

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS  
COUNTY DEPARTMENT, CHANCERY DIVISION**

<b>JORGE MARQUEZ, individually, and on</b>	)	
<b>behalf of all others similarly situated,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>Case No. 2020-CH-05895</b>
<b>vs.</b>	)	
	)	
<b>NORTH RIVERSIDE GOLF CLUB,</b>	)	
	)	
<b>Defendant.</b>	)	

**CLASS ACTION SETTLEMENT AGREEMENT AND RELEASE**

This Class Action Settlement Agreement and Release (herein referred to as “Settlement Agreement” or “Settlement”) is made and entered into by and between JORGE MARQUEZ (“Plaintiff”) on behalf of himself and each member of the Settlement Class as defined below, and Defendant RIVERSIDE GOLF CLUB (“Defendant”)<sup>1</sup> (together with Plaintiff, the “Parties”).

**I. RECITALS**

1. On September 16, 2020, Plaintiff JORGE MARQUEZ filed a class action complaint captioned *Marquez v. North Riverside Golf Club*, Case No. 2020-CH-05895, (hereinafter “Class Action Complaint”) in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, alleging violations of the Illinois Biometric Information Privacy Act (“BIPA”), 740 ILCS 14/1, *et seq.* (the “Action”).

2. Defendant denies any liability, wrongdoing, or legal violations of any kind related to the claims and contentions asserted in this Action. By entering into this Settlement, Defendant does not admit any liability or wrongdoing, and expressly denies the same.

3. Class Counsel have conducted an investigation into the facts and the law regarding

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<sup>1</sup> Misnamed as “North Riverside Golf Club.”

the Action and have concluded that a settlement according to the terms set forth herein is fair, reasonable, and adequate, and beneficial to and in the best interests of Plaintiff and the Settlement Class, recognizing (a) the existence of complex and contested issues of law and fact; (b) the risks inherent in litigation; (c) the likelihood that future proceedings will be unduly protracted and expensive if the proceeding is not settled by voluntary agreement; (d) the magnitude of the benefits derived from the contemplated Settlement in light of both the maximum potential and likely range of recovery to be obtained through further litigation and the expense thereof, as well as the potential of no recovery whatsoever; and (e) Class Counsel's determination that the Settlement is fair, reasonable, adequate, and will substantially benefit the Settlement Class Members. For purposes of this Settlement Agreement, Class Counsel have also determined that the Settlement Agreement procedures described herein are superior to other available methods for the fair and efficient resolution of this controversy.

4. Considering the risks and uncertainties of continued litigation and all factors bearing on the merits of settlement, the Parties are satisfied that the terms and conditions of this Settlement Agreement are fair, reasonable, adequate, and in their best respective interests.

5. The Parties agree to cooperate and take all reasonable steps necessary and appropriate to obtain preliminary and final approval of the Settlement Agreement, to effectuate all aspects of the Settlement Agreement, and to dismiss this action with prejudice upon final approval and entry of final judgment.

6. In consideration of the covenants, agreements, and releases set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is agreed by and among the undersigned that the Action be settled and compromised, and that the Releasors, as that term is defined herein, release the Released Parties,

as that term is defined herein, of the Released Claims, as that term is defined herein, without costs as to Defendant, the Released Parties, Plaintiff, Class Counsel, or the Settlement Class, except as explicitly provided for in this Settlement Agreement, subject to the approval of the Court, on the following terms and conditions.

## **II. SETTLEMENT TERMS**

### **A. DEFINITIONS**

The following terms, as used in this Settlement Agreement, have the following meanings:

7. “Action” means the class action lawsuit pending in the Circuit Court of Cook County, Illinois, County Department, Chancery Division, captioned *Marquez v. North Riverside Golf Club*, Case No. 2020-CH-05895.

8. “Administrative Fees” refers to the Settlement Administrator’s fees arising from its administration of the Settlement, including but not limited to costs in providing Notice, communicating with the Settlement Class Members, disbursing payments to the proposed Settlement Class Members, and tax reporting, among other duties.

9. “Timekeeping System” means the timekeeping device or time clocks used by Defendant’s workers between September 16, 2015, and the date of Preliminary Approval, which utilized a scan of Plaintiff’s and the other Settlement Class Members’ finger, hand or palm, and/or fingerprints or handprints.

10. “Class,” “Settlement Class,” “Class Member,” or “Settlement Class Member” mean each member of the Settlement Class, as defined in Paragraph 35 of this Agreement, who does not timely elect to be excluded from the Settlement Class and includes, but is not limited to, Plaintiff.

11. “Class Counsel” refers to Stephan Zouras, LLP, 222 W. Adams Street, Suite 2020, Chicago, IL 60606, and Peiffer Wolf Carr Kane Conway & Wise, LLP, 818 Lafayette Avenue,

Floor 2, St. Louis, MO 63104.

12. “Court” means the Circuit Court of Cook County, Illinois, County Department, Chancery Division and the Honorable Neil H. Cohen or any judge sitting in his stead.

13. “Defendant” means Defendant Riverside Golf Club.

14. “Defendant’s Counsel” means BakerHostetler, One North Wacker Drive, Suite 4500, Chicago, Illinois 60606.

