

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF NEW YORK

SEIU LOCAL 32BJ, on behalf of THE STATE  
OF NEW YORK and THE CITY OF NEW  
YORK,

Plaintiff,

v.

568 UNION DE LLC, 544 UNION DE LLC and  
1719 27TH ST. LLC,\*

Defendants.

Index No. 100120/2018

**STIPULATION AND SETTLEMENT AGREEMENT**

This Stipulation and Settlement Agreement (“Agreement”) is entered into among (i) the People of the State of New York (the “State”) (ii) the City of New York (the “City”); (iii) Defendants 568 UNION DE LLC (“568 Union”), 544 UNION DE LLC (“544 Union”), and 1719 27STLLC (“1719 27ST,” and together with 568 Union and 544 Union, the “Defendants”); (iv) Defendants’ affiliate, Heatherwood Communities, LLC (“Heatherwood”); and (v) relator Local 32BJ, Service Employees International Union, AFL-CIO (the “Relator” or “SEIU Local 32BJ”), through their authorized representatives. All of the above-named persons and entities are hereinafter collectively referred to as “the Parties.”

**PREAMBLE**

WHEREAS, on or about January 23, 2018, Relator filed a *qui tam* complaint captioned *SEIU Local 32BJ, on Behalf of the State of New York and the City of New York v. 568 Union DE LLC, et al.*, in the Supreme Court of the State of New York, New York County, Index No. 100120/2018 (the “Action”); and

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\* The parties note that the correct name of this Defendant is “1719 27ST LLC.”

WHEREAS, the Attorney General of the State of New York (the "Attorney General") thereafter commenced an investigation in connection with the allegations in the Relator's *qui tam* complaint; and

WHEREAS, the Comptroller of the City of New York (the "Comptroller") commenced an investigation into Defendants' alleged failure to pay the applicable prevailing wages and supplemental benefits to building service employees employed at the 568 Union Property, 544 Union Property, 1719 27ST Property (all defined hereinafter at Paragraph 1) in violation of Section 421-a of the New York Real Property Tax Law and the Rules of the City of New York (28 R.C.N.Y. §§ 50-01 *et seq.*); and

WHEREAS, as a result of the Attorney General's investigation, the State and City contend that they have civil claims against the Defendants regarding the 568 Union Property and the 1719 27ST Property under the New York False Claims Act, N.Y. State Finance Law §§ 187 *et seq.* ("NYFCA") and Executive Law § 63(12); the State and City have found the prevailing wage obligations of Section 421-a do not apply to the 544 Union Property; and

WHEREAS, the Parties have agreed to enter into a full and final settlement of the Action and contemporaneously enter into a separate Stipulation of Settlement with the Comptroller (the "Stipulation of Settlement"); and

WHEREAS, the Defendants and Heatherwood have agreed to this Agreement in settlement of the claims asserted in the Action and to avoid the time, expense, uncertainty, inconvenience, and distraction of protracted litigation of the claims, the Parties have determined and hereby agree that settlement is in their best interests, and the Attorney General and the Corporation Counsel of the City of New York have agreed to accept the terms of the Agreement; and

WHEREAS, Relator claims entitlement under New York State Finance Law § 190(6) to a share of the proceeds of this Agreement;

NOW THEREFORE, in consideration of the mutual promises and obligations of the Agreement, the Parties agree fully and finally to settle this Action pursuant to the Terms and Conditions below:

**THE ATTORNEY GENERAL'S FINDINGS & COVERED CONDUCT**

1. Defendants are the owners of luxury apartment buildings located 568 Union Avenue in Brooklyn (the "568 Union Property"), 544 Union Avenue in Brooklyn ("544 Union Property"), and 1719 27ST in Queens (the "1719 27ST Property").
2. Defendants are limited liability companies that are affiliated with Heatherwood, a New York real estate developer.
3. Since 2011, Heatherwood and the Defendants have enjoyed the benefits of Section 421-a partial real property tax exemptions that substantially reduce the property taxes Defendants are required to pay, in exchange for, among other things, Heatherwood and Defendants' agreement to pay building service employees employed at the property the applicable prevailing wages. The prevailing wage obligations of Section 421-a do not apply to the 544 Union Property.
4. In 2011, the New York City Department of Housing Preservation and Development ("HPD") issued to Defendant 568 Union certificates of eligibility for a Section 421-a partial real property tax exemption for the 568 Union Property based on, among other things, representations that building service employees employed at the property would be paid the applicable prevailing wages. From approximately August 2011 through approximately



November 2013, Defendant 568 Union's building services contractor failed to pay applicable prevailing wages to its building service employees employed at the 568 Union Property.

