

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHAN AMADOR ACEVEDO,
MITCHELL BRATTON, JEREMY
BUSSE, STEPHEN PULLUM, ERIC
MIGDOL, and JOSE GONZALEZ,
individually and on behalf of all others
similarly situated,

Plaintiffs,

v.

BRIGHTVIEW LANDSCAPES, LLC
(F/K/A THE BRICKMAN GROUP LTD.
LLC)

Defendant.

Civil Action No. 3:13-CV-02529

(Judge Mannion)

AMENDED SETTLEMENT AGREEMENT AND RELEASE

1. This Amended Settlement Agreement and Release (the “Settlement Agreement,” “Settlement” or “Agreement”) is entered into between Named Plaintiffs Jonathan Amador, Mitchell Bratton, Jeremy Busse, Stephen Pullum, Eric Migdol, and Jose Gonzalez, the Opt-in Plaintiffs, and the State Settlement Class defined below, and Defendant BrightView Landscapes, LLC (F/K/A “The Brickman Group LTD, LLC”) (“Defendant”), subject to the approval of the Court.

RECITALS

2. On October 8, 2013, Jonathan Amador (“Amador”) commenced this action by filing a Complaint in the United States District Court for the Middle District of Pennsylvania captioned *Jonathan Amador, individually and on behalf of all others similarly situated v. The Brickman Group, Ltd., LLC*, No. 3:13-cv-02529 (M.D. Pa.) (the “Action”). Amador asserted claims on behalf of himself and all employees of Defendant who were paid on a fluctuating work week basis alleging: (a) a failure to pay overtime wages under the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.* (“FLSA”); (b) a failure to pay overtime wages under the

Pennsylvania Minimum Wage Act of 1968, 43 P. S. §§ 333.101, *et seq.* (“PMWA”); (c) an intentional failure to pay wages under the Pennsylvania Wage Payment and Collection Law, 43 Pa.C.S. § 260.1 (“PWPCL”); and (d) a Pennsylvania common law claim of unjust enrichment. Amador sought collective action status under 29 U.S.C. §216(b) and a Pennsylvania statewide class pursuant to Federal Rule of Civil Procedure 23.

3. On February 17, 2014, the Court granted the Parties’ joint motion to stay discovery, grant conditional certification for purposes of the FLSA claims, order notice, and permit alternative dispute resolution (“ADR”). On February 27, 2014, notice of the Action and their right to participate issued to 1,360 current and former employees who worked for Defendant at any time between October 8, 2010 and January 2014 and who fell within the scope of the Collective Group the Court defined as: “[a]ll current and former employees in the United States who have worked for The Brickman Group and who, at any time between October 8, 2010 and the present, were paid a salary, but only received ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate), including but not limited to salaried landscape/crew/irrigation Supervisors and those in similarly titled positions.”

4. In connection with the ADR process, the Parties agreed to exchange informal discovery so that they could engage in meaningful, good faith and informed settlement discussions. Specifically, Defendant agreed to produce and did produce: (a) an electronic spreadsheet setting forth the dates of employment in which Collective Group members worked in the position at issue; (b) Employee Earnings Detail History Reports and weekly pay data for each calendar year in which an employee worked in the position at issue during the applicable time period; (c) all documents summarizing or describing the policies and procedures for compensating Collective Group members in the form of wages, bonuses, overtime compensation, and all other forms of compensation during the applicable periods; (d) policies or practices applicable to Collective Group members with respect to time-keeping and compensation (e) job descriptions for the Collective Group members; (f) Department of Labor audits, evaluations, and reports; and (g) a sample of personnel files.

5. Between July 2014 and February 2015, the Parties participated in three full day mediation sessions in Philadelphia, Atlanta, and Los Angeles with two mediators experienced in mediating collective and class actions: retired United States Magistrate Judge Joel Rosen, and Hunter Hughes. In preparation for the

mediations, the Parties each prepared and exchanged comprehensive damages analyses and detailed mediation statements.

6. As a result of the multiple mediation sessions and continued arms' length negotiations between the Parties, the Parties have agreed to settle the Action in accord with the terms of this Settlement Agreement.

7. The Parties recognize the outcome in the Action is uncertain and that achieving a final result in the litigation process would require substantial risk, discovery, time, and expense for Plaintiffs and Defendant.

8. Including Amador, 417 individuals filed Opt-In Consent Forms to participate in the FLSA claims in the Action. An additional approximately 59 members of the Collective Group worked in Pennsylvania during the four-year period prior to the filing of Plaintiff's Complaint. Together, the pre-mediation Opt-in Plaintiffs and the approximately 59 members of the Collective Group who worked in Pennsylvania are identified for settlement purposes as Group 1.

9. During the settlement negotiations, Plaintiffs' counsel identified other putative claims under the laws of Ohio, New Jersey, Maryland, New York and Illinois (among others) in addition to Pennsylvania. With Defendant's consent, Plaintiffs' counsel filed a First Amended Complaint on May 19, 2015 asserting additional state law claims and including new Named Plaintiffs Mitchell Bratton, Jeremy Busse, Stephen Pullum, Eric Migdol, and Jose Gonzalez as class representatives of the putative state law classes. The parties agree that the deadline for Defendant to file a responsive pleading to the First Amended Complaint is extended through the date of the Court's ruling regarding final approval of the Settlement Agreement. Upon entry of a Final Approval Order, Defendant's response to the First Amended Complaint shall be excused through the dismissal with prejudice of the Action.

10. Should final approval of the Settlement Agreement be denied for any reason or should any party exercise the right to void this Settlement Agreement (as defined in paragraphs 44 and 45 below), the Parties stipulate that the Court will strike the First Amended Complaint without prejudice or costs and reinstate the original Complaint in the Action. The Court's action striking the First Amended Complaint and reinstating the original Complaint will not constitute a dismissal, will not preclude Plaintiffs from seeking leave to amend the Complaint pursuant to Federal Rule of Civil Procedure 15 to add claims of any kind, will not preclude Plaintiffs from making any relation back arguments, and will not in any way bar Plaintiffs from re-alleging any of the claims pleaded in the First Amended

Complaint in a subsequent amended pleading in this Action. The parties agree that Defendant retains the right to oppose any such request for leave to amend the Complaint. Further, nothing in this Agreement precludes Plaintiffs from seeking an order of equitable tolling from the Court for any period, and likewise nothing precludes Defendant from opposing any such request for equitable tolling on any basis (other than this Agreement). The agreements in this paragraph will survive and remain in effect after any exercise by Defendant of the void provision in paragraph 44.

11. Effective June 5, 2014, the Parties entered into a tolling agreement executed on October 7, 2014¹ related to any state law claims. That tolling agreement is superseded by this Settlement Agreement, if it is approved and becomes final, and will be of no effect if this Settlement Agreement is approved and becomes final. Should final approval of the Settlement Agreement be denied for any reason, or should Defendant exercise the right to void this Settlement Agreement as to Group 2 members as set forth in Paragraph 44, the Parties agree that the October 7, 2014 tolling agreement referenced herein will expire on the earlier of the date the Court denies final approval or the date Defendant exercises its right to void this Settlement Agreement as to Group 2 members.

12. As part of the settlement approval process, the Parties seek final certification pursuant to 29 U.S.C. §216(b) of the FLSA collective action claims, and final certification of a State Settlement Class, defined below. Members of the State Settlement Class who are not part of Group 1 are identified for settlement purposes as Group 2.

13. Plaintiffs, through their counsel, have made a thorough and independent investigation of the facts and law relating to the controversies between the Parties, including, among other things, through the review of documents and data produced by Defendant. In agreeing to this Settlement Agreement, Plaintiffs and their counsel have considered: (a) the facts developed during discovery in the Action and the law applicable thereto; (b) the attendant risks of continued litigation and the uncertainty of the outcome of their claims against Defendant; (c) the desirability of permitting the Settlement to be consummated according to the terms of this Settlement Agreement; and (d) the conclusion of Plaintiffs and their counsel

¹ The parties also executed two prior tolling agreements. The first, covering FLSA claims of the putative collective members having a December 3, 2013 effective date and continuing through Defendant's Answer date of December 20, 2013, was executed by Plaintiffs' counsel on December 18, 2013 and by Defendant's counsel on May 14, 2014. That first tolling agreement remains in effect and is not superseded by this Agreement. The second, having a June 5, 2014 effective date executed by the parties' respective counsel on June 5, 2014, was superseded by the tolling agreement executed October 17, 2014 that is referenced and addressed in Paragraph 11.

that the terms and conditions of this Settlement are fair, reasonable, adequate, and that it is in their best interests to settle their claims against Defendant pursuant to the terms in this Settlement Agreement.

14. Defendant denies the material allegations in the Action's Complaint and First Amended Complaint, including all allegations of wrongdoing, fault, liability, or damage to Plaintiffs, denies that it engaged in any wrongdoing, denies that it committed any violation of law, denies that it acted improperly in any way, believes that it acted properly at all times, and believes the Action has no merit, but is entering into this Settlement Agreement solely because the proposed Settlement Agreement will eliminate the burden, risk and expense of further litigation. Neither this Settlement Agreement, nor any document referred to herein, nor any action taken to carry out this Settlement Agreement, may be in any way used as an admission, concession or indication by or against Defendant of any fault, wrongdoing or liability whatsoever, including any concession that certification of a class or collective action other than for the purposes of this settlement would be appropriate in this or any other case.

15. The parties recognize that notices to Groups 1 and 2 of the material terms of this Settlement Agreement, as well as Court approval of this Settlement Agreement, are required to effectuate the Settlement Agreement, and that this Settlement Agreement will not become operative unless or until the Court grants final approval of it, and the Settlement Agreement becomes effective. The parties understand and agree that upon execution by all parties this Settlement Agreement supersedes the parties' May 2015 Settlement Agreement in its entirety and the May 2015 Settlement Agreement is deemed null and void.

16. The parties stipulate and agree that, for settlement purposes only, the requisites for establishing collective action certification under the FLSA pursuant to 29 U.S.C. § 216(b) with respect to the FLSA Collective Action members, and class certification pursuant to FED. R. CIV. P. 23 with respect to the State Settlement Class members, have been and are met. Should this Settlement Agreement not become final, such stipulation to collective action and/or class certification as part of the Settlement Agreement shall become null and void and shall have no bearing on, and shall not be admissible in connection with, the issue of whether or not certification would be appropriate in a non-settlement context. Defendant expressly reserves its right to seek decertification of the collective action claims and/or oppose class certification of any state law claims should this settlement not become final.

17. In consideration of the foregoing and other good and valuable consideration detailed below, the receipt and sufficiency of which is hereby acknowledged by each party to the other, and intending to be legally bound, the Parties have agreed to settle the Action as detailed below. As a result, the Named Plaintiffs, Opt-in Plaintiffs, and State Settlement Class members' Released FLSA Claims and/or Released State Law Claims (defined below) shall be finally and fully compromised, settled and dismissed as to the Releasees (as defined below), in the manner and upon the terms and conditions set forth below.

