

IN THE CIRCUIT COURT OF CHRISTIAN COUNTY, MISSOURI

RICHARD MCMILLIN,)	
On behalf of himself and a)	
class of similarly situated individuals,)	
)	
Plaintiff,)	
)	Case No: 14AF-CC00154-01
v.)	
)	
FOGLE ENTERPRISES, INC. and)	
NOLAN FOGLE,)	
)	
)	
Defendants.)	

SETTLEMENT AGREEMENT AND RELEASE

THIS SETTLEMENT AGREEMENT AND RELEASE (“Settlement Agreement”) is entered into between Richard McMillin (hereinafter “Plaintiff”), individually and on behalf of the Settlement Class as defined below, and Nolan Fogle and Fogle Enterprises, Inc. (hereinafter “Defendants”). This settlement resolves the case captioned *Richard McMillin v. Fogle Enterprises, Inc. and Nolan Fogle*; Case No. 14AF-CC000154-01.

I. DEFINITIONS

For purposes of this Settlement Agreement, the following terms are defined as follows:

- A. Administrative Costs** means (a) the costs of administration of the settlement by the third-party Settlement Administrator, and (b) the Service Award approved by the Court.
- B. Attorneys’ Fees and Costs** means the amount paid to Class Counsel from the Gross Settlement Fund pursuant to Section IV(A).
- C. CDF fee** refers to the amount charged by Defendants at Defendants’ Restaurants in Branson, Missouri during the Class Period referred to as the Community Development Fund or similarly-identified or described fee.
- D. Claim Form** means the form which must be submitted by Settlement Class Members to participate in the Settlement and receive a Settlement Award pursuant to the claims process described herein. A copy of the Claim Form will be available on the Settlement Website and is attached hereto as **Exhibit A**.
- E. Claims Period** means the ninety (90) day period after Notice is published wherein Settlement Class Members can submit Claim Forms.

- F. Class Counsel or Plaintiff's Counsel** shall mean Williams Dirks Dameron LLC, The Hodgson Law Firm, and Strong-Garner-Bauer P.C.
- G. Class Period** means the period between February 28, 2009 and February 28, 2014.
- H. Court** means the Circuit Court of Christian County, Missouri, in which the Lawsuit is pending, and to which presentation of this Settlement Agreement for judicial review and approval will be made.
- I. Defendants** means Nolan Fogle and Fogle Enterprises, Inc. and each of their respective predecessors, successors and assigns, their current and former direct and indirect parents, affiliates, subsidiaries, divisions, officers, directors, shareholders, employees, agents, insurers, attorneys, representatives and related business entities.
- J. Defendants' Restaurants** means the following restaurants owned and operated by Fogle Enterprises, Inc. where the CDF fee was charged during the Class Period: Fall Creek Steak and Catfish House, Whipper Snappers, Great American Steak & Chicken House, Peppercorns, Baldknobbers, and Plantations.
- K. Effective Date** shall mean the date on which the Final Approval Order has been entered by the Court, and the time for any appeal has lapsed with no appeal being filed.
- L. Final Approval Hearing** means the hearing at which the Court will consider and finally decide whether to enter the Final Approval Order.
- M. Final Approval Order** means the order entered by the Court approving: (1) this Settlement Agreement; (2) payment of the Service Award and Attorney's Fees and Costs; (3) dismissal of Plaintiff's individual and class claims with prejudice; (4) an order barring the assertion of claims against the Released Parties related to the CDF fee; and (5) such other final rulings as are contemplated by this Settlement Agreement.
- N. Gross Settlement Fund** means the amount of Three Hundred and Twenty Thousand Dollars (\$320,000.00). This payment includes the settlement allocations to all Settlement Class Members as defined below; Attorneys' Fees and Costs; and Administrative Costs. In no event shall the Gross Settlement Fund, or the amount Defendants are required to pay pursuant to this Settlement Agreement, exceed the sum of Three Hundred and Twenty Thousand Dollars (\$320,000.00).
- O. Long Form Class Notice ("Long Form Notice")**, which shall be in substantially the same form as **Exhibit B**, means the Court-approved long form notice, which shall be published using the court-approved methods discussed below, regarding, *inter alia*: (i) existence of the Settlement Website; (ii) preliminary approval of the Settlement; (iii) scheduling of the Final Approval Hearing, and (iv) the opportunity to object to or opt out of the Settlement.

