

FILED

STATE OF NORTH CAROLINA

COUNTY OF WAKE

MERITAGE HOMES OF THE  
CAROLINAS, INC., Individually  
and on behalf of all others similarly  
situated,

Plaintiff,

vs.

TOWN OF HOLLY SPRINGS,

Defendant.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION  
20-CVS-14511

**ORDER ALLOWING PLAINTIFF'S  
MOTION FOR CLASS  
CERTIFICATION**

Plaintiff's Motion for Class Certification (the "Motion") came on for hearing before the Honorable Stephan Futrell, Superior Court Judge, on July 27, 2022 in Wake County Superior Court. James R. DeMay, Scott C. Harris, and Jacob Morse, Milberg Coleman Bryson Phillips Grossman, PLLC, were present and appearing for Plaintiff. Dan M. Hartzog, Jr., Katherine Barber-Jones, Hartzog Law Group, and John Schifano, Town of Holly Springs, were present and appearing for Defendant.

After hearing from counsel for the parties and reviewing the Motion, Plaintiff's Memorandum of Law in support of the Motion, Defendant's Memorandum of Law in opposition to the Motion, the affidavits, depositions, discovery responses, and other exhibits submitted by Plaintiff and Defendant in support of and opposition to the Motion, the Court believes the Motion should be granted. The Court FINDS and CONCLUDES as follows with respect to the Motion:

NATURE OF THE CASE

1. Plaintiff Meritage Homes of Carolina, Inc. commenced this action, on behalf of itself and others similarly situated, against Defendant Town of Holly Springs on December 18, 2020 to recover what it contends are *ultra vires* and illegal Recreation Fees In-Lieu of Land Dedication (herein referred to as “Recreation Fees” or “Fees”) charged and collected by Defendant from new residential development.

2. Defendant filed an Answer denying the material allegations of the Complaint.

3. The parties have engaged in extensive discovery, including the depositions of Daniel W. Weeks, Assistant Town Manager; Randy J. Harrington, Town Manager; LeeAnn Plumer, Town Director of Parks and Recreation; Matt Beard, Town Park Planner; and the Rule 30(b)(6) deposition of Town of Holly Springs, by and through Adam Huffman, Town Assistant Director of Parks and Recreation; as well as written discovery served and responded to by both parties.

#### **FACTS AND ALLEGATIONS COMMON TO CLASS MEMBERS**

4. The Complaint alleges and seeks: (a) a declaration that the Town’s adoption and enforcement of its Recreation Fees was unlawful and *ultra vires* because the Fees exceed the Town’s authority granted by the North Carolina General Assembly; (b) alternatively, a declaration that the Town’s Recreation Fees are unlawful because the Fees lack a reasonable relationship or rational nexus, or similar connection, to the impact of new development on the Town’s recreation and open space areas; (c) the return of all Recreation Fees to Plaintiff and Class members, plus 6% per annum interest from the date of each payment; and (d) an award of costs, expenses, and attorneys’ fee to Plaintiff and Class Members.

5. Plaintiff paid Recreation Fees to the Town on or about May 4, 2018, August 17, 2018, and March 16, 2020 for its subdivision projects.

6. Plaintiff contends that the Town's Recreation Fees violate N.C.G.S. § 160D-804(d) because (a) Plaintiff and Class members were already required to dedicate or reserve recreation and open space areas for their developments; (b) the Fees are not based on the property tax value of the subdivision or otherwise exceed the value of land that would otherwise be required to be dedicated or reserved for recreation or open space areas; (c) the Fees are not used by the Town to acquire and develop recreation and open space areas for the particular benefit of Plaintiff and Class member's developments.

7. Alternatively, Plaintiff contends that the Recreation Fees are unlawful because the Fees lack a reasonable relationship or rational nexus, or a similar connection, to the impact of new development on the Town's recreation and open space areas.

8. Plaintiff contends that Plaintiff and Class members are entitled to the return of all Recreation Fees charged and collected by the Town, plus 6% per annum interest, pursuant to N.C.G.S. § 160D-106.

