

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this _____ day of January, 2023 by and between Meritage Homes of the Carolinas, Inc. (“Plaintiff”), individually and on behalf of the Settlement Class (as defined below) and the Town of Holly Springs (“the Town”) in *Meritage Homes of the Carolinas, Inc. v. Town of Holly Springs*, pending in the General Court of Justice, Superior Court Division, Wake County, North Carolina, Case Number 20-CVS-14511 (the “Civil Action”),

WHEREAS, on December 18, 2020, Plaintiff commenced the Civil Action against the Town in the Superior Court of Wake County through the filing of a Complaint, seeking relief on behalf of itself and a class under a cause of action for a declaration that the Town’s collection of recreation fees in lieu of land dedication (the “Recreation Fees” or the “Fees”) exceeded the Town’s legal authority and is *ultra vires*, and that the Fees must be refunded to plaintiff and the class; and

WHEREAS, the Town denies each one of the Plaintiff’s allegations of unlawful conduct and damages in the Civil Action, and the Town has asserted various legal and other affirmative defenses; and

WHEREAS, following extensive discovery in the Civil Action, the parties conducted a mediation on September 22, 2021, Patricia Holland serving as mediator, which resulted in an impasse;

WHEREAS, on August 12, 2022, the Hon. Stephen Futrell, Superior Court Judge, entered a Class Certification Order in the Civil Action certifying a Class of Recreation Fee payors 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.

Within the Class are two Sub-Classes, 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.

WHEREAS, notice of the certified Class in the Civil Action was sent by the Notice Administrator, Settlement Services, Inc., to a total of all 35 Class Members, and no Class Members opted out of the Class, as set forth in the Affidavit of Aisha Lange dated November 10, 2022; and

WHEREAS, the parties have engaged in extensive discovery in the Civil Action, including multiple sets of interrogatories, voluminous document productions consisting of thousands of pages of documents, deposing 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 a Rule 30(b)(6) deposition of the Town, by and through Adam Huffman, Town Assistant Director of Parks and Recreation; and

WHEREAS, after approximately two (2) years of protracted litigation and arms-length settlement negotiations between Counsel for the Settlement Class (as defined below) and the Town, this Settlement Agreement has been reached; and

WHEREAS, Counsel for the Settlement Class have thoroughly investigated the facts and claims of this class action lawsuit and have concluded that it would be in the best interest of the Settlement Class to enter into this Settlement Agreement as it relates to Recreation Fees paid to the Town from December 19, 2017 through December 13, 2022. Counsel for the Settlement Sub-Classes consider the settlement as set forth below to be fair, reasonable, adequate, and in the best interests of the Settlement Class, subject to Court approval; and

WHEREAS, James R. DeMay, J. Hunter Bryson, and W. Mark Cumalander of Milberg, Coleman, Bryson, Phillips, Grossman, PLLC, are counsel for Plaintiff and are fully authorized to enter into this Settlement Agreement on behalf of Plaintiff and the Settlement Class; and

WHEREAS, the Town has concluded (despite its belief that it is not liable for the claims asserted) that it will enter into this Settlement Agreement in order to, among other things, avoid the further expense, inconvenience, burden, and risk of further litigation.

NOW, THEREFORE, intending to be legally bound, the parties have entered into this Settlement Agreement for All Claims (as defined below) of the Settlement Class to be dismissed with prejudice, without costs to any party (except as provided below), on the following terms and conditions:

I. DEFINITIONS

For purposes of this Settlement Agreement, the following terms shall have the meanings set forth below.

A. “Administration Costs” or “Notice Administration” shall mean any and all costs associated with the administration of the benefits under this Settlement Agreement, including the fees and the expenses of the Notice Administrator, and any expenses of mailing notices, and paying settlement benefits and expenses.

B. “Agreement” or “Settlement Agreement” means this Settlement Agreement, including any subsequent amendments agreed to by the Parties and any exhibits to such amendments, which together are the settlement (the “Settlement”).

C. “All Claims” shall mean any and all claims, demands, actions, suits and causes of action against the Town and/or its directors, officers, employees, attorneys, insurers, agents or successors whether known or unknown, asserted or unasserted, that any member of the Settlement Class ever had, or could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, acts or omissions which were or could have been alleged by any or all members of the Settlement Class only arising out of or relating to the payment of Recreation Fees to the Town from December 19, 2017 through December 13, 2022. These claims include claims for refunds, damages or remedies (including, without limitation, actual, compensatory, punitive, or exemplary), or for compensation of any type or for accounting or reconciliation, reimbursement or statutory remedies or for pre- or post-judgment interest, or for other damages arising from or relating to the Class Members’ claims for damages that were asserted or that could have been asserted in the Class Action Litigation, including claims for the Town’s *ultra vires* conduct, as it relates to Recreation Fees paid to the Town from December 19, 2017 through December 13, 2022.

