

JOINT STIPULATION OF SETTLEMENT AND RELEASE

This **Settlement Agreement** and Release (“**Agreement**” or “**Settlement Agreement**” or “**Settlement**”) is entered into between The Vail Corporation d/b/a Vail Resorts Management Company, Heavenly Valley, Limited Partnership, and all parent corporations, subsidiaries, and other affiliates as further defined herein (collectively, “Vail”), on the one hand, and Plaintiffs Anna Gibson, Zachariah Saiz-Hawes, William Berrier, Matthew Allen, Adam Heggen, Paul Roberds, and Christopher Hamilton, individually and on behalf of other members of the public similarly situated (collectively, “Plaintiffs”), on the other hand.

RECITALS

WHEREAS, Plaintiffs have asserted claims on behalf of themselves and other **Class Members** (as defined below) who are similarly situated against Vail under the federal Fair Labor Standards Act and the laws of the states of California, Colorado, Wisconsin, Michigan, New York, Vermont, Minnesota, Utah, Washington, Ohio, Indiana, Missouri, New Hampshire, Pennsylvania, Nevada, and Wyoming based on Vail’s alleged failure to comply with its wage and hour obligations, and seeking derivative penalties in *Gibson, et al. v. The Vail Corporation d/b/a Vail Resorts Management Company*, Case No. 21-CV-1260 (E.D. Cal.) (“*Gibson*”); *Heggen v. Heavenly Valley, Limited Partnership*, Case No. 21-CV-107 (E.D. Cal.) (“*Heggen*”); *Hamilton v. Heavenly Valley, Limited Partnership*, Case No. 21-CV-1608 (E.D. Cal.) (“*Hamilton I*”); *Hamilton v. Heavenly Valley, Limited Partnership*, Case No. SC20210148 (El Dorado Superior Court) (“*Hamilton II*”); and *Roberds v. The Vail Corporation which will do business as Vail Resorts Management Company and Heavenly Valley, Limited Partnership* (“*Roberds*”) (collectively, the “**Litigation**”);

WHEREAS, Vail and *Gibson* attended a first mediation session on October 20, 2020 before the respected mediator Steven Pearl;

WHEREAS, Vail and *Gibson* continued negotiations between October 21, 2020 and June 27, 2021, during which time *Heggen* joined in the negotiations;

WHEREAS, Vail, *Gibson*, and *Heggen* attended a further mediation session on June 28, 2021 before the respected mediator Michael Russell;

WHEREAS, Vail, *Gibson*, and *Heggen* continued negotiations between June 29, 2021 and late July 2021, at which time they reached an agreement on the basic terms of a global settlement to cover all claims against Vail;

WHEREAS, *Hamilton I*, *Hamilton II* and *Roberds* joined in the negotiations after Vail, *Gibson*, and *Heggen* reached an agreement on the basic terms of the settlement;

WHEREAS, Plaintiffs’ Counsel has conducted significant investigation into and analysis of Plaintiffs’ claims and Vail’s defenses prior to and during the prosecution of the **Litigation**,

including, among other things: (a) engaging in numerous interviews and follow-up calls with dozens of **Class Members**, including Plaintiffs and other witnesses; (b) research of the applicable law with respect to the claims asserted in the Complaint and the potential defenses thereto; (c) investigation into the viability of class treatment of the claims asserted in the **Litigation**; (d) analysis of the legal positions taken by Vail; (e) inspection and analysis of payroll and policy documents and other information produced by Plaintiffs and Vail; (f) analysis of class data produced by Vail, including hiring the services of an expert to analyze the data; and (g) evaluating the potential class-wide damages, including information sufficient to understand Vail's potential defenses to Plaintiffs' claims.

WHEREAS, the settlement discussions before, during, and after mediation were conducted vigorously at arm's length and the settlement is the result of an informed and detailed analysis of Vail's alleged potential liability in relation to the costs and risks associated with continued litigation;

WHEREAS, based upon their analysis and evaluation of a number of factors, and recognizing the substantial risks of litigation, including the possibility that these claims, if not settled now, might not result in any recovery or might result in a recovery less favorable, and that any recovery likely would not occur for several years, Plaintiffs' Counsel are satisfied that the terms and conditions of this **Agreement** are fair, reasonable, and adequate and that this **Agreement** is in the best interests of Plaintiffs and **Class Members** (as defined below);

WHEREAS, Vail denies all the claims and contentions alleged by Plaintiffs in **the Litigation**; nonetheless, Vail has concluded that further litigation of the claims encompassed by **the Litigation** would be protracted and expensive and would also divert management and employee time; Vail also has taken into account the uncertainty and risks inherent in litigation and has, therefore, concluded that it is desirable that **the Litigation** be settled in the manner and upon the terms and conditions set forth in this **Agreement**; and

WHEREAS, the purpose of this **Agreement** is to settle fully and finally all **Released Claims** (as defined below) that Plaintiffs and any **Class Members** (as defined below) may have against Vail;

WHEREAS, Vail and the Plaintiffs have agreed to effectuate **the Settlement Agreement** reached between them via the *Hamilton II* action, which will be amended (as described in Section VI) to conform with the terms of this **Agreement**.

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth in this **Agreement**, as well as the good and valuable consideration provided for herein, Vail and Plaintiffs (collectively, the "**Settling Parties**") hereto agree to a full and complete settlement of **the Litigation** on the following terms and conditions:

The **Settling Parties** agree to do all things and engage in all procedures reasonably necessary and appropriate to obtain approval of this **Agreement** in consideration for: (a)

payment by Vail of the **Gross Fund** (as defined below), subject to the terms, conditions and limitations of this **Agreement**; (b) the release and termination of all claims as set forth in this **Agreement**; and (c) other valuable monetary and non-monetary consideration as set forth in this **Agreement**. This **Agreement** is contingent upon approval by the Court and is entered into voluntarily by the **Settling Parties** for settlement purposes only.

AGREEMENT

I. CONSENT TO COURT-FACILITATED NOTICE

A. For settlement purposes only, the **Settling Parties** agree that Plaintiffs and the **Class Members** (as defined below) are similarly situated for purposes of settling claims under Federal Rule of Civil Procedure 23 and § 216(b) of the Fair Labor Standards Act, and consent to Court-facilitated notice to Plaintiffs and **Class Members**. If the Court does not grant preliminary or final approval of this settlement, the **Settling Parties** agree that certification will be revoked without prejudice and Plaintiffs may not assert that this **Agreement** may be used to prove that Plaintiffs and the **Class Members** are similarly situated.

B. The term “**Named Plaintiffs**” shall mean Anna Gibson, Zachariah Saiz-Hawes, William Berrier, Paul Roberds, Adam Heggen, Matthew Allen and Christopher Hamilton.

C. The term “**Class Members**” shall include all non-exempt employees who, at any time during the “**Covered Period**” worked for and were employed by Vail in the United States and worked primarily at one of its resort locations or mountain facilities. Specifically excluded from the definition of “**Class Members**” are employees who worked primarily at corporate or non-resort distribution locations (“**Non-Resort Employees**”). For purposes of clarity in the administration of the Settlement, **Non-Resort Employees** will be defined as those who are identified in Vail’s records as having been assigned to one or more of the following location description codes: the CO-Aurora-Distribution, CO-Broomfield Corporate, and CO-Broomfield. In the event the Settlement receives preliminary approval by the Court, Plaintiffs in *Gibson, Heggen, Roberds, Hamilton I* and *Hamilton II* will file a first amended complaint in *Hamilton II* as described in Section VI of this Agreement.

The “**Covered Period**” shall start:

- For **Class Members** employed in Wyoming, on October 21, 2010.
- For **Class Members** employed in Indiana, Ohio, Washington, Minnesota, Vermont, New York, Michigan, Nevada Wisconsin, and Colorado, on October 21, 2014.
- For **Class Members** employed in Missouri, on October 21, 2015.
- For **Class Members** employed in California, Pennsylvania, and Utah, on October 21, 2016.
- For **Class Members** employed in New Hampshire, on October 21, 2017.

- For any **Class Members** not employed in one of the above identified states, the **Covered Period** shall begin on October 21, 2016.

The **Covered Period** shall end:

- For all **Class Members** employed in California, on December 15, 2021.
- For all **Class Members** employed in states other than California, on October 23, 2021.

C. The term “**Snow Positions**” shall include all job titles for which skiing and/or snowboarding was an essential function of the job. Specifically, **Snow Positions** include all job titles in the following job families: Mountain Safety, Ski School, Lift Maintenance, Lift Operations, Mountain Host, Mountain Dining, Snowmaking, and Epic Mix. The term “**Non-Snow Positions**” shall include all other job titles included in the **Settlement** other than **Snow Positions**.

II. SETTLEMENT APPROVAL PROCEDURE

A. Plaintiffs’ counsel shall prepare and send to Vail’s counsel a draft Motion for Preliminary Approval of the settlement at least seven (7) days prior to filing such motion, unless Vail agrees to a shorter period. Vail’s counsel shall provide Plaintiffs’ counsel with any comments at least three (3) days prior to filing the motion, unless Plaintiffs’ counsel agrees to a shorter period. Vail will have the right to propose edits, but Plaintiffs’ Counsel will retain complete discretion with respect to the substance and form of the Motion for Preliminary Approval. The Motion for Preliminary Approval will include as exhibits or attachments the following documents, which must be jointly approved of as to form by counsel for the Parties: (i) this **Settlement Agreement**, (ii) a Notice of Settlement form (attached hereto as Exhibit A), (iii) Consent to Join form (attached hereto as Exhibit B), and (iv) an Opt-Out form for Rule 23 claims (attached hereto as Exhibit C).

1. The Notice of Settlement form shall reflect each **Class Member’s** individual settlement amounts and a summary of the basis for the settlement, the material terms and provisions of this settlement, the procedure for objecting or opting-out of this settlement, and the **Class Members’** rights with respect to this settlement.

2. The Consent to Join form (applicable to FLSA claims) shall reflect each Class Member’s individual settlement amounts attributable to his or her FLSA claims, advise **Class Members** of their right to opt-in to the settlement, and advise **Class Members** of the multiple methods available for opting-in.

3. The Opt-Out form (applicable to Rule 23 claims) shall advise **Class Members** of their right to opt-out of the settlement and advise **Class Members** of the consequences of opting out of the settlement.

III. MODE, CALCULATION AND TIMING OF PAYMENT OF CLAIMS

A. Notice of Claims

1. Within fourteen (14) days¹ after the Court's order granting preliminary approval of this **Settlement Agreement**, Vail shall provide **the Settlement Administrator** an Excel spreadsheet listing, to the extent such information is reasonably available to Vail based on its existing electronic records, each **Class Member's**: (a) name, (b) employee identification number, (c) last known mailing address, (d) last known telephone number, (e) last known personal e-mail address, (f) Social Security number, and (g) number of working hours recorded. To the extent that Vail is missing any of the foregoing information, it shall provide all reasonably necessary assistance to **the Settlement Administrator** to allow **the Settlement Administrator** to locate the **Class Member(s)**. Prior to the mailing of a **Notice Packet** (as defined in Section III.A.2) to Plaintiff and **Class Members**, **the Settlement Administrator** shall attempt to confirm the accuracy of the addresses through the United States Post Office's National Change of Address database and shall mail the Notice to any updated address obtained therefrom. Additionally, within twenty-one (21) days of the Court's order granting preliminary approval of this **Agreement**, **the Settlement Administrator** shall provide Plaintiffs' Counsel with an Excel chart listing only Plaintiffs' and each **Class Member's** employee identification numbers and the amounts allocated to them under this Settlement. **The Settlement Administrator** shall keep all other information provided by Vail strictly confidential and shall not disclose it to Plaintiffs or any other person or entity, except that Plaintiffs' counsel shall be entitled to request names and/or contact information for **Class Members** from **the Settlement Administrator** if necessary to respond to **Class Member** inquiries, to locate **Class Members** whose notices or checks have been returned as undeliverable or whose checks have not been cashed/negotiated within ninety (90) days of mailing, or with the written consent of Vail's counsel.