9. The Town contends that its Recreation Fees comply with N.C.G.S. § 160D-804(d), including its predecessor statutes, were within the authority of the Town to adopt and collect, were reasonably related to the impact of new development on demand for and availability of recreation resources for the Town's residents and shared a rational nexus with the benefit received by the new development, and are

otherwise lawful.

PLAINTIFFS' MOTION FOR CLASS CERTIFICATION

**Requirement for Findings of Fact**

10. "Findings of fact are required by the trial court when rendering a judgment granting or denying class certification... Such findings must be made with sufficient specificity to allow effective appellate review." *Nobles v. First Carolina Communications, Inc.*, 108 N.C. App. 127, 133 (1992) (internal citations omitted).

**There are Four Prerequisites to Class Certification**

11. There are four elements or prerequisites to class certification under Rule 23.

12. First, the existence of a class. *Crow v. Citicorp Acceptance Co.*, 319 N.C. 274, 282 (1987); *Pitts v. Am. Sec. Ins. Co.*, 144 N.C. App. 1, 10 (2001).

13. Second, that the named class representative will fairly and adequately represent the class members. *Id.*

14. Third, the proposed class members are so numerous that it is impractical to bring them all before the court. *Crow* at 283; *Pitts* at 10.

15. Once the first three elements are established, the Court also determines whether a class action is superior to other available methods for adjudicating the controversy. *Crow* at 283; *Pitts* at 11.

16. Class actions in North Carolina are governed by Rule 23 of the North Carolina Rules of Civil Procedure.

17. The *Crow* Court stated, “[o]ur Rule 23 should receive a liberal construction, and it should not be loaded down with arbitrary and technical restrictions. The rule has as its objectives the efficient resolution of the claims or liabilities of many individuals in a single action and the elimination of repetitious litigation and possible inconsistent adjudications involving common questions, related events, or requests for similar relief.” *Crow* at 280 quoting *English v. Holden Beach Realty Corp.*, 41 N.C. App. 1, 9 (1979) *overruled on other grounds by Crow*.

#### A Class Exists

18. The first prerequisite to class certification is the existence of a class.

19. A “class” exists when the class members each have an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members. *Crow* at 280; *Pitts* at 10.

20. Plaintiff has identified the following Class in this matter (the “Class”) for the return of all Recreation Fees charged from December 19, 2017 through the present (the “Class Period”):

All natural persons, corporations, or other entities who (a) at any point from December 19, 2017 through the present (b) paid Recreation Fees to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town.

Excluded from the Class are WSLD 12 Oaks, LLC and Lake Time Development, LLC with respect to Recreation Fees paid pursuant to development agreements with the Town of Holly Springs.

21. The Town produced a list of thirty-five (35) Recreation Fee payors for the period from December 19, 2017 through June 13, 2022. Additionally, the Recreation Fee worksheets produced by the Town identify a potential additional payor that was

not included on the Town's list. Thus, the Town's records identify approximately thirty-six (36) Recreation Fee payors for the period from December 19, 2017 through June 13, 2022.

22. Of the approximately thirty-six (36) Recreation Fee payors, two payors, WSLD 12 Oaks, LLC and Lake Time Development, LLC, paid Recreation Fees pursuant to the terms of development agreements with the Town<sup>1</sup> and not the Town's standard adopted schedule of rates and fees and/or policies. Because these two payors did not pay Recreation Fees pursuant to the Town's adopted schedule of rates and fees and/or policies, these two payors should be excluded from the Class.

23. The Town collected the Recreation Fees in question from all of the Class Members during the Class Period. There are common factual and legal issues that will apply to all Class Members and will predominate over any individual issues.

24. There are common issues of fact and law in this action that affect the Class Members (including Plaintiff) in the same manner and that predominate over any individual issues that may exist including the following:

- a. Whether the Town's Recreation Fees violate N.C.G.S. § 160D-804(d) because Class Members were already required to dedicate or reserve recreation and open space areas for their subdivisions pursuant to Town's UDO;
- b. Whether the Town's Recreation Fees violate N.C.G.S. § 160D-804(d) and/or the Town's Ordinances because the Fees are not based on the property tax value of the subdivision or otherwise exceed the value of land that would otherwise be required to be dedicated or reserved for recreation or open space areas;

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<sup>1</sup> These subdivision projects are 12 Oaks Phase 10 (WSLD 12 Oaks, LLC) and Hemlock Preserve (Lake Time Development, LLC).