D. “Attorneys’ Fees and Expenses” means such funds as may be awarded by the Court to Class Counsel in accordance with all the terms and conditions of this Settlement, in order to compensate Class Counsel for all of the past, present and future attorneys’ fees, costs (including court costs), expenses, and disbursements earned or incurred collectively and individually by any and all of them, their investigators, experts, staff, and consultants combined in connection with the Class Action.

E. “Recreation Fees” means recreation fees in-lieu of land dedication charged by the Town to Class Members, as shown on the spreadsheet attached hereto as “Exhibit A.”

F. “Claim Amount” means a Class Member’s total Recreation Fees paid to the Town, plus interest at the rate of 6% per annum from the date of payment through December 13, 2022.

G. “Class Action” or “Class Action Litigation” shall mean the class-action litigation bearing the following caption: *Meritage Homes of the Carolinas, Inc. v. Town of Holly Springs*, Wake County Case No. 20-CVS-14511.

H. “Class Counsel” or “Counsel for the Settlement Class” shall mean James R. DeMay, J. Hunter Bryson, and W. Mark Cumalander of Milberg, Coleman, Bryson, Phillips, Grossman, PLLC.

I. “Class Members” shall mean members of the two Settlement Sub-Classes, as shown on the spreadsheet attached hereto as “Exhibit A,” but not including the payments by WSLD 12 Oaks, LLC (payment receipt 2019-00126344) and Lake Time Development, LLC (payment receipt 2019-00037367) (as those payments are excluded from the Class). With the exception of those two payments, the Class Member payments are the payments as shown on the attached Exhibit A as being paid from December 19, 2017 through December 13, 2022. The Town certifies that the spreadsheet attached hereto as Exhibit A is current and accurate through December 13, 2022 and that no further payments have been received by the Town since July 8, 2022 (payment receipt 2022-02199).

J. “Class Representative” shall mean Meritage Homes of the Carolinas, Inc.

K. “Common Fund” or “Fund” shall mean \$7,500,000 paid by the Town to the Settlement Administrator in three installments of \$3,500,000 within 7 days of Final Judicial

Approval, \$1,000,000 on or before December 1, 2023, and \$3,000,000 on or before December 1, 2024.

L. “Court” or “Trial Court” means the General Court of Justice, Superior Court Division of Wake County, North Carolina.

M. “Fairness Hearing” shall be the hearing set for a definite date by the Court at the Preliminary Approval Hearing, which will be conducted by the Court to determine the fairness, adequacy and reasonableness of this Settlement Agreement under North Carolina Rules of Civil Procedure and North Carolina law, at which time the Court may issue a Final Order and Judgment.

N. “Final Judicial Approval” means the date of occurrence of all the following events:

1. This settlement is approved in all respects by the Court;
2. The Court enters a Final Order and Judgment as provided below; and
3. The time to appeal or seek permission to appeal from the Court’s Final Order and Judgment has expired, or, if appealed, the Final Order and Judgment have been affirmed in their entirety by the court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

O. “Final Order and Judgment” shall be the order and judgment entered in the Class Action that approves the Settlement Agreement and dismisses the Class Action with prejudice following the Fairness Hearing.

P. “Opt-Out Date” means the last day of the Opt-Out Period and the postmark date by which members of the Settlement Class must mail their request to be excluded from the Settlement Class in order for that request to be considered timely.

Q. “Opt-Out Period” shall mean a period of forty-five (45) days after mailing of initial notice of settlement during which Class Members may exercise the right to opt out of the settlement.

R. “Parties” shall mean the Town, the Plaintiff and Class Representative, and all Class Members who do not timely and properly exclude themselves from the settlement as provided herein.

S. “Preliminary Approval Hearing” shall mean the hearing in North Carolina Superior Court upon motion for an Order Granting Preliminary approval of the Settlement Agreement as specified herein.

T. “Service Awards” means such funds as may be awarded by the Court to the Class Representative within the limits set forth in this Agreement, to compensate the Class Representative for its efforts and risks taken in bringing and prosecuting the Action on behalf of the Settlement Class and achieving the benefits of this Agreement on behalf of the Settlement Class.

U. “Settlement” means the terms of this Settlement Agreement which resolve the claims between parties, including payments to the Class Members and release of the Town.

