

## **SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS**

WHEREAS, on April 25, 2018, Plaintiffs Hyon Kil and Michael Pollock (“Plaintiffs”) filed a class action complaint (“Complaint”) against Defendants THR Washington II, LP and THR Property Management, LP (collectively “Defendants” or “Invitation Homes”) in the Superior Court of the State of Washington, County of King, Cause No 18-2-10587-1 SEA, on behalf of themselves and all others similarly situated (“Lawsuit”); and

WHEREAS, on November 20, 2018, Plaintiffs filed a First Amended Complaint against Defendants in the Lawsuit;

WHEREAS, under the First Amended Complaint, Plaintiffs sought, on behalf of themselves and all others similarly situated: (a) damages for unpaid travel and unloading time and missed rest breaks and meal periods; (b) exemplary damages pursuant to RCW 49.52.070; (c) attorneys’ fees and costs pursuant to RCW 49.46.090, 49.48.030 and 49.52.070; and (d) prejudgment interest; and

WHEREAS, Defendants have denied any liability for Plaintiffs’ claims and have asserted certain affirmative defenses; and

WHEREAS, Plaintiffs and Defendants (the “Parties”) have engaged in extensive settlement discussions, including an all-day settlement mediation session with Mediator Stew Cogan on October 30, 2018; and

WHEREAS, it is the desire of the Parties to fully, finally, and forever settle, compromise, and discharge all disputes and claims that have been alleged in the Lawsuit or that arise out of or could have been alleged on the basis of the circumstances alleged in the First Amended Complaint, including both federal and state claims,

NOW, THEREFORE, in consideration of the mutual covenants, promises, and warranties set forth herein, the Parties agree, subject to the Court’s approval, as follows:

1. This Settlement Agreement and Release of Claims (hereinafter “Settlement” or “Settlement Agreement”), which the parties agree is a fair, adequate and reasonable compromise and settlement of the Lawsuit, is made and entered into by and between the following Parties: Plaintiffs; the “Settlement Class Members” as defined below; and Defendants. This Settlement Agreement is subject to the terms and conditions hereof and to the approval of the Court.

### **SETTLEMENT CLASS CERTIFICATION**

2. The Parties agree that Plaintiffs will move the Court for certification of a “Settlement Class” under CR 23(b)(3) solely for purposes of effectuating this Settlement Agreement, and conditioned on final approval of the Settlement by the Court. As part of this motion, Plaintiffs will ask the Court to approve the designation of Plaintiffs as the representatives of the Settlement Class (“Settlement Class Representative”), and to appoint Adam J. Berger and Lindsay L. Halm of Schroeter Goldmark & Bender and James Pizl of

Entente Law, PLLC as “Class Counsel” for the Settlement Class. Defendants agree not to oppose Plaintiffs’ motion to certify a Settlement Class.

3. The proposed Settlement Class shall include all current and former employees of THR Washington II, LP and THR Property Management, LP who were employed in the position of Maintenance Technician in Washington State at any time from April 25, 2015 to the date of preliminary approval of this Settlement, excluding those employees who have previously released their claims against Invitation Homes.

4. Except as provided in Paragraph 2 above, Defendants do not waive their right to contest or object to the certification of any class in this Lawsuit for any other purposes in the event that this Settlement Agreement shall be vacated or become void for any reason.

#### **SETTLEMENT FUNDS AND SETTLEMENT PAYMENTS**

5. **The Settlement Fund.** Defendants shall establish a fund of \$400,000.00, which shall be referred to herein as the “Settlement Fund.” This fund is inclusive of all of Defendants’ financial obligations under this Settlement Agreement (including all obligations for attorneys’ fees and litigation costs, costs of notice, any incentive payments to the Settlement Class Representatives, the employees’ normal portions of payroll taxes on the settlement payments, and the costs of settlement administration), except as otherwise specifically provided in Subparagraph 6(e).

#### **6. Payments Out of the Settlement Fund**

(a) **Net Settlement Fund.** The “Net Settlement Fund” is defined as the Settlement Fund less any Incentive Payments to Plaintiffs approved by the Court and any award of attorneys’ fees and costs to Class Counsel approved by the Court.

(b) **Division of Net Settlement Fund.** The Net Settlement Fund will be allocated among Settlement Class Members according to their wage rates, days and hours worked, and meal periods recorded in Defendants’ time punch data. Class Counsel shall calculate the specific pro rata amounts representing the individual settlement awards (which shall be based on Defendants’ records) within fifteen (15) days of the Opt-Out deadline described in Paragraph 12 below, and thereafter shall provide such amounts to Defendants for approval. Defendants shall have the right to review all calculations for accuracy. If any additional data is determine necessary to make these calculations, and Defendants have access to that data, Defendants shall provide those data within thirty (30) days of the date of notice that such information is needed.