- c. Whether the Recreation Fees violate N.C.G.S. § 160D-804(d) because the Fees were not used by the Town to acquire and develop recreation areas serving the Class Member's subdivision;
- d. Whether the Recreation Fees are unlawful because the Fees lack any reasonable relationship to the benefit received by Class Members in satisfying the requirements of N.C.G.S. § 160D-804(d);
- e. Whether Class Members are entitled to a refund of all unlawful Recreation Fees charged and collected by the Town during the Class Period, plus interest at the rate of 6% per annum from the date of payment pursuant to N.C.G.S. § 160D-106; and
- f. Whether Class Members are entitled to their costs and attorneys' fees pursuant to N.C.G.S. § 6-21.7.

25. The Court concludes that a "class" exists in this action.

26. Within in the Class, some Class Members paid a Recreation Fee that was a uniform per-unit fee as set forth on the Town's adopted fee schedule for Fiscal Years 17-18, 18-19, and 19-20. Other Class Members paid a Recreation Fee based on the value of the subdivision property as set forth on the Town's adopted fee schedule for Fiscal Years 20-21, 21-22, and 22-23.

27. Therefore, within the common issue set forth in Paragraph 24(b) above, the Court finds and concludes that there should be the following two subclasses:

*The Uniform Per-Unit Fee Subclass*

All natural persons, corporations, or other entities who paid a uniform per-unit Recreation Fee to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town in effect from December 19, 2017 through June 30, 2020.

*The Property Value Formula Fee Subclass*

All natural persons, corporations, or other entities who paid a Recreation Fee based on a property value formula to the Town of

Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town in effect from July 1, 2020 through the present.

**Plaintiff and Plaintiff's Counsel will Fairly and Adequately Represent the Class**

28. To fairly and adequately represent the Class Members, the Class Representatives must (a) have no conflict of interest with the Class Members; (b) have a genuine personal interest in the outcome of the case, rather than a mere technical interest; and (c) adequately represent Class Members inside and outside the state. *Pitts* at 10; see also *Crow* at 282-283.

Plaintiff does not have a Conflict of Interest with the other Class Members

29. As to conflict of interest, “a difference in the amount of damages does not create a material conflict of interest between Plaintiff and the other proposed class members.” *Pitts* at 15; *Faulkenbury v. Teachers’ & State Emples. Retirement Sys.*, 345 N.C. 683, 698 (1997) (affirming trial court’s certification of class action over defendants’ objection “that the members of the potential class will receive recoveries in different amounts.”). In addition, “many courts have held that speculative conflict should be disregarded at the class certification stage.” *Pitts* at 15.

30. Plaintiff, like all of the Class Members, paid Recreation Fees during the Class Period to the Town. As such, Plaintiff is suing for recovery of the same Recreation Fees in the Class Period that all Class members paid.

31. Accordingly, the Court finds and concludes that there is no conflict of interest between Plaintiff and Class Members.

Plaintiff has a Genuine Personal Interest in the Outcome of this Case



32. Regarding Plaintiff's genuine personal interest in the outcome of this case, Plaintiff paid the Recreation Fees in question during the Class Period. This is established by the documents produced by the Town in discovery. In addition, Plaintiff contends that it is entitled to recover six percent (6%) interest on the Recreation Fees from the time the Recreation Fees were paid under N.C.G.S. § 160D-106. Furthermore, Plaintiff has an outstanding claim for attorneys' fees in this action including under N.C.G.S. § 6-21.7.