2. Within twenty-eight (28) days of preliminary approval, **the Settlement Administrator** shall send **Notice Packets** to each Class Member via (to the extent permitted by law) e-mail, text message, and First Class U.S. Mail. The "**Notice Packet**" shall contain the Notice of Settlement Form, Consent to Join Form, Opt Out Form, information about **the Settlement**, and each of Plaintiffs' and **Class Members'** potential **Individual Settlement Payment**. If any **Notice Packet** is returned as undeliverable for a Plaintiff or a Class Member, **the Settlement Administrator** shall promptly attempt to locate such Plaintiff or Class Member at least two times through an electronic search using the Social Security number and/or former address of that person and shall promptly mail an additional **Notice Packet** to such person.

3. Within twenty-eight (28) days of preliminary approval, **the Settlement Administrator** shall, after obtaining advance agreement from counsel for the Parties to the content of the following, establish: (a) an 800-number hotline for questions about **the Settlement**; (b) a website that provides **Class Members** with information about the settlement and which **Class Members** may use to opt-in to **the Settlement** or submit questions about **the**

¹ "Days," unless otherwise stated, shall refer to calendar days.

Settlement; (c) an automated system for distributing text message reminders to remind **Class Members**, at least once per week, about **the Settlement** opt-in deadline and check cashing deadline; (d) an automated system to send notice of the settlement by e-mail to **Class Members** as well as reminders, sent at least once per week, about the **Settlement** opt-in deadline and check cashing deadline; (e) a system that allows **Class Members** to opt-in to **the Settlement** via return mail, fax, e-mail, or the website established by **the Settlement Administrator**.

4. In the event of any dispute over a **Class Member's** recorded hours, the **Settling Parties** will meet and confer in good faith in an effort to resolve the dispute, and if the **Settling Parties** are unable to reach an agreement, **the Settlement Administrator** shall decide the dispute based on objective evidence which shall be shared with the **Settling Parties** prior to such decision for any clarification or comment, and thereafter its decision will be final. In the case of a dispute over a **Class Member's** dates of employment, Vail's records will have a rebuttable presumption of correctness.

5. The deadline for **Class Members** to opt out of the settlement shall be forty-five (45) days from the date of mailing of the **Notice Packet**. ("**Opt-Out Period**"). The Deadline will be extended fifteen (15) calendar days for any Class Member who is re-mailed a Notice Packet by the Settlement Administrator, unless the 15th day falls on a Sunday or federal holiday, in which case the Response Deadline will be extended to the next day on which the U.S. Postal Service is open.

6. **Class Members** who do not opt-out of the settlement within the **Opt-Out Period** will be considered "**Qualified Class Members**." **Class Members** who opt-out of the settlement will be considered "**Opt-Outs**." **Qualified Class Members** will be bound by a release of all applicable state law claims, irrespective of whether they opt-in to the FLSA release or cash/negotiate their settlement checks. As will be explained in the Consent to Join Form itself, **Class Members** may opt-in to the release of FLSA claims by either cashing/negotiating their settlement checks or by indicating their desire to opt in to the action by submitting an opt-in form by mail, fax, e-mail or the website established by **the Settlement Administrator**. Within five (5) days of the end of the **Opt-Out Period**, the Settlement Administrator shall provide Plaintiffs' Counsel with copies of all Consent to Join forms for Plaintiffs' Counsel to be filed with the Court.

B. Consideration/Payment Obligations. In consideration for the termination of **the Litigation** as well as the release of claims effected by this **Agreement** and other good and valuable consideration, Vail shall pay a maximum of thirteen-million-one-hundred- thousand dollars and no cents (\$13,100,000.00) to settle **the Litigation** (the "**Gross Fund**"), except as provided in Sections III.C and III.D. The **Gross Fund** shall be the entire amount that Vail shall pay to settle **the Litigation**, except as provided in Paragraph III.C. and III.D. The **Gross Fund** is inclusive of payment for: (1) the release of **the Released Claims** entered into by the Plaintiffs and all **Class Members**, as further defined in Section IV.A; (2) the **Enhancement Payments** approved by the Court for Plaintiffs other than Plaintiff Anna Gibson ("**Gibson**"), as further defined in Sections III.F and III.H.4; (3) all attorneys' fees, costs, and litigation expenses

approved by the Court; (4) all costs incurred by **the Settlement Administrator** and all costs in connection with **the Settlement Fund**; (5) the **PAGA Payment**; and (6) applicable employee-side federal, state, and local taxes and withholdings, other than employer-side payroll taxes. Any and all employer-side payroll tax obligations required by law shall be paid by Vail separate and apart from the **Gross Fund**.

C. Potential Increase To Gross Fund In The Event Of Data Errors.

Notwithstanding Section III.B, in the event that the total hours recorded in Vail's timekeeping system as having been worked by **California Class Members** between October 21, 2016 and February 27, 2021, plus the total number of hours recorded in Vail's timekeeping system as having been worked by all other **Settlement Class Members** between December 1, 2017 and February 27, 2021, exceeds seventy-five-million-eight-hundred-sixty-one-thousand-two-hundred-one (75,861,201) hours, Vail will add an additional \$0.189 for every additional hour, up to a maximum of one million dollars and 00/100 (\$1,000,000.00), to the **Gross Fund**.

D. Potential Increase To Gross Fund In The Event Of Unanticipated Growth Between Mediation And The End Of The Covered Period. Notwithstanding Section III.B, in the event that the total hours recorded in Vail's timekeeping system as having been worked by **Settlement Class Members** between July 23, 2021, and the end of the **Covered Period** exceeds four-million-four-hundred-thousand (4,400,000) hours, Vail shall add an additional \$0.189 for every additional hour, up to a maximum of one million dollars and 00/100 (\$1,000,000.00), to the **Gross Fund**.

E. No Additional Contributions. Sections III.C.1 and III.C.2 identify the only events pursuant to which the **Gross Fund** may increase. In no other event besides those specifically described in Sections III.C and III.D shall the **Gross Fund** exceed \$13,100,000.00. For the avoidance of confusion, the triggering events in Sections III.C and III.D are not mutually exclusive.

F. Separate Payment to Anna Gibson. In exchange for a general release and waiver of all claims by Gibson, as defined in Section IV.C, including any claims associated with alleged sexual harassment, sex and/or gender discrimination, and/or retaliation, Vail will, separate and apart from the **Gross Fund**, pay Gibson fifty-thousand dollars and zero cents (\$50,000.00) by check tendered to her counsel within twenty-eight (28) days of a court order granting final approval of the settlement and such order becoming a final, non-appealable order and Vail's receipt of a required W9 form. This amount will not come out of the **Gross Fund**. **Settling Parties** understand and agree that Gibson is **not** entitled to recover any Enhancement Payment, including that described in Section IV.H.5.

G. Funding of the Gross Fund. Within seven (7) days after the Court grants an order granting final approval of the settlement and such order becomes final and non-appealable, Vail will pay to the **Settlement Fund** (as defined in Section III.G.1) the entire amount of the **Gross Fund**. Payment will be made by automated clearing house ("ACH") to a depository bank chosen by **the Settlement Administrator** and acceptable to Vail. Vail may, at its discretion,

deposit these funds into **the Settlement Fund** at any time after the Court approves the settlement, subject to the requirements of this paragraph. Within seven (7) days after receipt of the ACH funds, **the Settlement Administrator** shall pay to Plaintiffs' Counsel by wire transfer such amount of attorneys' fees, costs and litigation expenses as has been approved and ordered by the Court, and shall pay via First Class U.S. Mail the Court-approved Enhancement Payments to Plaintiffs other than Gibson.

H. Settlement Claims Administration

1. **Selection of the Settlement Administrator.** **The Settlement Administrator** shall be selected by Plaintiffs' Counsel on the basis of competence and costs and with the best interests of the **Class Members** in mind. Vail shall not be responsible for the selection of **the Settlement Administrator**, shall not be responsible for or contract to any agreements between Plaintiffs' Counsel and **the Settlement Administrator**, and shall not be responsible or liable for the work performed by **the Settlement Administrator**, other than as set forth herein. If the Settlement is voided or rejected by the Court, one-half of any and all costs incurred by **the Settlement Administrator** shall be paid by Vail, and the other half shall be paid by Plaintiffs' Counsel, unless otherwise specified in this Agreement.

2. **Settlement Administrator Responsibilities.** **The Settlement Administrator's** duties shall include, but are not limited, to being solely and exclusively responsible for: (a) establishing a **Settlement Fund** and qualified settlement fund account, and determining and finalizing the calculations of the **Individual Settlement Payments** and tax withholding amounts for Plaintiffs and **Class Members**, as applicable; (b) preparing, printing and disseminating to Plaintiffs and **Class Members** the **Notice Packet**; (c) submitting the **PAGA Payment** to the State of California; (d) determining the potential **Individual Settlement Payment** for each Class Member and the **Final Individual Settlement Payment** for each **Qualified Class Member** in accordance with this Agreement; (e) wiring Plaintiffs' Counsel's attorneys' fees, expenses, and costs and mailing the **Enhancement Payment** and **Individual Settlement Payments** in accordance with this Agreement and Order of the Court; (f) paying all payroll tax obligations in accordance with applicable law and this Agreement; (g) issuing W-2 and 1099 Forms for all amounts paid to **Qualified Class Members**, Plaintiffs, and Plaintiffs' Counsel; (h) ascertaining current address and addressee information for each **Notice Packet** and check returned as undeliverable; (i) responding to inquiries of Plaintiffs' Counsel or Vail's Counsel; (j) promptly apprising counsel for the **Settling Parties** of the activities of **the Settlement Administrator**; (k) maintaining adequate records of its activities, including the date of the mailing of the **Notice Packets** and checks, returned mail and other communications and attempted written or electronic communications with Plaintiffs and **Class Members**; (l) collecting opt-out forms and informing **Settling Parties** of such Opt-Outs; (m) confirming in writing to Plaintiffs' and Vail's Counsel its completion of the administration of the settlement and retaining copies of all endorsed settlement checks; (n) timely responding to communications from the **Settling Parties** or their counsel; (o) maintaining the confidentiality of Vail's data, including personal information of the **Class Members**; (p) setting up a *cy pres* fund; (q) sending

out reminder notices; (r) discharging all of the duties described in Sections III.A.1-4 and III.H.4, and (s) such other tasks as called for by this **Agreement** or ordered by the Court.

3. **Settlement Fund Fees and Expenses.** All fees, expenses, and costs of **the Settlement Administrator** related directly or indirectly to **the Settlement Fund**, including but not limited to all fees, expenses, and costs in connection with the **Gross Fund** and **Settlement Fund** (including, but not limited to, those related to notice, check cutting and mailing, claims processing, court filings, legal and accounting advice relating to the establishment of **the Settlement Fund** and tax treatment and tax reporting of awards to **Qualified Class Members**, preparation of tax returns (and the taxes associated with such tax returns as defined below)) shall be paid from **the Settlement Fund**.

4. **Reporting by the Settlement Administrator.** Throughout the period of claims administration, **the Settlement Administrator** will provide weekly reports to the **Settling Parties**, and upon reasonable request by either **Settling Party**, regarding the status of the mailing of the **Notice Packets** and checks to Plaintiffs and **Class Members**, the claims administration process, the receipt of confirmation of clearance of negotiable settlement payment checks with Consent to Join and Release language, the receipt of Opt-Out forms, and any other aspect of the claims administration process. Such reports shall be provided to both Vail and Plaintiffs regardless of which Settling Party requested the report.