(c) **Attorneys’ Fees and Costs.** Class Counsel will apply to the Court for payment from the Settlement Fund of attorneys’ fees and reasonable litigation costs, which is to include the costs of settlement administration, with Class Counsel acting as a settlement administrator. Defendants will not oppose the request for litigation costs, and will not oppose the request for attorneys’ fees and costs to the extent the request does not exceed twenty-five percent (25%) of the Settlement Fund. The attorneys’ fees and litigation costs actually paid from the Settlement Fund shall be that amount approved by the Court. The enforceability of this Settlement Agreement is not contingent on the amount of attorneys’ fees or litigation costs

awarded, and any dispute regarding the amount of attorneys' fees or litigation costs, and/or any appeal related thereto, shall not affect or delay the finality of this Settlement Agreement, and shall not affect or delay the entry of dismissal of the Lawsuit with prejudice.

(d) **Incentive Payment to Settlement Class Representatives.** The Parties agree that Plaintiffs will request payment (the "Incentive Payments") from the Settlement Fund in the amount of \$5,000.00 each in recognition of their role and efforts as named Plaintiffs, which Incentive Payments shall be subject to Court approval. This amount shall be in addition to Plaintiffs' pro rata share of the Net Settlement Fund. The enforceability of this Agreement is not contingent on the amount of the Incentive Payments (if any) that are granted.

(e) **Tax Allocations.** The awards to Settlement Class Members in the amounts calculated pursuant to Subparagraph 6(b) above shall be allocated 50% to back pay and 50% to interest and exemplary damages. At their option, Defendants shall issue either separate checks to each Settlement Class Member for the back pay and interest or a single check including both payments. The amounts allocated as interest shall not be treated as wages and shall not be subject to payroll taxes. The amounts allocated as back pay settlement awards shall be treated as wages and subject to payroll taxes. Defendants shall pay the employer's portion of payroll taxes on that portion of Settlement Class Members' settlement payments that is treated as wages. Defendants' payment of the employer's portion of payroll taxes shall be in addition to, and shall not come out of, the Settlement Fund. Except for the employer's portion of payroll taxes, Defendants shall have no responsibility or liability for any federal or state taxes owed in connection with the payments made in connection with this Settlement Agreement. Defendants shall withhold from each Settlement Class Member's back pay settlement award payment, and disburse to the IRS, the employee's portion of payroll taxes and other applicable tax withholding attributable to the portion of the Settlement Class Member's settlement payments that is treated as wages. Defendants shall also deduct from each Settlement Class Member's back pay settlement award payment any other applicable wage deductions required or permitted by law.

(f) **Tax Reporting.** Defendants shall prepare and provide to each Settlement Class Member receiving a settlement payment from the Settlement Fund a Form W-2 (for wages) and a Form 1099 (for interest and exemplary damages) for such settlement awards. Plaintiffs also will receive a Form 1099 for any Incentive Payments they receive (designated as "Other Income"). Class Counsel will receive a Form 1099 for the attorneys' fees and litigation costs awarded to Class Counsel. The Parties agree that the attorneys' fees and litigation costs awarded to Class Counsel need not be reported to the IRS as being income to the Settlement Class Members, based on the analysis in Internal Revenue Service Office of Chief Counsel Memorandum PRENO-111606-07 (May 18, 2007).

(g) **Residual Funds.** In accordance with CR 23(f), 50% of all settlement payments sent to Settlement Class Members that are not cashed within one hundred and eighty (180) calendar days after their issuance by Defendants will be paid to the Legal Foundation of Washington, and 50% will be paid to the Fair Work Center. If the Court does not approve the payment to the Fair Work Center, then that sum shall also be paid to the Legal Foundation of Washington. Within thirty (30) calendar days after the end of such one hundred and eighty (180) day period, Defendants will advise Class Counsel in writing of the amounts of such

uncashed settlement checks. Defendants will issue and deliver checks, calculated according to the percentages of such uncashed settlement checks as specified above, to the Legal Foundation of Washington and to the Fair Work Center no later than two hundred (260) calendar days after the Effective Date (as defined in Paragraph 21 below) and shall notify Class Counsel of such delivery.

#### **TIMELINE AND DUTIES OF THE PARTIES PRIOR TO OBTAINING COURT APPROVAL**

7. Class Counsel shall provide a draft Notice of Settlement Class Certification and Proposed Settlement (“Notice”) to Defendants no later than seven (7) calendar days after the execution of this Settlement Agreement. The Parties will attempt in good faith to agree on the final form of the Notice.