- P. Net Settlement Fund** means the Gross Settlement Fund less Administrative Costs and Attorneys' Fees and Costs.
- Q. Plaintiff** means Richard McMillin.
- R. Preliminary Approval Order** means the order of the Court preliminarily approving this Settlement Agreement, in substantially the same form as **Exhibit C**.
- S. Released Parties** means (i) Defendants; and (ii) Defendants' past or present subsidiaries, divisions, affiliates, parents, and successors or assigns; and (iii) past or present officers, directors, shareholders, members, partners, agents, employees, advisors, insurers, attorneys, representatives, trustees, heirs, executors, administrators, and predecessors, and successors or assigns of any of the foregoing, specifically including but in no way limited to Babette Fogle.
- T. Selected Charities** means the following charities which were mutually agreed-upon by the Parties to receive half of the unclaimed amounts remaining in the Net Settlement Fund. 50% to the following Law Enforcement Entities: Taney County, Missouri Sheriff's Department; Stone County, Missouri Sheriff's Department; City of Branson Police Department; City of Branson West Police Department; City of Merriam Woods Police Department; and City of Hollister Police Department; and 50% to Legal Services of Southern Missouri.
- U. Service Award** means a \$10,000 payment that shall be paid to Richard McMillin Trust FBO the Ronald McDonald House on behalf of Plaintiff, subject to approval of the Court, for his service on behalf of the other Class Members.
- V. Settlement Administrator** means the entity selected by Class Counsel and approved by Defendants to perform the settlement administration tasks described herein.
- W. Settlement Award** means the payments that each Settling Plaintiff shall be entitled to receive pursuant to the terms of the Settlement Agreement.
- X. Settlement Website** means the website established by the Settlement Administrator for purposes of providing access to the Long Form Notice and information about the settlement, and accepting Claims Forms from Settlement Class Members.
- Y. Settling Plaintiff** means a Settlement Class Member who participates in this Settlement by submitting a valid Claim Form.
- Z. Settlement Class, Settlement Class Members, or Class Members** means the Class certified by the Court, defined as "Defendants' customers within five years of the filing of this action who paid a CDF."
- AA. Short Form Class Notice ("Short Form Notice")**, which shall be in substantially the same form as **Exhibit D**, means the Court-approved short form notice which shall be

published using court-approved methods.

II. REQUIRED EVENTS

A. After execution of this Settlement Agreement by all Parties:

1. Class Counsel and Defendants' Counsel shall take all necessary steps to obtain entry of the Preliminary Approval Order and the Final Approval Order.

2. Within ten (10) business days of execution of this Settlement Agreement, the Parties will jointly file a motion with the Court for a Preliminary Approval Order.

3. The Parties shall use good faith efforts, consistent with the terms of this Settlement Agreement, to obtain a Final Approval Order.

4. In the event that the Court fails to issue the Preliminary Approval Order or fails to issue the Final Approval Order, the Parties agree to use good faith efforts, consistent with this Settlement Agreement, to cure any defect(s) identified by the Court, provided that the cure substantially preserves the parties the rights and obligations as set forth herein. If said defects cannot be cured in order to secure preliminary and/or final approval by the Court, then the Settlement Agreement is void and all parties are restored to their former pre-settlement positions.

5. The Parties acknowledge that approval, consummation, and implementation of the Settlement set forth in this Settlement Agreement are essential. The Parties shall cooperate with each other in good faith to carry out the purposes of and effectuate this Settlement Agreement, shall promptly perform their respective obligations hereunder, and shall promptly take any and all actions and execute and deliver any and all additional documents and all other materials and/or information reasonably necessary or appropriate to carry out the terms of this Settlement Agreement and the transactions contemplated hereby.

III. CONSIDERATION: SETTLEMENT FUND AND ALLOCATION

A. Net Settlement Fund and Reversion.

Defendants shall pay Settling Plaintiffs their Settlement Awards only on the basis of claims submitted in the form and manner specified below, in addition to Administrative Costs and Attorneys' Fees and Costs. Half of the amounts allocated to Settlement Class Members from the Net Settlement Fund which are not claimed shall automatically revert to Defendants and the other half of unclaimed funds shall be divided among the Selected Charities.