TERMS AND CONDITIONS

18. **Defined Terms.** Capitalized terms used in this Settlement Agreement shall have the meanings ascribed to them herein. In addition, the following capitalized terms shall have the meanings specified below:

a. "CAFA Notice" means the notices to be sent by Defendant to appropriate federal and state officials pursuant to the requirements of the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1715(b), within ten (10) days after the submission of this Settlement Agreement to the Court. A copy of the CAFA Notices shall be provided to Class Counsel.

b. "Claim Form" means the form as approved by the Court, provided to all Group 2 members to submit in order to obtain a Settlement Award under this Settlement Agreement, a copy of which is attached hereto as Exhibit C.

c. "Claim Deadline" means the date sixty (60) days after the Claim Form is initially mailed by the Settlement Administrator to all Group 2 members in which they may submit an executed Claim Form to receive a Settlement Award under this Settlement Agreement. Claim Forms submitted by mail must be postmarked on or before the Claim Deadline in order to be timely. Claims forms submitted electronically or by facsimile or email must be received by the Settlement Administrator on or before the Claim Deadline in order to be timely. Untimely Claim Forms will be accepted only with the mutual written agreement of Class Counsel and Defendant's Counsel.

d. "Class Counsel" means Berger & Montague, P.C. and Head Law Firm, LLC. Both Berger & Montague, P.C. and Head Law Firm, LLC, state and affirm that Fried & Bonder, LLC, which previously entered an appearance in this matter is no longer class counsel and has no claim or entitlement to any claims for attorneys' fees and/or costs relating to this matter.

e. “Collective Group” means all current and former employees in the United States who were paid by The Brickman Group (which is now part of BrightView Landscapes, LLC) for work performed and who, at any time between October 8, 2010 and June 8, 2014, were paid a salary, but only received ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate), including but not limited to salaried landscape/crew/irrigation Supervisors and those in similarly titled positions.

f. “Defendant” means BrightView Landscapes, LLC, as well as The Brickman Group LTD, LLC, and all of its subsidiaries, prior to the acquisition of ValleyCrest Holding Co. (“ValleyCrest”) and its subsidiaries, now part of the legal entity known as BrightView Landscapes, LLC. As set forth in paragraph 18(1), employees of ValleyCrest and its subsidiaries are not included in the settlement. It is expressly agreed that the substitution of BrightView Landscapes, LLC, for The Brickman Group LTD, LLC as the “Defendant” or a “Releasee” in this agreement shall not in any way expand the scope of the employees or their claims covered by this Agreement beyond the claims as specified in the release below of the employees who were employed by The Brickman Group LTD, LLC, as limited by paragraph 18(1) to exclude employees of ValleyCrest and its subsidiaries, arising out of their employment with ValleyCrest between October 8, 2010 and June 8, 2014.

g. “Defendant’s Counsel” means Littler Mendelson, P.C.

h. “Effective Date” means the later of (i) the first business day following the expiration of the time for any reargument or appeal of the Court’s Order, whichever is later, entering final approval of the Settlement Agreement if no such reargument or appeal is filed (*i.e.*, thirty days from final approval), or (ii) the first business day after the Court’s Order entering final approval of the Settlement is finally affirmed on appeal and/or is no longer subject to appeal or certiorari, and the time for any petition for reargument, appeal, or review, by certiorari or otherwise, has expired. Should Defendant elect to exercise the void provision in paragraph 44 as to Group 2 members, there will be no “Effective Date” as to Group 2 members.

i. “Fee Award” means the award of attorneys’ fees that the Court

authorizes to be paid to Class Counsel for the services they rendered to Plaintiffs and the Class in the Action.

j. “Group 1” means the Named Plaintiffs; the 411 additional individuals who filed Opt-In Consent Forms to participate in the FLSA claims in the Action prior to the date of this Settlement Agreement; and the approximately 59 members of the Collective Group who worked in Pennsylvania during the four-year period prior to the filing of Plaintiff’s Complaint. All members of Group 1 are Eligible Group 1 Members except Group 1 Members who timely submit a request for exclusion and opt-out of the Settlement.

k. “Group 1 Gross Settlement Fund” means the non-reversionary gross amount of Three Million and Two Hundred and Fifty Thousand Dollars (\$3,250,000.00).

l. “Group 2” means all individuals who are not included in Group 1 who were paid by The Brickman Group (which is now known as BrightView Landscapes, LLC) for work performed and who, at any time between October 8, 2010 and June 8, 2014, were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate), including but not limited to salaried landscape/crew/irrigation Supervisors and those in similarly titled positions. Individuals employed by ValleyCrest at the time ValleyCrest was acquired by The Brickman Group, LTD, LLC, and who did not work directly for The Brickman Group, LTD, LLC prior to its acquisition of ValleyCrest in the positions and during the time period covered by the class definitions, are excluded from Group 2. “Eligible Group 2 members” are those who submit a completed and timely Claim Form postmarked or electronically dated on or before the expiration of the Claim Deadline, by mail, by facsimile, by pdf via email, or via the Settlement Administrator website’s electronic signature service (for example, via DocuSign) and who do not submit a timely request for exclusion and out out of the State Settlement Class. Defendant has identified approximately 867 Group 2 members, and Plaintiffs have relied on this number in this Settlement Agreement.

m. “Group 2 Calculated Gross Settlement Fund” means the gross calculated Settlement Awards to Eligible Group 2 Members to be determined by the Settlement Administrator based on the percentage of Group 2 members who timely submit a Claim Form and in accord with the formula detailed in paragraph

35.

n. “Group 2 Maximum Possible Gross Settlement Fund” means the gross amount of Three Million and Seven Hundred Thousand Dollars (\$3,700,000.00).

o. “Named Plaintiffs” means Jonathan Amador, Mitchell Bratton, Jeremy Busse, Stephen Pullum, Eric Migdol, and Jose Gonzalez.

p. “Net Settlement Fund for Group 1” means the Group 1 Gross Settlement Fund of \$3,250,000 less Class Counsel’s attorneys’ fees, and, in the following order, then less: (i) Class Counsel’s attorneys’ costs, (ii) Settlement Administrator fees and costs, and (iii) Service Awards. The deductions identified in (i) – (iii) will be made on a *pro rata* basis with the Net Settlement Fund for Group 2. Eligible Group 1 Members’ employee payroll taxes and Social Security, as well as Defendant’s payroll taxes for the wages portion of Eligible Group 1 members’ payments (including but not limited to FICA and Social Security), will be deducted from their Settlement Awards. It is the Parties’ intent that both Defendant’s and each Eligible Group 1 Member’s share of payroll taxes (including but not limited to FICA and Social Security) for the wages portion of each Eligible Group 1 member’s Settlement Award, shall be paid from the Net Settlement Fund for Group 1. However, the Parties agree that the withholding of payroll taxes above shall not result in the double withholding of, or double deduction from the Net Settlement Fund for Group 1 for, either Defendant’s or Eligible Group 1 Members’ payroll taxes.

q. “Net Settlement Fund for Group 2” means the Group 2 Calculated Gross Settlement Fund determined by formula for Eligible Group 2 Members, less Class Counsel’s attorneys’ fees, and, in the following order, then less: (i) Class Counsel’s attorneys’ costs, (ii) Settlement Administrator fees and costs; and (iii) Service Awards. The deductions identified in (i) – (iii) will be made on a *pro rata* basis with the Net Settlement Fund for Group 1. Eligible Group 2 Members’ employee payroll taxes and Social Security, as well as Defendant’s payroll taxes for the wages portion of Eligible Group 2 members’ payments (including but not limited to FICA and Social Security), will be deducted from their Settlement Awards. It is the Parties’ intent that both Defendant’s and each Eligible Group 2 Member’s share of payroll taxes (including but not limited to FICA and Social Security) for the wages portion of each Eligible Group 2 member’s Settlement Award, shall be paid from the Net Settlement Fund for Group 2. However, the Parties agree that the withholding of payroll taxes above

shall not result in the double withholding of, or double deduction from the Net Settlement Fund for Group 1 for, either Defendant's or Eligible Group 2 Members' payroll taxes.

r. "Objection and Exclusion Deadline" means the date thirty (30) days after the Settlement Notices and Claim Forms are initially mailed by the Settlement Administrator, in which Group 1 and Group 2 members may submit objections to the Settlement and in which they may opt out of the State Settlement Class by submitting a request for exclusion. Any objection submitted to the Court after the Objection and Exclusion Deadline is deemed time-barred.

s. "Opt-in Plaintiffs" means (i) all Group 1 members and (ii) if the Settlement Agreement as to Group 2 is not nullified by Defendant pursuant to Paragraph 44, all Group 2 members who submit a completed Claim Form.

t. "Parties" means the Plaintiffs and Defendant.

u. "Plaintiffs" means the Named Plaintiffs.

v. "Released FLSA Claims" means any and all Opt-in Plaintiffs' claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, against Releasees that were or could have been asserted in the Complaint or Amended Complaint based on the facts alleged for alleged unpaid wages, overtime compensation, liquidated or other damages, unpaid costs, penalties (including late payment penalties), interest, attorneys' fees, litigation costs, restitution or other compensation and relief arising under the FLSA for the time period between October 8, 2010 and June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek.

w. "Released State Law Claims" means any and all State Settlement Class members' claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, and specifically including but not limited to unjust enrichment claims, against Releasees that were or could have been asserted in the Complaint or Amended Complaint based on the facts alleged for alleged unpaid wages, overtime compensation, liquidated or other damages, unpaid costs, penalties (including late payment penalties), interest, attorneys' fees, litigation costs, restitution or other compensation and relief arising under state statutes, regulations, or common law beginning from the longest applicable statute

of limitations (inclusive of any earlier tolling periods agreed upon in the Action) for all states in which a State Settlement Class Member worked (dating back from October 8, 2013 for Eligible Group 1 Members and dating back from June 8, 2014 for Eligible Group 2 Members) through June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek.

x. “Releasees” means Defendant and its past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, investors, legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos, predecessors, successors, transferees, assigns, and insurers.

y. “Settlement Administrator” means Dahl Administration.

z. “Settlement Award” means the payment that each Eligible Group 1 Member and each Eligible Group 2 Member, subject to Paragraph 44, shall be entitled to receive pursuant to the terms of the Settlement Agreement.

aa. “Settlement Notice” means the notices to Group 1 and Group 2 members, substantially in the form of Exhibits A and B or as approved by the Court.

bb. “State Settlement Class” means all individuals in Groups 1 and 2 (who worked in the states of Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Jersey, New York, North Carolina, Ohio, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Virginia, Washington, Wisconsin) unless removed from the State Settlement Class by (i) timely opting-out of the Settlement, (ii) being identified by the Claims Administrator as having his/her Notice of Settlement returned as undeliverable (and not subsequently delivered prior to the Claim Deadline following the Settlement Administrator’s reasonable efforts as outlined in Paragraph 20(b)(4)), or (iii) for Group 2 members only, Defendant’s decision to nullify this Settlement Agreement as to Group 2 members as set forth in Paragraph 44.