5. In 2012 and 2013, HPD issued to Defendant 1719 27ST certificates of eligibility for a Section 421-a real property partial tax exemption for the 1719 27ST Property based on, among other things, representations that building service employees employed at the property would be paid the applicable prevailing wages. From approximately October 2012 through approximately November 2013, Defendant's building services contractor failed to pay applicable prevailing wages to building service employees employed at the 1719 27ST Property.

6. Prior to Defendant 568 Union's filing of multiple affidavits with HPD attesting to Defendant's intent to comply with Section 421-a's prevailing wage requirement in connection with the 568 Union Property, affiliate Heatherwood retained a real estate consulting firm to advise Heatherwood on the Section 421-a applications. Among other things, the consulting firm told Heatherwood that it was required to pay prevailing wage to workers at the 568 Union Property and sent Heatherwood the applicable prevailing wage schedule.

7. Despite being on notice of its obligation to pay workers at the 568 Union Property prevailing wage, Defendant 568 Union entered into a contract with a building services provider which failed to pay workers at the 568 Union Property prevailing wage.

8. Defendant proceeded to submit three signed affidavits to HPD that attested to Defendant's compliance with Section 421-a's prevailing wage requirement.

9. After submitting the affidavits attesting to its compliance with Section 421-a's prevailing wage requirement, 1719 27ST proceeded to submit signed affidavits to HPD attesting to its intended compliance with the prevailing wage requirement at the 1719 27ST Property. At the time it submitted those affidavits, the Defendant 1719 27ST and its principals were aware



that Defendant 568 Union had already entered into a contract with a building services provider which failed to pay employees at the 568 Union Property prevailing wage.

10. In or around August 2013, several workers at the 568 Union Property wrote a letter to a 568 Union principal notifying him that they were not being paid prevailing wage. After receiving the letter, the Defendants investigated the matter internally and ultimately terminated its building services provider. The new building services provider Defendant retained in November 2013 indicated that it would pay its workers at the 568 Union Property and the 1719 27ST Property prevailing wage.

11. Heatherwood cooperated fully in the State's investigation and took responsibility for the conduct described herein.

12. The State and City contend that Defendants 568 Union and 1719 27ST actually knew, recklessly disregarded, or were deliberately ignorant to the fact that their attestations that building service employees employed at the 568 Union Property and 1719 27ST Property would be paid the applicable prevailing wages were false when made.

13. The State and City contend that, as a result, Defendants 568 Union and 1719 27ST fraudulently induced HPD to grant a Section 421-a partial real property tax exemption for the 568 Union Property and 1719 27ST Property, in violation of the NYFCA.

14. The conduct described in the foregoing Paragraphs 1-13, is hereinafter referred to as the "Covered Conduct."

15. Defendants neither admit nor deny the factual allegations contained in Paragraphs 4 through 10 or the State and the City's legal contentions in Paragraphs 12 and 13.

## TERMS AND CONDITIONS

### Settlement Amount

16. Heatherwood and Defendants 568 Union and 1719 27<sup>th</sup>, jointly and severally, agree to pay the sum of three million dollars (\$3,000,000) (the "Settlement Amount") to resolve the Action, the Attorney General's and the City's investigation, and the Comptroller's investigation. The Settlement Amount represents unpaid wages and interest to building service employees employed at the 568 Union Property and the 1719 27ST Property; damages recovered by the State and the City for alleged violations of the NYFCA; and the Relator's share, *i.e.*, the share to which the Relator is entitled under New York State Finance Law § 190(6).

17. The Settlement Amount is divided into three portions: (i) \$723,324.33 paid to the Comptroller (the "Comptroller's Share") pursuant to the Comptroller's Stipulation of Settlement; (ii) \$1,832,723.92 paid to the State and City (the "State and City's Share"); and (iii) \$443,951.75 paid to the Relator (the "Relator's Share"), the share to which the Relator is entitled under New York State Finance Law § 190(6).

18. Heatherwood and the Defendants 568 Union and 1719 27ST, jointly and severally, agree to pay or cause to be paid the Comptroller's Share pursuant to the Stipulation of Settlement entered into contemporaneously with the Comptroller. The Comptroller will notify Defendants and Heatherwood once payments have been made to all identified employees.

19. Heatherwood and the Defendants 568 Union and 1719 27ST, jointly and severally, agree to pay or cause to be paid the State and City's Share as follows:

a. Within thirty (30) days following the Effective Date of this Agreement, the Defendants shall pay \$1,832,723.92 by wire transfer pursuant to written instructions provided by the Attorney General.

b. The State will transmit the City's portion of the State and City's Share to the City, pursuant to instructions provided by the Office of Corporation Counsel, upon receipt from Defendants.