V. “Settlement Class” is defined as two subclasses as follows:

1. “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”; and
2. “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.”

3. Excluded from the Settlement 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

W. “Settlement Notice” means the legal notice of the terms of this Settlement. The Settlement Notice shall contain the following information:

1. A plain, neutral, and objective and concise summary description of the nature of the action and the terms of the proposed Settlement. This description shall also disclose, among other things, that: (a) any relief to Class Members offered by the Settlement is contingent upon the Court’s approval of the Settlement, which will not become effective until the Final Order and Judgment date; (b) the Town of Holly Springs has agreed to state to the Court, if asked, that it is contractually bound not to object to Class Counsel’s application for an award of Attorneys’ Fees and Expenses; (c) that the Settlement is not made contingent upon any Service Awards or Attorneys’ Fees and Expenses being awarded by the Court, and that if such awards are approved by the Court, they will be paid from the relief offered to the Class Members by this Stipulation and Settlement; and (d) that the sums paid in this Settlement are made in exchange for release of the Released Claims by the named Plaintiff and each of the Class Members and a copy of the Stipulation is available for review from the Notice Administrator.

2. The Settlement Notice shall include a description of the Settlement Class.
3. The Settlement Notice shall inform the Class Members of their right to seek exclusion from their applicable Settlement Class and the Settlement. The Settlement Notice shall provide the deadlines and procedures for exercising this right.
4. The Settlement Notice shall inform Class Members of their right to object to the proposed Settlement and to appear at the Fairness Hearing. The Settlement Notice shall provide the deadlines and procedures for exercising these rights.
5. The Settlement Notice shall summarize the proposed terms of the Release contemplated by this Stipulation.
6. To the extent the Notice Administrator is directed within a timely and properly submitted Claim Form to forward settlement funds to a third party, the Notice Administrator will do so.
7. The Settlement Notice shall disclose where Class Members may direct written or oral inquiries regarding the Settlement.

X. “The Town” means the Town of Holly Springs, North Carolina.

II. COURT APPROVAL AND CLASS NOTICE

A. Best Efforts: Class Counsel and counsel for Town agree to recommend approval of this Settlement Agreement to the Court. Class Counsel and counsel for the Town also agree to use their best efforts to obtain approval of the Settlement Agreement and to carry out the terms thereof.

B. Certification of Settlement Class

1. For settlement purposes only, Class Counsel will request, as part of the Order for Preliminary Approval and Conditional Certification of Class, that the Court make preliminary findings and enter an Order granting provisional certification of the Settlement Class subject to final findings and ratification in the Final Order and Judgment, and appointing the Plaintiff Meritage Homes of the Carolinas, Inc. and Class Counsel as representatives of the Settlement Class.
2. The Town does not consent to the certification of the Settlement Class for any purpose other than to effectuate this Settlement Agreement and the resolution of claims relating to Recreation Fees paid by the Settlement Class to the Town from December 19, 2017 through December 13, 2022. In the event the Settlement Agreement is declared null and void for any reason, or in the event the Court fails to approve the Settlement Agreement or certify the Settlement Class, the order conditionally certifying the Settlement Class shall be automatically vacated upon notice to the Court of the termination of the Settlement Agreement and the matter shall proceed as though the Settlement Class had never been conditionally certified and such finding had never been made.

C. Approval by The Court

1. Class Counsel shall submit to the Court within ten (10) after full execution of this Settlement Agreement, a motion for preliminary approval of the Settlement Agreement on behalf of the Settlement Class, together with a proposed preliminary approval order. The motion for preliminary approval

shall seek: (i) certification of the Settlement Class (for settlement purposes only); (ii) appointment of Meritage Homes of the Carolinas, Inc. and Class Counsel as the representatives of and counsel for the Settlement Class; (iii) preliminary approval of the terms of the Settlement Agreement as fair, adequate and reasonable; and (iv) approval of the form and manner of notice and opt-out procedures as set forth in the Settlement Agreement. The motion for preliminary approval shall also ask the Court to schedule a hearing date for final approval of the Settlement Agreement. If the settlement is terminated or does not obtain Final Approval, then the status of class certification in this litigation shall be as it existed prior to the execution of the Settlement Agreement.