RELEASES

19. **Release.** It is hereby agreed that in consideration of the benefits to be received by them under this Settlement, that upon entry of a final order approving this Settlement Agreement:

a. Each Named Plaintiff and Opt-in Plaintiff who does not timely opt out shall be deemed to have released and discharged the Releasees from the Released FLSA Claims and the Released State Law Claims. Named Plaintiffs and Opt-in Plaintiffs agree not to sue or otherwise assert any of the Released FLSA Claims against Releasees.

b. Each State Settlement Class member shall be deemed to have released and discharged the Releasees from the Released State Law Claims. State Settlement Class members agree not to file a claim for, or otherwise assert any of the Released State Law Claims against Releasees. Defendant shall not use the Released State Law Claims to assert collateral estoppel, *res judicata*, waiver or any other claim preclusion of FLSA claims or other claims not included in the Released State Law Claims with respect to non-participating individuals.

c. Named Plaintiffs further release any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, against Releasees for alleged unpaid wages, overtime compensation, liquidated or other damages, unpaid costs, penalties (including late payment penalties), premium pay, interest, attorneys' fees, litigation costs, restitution or other compensation and relief arising under the FLSA.

d. Even if Named Plaintiffs, Opt-in Plaintiffs, and/or State Settlement Class members should later discover facts in addition to or different from those they now know or believe to be true with respect to the subject matter of the Released FLSA Claims and/or the Released State Law Claims, upon the Effective Date, they shall be deemed to have, by operation of the Court's Final Approval Order, fully, finally and forever settled and released those claims.

20. **Release Language on Settlement Checks.** The Settlement Administrator shall include the following release language on the back of each settlement check:

By signing or cashing this check, I hereby consent and agree to join this lawsuit, and I hereby opt in to become a plaintiff in this lawsuit and consent

to be bound by the collective and class action settlement. I further affirm my release of BrightView Landscapes, LLC, (F/K/A The Brickman Group LTD, LLC) and any “Releasees” of the “Released FLSA Claims” and the “Released State Law Claims” as those terms are defined in the Settlement Agreement approved by the Court on [*insert date of Final Approval Order*] in the lawsuit captioned *Jonathan Amador, individually and on behalf of all others similarly situated v. The Brickman Group, Ltd., LLC.*, No. 3:13-cv-02529 (M.D. Pa.). I also affirm that I will not sue or otherwise assert any of the “Released FLSA Claims” or the “Released State Law Claims” against any Releasee.

**CERTIFICATION, NOTICE OF SETTLEMENT AGREEMENT
AND SETTLEMENT IMPLEMENTATION**

21. The Parties agree to the following procedures for obtaining Preliminary Approval of the Settlement, certifying the State Settlement Class, and notifying Group 1 and Group 2 members of the Settlement:

a. Request for Preliminary Approval Order. Within five (5) business days after the execution of this Agreement, Plaintiffs will provide Defendant with a proposed draft of the Unopposed Amended Motion for Preliminary Approval of the Settlement Agreement, requesting that the Court preliminarily approve the Settlement, certify the FLSA collective action claims and the State Settlement Class for settlement purposes only, and set the date for the Final Approval Hearing. Subject to Defendant’s approval, Plaintiffs shall file within ten (10) business days after the execution of this Agreement, an Unopposed Amended Motion for Preliminary Approval of the Settlement Agreement.

b. Notice and Claim Forms. Pursuant to the terms of the Court’s Preliminary Approval Order, the Settlement Administrator shall be responsible for preparing, printing and mailing the Settlement Notices to all Group 1 and Group 2 members, and the Claim Form to all Group 2 members. Claim Forms will also be available for download by link on a settlement website maintained by the Settlement Administrator, and may be submitted via electronic signature on that website (for example, via DocuSign).

(1) Within fourteen (14) days after the Preliminary Approval Order, Defendant, in cooperation with Class Counsel to confirm accuracy, will provide the Settlement Administrator with (a) a list setting forth the names, last known address, social security numbers of each of the Group 1 and Group 2

members previously identified; and (b) available payroll data already produced reflecting any hours worked, pay rates, and amount of overtime received for covered weeks (*i.e.*, each week in which an individual may be eligible to receive settlement shares pursuant to the formula in Paragraphs 34 or 35) for each of the Group 1 and Group 2 members. The social security numbers shall not be provided to Class Counsel by Defendant or the Settlement Administrator. Class Counsel shall provide any updated addresses for Group 1 and Group 2 Members they may have received during the course of the Action to the Settlement Administrator.

(2) In order to provide the best notice practicable, the Settlement Administrator will do the following before mailing the Settlement Notice and Claim Form: (i) run the list of Group 1 and Group 2 members through the U.S. Postal Service's National Change of Address database ("NCOA"); and (ii) perform address searches using public and proprietary electronic resources which collect their data from various sources such as utility records, property tax records, motor vehicle registration records (where allowed) and credit bureaus.

(3) Within five business days of receipt of the lists in (1) above, the Settlement Administrator shall send copies of the Settlement Notices to all Group 1 and Group 2 members via U.S. first class mail. The Settlement Administrator shall include a Claim Form for all Group 2 members, with an enclosed self-addressed postage prepaid return envelope.

(4) Any Settlement Notice returned to the Settlement Administrator with a forwarding address shall be re-mailed by the Settlement Administrator within three (3) business days following receipt of the returned mail. The Settlement Administrator shall undertake reasonable efforts such as skip traces to search for the correct address, and shall promptly re-mail the Settlement Notices to any newly found addresses.

(5) Group 2 members shall not have the possible right to obtain any payment through this Settlement Agreement unless they submit a completed Claim Form on or before the Claim Deadline.

c. Reminder Notice. Twenty-one (21) days after the Settlement Administrator initially mails the Settlement Notices, the Settlement Administrator will mail a reminder Settlement Notice to Group 2 Members who have not returned a Claim Form and have not requested exclusion from the Settlement. The reminder Settlement Notice will be in the same form as the original Settlement Notice.

22. **Objections.** The Settlement Notice shall provide that Group 1 and Group 2 Members who wish to object to the Settlement must mail a written statement objecting to the Settlement to the Settlement Administrator on or before the Objection and Exclusion Deadline, including their name, address, telephone number, and email address (if applicable). The postmark date of the mailing shall be the exclusive means for determining that an objection is timely. The Settlement Administrator shall provide copies of any objections to the Parties' Counsel on a weekly basis. Persons who fail to serve timely written objections in the manner specified above shall be deemed to have waived any objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

23. **Requests for Exclusion.** The Settlement Notice shall provide that State Settlement Class members who wish to exclude themselves from the Settlement ("opt out") must mail to the Settlement Administrator a written statement indicating that they do not wish to participate or be bound by the Settlement. The written request for exclusion must contain the State Settlement Class member's full name, address, and telephone number, and must be signed individually by the State Settlement Class member. No request for exclusion may be made on behalf of a group. Such written statement must be postmarked by the Objection and Exclusion Deadline. The Settlement Administrator shall provide copies of any requests for exclusion to the Parties' Counsel on a weekly basis.

24. **First Interim Report by the Settlement Administrator.** No later than five (5) business days after the Objection and Exclusion Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration setting forth: (a) due diligence and proof of mailing of the Settlement Notices and Claim Forms; (b) the total number and names of individuals who filed timely requests for exclusion; and (c) the total number and names of individuals who filed objections to the Settlement, along with the complete copies of all requests for exclusion or objections, including their postmark dates.

25. **Second Interim Report by the Settlement Administrator.** No later than five (5) business days after the Claim Deadline, the Settlement Administrator shall provide counsel for the Parties with a declaration setting forth: (a) the total number and names of Eligible Group 2 Members, the individual calculation of the gross Settlement Award for each Eligible Group 2 Member, and the total of the Group 2 Calculated Gross Settlement Fund; (b) the total number and names of Eligible Group 1 Members, the individual calculation of the Settlement Award for

each Eligible Group 1 Member, and the total of all Settlement Awards for Eligible Group 1 Members; and (c) the combined total of the Group 1 Gross Settlement Fund and Group 2 Calculated Gross Settlement Fund.

26. **Motion for Final Approval.** Ten (10) business days prior to the Final Approval Hearing, Class Counsel shall file a Motion for Final Approval and a proposed Final Approval Order. The motion will include the First and Second Interim Reports received from the Settlement Administrator as exhibits.

27. **Final Approval Hearing.** Plaintiffs shall request that the Court schedule the Final Approval Hearing no earlier than 100 days after the date the Court grants preliminary approval to the settlement to determine final approval of the settlement along with the amounts properly payable for attorneys' fees and costs, and to enter a Final Approval Order as to part or all of the settlement (unless limited by Defendant's exercise of the void provision applicable to Group 2 members in Paragraph 44):

a. certifying the Action as a collective action under Section 216(b) of the FLSA and a class action under FED. R. CIV. P. 23;

b. finally approving the Settlement Agreement and its terms as being a fair, reasonable and adequate settlement of this Action;

c. directing that the settlement funds, including attorneys' fees and costs, be distributed in accordance with the terms of the Settlement Agreement;

d. directing that the Action be dismissed with prejudice and in full and final discharge of any and all Released FLSA Claims and Released State Law Claims as to any claims released by operation of this Agreement; and

e. retaining continuing original jurisdiction over this Action for purposes of overseeing all settlement administration matters,.

SETTLEMENT FUNDS AND AWARD CALCULATIONS

28. **Gross Settlement Amounts.**

a. **Group 1 Qualified Settlement Fund.** Within twenty-one (21) days of the Court's entry of a Preliminary Approval Order, Defendant shall cause the non-reversionary Group 1 Gross Settlement Fund of Three Million and Two Hundred and Fifty Thousand Dollars (\$3,250,000.00) to be paid to the Settlement

Administrator. Upon receipt by the Settlement Administrator, these funds shall be transferred immediately to a fund that is intended to satisfy the requirements of Treasury Regulation Section 1.468B-1 as a “Qualified Settlement Fund.” The Settlement Administrator shall provide Defendant with a Section 1.468B-1 Relation Back Election that meets the requirements of Regulation Section 1.468B-1(j)(2) within five (5) business days after receipt of the funds pursuant to the Settlement Agreement. Defendant shall execute and return such to the Settlement Administrator which shall be affixed to the initial tax return of the Qualified Settlement Fund in order to establish the start date of this Group 1 Qualified Settlement Fund.

b. Group 2 Qualified Settlement Fund. Within five (5) business days after the Effective Date, Defendant shall cause the Group 2 Calculated Gross Settlement Fund to be paid to the Settlement Administrator. Upon receipt by the Settlement Administrator, these funds shall be transferred immediately to a fund that is intended to satisfy the requirements of Treasury Regulation Section 1.468B-1 as a “Qualified Settlement Fund.” The Settlement Administrator shall provide Defendant with a Section 1.468B-1 Relation Back Election that meets the requirements of Regulation Section 1.468B-1(j)(2) within five (5) business days after receipt of the Group 2 Calculated Gross Settlement Fund pursuant to the Settlement Agreement. Defendant shall execute and return such to the Settlement Administrator which shall be affixed to the initial tax return of the Qualified Settlement Fund in order to establish the start date of this Group 2 Qualified Settlement Fund.

29. Disbursement by Settlement Administrator. All disbursements shall be made from the Group 1 and Group 2 Qualified Settlement Funds. The Settlement Administrator shall be the only entity authorized to make withdrawals or payments from the Qualified Settlement Funds. The interest on the funds deposited by Defendant will inure *pro rata* to the Party or persons to whom the underlying funds are ultimately paid out.

