

SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of U.S. Small Business Administration (collectively the “United States”), Briarwood Country Club (“Briarwood”), Swing First Golf, LLC (“Swing First”), and Wade Riner (hereafter collectively referred to as “the Parties”), through their authorized representatives.

RECITALS

A. Briarwood is a private club that is organized as a non-profit under section 501(c)(7) of the Internal Revenue Code. Briarwood offers its members use of an 18-hole golf course, swimming pool, and a full-service restaurant and bar. Briarwood is located at 20800 N. 135th Avenue, Sun City West, Arizona 85375.

B. On August 23, 2022, Wade Riner filed a *qui tam* action in the United States District Court for the District of Arizona captioned United States ex rel. *Riner v. Recreation Centers of Sun City West, et. al.*, No. 22-cv-01421, pursuant to the *qui tam* provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action).

C. The Paycheck Protection Program was established pursuant to the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act. The CARES Act, which was enacted in March 2020, was designed to provide emergency financial assistance to millions of Americans suffering economic effects caused by the COVID-19 pandemic. One source of relief provided by the CARES Act was the authorization of forgivable loans to small businesses for employee payroll and certain other expenses, through the PPP. To obtain a PPP loan, a qualifying business was required to submit a PPP loan application, which is signed by an authorized representative of the business.

The loan application requires the business—through its authorized representative—to acknowledge the program rules and make certain affirmative certifications regarding its eligibility to obtain the PPP loan. PPP loan applications were processed by participating lenders, which received processing fees from SBA. Following the approvals of loan applications, the participating lenders funded the loan, which were 100% guaranteed by the SBA.

D. The United States contends that it has certain civil claims against Briarwood arising from Briarwood’s application for and receipt of funds under the PPP, specifically:

1. On or about May 4, 2020, Briarwood applied for a Small Business Administration Loan under the PPP, enacted by the CARES Act.
2. In submitting the PPP loan application, Briarwood certified that it “is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the Small Business Administration (SBA) implementing the Paycheck Protection Program under Division A, Title I of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (the Paycheck Protection Program Rule).”
3. At the time Briarwood submitted the application, Briarwood was organized as a non-profit under section 501(c)(7) of the Internal Revenue Code. At the time of Briarwood’s application, 501(c)(7) non-profit entities were not eligible for PPP loans under the CARES Act and the SBA’s Paycheck Protection Program Rules. Thus, Briarwood was ineligible for its May 4, 2020 PPP loan

under the applicable rules in effect at the time of the application, and Briarwood's application was false.

4. Based on Briarwood's application, the SBA approved a first draw PPP loan to Briarwood totaling \$431,800.00. In connection with the PPP loan, the SBA also paid a loan processing fee to the lender totaling approximately \$12,954.00, and interest of \$3,562.35.

The conduct described in paragraph D is referred to below as the "Covered Conduct."

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

F. Swing First Golf, LLC is purchasing Briarwood, and assuming all assets and liabilities of Briarwood, with closing scheduled for July 11, 2024. Swing First as the new owner of Briarwood, agrees to assume any and all of Briarwood's right, title and interest in, and under this Agreement, along with any obligations and liabilities under the Agreement and to be fully responsible for all of Briarwood's obligations related to the Covered Conduct. Therefore, from and after execution of this Agreement and closing of the sale of Briarwood to Swing First, the United States and the relator will look solely to Swing First regarding all subjects covered in this agreement.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

TERMS AND CONDITIONS

1. The Recitals above are incorporated herein as Agreements. Swing First shall pay to the United States six hundred-thirty-one-thousand four-hundred dollars (\$631,400.00) (Settlement Amount), of which \$448,316.35 is restitution. Payment shall be made in accordance with the payment schedule attached as Exhibit A (the Payments Over Time) by electronic funds transfer pursuant to written instructions to be provided by U.S. Attorney's Office for the District of Arizona.