15. “Effective Date” means the first business day after the date on which the Final Judgment becomes final. For purposes of this definition, the Final Judgment “becomes final” when the Final Approval Order has been entered on the docket and the latest of the following has occurred: (a) on the date that the time to appeal from the Final Approval Order has expired and no appeal has been timely filed but no later than 35 calendar days after the Court enters the Final Approval Order; (b) if such an appeal has been filed, it has been finally resolved and has resulted in an affirmation of the Final Approval Order; or (c) the Court, following the resolution of the appeal, enters a further order or orders approving the Settlement on the material terms set forth herein, and either no further appeal is taken from such order(s) or any such appeal results in affirmation of such order(s). In the event that the Court does not approve the Settlement Agreement and/or does not enter a Final Judgment, or in the event that entry of the Final Judgment is reversed on appeal, then there shall be no Effective Date and this Settlement Agreement shall become null and void.

16. “Fee Petition” means the motion to be filed by Class Counsel in which they seek approval of an award of attorneys’ fees, costs, and expenses.

17. “Fee Award” means the amount of attorneys’ fees and reimbursement of costs and expenses awarded by the Court to Class Counsel.

18. “Final Approval Hearing” means the hearing contemplated by the Parties at which the Court will grant final approval of the Settlement and make such other final rulings as are contemplated by the Settlement Agreement.

19. “Final Approval Order” means the Court’s order granting final approval of this Settlement Agreement on the terms provided herein or as those terms may be modified by subsequent written agreement of the Parties. The Final Approval Order shall:

- a. Grant final certification of the Settlement Class pursuant to 735 ILCS § 5/2-801;
- b. Find that the Settlement Agreement is fair, reasonable, and adequate, was entered into in good faith and without collusion, and approves and directs consummation of the Settlement Agreement;
- c. Dismiss Plaintiff’s and Class Members’ claims pending before it with prejudice and without costs, except as explicitly provided for in this Settlement Agreement;
- d. Approve the Release provided in the Settlement Agreement and order that, as of the Effective Date, the Released Claims will be released as to the Released Parties; and
- e. Enter a Final Judgment pursuant to 735 ILCS § 5/2-1301 with respect to the foregoing.

The Parties shall submit a proposed Final Approval Order setting forth the terms of this Settlement Agreement, by incorporation or otherwise, for execution and entry by the Court at the time of the Final Approval Hearing or at such other time as the Court deems appropriate.

20. “Final Judgment” refers to the judgment pursuant to 735 ILCS § 5/2-1301 entered by the Court in conjunction with the Final Approval Order.

21. “Notice” means the notice of class action settlement to be directed to Settlement Class Members consistent with due process. The Notice shall be substantially in the form of **Exhibit A** attached hereto and will provide a summary of the Action, a summary of the Settlement

Agreement, information on how Class Members can opt-out or object to the Settlement, and the scope of the release of claims.

22. “Objection/Exclusion Deadline” means the date by which a written objection to this Settlement Agreement or a request for exclusion submitted by a member of the Settlement Class must be postmarked and/or filed with the Court, which shall be designated as a date approximately forty-five (45) days following the initial mailing of the Notice, or such other date as ordered by the Court.

23. “Parties” means Plaintiff and Defendant, collectively.

24. “Plaintiff” or “Class Representative” shall mean the named class representative, Jorge Marquez.

25. “Preliminary Approval Order” or “Preliminary Approval” refers to the Court’s order preliminarily approving the Settlement Agreement, certifying the Settlement Class for settlement purposes, and directing Notice of the Settlement to the Settlement Class substantially in the form of the Notice set forth in this Agreement.

26. “Qualified Settlement Fund” or “QSF” means the interest-bearing escrow account with the Settlement Fund to be opened, administered, and controlled by the Settlement Administrator as a “Qualified Settlement Fund” under Section 468B of the IRC and Treas. Reg. § 1.468B-1, 26 C.F.R. § 1.468B-1, et seq.

27. “Released Claims” means the Releasors will, upon the Effective Date, fully and completely release, acquit, relinquish and completely discharge the Released Parties from any and all claims, suits, actions, controversies, demands, and/or causes of action against the Released Parties that arise out of, relate to, or are connected with alleged violation of or noncompliance with the Illinois Biometric Information Privacy Act (“BIPA”), alleged biometric identifiers (including,

but not limited to retina or iris scan, fingerprint, voiceprint, scan of hand, scan of face geometry, or measurement of any biological feature), alleged biometric information of any kind (including, but not limited to, any information, regardless of how it is captured, converted, stored, or shared, based on an individual's biometric identifier used to identify an individual), or other alleged biometric data, including, but not limited to, claims brought, or which could be brought, under BIPA, or other local, state, or federal law (“Released Claims”). All Settlement Class Members are bound by the foregoing release whether or not their Settlement checks are timely cashed. The only Settlement Class Members not subject to the foregoing release are those who timely and validly exclude themselves from the Settlement.