30. Payments. The following amounts shall be paid by the Settlement Administrator, subject to the Court’s Final Approval Order and, as to funds from the Group 2 Qualified Settlement Fund only, to Defendant’s right to nullify the Settlement Agreement as to Group 2 members as set forth in Paragraph 44:

a. Service Awards to Named Plaintiffs. Subject to the Court’s approval, Named Plaintiff Amador shall receive Five Thousand Dollars (\$5,000.00) and Named Plaintiffs Bratton, Busse, Pullum, Migdol, and Gonzalez

shall each receive One Thousand Dollars (\$1,000.00) for their efforts in bringing and prosecuting this matter, and in consideration of the releases set forth above. These payments shall be paid *pro rata* from the Group 1 and Group 2 Qualified Settlement Funds within ten (10) business days after the Effective Date, and Form 1099s shall issue for these payments. In the event Defendant exercises its right to nullify the Settlement Agreement as to Group 2 members as set forth in Paragraph 44, these payments shall be paid solely from the Group 1 Qualified Settlement Fund.

b. Attorneys' Fees and Costs.

(1) Subject to the Court's approval, Class Counsel shall receive payments of attorneys' fees as follows: (a) The amount of One Million Eighty-Three Thousand Three Hundred and Thirty Three Dollars (\$1,083,333.00) (which is one-third of the Group 1 Gross Settlement Fund) from the Group 1 Qualified Settlement Fund; and (b) the amount equal to one-third of the Group 2 Calculated Gross Settlement Fund from the Group 2 Qualified Settlement Fund. These payments will compensate Class Counsel for all work performed in the Action as of the date of this Settlement Agreement as well as all of the work remaining to be performed, including but not limited to documenting the Settlement, securing Court approval of the Settlement, making sure that the Settlement is fairly administered and implemented, and obtaining final dismissal of the Action. Under no circumstances will the payments for attorneys' fees exceed one-third of the Group 1 Gross Settlement Fund plus one-third of the Group 2 Calculated Gross Settlement Fund if this Agreement becomes final without Defendant exercising the void provision in Paragraph 44. In the event Defendant exercises its right to nullify the Settlement Agreement as to Group 2 members as set forth in Paragraph 44, only the payment in (1)(a) of this paragraph will be made to Plaintiffs' Counsel.

(2) In addition, Class Counsel shall receive reimbursement of their out-of-pocket costs approved by the Court in an amount not to exceed Sixty-Five Thousand dollars (\$65,000.00), which shall be paid *pro rata* from the Group 1 and Group 2 Qualified Settlement Funds. In the event Defendant exercises its right to nullify the Settlement Agreement as to Group 2 members as set forth in Paragraph 44, these cost payments shall be paid solely from the Group 1 Qualified Settlement Fund.

(3) The payments of attorneys' fees and costs shall be made within seven (7) business days after the Effective Date.

(i) The attorneys' fees and costs paid by Defendant pursuant to this Agreement shall constitute full satisfaction of Releasees' obligations to pay amounts to any person, attorney or law firm for attorneys' fees or costs in the Action on behalf of the Opt-in Plaintiffs and State Settlement Class members, and shall relieve Releasees from any other claims or liability to any other attorney or law firm for any attorneys' fees or costs to which any of them may claim to be entitled on behalf of the Opt-in Plaintiffs and State Settlement Class members, for the Released FLSA Claims and Released State Law Claims.

(ii) A Form 1099 shall be provided to each Class Counsel for the payments made to each Class Counsel by the Settlement Administrator. Each firm constituting Class Counsel shall be solely and legally responsible to pay any and all applicable taxes on the payment made to that firm.

c. Settlement Administration Costs. Settlement Administration costs shall not exceed \$17,470, and shall be paid *pro rata* from the Group 1 and Group 2 Qualified Settlement Funds. If Settlement Administration costs exceed this maximum Class Counsel shall be responsible for the amount in excess of this maximum. A copy of the Settlement Administrator's invoice shall be provided to the Court with Plaintiffs' Motion for Final Approval of Class Action Settlement. The Parties agree to cooperate in the settlement administration process and to make all reasonable efforts to control and minimize the costs and expenses incurred in the administration of the Settlement. Should any Party's errors or failure to provide required information to the Settlement Administrator result in additional administration costs, the Parties reserve the right to seek relief from the Court for the cost of such errors or omissions. In the event Defendant exercises its right to nullify the Settlement Agreement as to Group 2 members as set forth in Paragraph 44, these payments for settlement administration costs shall be paid solely from the Group 1 Qualified Settlement Fund.

CALCULATION AND DISTRIBUTION OF SETTLEMENT AWARDS

31. Settlement Award Eligibility.

a. Eligible Group 1 Members: Each Group 1 member shall be paid a Group 1 payment through this Settlement Agreement unless s/he timely submits a request for exclusion and opts out of the Settlement. Group 1 members do not need to submit a Claim Form in order to be eligible to receive a Settlement Award.

b. Eligible Group 2 Members: Subject to Defendant's right to nullify the Settlement Agreement as to Group 2 members, each Group 2 member shall only have the right to obtain a Group 2 payment through this Settlement Agreement if he/she timely submits a completed Claim Form and does not submit a timely request for exclusion from the State Settlement Class and/or opts out of the collective action.

32. All Eligible Group 1 Members shall be paid a Settlement Award from the Group 1 Qualified Settlement Fund in accordance with the formula set forth in Paragraph 35. The Settlement Administrator shall be responsible for determining eligibility for, and the amount of, the Settlement Awards to be paid to Eligible Group 1 Members.

33. All Eligible Group 2 Members shall be paid a Settlement Award from the Group 2 Qualified Settlement Fund in accordance with the formula set forth in Paragraph 36. The Settlement Administrator shall be responsible for determining eligibility for, and the amount of, the Settlement Awards to be paid to Eligible Group 2 Members. This Paragraph is subject to Defendant's right to nullify the Settlement Agreement as to Group 2 members as set forth in Paragraph 44.

34. Once an individual qualifies as an Eligible Group 1 Member or an Eligible Group 2 Member, he/she shall be entitled to recover only a single Settlement Award. No individual shall receive a double recovery or be permitted to be a member of both Groups 1 and 2 for settlement purposes.

35. The Settlement Administrator will calculate an award for each Eligible Group 1 Member based on the following formula:

a. The amount of \$150 per Eligible Group 1 Member will be deducted from the Net Settlement Fund for Group 1 prior to the determination of *pro rata* individual settlement shares and allocated to each Eligible Group 1 Member so that each Eligible Group 1 Member receives at least \$150 in exchange for their release in this Settlement Agreement;

b. Each Eligible Group 1 Member will receive settlement shares which equal the total overtime pay he/she received between the longer of (a) his/her individual maximum state law statute of limitations; or (b) three years plus any applicable period during which his/her FLSA claims were tolled prior to the date that he/she filed his/her Opt-In Consent Form, and June 8, 2014 in weeks when he/she was paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours

worked over 40 in a workweek.

c. The total number of settlement shares for all Eligible Group 1 Members will be added together and the resulting sum will be divided into the Net Settlement Fund for Group 1 (less the allocation in subparagraph a, above) to reach a per share dollar figure. That figure will then be multiplied by each Eligible Group 1 Member's number of settlement shares, and added to the \$150 set aside in subparagraph a to determine the Eligible Group 1 Member's Settlement Award.

36. The Settlement Administrator will calculate an award for each Eligible Group 2 Member:

a. The Settlement Administrator shall first determine the percentage of Group 2 members who become Eligible Group 2 Members and multiply the Group 2 Gross Settlement Fund by that percentage to create the Group 2 Calculated Gross Settlement Fund. By way of example, if thirty percent (30%) of Group 2 Members become Eligible Group 2 Members, the Group 2 Calculated Gross Settlement Fund will be \$1,110,000.00.

b. The amount of \$150 per Eligible Group 2 Member will be allocated from the Group 2 Net Settlement Fund prior to the determination of *pro rata* individual settlement shares so that each Eligible Group 2 Member receives at least \$150 in exchange for their release in this Settlement Agreement.

c. Each Eligible Group 2 Member will be allocated settlement shares which equal the total overtime pay he/she received at any time between the longer of (a) his/her maximum applicable state law statute of limitations for applicable wage laws (exclusive of unjust enrichment), subject to any tolling agreement between the Parties if applicable; or (b) three years preceding June 8, 2014, and June 8, 2014, plus any applicable period during which his/her FLSA claims were tolled, in which he/she was paid a salary, but worked under a pay plan in which he/she was eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek.

d. The total number of settlement shares allocated to all Eligible Group 2 Members will be added together and the resulting sum will be divided into the Group 2 Net Settlement Fund (less the minimum payment allocations in subparagraph a, above) to reach a per share dollar figure. That figure will then be multiplied by each Eligible Group 2 Member's number of settlement shares, and added to the \$150 allocated in subparagraph a to determine each Eligible Group 2

Member's Settlement Award.

37. All Settlement Award determinations shall be based on Defendant's previously produced payroll and timekeeping data for Eligible Group 1 Members and Eligible Group 2 Members, which Defendant shall make available to the Settlement Administrator and Class Counsel pursuant to paragraph 20(b)(1), above. To the extent payroll data is not available for any Eligible Group 1 or Eligible Group 2 Member for part or all of any individual maximum state law statute of limitations period, the estimated overtime earned during any such period may be determined by extrapolation from available payroll data to determine settlement shares for such period.

38. The Parties agree that fifty percent (50%) of each Settlement Award shall be treated as back wages paid by Defendant. Accordingly, on each Settlement Award, the Settlement Administrator shall effectuate federal and applicable state income and employment tax withholding as required by law with respect to fifty percent (50%) of each Settlement Award distributed. Amounts withheld will be remitted by the Settlement Administrator from the Group 1 and Group 2 Qualified Settlement Funds to the appropriate governmental authorities. The Settlement Administrator shall calculate and remit all applicable employers' payroll tax obligations on the back wage portion of each Settlement Award. The remaining fifty percent (50%) of each Settlement Award shall be treated as non-wage liquidated damages, to be reported on an IRS Form 1099, and shall not be subject to FICA and FUTA withholding taxes. Defendant shall cooperate with the Settlement Administrator to provide payroll tax information as necessary to accomplish the income and employment tax withholding on the wage portion of each Settlement Award, and the Form 1099 reporting for the non-wage portion of each Settlement Award.

39. The Settlement Administrator shall provide counsel for all Parties with a final report of all Settlement Awards, at least ten (10) business days before the Settlement Awards are mailed.

40. The Settlement Administrator shall pay Settlement Awards to Eligible Group 1 Members and Eligible Group 2 Members within fifteen (15) business days after the Effective Date. The Settlement Administrator shall then provide a written certification of such payments to counsel for the Parties.

41. All Settlement Award checks shall remain valid and negotiable for one hundred eighty (180) days from the date of their issuance and may thereafter

automatically be canceled if not cashed within that time. All funds from checks not cashed by Eligible Group 1 members will thereafter, if administratively feasible to do so, be redistributed to Eligible Group 1 members who cashed their Settlement Award checks. All funds from checks not cashed by Eligible Group 2 members will thereafter, if administratively feasible to do so, be redistributed to Eligible Group 2 members who cashed their Settlement Award checks. If it is not administratively feasible to redistribute the uncashed checks as set forth above, then any uncashed checks will revert to the Qualified Settlement Funds and the Settlement Administrator will return the total of all uncashed checks from each Qualified Settlement Fund to Plaintiffs' Counsel within two hundred and ten (210) days from the date of their issuance. No amount of uncashed check funds will revert to Defendant, and uncashed check funds will be returned to Plaintiffs' Counsel and held in Plaintiffs' Counsel's trust account for the applicable state statutory period for contract claims for payment to any Eligible Group 1 Member or an Eligible Group 2 Member who later demands payment, within the applicable state statutory limitations period. Plaintiffs' Counsel will comply with all required reporting and submittal obligations for any unclaimed funds in accord with any applicable state laws regarding unclaimed property and will provide a status report to the Court on the one-year anniversary of the Effective Date concerning any unclaimed funds.