I. Creation and Implementation of a Qualified Settlement Fund

1. **Establishing the Qualified Settlement Fund.** The **Gross Fund** will be deposited in an account titled *Vail Settlement Fund* (herein, the “**Settlement Fund**”), intended by the **Settling Parties** to be a “Qualified Settlement Fund” as described in Section 468B of the Internal Revenue Code of 1986, as amended, and Treas. Reg. Section 1.468B-1, et seq. The **Settlement Fund** shall be established as a Qualified Settlement Fund within the meaning of Section 468B of the Internal Revenue Code of 1986, as amended, the Treas. Reg. Section 1.468B-1, et seq., and shall be administered by **the Settlement Administrator**, subject to the ultimate authority of the Court.

2. **Administering the Settlement Fund.** The **Settlement Administrator** shall serve as Trustee of **the Settlement Fund** and shall act as a fiduciary with respect to the handling, management, and distribution of **the Settlement Fund**, including the handling of tax-related issues and payments. The **Settlement Administrator** shall act in a manner necessary to qualify **the Settlement Fund** as a **Qualified Settlement Fund** and to maintain that qualification. The **Settling Parties** shall cooperate to ensure such treatment and shall not take a position in any filing or before any tax authority inconsistent with such treatment. The **Settling Parties** agree to any relation-back election required to treat **the Settlement Fund** as a **Qualified Settlement Fund** from the earliest possible date.

3. Tax Withholding and Reporting.

a. Employment Taxes. The **Settlement Administrator** shall allocate thirty-three percent (33%) of the total paid to each **Qualified Class Member** to back wages (to be reported on an Internal Revenue Service (“IRS”) Form W-2) and sixty-seven percent (67%) to non-wage compensation in the form of liquidated damages, penalties, and interest (to be reported on an IRS Form 1099). The back wages shall be subject to all required payroll taxes and other authorized or required deductions (garnishments, tax liens, child support, etc.). The liquidated damage, penalties, and interest shall be treated as non-wage income to the **Qualified Class Members**. The **Settlement Administrator** shall be responsible for withholding employee-side payroll taxes and withholdings, collecting applicable employer-side taxes from Vail, and timely remitting and reporting all taxes to the appropriate taxing authorities. The **Settlement Administrator** shall determine the proper tax reporting treatment for the Court-approved Enhancement Payment. Plaintiffs, individually and on behalf of **Class Members**, acknowledge and agree that Plaintiffs have not relied upon any advice from Vail’s or Plaintiffs’ Counsel as to the taxability of the payments received pursuant to this **Agreement**.

b. Fund Taxes. All taxes (including any estimated taxes, interest, or penalties) arising with respect to the income earned by **the Settlement Fund**, if any, including any taxes or tax detriments that may be imposed on Vail with respect to income earned for any period during which **the Settlement Fund** do not qualify as a “Qualified Settlement Fund” for federal and state income tax purposes (hereinafter “**Settlement Fund Taxes**”), and expenses and costs incurred in connection with the operation and implementation of this paragraph (including, without limitation, expenses of tax attorneys and/or accountants and mailing and distribution costs and expenses relating to filing (or failing to file) any returns described herein or otherwise required to be filed pursuant to applicable authorities) (hereinafter “**Settlement Fund Tax Expenses**”) shall be paid out of **the Settlement Fund**. Further, **Settlement Fund Taxes** and **Settlement Fund Tax Expenses** shall be treated as a cost of the administration of **the Settlement Fund**. The **Settling Parties** agree to cooperate with **the Settlement Administrator**, each other, and their tax attorneys and accountants to the extent reasonably necessary to carry out the provisions set forth in this Section.

4. Other Payments. The **Settlement Administrator** shall satisfy from **the Settlement Fund**: all federal, state, local, and other reporting requirements (including any applicable reporting with respect to attorneys’ fees and other costs subject to reporting) and any and all taxes, penalties and other obligations with respect to the payments or distributions not otherwise addressed in this **Agreement**.

5. Communication with Vail’s and Plaintiffs’ Counsel. Vail, Vail’s Counsel, and Plaintiffs’ Counsel are authorized to communicate directly with **the Settlement Administrator** to expedite the settlement administration process.

J. Allocation of the Settlement Fund

1. **Net Fund.** The amount approved by the Court for the **Enhancement Payment**; the amount approved by the Court for attorneys' fees, expenses, and costs; the **PAGA Payment**; and the fees and expenses of **the Settlement Administrator** approved by the Court shall be deducted from the **Gross Fund** to obtain a "**Net Fund**."

2. **Allocation of Net Fund.** The Settlement Administrator shall compute the **Individual Settlement Payments** for all **Class Members** pursuant to the following allocation formula:

- (a) For each hour worked by a **Class Member** outside of California before October 21, 2017 but within the applicable **Covered Period**, assign each such **Class Member** one (1) point for each such hour, as consideration for settling *state law breach of contract claims*;
- (b) For each hour worked by a **Class Member** in California between October 21, 2016, and October 21, 2017, in a **Snow Position** during the applicable Covered Period, assign each such **Class Member** thirty (30) points for each such hour; for each hour worked by a **Class Member** in California between October 21, 2016, and October 21, 2017, in a **Non-Snow Position** during the applicable Covered Period, assign each such **Class Member** fifteen (15) points for each such hour, as consideration for settling *state law breach of contract claims and unfair competition claims*;
- (c) For each hour worked (i) by a **Class Member** in California between October 21, 2017 and December 15, 2021, or in Colorado between October 21, 2017, and October 23, 2021, in a **Snow Position** during the applicable Covered Period, assign each such **Class Member** sixty (60) points for each such hour; (ii) for each hour worked by a **Class Member** in California between October 21, 2017 and December 15, 2021, or Colorado between October 21, 2017, and October 23, 2021, in a **Non-Snow Position** during the applicable Covered Period, assign each such **Class Member** thirty (30) points for each such hour; (iii) for each hour worked by a **Class Member** outside of California or Colorado between October 21, 2017, and October 23, 2021, in a **Snow Position** during the applicable Covered Period, assign each such **Class Member** thirty (30) points for each such hour; (iv) for each hour worked by a **Class Member** outside of California or Colorado between October 21, 2017, and October 23, 2021, in a **Non-Snow Position** during the applicable Covered Period, assign each such

Class Member fifteen (15) points for each such hour, as consideration for settling their *state law claims* and *federal Fair Labor Standards Act (FLSA) claims*;

- (d) Add all points for all **Class Members** together to obtain the “**Denominator**”;
- (e) Divide the number of points for each **Class Member** by the **Denominator** to obtain each **Class Member’s “Payment Ratio”**;
- (f) Multiply each **Class Member’s Payment Ratio** by the **Net Fund** to determine his or her Individual Settlement Payment.

3. Settlement Payments. After the **Opt-Out Period**, the **Settlement Administrator** will calculate Plaintiffs’ and **Qualified Class Members’ “Individual Settlement Payments”** by performing the calculations in Paragraph J.2 above for Plaintiffs and **Qualified Class Members** only. Fifty percent (50%) of each **Qualified Class Members’ Initial Gross Settlement Payment** shall be allocated as consideration for settling *state law claims*, and fifty percent (50%) shall be allocated as consideration for settling their *federal Fair Labor Standards Act claims*. The **Individual Settlement Payments**, minus applicable payroll taxes and withholdings, will be paid to Plaintiffs and **Qualified Class Members** by check mailed by the **Settlement Administrator** fourteen (14) days after the Court’s final approval order has become a final, non-appealable order (the “**Effective Date**”). Checks for **Qualified Class Members’ Individual Settlement Payments** shall remain negotiable for 180 days. If any check is returned as undeliverable for Plaintiffs or a **Qualified Class Member** within 200 days, the **Settlement Administrator** shall promptly attempt to locate such Plaintiff or **Qualified Class Member** up to two times through an electronic search using the Social Security number and/or former address of that person and shall promptly re-mail the returned check to such person. After fourteen (14) days have passed from the mailing of **Notice Packets**, the **Settlement Administrator** will contact **Class Members** who have not yet opted-in to the settlement to remind them of their deadline to opt-in. The **Settlement Administrator** will provide such reminders by, to the extent permitted by law: (a) by a postcard containing text approved by counsel for **Settling Parties** and (b) by e-mail and text messages containing text approved by counsel for **Settling Parties**. Ninety (90) days after the **Settlement Administrator** mails the **Individual Settlement Payment** checks to **Qualified Class Members**, the **Settlement Administrator** will provide **Plaintiffs’ Counsel** with the names and contact information of all **Qualified Class Members** who have not yet cashed/negotiated their checks, and **Plaintiffs’ Counsel** will only use such information for the sole purpose of contacting those **Qualified Class Members** to remind them of their deadline to cash their checks or to help them obtain a replacement check.

Any **Individual Settlement Payment** checks that were mailed but are not cashed/negotiated by Plaintiffs or **Qualified Class Members** within 270 days after they were mailed shall be treated as follows:

- (a) Amounts allocated as consideration for settling *state law* claims shall be re-allocated into a “**Supplemental Payment Fund**” administered by the **Settlement Administrator**. The total amount of the **Supplemental Payment Fund** shall be distributed, minus applicable payroll taxes and withholdings, by the **Settlement Administrator** via check to those Plaintiffs and **Qualified Class Members** who in fact cashed/negotiated the check they received as their **Individual Settlement Payment**. The amount paid to each recipient of a share of the **Supplemental Payment Fund** shall be calculated in the same manner provided in Section III.J.2, above. Any checks representing payments from the **Supplemental Payment Fund** that are not cashed/negotiated within 30 days after mailing shall, within 14 days of the expiration of the 30-day period, be distributed by the **Settlement Administrator** to the following *cy pres* beneficiaries selected by the parties as follows: 50% to Legal Services of Northern California and 50% to Colorado Legal Services.
- (b) Amounts allocated as consideration for settling *FLSA claims* shall not be re-allocated and shall remain the property of Vail.

4. Enhancement Payments. Plaintiffs’ Counsel shall request that, from the **Gross Fund**, the **Named Plaintiffs**, other than Gibson, should be awarded an **Enhancement Payment** of up to \$10,000 each in consideration for his or her role as a class representative and in exchange for their agreement to be bound by a general release of all claims, as described in Section IV.C. Vail shall not oppose this request. The **Settling Parties** expressly agree, however, that the Court’s denial or reduction of any **Enhancement Payment** shall not be grounds to terminate or cancel this **Agreement**, and this **Agreement** shall remain enforceable. Any reduction of **Enhancement Payments** shall revert to the **Net Fund** for payment to **Class Members**.

5. Attorneys’ Fees and Costs Amounts. Plaintiffs’ Counsel shall make an application to the Court for an award of attorneys’ fees of up to one-third of the **Gross Fund**, *i.e.*, four-million-three-hundred-sixty-six-thousand-six-hundred-sixty-six dollars and sixty-seven cents (\$4,366,666.67), plus actual costs and expenses as supported by declarations from Plaintiffs’ Counsel. Vail will not oppose Plaintiffs’ Counsel’s attorneys’ fees, costs, and expenses requests provided they are consistent with the terms of this **Agreement**. The **Settling Parties** expressly agree, however, that the Court’s denial or reduction of any requested award of attorneys’ fees or costs shall not be grounds to terminate or cancel this **Agreement**. Any reduction of fees, costs, or expenses shall revert to the **Net Fund** for payment to **Class Members**. Payment of any approved amount of attorneys’ fees, expenses, or costs to Plaintiffs’ Counsel shall constitute full satisfaction of any and all obligations by Vail to pay any person, attorney or law firm for attorneys’ fees, expenses or costs incurred on behalf of Plaintiffs and

Qualified Class Members. The **Settlement Administrator** shall report the payment of these fees, expenses and costs to Plaintiffs' Counsel on an IRS Form 1099.