28. “Released Parties” refers to Defendant and/or its past or present, direct or indirect, parents, subsidiaries, divisions, predecessors, successors, assigns, holding companies, shareholders, principals, owners, trustees, administrators, executors, directors, officers, managers, employees, board members, partners, attorneys, insurers, reinsurers, underwriters, and lenders. For the avoidance of doubt, Released Parties shall not include third-party vendors, including, but not limited to any entity that manufactured, sold, leased, or otherwise provided Defendant with any Timekeeping System, or any portion thereof (whether software or hardware).

29. “Releasor(s)” refers to Plaintiff, the Settlement Class Members, and to each of their predecessors, successors, beneficiaries, heirs, executors, conservators, administrators, and assigns of each of the foregoing, and anyone claiming by, through or on behalf of them.

30. “Service Award” means the amount to be paid to the Plaintiff, subject to approval of the Court, as payment for his efforts for the benefit of the Class, including assisting Class Counsel with the prosecution of the Action.

31. “Settlement Administrator” refers to the third-party entity selected and supervised

by Class Counsel to administer the Settlement.

32. “Settlement Fund” means a cash settlement fund to be established by Defendant or its insurer(s) in an amount equal to \$2,000.00 multiplied by 363 Class Members for a total of \$726,000.00. Defendant recognizes that the representation of the total class size is a material term of this Settlement Agreement and if the class size fluctuates up, the total Settlement Fund will be adjusted on a *pro rata* basis. The class size and manner in which it was calculated shall be verified under oath by a representative of Defendant before the execution of this Settlement Agreement. The Settlement Fund shall be used to satisfy all payments and obligations relating to this Action and Settlement, including the following as approved by the Court: (1) all payments to the Plaintiff and Settlement Class Members; (2) the Fee Award in connection with all of Class Counsel’s representation of Plaintiff and the Settlement Class Members, including all attorneys’ fees and costs that may arise in the future in connection with this Settlement Agreement, including, without limitation, seeking Court approval of the Settlement Agreement and the notice process; (3) all Administrative Fees incurred by the Settlement Administrator; and (4) a Service Award to the Plaintiff.

**B. SETTLEMENT CLASS CERTIFICATION**

33. Solely for the purposes of this Settlement Agreement, the Parties stipulate and agree that (a) the Class shall be certified under 735 ILCS § 5/2-801 in accordance with the definition contained in Paragraph 35, below; (b) Plaintiff shall represent the Class for settlement purposes and shall be the Class Representative; and (c) Plaintiff’s Counsel shall be appointed as Class Counsel.

34. Defendant expressly reserves its right to oppose class certification and oppose the merits of the Action should the Settlement Agreement not become final.



35. Subject to Court approval, the following Settlement Class shall be certified for settlement purposes:

All individuals who work or worked at Riverside Golf Club in the State of Illinois who had their finger, hand or palm scanned and/or fingerprints or handprints scanned and/or associated biometric identifiers and/or biometric information collected, captured, received, converted, stored, obtained, shared, taken, used, disclosed, re-disclosed, or otherwise disseminated by Defendant from September 16, 2015, to the date of preliminary settlement approval, and who do not timely opt-out of the Settlement (“Settlement Class”).

36. Excluded from the Settlement Class are (1) the Court and members of their families; (2) persons who properly execute a timely request for exclusion from the Class; and (3) persons whose claims in this matter have been finally adjudicated on the merits or otherwise released. The Defendant shall provide an affidavit, as noted in Paragraph 32, to Class Counsel before the execution of this Settlement Agreement attesting to the number of Class Members.

**C. SETTLEMENT APPROVAL REQUIREMENTS**

37. The Settlement is conditioned upon Preliminary Approval and Final Approval of the Settlement Agreement by the Court.

38. The Settlement Agreement requires the occurrence of all of the following events: (a) execution of the Settlement Agreement by the Parties; (b) submission of the Settlement Agreement by the Parties to the Court for preliminary approval; (c) entry of the Preliminary Approval Order by the Court granting preliminary approval of the Settlement Agreement and certification of a class action for purposes of this Settlement only; and (d) Court approval of the method of distribution and the form and content of the Settlement Notice.

39. The Settlement Agreement will become final and effective only upon the occurrence of the following events: (a) the Court enters the Final Approval Order; (b) the Effective Date occurs, and (c) any challenge to the Settlement, whether by objection or appeal, is resolved

in favor of enforcement of the Settlement.

**D. MOTION FOR PRELIMINARY APPROVAL OF SETTLEMENT**

40. Within fourteen (14) calendar days upon execution of this Settlement Agreement, Plaintiff, through Class Counsel, will file with the Court an Unopposed Motion for Preliminary Approval of Settlement (“Preliminary Approval Motion”) to be prepared by Plaintiff and agreed upon by the Parties.

41. The Preliminary Approval Motion shall submit this Settlement Agreement, together with its exhibits, to the Court and shall request that the Court enter the Preliminary Approval Order: (a) granting preliminary approval of the Settlement Agreement described herein; (b) conditionally certifying the Class for settlement purposes only; (c) approving the Notice and the proposed plan of settlement administration described herein; and (d) scheduling a tentative date for a Final Approval Hearing approximately ninety (90) days after entry of the Preliminary Approval Order.