8. Consistent with Paragraph 2 above, Plaintiffs shall move the Court for entry of an order certifying a Settlement Class, preliminarily approving this Settlement, and approving the Notice no later than twenty (20) calendar days after the execution of this Settlement Agreement. Class Counsel shall provide Defendants with a draft of the motion for preliminary approval and the proposed form of Notice at least seven (7) calendar days before the motion for preliminary approval is filed. If impasse is reached on the final form of the Notice, the Parties will, at the time of the request for preliminary approval of the Settlement Agreement, request that the Court resolve such dispute.

#### **NOTICE TO SETTLEMENT CLASS MEMBERS**

9. The Notice, in a form approved by the Court, shall be sent by Class Counsel to the putative Settlement Class Members, by first class mail, within thirty (30) calendar days after entry of the order of preliminary settlement approval by the Court.

10. Defendants will provide Class Counsel with an updated address list for Settlement Class Members and social security numbers for all Settlement Class Members. Class Counsel will keep confidential and not disclose Settlement Class Members’ social security numbers to any third party and will use the numbers solely to locate correct mailing addresses for putative Settlement Class Members. Class Counsel will use reasonable means to perform an address updating check for Settlement Class Members prior to mailing the Notice and to ensure, to the extent practicable, that the Notice is sent to all putative Settlement Class Members. Class Counsel may also use similar reasonable means to locate the proper address of any putative Settlement Class Member whose Notice is returned as undeliverable.

#### **OPT OUTS; OBJECTIONS; BINDING EFFECT**

11. Putative Settlement Class Members will have thirty (30) calendar days from the date on the Notice to opt out of the Settlement Class or object to the Settlement Agreement.

12. Any putative Settlement Class Member may elect to be excluded from this litigation during the 30-day period after the date of the Notice. To be effective, any such election must be made in writing; must contain the information specified in the Notice; and must be mailed to Class Counsel and postmarked, hand-delivered, or emailed on or before the 30th day

after the date of the Notice. If a request for exclusion is mailed, the date of the postmark on the mailing envelope shall be the exclusive means to determine whether it is timely. Any putative Settlement Class Member who is eligible to opt out and who timely requests exclusion in compliance with these requirements shall thereafter not be considered to be a Settlement Class Member, shall not have any rights under this Settlement Agreement, shall not be entitled to receive any settlement payment, and shall not be bound by this Settlement Agreement or any judgment(s) in the Lawsuit.

13. Except for those putative Settlement Class Members who exclude themselves in compliance with the forgoing, all putative Settlement Class Members will be deemed to be members of the Settlement Class in the Lawsuit for all purposes under this Settlement Agreement, the final approval order, the judgment, and the releases set forth in this Settlement Agreement.

14. Any Settlement Class Member may object to this Settlement Agreement, provided that such objections are made in writing, and filed with the Court and served on Class Counsel and counsel for Defendants no later than 30 days after the date of the Notice. Such objection shall include the information specified in the Notice.

15. Neither Plaintiffs, Class Counsel, the Defendants, Defendants' counsel, nor any person on their behalf, shall seek to solicit or otherwise encourage anyone to (a) exclude himself or herself from the Settlement Class, (b) object to the Settlement Agreement, (c) appeal from any order of the Court that is consistent with the terms of this Settlement Agreement, or (d) discourage participation in the Settlement.

16. Upon receipt, counsel for the Parties shall promptly exchange with one another copies of all objections, exclusions and/or challenges to the Settlement or any part thereof.

#### **TIMELINE AND DUTIES OF THE PARTIES FOLLOWING NOTICE**

17. Plaintiffs shall move the Court for entry of an Order granting final approval to this Settlement following the opt-out/objection deadline. Class Counsel shall provide Defendants with a draft of said motion and proposed order of dismissal with prejudice at least seven (7) days prior to filing.

18. The settlement embodied in this Settlement Agreement shall become effective on the "Effective Date," which is defined as the later of: (i) thirty-one (31) days after entry of the Court's final approval of this Settlement Agreement, if no appeal of that order is filed, or (ii) the date the Court's approval of this Settlement Agreement becomes final and binding after final resolution of any appeals.

19. Defendants shall issue and deliver to Class Counsel all settlement checks for Plaintiffs, the Settlement Class Members, and Class Counsel within fifteen (15) business days of the Effective Date. All such checks shall be valid for one hundred and eighty (180) calendar days after issuance.

20. Class Counsel shall mail payments to Settlement Class Members and the Incentive Payments to Plaintiffs no later than fifteen (15) business days after receipt of the settlement checks from Defendants.