2. After the Opt-Out Date has passed, Class Counsel and counsel for the Town shall file a motion seeking entry by the Court of a Final Order and Judgment:

- (a) Certifying the Settlement Class and appointing the Plaintiff Meritage Homes of the Carolinas, Inc. and Class Counsel as representatives of the Settlement Class;
- (b) Determining that the Town and the Settlement Class have submitted to the jurisdiction of the Court for purposes of this Settlement, that the Court has personal jurisdiction over the Town and all members of the Settlement Class and that the Court has jurisdiction to approve this Settlement Agreement as fair, reasonable and adequate under North Carolina Rule of Civil Procedure 23;

- (c) Finding that the notice provided for in the Settlement Agreement constitutes reasonable and the best practicable notice; constitutes notice that is reasonably calculated, under the circumstances, to apprise members of the Settlement Class of the pendency of this action, the terms of this Settlement Agreement, the right to object or exclude themselves from this Settlement and to appear at the hearing on final approval; constitutes due, adequate, and sufficient notice to all persons or entities entitled to receive such notice; and meets the requirements of due process, the North Carolina Rules of Civil Procedure and any other applicable law or rules of the Court;
- (d) Directing that the claims in the Class Action Litigation as to a refund, in the amounts as set forth herein, of Recreation Fees paid to the Town from December 19, 2017 through December 13, 2022, and, except as provided below, without costs;
- (e) Reserving for the Court exclusive jurisdiction over this Settlement, including the administration, consummation, and enforcement of this Settlement Agreement;
- (f) Determining that there is no just reason for delay and directing that the final judgment shall be final and appealable;
- (g) Directing that for a period of four years from the Final Judicial Approval date of the Settlement, the Clerk of Court shall maintain the record of those members of the Settlement Class who have timely excluded themselves from the Settlement Class; and

(h) Incorporating the release set forth in the Settlement Agreement and forever discharging the Town from All Claims.

3. Upon final approval of this Settlement Agreement, Class Counsel and counsel for the Town shall join in seeking dismissal with prejudice of the claims in the Class Action Litigation as they relate to the Town's collection of Recreation Fees from December 19, 2017 through December 13, 2022, to the extent that the Court does not otherwise dismiss those claims with prejudice in its Final Order and Judgment.

D. Notice

1. Through a motion styled Motion for Preliminary Approval of Class Action Settlement, Class Counsel shall apply to the Court for an order authorizing notice to the Settlement Class substantially in the form to be agreed upon by the parties, and as approved by the Court. Such notice shall inform the Settlement Class of the conditional certification of the Settlement Class and the terms of the Settlement Agreement, advise of the right to request exclusion from the Settlement Class, and state the date scheduled by the Court for the hearing on final approval of the settlement.
2. Class Counsel and counsel for the Town agree that under the circumstances, the best practicable means of notice to the Settlement Class is notice by direct mail.
3. The Notice Administrator will provide notice to all identifiable members of the Settlement Class by United States Mail by mailing notice, in the form agreed upon by the parties and as approved by the Court, to the last known

address of each member of the Settlement Class. The cost of such notice and all other Administration Costs will be paid from the Settlement Fund.

4. A copy of the direct mail notice will also be posted on an Internet web site during the entire Notice Period. Class Counsel and counsel for the Town shall agree on an Internet web site address. The Notice Administrator will manage the Internet web site. The Notice shall identify Class Counsel's phone number and web site which shall provide an opportunity for Class Members to obtain information regarding the Settlement. The Internet website shall post copies of the Complaint, the Settlement Agreement, the Orders Granting Preliminary Approval of the Settlement, the Class Notice, and Frequently Asked Questions. Additionally, the Internet website will have a Change of Address Form available for Potential Class Members that want to notify the Notice Administrator of a change of address. The notice by direct mail will direct the Settlement Class to the Internet web site and to Class Counsels' telephone number from which additional information may be obtained.
5. A copy of the notice by direct mail will all be available upon request from the Notice Administrator.
6. The written notice shall be mailed no later than thirty (30) days after the Court enters an order preliminarily approving the Settlement Agreement. Class Counsel and counsel for the Town shall use all reasonable efforts to ensure that notice is completed in a timely fashion.