42. Should the Court decline to enter the Preliminary Approval Order or otherwise decline to preliminarily approve any aspect of the Settlement Agreement, the Parties will attempt to renegotiate those aspects of the Settlement Agreement in good faith, with the mutual goal of attempting to reach an agreement as close to this Settlement Agreement as possible and will then submit the renegotiated settlement agreement to the Court for preliminary approval. If and only if the Parties are unable to obtain preliminary approval of a settlement agreement after submitting at least two renegotiated settlements to the Court, the Settlement Agreement will be null and void, and the Parties will have no further obligations under it, and the Parties will revert to their prior positions in the Action as if the Settlement had not occurred.

**E. ESTABLISHMENT AND ALLOCATION OF THE SETTLEMENT FUND**

43. Defendant agrees to pay amounts to the Settlement Administrator necessary to

create the Settlement Fund as follows:

- a. Within seven (7) business days of the Final Approval Hearing, Defendant or its insurer(s) shall pay to the Settlement Administrator the total Settlement Fund in the amount of \$726,000.00.
- b. The Settlement Fund shall be used to pay (i) Settlement Class Members' claims; (ii) a Service Award of up to \$7,500.00 to the Class Representative; (iii) the Fee Award; and (iv) the costs of administration of the Agreement to the Settlement Administrator.
- c. The Court may require changes to the method of allocation to Settlement Class Members without invalidating this Settlement Agreement, provided that the other material terms of the Settlement Agreement are not altered, including but not limited to the scope of the Release, the scope of the Settlement Class, and the amount of the Settlement Fund.

44. Each Settlement Class Member, including the Class Representative, shall be entitled to a payment of an equal *pro rata* share of the Settlement Fund after Court-approved Administrative Fees paid to the Settlement Administrator, a Fee Award to Class Counsel, and a Service Award to the Class Representative are deducted. Thus, each Settlement Class Member shall receive the same amount of the Settlement Fund as each other Settlement Class Member.

45. Settlement Class Members shall receive their shares of the Settlement Fund without having to submit a claim form or otherwise "opt in" to the Settlement Class.

46. The funds provided by or on behalf of Defendant to the Settlement Administrator will be maintained by an escrow agent as a Court-approved Qualified Settlement Fund and shall be deposited in an FDIC insured interest-bearing account created and controlled by the Settlement Administrator.

47. Any uncashed amounts from the Settlement Fund (including checks disbursed to Settlement Class Members that are uncashed for any reason after 120 days of issuance of the check) will be sent to a *cy pres* agreed to by the Parties and approved by the Court.

48. If the Settlement Agreement is not finally approved, the Settlement Fund shall

revert to Defendant and/or its insurer(s), per their *pro rata* contributions, less any Administrative Fees paid to date. Plaintiff shall have no financial responsibility for any Administrative Fees paid out of the Settlement Fund in the event that the Settlement Agreement is not finally approved.

49. The Settlement Administrator shall be responsible for making all reporting and filings with respect to amounts payable to Settlement Class Members required pursuant to any federal, state, or local tax law or regulation hereunder under the EIN of the escrow account. The Settlement Administrator shall also be responsible for filing and sending Form 1099s to any applicable recipient of a payment from the Settlement Fund.

50. Plaintiff and all other Settlement Class Members will be solely responsible for all taxes, interest, penalties, or other amounts due with respect to any payment received pursuant to the Settlement.

#### **F. PLAN OF SETTLEMENT ADMINISTRATION**

51. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement Agreement.

52. At no time shall any of the Parties or their counsel: (a) discourage any Settlement Class Member from participating in the Settlement; or (b) encourage any Settlement Class Member to object to the Settlement Agreement or opt out of the Settlement Agreement.

53. Within seven (7) calendar days after the Court grants preliminary approval of the Settlement Agreement described herein, Defendant shall provide the Settlement Administrator and Class Counsel, on a confidential basis, with a class list containing names, last known home addresses, and email addresses. Additionally, the class list sent to the Settlement Administrator shall also include Settlement Class Members' last known phone numbers and social security

numbers. The Settlement Administrator and Class Counsel shall treat their respective class list information as confidential and shall not disclose the information contained therein to any third party. If, however, due to unavailability, Defendant is unable to provide any of this information for any Settlement Class Member, and to the extent such information is necessary to effectuate notice and/or payment under the Settlement, the Settlement Administrator is authorized to contact the Settlement Class Member or use public information databases to otherwise obtain the missing information. Also, prior to mailing the Notice, the Settlement Administrator will update the class list using the U.S. Postal Service's database of verifiable mailing addresses and the National Change-of-Address database. Moreover, the class list information contained therein shall not be used for any purpose other than administration of the settlement. Class Counsel will not use the class list information to initiate contact with any Class Member and shall destroy the class list information within 60 days after the payment of the Settlement Funds.