B. Allocation of the Net Settlement Fund.

Each Settling Plaintiff shall be allocated portions of the Net Settlement Fund (i.e., his or her Settlement Award) in the manner prescribed in Section VII(B)(6). Class Members' Settlement Awards shall be totaled. If the total Claimed Settlement Awards is less than \$10,000, then the difference between \$10,000 and the total Settlement Awards shall be divided among the Selected

Charities. If the total Settlement Awards exceeds the Net Settlement Fund, each Class Member's Settlement Award will be proportionally reduced so that the total Settlement Awards equals the Net Settlement Fund. Defendants have the right to challenge each Claiming Class Member's Settlement Award. However, such challenges shall not be unduly burdensome to Claiming Class Members in light of the size of the relative Award.

IV. ADMINISTRATIVE COSTS, ATTORNEYS' FEES, AND SERVICE AWARD:

A. Attorneys' Fees and Costs.

Class Counsel will seek, and Defendants will not oppose, an award of attorneys' fees in the amount of forty percent (40%) of the Gross Settlement Fund, which is equivalent to One Hundred and Twenty-Eight Thousand Dollars (\$128,000.00), plus their costs of approximately Seven Thousand Dollars \$7,000. Any amounts allocated as attorneys' fees and costs under this paragraph but not approved by the Court shall be re-allocated to the Net Settlement Fund and be re-distributed pursuant to the allocation method set forth in Section III.B. The attorneys' fees and costs described herein will be paid from the Gross Settlement Fund following the Effective Date.

B. Service Award.

In exchange for a separate general release described below and subject to Court approval, Plaintiff will receive a service award in the amount of \$10,000 to be paid to Richard McMillin Trust FBO the Ronald McDonald House on Plaintiff's behalf. Class Counsel seeks this Service Award in recognition of Plaintiff's efforts to pursue the claims raised in this Litigation on behalf of the Class, including participating in discovery, depositions and for providing factual information and otherwise assisting Class Counsel with the prosecution of the litigation. The Service Award will be paid from the Gross Settlement Fund following the Effective Date.

V. RELEASE, COVENANT NOT TO SUE, AND BAR ORDER

A. Scope and Effect of Final Approval Order

The Final Approval Order shall be binding upon, and inure to the benefit of Plaintiff, the Class, all Class Members, and Defendants. The Parties to this Settlement Agreement intend the settlement to be a final and complete resolution of all claims released herein.

B. Plaintiff's Release of Defendants

Plaintiff, on behalf of himself and his spouse, heirs, representatives, insurers, partners, parents, associates, assignors, predecessors, administrators, executors, successors, assigns, attorneys, agents and the Released Parties, as defined herein, and anyone else acting on his behalf or at his direction shall, as of the Effective Date, be deemed to release and forever discharge any and all claims, rights, causes of action, and liabilities whatsoever, irrespective of legal theory, whether based on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known and unknown claims accrued and un-accrued claims, foreseen and unforeseen claims, matured and un-matured claims, which have been or could have been

asserted in this Litigation by reason of any event occurring up to and including the Effective Date.

C. The Class's Release of Defendants

Each Class Member, on behalf of themselves and their past and present spouses, heirs, employees, legal representatives, insurers, partners, parents, associates, assignors, predecessors, administrators, executors, successors, assigns, and anyone else acting on their behalf or at their direction (collectively, the "Class Releasers") shall, as of the Effective Date be deemed to release and forever discharge the Released Parties, as defined herein, from any and all claims, rights, causes of action, and liabilities whatsoever, irrespective of the legal theory, whether based on federal, state, local, statutory or common law, or any other law, rule or regulation, including both known and unknown claims, accrued and un-accrued claims, foresee and unforeseen claims, matured and un-matured claims, which have been or could have been asserted in this Litigation by reason of any event occurring up to and including the Effective Date..

D. Covenant Not to Sue

Upon entry of the Final Approval Order, Plaintiff and the Class Releasers shall be deemed to have covenanted and agreed not to sue or to assert or to prosecute, institute, or cooperative in the institution, commencement, filing, or prosecution of any proceeding against the Released Parties, in any forum, any cause of action, judgment, lien, indebtedness, costs, damages, obligation, attorneys' fees, losses, claims, liabilities, and demands of whatever kind or character, against the Released Parties that is similar to, or is based on, the causes of action and/or this Litigation. Provided, however, the Covenant Not to Sue does not apply to any future claim for which this Settlement Agreement does not provide an adequate remedial process.