6. **PAGA Payment.** **Settling Parties** agree to allocate five-hundred-thousand dollars and zero cents (\$500,000.000) (the "**PAGA Fund**") to settle Plaintiffs' Private Attorney General Act ("PAGA") claim brought on behalf of themselves and all other aggrieved employees. In accordance with the terms of PAGA, seventy-five percent (75%) of the **PAGA Fund** will be paid to the California Labor and Workforce Development Agency ("**PAGA Payment**") and twenty-five percent (25%) of the PAGA Fund will be allocated to the **Net Fund**.

7. **Settling Parties' Responsibility.** None of the **Settling Parties** nor their counsel shall bear any responsibility for errors or omissions in the calculation or distribution of any settlement payments or development of the list of recipients of settlement payments.

IV. RELEASE

A. **Release By Qualified Class Members.** Conditioned upon both (1) the Court's entry of an order granting final approval of the settlement and (2) such order becoming final and non-appealable, and in exchange for the monetary consideration recited in this **Agreement**, Plaintiffs and all **Qualified Class Members** hereby fully release Vail, along with all of its current and former parents, subsidiaries, agents, assigns, affiliates, divisions, predecessors, successors, joint ventures, officers, directors, employees, agents, attorneys, joint employers, and insurers, and any other person or entity acting by, through, or in concert with any of them (collectively, "**Releasees**"), from the "**Released Claims**," which shall include any and all claims, debts, liabilities, demands obligations, penalties, guarantees, costs, expenses, attorneys' fees, and damages resulting from all causes of action and factual or legal theories that were alleged or reasonably could have been alleged: (i) based on the facts and legal theories contained in the Amended Complaint; and/or (ii) arising out of the "**Factual Predicates**."

The definition of **Released Claims** includes, but is not limited to, all of the following claims for relief: (i) unpaid wages (including but not limited to minimum wages, overtime wages, double time wages, and wage premiums) under the FLSA and/or the laws of the states of California, Colorado, Wisconsin, Michigan, New York, Vermont, Minnesota, Utah, Washington, Ohio, Indiana, Missouri, New Hampshire, Pennsylvania, Nevada, and Wyoming (collectively, "**Class States**"); (ii) failure to authorize, provide or allow proper meal and/or rest periods under the FLSA and/or the laws of the Class States; (iii) failure to pay proper meal and/or rest break premiums under the laws of the Class States; (iv) failure to reimburse expenses, as well as any resulting claims for unpaid wages arising out of such allegations, under the FLSA and/or the laws of the **Class States**; (v) unlawful deductions, rebates, or refunds from wages, as well as any resulting claims for unpaid wages arising out of such allegations; (vi) breach of contract under the laws of the **Class States**; (vii) failure to accurately record time or keep accurate records under the FLSA and/or the laws of the **Class States**; (viii) failure to provide accurate employment records upon request under the laws of the **Class States**; (xiv) improper or inaccurate wage statements under the laws of the **Class States**; (xv) failure to pay timely wages

during employment under the FLSA and/or laws of the **Class States**; (xvi) failure to pay timely wages at or after termination under the FLSA and/or laws of the **Class States**; (xvii) solicitation of employees by misrepresentation under the laws of the **Class States**; (xviii) fraudulent solicitation of employees under the laws of the **Class States**; (xix) employment under conditions detrimental to employee health under federal law and/or the laws of the **Class States**, (xx) unfair business practices under the laws of the **Class States** ; (xxi) false or deceptive representation or advertisement under the laws of the **Class States**; (xxii) statutory or civil penalties (including but not limited to those under PAGA); (xxiii) unfair competition under the laws of the **Class States** ; (xxiv) unjust enrichment under the laws of the **Class States**; and (xxv) all other claims for damages, penalties, interest, injunctive relief, equitable relief, attorneys' fees and costs, and other amounts recoverable under any of the aforementioned causes of action or arising out of the **Factual Predicates**, to the extent permissible by law, including but not limited to any state's labor codes, wage orders, and the California Unfair Competition Law or any other analogous state law.

The **Factual Predicates** consist of all of the factual allegations raised in the **Amended Complaint**, including but not limited to: interrupted meal and rest breaks; short meal and rest breaks; working during meal and rest breaks; untimely meal and rest breaks; on-duty or on-premises meal and rest breaks; failure to pay proper wages or premiums in response to or in lieu of meal/rest break violations; time spent travelling, commuting, donning/doffing, storing or removing gear, training, maintaining equipment, checking/reviewing schedules, making business-related purchases, waiting time, pre-shift meetings, post-shift meetings, communicating with customers, planning and strategizing about work, communicating with ski and snowboard students, communicating with other Vail employees, communicating with managers/supervisors, checking terrain reports, completing paperwork, reviewing schedules, reviewing grooming information, reviewing terrain information, reviewing snow and weather reports, working from home, performing compensable activities pre- and post-scheduled shifts or clocking in, or time spent working off the clock; falsification or alteration of time records; application of the continuous workday doctrine; application of the seventh-consecutive day of work rule; failure to properly or accurately record, track, or pay employee time; failure to properly calculate or provide employee pay; the content of documents, statements, press releases, or communications by or from Vail or its officers or employees regarding wages; agreements between Vail and its employees; use of smartphones or other cellular telephones; use of the Internet; use of data and/or cellular plans, use of personal electronic equipment; use of personal ski equipment, clothing and paraphernalia, the purchase and maintenance of necessary equipment, tools, and clothing; agreements regarding missed or interrupted meal and rest breaks; miscalculating the regular rate; misuse of the Colorado "Ski Industry Exemption"; misuse of the California ski establishment rule in IWG Wage Order No. 10-2001 § 3 (K); timing of wage payments; maintenance of records; content and formatting of wage statements; responses to requests for wage and hour or personnel records; and any other facts pled in the **Amended Complaint**.

The period of the Release shall extend to the limits of the **Covered Period**. The *res judicata* effect of the judgment will be the same as that of the Release. The Parties agree that in order to consolidate the actions comprising the **Litigation** for purposes of **Settlement**, and in

order to effectuate this **Settlement** and the **Release**, as a precondition for the enforcement of this **Agreement**, the **Parties** will (as described in Section VI, below) amend the operative complaint in *Hamilton II* to cover all of the **Released Claims** to the full extent of the **Covered Period**, and to remove all claims of **Non-Resort Employees**. **Named Plaintiffs** will file the amended complaint within fourteen (14) days of the date the Motion for Preliminary Approval is granted. As a further precondition to the enforceability of this **Settlement**, within seven (7) days of complete execution of this **Agreement**, Plaintiffs' Counsel will file a joint stipulation and proposed order requesting to stay the *Heggen, Gibson, Roberds, and Hamilton I* actions for all purposes pending final disposition of *Hamilton II*.

B. Settlement Checks. All Settlement Checks for each **Qualified Class Members'** Initial Gross Settlement Payment shall contain, on the back of the check, the following Consent to Join and Release Form endorsement:

By signing this check and accepting this payment, I consent to join and participate in the settlement of the litigation entitled *Hamilton v. Heavenly Valley, Limited Partnership*, Case No. SC20210148 (California Superior Court for the County of El Dorado), and agree to be bound by the Settlement Agreement negotiated by Plaintiffs' counsel and approved by the Court in that case, and to immediately and irrevocably release all such claims without limitation all state and federal claims described in the Settlement Agreement. This check is void if not cashed or deposited within [insert date].

Within five (5) days of the end of the period for Qualified Class Members to cash their checks, the **Settlement Administrator** shall provide Plaintiffs' Counsel with copies of all checks bearing the signed Consent to Join Form endorsement, to be filed with the Court.

C. General Release of Known and Unknown Claims By Named Plaintiffs. Except as set forth in this Release, **Named Plaintiffs**, on their own behalf and any other person or entity claiming through them, fully release and discharge Vail, and each of its present and former owners, partners, equity holders, predecessors, successors, subsidiaries, assigns, insurers, and their present and former respective directors, officers, managers, trustees, attorneys, and agents, whether in their individual or official capacities (hereinafter collectively referred to as the "Released Parties"), from any and all liability, claims and demands, up to the date of this Agreement or related to or arising out of any event, circumstance, or omission that began (in whole or in part) prior to the date of this Agreement, including, but not limited to, claims relating to **Named Plaintiffs'** employment with any Released Party including, but not limited to, any and all claims for salary, wages, compensation, monetary relief, employment, benefits (including, but not limited to, any claims for benefits under, or contribution to, any employee benefit, profit-sharing or retirement plan bonuses, merit and longevity increases, commissions, relocation expenses, and all other benefits of all kind), earnings, back pay, front pay, compensatory damages, punitive damages, damage to character, damage to reputation, liquidated and other damages, emotional distress, mental anguish, depression, injury, impairment in locating employment, financial loss, pain and suffering, injunctive and declaratory relief, interest,

attorneys' fees and costs; specifically including any and all claims for discrimination including, but not limited to, discrimination on the basis of race, national origin, citizenship, color, religion, marital status, handicap or disability, age, sex, harassment of any kind, including sexual harassment, retaliation, whistle blowing, breach of contract, rescission, promises, claims under the Employee Retirement Income Security Act of 1974 [29 U.S.C. Sections 1001-1461], as amended; torts of all kinds including, but not limited to, misrepresentation, negligent or otherwise, fraud, defamation, slander, libel, duress, fraudulent inducement, workers' compensation retaliation, interference with an advantageous business relationship, negligent employment, including negligent hiring, negligent retention and negligent supervision; claims or rights under state and federal whistleblower legislation including the Consolidated Omnibus Budget Reconciliation Act of 1985 [Pub. L. 99-509], as amended ("COBRA"); the Sarbanes-Oxley Act of 2002 [Public Law 107-204, 116 Stat. 745] ("S-OA"); the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"); the Family and Medical Leave Act [29 U.S.C. Sections 2601-2654], as amended ("FMLA"); the Age Discrimination in Employment Act ("ADEA"); the Older Workers Benefits Protection Act ("OWBPA"), the Congressional Accountability Act of 1995 [2 U.S.C. Sections 1311-1317], as amended; the Americans with Disabilities Act [42 U.S.C. Sections 12101-12213], as amended ("ADA"); the ADA Amendments Act of 2008 ("ADAAA"); the Rehabilitation Act of 1973 [29 U.S.C. Section 791 et seq.], as amended; the Employee Polygraph Protection Act of 1988 [29 U.S.C. Sections 2001 et seq.], as amended ("PPA"); the Internal Revenue Code [Title 26, U.S.C.], as amended ("IRC"); the Equal Pay Act [29 U.S.C. Section 206(d)], as amended ("EPA"); Title VII of the Civil Rights Act of 1964 [42 U.S.C. Sections 2000e-2000e-17], as amended ("CRA"); the Civil Rights Act of 1991; Elliott-Larsen Civil Rights Act, as amended; the Revised Statutes [42 U.S.C. Sections 1981, 1983 or 1985], as amended; the Fair Housing Act [42 U.S.C. Section 3604 et seq.], as amended; Title IX of the Education Amendments of 1972 [20 U.S.C. Sections 1681 et seq.], as amended; the Federal False Claims Act [18 U.S.C. Sections 287 et seq.], as amended ("FFCA"); the Program Fraud Civil Remedies Act [38 C.F.R. 42.1, et seq.], as amended ("PFCRA"); the Fair Credit Reporting Act, as amended ("FCRA"); the Uniformed Services Employment and Reemployment Rights Act of 1994 [38 U.S.C. Sections 4301-4333], as amended ("USERRA"); the National Labor Relations Act [29 U.S.C. Sections 151-169], as amended ("NLRA"); the Worker Adjustment and Retraining Notification Act [29 U.S.C. Sections 2101 et seq.], as amended ("WARN"); the Occupational Safety and Health Act [29 U.S.C. Sections 651-678], as amended ("OSHA"); California Business & Professions Code § 17200, et seq.; California Unruh Civil Rights Act; California Fair Employment and Housing Act; and any other federal, state or local statute, ordinance or regulation. This Release does not affect any claims that cannot be released by law. Nothing in this Agreement is intended to waive claims for: (i) workers' compensation claims, (ii) unemployment insurance benefits, (iii) COBRA benefits, (iv) for vested rights under ERISA-covered employee benefit plans as applicable on the date Employee signs this Agreement, or (v) which cannot be released by private agreement. Notwithstanding the foregoing, the Parties agree that the **Released Claims** are not released by this Release.