III. REQUESTS TO OPT OUT OF THE SETTLEMENT CLASS AND OBJECTIONS TO THE SETTLEMENT AGREEMENT

A. Opt-Out Procedures

1. Class Counsel and counsel for the Town will recommend that the Court approve an Opt-Out Date that is forty-five (45) days after the mailing of the written Notice. Any member of the Settlement Class may request exclusion from (“opt-out” of) the settlement on or before the Opt-Out Date through the method described below. Except as authorized by law, no person may opt-out on behalf of any other person, class, or sub-class.
2. Each member of the Settlement Class wishing to opt out of the Settlement Class must individually sign and submit timely written notice to an address designated by the Notice Administrator. This written notice must contain the name, address and valid telephone number of the Class Member wishing to opt out of the Settlement Class. This written notice must clearly manifest an intent to be excluded from the Settlement Class. To be considered timely, written notice must be postmarked for mailing to the Notice Administrator on or before the Opt-Out Date.
3. The Notice Administrator shall promptly forward copies of any Opt-Out letter that it receives to Class Counsel and counsel for the Town, and the Notice Administrator shall file a list of all such Class Members who exercise an Opt-Out Right with the Court not later than fourteen (14) days prior to the Fairness Hearing.
4. If a Class Member exercises an Opt-Out Right pursuant to this section, such opt-out shall only be effective at the conclusion of the Opt-Out Period and

upon Final Judicial Approval of the Settlement Agreement; unless otherwise ordered by the Court.

B. Objections to Class Action Settlement Agreement

1. Subject to Court approval, any member of the Settlement Class who intends to object to the fairness of the Settlement Agreement must file objections to the Settlement Agreement in writing and postmarked no later than forty-five (45) days after the mailing of the written Notice, and serve the same upon the Notice Administrator, Class Counsel, and Counsel for the Town.
2. Objections to the Settlement Agreement must: (a) contain a caption or title that identifies it as “Objection to Class Settlement in *Meritage Homes of the Carolinas, Inc. v. Town of Holly Springs*, Wake County Case No. 20-CVS-14511;” (b) identify whether the objection is to the Settlement Class; (c) set forth the specific reason(s), if any, for each objection, including all legal support the Settlement Class Member wishes to bring to the Court’s attention and all factual evidence the Settlement Class Member wishes to offer in support of the objection; (d) include the name and address of the Settlement Class Member; (e) be personally signed by the Settlement Class Member or an officer or director thereof with actual authority to bind the entity; (f) include an identification, by case style and number, of any other class settlements in which the objector or the objector’s attorney(s) have asserted an objection; (g) include an identification of all attorneys having a financial interest or stake in the objection; and (h) three dates within the

calendar month they are submitting the objection in which they can be available for a deposition.

3. Class Members submitting objections to the Settlement Agreement may also file a statement of intent to appear at the Fairness Hearing, either personally or through their counsel. The statement of intent to appear at the Fairness Hearing must be filed with the Wake County Clerk of Superior Court in *Meritage Homes of the Carolinas, Inc. v. Town of Holly Springs*, Wake County Case No. 20-CVS-14511, and be served upon Class Counsel in the manner provided by Rule 5 of the North Carolina Rules of Civil Procedure, no later than fourteen (14) days before the date of the Fairness Hearing. The Court will determine whether Class Members filing statements of intent to appear at the Fairness Hearing will be permitted to enter appearances and participate at the Fairness Hearing.
4. Any Class Member who does not raise a timely objection to the Settlement Agreement prior to the Fairness Hearing shall be foreclosed from seeking review of the Settlement Agreement by appeal or otherwise without Court approval.
5. The Notice Administrator will provide a summary chart and file all original opt-out notices and objections with the Court, along with copies to Class Counsel and Counsel for the Town.

IV. CLASS SETTLEMENT & BENEFITS.

A. Class Settlement Amount & Payment by Town from the Common Fund: The Class Action Settlement Fund (or Common Fund) shall be payable by the Town pursuant to the terms contained herein. The Town shall pay a total of \$7,500,000.00 to the Common Fund for Class

Member benefits, Notice Administration, Attorneys' Fees and Expenses, Service Awards, and any other costs of this Settlement Agreement. Of that \$7,500,000.00, the sum of \$6,300,000.00 shall be reserved for payments to Class Members for Recreation Fees paid to the Town from December 19, 2017 through June 30, 2020 (the Uniform Per-Unit Fee Subclass), and the sum of \$1,200,000.00 shall be reserved for payments to Class Members for Recreation Fees paid to the Town from July 1, 2020 through December 13, 2022 (the Property Value Formula Subclass). From the Common Fund, the Town shall issue payments for the Court approved Class Notice and Claims administration expenses, payments to Class Members, the Class Representative Service awards and Class Counsel's Attorney fee and expense award. The payment of Notice Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement shall be allocated *pro rata* between the two settlement subclasses.

Town shall fund the Common Fund as follows: \$3,500,000.00 paid within seven (7) days of the Final Judicial Approval date, \$1,000,000.00 paid on or before December 1, 2023, and the remaining \$3,000,000.00 paid on or before December 1, 2024.