21. If any Settlement Class Members do not cash their checks within 180 days after issuance, their checks will be void. In such event and unless good cause exists, those Settlement Class Members will be deemed to have irrevocably waived any right in or claim to a settlement payment or share under this Settlement Agreement, but the Settlement Agreement and the Court's final approval thereof, and the dismissal of the Complaint with prejudice, shall nevertheless be binding upon them.

22. The order of dismissal with prejudice shall be presented for entry upon entry of the Court's final approval of this Settlement Agreement.

#### **RELEASES BY SETTLEMENT CLASS MEMBERS AND PLAINTIFF**

23. Upon the final approval by the Court of this Settlement Agreement (and except as to such rights or claims as may be created by this Settlement Agreement), Class Members (including Class Representatives) release Defendant and Defendant's predecessors, successors, as well as their current, former and future subsidiaries, affiliates, fiduciaries, insurers, agents, employees, assigns, subrogees, privies, officers, officials, directors, administrators, attorneys and shareholders ("Released Parties") from the Released Class Claims defined as follows: Any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities, of any nature and description whatsoever, known or unknown that have been, could have been or might in the future be asserted by any member of the Class as defined above, or any of their respective heirs, executors, administrators, beneficiaries, predecessors, successors, attorneys, assigns, agents and/or representatives arising out of any claims that were or could have been encompassed in the Action, and any claims which reasonably flow from the facts alleged in Plaintiffs' complaint, including, but not limited to, claims for unpaid wages (including claims for minimum wage and overtime of any sort, including due to alleged missed meal and rest periods), claims under the Fair Labor Standards Act, claims for attorneys' fees and costs, conversion, fraud, common count, and unfair or anti-competitive business practices. Released Claims include all claimed or unclaimed compensatory, consequential, incidental, liquidated, punitive and exemplary damages, restitution, interest, costs and fees, injunctive or equitable relief, and any other remedies available at law or equity allegedly owed or available to the Class arising or reasonably flowing from the Complaint, against the Released Parties for the time period from the beginning of time up to and including the Date of Final Approval (collectively referred to as "Released Class Claims").

24. In addition to the release set forth in Paragraph 23, the Class Representatives make the following general release of all their individual claims: Class Representatives release the Released Parties from any and all claims, actions, demands, causes of action, suits, debts, obligations, damages, rights or liabilities of any nature and description whatsoever, known or unknown, that Class Representatives individually may possess against the Released Parties arising from Class Representatives' employment with Defendants. Class Representatives hereby acknowledge that upon receiving the sums provided to them pursuant to this Agreement, they will have received all wages, damages, and penalties owing to them by Defendants, and further,

that they are not owed any additional wages, penalties, or damages from Defendants. Class Representatives' release shall cover the time period from prior to their employment with Defendants up to the Effective Date. Further, Class Representatives agree that Defendants have no legal obligation to them and they promise, covenant, and agree not to seek employment or any other working relationship with Defendants or any of the Released Parties at any time in the future. If Class Representatives do apply for a job with, or otherwise seeks employment or any other relationship with Defendants or any of the Released Parties, Class Representatives acknowledge and agree that any such application may be rejected or terminated by Defendants or any of the Released Parties without recourse to Class Representatives, it being the intent of the parties to have a complete parting of the ways between Class Representatives, Defendants, and any of the Released Parties.

25. Except to the extent a Settlement Class Member presents a timely objection to this Settlement pursuant to the procedures set forth above, Settlement Class Members waive their right to seek any form of appellate review over any order or judgment that is consistent with the terms of this Settlement Agreement.

#### **VOIDING THE SETTLEMENT AGREEMENT**

26. Except as otherwise provided in Paragraphs 6(c)-(d) above, a failure of the Court to approve any material term or aspect of this Settlement Agreement shall render the entire Settlement void and unenforceable as to all Parties herein.

27. Defendants shall have the option, at their sole discretion, to void this Settlement Agreement within five (5) business days of the Opt-Out deadline described in Paragraph 12 above if four (4) or more putative Settlement Class Members request exclusion from the Class.

28. If the Settlement becomes void under the preceding Paragraphs, this Settlement Agreement shall have no force or effect; all negotiations, statements and proceedings related thereto shall be without prejudice to the rights of any party, all of whom shall be restored to their respective positions in the Lawsuit prior to the Settlement; the Settlement Class created pursuant to this Settlement Agreement shall be decertified and of no force or effect; and neither this Settlement Agreement nor any ancillary documents, actions or filings shall be admissible or offered into evidence in the Lawsuit or any other action or proceeding for any purpose.