VI. APPROVAL OF SETTLEMENT

A. Court Approval of Settlement.

1. Preliminary Approval. Within ten (10) business days of execution of this Settlement Agreement, the Parties will jointly seek the Court's preliminary approval of the terms of this Settlement Agreement by filing with the Court a motion for a Preliminary Approval Order. As detailed below, once the Agreement has been preliminarily approved, the Settlement Administrator and Defendants shall publish the Short Form and Long Form Notices (collectively, "Notices") in formats substantially in compliance with **Exhibits B and D**.

2. Final Approval. The parties will move for final approval of the settlement in a fashion designated by the Court. After the close of the Claims Period the Court will conduct a Final Approval Hearing. The settlement will be final upon the entry of a Final Approval Order.

3. If the Court does not enter a Final Approval Order, or decides to do so only with material modifications to the terms of this Agreement, or if the Final Approval Order is reversed or vacated by a court of competent jurisdiction, then this Agreement shall become null and void, unless the Parties agree in writing to modify this Agreement and the Court approves this

Agreement as modified.

B. Dismissal of Action with Prejudice.

Subject to and conditioned upon entry of the Court's Final Approval Order in accordance with the terms and conditions of this Settlement Agreement, this Lawsuit shall be dismissed with prejudice, with all parties responsible for their own costs and attorneys' fees, except as otherwise specifically provided in this Settlement Agreement.

VII. SETTLEMENT ADMINISTRATION AND PAYMENTS

A. Settlement Administrator.

The Settlement will be administered by a third-party administrator, to be selected by Class Counsel and approved by Defendants' Counsel. Defendants agree not to unreasonably withhold consent to the selection of a Settlement Administrator. The reasonable fees and expenses of the Settlement Administrator shall be deducted from the Gross Settlement Fund.

B. Notice and Claims Process.

1. Notice. Within fourteen (14) days of the Court's Preliminary Approval Order, the Settlement Administrator shall publish notice using each of the following Court-approved methods:

- a.** Establish a Settlement Website, allowing visitors to access case information (including the Long Form Notice) and submit Claims Forms.
- b.** Publish the Short Form Notice in newspapers in the following markets, which constitute the five largest markets from which tourists visit the Branson area: Springfield, Missouri; Kansas City, Missouri; St. Louis, Missouri; Little Rock, Arkansas; and Tulsa, Oklahoma.

2. Within fourteen (14) days of the Court's Preliminary Approval Order, Defendants shall publish notice using each of the following Court-approved methods:

- a.** Publish the Short Form Notice conspicuously at Fogle Enterprises' Office located at 301 North Francis, Branson, Missouri 65616.
- b.** Include the Short Form Notice along with a link to the Settlement Website on Defendants' website (www.bransonsbestrestaurants.com).

3. The Notices shall inform the Class Members of their eligibility to participate in the Settlement by completing, signing, and returning a Claim Form, which can be found on the Settlement Website, or by submitting a Claim Form directly on the Settlement Website, thereby potentially becoming a Settling Plaintiff.

4. Claims. Settlement Class Members will only be eligible to receive their Settlement

Award if they complete the Claim Form and postmark it, fax it, or submit it online through the Settlement Website within ninety (90) days of the publishing date (“Claims Period”).

5. The Claim Form shall require Settlement Class Members to self-identify by attesting under penalty of perjury that: (1) he or she went to one of Defendants’ Restaurants during the Class Period; (2) that he or she paid the bill for his or her transaction; and (3) that he or she did not opt-out of paying the CDF fee. In addition, the Claim Form will require the Class Members to do one of the following:

- a.** Provide a receipt from one of Defendants’ Restaurants, or
- b.** Provide some other documentary evidence of their visit to one of Defendants’ Restaurants (e.g., a photograph, credit card statement, etc.), as well as an approximation of the amount of the bill and/or attest under penalty of perjury that he or she dined at one of Defendants’ Restaurants during the Class Period and provide the approximate date of the visit as well as an approximation of the bill. No Settlement Class Member may receive more than \$10 without documentary evidence of each of their visits to Defendants’ Restaurants.

6. The Settlement Award for each Settling Plaintiff will be calculated in the following ways:

- a.** If the Settlement Class Member provides a receipt that identifies the amount he or she was charged for the CDF fee, then his or her Settlement Award will be the amount he or she was charged for a CDF fee, as displayed on the receipt.
- b.** If the settlement Class Member provides a receipt that does not identify a CDF fee charge, then he or she shall be paid either:
 - i.** One percent (1%) of his or her total bill if he or she dined at Defendants’ Restaurants between February 28, 2009 and June 1, 2011, or
 - ii.** One and one-half percent (1.5%) of his or her total bill if he or she dined at Defendants’ Restaurants between June 2, 2011 and February 28, 2014.
- c.** If the Settlement Class Member provides dining information without a receipt as set forth in paragraph 5(b) above, his or her Settlement Award will be calculated as:
 - i.** One percent (1%) of his or her approximate bill if he or she dined at Defendants’ Restaurants between February 28, 2009 and June 1, 2011; or
 - ii.** One and one-half percent (1.5%) of his or her approximate bill if he or she dined at Defendants’ Restaurants between June 2, 2011 and February 28, 2014.