B. Class Member Benefit Payments:

After the Court finally approves the Class Representative Service awards and Class Counsel's Attorney fee and expense award, Class Counsel will determine each Class Member's percentage share of the common fund, which shall be based on each Class Member's total Recreation Fee payments to the Town from the two Sub-Classes, after deducting expenses for the Court approved Class Notice and Administration expenses, the Class Representative Service awards and Class Counsel's Attorney fee award.

Any Class Member that has not opted out of the Class Action Settlement will be issued a Settlement check from the Settlement Administrator for their class member benefit from the

settlement fund in the manner as described below. The Settlement Administrator will mail the Class benefit checks to Class Members.

The two subclasses shall be paid class benefits as follows:

1. From the portion of the Settlement reserved for Recreation Fee payments to the Town from December 19, 2017 through June 30, 2020 (the “Uniform Per Unit Fee Subclass”), the Town will pay to all Class Members who paid Recreation Fees to the Town from December 19, 2017 through June 30, 2020, and who have not opted out of this Settlement Sub-Class, an amount up to 85% of the Class Member’s Claim Amount for Recreation Fees paid by the Class Member during this period. Notice Administration, Attorneys’ Fees and Expenses, Service Awards, and other costs of this Settlement Agreement may reduce the percentage of payouts to Class Members to a percentage lower than 85% of the Class Members’ Claim Amounts, and Class Members will be paid a *pro-rata* amount of the remaining available balance of the Fund following deduction for those costs. Any funds which remain in this portion of the Fund following the expiration of checks sent to Class Members shall be distributed as set forth in Section IV(E).
2. From the portion of the Settlement reserved for Recreation Fee payments to the Town from July 1, 2020 through December 13, 2022 (the “Property Value Formula Subclass”), the Town will pay to all Class Members who paid Recreation Fees to the Town from July 1, 2020 through December 13, 2022, and who have not opted out of this Settlement Sub-Class, an amount up to 24% of the Class Member’s Claim Amount for Recreation Fees paid

by the Class Member during this period. Notice Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement and other expenses may reduce the percentage of payouts to Class Members to a percentage lower than 24% of the Class Member's Claim Amount for Recreation Fees paid by the Class Member during this period, and Class Members will be paid a pro rata amount of the remaining available balance of the Fund following deduction for those costs. Any funds which remain in this portion of the Fund following the expiration of checks sent to Class Members shall be distributed as set forth in Section IV(E).

3. Subject to the Final Judgment and Order being first entered, the payment described above to the Settlement Class for Settlement Claims, including Notice Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement, or any other cost, are subject to a maximum payout, or maximum settlement value, of \$7,500,000.00. In no event shall the Town be obligated to pay any more than the maximum payout of \$7,500,000. The final amount that will be paid to Class Members shall be determined by the Settlement Administrator after determining request for exclusions from the Class and deducting expenses for Notice Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement. The Final Settlement amount shall not exceed the aforementioned total Common Fund and no payments pursuant

to this Agreement shall be made except for those made from the Fund, and any excess to be distributed as set forth in Section IV(E).

4. Class Member benefit checks shall be issued by the Settlement Administrator within thirty (30) days of receipt of funds by the Town as set forth in Section IV(B)(4) above. The Settlement Administrator shall issue 46.67% of the Class Member benefit payment upon receipt of the initial payment by the Town, 13.33% upon receipt of the second payment by the Town, and 40% upon receipt of the third payment by the Town.

C. Attorneys' Fees and Expenses and Service Awards. As additional consideration for the dismissal of the Action with prejudice on the merits and entry of the Release, the Settlement Administrator will pay or cause to be paid from the Fund any Attorneys' Fees and Expenses and Service Awards that may be awarded by the Court, subject to the terms, conditions, and maximum amount limitations set forth in this Agreement. The Attorneys' Fees and Expenses and Services Awards shall be paid on the same schedule as the Class Member benefit payments.

D. Notice and Settlement Administration Costs. All Notice and Settlement Administration Costs shall be paid from the Common Fund.

E. Unclaimed Funds. For any Class member benefit checks that have not been cashed or deposited within one-hundred and twenty (120) days of issuance, those funds shall revert back to the Common Fund to be distributed through a second round of checks in the following manner: the total amount of unclaimed funds shall be paid *pro rata* to the Class Members who cashed or deposited checks in the first distribution, up to the amount of making these Class Members whole on their total Claim Amount, and if any money still remains after making these Class members

whole, these unclaimed funds shall be distributed *cy pres* to a charitable fund as requested by Class Counsel and approved by the Court pursuant to N.C. Gen. Stat. § 1-267.1.