54. Within seven (7) calendar days after the Defendant provides the class list to the Settlement Administrator and Class Counsel, as provided in Paragraph 53, the Settlement Administrator shall send the Notice to the Settlement Class Members *via* email and First-Class U.S. Mail, postage prepaid, to their mailing addresses as updated using the U.S.P.S. database of verifiable mailing addresses and the National Change-of-Address database. If any such mailing is returned as undeliverable with an indication of a more current address, the Settlement Administrator will mail the Notice to the new address. If any such mailing is returned as undeliverable without any indication of a more current address, the Settlement Administrator will perform a reverse look up to find an updated address, and if one is so identified, will mail the Notice to the new address. For any Notice sent to members of the Settlement Class that are returned as undeliverable, the Settlement Class Member will have the longer of the remaining period or

fourteen (14) calendar days from the date of any re-mailing to seek exclusion or object.

55. The Settlement Administrator will provide Counsel for the Parties with bi-weekly reports regarding the status of administration of this Settlement. Defendant's Counsel and Class Counsel have the right to make inquiries and receive any information from the Settlement Administrator as is necessary to the administration of the Settlement.

56. The Notice, which shall be substantially in the form of **Exhibit A** attached hereto, shall be used for the purpose of informing proposed Settlement Class Members, prior to the Final Approval Hearing, that there is a pending Settlement, and to further inform Settlement Class Members how they may: (i) protect their rights regarding the Settlement; (ii) request exclusion from the Settlement Class and the proposed Settlement, if desired; (iii) object to any aspect of the proposed Settlement, if desired; and (iv) participate in the Final Approval Hearing, if desired. The Notice shall make clear the binding effect of the Settlement on all persons who do not timely request exclusion from the Settlement Class.

57. **Exclusions.**

- a. Settlement Class Members shall receive their shares of the Settlement Fund without having to submit a claim form or otherwise "opt in" to the Settlement Class.
- b. Settlement Class Members who do not want to participate in the Settlement will have up to and including forty-five (45) days following the initial mailing of the Notice to exclude themselves from the Settlement.
- c. In order to exercise the right to be excluded, a Settlement Class Member must timely send a written request for exclusion to the Settlement Administrator providing his/her name, address, and telephone number; the name and number of this case; a statement that he/she wishes to be excluded from the Settlement Class; and a signature. A request to be excluded that is sent to an address other than that designated in the Notice, or that is not postmarked on or before the Objection/Exclusion Deadline, shall be invalid, and the person serving such a request shall be considered a member of the Settlement Class and shall be bound by the Settlement Agreement, if approved.
- d. The request for exclusion must be personally signed by the person requesting

exclusion. So-called “mass” or “class” exclusion requests shall not be permitted.

- e. No person shall have any claim against Defendant, Defendant’s Counsel, the Plaintiff, Class Counsel, or the Settlement Administrator based on any claim that a request for exclusion was not received in a timely manner.
- f. Defendant has the right to rescind the Settlement Agreement within ten (10) calendar days after the Settlement Administrator provides the list of timely and valid exclusions if 10% or more members of the Settlement Class timely and validly request to be excluded from the Settlement. In the event Defendant exercises its right to rescind the Settlement Agreement as provided herein, the Parties will return to the *status quo ante*.
- g. Any Settlement Class Member who elects to be excluded shall not: (i) be bound by any order or the Final Judgment; (ii) be entitled to relief under this Settlement Agreement; (iii) gain any rights by virtue of this Settlement Agreement; or (iv) be entitled to object to any aspect of this Settlement Agreement. A Settlement Class Member who requests to be excluded from the Settlement Class cannot also object to the Settlement Agreement.
- h. If the Settlement Agreement receives final Court approval, all Settlement Class Members who have not opted out by the Objection/Exclusion Deadline will be bound by the Settlement Agreement and will be deemed a Releasor as defined herein, and the relief provided by the Settlement will be their sole and exclusive remedy for the claims alleged in the Action.

58. **Objections.**

- a. Settlement Class Members may object to the Settlement Agreement by following the instructions on the Notice. To object to the Settlement Agreement or any terms of it, the person making the objection must be a member of the Settlement Class, must not have requested to be excluded from the Settlement, and must file a timely written statement of objection with the Court, and mail a copy of that objection with the requisite postmark to the Settlement Administrator, Class Counsel, and Defendant’s Counsel no later than the Objection/Exclusion Deadline. The notice of objection must state the case name and number; the basis for and an explanation of the objection; the name, address, telephone number, and email address of the Settlement Class Member making the objection; a list of any other objections filed; a statement of whether he or she is represented by counsel and, if so, a list of all objections filed by that counsel; and a statement of whether the Settlement Class Member intends to appear at the Final Approval Hearing with or without counsel. In addition, any objection must be personally signed by the Settlement Class Member. Any objection that does not meet the requirements of this paragraph shall not be considered by the Court, unless otherwise ordered by the Court.
- b. If any objecting Settlement Class Member intends to appear at the Final Approval

Hearing, either with or without counsel, he/she must state as such in the written objection, and must also identify any witnesses he/she may seek to call to testify at the Final Approval Hearing and all exhibits he/she intends to seek to introduce into evidence at the Final Approval Hearing, which must also be attached to, or included with, the written objection.

- c. Settlement Class Members who fail to serve timely and proper written objections shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement Agreement. The Parties may file a response to any objections no later than seven (7) calendar days before the Final Approval Hearing.