A. The Settlement Amount may be prepaid, in whole or in part, without penalty or premium.

2. Conditioned upon the United States receiving the Settlement Amount payments, the United States agrees that it shall pay to Relator by electronic funds transfer 10% percent of each such payment received under the Settlement Agreement (Relator's Share) as soon as feasible after receipt of the payment.

3. Swing First agrees to pay a total of \$4,000 to Relator pursuant to 31 U.S.C. § 3730(d) in satisfaction of all attorney's fees, expenses, and costs incurred by the Relator in connection with the qui tam, no later than thirty (30) days after the Effective Date. Payment under this Paragraph shall be made by electronic funds transfer pursuant to written instructions provided by Relator's counsel.

4. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below and subject to Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, the United States releases Briarwood and Swing First, together with their current and former parent corporations; direct and indirect subsidiaries; brother or sister corporations;

divisions; current or former corporate owners; and the corporate successors and assigns of any of them from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; or the common law theories of breach of contract, payment by mistake, unjust enrichment, and fraud.

5. Subject to the exceptions in Paragraph 6 (concerning reserved claims) below and subject to, Paragraph 16 (concerning default), and Paragraph 17 (concerning bankruptcy) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 1, Relator, for himself/herself and for his/her heirs, successors, attorneys, agents, and assigns, releases Briarwood and Swing First from any and all civil monetary claim the Relator has on behalf of the United States for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733.

6. Notwithstanding the releases given in Paragraph 4 of this Agreement, or any other term of this Agreement, the following claims and rights of the United States are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;
- c. Except as explicitly stated in this Agreement, any administrative liability or enforcement right, or any administrative remedy, including the suspension and debarment rights of any federal agency;

- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability of individuals;
- g. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- h. Any liability for failure to deliver goods or services due;
- i. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct.

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B).

Conditioned upon Relator's receipt of the Relator's Share, Relator and his/her heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action.

8. Briarwood and Swing First waive and shall not assert any defenses they may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive

Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action.

9. Briarwood and Swing First fully and finally release the United States, its agencies, officers, agents, employees, and servants, from any claims (including attorneys' fees, costs, and expenses of every kind and however denominated) that they have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, related to the Covered Conduct or the United States' investigation or prosecution thereof.

10. a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47) incurred by or on behalf of Briarwood, and its present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) Briarwood's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil [and any criminal] investigation(s) in connection with the matters covered by this Agreement (including attorneys' fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment Briarwood makes to the United States pursuant to this Agreement and any payments that

Briarwood may make to Relator, including costs and attorneys' fees,

are unallowable costs for government contracting purposes (hereinafter referred to as Unallowable Costs).

b. Future Treatment of Unallowable Costs: Unallowable Costs will be separately determined and accounted for by Briarwood, and Briarwood shall not charge such Unallowable Costs directly or indirectly to any contract with the United States.

c. Treatment of Unallowable Costs Previously Submitted for Payment: Within 90 days of the Effective Date of this Agreement, Briarwood shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by Briarwood or any of its subsidiaries or affiliates from the United States. Briarwood agrees that the United States, at a minimum, shall be entitled to recoup from Briarwood any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted requests for payment. The United States, including the Department of Justice and/or the affected agencies, reserves its rights to audit, examine, or re-examine Briarwood's books and records and to disagree with any calculations submitted by Briarwood or any of its subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by Briarwood, or the effect of any such Unallowable Costs on the amount of such payments.

11. In the event that Swing First or its successor fails to pay the Settlement Amount as provided in the payment schedule set forth in Paragraph 1 above, Swing First

or its successor shall be in Default. (“Default”). The United States will provide a written Notice of Default, and Swing First or its successor shall have an opportunity to cure such Default within ten (10) calendar days from the date of receipt of the Notice of Default by making the payment due under the payment schedule and paying any additional interest accruing under the Settlement Agreement up to the date of payment. Notice of Default will be delivered to Swing First, or to such other representative as Swing First shall designate in advance in writing. If Swing First fails to cure the Default within seven (7) calendar days of receiving the Notice of Default and in the absence of an agreement with the United States to a modified payment schedule (“Uncured Default”), the remaining unpaid balance of the Settlement Amount shall become immediately due and payable, and interest on the remaining unpaid balance shall thereafter accrue at the rate of 10% per annum, compounded daily from the date of Default, on the remaining unpaid total (principal and interest balance).