- d. Defendants shall have the right to challenge the amount of any Class Member's claimed Settlement Award. However, such challenges shall not be unduly burdensome to Claiming Class Members in light of the size of the relative Award, and payments shall not be unduly withheld to any Class Member.

7. The Gross Settlement Fund, less any previously paid administrative costs, shall be paid to the Settlement Administrator within seven (7) days of the Effective Date. Payment to Settling Plaintiffs will be made by the Settlement Administrator within thirty (30) days after the Effective Date. Excepting Plaintiff, no Settlement Class Member shall have the right to obtain any payment through this Settlement Agreement unless he or she submits a timely Claim Form.

8. Objections. The Notices shall provide that those Settlement Class Members who wish to object to the Settlement Agreement must serve via U. S. Mail a written statement of objection ("Objection"), within ninety (90) days of the publishing of the Notices, to the Court at the address set forth in the Notices, and simultaneously serve via U. S. Mail on counsel for the Parties a copy of the Objection. The postmark date of any such Objection shall be deemed the exclusive means for determining if the Objection is timely, unless otherwise determined by the Court. The Objection must state (a) the full name, address, and telephone number of the person objecting and (b) the basis for the objection. Settlement Class Members who fail to make Objections in the manner specified in this subparagraph shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement. Any objection will be at the objecting Class Members' sole expense.

9. Requests for Exclusion. The Notices shall provide that Settlement Class Members who wish to exclude themselves from the Settlement Agreement must submit a written statement requesting exclusion from the Settlement within ninety (90) days of the publishing of the Notices. Such written request for exclusion must contain the name, address, of the person requesting exclusion, the approximate date he or she dined at Defendants' Restaurants, and either the amount he or she was charged for a CDF fee or the approximate amount of his or her bill. The request for exclusion must be signed by the Settlement Class Member who seeks to be excluded from the settlement. No request for exclusion may be made on behalf of a group of Settlement Class Members. The request for exclusion must be sent by U. S. mail to the Settlement Administrator at the address set forth in the Notice and must be postmarked within ninety (90) days of the publishing of the Notices. Any Settlement Class Member who requests to opt out of the Settlement will not be entitled to any Settlement Award, will not be bound by the Settlement Agreement, and will not have any right to object, appeal, or comment thereon. Settlement Class Members who fail to submit a valid and timely request for exclusion shall be bound by all terms of the Settlement Agreement and the Final Approval Order, unless otherwise determined by the Court. Any request for exclusion will be at the requesting Class Members' sole expense.

10. The parties will meet and confer in good faith if a Settlement Class Member attempts to submit a Claim Form after the Claims Period.

11. During the Claims Period, the Settlement Administrator will provide the parties with weekly updates that include: (i) the names of the Settlement Class Members who filed complete, accurate, and timely requests for exclusion from the Settlement; (ii) the names of

Settlement Class Members who objected to the Settlement; and (iii) the names and amounts of the Settlement Class Members who submitted complete, accurate, and timely Claim Forms (*i.e.*, Settling Plaintiffs). No later than fourteen (14) days after the Claims Period, the Settlement Administrator shall provide to Counsel for the Parties an affidavit with this same information.

C. Payment of Attorneys' Fees and Service Payments.

1. Within ten (10) days of the Effective Date, the Settlement Administrator shall wire to Class Counsel the Attorney's Fees and Costs approved by the Court.

2. Within ten (10) days of the Effective Date, the Settlement Administrator shall send via First Class U.S. Mail a check to Richard McMillin Trust FBO the Ronald McDonald House, on behalf of Plaintiff, in the amount of the Service Award the Court approved for Plaintiff.

3. Any amounts sought as Attorneys' Fees and Costs or the Service Award under this Settlement Agreement, but not approved by the Court, shall be added to the Net Settlement Fund to be proportionally re-distributed to Settling Plaintiffs, Defendants, and/or Selected Charities pursuant to the allocation method set forth in Section III(B).