#### **NO ADMISSION OF LIABILITY**

29. Defendants do not admit any liability or wrongdoing of any kind associated with the claims asserted in the Lawsuit. This Settlement Agreement and any documents executed or filed in connection with this Settlement Agreement are not admissions and may not be used or admitted as evidence against any Party or in any action or proceeding of Defendants' liability or wrongdoing.

#### **PARTIES' AUTHORITY**

30. The signatories hereby represent that they are fully authorized to enter into this Settlement Agreement and to bind the Parties hereto to the terms and conditions hereof.

## **MUTUAL FULL COOPERATION**

31. The Parties agree to reasonably cooperate with each other to accomplish the terms of this Settlement Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement Agreement. As soon as practicable after execution of this Settlement Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all necessary steps to secure the Court's preliminary and final approval of this Settlement Agreement.

## **DISPUTE RESOLUTION AND ENFORCEMENT ACTIONS**

32. Any disputes over any term of this Settlement Agreement, calculations of settlement payments or checks, the form of the Notice, or alleged violations of any of the terms or deadlines set forth in this Settlement Agreement shall be brought on an expedited basis to the Court for resolution. Pursuant to CR 23, the Court shall have continuing jurisdiction to consider and resolve such post-settlement matters.

## **NOTICES**

33. Unless otherwise specifically provided herein, all notices, demands or other communications given hereunder shall be in writing and delivered and addressed as follows:

To Class Counsel:

Adam J. Berger  
Schroeter, Goldmark & Bender  
810 Third Ave., Suite 500  
Seattle, WA 98104-1657

To Defendant's Counsel:

James M. Barrett  
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.  
222 SW Columbia St., Ste. 1500  
Portland, OR 97201

## **CONSTRUCTION**

34. The Parties hereto agree that the terms and conditions of this Settlement Agreement are the result of lengthy, intensive, arm's-length negotiations between the Parties and that the Settlement Agreement shall not be construed in favor of or against any party by reason of the extent to which any party or his or its counsel participated in the drafting of this Settlement Agreement.

## **CAPTIONS AND INTERPRETATIONS**

35. Paragraph titles or captions contained herein 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 provision hereof. Each term of this Settlement Agreement is contractual and not merely a recital.

#### **MODIFICATION**

36. This Settlement Agreement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and, if changed after preliminary court approval, approved by the Court.

#### **INTEGRATION CLAUSE**

37. This Settlement Agreement constitutes the entire agreement between the Parties relating to the settlement and transaction contemplated hereby, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such party's legal counsel are merged herein. No rights hereunder may be waived except in writing.

#### **NO RELIANCE**

38. The parties acknowledge that they have not relied on any promise, representation or warranty, whether express or implied, not contained in this agreement.

#### **NO PRIOR ASSIGNMENTS**

37. This Settlement Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators and successors. The Parties hereto 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 liability, claim, demand, action, cause of action, or rights herein released and discharged except as set forth herein.

#### **CLASS COUNSEL SIGNATORIES**

38. It is agreed that because the Settlement Class Members are so numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the release and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member.

#### **COUNTERPARTS**

39. This Settlement Agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement Agreement, which shall be binding upon and effective as to all Parties.

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

Date: November 20th 2018

Individually,

  
\_\_\_\_\_  
PLAINTIFF HYON KIL


Date: November \_\_, 2018

Individually,

\_\_\_\_\_  
PLAINTIFF MICHAEL POLLOCK

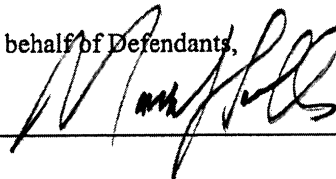
<sup>CH</sup>  
Date: ~~November~~ December 3, 2018

As Class Counsel:

  
\_\_\_\_\_  
Adam J. Berger, WSBA #20714  
SCHROETER GOLDMARK & BENDER

<sup>MAJ</sup>  
Date: ~~November~~ December 5, 2018

On behalf of Defendants,

  
\_\_\_\_\_

Date: November \_\_, 2018

As Defense Counsel:

\_\_\_\_\_

36417073.1

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

Date: November \_\_, 2018

Individually,

\_\_\_\_\_  
PLAINTIFF HYON KIL

Date: November 28, 2018

Individually,

Michael Pollock  
PLAINTIFF MICHAEL POLLOCK

Date: November \_\_, 2018

As Class Counsel:

\_\_\_\_\_  
Adam J. Berger, WSBA #20714  
SCHROETER GOLDMARK & BENDER

Date: November \_\_, 2018

On behalf of Defendants,

As Counsel  
Date: November 3, 2018

As Defense Counsel:

[Signature]

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