

STATE OF NORTH CAROLINA
BY: SS
COUNTY OF WAKE

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

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

Plaintiff,

vs.

TOWN OF HOLLY SPRINGS,

Defendant.

**ORDER GRANTING FINAL APPROVAL OF
CLASS ACTION SETTLEMENT**

WHEREAS, this matter came on before the undersigned Superior Court Judge on April 11, 2023 in Wake County Civil Superior Court for hearing on Plaintiff's Motion for Final Approval of Class Action Settlement (the "Motion") pursuant to Rule 23 of the North Carolina Rules of Civil Procedure with respect to the Class Action Settlement (the "Settlement") entered into between Plaintiff and Defendant Town of Holly Springs (the "Town") on January 11, 2023, a copy of which is attached to Plaintiff's Motion for Preliminary Approval of Class Action Settlement as "Exhibit A"; and

WHEREAS, on January 24, 2023, the Hon. G. Bryan Collins, Jr., Superior Court Judge, entered an Order Granting Preliminary Approval of Class Action Settlement (the "Preliminary Approval Order") which, *inter alia*: (i) preliminarily approved the Settlement as fair, reasonable, and adequate; (ii) preliminarily approved the Settlement Class; (iii) appointed Plaintiff Meritage Homes of the Carolinas, Inc. as Settlement Class Representative; (iv) appointed James R. DeMay, J. Hunter Bryson, and W. Mark Cumalander, Milberg Coleman Bryson Phillips Grossman, PLLC, as Settlement Class Counsel; (v) approved the form and manner of the Settlement Notice program for Settlement Class members; and (vi) set a hearing date for Final

Approval of the Settlement; and

WHEREAS, Notice of the Settlement was provided by first-class mail to Settlement Class members by the Settlement Administrator, Settlement Services, Inc., and no Settlement Class member objected to or opted out of the Settlement; and

WHEREAS, the Town does not oppose the Motion; and

WHEREAS, based on the foregoing, having considered the papers filed and proceedings held in connection with the Settlement, and having considered all other matters of record and having heard the arguments of counsel, and having considered the applicable legal authority and standards;

IT IS HEREBY ORDERED as follows:

1. This Court has jurisdiction over the subject matter of this action and the Parties, including all Settlement Class members.
2. This Order incorporates the definitions in the Settlement Agreement, and all capitalized terms used in this Order have the same meanings as set forth in the Settlement Agreement, unless otherwise noted.
3. The direct-mail Notice provided to the Settlement Class in accordance with the Preliminary Approval Order was the best notice practical under the circumstances and constituted due and sufficient notice to Settlement Class members of the proceedings and matters set forth therein. The Notice fully satisfied the requirements of due process, North Carolina Civil Procedure Rule 23, and all other applicable laws and rules.
4. The Settlement (i) is in all respects fair, reasonable, and adequate to the Settlement Class, (ii) was the product of informed, arms-length negotiations among competent, able counsel, and (iii) was made based upon a record that is sufficiently developed and complete

to have enabled the Parties to adequately evaluate and consider their positions. The Settlement provides for a Common Settlement Fund in the amount of \$7,500,000, from which members of the Uniform Per-Unit Fee Subclass will receive up to 85% of their Recreation Fees paid to the Town, less a *pro rata* share of administration costs, attorneys' fees and expenses, and service awards; and the Property Value Formula Subclass will receive up to 24% of their Recreation Fees paid to the Town, less a less a *pro rata* share of administration costs, attorneys' fees and expenses, and service awards. In finding the Settlement fair, reasonable, and adequate, the Court has also considered that there were no objections or opt outs to the Settlement, indicating an overwhelming positive reaction from the Settlement Class.

5. The Class Representative and Class Counsel have fairly and adequately represented and will continue to adequately represent and protect the interests of the Settlement Class members in connection with the Settlement.

6. Because the Court approves the Settlement set forth in the Settlement Agreement as fair, reasonable, and adequate, the Court authorizes and directs implementation of all terms and provisions of the Settlement Agreement.

7. All Parties to this action, and all Settlement Class members, are bound by the Settlement as set forth in the Settlement Agreement and this Order.

8. The appointment of Plaintiff Meritage Homes of the Carolinas, Inc. as Settlement Class Representative is affirmed.

9. The appointment of James R. DeMay, J. Hunter Bryson, and W. Mark Cumalander, Milberg Coleman Bryson Phillips Grossman, PLLC, as Class Counsel is affirmed.

10. The Court affirms the finding that the Settlement Class meets the relevant requirements of North Carolina Civil Procedure Rule 23 for purposes of the Settlement in that:

(1) the number of Settlement Class members is so numerous that joinder is impracticable; (2) there are questions of law and fact common of the Settlement Class members; (3) the claims of the Class Representative are typical of the claims of the Settlement Class members; (4) the Class Representative is an adequate representative for the Settlement Class, and has retained experienced counsel to represent it; (5) the questions of law and fact common to the Settlement Class members predominate over any questions affecting any individual Settlement Class member; and (6) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

11. Plaintiff and each Settlement Class member 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 postjudgment 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.

12. Class Counsel's request for Attorneys' Fees and Expenses as a percentage of the Common Fund in the amount of one-third (1/3) of the Common Fund, or \$2,500,000, is reasonable, having considered the information and evidence in the record, the relevant legal standards, and awards granted in similar cases. Class Counsel has provided sufficient information to establish their experience, skill, and ability to successfully conduct class action litigation; Class Counsel engaged in protracted and complex litigation with the Town for over two (2) years on a contingent basis with no promise of a recovery; Class Counsel has obtained a highly favorable result for Class Members in a case with novel legal and factual issues; and no Class Member has opted out of or objected to the Settlement. The request for Attorneys' Fees and Expenses in the amount of \$2,500,000 is therefore GRANTED, and shall be paid from the Common Fund in accordance with the terms of the Settlement Agreement.

13. The Class Representative's request for a Service Award in the amount of \$20,000 is reasonable, having considered the information and evidence in the record, the relevant legal standards, and awards granted in similar cases. Plaintiff expended time and resources in assisting Class Counsel to obtain the Settlement on behalf of the Class. The request for a Service Award in the amount of \$20,000 is GRANTED, and shall be paid from the Common Fund in accordance with the terms of the Settlement Agreement.

14. The Settlement Administrator, Settlement Services, Inc., shall be paid the sum of \$25,200 for the Administration Costs of the Settlement, such amount to be paid from the Common Fund in accordance with the terms of the Settlement Agreement.

15. The Motion for Final Approval of Settlement is GRANTED.

16. The Parties, including all Settlement Class members, are bound by this Final

Approval Order.

17. The Court hereby retains and reserves jurisdiction over: (a) implementation of this Settlement and any distributions from the Settlement Fund; (b) this action, until each and every act agreed to be performed by the Parties shall have been performed pursuant to the terms and conditions of the Settlement Agreement; and (3) all Parties, for the purpose of enforcing and administering the Settlement.

IT IS SO ORDERED.

This the 11th day of April, 2023.

4/16/2023 9:47:22 PM



Superior Court Judge