12. Upon execution of this Settlement Agreement, Swing First shall enter into a Consent Judgment with the United States in the form attached as Attachment B. The United States shall not file the Consent Judgment unless Swing First is in Uncured Default as defined above. Swing First agrees not to contest any Consent Judgment and/or collection action undertaken by the United States pursuant to this Paragraph, either administratively or in any state or federal court, except on the grounds of actual payment to the United States. At its sole option, in the event of uncured Default as defined above, the United States alternatively may rescind this Agreement as to Swing First and bring any civil and/or administrative claim, action, or proceeding against Swing First for the claims that would otherwise be covered by the releases provided herein. If the United

States opts to rescind this Agreement in the event of Uncured Default as defined above, Swing First agrees not to plead, argue, or otherwise raise any defenses of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims that are filed by the United States against Swing First.

13. In exchange for valuable consideration provided in this Agreement, Briarwood, Swing First, and Relator acknowledge the following:

a. In evaluating whether to execute this Agreement, the Parties intend that the mutual promises, covenants, and obligations set forth herein constitute a contemporaneous exchange for new value given to Briarwood, within the meaning of 11 U.S.C. § 547(c)(1), and the Parties conclude that these mutual promises, covenants, and obligations do, in fact, constitute such a contemporaneous exchange.

b. The mutual promises, covenants, and obligations set forth herein are intended by the Parties to, and do in fact, constitute a reasonably equivalent exchange of value.

c. The Parties do not intend to hinder, delay, or defraud any entity to which Briarwood was or became indebted to on or after the date of any transfer contemplated in this Agreement, within the meaning of 11 U.S.C. § 548(a)(1).

d. If any of Swing First's payments or obligations under this Agreement are avoided for any reason (including but not limited to, through the exercise of a trustee's avoidance powers under the Bankruptcy Code) or if, before the Settlement Amount is paid in full, Swing First or a third party commences a case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors seeking any order for relief of Swing First's debts, or to adjudicate Swing First as

bankrupt or insolvent; or seeking appointment of a receiver, trustee, custodian, or other similar official for Swing First or for all or any substantial part of Swing First's assets:

(i) the United States may rescind the releases in this Agreement and bring any civil and/or administrative claim, action, or proceeding against Swing First or its successor for the claims that would otherwise be covered by the releases provided in Paragraph 4 above;

(ii) the United States has an undisputed, noncontingent, and liquidated allowed claim against Swing First or its successor in the amount of \$1,372,843.05, less any payments received pursuant to Paragraph 1 of this Agreement, provided, however, that such payments are not otherwise avoided and recovered from the United States by a receiver, trustee, creditor, custodian, or similar official;

(iii) if any payments are avoided and recovered by a receiver, trustee, creditor, custodian, or similar official, the United States shall not be responsible for the return of any amounts already paid by the United States to the Relator; and

(iv) if, notwithstanding subparagraph (iii), any amounts already paid by the United States to the Relator pursuant to Paragraph 2 are recovered from the United States in an action or proceeding filed by a receiver, trustee, creditor, custodian, or similar official in or in connection with a bankruptcy case that is filed within two years of the Effective Date of this Agreement or of any payment made under Paragraph 1 of this Agreement, Relator shall, within thirty days of written notice from the United States to the undersigned Relator's counsel, return to the United States all amounts recovered from the United States.

e. Swing First or its successor agrees that any civil and/or administrative claim, action, or proceeding brought by the United States under Paragraph 17.e is not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) because it would be an exercise of the United States' police and regulatory power. Swing First or its successor shall not argue or otherwise contend that the United States' claim, action, or proceeding is subject to an automatic stay and, to the extent necessary, consents to relief from the automatic stay for cause under 11 U.S.C. § 362(d)(1). Swing First or its successor waives and shall not plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel, or similar theories, to any such civil or administrative claim, action, or proceeding brought by the United States within 120 days of written notification to Swing First that the releases have been rescinded pursuant to this paragraph, except to the extent such defenses were available on the Effective Date of the Agreement.