42. **No Claim Based Upon Distributions or Payments in Accordance with this Settlement Agreement.** No person shall have any claim against Defendant or any of the Releasees, the Opt-In Plaintiffs, the State Settlement Class Members, Class Counsel, Defendant's Counsel or the Settlement Administrator based on distributions or payments made in accordance with this Settlement Agreement.

MISCELLANEOUS

43. **Defendant's Legal Fees.** All of Defendant's own legal fees, costs, and expenses in this Action shall be borne by Defendant. Defendant agrees to pay the mediation costs charged by the mediator for the February 2015 mediation.

44. **Nullification and Voiding of the Settlement Agreement as to Group 2 Members.** In the event the Group 2 Calculated Gross Settlement Fund ("the Gross Fund Total") exceeds one million one hundred and fifty thousand dollars (\$1,150,000.00), Defendant shall have the unilateral right to void this Settlement Agreement as to Group 2 members if it provides written notice of its intent to void as to Group 2 members to Class Counsel by the later of ten (10)

business days after the Claim Deadline, or five (5) business days after being provided all information in the Second Interim Report by the Settlement Administrator. If the right to void is exercised in accord with the terms of this paragraph, all portions of the Settlement Agreement applicable to Group 2 members shall be null and void as to Group 2 members and any order or judgment entered by the Court in furtherance of this Settlement Agreement shall apply only to Group 1 members. If the settlement as to Group 2 does not become final, the parties agree that the statute of limitations on Group 2 members' FLSA and state law claims for overtime hours worked shall be deemed tolled for the period beginning 112 days after the May 29, 2015 date the motion for preliminary approval was filed, which is the Parties' agreed upon reasonable last possible opt-in filing date by a Group 2 notice recipient under the Parties' timeline of events that flowed from an approval order if issued 30 days after the parties originally filed for preliminary approval, through the date of the action that resulted in the settlement as to Group 2 not becoming final. In such case, Plaintiffs' Counsel shall provide notice to Group 2 members who timely submitted a completed Claim Form and did not submit a timely request for exclusion from the State Settlement Class and/or opt out of the Collective Action within ten (10) business days of Defendant's notice of intent to nullify and void the Group 2 settlement, all claim forms submitted by Group 2 members shall be null and void, and Group 2 members provided the notice will have an additional thirty (30) days from the date of mailing the notice to submit a consent to join form in the Action. The parties further agree that the statute of limitations on Group 2 members' FLSA and state law claims for overtime hours worked shall additionally be deemed tolled for a period of 40 days from the date of Defendant's notice of intent to void. In the event Defendant exercises its right to void within the meaning of this Paragraph, the Parties shall further seek final approval of this Settlement Agreement only as to Group 1 members, and all Group 2 Members who timely submitted a completed Claim Form and did not submit a timely request for exclusion from the State Settlement Class and/or opt out of the Collective Action will be provided a notice to be agreed upon by the parties and approved by the Court and return to their respective status as of the date immediately prior to the execution of the first Settlement Agreement in this Action. This paragraph and the related tolling provisions in paragraphs 9, 10, and 11 survive this void provision.

45. In the event that (a) the Court does not preliminarily approve the Settlement Agreement as provided herein; (b) the Court does not finally approve the Settlement Agreement as provided herein; (c) the Court alters any material term of the Settlement Agreement, including but not limited to increasing the amounts required to be paid by Defendant or failing to approve the claim structure

for Eligible Group 2 Members; or (d) the Settlement Agreement does not become final for any other reason, the Parties agree to engage in follow-up negotiations with the intent of resolving the Court's concerns that precluded initial approval, and if feasible, to resubmit the settlement for approval within thirty (30) days. If the settlement is not approved as resubmitted or if the Parties are not able to reach another agreement, either Party may void this Settlement Agreement within ten (10) business days of notice of either event, and litigation of the Action resumes.

46. **Inadmissibility of Settlement Agreement.** Except for purposes of settling this Action pursuant to the terms of this Settlement Agreement, or enforcing its terms, resolving an alleged breach, or for resolution of other tax or legal issues arising from a payment under this Settlement Agreement, neither this Settlement, nor any of its terms, nor any document, statement, proceeding or conduct related to this Settlement Agreement, nor any reports or accounts thereof, shall in any event be construed as, offered or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to any Party, including, without limitation, evidence of a presumption, concession, indication or admission by any Party of any liability, fault, wrongdoing, omission, concession or damage.

47. **Computation of Time.** For purposes of this Settlement Agreement, if the prescribed time period in which to complete any required or permitted action expires on a Saturday, Sunday, or legal holiday (as defined by FED. R. CIV. P. 6(a)(6)), such time period shall be continued to the following business day.

48. **Exhibits and Headings.** This Settlement Agreement includes both the terms set forth in this Settlement Agreement herein and the attached Exhibits, which are incorporated by reference as though fully set forth herein. All exhibits to this Settlement Agreement are an integral part of the Settlement. The descriptive headings of any paragraphs or sections of this Settlement Agreement are inserted for convenience of reference only and do not constitute a part of this Settlement Agreement.

49. **Interim Stay of Proceedings.** The Parties agree to hold in abeyance all proceedings in the Action, except such proceedings necessary to implement and complete the settlement and execute the Settlement Agreement.

50. **Amendment or Modification.** This Settlement Agreement may be amended or modified only by a written instrument signed by counsel for all Parties or their successors in interest.

51. **Entire Settlement Agreement.** This Settlement Agreement and the attached exhibits constitute the entire agreement among the Parties, and no oral or written representations, warranties or inducements have been made to any Party concerning this Settlement Agreement or its exhibits other than the representations, warranties, and covenants contained and memorialized in such documents. All prior or contemporaneous negotiations, memoranda, agreements, understandings, and representations, whether written or oral, are expressly superseded hereby and are of no further force and effect. Each of the Parties acknowledges that they have not relied on any promise, representation or warranty, express or implied, not contained in this Settlement Agreement.

52. **Authorization to Enter Into Settlement Agreement.** Counsel for all Parties are expressly authorized by the Parties whom they represent to enter into this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel shall cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach resolution on the form or content of any document needed to implement the Settlement Agreement, or on any supplemental provisions or actions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties shall seek the assistance of the Court to resolve such disagreement, subject to applicable Court or Bankruptcy Court approval.

53. **Binding on Successors and Assigns.** This Settlement Agreement shall be binding upon, and inure to the benefit of Opt-in Plaintiffs, Defendant, the State Settlement Class Members and their heirs, beneficiaries, executors, administrators, successors, transferees, successors, assigns, or any corporation or any entity with which any party may merge, consolidate or reorganize.

54. **Governing Law.** This Settlement Agreement shall be governed by and interpreted according to the Federal Rules of Civil Procedure, where applicable, or the laws of the Commonwealth of Pennsylvania, without regard to its principles of conflict of laws.

55. **Counterparts.** This Settlement Agreement may be executed in one or more counterparts, including by facsimile, email, or via DocuSign. All executed counterparts and each of them shall be deemed to be one and the same instrument.

56. **Cooperation and Drafting.** Each of the Parties has cooperated in the

drafting and preparation of this Settlement Agreement; hence the drafting of this Settlement Agreement shall not be construed against any of the Parties. The Parties agree that the terms and conditions of this Agreement were negotiated at arm's length and in good faith by the Parties, and reflect a Settlement that was reached voluntarily based upon adequate information and sufficient discovery and after consultation with experienced legal counsel.

57. **Jurisdiction of the Court.** Any dispute regarding the interpretation or validity of or otherwise arising out of this Settlement Agreement, or relating to the Action or the Released FLSA Claims or the Released State Law Claims, shall be subject to the exclusive jurisdiction of the Court, unless and until the Court declines to exercise jurisdiction over or to otherwise decide the dispute. The Court shall retain jurisdiction with respect to the interpretation, implementation, and enforcement of the terms of this Settlement Agreement and all orders and judgments entered in connection therewith, and the Parties and their Counsel submit to the jurisdiction of the Court for purposes of interpreting, implementing, and enforcing the settlement embodied in this Settlement Agreement and all orders and judgments entered in connection therewith.

58. **CAFA Notice.** Pursuant to the requirements of the Class Action Fairness Act, 28 U.S.C. §1715, Defendant shall notify the appropriate governmental authorities. The Parties agree that CAFA Notice must be provided 90 days prior to the Final Approval Hearing. The Parties agree to schedule dates and deadlines in this Agreement so as to insure that CAFA notice is provided within this deadline.

59. **Named Plaintiffs' Waiver of Right to Object.** By signing this Settlement Agreement, the Named Plaintiffs agree to be bound by the terms herein and further agree not to object to any of the terms of this Settlement Agreement.

60. **Publicity.** Class Counsel and the Named Plaintiffs agree that, prior to Final Approval, they will not: (i) issue any press release relating to the Settlement; (ii) initiate press coverage of the Settlement; (iii) take any affirmative efforts to reach or contact Group 2 members, including, without limitation, use of robocalls, emails, or the like. Prior to Final Approval, Class Counsel shall be permitted to state the following on their websites: (i) a Settlement has been reached, and (ii) Preliminary Approval of the Settlement has been granted; and may include a link to the Settlement Administrator's website without any language encouraging participation. Defendant agrees that it will not actively discourage participation in the Settlement and that it will instruct management not to in any way discourage

participation. The Settlement Administrator will have a website regarding this Settlement, with content including information contained in the Notice; a statement that Preliminary Approval has been granted; and instructions on how to submit Claim Forms via DocuSign or print Claim Forms. The website may also include relevant court pleadings, such as the Complaint, the preliminary approval order, the motions for preliminary and final approval and attorneys' fees, and the Notices and Claim Form.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, the Parties and their Counsel have executed this Settlement Agreement as follows:

PLAINTIFF: Jonathan Amador Acevedo Date: 2/7/2017
Jonathan Amador Acevedo

PLAINTIFF: [Signature] Date: 2/7/2017
Mitchell Bratton

PLAINTIFF: Jeremy Busse Date: 2/8/2017
Jeremy Busse

PLAINTIFF: Stephen Pullum Date: 2/7/2017
Stephen Pullum

PLAINTIFF: Eric Migdol Date: 2/8/2017
Eric Migdol

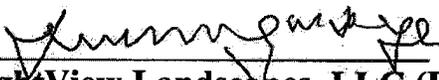
PLAINTIFF: Jose Gonzalez Date: 2/9/2017
Jose Gonzalez

APPROVED AS TO FORM BY CLASS COUNSEL:

[Signature] Date: 2/9/17
Shanon J. Carson
Sarah R. Schalman-Bergen
Alexandra Koropey
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103

[Signature] Date: 2/9/17
C. Andrew Head
HEAD LAW FIRM, LLC
White Provision, Ste. 305
1170 Howell Mill Rd., NW
Atlanta, GA 30318

DEFENDANT:

 Date: 2/8/17
**BrightView Landscapes, LLC (F/K/A The Brickman Group
Ltd., LLC)**
By: EUP

**APPROVED AS TO FORM BY DEFENDANT'S
COUNSEL:**

 Date: 2/3/17
Daniel E. Turner

LITTLER MENDELSON, P.C.
3344 Peachtree Road, N.E., Suite 1500
Atlanta, GA 30326-4803

Exhibit A

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHAN AMADOR ACEVEDO,
MITCHELL BRATTON, JEREMY BUSSE,
STEPHEN PULLUM, ERIC MIGDOL, and
JOSE GONZALEZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

THE BRICKMAN GROUP LTD. LLC,

Defendant.