V. RELEASE

A. Upon Final Approval, Plaintiffs and each member of the Settlement Class hereby expressly and irrevocably waives and fully, finally and forever settles and releases any and all claims, demands, actions, suits and causes of action against the Town and/or their respective officers, employees, attorneys, insurers or agents, whether known or unknown, asserted or unasserted, that any member of the Settlement Class ever had, or could have had, now has or hereafter can, shall or may have, relating in any way to any conduct, act or omission which was or could have been alleged by any or all members of the Settlement Class arising out of or relating to the dedication or inability to dedicate land for parks and recreation open space or the payment to the Town of Recreation Fees from December 19, 2017 to December 13, 2022. These claims include claims for damages or remedies of every kind or character (including without limitation actual, compensatory, punitive, or exemplary), known or unknown, or for compensation of any type or for accounting or reconciliation, reimbursement or statutory remedies or for pre- or post-judgment interest, or for other damages arising from or relating to the Class Member's claims for damages that were asserted or that could have been asserted in the Class Action Litigation, including all claims for refunds, damages, etc., as they relate to Recreation Fees paid to the Town from December 19, 2017 to December 13, 2022.

1. In addition to the provisions above, each member of the Settlement Class hereby expressly and irrevocably waives and fully, finally, and forever settles and releases, upon Final Approval, any and all defenses, rights and benefits that said class member may have or that may be derived from the

provisions of applicable law which, absent such waiver, may limit the extent or effect of the release contained above.

2. Consideration: As part of the consideration for the agreement to dismiss All Claims with prejudice, and for entry of the final judgment as provided for in the Settlement Agreement, on the Final Judicial Approval date of the Settlement, the Town shall make available and pay checks to Class Members in accordance with the procedures set forth below.

B. All Class Members who:

1. Paid to the Town Recreation Fees from December 19, 2017 to December 13, 2022; and
2. Do not exercise an Opt Out Right;
3. Shall receive a check as detailed in Section IV A. & B, representing the amount of each class member's percentage share of the Common Settlement Fund, which shall be based on each class member's total Recreation Fee payments to the Town: (a) for the Uniform Per-Unit Fee Sub-Class period from December 19, 2017 through June 30, 2020; and (b) for the Property Value Formula Sub-Class period from July 1, 2020 through December 13, 2022, after deducting expenses for the Court approved Class Notice and Administration expenses, the Class Representative Service awards and Class Counsel's Attorney fee award.

VI. ATTORNEYS' FEES, COSTS AND EXPENSES

A. Class Counsel may apply to the Court for an award of reasonable Attorneys' Fees and Expenses for professional services rendered on behalf of the Settlement Class relating to the claims settled, released, and discharged by the Settlement Agreement.

B. The Town agrees to pay, subject to Court approval, and will not challenge Class Counsel's request for Attorneys' Fees and Expenses up to one-third of the Common Fund. Class Counsel agrees not to seek an award of Attorneys' Fees and Expenses from the Court of more than one-third of the Common Fund. In no event shall the Town be obligated or required to pay any amount greater than one-third of the Common Fund for any past, present, or future Attorneys' Fees and Expenses incurred by Class Counsel for all or any plaintiff or named Class Representative in the Class Action, regardless of any order purporting to award a greater amount.

C. Class Counsel shall apply for an award of Attorneys' Fees and Expenses to the Court no later than fourteen (14) days before the Fairness Hearing Date.

D. Awarded Attorneys' Fees and Expenses shall be paid from the Common Fund within seven (7) days following the dates that the funds are received by the Settlement Administrator from the Town.

VII. SERVICE AWARDS

A. The Town agrees to pay, subject to Court approval, and will not challenge Class Counsel's request for Service Awards to Meritage Homes of the Carolina, Inc., as Class Representative, in the amount of \$20,000 paid from the Common Fund by the Settlement Administrator.

B. Awarded Service Awards shall be paid from the Common Fund within ten (10) days following the Final Judicial Approval date.

VIII. OTHER PROVISIONS

A. No Admission: By entering into this Settlement Agreement, the Town does not admit any liability or wrongdoing or the truth of any of the claims or allegations asserted in the Class Action. To the contrary, the Town specifically denies each one of the allegations of unlawful conduct and damages. It is expressly understood and agreed that this Settlement Agreement is

being entered into solely for the purpose of amicably resolving All Claims between the Town and the Settlement Class: Class Counsel agree not to represent, publicly or otherwise, that the settlement in any way embodies, reflects, implies or can be used to infer any culpability by the Town or any of its Board Members, officers, employees, attorneys, insurers or agents.