D. California Civil Code Section 1542 Waiver. **Named Plaintiffs** expressly acknowledge and agree that the Release includes a waiver of all rights under Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

Named Plaintiffs acknowledge that they have read all of this Release, including the above Civil Code section, and the Class Settlement, and that they fully understand the Release, Class Settlement, and the Civil Code section. The Parties expressly waive any benefits and rights granted pursuant to Civil Code section 1542.

V. NOTICES

All notices, requests, demands and other communications required or permitted to be given pursuant to this **Agreement** shall be in writing and shall be delivered personally or mailed, postage prepaid, by first-class mail to the undersigned persons at their respective addresses as set forth herein:

Counsel for Plaintiffs:

Jennifer Liu
The Liu Law Firm, P.C.
800 Menlo Avenue, Suite 102
Menlo Park, CA 94025
Telephone: 650-461-9000

Vail:

Vail Resorts Management Company
390 Interlocken Crescent
ATTN: Legal Department, Box I-88
Broomfield, CO 80021

Counsel for Vail:

Evan R. Moses
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
400 South Hope Street, Suite 1200
Los Angeles, CA 90071
Telephone: 213-438-5851

Plaintiffs and the **Settlement Administrator** shall not file any documents relating to or in furtherance of the **Agreement** without providing drafts of such documents to Vail's counsel at least five (5) court days before filing, unless Vail agrees to a shorter period.

VI. REPRESENTATIONS.

Named Plaintiffs represent that they are not currently aware of any: (a) unalleged claims in addition to, or different from, those which are finally and forever settled and released against the **Released Parties** by this Settlement; and (b) unalleged facts or legal theories upon which any claims or causes of action could be brought against Vail, except such facts and theories specifically alleged in the operative complaints in the **Litigation**.

Named Plaintiffs and **Plaintiffs' Counsel** further represent that, other than the instant **Litigation**, they have no *current* intention of asserting any other claims against Vail in any judicial or administrative forum. **Plaintiffs** and **Plaintiffs' Counsel** further represent that, other than individuals that **Plaintiffs' Counsel** have disclosed to Vail's counsel: (a) they do not *currently* represent any persons who have expressed any interest in pursuing litigation or seeking any recovery against Vail, and (b) do not *currently* know of any individuals who have expressed any interest in pursuing litigation or seeking any recovery against Vail. The **Settling Parties** acknowledge, understand and agree that the representations described in this paragraph are not intended to, and are not meant to be interpreted in a fashion, that would violate California Rule of Professional Conduct 5.6, or any comparable federal or state ethics rule prohibiting limitations on an attorneys' practice of law.

Each of the **Named Plaintiffs** warrant and agree that as of the date of their execution of this **Agreement** they are under 40 years of age.

The Parties and their Counsel agree not to take any action to encourage any **Class Members** to opt out of and/or object to **the Settlement**. Except as provided herein, **Named Plaintiffs** agree not to file any documents relating to **the Settlement** with any court without at least five court days' advance notice and providing Vail's counsel with copies of such documents, unless Vail agrees to a shorter period.

The Parties agree that, as a precondition to the enforceability of this **Settlement**: (i) counsel for all Parties must agree on the terms, substance, and language of a proposed amendment to the *Hamilton II* action (the "**Amended Complaint**"), which ensures the *Hamilton II* action covers all of **the Released Claims** to the full extent of the **Covered Period**, and removes all claims or allegations relating to **Non-Resort Employees**; (ii) a verbatim copy of the mutually agreed **Amended Complaint** will be attached as an exhibit to Plaintiffs' Motion for Preliminary Approval of the Settlement; and (iii) Plaintiffs' Motion for Preliminary Approval of the Settlement will explain that the **Amended Complaint** will be filed fourteen (14) days after the date the Motion for Preliminary Approval is granted in order to effectuate the **Settlement**. The Parties agree, as a precondition to the enforceability of this **Settlement**, that the **Amended Complaint** must become the operative complaint in the *Hamilton II* action.

The Parties agree that, immediately upon the **Effective Date** of the **Settlement**, the **Named Plaintiffs** in *Heggen, Gibson, Roberds, Hamilton I, and Hamilton II* will, by virtue of this **Agreement**, automatically and forever release and abandon all claims and allegations relating to

or arising out of the experiences of **Non-Resort Employees**, and forever abandon any right to act as a class, collective, or PAGA representative on behalf of any **Non-Resort Employees** bringing claims that accrued prior to the date each Named Plaintiff executes this Agreement. The Parties further agree that, as a precondition for this **Settlement**, upon Plaintiffs' execution of this **Agreement**, the *Heggen, Gibson, Roberds, and Hamilton I* actions will be immediately stayed for all purposes pending the final disposition of the *Hamilton II* action. The Parties further agree that within fourteen (14) days of the **Effective Date** of the **Settlement**, Plaintiffs' Counsel will dismiss with prejudice the *Heggen, Roberds, Gibson, and Hamilton I* actions.

The **Settling Parties** acknowledge, understand and agree that the representations described in this Section VI are essential to **the Agreement** and that this **Agreement** would not have been entered into were it not for this representation.

VII. ADVICE OF COUNSEL

All of the **Settling Parties** acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this **Agreement** and that this **Agreement** has been executed with the consent and advice of counsel.

VIII. NO ADMISSION OF LIABILITY

Vail enters into this **Agreement** to avoid further expense and disruption to its business. The **Settling Parties** acknowledge and agree that liability for the actions that are the subject matter of **the Litigation** is disputed by Vail. This **Agreement** and **the Settlement** are a compromise and shall not be construed as an admission of liability at any time or for any purpose, under any circumstances, by the **Settling Parties** to this **Agreement**. The **Settling Parties** further acknowledge and agree that this **Agreement** and the settlement shall not be used to suggest an admission of liability in any dispute the **Settling Parties** may have now or in the future with respect to any person or entity. Neither this **Agreement** nor anything herein, nor any part of the negotiations had in connection herewith, shall constitute evidence with respect to any issue or dispute other than for purposes of enforcing this **Agreement**. Vail expressly disputes any liability.

IX. MODIFICATION OF AGREEMENT

This **Agreement** may not be modified or amended except in writing, signed by the affected **Settling Parties** or the respective counsel of record for the **Settling Parties**, and as approved by the Court with respect to material modifications or amendments.

X. CONSTRUCTION AND INTERPRETATION

A. Entire Agreement. This **Agreement** constitutes the entire agreement between the **Settling Parties** with respect to the subject matter contained herein and shall supersede all prior and contemporaneous negotiations between the **Settling Parties**. This **Agreement** shall be

construed as a whole according to its fair meaning and intent, and not strictly for or against any party, regardless of who drafted or who was principally responsible for drafting this **Agreement**, or any specific term or condition thereof. Plaintiffs and Vail participated in the negotiation and drafting of this **Agreement** and had available to them the advice and assistance of independent counsel. As such, neither Plaintiffs nor Vail may claim that any ambiguity in this **Agreement** should be construed against the other. This **Agreement** replaces and supersedes all prior agreements between the parties, including any deal terms memoranda or memorandum of agreement.

B. No Reliance on Representations or Extrinsic Evidence. Except as expressly provided herein, this **Agreement** has not been executed in reliance upon any other oral or written representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary, or contradict its terms. In entering into this **Agreement**, the **Settling Parties** agree that this **Agreement** is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence.

C. Controlling Law. This **Agreement** shall be subject to, governed by, construed, enforced and administered in accordance with the laws of the State of California, both in its procedural and substantive aspects, and without regard for the principle of conflict of laws, and shall be subject to the continuing jurisdiction of the El Dorado Superior Court for purposes of approving and enforcing this **Agreement**.

D. No Assignment. Plaintiffs' Counsel, Plaintiffs, and **Qualified Class Members** (by their acceptance of the **Settlement** Payment) represent and warrant that they have not assigned or transferred, or purported to assign or transfer, to any person or entity, any claim or any portion thereof or interest therein, including, but not limited to, any interest in the **Litigation**, or any related action.

E. Severability. If any provision of this **Agreement** (except the Release) is held by a court of competent jurisdiction to be void, voidable, unlawful or unenforceable, the remaining portions of this **Agreement** will remain in full force and effect to the extent that the effect of the **Agreement** remains materially the same and the obligations of the **Settling Parties** remain materially the same.

F. Headings and Recitals. Headings and recitals are for convenience and reference only and should not be used to interpret this **Agreement**.

XI. COUNTERPARTS

This **Agreement**, any amendments or modifications to it, and any other documents required or contemplated to be executed in order to consummate this **Agreement**, may be executed in one or more counterparts, each of which shall be deemed an original of this **Agreement**. All counterparts of any such document together shall constitute one and the same instrument. A photocopy, facsimile, or digital image of an executed counterpart shall be

enforceable and admissible as an original.

XII. BINDING EFFECT

This **Agreement** is binding upon and shall inure to the benefit of the **Settling Parties** to this **Agreement**. Without limiting the foregoing, this **Agreement** specifically shall inure to the benefit of Vail as well as its present and former owners, stockholders, predecessors, successors, joint ventures, assigns, agents, directors, officers, board members, employees, representatives, insurers, attorneys, parents, subsidiaries, benefit plans, plan fiduciaries, affiliated divisions and companies, and all persons acting by, through, under or in concert with any of them. Also without limiting the foregoing, this **Agreement** shall be binding upon the spouses, children, heirs, assigns, administrators, executors, beneficiaries, conservators, successors and offspring of all **Qualified Class Members**. This **Agreement** is binding and effective if signed by Vail and at least one **Named Plaintiff**.

XIII. ATTORNEYS' FEES, COSTS, AND EXPENSES

Except as otherwise specifically provided herein, the **Settling Parties** and all **Qualified Class Members** shall bear responsibility for their own attorneys' fees, costs and expenses, taxable or otherwise, incurred by them or arising out of this **Litigation** and shall not seek reimbursement thereof from any party to this **Agreement**.

XIV. AUTHORITY OF COUNSEL

A. Facsimile, Electronic, and E-mail Signatures. Any **Settling Party** may execute this **Agreement** by signing or by causing its counsel to sign, or by e-signature on the designated signature block below and transmitting that signature page *via* facsimile, e-mail, or other electronic means to counsel for the other **Settling Party**. Any signature made and transmitted by facsimile, e-signature, or e-mail for the purpose of executing this **Agreement** shall be deemed an original signature for purposes of this **Agreement** and shall be binding upon the **Settling Party** whose counsel transmits the signature page by facsimile, e-signature or e-mail.

B. Voluntary Signature. All **Settling Parties** agree that they have signed this **Agreement**, or authorized their counsel to sign this **Agreement** on their behalf, knowingly, voluntarily, with full knowledge of its significance and with the opportunity to engage their own legal counsel, and without coercion.