59. Within three (3) business days after the Objection/Exclusion Deadline, the Settlement Administrator shall provide Class Counsel and Defendant's Counsel a written list reflecting all timely and valid exclusions from the Settlement Class and all objections to the Settlement.

**G. MOTION FOR FINAL APPROVAL OF SETTLEMENT AND FEE PETITION**

60. No later than seven (7) calendar days before the Final Approval Hearing, or by some other date as directed by the Court, the Parties will jointly move for final approval of the Settlement Agreement, and Class Counsel will file an unopposed Fee Petition seeking approval of the award of attorneys' fees and litigation costs relating to their representation of the Settlement Class in the amount agreed by the Parties as provided in Paragraph 61.

61. Class Counsel's Fee Petition shall seek: (a) an award of attorneys' fees not to exceed 35% of the Settlement Fund, or \$254,100.00, based on the estimated size of the Class, plus reasonable litigation costs not to exceed \$2,000 relating to their representation of Plaintiff and the Settlement Class Members; (b) an award for Administrative Fees in an amount to be determined; and (c) a Service Award to the Plaintiff, not to exceed \$7,500, as payment for his efforts on behalf of the Class, including assisting Class Counsel with the prosecution of the Action. Defendant will not oppose Class Counsel's application so long as it is consistent with the provisions of this



Settlement Agreement. The amounts approved by the Court will be deducted from the Settlement Amount, and the remaining amount shall be distributed to the Settlement Class in accordance with this Settlement Agreement.

62. At the Final Approval Hearing, the Parties will ask the Court to (a) grant final approval of the Settlement Agreement as fair, reasonable and adequate, and entered into in good faith and without collusion; (b) grant final certification of the Settlement Class pursuant to 735 ILCS § 5/2-801 solely for purposes of settlement; (c) consider any properly-submitted objections; and (d) approve the amounts allocated for the Fee Award, the Administrative Fees, and the Service Award to Plaintiff. Counsel for the Parties shall jointly present the Court with a proposed Final Approval Order to accomplish that purpose.

63. If the Court does not approve any material condition of this Settlement Agreement that effects a fundamental change to the terms of the Settlement hereunder, the entire Settlement Agreement will be voidable and unenforceable at the election of either Party. In the event either Party elects to deem the Settlement Agreement void and unenforceable, the Parties will return to the *status quo ante*.

64. Notwithstanding any contrary provision of this Settlement Agreement, the Court's consideration of the Fee Award is to be conducted separately from the Court's consideration of the fairness, reasonableness, and adequacy of the Settlement Agreement, and so long as the award made by the Court with respect to Class Counsel's attorneys' fees plus litigation expenses, or any proceedings incident thereto, including any appeal thereof, does not exceed 35% of the Settlement Fund plus expenses, it shall not operate to terminate or cancel this Settlement Agreement or be deemed material thereto.

## H. SETTLEMENT PAYMENTS

65. Within fourteen (14) calendar days after the Effective Date, the Settlement Administrator shall disburse the QSF as follows:

- a. Payments to Class Members. The Settlement Administrator shall send a check by First Class U.S. Mail to each Class Member, including the Plaintiff, who did not submit an exclusion request, equal to each Settlement Class Member's *pro rata* share of the Settlement Fund, less Administrative Fees paid to the Settlement Administrator, the Service Award to the Class Representative, and the Fee Award to Class Counsel. This payment is not subject to any withholdings, and the Settlement Administrator shall issue Class Members an IRS Form 1099 (marked "Other Income"). Class Members acknowledge that the Settlement Administrator must report to the IRS (as well as state and local taxing authorities where applicable) the payment made to them under this Settlement Agreement and that it is each Class Member's individual responsibility to make tax payments on these amounts, if applicable.
- b. Payment of the Service Award to Plaintiff. The Service Award of \$7,500, if approved by the Court, shall be paid in the form of one check made payable to Plaintiff. This payment is not subject to any withholdings, and the Settlement Administrator shall issue Plaintiff an IRS Form 1099 (marked "Other Income"). The Plaintiff acknowledges the Settlement Administrator must report to the IRS (as well as state and local taxing authorities where applicable) the payment made to him under this provision.
- c. Payment of the Fee Award to Class Counsel. Attorneys' fees and litigation costs approved by the Court shall be paid in the form of wire transfer to an account designated by Class Counsel. Class Counsel shall provide the Settlement Administrator with its completed W-9 before the payment of the Fee Award is due. The Settlement Administrator shall issue Class Counsel an IRS Form 1099 (marked "Other Income") for their award of attorneys' fees and costs. Class Counsel is responsible for all federal, state, and local tax liabilities that may result from the payment of such attorneys' fees and Defendant shall bear no responsibility for such tax liabilities.

66. Checks to the Settlement Class Members shall remain valid and negotiable for one hundred twenty (120) days from the date of their issuance and may thereafter automatically be cancelled if not cashed within that time period. The Settlement Administrator will include language on all settlement checks stating that such checks are void one hundred twenty (120) days

following the date such check was originally issued.

67. The Settlement Administrator will provide Counsel for the Parties with bi-weekly reports regarding the status of administration of this Settlement Agreement, including, without limitation, the portion of the Settlement Fund that has not been cashed within one hundred twenty (120) days following the date such check was originally issued.