20. Heatherwood and the Defendants 568 Union and 1719 27ST, jointly and severally, agree to pay or cause to be paid the Relator's Share in the amount of \$443,951.75 within thirty (30) days following the Effective Date of this Agreement by wire transfer to an attorney trust account, pursuant to written instructions provided by Relator's counsel.

a. Defendants have separately agreed to pay Relator \$45,000, representing attorney's fees and costs, by wire transfer to an attorney trust account within thirty (30) days of the Effective Date of this Agreement, pursuant to written instructions provided by Relator's counsel.

21. Heatherwood and the Defendants agree that they will not claim, assert, or apply for a tax deduction or tax credit on New York State or New York City tax return, for any portion of the amount due under this Agreement or the Stipulation of Settlement entered into with the Comptroller.

22. The State, the City and the Defendants agree that for purposes of Internal Revenue Code ("I.R.C.") § 162(f): of the Settlement Amount, \$2,280,000 constitutes restitution for coming into compliance with Section 421-a of the R.P.T.L. and Chapter 6 of Title 28 of the R.C.N.Y., within the meaning of I.R.C. § 162(f)(2).



23. In consideration of the obligations of Heatherwood and the Defendants as set forth in this Agreement, and conditioned upon Heatherwood or the Defendants' payments to the Comptroller, State, City, and Relator, the State and Relator pursuant to Paragraphs 16 through 20, within fourteen (14) days of said payments, shall file, pursuant to New York Civil Practice Law and Rule ("CPLR") 3217(a), a Notice of Discontinuance of the Action with prejudice.

#### **Non-Monetary Relief**

24. Heatherwood and the Defendants agree and acknowledge that for the duration of any tax exemption provided by R.P.T.L. § 421-a, payment of the required applicable prevailing wages and supplemental benefits to building service employees employed at the 568 Union Property and 1719 27ST is required whether such employees are employed directly by Heatherwood and the Defendants or its successors or assigns, through a property management company, through a contractor or subcontractor, or by other third party. Heatherwood and the Defendants will comply with this and all other requirements of R.P.T.L. § 421-a and 28 R.C.N.Y. 6-01 *et seq.*, for the entire time period for which they receive a Section 421-a partial real property tax exemption.

25. In the event that any sale or other transfer of the 568 Union Property and/or 1719 27ST Property is proposed or considered during the period of the Section 421-a partial real property tax exemption benefit and prior to the satisfaction of the provisions of the settlement by Defendants, Heatherwood or the Defendants will notify any potential buyer or successor of the prevailing wage requirement at an early stage of discussion or negotiation, will send written confirmation of any such notification to the Attorney General before closing of title, and will include a provision recognizing the existence of the requirement in any term sheet, proposal for sale or transfer, and document effecting sale or transfer. Such document shall also require the

purchaser, transferee or other successor to assume the non-monetary obligations of this Agreement at Paragraphs 24 through 26 from and after the date of their ownership to the extent they have not been satisfied by Defendants.

26. Defendants 568 Union or 1719 27ST shall provide the Attorney General and the City with a certification in writing and signed by Heatherwood or the 568 Union or 1719 27ST Defendants affirming their compliance with the prevailing wage requirements of Section 421-a and the requirements set forth in Paragraphs 24 and 25 of this Agreement, to be submitted to the Attorney General and the City thirty (30) days after the effective date of this Agreement. Such certificate of compliance may indicate that the 568 Union or 1719 27ST Defendants investigated and then relied upon information provided by their building services contractor in certifying their compliance with the applicable requirements. Such certificate of compliance will incorporate records of the prevailing wages and supplemental benefits paid to each building service employee by each Defendant's respective contractors for the period from January 1, 2020 to the effective date of this agreement (the "Prevailing Wage Report").

a. The Prevailing Wage Report shall certify that all building service employees at the 568 Union Property and 1719 27ST Property (the "Covered Employees") were compensated in full compliance with all applicable prevailing wage requirements during the period covered by the Prevailing Wage Report, including but not limited to all requirements relating to supplemental and fringe benefits. In the event the Attorney General, City, or Comptroller determines that the Prevailing Wage Report shows that Covered Employees were not compensated in accordance with all applicable prevailing wage requirements, including but not limited to all requirements relating to supplemental and fringe benefits, during any period from November 1, 2013 through the remaining time period for which they receive a Section 421-a

partial real property tax exemption for the 568 Union Property or 1719 27ST Property, Defendants will be required to submit a certificate of compliance and accompanying prevailing wage report to the Attorney General and the City for the following two (2) years, commencing one year after the effective date of this Agreement. This requirement shall be in addition to any other remedies and relief available to the Attorney General and the City under law or this Agreement, including but not limited to Heatherwood and the Defendants' obligation to fully compensate any workers who received less than the applicable prevailing wage.