C. Warranty of Counsel. Plaintiffs' Counsel warrant and represent that they are expressly authorized by Plaintiffs to take all appropriate action required or permitted to be taken pursuant to this **Agreement** in order to effectuate its terms. Counsel for Vail warrant and represent that they are authorized to take all appropriate action required or permitted to be taken by Vail pursuant to this **Agreement** in order to effectuate its terms.

XV. CONFIDENTIALITY

Plaintiffs and Plaintiffs' Counsel agree not to disclose or publicize this Agreement or the Settlement, including the fact of the Settlement, its terms or contents, and the negotiations underlying the Settlement, in any manner or form, directly or indirectly, to any person or entity, except Class Members and only to the extent required to effectuate the terms of the Settlement. For the avoidance of doubt, this section means Plaintiffs and Plaintiffs' Counsel agree not to issue press releases, communicate with, or respond to any media or publication entities, publish information in manner or form, whether printed or electronic, on any medium or otherwise communicate, whether by print, video, recording or any other medium, with any person or entity concerning the Settlement, including the fact of the Settlement, its terms or contents and the negotiations underlying the Settlement, except as shall be contractually required to effectuate the terms of the Settlement. However, for the limited purpose of allowing Plaintiffs' Counsel to prove adequacy as class counsel in other actions, Plaintiffs' Counsel may disclose the name of the Parties in this action and the venue/case number of this action (but not any other settlement details) for such purposes. To the extent Plaintiffs wish to post information about the **Litigation** on their websites, they may refer to Vail by name, or the amount/terms of the Settlement, but not both.

XVI. RESCISSION RIGHT

In the event five percent (5%) or more of the **Class Members** opt out of the settlement, Vail shall have the unilateral right to rescind and void this **Settlement Agreement** in its entirety, by notifying Plaintiffs' counsel in writing prior to the final fairness hearing. In such case, Vail will be responsible for any and all costs of the Settlement Administrator accrued through the date of such notice.

XVII. CONTINUING JURISDICTION

The **Settling Parties** hereto agree to move for the California Superior Court for the County of El Dorado to retain, for a period of six (6) months after the Court holds a final compliance hearing, continuing jurisdiction to construe, interpret and enforce the provisions of this **Agreement**; to supervise the administration and distribution of the resulting settlement funds; and to hear and adjudicate any dispute or litigation arising from or related to this **Agreement** or the issues of law and facts asserted in the class action litigation to the extent necessary to effectuate this **Agreement**. This paragraph will be null and void in the event final approval of the **Settlement** is denied.

XVIII. EFFECT OF NON-APPROVAL

A. **Attempt to Submit a Revised Settlement Agreement.** In the event that the Court, for any reason, denies preliminary approval of the Agreement in the form submitted by the **Settling Parties**, the **Settling Parties** will attempt in good faith to negotiate and submit to the Court a revised settlement agreement for approval.

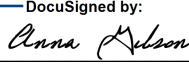
B. **Denial of Approval.** If the Parties are unable to obtain preliminary approval of the Settlement or a revised settlement agreement, or if the Court denies final approval of the Settlement or a revised settlement agreement: (i) the **Settling Parties** agree that this Agreement will be void and of no effect and completely inadmissible for any purpose whatsoever; (ii) all **Named Plaintiffs** in the **Litigation**, other than Plaintiff Hamilton, will immediately withdraw from the *Hamilton II* action; (iii) Plaintiff Hamilton will immediately file a Second Amended Complaint in *Hamilton II* identical to the original *Hamilton II* complaint, as it existed and was filed on August 9, 2021 (the “Original *Hamilton II* Complaint”), other than necessary modifications to reflect the passage of time only; (iv) Plaintiff Hamilton will immediately withdraw from *Hamilton II* all claims and causes of action that were alleged in the **First Amended Complaint** but not in the Original *Hamilton II* Complaint; (v) the **Settling Parties** agree to lift the stays in *Gibson*, *Heggen*, *Roberds*, and *Hamilton I*. The **Settling Parties** acknowledge that if the parties are unable to obtain preliminary or final approval, it is their intention to return the Parties to the status quo in *Gibson*, *Heggen*, *Roberds*, *Hamilton I*, and *Hamilton II* as they existed prior to seeking approval of the **Settlement**.

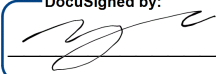
DATED: <u>12-28-2021</u>	The Vail Corporation d/b/a Vail Resorts Management Company and Heavenly Valley, Limited Partnership: By: <u>David T. Shyne</u> Its: <u>LVP + GC</u>
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DATED: _____	Anna Gibson: _____
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B. Denial of Approval. If the Parties are unable to obtain preliminary approval of the Settlement or a revised settlement agreement, or if the Court denies final approval of the Settlement or a revised settlement agreement: (i) the **Settling Parties** agree that this Agreement will be void and of no effect and completely inadmissible for any purpose whatsoever; (ii) all **Named Plaintiffs** in the **Litigation**, other than Plaintiff Hamilton, will immediately withdraw from the *Hamilton II* action; (iii) Plaintiff Hamilton will immediately file a Second Amended Complaint in *Hamilton II* identical to the original *Hamilton II* complaint, as it existed and was filed on August 9, 2021 (the “Original *Hamilton II* Complaint”), other than necessary modifications to reflect the passage of time only; (iv) Plaintiff Hamilton will immediately withdraw from *Hamilton II* all claims and causes of action that were alleged in the **First Amended Complaint** but not in the Original *Hamilton II* Complaint; (v) the **Settling Parties** agree to lift the stays in *Gibson*, *Heggen*, *Roberds*, and *Hamilton I*. The **Settling Parties** acknowledge that if the parties are unable to obtain preliminary or final approval, it is their intention to return the Parties to the status quo in *Gibson*, *Heggen*, *Roberds*, *Hamilton I*, and *Hamilton II* as they existed prior to seeking approval of the **Settlement**.

DATED: _____	The Vail Corporation d/b/a Vail Resorts Management Company and Heavenly Valley, Limited Partnership: By: _____ Its: _____
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DATED: <u>12/29/2021</u>	Anna Gibson: DocuSigned by:  _____ DEDDC94C5614467 ...
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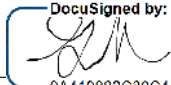
DATED: <u>12/28/2021</u>	Zachariah Saiz-Hawes: DocuSigned by:  D92C1D8F180444C...
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DATED: <u>12/28/2021</u>	William Berrier: DocuSigned by:  F117F375EDDE4C6...
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DATED: <u>12/28/2021</u>	Matthew Allen: DocuSigned by:  5BD7C3FE01EC45D...
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DATED: _____	Adam Heggen: _____
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DATED: _____	Christopher Hamilton: _____
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DATED: <u>12/30/2021</u>	Paul Roberds:  9A419882C80C416...
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49720141.1

EXHIBIT A
(Settlement Agreement)

NOTICE OF CLASS AND COLLECTIVE ACTION SETTLEMENT

***Hamilton v. Heavenly Valley, Limited Partnership*, Case No. SC20210148
Superior Court of the State of California, County of El Dorado**

★★★★

**PLEASE READ THIS NOTICE CAREFULLY.
THIS NOTICE COULD AFFECT YOUR LEGAL RIGHTS.
YOU MAY BE ENTITLED TO MONEY FROM THIS SETTLEMENT.**

A Court authorized this notice. This is not a solicitation from a lawyer.

You are receiving this Notice because you are a current or former employee of the Vail Corporation d/b/a/ Vail Resorts Management Company, Heavenly Valley, Limited Partnership, or one of their related or affiliated companies (collectively, “Vail”) at their resort locations or mountain facilities in the United States, and you may be entitled to money as a result of the settlement of a lawsuit. A court has authorized this Notice so you are made aware of your rights.

Plaintiffs Christopher Hamilton, Anna Gibson, Zachariah Saiz-Hawes, William Berrier, Matthew Allen, Adam Heggen, and Paul Roberds (collectively, “Plaintiffs”) brought the above-captioned class and collective action lawsuit (the “Action”), which is pending before the Superior Court for the State of California, County of El Dorado (the “Court”). The Action alleges that Vail violated federal and state wage and hour laws, and several related causes of action. Vail denies any wrongdoing but has agreed to settle the lawsuit to avoid the time, cost and uncertainty of litigation. The Court has not made any decisions regarding the merits of the lawsuit. The Court has, however, granted preliminary approval of the proposed settlement (the “Settlement”) which has been agreed upon by legal counsel for the Plaintiffs and Vail.

The Court has ordered that this Notice be sent to you because you may be affected by the Settlement. The purpose of this Notice is to inform you about the Settlement and your legal rights under the Settlement as follows:

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS:

Get a Payment	If you want to participate in the Settlement and receive a monetary payment, there are two ways to do so. <i>First</i> , you can fill out and return the “Consent to Join” Form provided below or available at: hyperlinked website address . <i>Second</i> , you can do nothing, wait to receive a payment, and then cash the check you receive. Either of these methods will ensure you participate. If you return the Consent to Join Form and/or cash the check you receive, you will give up your right to sue Defendants (as defined below) for any of the legal claims identified in Section IX, below. After final approval of the Settlement by the Court, your Settlement Payment will be mailed to you at the same address identified on this Notice. If your address changes, please notify the Settlement Administrator.
Exclude Yourself	If you do not want to participate in the Settlement, send the Opt-Out Statement to the Settlement Administrator as provided below, which will remove you from the Action and the Settlement. You will not receive any payment. You will keep your right to sue Defendants for the legal claims in this Action. The Settlement will bind all Class Members who do not request exclusion by submitting an Opt-Out Form.
Object	If you wish to object to the Settlement, send a written objection by mail to the Settlement Administrator stating your reasons for the objection. Directions are provided below. You cannot both object and exclude yourself from the Settlement.

I. WHY DID I RECEIVE THIS NOTICE AND WHAT IS THE CASE ABOUT?

You are a potential Class Member in a class and collective action lawsuit filed against Vail.

The Action contains claims against Vail for: (i) unpaid wages (including but not limited to minimum wages, overtime wages, double time wages, and wage premiums) under the Fair Labor Standards Act (“FLSA”) and/or the laws of the states of California, Colorado, Wisconsin, Michigan, New York, Vermont, Minnesota, Utah, Washington, Ohio, Indiana, Missouri, New Hampshire, Pennsylvania, Nevada, and Wyoming (collectively, “Class States”); (ii) failure to authorize, provide or allow proper meal and/or rest periods under the FLSA and/or the laws of the Class States; (iii) failure to pay proper meal and/or rest break premiums under the laws of the Class States; (iv) failure to reimburse expenses, as well as any resulting claims for unpaid wages arising out of such allegations, under the FLSA and/or the laws of the Class States; (v) unlawful deductions, rebates, or refunds from wages, as well as any resulting claims for unpaid wages arising out of such allegations; (vi) breach of contract under the laws of the Class States; (vii) failure to accurately record time or keep accurate records under the FLSA and/or the laws of the Class States; (viii) failure to provide accurate employment records upon request under the laws

of the Class States; (xiv) improper or inaccurate wage statements under the laws of the Class States; (xv) failure to pay timely wages during employment under the FLSA and/or laws of the Class States; (xvi) failure to pay timely wages at or after termination under the FLSA and/or laws of the Class States; (xvii) solicitation of employees by misrepresentation under the laws of the Class States; (xviii) fraudulent solicitation of employees under the laws of the Class States; (xix) employment under conditions detrimental to employee health under federal law and/or the laws of the Class States, (xx) unfair business practices under the laws of the Class States ; (xxi) false or deceptive representation or advertisement under the laws of the Class States; (xxii) statutory or civil penalties (including but not limited to those under PAGA); (xxiii) unfair competition under the laws of the Class States; and (xxiv) unjust enrichment under the laws of the Class States. The Action seeks damages for lost wages, interest, penalties, injunctive relief, and attorneys' fees and expenses.

