

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 the United States Small Business Administration (collectively the "United States") and The Genesee Valley Club (hereafter collectively referred to as "the Parties"), through their authorized representatives.

RECITALS

A. The Genesee Valley Club ("GVC") is a private membership club located in Rochester, New York.

B. The Small Business Administration ("SBA") is an independent agency of the United States government that provides aid, counsel, and assistance to small businesses and entrepreneurs. The Coronavirus Aid, Relief, and Economic Security Act, Section 1102, vested the SBA with the responsibility of managing the Paycheck Protection Program ("PPP") under the SBA's 7(a) Loan Program. The PPP was a federal program that provided emergency relief to small businesses affected by the COVID-19 pandemic. The SBA administered the PPP and guaranteed loans that were made according to PPP regulations. Congress directed the SBA to guarantee PPP loans "under the same terms, conditions, and processes" as ordinary small business loans administered by the agency. 15 U.S.C. § 636(a)(36)(B). "Private clubs and businesses which limit the number of memberships for reasons other than capacity" were not eligible for loans through the SBA. 13 C.F.R. § 120.110(i). On April 2, 2020, the SBA announced that business identified in 13 C.F.R. § 120.110 are not eligible for PPP loans, including, specifically, "[p]rivate clubs and businesses which limit the number of memberships for reasons other than capacity." In

March 2021, Congress enacted the American Rescue Plan Act, which, among other things, expanded PPP eligibility to additional types of 501(c) entities, but expressly excluded most entities listed in 13 C.F.R. § 120.110, including entities under subsection (i).

C. The United States contends that it has certain civil claims against GVC arising from its certification on its application for a PPP loan, and its receipt of funds from and forgiveness of that loan. The United States contends that GVC is a private membership club in Rochester that restricts its membership for reasons other than capacity. On approximately May 3, 2021, GVC applied for a PPP loan (PPP Loan Number 7705778904). The application included a certification that “[t]he Applicant is eligible to receive a loan under the rules in effect at the time this application is submitted that have been issued by the SBA and the Department of the Treasury (Treasury) implementing the Paycheck Protection Program[.]” The SBA approved that loan through M&T Bank on approximately May 12, 2021. On approximately April 14, 2022, GVC applied for—and subsequently received—loan forgiveness from the SBA. The United States contends, however, that GVC incorrectly certified its eligibility for its PPP loan and subsequent forgiveness because GVC is a private membership club that restricts its membership for reasons other than capacity. The United States further contends that as a private club that limited membership for reasons other than capacity, GVC was ineligible for loans through the SBA, including the PPP loan that it applied for and received loan forgiveness from the SBA. The foregoing conduct is hereinafter referred to as the “Covered Conduct.”

D. This Settlement Agreement is neither an admission of liability by GVC nor a concession by the United States that its claims are not well founded.

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. GVC shall pay to the United States one million and fifty thousand dollars (\$1,050,000) (Settlement Amount), plus interest as provided in Paragraph 2 below.

2. GVC shall owe interest on any payments due under Paragraph 1 above, to be assessed at a rate of four percent per annum (4%) running from the date of the Effective Date of this Agreement, or July 15, 2026, whichever is earlier, until paid.

3. The Settlement Amount shall be paid as follows:

- a. GVC shall make an initial payment of \$300,000 within sixty (60) days of the effective date of this agreement by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of New York.
- b. In addition to the initial payment described in Paragraph 3.a above, GVC shall make additional monthly payments ("Monthly Payments") totaling seven hundred-fifty thousand dollars (\$750,000), plus interest due under Paragraph 2, by electronic funds transfer pursuant to written instructions to be provided by the United States Attorney's Office for the Western District of New York.
- c. Each Monthly Payment should be no less than \$20,833.33, plus interest due under Paragraph 2, and be made no later than on the 15th day of each month following the month of the initial payment.

- d. Nothing in this agreement precludes GVC from accelerating and paying ahead of schedule any and all payments due, without penalty.

4. Subject to the exceptions in Paragraph 5 (concerning reserved claims) below, and upon the United States' receipt of the Settlement Amount, plus interest due under Paragraph 2, the United States releases GVC 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, or similar statutory or common law claims.

5. 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;

7. GVC waives and shall not assert any defenses it 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.

8. GVC 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 GVC 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.

9. 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 GVC, 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) GVC's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil 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 GVC makes to the United States pursuant to this Agreement;

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 GVC, and GVC 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, GVC shall identify and repay by adjustment to future claims for payment or otherwise any Unallowable Costs included in payments previously sought by GVC or any of their subsidiaries or affiliates from the United States. GVC agrees that the United States, at a minimum, shall be entitled to recoup from GVC 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 GVC's books and records and to disagree with any calculations submitted by GVC or any of their subsidiaries or affiliates regarding any Unallowable Costs included in payments previously sought by GVC, or the effect of any such Unallowable Costs on the amount of such payments.

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

11. Each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

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

13. 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 Western District of New York. 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.

14. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

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

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

17. This Agreement is binding on GVC's successors, transferees, heirs, and assigns.

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

19. 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: 7/8/26

BY: 
Jonathan W. Ferris
Assistant United States Attorney
Western District of New York

THE GENESEE VALLEY CLUB

DATED: 7/8/26

BY: A Thomas Hildebrandt
A. Thomas Hildebrandt
President, Genesee Valley Club

DATED: 7/8/26

BY: 
Glenn E. Pezzulo, Esq.
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