33. The Court finds and concludes that the named Plaintiff has a genuine personal interest in the outcome of this case.

Plaintiff and its Counsel will Fairly and Adequately Represent all Class Members

34. The final prong of the fair and adequate representation analysis is whether Plaintiff will fairly and adequately represent Class Members who are inside and outside this state. *English at 9* ("The fact that some members of the class are located outside the court's jurisdiction does not prevent the institution of a class action so long as there are class members within the jurisdiction who adequately represent those outside.").

35. Given the unity of interest regardless of where Class Members may be located, Plaintiff will fairly adequately represent Class members inside and outside the State of North Carolina.

36. As further evidence that Plaintiff will fairly and adequately protect all Class Members including those located outside North Carolina, Plaintiff retained counsel with extensive experience in class actions generally and, more specifically,

various lawsuits, including class actions, over unlawful impact fees. Affidavits from Plaintiff's counsel were submitted in support of the Motion. These Affidavits show that Plaintiff's counsel are highly skilled and qualified to represent Plaintiff and the Class Members in this action and that Plaintiff's counsel will assist Plaintiff in fairly and adequately representing all Class Members including any located outside North Carolina.

37. In addition, the affidavits from Plaintiff and Plaintiff's counsel state that Plaintiff has actively participated in the case, including reviewing the complaint, participating in discovery, attending the mediated settlement conference, and discussing case strategy, and is generally willing to do whatever is appropriate to ensure this litigation is successful for the Class. The Court finds this testimony to be credible and adopts it as a finding of fact.

38. As such, the Court finds and concludes that Plaintiff and Plaintiff's counsel will fairly and adequately represent all of the Class Members regardless of whether they reside in North Carolina or elsewhere.

#### **Numerosity is Satisfied**

39. The third prerequisite to class certification is numerosity.

40. This element provides that the number of class members must be so numerous that it is impractical to bring them individually before the court. The test for impracticality is "not 'impossibility' of joinder, but only difficulty or inconvenience of joining all members of the class. The number is not dependent upon any arbitrary limit but rather upon the circumstances of each case." *English* at 6-7 (14 class

members sufficient); See also *Cypress v. Newport News General & Nonsectarian Hosp. Ass'n*, 375 F.2d 648, 653 (4th Cir. 1967) (18 class members sufficient).

41. “[T]here is no requirement that the party seeking certification allege in her certification motion the exact number of proposed class members or their identities.” *Pitts*, 144 N.C.App. at 10-11 (citing 1 *Newberg on Class Actions* § 3.05, at 3-18-19 (3d ed. 1992)).

42. As noted above, based on the Town’s discovery responses, the number of Class Members in this case is at least approximately thirty-four (34) payors of Recreation Fees during the Class Period through June 13, 2022, and potentially more at present.

43. The Court finds and concludes that the number of Class Member is so numerous that it is impractical to bring all of them individually before this Court. Consequently, the numerosity prerequisite to class certification is satisfied.

#### **A Class Action is Superior to Other Adjudication Methods**

44. The fourth and final prerequisite is whether a class action is superior to other available methods for the adjudication of the controversy. *Crow* at 284; *Pitts* at 11.

45. “A class action should be permitted where it is likely to serve useful purposes such as preventing a multiplicity of suits or inconsistent results[.]” *Pitts* at 11; *see also*, *Crow* at 284. The trial court balances those useful purposes against possible inefficiency or other drawbacks of a class action. *Id.* Some other proper considerations in making the superiority determination include, but are not limited

to, (a) the amount of recovery compared to the cost of administration of the lawsuit, (b) the interest of class members in individually controlling the prosecution or defense of separate actions, (c) the extent and nature of any litigation concerning the controversy already commenced by or against members of the class, (d) the desirability or undesirability of concentrating the litigation of the claims in the particular forum, and (e) the difficulties likely to be encountered in the management of a class action. *Pitts* at 11.

46. The potential amount of recovery for the Class as reflected on the list of Recreation Fee payors produced by the Town, which is approximately \$11,878,362, is significant enough that the amount of the potential recovery far outweighs the costs of administration of the lawsuit.

47. The Town would be the named defendant in any related case and the Town has not brought any such cases to the Court's attention nor is the Court aware of any Class Members who have pursued separate actions instead of a class action. These factors weigh in favor of a class action.