b. In the event of any sale or other transfer of the 568 Union Property and/or the 1719 27ST Property, Heatherwood and the Defendants will have no further non-monetary obligations relating to this Agreement with respect to the sold or transferred property upon full payment of the Settlement Amount and upon providing written confirmation to the Attorney General and the City of the sale and that it has met its obligations pursuant to this paragraph; provided, however, that the Defendants must provide the Attorney General and the City with thirty (30) days advance written notification of any scheduled sale or transfer, including the terms that show that the purchaser, transferee, or other successor has agreed to comply with the prevailing wage requirements of Section 421-a.

#### **Releases**

27. Subject to the exceptions in the next Paragraph, in consideration of the obligations of Heatherwood and the Defendants set forth in this Agreement, and conditioned upon the full payment by Heatherwood and the Defendants of the Settlement Amount, and subject to Paragraph 36 herein (concerning bankruptcy proceedings commenced within ninety-one (91) days of the Effective Date of this Agreement or any payment under the Agreement, whichever is later), the State and the City release Heatherwood and the



Defendants and any of their respective owners and/or members, officers, directors, partners, heirs, employees, and affiliates from any civil or administrative monetary claim the State or City have or may have for the Covered Conduct under the NYFCA, the New York Executive Law, or any other law regarding 568 Union Property, 1719 27ST Property, and 544 Union Property.

28. Notwithstanding any term of this Agreement, the State and the City specifically do not release any person or entity from any of the following liabilities:

- a. any civil or administrative liability arising under any state or municipal tax laws, except as stated in Paragraph 27;
- b. any criminal liability (the Attorney General represents that there are no criminal proceedings, which it is presently contemplating or pursuing against either the Defendants, their owners, their members, or their employees, based on the Covered Conduct as defined in Paragraph 14);
- c. any civil liability that Defendants may have under any state statute, regulation, or rule not covered by this Agreement;
- d. any liability to the State (or its agencies) or City (or its agencies) for any conduct other than the Covered Conduct;
- e. any liability based upon obligations created by this Agreement;
- f. any civil or administrative liability of individuals, except as provided for herein.

29. Nothing herein affects the obligations or duties of the Defendants prescribed by the Stipulation of Settlement, nor the rights of the Comptroller under the Comptroller's Stipulation of Settlement.

30. In consideration of the obligations of Heatherwood and the Defendants in this Agreement, conditioned upon the full payment by Heatherwood, 568 Union, and 1719 27ST of the Settlement Amount, the Relator, for itself, and for each of its officers, directors, employees, attorneys, and agents, fully and finally releases, waives and forever discharges Heatherwood and the Defendants and any of their respective owners and/or members from any rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature, whether known or unknown, that the Relator has asserted, could have asserted, or may assert in the future for itself or on behalf of the State or any local governments within the State for the Covered Conduct, including civil monetary claim Relator has on behalf of the State or any local governments within the State for the Covered Conduct under the New York False Claims Act, N.Y. State Fin. Law §§ 187 *et seq.*; provided, however, that nothing in this Agreement shall preclude Relator from seeking to recover his expenses or attorney's fees and costs from Defendant, pursuant to N.Y. State Fin. Law § 190 or from seeking redress pursuant to N.Y. State Fin. Law § 191.

31. Heatherwood and the Defendants and any current affiliated entity and any of their respective owners, officers, directors, employees, managers, members, partners, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally release the State and City, and their agencies, officers, employees, attorneys, and agents, from any rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature (including for attorney's fees, costs, and expenses of every kind and however denominated), whether known or unknown, that Heatherwood or the Defendants have asserted, could have asserted, or may assert in the future against the State or

City, and their agencies, officers, employees, attorneys, and agents, related to the Covered Conduct and/or the State's and the City's investigation and prosecution thereof.

32. Heatherwood and the Defendants and any current affiliated entity and any of their respective owners, officers, directors, employees, managers, members, partners, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally release, waive, and forever discharge the Relator, and each of its officers, directors, employees, attorneys, and agents, from any rights, claims, expenses, debts, liabilities, demands, obligations, costs, damages, injuries, actions, and causes of action of any nature (including for attorney's fees, costs, and expenses of every kind and however denominated), whether known or unknown, that Heatherwood and the Defendants have asserted, could have asserted, or may assert in the future against the Relator, and each of its members, officers, directors, employees, attorneys, and agents, for the Covered Conduct and the Relator's and the State and the City's investigations and civil prosecution thereof.