14. This Agreement is intended to be for the benefit of the Parties only.

15. Upon receipt of the initial installment payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Stipulation of Dismissal of the Civil Action pursuant to Rule 41(a)(1), with a request that the Court retain jurisdiction over this Settlement Agreement.

16. Except as provided in Paragraph 3, above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

17. Each Party and signatory to this Agreement represents that it freely and voluntarily enters into this Agreement without any degree of duress or compulsion.

18. This Agreement is governed by the laws of the United States. The exclusive venue for any dispute relating to this Agreement is the United States District Court for the District of Arizona. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

19. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties. Forbearance by the United States from pursuing any remedy or relief available to it under this Agreement shall not constitute a waiver of rights under this Agreement.

20. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

21. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

22. This Agreement is binding on Swing First's and Briarwood's respective successors, transferees, heirs, and assigns.

23. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

24. All Parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

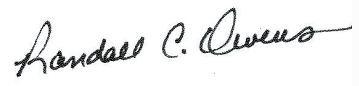
DATED: _____ BY: _____
ANNE E. NELSON
Assistant United States Attorney
District of Arizona

DATED: _____ BY: _____
Ramona Putnam, Board President
BRIARWOOD COUNTRY CLUB, INC.

DATED: _____ BY: _____
David Ashton, Manager
SWING FIRST GOLF, LLC

Wade Riner - RELATOR

DATED: 7/5/24 BY: 
Wade Riner

DATED: 7/9/24 BY: 
Counsel for Wade Riner

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.


THE UNITED STATES OF AMERICA

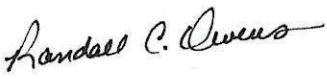
DATED: _____ BY: _____
ANNE E. NELSON
Assistant United States Attorney
District of Arizona

DATED: 7-10-24 BY: 
Ramona Putnam, Board President
BRIARWOOD COUNTRY CLUB, INC.

DATED: _____ BY: _____
David Ashton, Manager
SWING FIRST GOLF, LLC

Wade Riner - RELATOR

DATED: 7/9/24 BY: 
Wade Riner


DATED: 7/9/24 BY: 
Counsel for Wade Riner

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

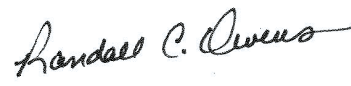
DATED: _____ BY: _____
ANNE E. NELSON
Assistant United States Attorney
District of Arizona

DATED: _____ BY: _____
Ramona Putnam, Board President
BRIARWOOD COUNTRY CLUB, INC.

DATED: 9 July 2024 BY: 
David Ashton, Manager
SWING FIRST GOLF, LLC

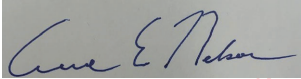
Wade Riner - RELATOR

DATED: 7/9/24 BY: 
Wade Riner

DATED: 7/9/24 BY: 
Counsel for Wade Riner

25. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 7/10/2024 BY:  Digitally signed by ANNE NELSON
Date: 2024.07.10 15:15:27 -07'00'

ANNE E. NELSON
Assistant United States Attorney
District of Arizona

DATED: _____ BY: _____
Ramona Putnam, Board President
BRIARWOOD COUNTRY CLUB, INC.

DATED: _____ BY: _____
David Ashton, Manager
SWING FIRST GOLF, LLC

Wade Riner - RELATOR

DATED: _____ BY: _____
Wade Riner

DATED: _____ BY: _____
Counsel for Wade Riner

EXHIBIT A

Settlement Payment Schedule

Under the Settlement, Briarwood's successor Swing First Golf, LLC will pay a total of \$631,400 in accordance with the following payment schedule:

Payment Due Date	Payment Amount
January 31, 2025	\$100,000.00
January 31, 2026	\$177,133.33
January 31, 2027	\$177,133.33
January 31, 2028	\$177,333.33