements, notices, and statements shall explicitly state that there has been no admission by Defendant of any liability of any kind, and nothing in such agreements, notices, and statement shall be used, referred to, or relied upon as constituting an admission of any kind of shall be used, relied upon, or referred to in any forum for any purpose, except insofar as may be necessary to enforce the settlement.

16. **No Re-Employment/No Re-Application.** In connection with this Agreement and release of claims, Bauer warrants and certifies there are no pending applications for employment or work of any kind (whether as an employee, contractor, consultant, assigned worker through a staffing agency or in any other capacity) with Glenmoor and further agrees that he shall not ever mark up or attempt to return to service or apply for employment or otherwise seek employment, reinstatement, work or perform services or seek to mark up, work or perform services of any kind with Glenmoor in any capacity (whether as an employee, contractor, consultant, assigned worker through a staffing agency or in any other capacity) at any time now

or in the future following his signature of this Agreement. In the event Bauer does apply for employment in violation of this provision or assigned or contracted to or with, Bauer agrees that he has no right to being returned to work, being hired or employed and that Glenmoor has a legitimate, non-discriminatory, non-retaliatory and contractual reason to refuse his hire or, in the event he is mistakenly hired or assigned or contract to work in contradiction of this provision, to terminate his employment after realizing such error in accordance with the terms of this Agreement and that, in doing so, Bauer acknowledges, agrees and understands that Glenmoor is not discriminating or retaliating against him but is asserting its contractual right hereunder.

17. **Preliminary Approval by the Court.** The Parties shall petition the Arapahoe County District Court for preliminary approval of this Agreement and for notice to be sent to the Class Members as specified herein. The Parties will submit this Stipulation and a [proposed] Preliminary Approval Order.

18. **Final Fairness and Approval Hearing.** The Parties shall petition the Court to hold a Final Fairness and Approval Hearing and will thereafter enter a [proposed] Final Approval Order. At the Final Fairness and Approval Hearing, the Court will review any objections to the settlement with the Parties and any Settlement Class Member who chooses to appear. The Parties have the right to present arguments and evidence regarding such objections, if any. To be heard at the hearing, a Settlement Class Member must file and serve any objections on Plaintiff's counsel and Defendant's counsel so that they are received by each no later than sixty (60) days from the original mailing of Class Notice. The Court will not consider any objections received outside this time period.

19. **Consultation.** In the event of any disagreements between the Parties concerning the terms of this Settlement Agreement or ancillary documents related to this Agreement, the

Parties shall contact the Court in an attempt to resolve any difference of opinions and finalizing such documents as soon as practicable. Prompt and cooperative consultation between the Parties shall be a condition precedent to an application by the party to the Court for relief on the subject under discussion.

20. **General Terms Regarding Construction of the Agreement, Etc.**

a. *No Representation.* This agreement controls over prior communications regarding the matters contained herein between the signatories hereto or their representatives. Except as expressly stated in this Agreement, no party hereto has made any statement or representation to any other party regarding any fact relied upon by any other party in entering into this Agreement, and each party specifically does not rely upon any statement, representation, or promise of any other party in executing this Agreement.

b. *Consent.* All Parties have carefully read this Agreement, and the contents hereof are known and understood by all Parties. The Parties have each received independent legal advice from attorneys of their choice with respect to the preparation, review, and advisability of executing this Agreement. Prior to execution of this Agreement by each party, each party's attorney has reviewed and Agreement and each party acknowledges that such party has executed the Agreement after independent investigation and without fraud, duress, or undue influence.

c. *Successors.* Subject to the provisions otherwise contained in this Agreement, this Agreement shall inure to the benefit of and binding upon the heirs, successors, and assigns of the respective Parties to this Agreement.

d. *No Assignments.* Each party represents and warrants that he, she, or it has not heretofore assigned or transferred, or purported to assign or transfer, to any person or entity,

his, her, or its rights in the Action or any interest therein, or any other interest in any claims or claims arising out of any of the matters that are the subject of the Recitals herein.

e. *Negotiated Agreements.* This Agreement and each of its terms constitutes a negotiated contract and not merely a recital and are the result of negotiation among the Parties. In interpreting this Agreement, there shall not be a presumption of interpretation against any party.

f. *Compromise Agreement and No Admissions.* This Agreement is the result of a compromise among the Parties, and nothing in this Agreement shall constitute an admission of liability by any party with regard to the subject matter of the Action and of this Agreement or with respect to the composition or certification of a class or collective action under the Colorado Rules of Civil Procedure, the Colorado Wage Act, the Colorado Minimum Wage Orders, or any other applicable law.

g. *Warranty of Authority.* Each of the signatories hereto warrants and represents that he or she is competent and authorized to enter into this Agreement on behalf of the party for whom he or she purports to sign it.

h. *Evidentiary Privilege.* This Agreement shall be deemed to fall within the protection afforded compromises and offers to compromise by Rule 408 of the Colorado Rules of Evidence.

i. *Applicable Law.* This Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the domestic laws of the State of Colorado without regard to conflicts of laws principles.

j. *Further Actions.* The Parties agree to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably

require to consummate, evidence, or confirm the agreements contained herein in the manner contemplated hereby. Defendant and Plaintiff mutually agree to cooperate to ensure the expeditious approval and administration of this Settlement.

k. *Continuing Court Jurisdiction.* The Court shall have continuing jurisdiction to supervise and enforce the settlement set forth in this Agreement.

l. *No Third Party Beneficiaries.* The Parties do not intend to confer any benefit hereunder on any person, firm, or corporation other than those specifically named herein.

m. *Modifications.* As approved by the Court, this Agreement may not be modified in whole or in part except by an agreement in writing signed by all Parties and executed in the same manner as this Agreement and approved by the Court.

n. *Execution.* This document may be executed in counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument, and may be transmitted via electronic scanning and email.

o. *Entire Agreement.* This Agreement and the exhibits hereto embody the entire agreement and understanding of the Parties hereto with respect to the subject matter contained herein and is a fully integrated contract.

IN WITNESS WHEREOF, the Parties hereby execute this Agreement effective as of the date set forth above unless a deferent date appears below.

**Plaintiff:**

Fred D. Bauer, as  
Class Representative on behalf of himself and  
All others similarly situated

\_\_\_\_\_  
Fred D. Bauer

**Approved as to Form:**

Sawaya & Miller Law Firm



By: \_\_\_\_\_  
David H. Miller  
Attorney for Plaintiff

**Defendant:**

**Glenmoor Country Club**

By: \_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name:  
Authorized Agent

**Approved as to Form:**

Stinson Leonard Street

By: \_\_\_\_\_  
Perry Glantz  
Attorney for the Defendant