Civil Action No. 3:13-CV-02529

NOTICE OF YOUR RECOVERY UNDER BRICKMAN OVERTIME SETTLEMENT

1. Why Should You Read This Notice?

You are receiving this Notice because you filed a Consent to join and participate in this overtime lawsuit against The Brickman Group, LTD., LLC (“Defendant” or “Brickman”), which claimed that Brickman paid its landscape/crew/irrigation Supervisors on the ‘fluctuating workweek’ method of payment for hours worked over 40 hours in a workweek, while also paying non-discretionary bonuses and other types of pay to them, which Plaintiff alleged was in violation of the Fair Labor Standards Act (“FLSA”) and state law. The Consent that you signed to join this case authorized the Representative Plaintiffs to negotiate settlement on behalf of you and all others who filed Consents to join this case.

The parties have agreed to a settlement, which includes your claims, and the Court granted preliminary approval of the settlement by Order entered [REDACTED]. The Court will hold a Final Approval Hearing on [REDACTED], 2017 at [REDACTED], before the Honorable Malachy E. Mannion of the United States District Court for the Middle District of Pennsylvania, located at 228 Walnut Street, Harrisburg, Pennsylvania, 17101. **This Notice explains the terms of that settlement and the manner of calculating your potential settlement payment amount if the Court grants final approval to the settlement.**

2. What Are the Terms of the Settlement?

As set forth in the Court-approved Settlement Agreement (the “Agreement”), which is available for your review on the following website [REDACTED], or at the Court at 228 Walnut Street, Harrisburg, Pennsylvania, 17101, Brickman agreed to pay up to \$6,950,000.00 (“Maximum Gross Settlement Fund Amount”) in this case. Under the Agreement, all individuals who had filed a Consent to join this case before the settlement, as well as all current and former

employees who worked for Brickman in Pennsylvania and who, at any time between October 8, 2009 and June 8, 2014, were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate), including but not limited to salaried landscape/crew/irrigation Supervisors and those in similarly titled positions, are referred to as “Group 1.” There are approximately 476 members of Group 1.

Individuals who did not previously submit a Consent to join this case before the settlement, and who did not work in Pennsylvania, but who worked for Brickman and who, at any time between October 8, 2010 and June 8, 2014, were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate) for hours worked over 40 in a workweek, are referred to as “Group 2.” There are approximately 839 members of Group 2. Members of Group 2 will also be eligible to participate in the Settlement if they submit a Claim Form by [REDACTED].

Because you filed a Consent to join this case before settlement, you are a member of “Group 1.” **You do not need to submit a Claim Form to participate in the Settlement, and you will receive a payment based on the formula below if the Court grants final approval to the Settlement, unless you exclude yourself from the Settlement.**

The following is a summary of the primary settlement terms as they affect you:

1. Brickman has agreed to pay \$3,250,000 to Group 1. Deductions from this amount will be made for attorneys’ fees and costs awarded to Class Counsel (see below); settlement administration costs allocated to Group 1 not to exceed \$17,470; and service awards in the amount of \$5,000 to Named Plaintiff Amador and \$1,000 to each of Named Plaintiffs Bratton, Busse, Pullum, Migdol, and Gonzalez for their service to the Class (“Net Settlement Fund for Group 1”), as well as applicable employer and employee payroll taxes as described below. Deductions for Class Counsel’s costs, settlement administration costs and service awards shall be made on a pro rata basis with the amounts made available to Group 2.

2. Members of Group 2 who are eligible to receive a Settlement Award will receive their Settlement Award from a separate fund allocated for Group 2 Members, and will not receive any portion of the Net Settlement Fund for Group 1.

3. Each Eligible Group 1 Member will receive a \$150 minimum payment. The \$150 per person minimum payment will be deducted first from the total Net Settlement Fund for Group 1. Any additional pro rata settlement distribution you may receive will be calculated using the following formula:

a. Each Eligible Group 1 Member will receive settlement shares which equal the total overtime pay he/she received between the longer of (a) his/her individual maximum state law statute of limitations; or (b) three years plus any applicable period during which his/her

FLSA claims were tolled prior to the date that he/she filed his/her Opt-In Consent Form, and June 8, 2014 in weeks when he/she was paid a salary, but worked under a pay plan in which he/she was eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek;

b. The total number of settlement shares for all Eligible Group 1 Members will be added together and the resulting sum will be divided into the Net Settlement Fund for Group 1 (less the allocation of \$150 per person) to reach a per share dollar figure. That figure will then be multiplied by each Eligible Group 1 Member's number of settlement shares, and, if applicable, added to the \$150 set aside to determine the Eligible Group 1 Member's Settlement Award.

4. Each Settlement Award will be separated into two equal amounts: fifty percent (50%) shall be allocated to the claims asserted in the lawsuit for unpaid overtime wages, and fifty percent (50%) shall be allocated to the claims asserted in the lawsuit for liquidated damages. The portion allocated to claims for unpaid overtime and other wage-related damages will be subject to all required employee and employer-paid payroll taxes and deductions. The portion allocated to liquidated damages shall be characterized as non-wage income to the recipient and you will be responsible for any applicable taxes on this portion.

5. In exchange for your Settlement Award, each Group 1 Member has agreed to the following release of claims:

any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, and specifically including but not limited to unjust enrichment claims, against The Brickman Group Ltd. LLC, and its past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, investors, legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos, predecessors, successors, transferees, assigns, and insurers ("Releasees") that were or could have been asserted in the Complaint or Amended Complaint based on the facts alleged for alleged unpaid wages, overtime compensation, liquidated or other damages, unpaid costs, penalties (including late payment penalties), interest, attorneys' fees, litigation costs, restitution or other compensation and relief arising under the Fair Labor Standards Act ("FLSA") for the time period between October 8, 2010 and June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek, and arising under state statutes, regulations, or common law beginning from the longest applicable statute of limitations (inclusive of any earlier tolling periods agreed upon in the Action) for all states in which a State Settlement Class Member worked dating back from October 8, 2013) through June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek.

3. What Are My Rights?

- Because you already filed a Consent to join the Lawsuit at an earlier date (*i.e.*, you are a member of Group 1), assuming Court approval and the Settlement Agreement is not voided, you will **automatically** receive money from the Settlement. **You do not have to do anything to receive your share of the settlement proceeds, and there is no Claim Form enclosed because you are already recognized as having made a claim.**
- If you do not wish to participate or be bound by the Settlement, you must submit a written exclusion from the settlement (“opt-out”), postmarked by [INSERT] (30 days from the date this Notice was mailed). The written request for exclusion from the settlement must contain your full name, address, and telephone number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator at: [INSERT SETTLEMENT ADMIN INFO]. **Any person who requests exclusion (opts out) of the settlement will not be entitled to any potential Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.**
- If you wish to object to the Settlement, you must submit an objection, postmarked by [INSERT] (30 days from the date this Notice was mailed), stating why you object to the settlement. Your objection must state your full name, address, telephone number, and email address (if applicable) and must be signed by you. Any objection should be mailed to the Settlement Administrator at: [INSERT SETTLEMENT ADMIN INFO]. If you submit a written objection, you may also, if you wish, appear at the Final Approval Hearing set for [INSERT] at [INSERT] before the Honorable Malachy E. Mannion of the United States District Court for the Middle District of Pennsylvania, located at 228 Walnut Street, Harrisburg, Pennsylvania, 17101, to discuss your objection with the Court and the parties to the Lawsuit.

4. No Retaliation Permitted

Federal law prohibits Brickman from terminating you, retaliating against you, or in any other manner discriminating against you **because you participate in this lawsuit and settlement.**

5. How Will the Attorneys for the Class Be Paid?

You do not have to pay the attorneys who represent the Class separately. Plaintiffs’ Counsel will be paid from the settlement in the amount of up to (a) One Million Eighty-Three Thousand Three Hundred and Thirty Three Dollars (\$1,083,333.00) (which is one third of the Group 1 Gross Settlement Amount); and (b) the amount equal to up to one-third of the Group 2 Calculated Gross Settlement Fund, plus their out-of-pocket costs, not to exceed Sixty-Five Thousand Dollars (\$65,000.00). Class Counsel will file with the Court a Motion for Attorneys’ Fees and Costs. The actual amount awarded will be determined by the Court. The Court will

hold a hearing on that Motion on the same day as the Final Settlement Fairness Hearing, on [INSERT] at [INSERT].

6. What If I Have Additional Questions?

If you have any questions regarding the terms of this settlement or your individual recovery, contact the Claims Administrator:

Attn: Brickman Overtime Settlement
[INSERT]
Toll-Free Telephone Number: _____
Facsimile Number: _____
Email Address: _____

If you have any legal questions about the settlement relating to the lawsuit itself, contact Plaintiffs' Counsel listed below:

Shanon J. Carson
Sarah R. Schalman-Bergen
Alexandra K. Piazza
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Telephone: (215) 875-3033

C. Andrew Head
HEAD LAW FIRM, LLC
White Provision, Ste. 305
1170 Howell Mill Rd., NW
Atlanta, GA 30318
Telephone: (404) 924-4151 x108

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE U.S. DISTRICT COURT, THE HONORABLE MALACHY E. MANNION, DISTRICT JUDGE. THE COURT HAS EXPRESSED NO OPINION REGARDING THE MERITS OF THE PARTIES' CLAIMS OR DEFENSES.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHAN AMADOR ACEVEDO,
MITCHELL BRATTON, JEREMY BUSSE,
STEPHEN PULLUM, ERIC MIGDOL, and
JOSE GONZALEZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

THE BRICKMAN GROUP LTD. LLC,

Defendant.

Civil Action No. 3:13-CV-02529

NOTICE OF YOUR RECOVERY UNDER BRICKMAN OVERTIME SETTLEMENT

1. Why Should You Read This Notice?

You may have previously received notice about the overtime lawsuit called *Amador v. The Brickman Group Ltd. LLC* (the “Lawsuit”), which claimed that The Brickman Group, LTD., LLC (“Defendant” or “Brickman”) paid its landscape/crew/irrigation Supervisors on the “fluctuating workweek,” method of payment for hours worked over 40 hours in a workweek, while also paying non-discretionary bonuses and other types of pay to them, which Plaintiff alleged was in violation of the Fair Labor Standards Act (“FLSA”) and Pennsylvania state law. You have been identified to participate in the settlement because Brickman’s records show that you worked for Brickman in Pennsylvania between October 8, 2009 and June 8, 2014, and were paid in the manner explained above.