33. The Relator, for itself individually, and for Relator's owners, members, heirs, personal representatives, legal representatives, successors, attorneys, agents and assigns, fully and finally releases the State and City, their agencies, officers, employees, servants, attorneys, and agents from any claims (including claims for attorney's fees, costs, and expenses of every kind and however denominated) that Relator has asserted, could have asserted, or may assert in the future against the State or City, arising out of the filing of claims against Heatherwood and the Defendants or from any other claim for a share of the settlement proceeds from Heatherwood and the Defendants. Relator accepts the payment described in Paragraph 20 in full settlement of any claims Relator may have against the State or City for any and all claims against the Defendants. This Agreement does not resolve or in any manner affect any claims the State or



City has or may have against Relator arising under State or City tax laws, or any claims arising under this Agreement.

34. The Relator, and each of its officers, directors, employees, and agents, hereby agrees and confirms that this Agreement is fair, adequate, and reasonable with respect to all Parties under all the circumstances, pursuant to New York State Finance Law § 190(5)(b)(ii). The Relator agrees not to object to the settlement of the Action.

35. The State and City have agreed to the terms of this Agreement based on, among other things, the representations made to the Attorney General by the Defendants. These representations include, but are not limited to, representations that building service employees employed at the 568 Union Property and 1719 27ST Property have been receiving the applicable prevailing wages and supplemental benefits from their respective employers since November 2013 to the best of Defendants' knowledge. To the extent that any material representations are later found to be materially inaccurate or misleading, this Agreement is voidable by the Attorney General in its sole discretion. No representation, inducement, promise, understanding, condition, or warranty not set forth in this Agreement has been made to or relied upon by Heatherwood or the Defendants in agreeing to this Agreement. The Parties acknowledge that they have entered this Agreement freely and voluntarily and upon due deliberation with the advice of counsel.

#### **Bankruptcy and Non-Payment**

36. If within ninety-one (91) days after the Effective Date of this Agreement or of the date of any payment made by Heatherwood or the Defendants under this Agreement, Heatherwood or any of the Defendants or a third party commences against any or all of the Heatherwood or the Defendants any case, proceeding, or other action under any law relating to bankruptcy, insolvency, reorganization, or relief of debtors (a) seeking to have any order for

relief of its or their debts, or seeking to adjudicate Heatherwood or any of the Defendants as bankrupt or insolvent; or (b) seeking appointment of a receiver, trustee, custodian, or other similar official for Heatherwood or any of the Defendants or for all or any substantial part of its or their assets, each of the Defendants agrees as follows:

- a. Heatherwood and the Defendants' obligations under this Agreement may not be avoided pursuant to 11 U.S.C. § 547, and Heatherwood and the Defendants shall not argue or otherwise take the position in any such case, proceeding, or action that: (i) their obligations under this Agreement may be avoided under 11 U.S.C. § 547; (ii) they were insolvent at the time this Agreement was entered into, or became insolvent as a result of the payment of the Settlement Amount; or (iii) the mutual promises, covenants, and obligations set forth in this Agreement do not constitute a contemporaneous exchange for new value given to Heatherwood and the Defendants.
- b. If Heatherwood or any of the Defendants' 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, the State or City, at their sole option, may rescind the releases in this Agreement insofar as they affect the State or City and bring any civil and/or administrative claim, action, or proceeding against Heatherwood and the Defendants and their parents, subsidiaries, and affiliates, as well as the current and former officers, directors, and employees of each of them, for the claims that would otherwise be covered by the releases provided

above, and Heatherwood and the Defendants agree that (i) any such claims, actions, or proceedings brought by the State or City are not subject to an "automatic stay" pursuant to 11 U.S.C. § 362(a) as a result of the action, case, or proceedings described in the first clause of this Paragraph, and Heatherwood and the Defendants shall not argue or otherwise contend that the State's or the City's claims, actions, or proceedings are subject to an automatic stay; (ii) they 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 claims, actions, or proceedings that are brought by the State or City within 60 calendar days of written notification to Heatherwood and the Defendants that the releases have been rescinded pursuant to this Paragraph, except to the extent such defenses were available on the Effective Date of this Agreement; and (iii) the State or City has a valid claim against Heatherwood and the Defendants in the amount of treble damages plus penalties under the NYFCA, and may pursue its claim in the case, action, or proceeding referenced in the first clause of this Paragraph, as well as in any other case, action, or proceeding.

- c. Heatherwood and the Defendants acknowledge that their agreements in this Paragraph are provided in exchange for valuable consideration provided in this Agreement.