48. Lawsuits against counties, cities, and towns must be brought in the county where they are located. *Coats v. Sampson County Memorial Hospital, Inc.*, 264 N.C. 332, 333 (1965). As such, Wake County is not only the desired forum, but also the legally required forum. Thus, this factor weighs in favor of litigating this dispute in one class action case rather than as many as 34 different lawsuits, all of which would have to be filed in Wake County.

49. Any difficulties associated with managing a class action are significantly outweighed by the difficulties of managing at least 34 separate lawsuits including the possibility of inconsistent results in such cases. This factor also weighs in favor of a class action.

50. The Court concludes that a class action is superior to other available methods for adjudicating this controversy and that certification of this case as an opt-out class action is appropriate under Rule 23 of the North Carolina Rules of Civil Procedure.

#### **Proper Notice Will be Sent to the Class**

51. The class certification notice will be provided upon entry of this Order in accordance with North Carolina law. See *English* at 8 (class notice is to be provided “as soon as the court determines that the class action is proper.”); *Crow* at 284 (“As part of the notification, the trial court may require that potential class members be given an opportunity to request exclusion from the class within a specified time in a manner similar to the current federal practice. See F.R. Civ. P. 23(c)(2).”).

52. The actual manner and form of the notice is largely within the discretion of the trial court. *Crow* at 283. The notice should be provided to all class members who can be identified through reasonable efforts, but it need not comply with the formalities of service of process. *Id.* at 283-284. As part of the notification, the trial court may require that potential class members be given an opportunity to request exclusion from the class within a specified time in a manner similar to the practice under Federal Rule 23. *Id.* at 284.

53. The Town has identified the names and most, but not all, last known addresses of those who paid fees in discovery up until June 13, 2022. The Town shall provide names of any additional entities or individuals who paid Recreation Fees after June 13, 2022 through the present, and the last-known mailing addresses of all Members of the Class to Class Counsel, within 14 days of the date this Order is signed.

54. A direct notice of class certification shall be sent by first class mail to all Members of the Class providing an opt-out deadline of 45 days from the mailing of the Notice. Plaintiff shall engage and pay for a company that regularly engages in the business of providing class notices to provide the notice to the Class Members. Such company shall use reasonable efforts in accordance with its regular business practices and industry standards in providing the notice to the Class Members.

55. A copy of the Court-approved notice to Class members is attached hereto as "Exhibit A."

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED AS FOLLOWS:

A. Plaintiff's Motion for Class Certification is **GRANTED**.

B. This case is **CERTIFIED** as an opt-out class action, as against Defendant, pursuant to Rule 23 of the North Carolina Rules of Civil Procedure, with the "Class" being defined as follows:

All natural persons, corporations, or other entities who (a) at any point from December 19, 2017 through the present (b) paid Recreation Fees to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town.

Excluded from the Class are WSLD 12 Oaks, LLC and Lake Time Development, LLC with respect to Recreation Fees paid pursuant to development agreements with the Town of Holly Springs.

- C. Within the Class, the Court certifies the following two subclasses:

*The Uniform Per-Unit Fee Subclass*

All natural persons, corporations, or other entities who paid a uniform per-unit Recreation Fee to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town in effect from December 19, 2017 through June 30, 2020.

*The Property Value Formula Fee Subclass*

All natural persons, corporations, or other entities who paid a Recreation Fee based on a property value formula to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town in effect from July 1, 2020 through the present.

- D. James R. DeMay, Scott C. Harris, J. Hunter Bryson, and W. Mark Cumalander are appointed as counsel to represent the Class;

- E. Plaintiff Meritage Homes of the Carolinas, Inc. is appointed as the Class Representative;

- F. Plaintiff shall engage and pay for a company that regularly engages in the business of providing class notices to provide the Notice to the Class Members. The Notice shall be sent by first class mail to all Class Members providing an opt-out deadline of 45 days from the mailing of the Notice. The company engaged by Plaintiff shall use reasonable efforts in accordance with its regular business practices and industry standards in providing the Notice to the Class Members; and

G. Defendant Town of Holly Springs shall provide names of any additional Members of the Class who paid Recreation Fees after June 13, 2022 through the present, and the last-known mailing addresses of all Members of the Class, to Class Counsel within 14 days of the date this Order is signed.