The parties reached an agreement to settle all claims in the Action, which was preliminarily approved by the Court on [INSERT DATE OF PRELIMINARY APPROVAL ORDER]. The Court has ordered that this Notice be sent to you to inform you of the Settlement and your legal rights under the Settlement.

II. WHAT ARE THE PARTIES' POSITIONS AND REASONS FOR SETTLEMENT?

The Action was filed by Plaintiffs Christopher Hamilton, Anna Gibson, Zachariah Saiz-Hawes, William Berrier, Matthew Allen, Adam Heggen, and Paul Roberds on behalf of themselves and others similarly situated. Counsel for the Plaintiffs ("Class Counsel") have extensively investigated and researched the facts and law for the issues in the Action, and believe Plaintiffs have asserted valid claims. While Class Counsel believe Plaintiffs' claims in this Action have merit, Class Counsel also recognizes that the risk, expense, and delay involved with continued litigation justify settlement. Taking all factors into account, Class Counsel believes the proposed Settlement is fair, adequate, and reasonable and in the best interests of the Class Members.

Vail believes all of its employees have been compensated in compliance with the law and denies that it has done anything wrong. Nothing about the Settlement may be used against Vail as an admission or indication of any fault or liability. However, Vail has agreed to the Settlement to avoid the time, cost, and uncertainty of litigation.

The parties recognize that continuing to litigate the Action takes time and money and any outcome is uncertain. Therefore, the parties have agreed to settle this Action on the terms set forth in the Settlement.

The Court has made no ruling on the merits of the claims or defenses in the Action and has determined only that certification for settlement purposes only is appropriate under the law.

III. WHO IS IN THE CLASS?

The "Class Members" are all non-exempt employees who, at any time during the "Covered Period" worked for and were employed by Vail in the United States and worked primarily at one of its resort locations or mountain facilities. The "Covered Period" starts:

- For Class Members employed in Wyoming, on October 21, 2010.
- For Class Members employed in Indiana, Ohio, Washington, Minnesota, Vermont, New York, Michigan, Nevada, Wisconsin, and Colorado, on October 21, 2014.
- For Class Members employed in Missouri, on October 21, 2015.
- For Class Members employed in California, Pennsylvania, and Utah, on October 21, 2016.
- For Class Members employed in New Hampshire, on October 21, 2017.
- For Class Members not employed in one of the above identified states, on October 21, 2016.

The Covered Period ends, for all Class Members employed in California, on December 15, 2021, and for all Class Members employed in states other than California, on October 23, 2021.

IV. WHAT ARE THE SETTLEMENT TERMS?

The Settlement provides that Vail will pay \$13,100,000.00 (the “Gross Settlement Amount”) to fully resolve the claims in the Action. Certain deductions will be made from the Gross Settlement Amount:

- (1) The Court has tentatively approved a payment of up to \$[INSERT AMOUNT] to the Settlement Administrator, [INSERT NAME], for the costs incurred in notifying the potential Class Members and processing claims.
- (2) Class Counsel will ask the Court at the Final Approval Hearing to approve attorneys’ fees of not to exceed 33 1/3 of the Gross Settlement Amount, or \$4,366,666.67, and reimbursement of the reasonable litigation expenses Class Counsel has incurred, not to exceed \$50,000. Class Counsel has litigated the Action on behalf of the Class Members on a contingency fee basis (that is, without being paid to date) while advancing litigation costs and expenses. The award of attorneys’ fees and reasonable litigation expenses will fully compensate Class Counsel for all legal fees and expenses incurred in the Action, including any work they do in the future. Class Members are not personally responsible for any fees or expenses.
- (3) Class Counsel will also ask the Court at the Final Approval Hearing to approve Service Awards of \$10,000.00 each for named Plaintiffs Christopher Hamilton, Zachariah Saiz-Hawes, William Berrier, Matthew Allen, Adam Heggen, and Paul Roberds for acting as representatives on behalf of the Class Members and spending time assisting with the Action, which was not required of other Class Members.
- (4) \$375,000.00 shall be paid to California’s Labor and Workforce Development Agency to pay the government portion of penalties allocated under the California Labor Code’s Private Attorneys General Act (“PAGA”).

The balance of the Gross Settlement Amount after the deductions described above is the “Net Settlement Amount.” The Net Settlement Amount is estimated to be \$[INSERT AMOUNT].

The amount of money Class Members will receive from the Settlement depends on how many hours they worked for Vail during the Covered Period, whether they worked in a “Snow Position” or “Non-Snow Position”, and the state in which they worked. “Snow Position” is defined as all job titles in the following job families: Mountain Safety, Ski School, Lift Maintenance, Lift Operations, Mountain Host, Mountain Dining, Snowmaking, and Epic Mix. “Non-Snow Position” is defined as all other job titles included in the Settlement other than Snow Positions.

This Notice summarizes the proposed Settlement. For the precise terms and conditions of the settlement, please see the settlement agreement available at www.INSERT-AMOUNT.com.

V. HOW MUCH MONEY WILL I RECEIVE?

Your share of the Net Settlement Amount is estimated to be \$[INSERT AMOUNT]. This amount may increase or decrease based on a number of factors, including but not limited to how much the Court awards in attorneys’ fees and reasonable litigation expenses, and the number of individuals who ask to be excluded from the Class.

VI. WHAT ARE MY OPTIONS, HOW CAN I GET MY SETTLEMENT MONEY, AND WHAT DO I NEED TO DO?

Depending on your dates of employment, you may be a Class Member for purposes of state law claims and/or federal FLSA claims. Here are your options regarding both types of claims.

A. Options Regarding Your State Law Claims

- **Option 1** — *Do nothing and receive a Settlement payment check.* If you do nothing and you are a Class Member, you will automatically receive a Settlement Payment for your share of the Settlement and you will be bound by the Settlement.
- **Option 2** — *Request exclusion from the Class.* If you wish to be excluded from the Class portion of the Settlement, you must submit an Opt-Out Form to the Settlement Administrator at the following address: [INSERT] on or before [INSERT DATE]. Your Opt-Out Form must include your name and signature. If you submit an Opt-Out Form, you will not be bound by the Settlement and you will not receive a Settlement Payment as part of the Settlement.
- **Option 3** — *Object to the Settlement.* If you are a Class Member and wish to object and tell the Court why you do not like the Settlement, you may submit a written objection or appear at the final approval hearing to raise your objection. If the Court approves the Settlement despite your objection, you will still be bound by the Settlement. If you submit a written objection, it should identify this case name and number, *Hamilton v. Heavenly Valley, Limited Partnership*, Case No. SC20210148, Superior Court of the State of California, County of El Dorado; and be submitted to the Court by filing it with the Court. If the Court denies approval, no settlement payments will be sent out, and the Action will continue. You may also appear at the final approval hearing scheduled for

[TIME] on [DATE] in Courtroom [INSERT] of the Superior Court of the State of California, County of El Dorado, located at 1354 Johnson Blvd., South Lake Tahoe, CA 96150, in Department 4, to have your objection heard by the Court. Any Class Member who does not object at or before the final approval hearing will be deemed to have approved the Settlement and to have waived such objections and shall not be able to make any objections (by appeal or otherwise) to the Settlement.

B. Options Regarding Your Federal Claims

Because this case involves federal FLSA claims in addition to state law claims, you must “consent to join” the case in order to receive payment for your FLSA claims. If you do not join the Settlement, you will not receive a payment. You may consent to join the Action and Settlement in one of two ways:

- **Option 1**— *Submit the Consent to Join Form.* You must submit the Consent to Join Form (using the postage pre-paid envelope provided along with this notice) to the Settlement Administrator at the following address: [INSERT] on or before [INSERT]. You may also submit a Consent to Join Form online by following the instructions on the following website: [INSERT WEBSITE].
- **Option 2** — *Cash or Deposit Your Settlement Payment.* By cashing or depositing the settlement check sent to you by [INSERT DATE], you are consenting to join the FLSA portion of the Settlement.

VII. HOW ARE THE INDIVIDUAL SETTLEMENT PAYMENTS CALCULATED?

Individual Settlement Payments are calculated using a “points” system as follows:

- (a) For each hour worked by a Class Member outside of California before October 21, 2017 but within the applicable Covered Period, assign each such Class Member one (1) point for each such hour, as consideration for settling state law breach of contract claims;
- (b) For each hour worked by a Class Member in California between October 21, 2016, and October 21, 2017, in a Snow Position during the applicable Covered Period, assign each such Class Member thirty (30) points for each such hour; for each hour worked by a Class Member in California between October 21, 2016, and October 21, 2017, in a Non-Snow Position during the applicable Covered Period, assign each such Class Member fifteen (15) points for each such hour, as consideration for settling state law breach of contract claims and unfair competition claims;
- (c) For each hour worked by a Class Member in California between October 21, 2017, and December 15, 2021, or in Colorado between October 21, 2017, and October 23, 2021, in a Snow Position during the applicable Covered Period, assign each such Class Member sixty (60) points for each such hour; for each hour worked by a Class Member in California between October 21, 2017, and December 15, 2021, or in Colorado between October 21, 2017, and October 23, 2021, in a Non-Snow Position during the applicable Covered Period, assign each such Class Member thirty (30) points for each such hour; for each hour worked by a Class Member outside of California or Colorado between October

21, 2017, and October 23, 2021, in a Snow Position during the applicable Covered Period, assign each such Class Member thirty (30) points for each such hour; for each hour worked by a Class Member outside of California or Colorado between October 21, 2017, and October 23, 2021, in a Non-Snow Position during the applicable Covered Period, assign each such Class Member fifteen (15) points for each such hour, as consideration for settling their state law claims and federal Fair Labor Standards Act (FLSA) claims;

- (d) Add all points for all Class Members together to obtain the “Denominator”;
- (e) Divide the number of points for each Class Member by the Denominator to obtain each Class Member’s “Payment Ratio”;
- (f) Multiply each Class Member’s Payment Ratio by the Net Settlement Amount to determine his or her Individual Settlement Payment.

Fifty percent (50%) of each Individual Settlement Payment shall be to settle FLSA claims and fifty percent (50%) shall be to settle state law claims.

For tax purposes, thirty-three percent (33%) of each Individual Settlement Payment shall be treated as settlement for wage claims, which will be subject to required tax withholdings, and reported on an IRS W2, and sixty-seven percent (67%) shall be treated as settlement for penalties and interest and/or statutory penalties, which will be paid without withholding any amount, and reported on a Form 1099. You should consult with your tax advisors concerning the tax consequences of the payments you receive under the Settlement.

VIII. WHAT HAPPENS TO LEFTOVER FUNDS FROM THE SETTLEMENT?

If, after the Individual Settlement Payments are distributed, any Class Members have failed to timely cash their settlement checks, the leftover funds allocated to settle state law claims (50% of each Individual Settlement Payment) shall be redistributed on a pro rata basis to Class Members who cashed their settlement checks in the initial distribution. Leftover funds allocated to settle FLSA claims will not be paid out and remain Vail’s property. If there are leftover funds allocated to settle state law claims after the second distribution, half (50%) of those funds will be donated to Legal Services of Northern California, and the other half (50%) will be donated to Colorado Legal Services.