37. In the event of the failure by Heatherwood and the Defendants to make any or all payments of the Settlement Amount, including the Comptroller's Share, the State and City's



Share, and the Relator's Share, when due according to Paragraphs 16 through 20, the State will provide written notice of the non-payment to Heatherwood and/or the Defendants. Such notice shall be given to the person and address designated in Paragraph 50 by (i) delivery in person, (ii) a nationally recognized next-day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Heatherwood and the Defendants shall have an opportunity to pay the unpaid balance within thirty (30) calendar days from the effective date of the notice. If Heatherwood and the Defendants fail to pay the overdue unpaid balance of its payment obligations under this Agreement within thirty (30) calendar days from the effective date of the notice of non-payment ("Default"), the State or City, in their sole discretion, may declare or do any or all of the following, or may exercise, without limitation, any remedies available under law, including:

- a. The State or City may declare the entire Settlement Amount, less any credits and payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in CPLR 5004 beginning as of the date of Default until payment of the remaining Settlement Amount is made in full; and/or
- b. Pursue all available remedies to enforce this Agreement and remedy violations of this Agreement. In the event of a Default as described above, Heatherwood and the Defendants agree not to contest any action to enforce this Agreement or any other collection action undertaken by the State or City pursuant to this Paragraph or pursuant to law, and Heatherwood and the Defendants agree to pay the State or City, without

- limitation, all reasonable costs of collection and enforcement of this Agreement, including attorney's fees, expenses and court costs; and/or
- c. Rescind their agreement to this Agreement as to Heatherwood and the Defendants and their parents, subsidiaries, and affiliates, as well as the current and former officers, directors, and employees of each of them, and prosecute this action and/or commence a new action against Heatherwood and the Defendants and any of their parents, subsidiaries, and affiliates, as well as the current and former officers, directors, and employees of each of them, in this Court. In the event the State or City pursues any such action, Heatherwood and the Defendants: (1) expressly agree not to plead, argue, or otherwise raise any defenses under the theories of statute of limitations, laches, estoppel or similar theories, to any civil or administrative claims which (i) are filed by the State or City after the written notification to Heatherwood and the Defendants of Default, and (ii) relate to the Covered Conduct, and (2) further waive and will not assert any defenses Heatherwood and the Defendants may have to any civil or administrative action relating to the Covered Conduct.

38. In the event the State or City rescinds this Agreement pursuant to Paragraph 37, any and all credits and payments made under this Agreement towards the Comptroller's Share, the State and City's Share, and the Relator's Share shall be credited towards any future judgment against Heatherwood and the Defendants.

39. In the event of the failure by Heatherwood and the Defendants to make any or all payments of the Relator's Share when due according to Paragraph 19, the Relator will provide

written notice of the non-payment to Heatherwood and the Defendants. Such notice shall be given to the person and address designated in Paragraph 50 by (i) delivery in person, (ii) a nationally recognized next day courier service, or (iii) first class, registered or certified mail, postage prepaid. Notice so given shall be effective upon (i) receipt, or (ii) on the fifth (5th) day following mailing, whichever occurs first. Heatherwood and the Defendants shall have an opportunity to pay the unpaid balance within thirty (30) calendar days from the effective date of the notice. If Heatherwood and the Defendants fail to pay the overdue unpaid balance of its payment obligations for the Relator's Share under this Agreement within thirty (30) calendar days from the effective date of the notice of non-payment ("Relator's Share Default"), the Relator, in its sole discretion, may declare or do any or all of the following:

- a. The Relator may declare the entire Relator's Share, less any payments already made, immediately due and payable, with unpaid amounts bearing the Default rate of interest at the interest rate set forth in New York Civil Practice Law and Rules § 5004 beginning as of the date of Relator's Share Default until payment of the remaining Relator's Share is made in full; and/or
- b. Institute an action or actions against Heatherwood and the Defendants in this Court to collect the unpaid amounts of the Relator's Share plus applicable interest. Heatherwood and the Defendants further waive and will not assert any defenses and agree not to contest any action to enforce this Agreement with respect to the Relator's Share or any other collection action undertaken by the Relator pursuant to this Paragraph, and Heatherwood and the Defendants agree to pay the Relator all reasonable



costs of collection and enforcement of this Agreement, including attorney's fees and expenses.

#### **Additional Terms**

40. The Parties represent and warrant, through the signatures below, that the terms and conditions of this Agreement are duly approved, and that execution of this Agreement is duly authorized.

41. The undersigned counsel and any other signatories represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below and to legally bind the person or entity on whose behalf he or she is signing this Agreement.

42. Heatherwood and the Defendants shall not take any action or make any statement denying, directly or indirectly, the propriety of this Agreement or taking positions inconsistent with this Agreement. Nothing in this paragraph affects Heatherwood and Defendants' testimonial obligations or its right to take legal or factual positions in defense of litigation or other legal proceedings to which the State or City is not a party.