68. Within seventy-five (75) days of issuance of settlement checks, the Settlement Administrator shall provide a list of any settlement checks that are not cashed/negotiated within sixty (60) days of issuance to Counsel for the Parties. Within five (5) calendar days thereafter, the Settlement Administrator shall attempt to confirm or obtain valid mailing and email addresses, including by telephone, and send a reminder postcard to affected Class Members.

69. The Settlement Administrator will distribute any uncashed amounts from the Settlement Fund to a *cy pres* agreed to by the Parties and approved by the Court within ten (10) business days of the expiration of the 120-day period.

70. Any Class Member whose settlement check is not cashed by the end of the 120-day period will be deemed to have waived irrevocably any right or claim to his or her payment from the Settlement, but the Settlement Agreement will nonetheless be binding upon the Class Member.

#### **I. PROSPECTIVE RELIEF**

71. Without admitting liability or that it was required by law to do so, Defendant hereby acknowledges by way of affidavit that it no longer uses a timekeeping system that uses scans of fingers, hands, palms and, to the extent it is in possession of any biometric identifiers or biometric information, it has implemented policies and procedures regarding the use of the Timekeeping System that endeavor to comply fully with BIPA. A copy of the affidavit is attached and incorporated herein as **Exhibit B**.

**J. RELEASES**

72. In addition to the effect of the Final Judgment entered in accordance with this Settlement Agreement, upon the Effective Date, and for other valuable consideration as described herein, the Released Parties shall be fully, finally, and completely released, relinquished, acquitted, and forever discharged from any and all Released Claims.

73. As of the Effective Date, and with the approval of the Court, all Releasers hereby fully, finally, and forever release, waive, discharge, surrender, forego, give up, abandon, and cancel any and all Released Claims against the Released Parties. As of the Effective Date, all Releasers will be forever barred and enjoined from prosecuting any action against the Released Parties asserting any and/or all Released Claims.

**K. TERMINATION OF THE SETTLEMENT**

74. Any Party may elect to terminate and cancel this Settlement Agreement within ten (10) calendar days of any of the following events:

- a. This Settlement Agreement is changed in any material respect to which the Parties have not agreed in writing;
- b. The Court refuses to grant Preliminary Approval of this Settlement Agreement even after the renegotiation process described in Paragraph 42 of this Agreement;
- c. The Court refuses to grant Final Approval of this Settlement Agreement in any material respect;
- d. The Court refuses to enter a Final Judgment in this Action in any material respect;  
or
- e. any other ground for termination provided for elsewhere in this Agreement.

75. In the event the Settlement Agreement is not approved or does not become final, or is terminated consistent with this Settlement Agreement, the Parties, pleadings, and proceedings will return to the *status quo ante* as if no settlement had been negotiated or entered into, and the

Parties will negotiate in good faith to establish a new schedule for the Action. In the event of a termination as provided in Paragraph 74 hereof, the Party electing to terminate the Settlement Agreement shall be responsible for any invoices or other fees or expenses mentioned in this Agreement that have been incurred and are due to be paid from the Settlement Fund to the Settlement Administrator.

**L. MISCELLANEOUS REPRESENTATIONS**

76. The Parties agree that the Settlement Agreement provides fair, equitable, and just compensation for any given Settlement Class Member related to the Released Claims.

77. The Parties (a) acknowledge that it is their intent to consummate this Settlement Agreement, and (b) agree, subject to their fiduciary and other legal obligations, to cooperate in good faith to the extent reasonably necessary to effectuate and implement all terms and conditions of this Settlement Agreement and to exercise their reasonable best efforts to accomplish the terms and conditions of this Settlement Agreement. Class Counsel and Defendant's Counsel agree to cooperate with each other in seeking Court approval of the Preliminary Approval Order, the Settlement Agreement, and the Final Approval Order, and promptly to agree upon and execute all such other documentation as may be reasonably required to obtain Final Approval of the Settlement Agreement.

78. The Parties intend this Settlement Agreement to be a final and complete resolution of all disputes between them with respect to the Released Claims by Plaintiff and the Settlement Class and other Releasors, and each or any of them, on the one hand, against the Released Parties, on the other hand.

79. The Parties have relied upon the advice and representation of counsel, selected by them, concerning their respective legal liability for the claims hereby released. The Parties have

read and understand fully this Settlement Agreement, including its exhibits, and have been fully advised as to the legal effect thereof by counsel of their own selection and intend to be legally bound by the same.

80. Paragraph titles and headings are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement Agreement or any of its provisions. Each term of this Settlement Agreement is contractual and not merely a recital.

81. The waiver by one Party of any breach of this Settlement Agreement by any other Party shall not be deemed as a waiver of any prior or subsequent breach of this Settlement Agreement.

82. This Settlement Agreement and its exhibits set forth the entire agreement and understanding of the Parties with respect to the matters set forth herein, and supersede all prior negotiations, agreements, arrangements, and undertakings with respect to the matters set forth herein. No representations, warranties, or inducements have been made to any Party concerning this Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents.