This 12<sup>th</sup> day of August, 2022.

  
\_\_\_\_\_  
THE HONORABLE STEPHAN FUTRELL  
SUPERIOR COURT JUDGE PRESIDING



EXHIBIT A

Class Certification Notice

STATE OF NORTH CAROLINA

COUNTY OF WAKE

MERITAGE HOMES OF THE  
CAROLINAS, INC., Individually  
and behalf of all others similarly  
situated,

Plaintiff,

vs.

TOWN OF HOLLY SPRINGS,

Defendant.

IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

20-CVS-14511

**NOTICE OF CLASS CERTIFICATION**

**This Notice may affect your rights.**

**Please read carefully.**

**If you have questions regarding the contents of this Notice, do not contact the court, but instead, please contact class counsel as identified below in this Notice.**

**To: All natural persons, corporations, or other entities who (a) at any point from December 19, 2017 through the present (b) paid Recreation Fees to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town.**

**Excluded from the Class are WSLD 12 Oaks, LLC and Lake Time Development, LLC with respect to Recreation Fees paid pursuant to development agreements with the Town of Holly Springs.**

1. If you are receiving this Notice, you are likely included among the defined class above. Your rights may be affected by a lawsuit pending in this court, Wake County File No. 20-CVS-14511. This lawsuit concerns Defendant's collection of Recreation Fees In-Lieu of Land Dedication (herein the "Recreation

Fees”).

2. On December 18, 2020, Plaintiff filed a Complaint that alleges and seeks: (a) a declaration that the Town’s adoption and enforcement of its Recreation Fees were unlawful and *ultra vires* because the Fees violate the Town’s authority granted by the North Carolina General Assembly; (b) alternatively, a declaration that the Town’s Recreation Fees are unlawful because the Fees lack a reasonable relationship or rational nexus, or similar connection, to the impact of new development on the Town’s recreation and open space areas; (c) the return of all Recreation Fees to Plaintiff and Class members, plus 6% per annum interest from the date of each payment; and (d) an award of costs, expenses, and attorneys’ fee to Plaintiff and Class Members.

3. Defendant has filed an Answer to the Complaint, which asserted various defenses and denied that Plaintiffs and the Class Members are entitled to the relief sought by the Claims.

4. Concurrently with its approval of this Notice, the Court ordered that a class action was the best way to resolve the Claims and certified the class in this case (“Class Certification Order”). Class certification by the court does not mean that any monetary or other relief will be obtained. There are contested issues that still must be decided.

#### Class Certification Ruling

In the Class Certification Order, the Court ordered that this lawsuit may be maintained on behalf of a Class defined as:

All natural persons, corporations, or other entities who (a) at any point from December 19, 2017 through the present (b) paid Recreation Fees to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town.

Excluded from the Class are WSLD 12 Oaks, LLC and Lake Time Development, LLC with respect to Recreation Fees paid pursuant to development agreements with the Town of Holly Springs.

5. The Class Certification Order also contains two subclasses, defined as follows:

*The Uniform Per-Unit Fee Subclass*

All natural persons, corporations, or other entities who paid a uniform per-unit Recreation Fee to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town in effect from December 19, 2017 through June 30, 2020.

*The Property Value Formula Fee Subclass*

All natural persons, corporations, or other entities who paid a Recreation Fee based on a property value formula to the Town of Holly Springs pursuant to the adopted schedule of rates and fees and/or policies of the Town in effect from June 30, 2020 through the present.

6. In addition, the Class Certification Order named Meritage Homes of Carolinas, Inc. as Class Representative.

7. Furthermore, the Class Certification Order appointed James R. DeMay, Scott C. Harris, J. Hunter Bryson, and W. Mark Cumalander, Milberg Coleman Bryson Phillips Grossman, PLLC as counsel for the Class.