The parties have agreed to a settlement, which includes your claims, and the Court granted preliminary approval of the settlement by Order entered [REDACTED]. The Court will hold a Final Approval Hearing on [REDACTED], 2017 at [REDACTED], before the Honorable Malachy E. Mannion of the United States District Court for the Middle District of Pennsylvania, located at 228 Walnut Street, Harrisburg, Pennsylvania, 17101. **This Notice explains the terms of that settlement and the manner of calculating your potential settlement payment amount if the Court grants final approval of the settlement.**

2. What Are the Terms of the Settlement?

As set forth in the Court-approved Settlement Agreement (the “Agreement”), which is available for your review on at the following website _____ or at the Court at 228 Walnut Street, Harrisburg, Pennsylvania, 17101, Brickman agreed to pay up to \$6,950,000.00 (“Maximum Gross Settlement Fund Amount”) in this case. Under the Agreement, all individuals

who had filed a Consent to join this case before the settlement, as well as all current and former employees who worked for Brickman in Pennsylvania and who, at any time between October 8, 2009 and June 8, 2014, were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate), including but not limited to salaried landscape/crew/irrigation Supervisors and those in similarly titled positions, are referred to as "Group 1." There are approximately 476 members of Group 1.

Individuals who did not previously submit a Consent to join this case before the settlement, and who did not work in Pennsylvania, but who worked for Brickman and who, at any time between October 8, 2010 and June 8, 2014, were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate), are referred to as "Group 2." There are approximately 839 members of Group 2. Members of Group 2 will also be eligible to participate in the Settlement if they submit a Claim Form by [REDACTED].

Because you worked for Brickman in Pennsylvania between October 8, 2009 and June 8, 2014, were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate), you are a member of "Group 1." **You do not need to submit a Claim Form to participate in the Settlement, and you will receive a payment based on the formula below if the Court grants final approval to the Settlement, unless you exclude yourself from the Settlement.** The check that you will receive will contain pre-printed endorsement language by which you will agree to join the lawsuit and be bound by the release described below.

The following is a summary of the primary settlement terms as they affect you:

1. Brickman has agreed to pay \$3,250,000 to Group 1. Deductions from this amount will be made for attorneys' fees and costs awarded to Class Counsel (see below); settlement administration costs allocated to Group 1 not to exceed \$17,470; and service awards in the amount of \$5,000 to Named Plaintiff Amador and \$1,000 to each of Named Plaintiffs Bratton, Busse, Pullum, Migdol, and Gonzalez for their service to the Class ("Net Settlement Fund for Group 1"), as well as applicable employer and employee payroll taxes as described below. Deductions for Class Counsel's costs, settlement administration costs and service awards shall be made on a pro rata basis with the amounts made available to Group 2.
2. Members of Group 2 who are eligible to receive a Settlement Award will receive their Settlement Award from a separate fund allocated for Group 2 Members, and will not receive any portion of the Net Settlement Fund for Group 1.
3. Each Eligible Group 1 Member will receive a \$150 minimum payment. The \$150 per person minimum payment will be deducted first from the total Net Settlement Fund for

Group 1. Any additional pro rata settlement distribution you may receive will be calculated using the following formula:

a. Each Eligible Group 1 Member will receive settlement shares which equal the total overtime pay he/she received between the longer of (a) his/her individual maximum state law statute of limitations; or (b) three years plus any applicable period during which his/her FLSA claims were tolled prior to the date that he/she filed his/her Opt-In Consent Form, and June 8, 2014 in weeks when he/she was paid a salary, but worked under a pay plan in which he/she was eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek;

b. The total number of settlement shares for all Eligible Group 1 Members will be added together and the resulting sum will be divided into the Net Settlement Fund for Group 1 (less the allocation of \$150 per person) to reach a per share dollar figure. That figure will then be multiplied by each Eligible Group 1 Member's number of settlement shares, and, if applicable, added to the \$150 set aside to determine the Eligible Group 1 Member's Settlement Award.

4. Each Settlement Award will be separated into two equal amounts: fifty percent (50%) shall be allocated to the claims asserted in the lawsuit for unpaid overtime wages, and fifty percent (50%) shall be allocated to the claims asserted in the lawsuit for liquidated damages. The portion allocated to claims for unpaid overtime and other wage-related damages will be subject to all required employee and employer-paid payroll taxes and deductions. The portion allocated to liquidated damages shall be characterized as non-wage income to the recipient and you will be responsible for any applicable taxes on this portion.

5. In exchange for your Settlement Award, each Group 1 Member has agreed to the following release of claims:

any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, and specifically including but not limited to unjust enrichment claims, against The Brickman Group Ltd. LLC, and its past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, investors, legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos, predecessors, successors, transferees, assigns, and insurers ("Releasees") that were or could have been asserted in the Complaint or Amended Complaint based on the facts alleged for alleged unpaid wages, overtime compensation, liquidated or other damages, unpaid costs, penalties (including late payment penalties), interest, attorneys' fees, litigation costs, restitution or other compensation and relief arising under the Fair Labor Standards Act ("FLSA") for the time period between October 8, 2010 and June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek, and arising under state statutes, regulations, or common law beginning from the longest applicable statute of limitations (inclusive of any

earlier tolling periods agreed upon in the Action) for all states in which a State Settlement Class Member worked dating back from October 8, 2013) through June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek.

3. What Are My Rights?

- Because you already filed a Consent to join the Lawsuit at an earlier date (*i.e.*, you are a member of Group 1), assuming Court approval and the Settlement Agreement is not voided, you will **automatically** receive money from the Settlement. **You do not have to do anything to receive your share of the settlement proceeds, and there is no Claim Form enclosed because you are already recognized as having made a claim.**
- If you do not wish to participate or be bound by the Settlement, you must submit a written exclusion from the settlement (“opt-out”), postmarked by [INSERT] (30 days from the date this Notice was mailed). The written request for exclusion from the settlement must contain your full name, address, and telephone number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator at: [INSERT SETTLEMENT ADMIN INFO]. **Any person who requests exclusion (opts out) of the settlement will not be entitled to any potential Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.**
- If you wish to object to the Settlement, you must submit an objection, postmarked by [INSERT] (30 days from the date this Notice was mailed), stating why you object to the settlement. Your objection must state your full name, address, telephone number, and email address (if applicable) and must be signed by you. Any objection should be mailed to the Settlement Administrator at: [INSERT SETTLEMENT ADMIN INFO]. If you submit a written objection, you may also, if you wish, appear at the Final Approval Hearing set for [INSERT] at [INSERT] before the Honorable Malachy E. Mannion of the United States District Court for the Middle District of Pennsylvania, located at 228 Walnut Street, Harrisburg, Pennsylvania, 17101, to discuss your objection with the Court and the parties to the Lawsuit.

4. No Retaliation Permitted

Federal law prohibits Brickman from terminating you, retaliating against you, or in any other manner discriminating against you **because you participate in this lawsuit and settlement.**

5. How Will the Attorneys for the Class Be Paid?

You do not have to pay the attorneys who represent the Class separately. Plaintiffs’ Counsel will be paid from the settlement in the amount of up to (a) One Million Eighty-Three

Thousand Three Hundred and Thirty Three Dollars (\$1,083,333.00) (which is one third of the Group 1 Gross Settlement Amount); and (b) the amount equal to up to one-third of the Group 2 Calculated Gross Settlement Fund, plus their out-of-pocket costs, not to exceed Sixty-Five Thousand Dollars (\$65,000.00). Class Counsel will file with the Court a Motion for Attorneys' Fees and Costs. The actual amount awarded will be determined by the Court. The Court will hold a hearing on that Motion on the same day as the Final Settlement Fairness Hearing, on [INSERT] at [INSERT].

6. What If I Have Additional Questions?

If you have any questions regarding the terms of this settlement or your individual recovery, contact the Claims Administrator:

Attn: Brickman Overtime Settlement
[INSERT]
Toll-Free Telephone Number: _____
Facsimile Number: _____
Email Address: _____

If you have any legal questions about the settlement relating to the lawsuit itself, contact Plaintiffs' Counsel listed below:

Shanon J. Carson
Sarah R. Schalman-Bergen
Alexandra L. Koropey
BERGER & MONTAGUE, P.C.
1622 Locust Street
Philadelphia, PA 19103
Telephone: (215) 875-3033

C. Andrew Head
HEAD LAW FIRM, LLC
White Provision, Ste. 305
1170 Howell Mill Rd., NW
Atlanta, GA 30318
Telephone: (404) 924-4151 x108

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE U.S. DISTRICT COURT, THE HONORABLE MALACHY E. MANNION, DISTRICT JUDGE. THE COURT HAS EXPRESSED NO OPINION REGARDING THE MERITS OF THE PARTIES' CLAIMS OR DEFENSES.

Exhibit B

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JONATHAN AMADOR ACEVEDO,
MITCHELL BRATTON, JEREMY BUSSE,
STEPHEN PULLUM, ERIC MIGDOL, and
JOSE GONZALEZ, individually and on behalf of
all others similarly situated,

Plaintiffs,

v.

THE BRICKMAN GROUP LTD. LLC,

Defendant.

Civil Action No. 3:13-CV-02529

NOTICE OF BRICKMAN OVERTIME SETTLEMENT

1. Why Should You Read This Notice?

You may have previously received notice about the overtime lawsuit called *Amador v. The Brickman Group Ltd. LLC* (the “Lawsuit”), which claimed that The Brickman Group, LTD., LLC (“Defendant” or “Brickman”) paid its landscape/crew/irrigation Supervisors on the ‘fluctuating workweek’ method of payment for hours worked over 40 hours in a workweek, while also paying non-discretionary bonuses and other types of pay to them, which Plaintiff alleged was in violation of the Fair Labor Standards Act (“FLSA”) and state law. You have been identified to participate in the settlement because Brickman’s records show that you worked for Brickman between October 8, 2010 and June 8, 2014, and were paid in the manner explained above.

The parties have agreed to a settlement, which the Court preliminarily approved by Order entered [REDACTED]. The Court will hold a Final Approval Hearing on [REDACTED], 2017 at [REDACTED], before the Honorable Malachy E. Mannion of the United States District Court for the Middle District of Pennsylvania, located at 228 Walnut Street, Harrisburg, Pennsylvania, 17101. **This Notice explains the terms of that settlement and your right to claim a potential payment under the settlement if the Court grants final approval to the settlement and you complete and return the enclosed Claim Form by [DATE].**

2. What Are the Terms of the Settlement?

As set forth in the Court-approved Settlement Agreement (the “Agreement”), which is available for your review on the following website [REDACTED] or at the Court at 228 Walnut Street, Harrisburg, Pennsylvania, 17101, Brickman agreed to pay up to \$6,950,000.00 (“Maximum Gross Settlement Fund Amount”) in this case. Under the Agreement,

approximately 476 individuals who filed Consents to join before the settlement and individuals who performed work in Pennsylvania are referred to as “Group 1.” Because you did not file a Consent to join before settlement, but you worked for Brickman in the United States and, at any time between October 8, 2010 and June 8, 2014, were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek (meaning at a rate that decreased with each overtime hour worked, rather than at time-and-a-half their hourly rate), you are referred to as a member of “Group 2.” There are approximately 839 members of Group 2.