D. Distribution of Settlement Payments, Payments to Selected Charities, and Reverter to Defendants

Within thirty (30) days of the Effective Date, the Settlement Administrator shall issue the settlement checks to Settling Plaintiffs. In no event shall there be any distribution from the Net Settlement Fund until after the Effective Date.

E. Uncashed Checks and Unclaimed Monies.

1. After the expiration of 120 days following issuance of checks to Settling Plaintiffs, any check not cashed shall become a part of the reversion to Defendant and Selected Charities. The Settlement Administrator will send out reminder postcards via First Class U.S. Mail sixty (60) days after the initial distribution of checks reminding Settling Plaintiffs to negotiate their checks prior to the 120 day deadline.

2. No earlier than 12:00 a.m. on the day following the expiration of the 120 day period described in Part VII(E)(1) above, the Settlement Administrator shall wire to Defendants (using wire instructions provided by Defendants' counsel) half the portion of the Net Settlement Fund not distributed to or cashed by Settling Plaintiffs. The Settlement Administrator shall distribute the remaining half of the Net Settlement Fund not distributed to or cashed by Settling Plaintiffs to the Selected Charities pursuant to paragraph I(T), as checks sent via First Class U.S. mail.

F. Tax Liability.

Defendants make no representations as to the tax treatment or legal effect of the payments called for under this Settlement Agreement. Settlement Class Members are not relying on any statement or representation by Defendants in this regard. Settlement Class Members understand

and agree that they will be solely responsible for the payment of any taxes and penalties assessed on the payments described in this Settlement. Settlement Class Members understand and agree that the Settlement Administrator will be responsible for issuing all tax forms and any necessary tax withholding.

VIII. COOPERATION CLAUSE

The parties agree to cooperate in good faith to effectuate the Settlement of the Litigation, including securing the Court's approval of the Agreement, assisting with the administration of the Settlement in accordance with the terms of this Agreement, and obtaining a final judgment.

IX. MATERIAL TERMS

These terms shall be deemed the material terms to the final Settlement Agreement and Release to be executed by the Parties. These material terms are conditional upon, interdependent with, and inextricably intertwined with each other.

X. EXHIBITS

The terms of this Settlement Agreement include the terms set forth in the attached exhibits, which are incorporated by reference as though fully set forth herein. The exhibits to this Settlement Agreement are an integral part of this Settlement Agreement. Unless specifically provided otherwise in the exhibits to this Settlement Agreement, in the event of any conflict between the Settlement Agreement and the exhibits, the terms of the Settlement Agreement shall control.

XI. AUTHORITY

Undersigned counsel certify that they are authorized to agree to these terms on behalf of their respective clients.

XII. DRAFTING

Each party has cooperated in the drafting and preparation of this Settlement Agreement. Hence, in any construction or interpretation of this Settlement Agreement, the Settlement Agreement shall not be construed for or against either party.

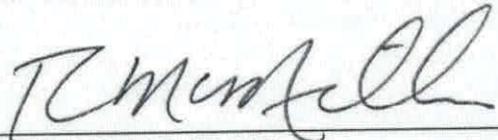
XIII. COUNTERPARTS

This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission or other electronic means will constitute effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes. Signatures of the Parties transmitted by facsimile or other electronic means will be deemed to be their original signatures for any purpose whatsoever.

XIV. NOT EVIDENCE; NO ADMISSION OF LIABILITIES

In no event shall this Settlement Agreement, in whole or in part, whether effective, terminated, or otherwise, or any of its provisions or any negotiations, statements, or proceedings relating to it in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in any other action, or in any juridical, administrative, regulatory or other proceeding, except in a proceeding to enforce this Settlement Agreement. Without limiting the foregoing, neither this Settlement Agreement nor any related negotiations, statements, or proceedings shall be construed as, offered as, received as, used as, or deemed to be evidence, or an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the party of Defendants, or as a waiver by Defendants of any applicable defense, including without limitation any applicable statute of limitations. None of the Parties waives or intends to waive any applicable attorney-client privilege or work product protection for any negotiations, statements, or proceedings relating to this Settlement Agreement. This provision shall survive the termination of this Settlement Agreement.

DATED: 5/10/18


RICHARD MCMILLIN

DATED: 6-18-18


NOLAN FOGLE

DATED: 6-18-18


FOGLE ENTERPRISES, INC.

Name: Nolan Fogle

Title: President