IX. WHAT AM I GIVING UP IN EXCHANGE FOR THE SETTLEMENT BENEFITS?

Released Claims. If approved by the Court, the Settlement will bar any Class Member who does not timely request exclusion from the Action from bringing certain claims described below against Defendants. The Settlement contains the following provisions regarding the release of claims by Class Members:

The definition of Released Claims includes, but is not limited to, all of the following claims for relief: (i) unpaid wages (including but not limited to minimum wages, overtime wages, double time wages, and wage premiums) under the FLSA and/or the laws of the states of California, Colorado, Wisconsin, Michigan, New York, Vermont, Minnesota, Utah, Washington, Ohio, Indiana,

Missouri, New Hampshire, Pennsylvania, Nevada, and Wyoming (collectively, “Class States”); (ii) failure to authorize, provide or allow proper meal and/or rest periods under the FLSA and/or the laws of the Class States; (iii) failure to pay proper meal and/or rest break premiums under the laws of the Class States; (iv) failure to reimburse expenses, as well as any resulting claims for unpaid wages arising out of such allegations, under the FLSA and/or the laws of the Class States; (v) unlawful deductions, rebates, or refunds from wages, as well as any resulting claims for unpaid wages arising out of such allegations; (vi) breach of contract under the laws of the Class States; (vii) failure to accurately record time or keep accurate records under the FLSA and/or the laws of the Class States; (viii) failure to provide accurate employment records upon request under the laws of the Class States; (xiv) improper or inaccurate wage statements under the laws of the Class States; (xv) failure to pay timely wages during employment under the FLSA and/or laws of the Class States; (xvi) failure to pay timely wages at or after termination under the FLSA and/or laws of the Class States; (xvii) solicitation of employees by misrepresentation under the laws of the Class States; (xviii) fraudulent solicitation of employees under the laws of the Class States; (xix) employment under conditions detrimental to employee health under federal law and/or the laws of the Class States, (xx) unfair business practices under the laws of the Class States ; (xxi) false or deceptive representation or advertisement under the laws of the Class States; (xxii) statutory or civil penalties (including but not limited to those under PAGA); (xxiii) unfair competition under the laws of the Class States ; (xxiv) unjust enrichment under the laws of the Class States; and (xxv) all other claims for damages, penalties, interest, injunctive relief, equitable relief, attorneys’ fees and costs, and other amounts recoverable under any of the aforementioned causes of action or arising out of the Factual Predicates, to the extent permissible by law, including but not limited to any state’s labor codes, wage orders, and the California Unfair Competition Law or any other analogous state law.

The Factual Predicates consist of all of the factual allegations raised in the Amended Complaint, including but not limited to: interrupted meal and rest breaks; short meal and rest breaks; working during meal and rest breaks; untimely meal and rest breaks; on-duty or on-premises meal and rest breaks; failure to pay proper wages or premiums in response to or in lieu of meal/rest break violations; time spent travelling, commuting, donning/doffing, storing or removing gear, training, maintaining equipment, checking/reviewing schedules, making business-related purchases, waiting time, pre-shift meetings, post-shift meetings, communicating with customers, planning and strategizing about work, communicating with ski and snowboard students, communicating with other Vail employees, communicating with managers/supervisors, checking terrain reports, completing paperwork, reviewing schedules, reviewing grooming information, reviewing terrain information, reviewing snow and weather reports, working from home, performing compensable activities pre- and post-scheduled shifts or clocking in, or time spent working off the clock; falsification or alteration of time records; application of the continuous workday doctrine; application of the seventh-consecutive day of work rule; failure to properly or accurately record, track, or pay employee time; failure to properly calculate or provide employee pay; the content of documents, statements, press releases, or communications by or from Vail or its officers or employees regarding wages; agreements between

Vail and its employees; use of smartphones or other cellular telephones; use of the Internet; use of data and/or cellular plans, use of personal electronic equipment; use of personal ski equipment, clothing and paraphernalia, the purchase and maintenance of necessary equipment, tools, and clothing; agreements regarding missed or interrupted meal and rest breaks; miscalculating the regular rate; misuse of the Colorado “Ski Industry Exemption”; misuse of the California ski establishment rule in IWG Wage Order No. 10-2001 § 3 (K); timing of wage payments; maintenance of records; content and formatting of wage statements; responses to requests for wage and hour or personnel records; and any other facts pled in the Amended Complaint.

For purposes of this Settlement, the term “Defendants” means The Vail Corporation d/b/a Vail Resorts Management Company, Heavenly Valley, Limited Partnership, and all of their parent corporations, subsidiaries, and other affiliates.

This Settlement is conditioned upon the Court entering an order at or following the Final Approval hearing approving the Settlement as fair, reasonable, adequate and in the best interests of the Class Members.

X. WHEN AND WHERE WILL THE COURT DECIDE WHETHER TO APPROVE THE SETTLEMENT?

The Final Approval hearing on the adequacy, reasonableness, and fairness of the Settlement will be held at [TIME] on [DATE] in Courtroom [INSERT] in the Superior Court of the State of California, County of El Dorado, located at 1354 Johnson Blvd., South Lake Tahoe, CA 96150, in Department 4. The hearing date may be changed without further notice; however, you can check the Settlement Administrator’s Website at www. .com to find out if the hearing date has changed. You have a right to attend this hearing, but you are not required to do so. You also have the right to hire an attorney to represent you, or you can appear without an attorney and represent yourself.

The Final Approval Hearing may be continued to a different date and/or time without further notice to the Class. You may contact Class Counsel, listed below in this Notice, to inquire into the date and time of the Final Approval Hearing.

XI. WHO ARE THE ATTORNEYS REPRESENTING THE PLAINTIFFS?

Plaintiffs and Class Members are represented in this Action by attorneys at the law firms of The Liu Law Firm, P.C., The Ottinger Firm, P.C., King & Siegel, LLP, Justin Toobi, Esq.; Diversity Law Group, P.C., and Webber Law Group, P.C., whose contact information appears below.

THE LIU LAW FIRM, P.C.

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Telephone: (650) 461-9000
jliu@liulawpc.com

KING & SIEGEL, LLP

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THE OTTINGER LAW FIRM, P.C.

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JUSTIN TOOBI, ESQ.

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DIVERSITY LAW GROUP, P.C.

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WEBBER LAW GROUP, P.C.

Kelsey Webber
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JAMES HAWKINS APLC

James Hawkins
Gregory Mauro
9880 Research Dr., Suite 200
Irvine, CA 92618
Telephone: (949) 387-7200
info@jameshawkinsaplc.com

XII. CAN VAIL RETALIATE AGAINST ME AS A RESULT OF WHAT I DO IN RESPONSE TO THIS NOTICE?

No. If you are a current employee of Vail, your decision as to whether or not to participate in this settlement will in no way affect your employment with Vail. It is further illegal for Vail to take any adverse employment action against you as a result of your decision whether or not to participate in this settlement.

IF YOU NEED MORE INFORMATION OR HAVE ANY QUESTIONS, you may contact the Settlement Administrator at the address, telephone number (toll-free), e-mail, or website listed below.

[INSERT]

ADDITIONAL INFORMATION

This Notice only summarizes the Action, the Settlement, and related matters. For more information, you may inspect the Court files at the Office of the Clerk, 1350 Johnson Blvd., South Lake Tahoe, CA 96150, open from 8:00 a.m. to 3:00 p.m., Monday through Friday, excluding holidays. You may also request a copy of the "Joint Stipulation of Settlement and Release" from the Settlement Administrator.

ALL INQUIRIES REGARDING THIS ACTION SHOULD BE MADE TO THE SETTLEMENT ADMINISTRATOR at [insert Settlement Administrator contact information]. YOU MAY ALSO CONTACT CLASS COUNSEL at the contact information listed above.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION ABOUT THIS SETTLEMENT OR THE CLAIMS PROCESS.

EXHIBIT B
(Settlement Agreement)

CONSENT TO JOIN FORM

***Hamilton v. Heavenly Valley, Limited Partnership*, Case No. SC20210148
Superior Court of the State of California, County of El Dorado**

★★★★

CONSENT TO JOIN LAWSUIT & AGREEMENT TO BE BOUND BY RELEASE: By signing, dating, and returning this Consent to Join Form, you agree to consent to join the litigation entitled *Hamilton v. Heavenly Valley, Limited Partnership*, Case No. SC20210148 (California Superior Court for the County of El Dorado), and participate in the proposed Settlement of the litigation in resolution of claims brought pursuant to the the Fair Labor Standards Act 29 U.S.C. § 216(b). You agree to be represented by Class Counsel and to be bound by the Settlement Agreement negotiated by Class Counsel in this case. You agree to be bound by any adjudication of this litigation by the Court, whether it is favorable or unfavorable. If the Settlement Agreement receives final approval from the Court, you will immediately and irrevocably release all claims described in the Settlement Agreement. This release will be effective even if you do not timely deposit or negotiate the settlement payment that will be sent to you.

YOU MUST SUBMIT THIS CONSENT TO JOIN FORM NO LATER THAN [DATE] TO JOIN THE LAWSUIT AND SETTLEMENT. ALTERNATIVELY, YOU MAY ALSO CASH OR DEPOSIT YOUR SETTLEMENT CHECK TO JOIN THE LAWSUIT AND SETTLEMENT.

1. My name is: _____

*First**Middle**Last*

2. My home address is: _____

Address

_____,
*City*_____,
*State*_____,
Zip Code

3. My telephone number is: _____

Telephone Number

4. My email address is: _____

Email Address

Signature

Type or print name

Date

EXHIBIT C
(Settlement Agreement)

OPT-OUT FORM

Hamilton v. Heavenly Valley, Limited Partnership, Case No. SC20210148
Superior Court of the State of California, County of El Dorado

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IF YOU DO NOT WISH TO BE A PART OF THIS SETTLEMENT AND RECEIVE MONEY FROM THE SETTLEMENT DESCRIBED IN THE ACCOMPANYING NOTICE, PLEASE COMPLETE THIS FORM. *YOU WILL NOT RECEIVE ANY MONEY IF YOU FILL OUT AND RETURN THIS FORM.*

You have a right to exclude yourself (“opt out”) from the Settlement Class, but if you choose to do so, **you will not receive any payment from the proposed Settlement described in the Settlement Agreement and summarized in the Notice of Class and Collective Action Settlement (“Notice”).** You will not be bound by a judgment in this case and you will have the right to file your own lawsuit against Defendants and to pursue your own claims in a separate suit.

If you wish to participate in the Settlement Class and receive money from the Settlement, you should not return this Opt-Out Form.

If you choose to exclude yourself, you must complete this Opt-Out Form and send the signed form no later than **[DATE]** to the Claims Administrator at **[insert address]**. This Opt-Out Form must be delivered by U.S. Mail or by courier (not by e-mail or fax) to the Claims Administrator.

If you timely and properly submit this Opt-Out Form, then you will be excluded from the Settlement Class, and you will not be entitled to any payment or other benefits from the Settlement, you will not be entitled to object to the Settlement, and you will not be bound by the release of claims set forth in the Settlement Agreement and Notice.

Before electing to opt-out and exclude yourself from the Settlement Class, you should read the enclosed Notice to understand the effect of either opting out of the Settlement Class or not opting out of the Settlement Class. You have the right to confer with Class Counsel or counsel of your own choosing, before executing this Opt-Out Form. If you have any questions regarding the effect of opting out of the Settlement Class or not opting out of the Settlement Class, or need any further information or assistance, please contact any of the following Class Counsel:

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INSTRUCTIONS

1. Questions 1-4 of below must be answered.
2. The completed Opt-Out Form must be sent to the following address so that it is postmarked or otherwise delivered no later than [DATE] to:

[Settlement Administrator]

QUESTIONS

1. My name is: _____
First Middle Last
2. My mailing address is: _____
Address

_____, _____, _____
City State Zip Code
3. My telephone number is: _____
Telephone Number
4. My email address is: _____
Email Address

ATTESTATION

I HEREBY CONFIRM THAT I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THIS PROCEEDING AND FROM ALL PAYMENTS AND OTHER BENEFITS OTHERWISE AVAILABLE TO ME UNDER THE SETTLEMENT.

Signature Type or Print Name Date