As a member of Group 2, in order to be eligible to receive a Settlement Award, you must submit a signed copy of the enclosed Claim Form to the Settlement Administrator postmarked by [REDACTED]. You may return the signed Claim Form by mail, email or fax and you may also complete and execute a copy of the Claim Form at the following website [REDACTED] or by contacting the Claims Administrator using the contact information below:

Attn: Brickman Overtime Settlement
[INSERT]
Toll-Free Telephone Number: _____
Facsimile Number: _____
Email Address: _____

The following is a summary of the primary settlement terms as they affect you:

1. Brickman has agreed to pay a maximum of \$3,700,000 to Group 2 (the “Group 2 Maximum Possible Gross Settlement Fund”). Brickman will only pay the portion of the Maximum Possible Gross Settlement Fund attributable to the percentage of Group 2 Members who timely submit a Claim Form (“Group 2 Calculated Gross Settlement Fund”). The Group 2 Calculated Gross Settlement Fund shall be determined by multiplying the percentage of Group 2 members who timely submit a Claim Form (“Eligible Group 2 Members”) by the Group 2 Gross Settlement Fund. By way of example, if thirty percent (30%) of Group 2 Members become Eligible Group 2 Members, the Group 2 Calculated Gross Settlement Fund will be \$1,110,000.00.

2. Deductions from the Group 2 Calculated Gross Settlement Fund will be made for attorneys’ fees and costs awarded to Class Counsel (see below); settlement administration costs allocated to Group 2 not to exceed \$17,470; service awards in the amount of \$5,000 to Named Plaintiff Amador and \$1,000 to each of Named Plaintiffs Bratton, Busse, Pullum, Migdol, and Gonzalez for their service to the Class (“Net Settlement Fund for Group 2”), as well as applicable employer and employee payroll taxes as described below. Deductions for Class Counsel’s costs, settlement administration costs and service awards shall be made on a pro rata basis with the amounts made available to Group 1.

3. Members of Group 1 who are eligible to receive a Settlement Award will receive their Settlement Award from a separate non-reversionary fund allocated for Group 1 Members, and will not receive any portion of the Net Settlement Fund for Group 2.

4. Each Eligible Group 2 Member who completes, signs and returns a Claim Form by [DATE] will receive a minimum payment. Each Eligible Group 2 Member who completes and returns a Claim Form by [DATE] may also receive an additional pro rata settlement distribution calculated using the following formula:

a. Each Eligible Group 2 Member will be allocated settlement shares which equal the total overtime pay he/she received at any time between the longer of (a) his/her maximum applicable state law statute of limitations for applicable wage laws (exclusive of unjust enrichment); or (b) three years preceding June 8, 2014, and June 8, 2014, in which he/she was paid a salary, but worked under a pay plan in which he/she was eligible to receive 'fluctuating workweek'-type half-time overtime pay for hours worked over 40 in a workweek.

b. The total number of settlement shares allocated to all Eligible Group 2 Members will be added together and the resulting sum will be divided into the Net Settlement Fund for Group 2 (less the minimum payment allocation) to reach a per share dollar figure. That figure will then be multiplied by each Group 2 Member's number of settlement shares, and, if applicable, added to the minimum payment to determine each Eligible Group 2 Member's potential Settlement Award.

c. Each Eligible Group 2 Member who completes, signs and returns a Claim Form by [DATE] will receive their pro rata portion of the Net Settlement Fund for Group 2. Brickman will not pay any amounts to any Group 2 Member unless he/she completes, signs and returns a Claim Form by [DATE].

5. Each Settlement Award will be separated into two equal amounts: fifty percent (50%) shall be allocated to the claims asserted in the lawsuit for unpaid overtime wages, and fifty percent (50%) shall be allocated to the claims asserted in the lawsuit for liquidated damages. The portion allocated to claims for unpaid overtime and other wage-related damages will be subject to all required employee and employer-paid payroll taxes and deductions. The portion allocated to liquidated damages shall be characterized as non-wage income to the recipient and you will be responsible for any applicable taxes on this portion.

6. Each Group 2 Member who completes, signs and returns a Claim Form by [DATE] has agreed to the following release of claims:

any and all claims, obligations, demands, actions, rights, causes of action and liabilities, whether known or unknown, and specifically including but not limited to unjust enrichment claims, against The Brickman Group Ltd. LLC, and its past, present and future parent companies, subsidiaries, affiliates, divisions, agents, employees, owners, members, officers, directors, partners, investors, legal representatives, accountants, trustees, executors, administrators, real or alleged alter egos, predecessors, successors, transferees, assigns, and insurers ("Releasees") that were or could have been asserted in the Complaint or Amended Complaint based on the facts alleged for alleged unpaid wages, overtime compensation, liquidated or other damages, unpaid costs, penalties (including late payment penalties), interest, attorneys' fees, litigation costs, restitution or other compensation and relief arising under the Fair Labor Standards Act ("FLSA") for

the time period between October 8, 2010 and June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek, and arising under state statutes, regulations, or common law beginning from the longest applicable statute of limitations (inclusive of any earlier tolling periods agreed upon in the Action) for all states in which a State Settlement Class Member worked dating back from October 8, 2013) through June 8, 2014 in weeks when they were paid a salary, but worked under a pay plan in which they were eligible to receive ‘fluctuating workweek’-type half-time overtime pay for hours worked over 40 in a workweek.

7. Upon Final Approval by the Court, each Group 2 Member shall be deemed to release all claims in paragraph 6 above, but shall not release any FLSA claims unless they complete and return a Claim Form by [DATE]. The release in paragraph 6 shall not apply to Group 2 Members who either (a) timely submit a request for exclusion; or (b) who are identified by Settlement Administrator as Group 2 Members whose notice is issued during the notice period and returned as undeliverable after appropriate skip traces have been performed by the Settlement Administrator.

In the event that the combined total of the Group 1 Gross Settlement Fund and the Group 2 Calculated Gross Settlement Fund (“the Gross Fund Total”) exceeds four million four hundred thousand dollars (\$4,400,000.00), Defendant shall have the unilateral right, but not the obligation, to void the Settlement Agreement with respect to Group 2, and if so voided each Group 2 member who timely submitted a Claim Form and did not submit a notice of intent to opt-out will be provided a follow-up notice with information about resumption of the litigation for purposes of Group 2 as if no settlement occurred.

3. What Are My Rights?

- In order to participate in the Settlement and potentially receive a Settlement Award, you must complete, sign and submit the enclosed Claim Form postmarked by [INSERT DATE]. You may also access the Claim Form at [INSERT WEBSITE]. You may submit the Claim Form by mail, email or fax to: [INSERT ADDRESS].
- If you do not wish to participate or be bound by the Settlement, you must submit a written exclusion from the settlement (“opt-out”), postmarked by [INSERT] (30 days from the date this Notice was mailed). The written request for exclusion from the settlement must contain your full name, address, and telephone number, and must be signed individually by you. No opt-out request may be made on behalf of a group. The opt-out request must be sent by mail to the Settlement Administrator at: [INSERT SETTLEMENT ADMIN INFO]. **Any person who requests exclusion (opts out) of the settlement will not be entitled to any potential Settlement Award and will not be bound by the Settlement Agreement or have any right to object, appeal or comment thereon.**
- If you wish to object to the Settlement, you must submit an objection, postmarked by [INSERT] (30 days from the date this Notice was mailed), stating why you object to the

settlement. Your objection must state your full name, address, telephone number, and email address (if applicable) and must be signed by you. Any objection should be mailed to the Settlement Administrator at: [INSERT SETTLEMENT ADMIN INFO]. If you submit a written objection, you may also, if you wish, appear at the Final Approval Hearing set for [INSERT] at [INSERT] before the Honorable Malachy E. Mannion of the United States District Court for the Middle District of Pennsylvania, located at 228 Walnut Street, Harrisburg, Pennsylvania, 17101, to discuss your objection with the Court and the parties to the Lawsuit.

4. No Retaliation Permitted

Federal law prohibits Brickman from terminating you, retaliating against you, or in any other manner discriminating against you **because you participate in this lawsuit and settlement.**

5. How Will the Attorneys for the Class Be Paid?

You do not have to pay the attorneys who represent the Class separately. Plaintiffs' Counsel will be paid from the settlement in the amount of up to (a) One Million Eighty-Three Thousand Three Hundred and Thirty Three Dollars (\$1,083,333.00) (which is one third of the Group 1 Gross Settlement Amount); and (b) the amount equal to up to one-third of the Group 2 Calculated Gross Settlement Fund, plus their out-of-pocket costs, not to exceed Sixty-Five Thousand Dollars (\$65,000.00). Class Counsel will file with the Court a Motion for Attorneys' Fees and Costs. The actual amount awarded will be determined by the Court. The Court will hold a hearing on that Motion on the same day as the Final Settlement Fairness Hearing, on [INSERT] at [INSERT].

6. What If I Have Additional Questions?

If you have any questions regarding the terms of this settlement or your individual recovery, contact the Claims Administrator:

Attn: Brickman Overtime Settlement
[INSERT]
Toll-Free Telephone Number: _____
Facsimile Number: _____
Email Address: _____

If you have any legal questions about the settlement relating to the lawsuit itself, contact Plaintiffs' Counsel listed below:

Shanon J. Carson
Sarah R. Schalman-Bergen
Alexandra K. Piazza
BERGER & MONTAGUE, P.C.

C. Andrew Head
HEAD LAW FIRM, LLC
White Provision, Ste. 305
1170 Howell Mill Rd., NW

1622 Locust Street
Philadelphia, PA 19103
Telephone: (215) 875-3033

Atlanta, GA 30318
Telephone: (404) 924-4151 x108

THIS NOTICE AND ITS CONTENTS HAVE BEEN AUTHORIZED BY THE U.S. DISTRICT COURT, THE HONORABLE MALACHY E. MANNION, DISTRICT JUDGE. THE COURT HAS EXPRESSED NO OPINION REGARDING THE MERITS OF THE PARTIES' CLAIMS OR DEFENSES.

Exhibit C

MAIL, EMAIL OR FAX TO:

Attn: Brickman Overtime Settlement

c/o [INSERT ADMIN]

[INSERT ADMIN ADDRESS]

Toll-Free Telephone Number: [INSERT ADMIN]

Facsimile Number: [INSERT ADMIN]

Email Address: [INSERT ADMIN]

GROUP 2 CLAIM AND OPT-IN FORM

CLAIMANT INFORMATION:

Claim No.:

[INSERT CLAIMANT NAME AND ADDRESS]

If different than the preprinted data to the left, please print your correct legal name, current address, telephone number, and Last Four Digits of Social Security Number here:

Email address: _____

Telephone No.:

Last Four Digits of Social Security No.: [INSERT]

Amador, et al. v. The Brickman Group Ltd. LLC
Case No. 3:13-cv-02529-MEM (M.D. Pa.)

TO RECEIVE A SETTLEMENT AWARD IN THE BRICKMAN OVERTIME SETTLEMENT, YOU MUST COMPLETE, SIGN AND RETURN THIS CLAIM AND OPT-IN FORM AND IT MUST BE POSTMARKED BY [INSERT DATE].

By signing below, I certify that I was employed by The Brickman Group, Ltd., LLC as a landscape/crew/irrigation Supervisor during one or more weeks between **October 8, 2010 and June 8, 2014**; that my name, address, telephone number and last four digits of my Social Security Number or Tax Identification Number written above are correct, and that all other information that I have provided in this document is correct.

I also hereby consent and agree to join this lawsuit, and I hereby opt in to become a plaintiff in this lawsuit and consent to be bound by the Settlement Agreement and Release executed by the Parties, including the Released FLSA Claims and Released State Law Claims as explained in the NOTICE OF BRICKMAN OVERTIME SETTLEMENT.

If my address changes, I understand I must send the Settlement Administrator my new address. It is my responsibility to keep my address on file and up-to-date with the Settlement Administrator to ensure I receive my settlement award.

Date

Signature