B. Binding Effect: This Settlement Agreement shall be binding on and inure to the benefit of Plaintiff, each member of the Settlement Class, and the Town, and their respective successors and assigns.

C. Choice of Law: This Settlement Agreement shall be construed under and governed by the laws of the State of North Carolina without regard to its choice of law or conflict of laws principles.

D. Integrated Agreement: The Settlement Agreement and its attached exhibits shall constitute the entire agreement, complete and integrated statement of each and every term and provision agreed to by Class Counsel and counsel for the Town and is not subject to any condition not provided for herein. The Settlement Agreement shall not be subject to any change, modification, amendment, or addition without the express written consent of all signatories hereto. The parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Settlement Agreement exist among or between them.

E. Jurisdiction: The Court shall retain continuing and exclusive jurisdiction over all provisions of the Settlement Agreement and over all disputes of any kind relating in any way to, or arising in any way out of, the Settlement Agreement.

F. Notice: Any notice, request, instruction, or other document to be given by the Town to Class Counsel, or vice versa, shall be in writing and (a) delivered personally, or (b) sent by Federal Express and facsimile.

If to the Town:

Dan M. Hartzog Jr.
Hartzog Law Group
2626 Glenwood Ave., Ste. 305
Raleigh, NC 27608
Facsimile: (919) 480-2450

If to the Settlement Class:

James R. DeMay, J. Hunter Bryson & W. Mark Cumalander
Milberg, Coleman, Bryson, Phillips, Grossman, PLLC
900 W. Morgan Street
Raleigh, North Carolina 27603
Facsimile: (919) 600-5035

G. Electronic Execution in Counterparts: The Settlement Agreement may be executed with an electronic or facsimile signature, such as manually executed signatures transmitted by facsimile or other electronic format (including, without limitation, “pdf”, “tif”, or “jpg”) and other electronic signatures (including, without limitation, DocuSign and AdobeSign), and may be executed in counterparts by the parties hereto, each of which shall constitute a duplicate original.

IN WITNESS WHEREOF, the parties have duly executed this Settlement Agreement as of this — day of January, 2023.

[SIGNATURES ON FOLLOWING PAGES]

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

APPROVED BY CLASS COUNSEL AND CLASS PLAINTIFFS:

Dated: _____

James R. DeMay
J. Hunter Bryson
W. Mark Cumalander
Milberg Coleman Bryson Phillips Grossman, PLLC
900 W. Morgan Street
Raleigh, North Carolina 27603
Facsimile: (919) 600-5035

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Dated: _____

Meritage Homes of the Carolinas, Inc.

By: _____

Title: _____

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

APPROVED ON BEHALF OF TOWN OF HOLLY SPRINGS:

Dated: _____

TOWN OF HOLLY SPRINGS:

By: _____

This instrument has been preaudited in the manner required by the Local Government Budget and Fiscal Control Act.

Finance Officer, Town of Holly Springs

Counsel for the Town of Holly Springs:

Dan M. Hartzog Jr.
Hartzog Law Group
2626 Glenwood Ave., Ste. 305
Raleigh, NC 27608

EXHIBIT A

06/13/22 06/01/22
6/20/2022 06/20/22
7/8/2022 07/08/22

CV 1383
CV 1390

20220196
202202199

755
71832
72836
89869

150,220.00 Elmwood Construction
569,375.00 MUNGO HOMES
\$ 323,405.00 MUNGO HOMES
\$ 288,350.00 M/I Homes

806 Green Valley Rd Ste 311 Greensboro NC 27408
441 Western Ln RMO SC 29063
442 Western Ln RMO SC 29063
4131 Worth Ave Ste 420 Columbus OH 43219

Hawthorne Apartments (P#P202200087)
Stephens Tract Phase 3 (P#P202200070)
Stephens Tract Phase 4 (P#P202200121)
Honeycutt Subdivision Phases 3 & 5 (P#P202200120)

From: [Jim DeMay](#)
To: [Jim DeMay](#)
Subject: FW: HS Rec Fee Agreement
Date: Monday, December 5, 2022 11:04:27 AM

From: Dan Hartzog Jr. <dhartzogjr@hartzoglawgroup.com>
Sent: Tuesday, November 29, 2022 2:31 PM
To: Hunter Bryson <hbryson@milberg.com>
Cc: Jim DeMay <JDeMay@milberg.com>
Subject: RE: HS Rec Fee Agreement

According to the Town, no additions have been made since 7/8/22, which was an amount of \$288,360.