43. This Agreement and all its terms shall be construed as if mutually drafted with no presumption of any type against any Party that may be found to have been the drafter.

44. Except as provided in Paragraph 30 above, each Party shall bear its own legal and other costs incurred in connection with this matter.

45. This Agreement constitutes the complete agreement between and among the Parties, and may not be amended, modified, or altered except by an instrument in writing signed on behalf of all the Parties to this Agreement. Other than the contemporaneously executed

Stipulation of Settlement, this Agreement supersedes any and all prior agreements or negotiations of the Parties, whether oral or in writing, with respect to the Action.

46. This Agreement shall be binding on and inure to the benefit of the Parties and their respective successors and assigns, provided that no Party, other than the State or City, may assign, delegate, or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the Attorney General.

47. This Agreement is not intended to and shall not be construed to give any third party any interest or rights (including, without limitation, any third party beneficiary rights) nor to be construed as an admission of liability except as specifically set forth herein with respect to or in connection with any agreement or provision contained herein or contemplated hereby, except that the Parties recognize and acknowledge that the employees described in this Agreement are entitled to receive back wages in the amount of underpaid prevailing wages plus interest as described in the Stipulation of Settlement with the Comptroller, which will be paid to them out of the Comptroller's Share of the Settlement Amount.

48. In the event that any one or more of the provisions contained in this Agreement, other than provisions concerning payment and release, shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

49. Any failure by the State or City to insist upon the strict performance by Heatherwood and the Defendants and/or the Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the State or City, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance

of any and all of the provisions of this Agreement to be performed by the Relator and/or Heatherwood and the Defendants. Any failure by the Relator to insist upon the strict performance by Heatherwood and the Defendants of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and the Relator, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by Heatherwood and the Defendants. Any failure by Heatherwood or the Defendants to insist upon the strict performance by the State, the City, or the Relator of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions hereof, and Heatherwood or the Defendants, notwithstanding such failure, shall have the right thereafter to insist upon the strict performance of any and all of the provisions of this Agreement to be performed by State, the City, or the Relator.

50. All communications from any Party concerning the subject matter of this Agreement shall be addressed as follows:

If to the State:

Thomas Teige Carroll, Esq.  
Bureau Chief  
Taxpayer Protection Bureau  
Office of the New York Attorney General  
28 Liberty Street, 21st Floor  
New York, NY 10005  
(212) 416-6561  
thomas.carroll@ag.ny.gov

If to the City:

Gail Rubin, Esq.  
Division Chief  
Affirmative Litigation Division  
New York City Law Department  
100 Church Street, 20th Floor  
New York, NY 10007  
(212) 356-2030  
grubin@law.nyc.gov



If to the Relator:

John H. Reichman, Esq.  
Johnreichmanlaw LLC  
56 Oakwood Ave.  
Montclair, NJ 07043  
(917) 626-8025  
[john@johnreichmanlaw.com](mailto:john@johnreichmanlaw.com)

Katchen Locke, Esq.  
SEIU Local 32BJ  
25 West 18th Street  
New York, NY, 10011-1991  
(212) 539-2941  
[klocke@seiu32bj.org](mailto:klocke@seiu32bj.org)

If to Defendants:

Thomas V. Walsh, Esq.  
Jackson Lewis P.C.  
44 South Broadway  
14<sup>th</sup> Floor  
White Plains, NY 10601  
(914) 872-6912  
[Thomas.walsh@jacksonlewis.com](mailto:Thomas.walsh@jacksonlewis.com)

Colleen Collins, Esq.  
Heatherwood Luxury Rentals  
58 Vanderbilt Motor Pkwy  
Commack, NY 11725  
[ccollins@Heatherwood.com](mailto:ccollins@Heatherwood.com)

51. Except for written notices of Heatherwood and the Defendants' non-payment issued by the State, City, or the Relator, the sending and receipt of which shall be governed by the provisions in Paragraphs 50, 37 and 39 respectively, all communications from any Party to another Party concerning this Agreement shall be sent by United States mail with return receipt requested or overnight delivery service with signature required to the signatory counsel for each Party, unless such communications are sent by email and a reply is written without objection to the electronic means of communication.

52. In any subsequent investigation, civil action, or proceeding by the State or City to enforce this Agreement, or for violations of the Agreement, Heatherwood and the Defendants

expressly agree and acknowledge that any statute of limitations or other time-related defenses are tolled from and after the effective date of this Agreement, and that the State or City may use statements, documents or other materials produced or provided by the Defendants prior to or after the effective date of this Agreement.