8. The court's Class Certification Order means that the ultimate outcome of the Claims alleged by the Class Representatives - whether favorable to Plaintiff or to Defendant - will apply in like manner to and be binding upon all class members as provided by Rule 23 of the North Carolina Rules of Civil

Procedure. More simply stated, the outcome of this lawsuit will apply to and be binding upon all natural persons, corporations, or other entities who at any point between December 19, 2017 and the present paid Recreation Fees to the Town of Holly Springs pursuant to the schedule of rates and fees and/or policies of the Town.

#### Election by Class Members

9. Currently, you are likely a member of the class since you received this Notice. You have a choice of whether or not to remain a member of the class. You should understand the consequences of your choice before deciding whether to remain a member of the class.

10. If you want to remain a member of the class, you are not required to do anything at this time and should not file an “Exclusion Request.”

11. By remaining a class member, any claims you have for damages or other relief against Defendant relating to the Claims alleged in this lawsuit will be determined in this case and cannot be presented in any other proceeding or lawsuit. Expenses including attorneys’ fees incurred in this litigation will be paid from any subsequent recovery and are not being assessed to individual class members.

12. If you decide to be excluded from the class, you must file an Exclusion Request in this action stating that you are excluding yourself from the class. Your Exclusion Request must be filed with the Wake County Clerk of Superior Court, 316 Fayetteville St., Raleigh, NC 27601, no later than \_\_\_\_\_, 2022 (*45 days from when the Class Notice was mailed*). If you file an Exclusion Request, (a) you will

not share in any recovery that might be obtained on behalf of the class as a result of any judgment, trial, or settlement of this lawsuit, (b) you will not be bound by any decision favorable to Defendant that may be rendered in this lawsuit, and (c) you may file your own lawsuit against Defendant, but you will be responsible for obtaining and paying your own attorney(s) to represent you and any expenses associated with your own lawsuit.

### Rights and Obligations of Class Members

If you remain a member of this class:

13. The Class Representatives and attorneys for the class will act as your representatives and counsel for the presentation of the Claims against Defendant. Again, you are already a member of the class. If, in addition to being a class member, you desire to intervene in this action to serve as an additional class representative, you may contact class counsel (identified below) or you may contact your own attorney at your expense. The pleadings and other records for this lawsuit may be examined at any time during regular office hours at the office of the Clerk of Superior Court of Wake County, North Carolina.

14. Your participation in any recovery that may be obtained from Defendant, through any judgment, trial, or settlement, will depend on the results of this lawsuit. If no recovery is obtained for the class, you will be bound by that result.

15. As a condition to participating in any recovery through any judgment,

settlement, or trial, you may be required to present evidence regarding your payment of fees. Therefore, you should preserve all documentation and other records concerning the payment of any Recreation Fees paid to Defendant.

16. You will be entitled to notice of any ruling reducing the size of the class, expanding the size of the class, or decertifying the class. You will also be entitled to notice of, and an opportunity to be heard on, any proposed settlement. To ensure proper notice, as well as to participate in any recovery, you are requested to notify class counsel of any corrections in your name or address by sending such corrections to class counsel, whose contact information is set out below.

#### Further Proceedings

17. Pre-trial proceedings remain ongoing, and a tentative trial date has not been set by the court at this time. You may communicate with the attorneys representing the class if you have questions about this case or evidence you believe would be helpful to establish the alleged Claims. You may be asked by the parties to provide information relevant to the case.

#### Additional Information

18. If you decide to remain a member of the class and wish to communicate at any time with the lawyers representing you in this lawsuit (or to make corrections to your name or address), you may do so by writing, calling, or emailing:

James R. DeMay

Scott C. Harris  
J. Hunter Bryson  
W. Mark Cumalander  
MILBERG, COLEMAN, BRYSON, PHILLIPS, GROSSMAN, PLLC  
900 W. Morgan Street  
Raleigh, North Carolina 27603  
Telephone: (919) 600-5000  
jdemay@milberg.com  
sharris@milberg.com  
hbryson@milberg.com  
mcumalander@milberg.com