83. This Settlement Agreement may not be amended, modified, altered, or otherwise changed in any material manner except by a written instrument signed by or on behalf of all Parties or their respective successors-in-interest.

84. The Parties agree the exhibits to this Settlement Agreement are material and integral part thereof and are fully incorporated herein by this reference.

85. The Parties may agree, subject to the approval of the Court where required, to reasonable extensions of time to carry out the provisions of the Settlement Agreement.

86. The Parties represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any claims, causes of actions, demands, rights, and liabilities of every nature and description released under this Settlement Agreement.

87. Each Party represents that it has obtained the requisite authority to enter into this Settlement Agreement in a manner that binds such Party to its terms.

88. Defendant denies all charges of wrongdoing or liability of any kind whatsoever that Plaintiff or Settlement Class Members have asserted in this Litigation.

89. Except in accordance with Paragraph 90 of this Agreement, this Settlement Agreement, whether approved or not approved, revoked, or made ineffective for any reason, and any proceedings related to this Settlement Agreement and any discussions relating thereto, the Parties specifically acknowledge, agree, and admit that this Settlement Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, correspondence, orders, or other documents shall be considered a compromise within the meaning of Illinois Rule of Evidence 408, and any other equivalent or similar rule of evidence, and shall not (a) constitute, be construed, be offered, or received into evidence as an admission of any kind, including but not limited to any negligent, reckless or illegal action or omission or other wrongdoing, the appropriateness of class certification, the validity of any claim or defense, or the truth of any fact alleged or other allegation in the Action or in any other pending or subsequently filed action, or of any wrongdoing, fault, violation of law, or liability of any kind on the part of any Party, or (b) be used to establish a waiver of any defense or right, or to establish or contest jurisdiction or venue.

90. The provisions of this Settlement Agreement, and any orders, pleadings, or other documents entered in furtherance of this Settlement Agreement, may be offered or received in

evidence solely (a) to enforce the terms and provisions hereof or thereof, (b) as may be specifically authorized by a court of competent jurisdiction after an adversarial hearing upon application of a Party hereto, (c) in order to establish payment hereunder, or an affirmative defense of preclusion or bar in a subsequent case, (d) in connection with any motion to enjoin, stay, or dismiss any other action, or (e) to obtain Court approval and/or the enforcement of the Settlement Agreement.

91. This Settlement Agreement may be executed in one or more counterparts by facsimile or other electronic means, including DocuSign and/or portable document format (PDF), and exchanged by hand, messenger, or PDF as an electronic mail attachment, and any such signature exchanged shall be deemed an original signature for purposes of this Settlement Agreement. All executed counterparts and each of them shall be deemed to be one and the same instrument, provided that counsel for the Parties to this Settlement Agreement all exchange signed counterparts.

92. This Settlement Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. The Court shall retain jurisdiction over the interpretation, implementation, and enforcement of this Settlement Agreement as well as any and all matters arising out of, or related to, the interpretation or implementation of this Settlement Agreement and of the settlement contemplated thereby. Any dispute or controversies arising with respect to the interpretation, enforcement, or implementation of the Settlement Agreement, if they cannot be resolved by the Parties in the first instance, shall be presented by motion to the Court. The Parties agree that the Court shall retain jurisdiction for enforcement of the Settlement Agreement.

93. This Settlement Agreement is deemed to have been prepared by Counsel for the Parties as a result of arms-length negotiations among the Parties. Whereas all Parties have contributed substantially and materially to the preparation of this Settlement Agreement and its



exhibits, it shall not be construed more strictly against one Party than another.

94. Unless otherwise specifically provided, all notices, demands or other communications in connection with this Settlement Agreement shall be in writing and shall be sent by electronic mail or hand delivery, postage prepaid, as follows:

To Class Counsel:

Ryan F. Stephan (rstephan@stephanzouras.com)  
James B. Zouras (jzouras@stephanzouras.com)  
Andrew C. Ficzko (aficzko@stephanzouras.com)  
**Stephan Zouras, LLP**  
222 W. Adams Street, Suite 2020  
Chicago, Illinois 60606

Brandon M. Wise (bwise@wcklegal.com)  
**Peiffer Wolf Carr Kane Conway & Wise, LLP**  
818 Lafayette Ave., Floor 2  
St. Louis, Missouri 63104


To Defendant's Counsel:

Joel C. Griswold (jcgriswold@bakerlaw.com)  
Bonnie Keane DelGobbo (bdelgobbo@bakerlaw.com)  
**BakerHostetler**  
One North Wacker Drive, Suite 4500  
Chicago, Illinois 60606

This Settlement Agreement shall be deemed executed as of the date that the last party signatory signs the Settlement Agreement.

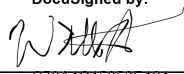
IN WITNESS WHEREOF, the undersigned duly executed this Settlement Agreement as of the date indicated below:

**JORGE MARQUEZ**

By:    
767E1AE88237418...  
Jorge Marquez, Plaintiff

Date: 2/13/2024 \_\_\_\_\_

## RIVERSIDE GOLF CLUB

DocuSigned by:  
By:   
C73A4C45058E464...

Name: Will Herman

Title: General manager

Date: 2/13/2024 | 6:25 AM PST