53. If a court of competent jurisdiction determines that Heatherwood or any of the Defendants has breached this Agreement, other than by failing to pay amounts owed under the Agreement, the remedy for which is described in Paragraphs 37 and 39, Heatherwood and the Defendants shall pay to the Attorney General and/or to the Relator the cost, if any, of obtaining such determination and of enforcing this Agreement, including, without limitation, legal fees, expenses, and court costs.

54. Any headings, titles and subtitles contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the Parties, and shall not in any way affect the meaning or interpretation of this Agreement.

55. This Agreement shall be governed by the laws of the State of New York without regard to any conflict of laws principles. The Parties agree that the exclusive jurisdiction and venue for any dispute arising between and among the Parties under this Agreement will be the Supreme Court of the State of New York, New York County.

56. This Agreement is effective on the date of the last signatory of the Agreement (the "Effective Date"). Facsimiles and .pdfs of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

57. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Agreement is executed by the Parties hereto.

[SIGNATURE PAGE FOLLOWS]

THE STATE OF NEW YORK

Dated: August 12, 2022

LETITIA JAMES  
New York State Attorney General

By:   
Thomas Teige Carroll

Bureau Chief  
Taxpayer Protection Bureau  
Office of the New York Attorney General  
Taxpayer Protection Bureau  
28 Liberty Street, 21st Floor  
New York, New York 10005  
Tel.: (212) 416-6561

*Attorney for the State of New York*

THE CITY OF NEW YORK

Dated:

Hon. Sylvia O. Hinds-Radix  
Corporation Counsel of the City of New  
York

By: \_\_\_\_\_  
Gail Rubin

Division Chief  
Affirmative Litigation  
Corporation Counsel  
100 Church Street, Room 20-098  
New York, New York 10007  
(212) 356-2030

*Attorney for the City of New York*




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[SIGNATURE PAGE FOLLOWS]

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Dated: August 12, 2022

LETITIA JAMES  
New York State Attorney General

By:   
Thomas Teige Carroll

Bureau Chief  
Taxpayer Protection Bureau  
Office of the New York Attorney General  
Taxpayer Protection Bureau  
28 Liberty Street, 21st Floor  
New York, New York 10005  
Tel.: (212) 416-6561

*Attorney for the State of New York*

THE CITY OF NEW YORK

Dated: August 23, 2022

Hon. Sylvia O. Hinds-Radix  
Corporation Counsel of the City of New  
York


By:   
Gail Rubin

Division Chief  
Affirmative Litigation  
Corporation Counsel  
100 Church Street, Room 20-098  
New York, New York 10007  
(212) 356-2030

*Attorney for the City of New York*

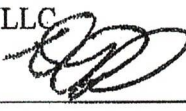
THE DEFENDANTS

Dated:

568 Union DE LLC  
By: 

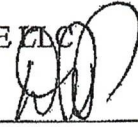
Douglas S. Partrick, Managing Member  
568 Union LLC  
(Sole Member of 568 Union DE LLC)

Dated:

1719 27ST LLC  
By: 


Douglas S. Partrick  
Managing Member

Dated:

544 Union DE LLC  
By: 

Douglas S. Partrick, Managing Member  
544 Union LLC  
(Sole Member of 544 Union DE LLC)

Dated:

Heatherwood Communities LLC  
By: 

Douglas S. Partrick  
Member

Dated:

JACKSON LEWIS P.C.

By:  \_\_\_\_\_

Thomas V. Walsh, Esq.  
44 South Broadway  
White Plains, NY 10601  
(914) 872-6912

*Attorney for Heatherwood Communities*

RELATOR SEIU LOCAL 32BJ

SEIU Local 32BJ

Dated:

By: \_\_\_\_\_

Name:  
Title:

Dated:

JOHNREICHMANLAW LLC

By: \_\_\_\_\_

John H. Reichman, Esq.  
56 Oakwood Ave.  
Montclair, NJ 07043  
(917) 626-8025

*Attorney for the Relator*



Dated:

JACKSON LEWIS P.C.

By: \_\_\_\_\_

Thomas V. Walsh, Esq.  
44 South Broadway  
White Plains, NY 10601  
(914) 872-6912

*Attorney for Heatherwood Communities*

RELATOR SEIU LOCAL 32BJ

SEIU Local 32BJ

Dated:

By: Katchen Locke

Name: Katchen Locke  
Title: General Counsel

Dated:

JOHNREICHMANLAW LLC

By: 

John H. Reichman, Esq.  
56 Oakwood Ave.  
Montclair, NJ 07043  
(917) 626-8025

*Attorney for the Relator*