

## SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 12<sup>th</sup> day of February, 2021 by and between Lennar Carolinas, LLC, D.R. Horton, Inc., D.R. Horton-Regent, LLC, Taylor Morrison of the Carolinas, LLC, TAC Stafford, LLC, Eastwood Construction, LLC d/b/a Eastwood Homes, M/I Homes of Charlotte, LLC, Niblock Homes, LLC, and Niblock Development Corp. (collectively, “Plaintiffs”), on behalf of the Settlement Class (as defined below) and the Town of Mooresville (“the Town” as defined below) in *Lennar Carolinas, LLC, et al. v. Town of Mooresville*, pending in the General Court of Justice, Superior Court Division, Iredell County, North Carolina, Case Number 18-CVS-2792 (the “Lennar Action”) and in *M/I Homes of Charlotte, LLC, et al. v. Town of Mooresville*, pending in the General Court of Justice, Superior Court Division, Iredell County, North Carolina, Case Number 18-CVS-3105 (the “M/I Homes Action”) (the Lennar Action and the M/I Homes Action are collectively referred to herein as the “Class Action”),

WHEREAS, on November 9, 2018, Lennar Carolinas, LLC, D.R. Horton, Inc., D.R. Horton-Regent, LLC, Taylor Morrison of the Carolinas, LLC, TAC Stafford, LLC, and Eastwood Construction, LLC d/b/a Eastwood Homes (collectively, the “Lennar Plaintiffs”), through the undersigned Class Counsel, commenced the Lennar Action against the Town in the Superior Court of Iredell County through the filing of a Complaint, and thereafter filed an Amended Complaint (Class Action) on January 14, 2019, seeking relief on behalf of themselves and a class under a cause of action for a declaration that the Town’s collection of water and sewer “system development fees” and “availability fees” (collectively, “System Development Fees”) for the period of three (3) years prior to commencement of the action through June 30, 2018 exceeded the Town’s legal authority and was *ultra vires*, and that the System Development Fees must be refunded to the Lennar Plaintiffs and class pursuant to N.C.G.S. § 160A-363. The

Lennar Plaintiffs alleged, among other things, that the Town collected Fees in violation of *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016) and exceeded its authority under the Public Enterprise Statutes, N.C. Gen. Stat. §§ 160A-311, *et seq.*, in charging the System Development Fees; and

WHEREAS, on December 17, 2018, M/I Homes of Charlotte, LLC, Niblock Homes, LLC, and Niblock Development, LLC (collectively, the “M/I Homes Plaintiffs”), through the undersigned Class Counsel, commenced the M/I Homes Action against the Town in the Superior Court of Iredell County through the filing of a Complaint, and thereafter filed an Amended Complaint (Class Action) on January 14, 2019, also seeking relief on behalf of themselves and a class under a cause of action for a declaration that the Town’s collection of water and sewer “system development fees” and “availability fees” (collectively, “System Development Fees”) for the period of three (3) years prior to commencement of the action through June 30, 2018 exceeded the Town’s legal authority and was *ultra vires*, and that the System Development Fees must be refunded to the M/I Homes Plaintiffs and the class pursuant to N.C.G.S. § 160A-363. Like the Lennar Plaintiffs, the M/I Homes Plaintiffs alleged, among other things, that the Town collected Fees in violation of *Quality Built Homes, Inc. v. Town of Carthage*, 369 N.C. 15, 789 S.E.2d 454 (2016) and exceeded its authority under the Public Enterprise Statutes, N.C. Gen. Stat. §§ 160A-311, *et seq.*, in charging the System Development Fees;

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

WHEREAS, the Lennar Action and the M/I Homes Action were consolidated by Order of the Hon. Joseph N. Crosswhite on August 19, 2019; and

WHEREAS, the Lennar Action and the M/I Homes Action were designated as Rule 2.1 Exceptional Cases by Order of the Chief Justice of the North Carolina Supreme Court on July 6, 2020, and assigned to Hon. R. Gregory Horne, Superior Court Judge for Buncombe County, North Carolina; and

WHEREAS, Plaintiffs filed Motions for Leave to Amend and Supplement the Amended Complaint on October 2, 2020, seeking leave to file a Second Amended and Supplemented Complaint wherein Plaintiffs sought further relief on behalf of themselves and a class under a cause of action for a declaration that the Town's collection of System Development Fees on or after July 1, 2018 through the present were improperly calculated by the Town and violated the Town's authority to charge System Development Fees under Article 8, Chapter 162A of the North Carolina General Statutes, and that a portion of the System Development Fees charged by the Town from July 1, 2018 through the present must be refunded to Plaintiffs and the class;

WHEREAS, following a hearing on January 15, 2021, Judge Horne entered an Order on January 19, 2021 granting Plaintiffs' Motions for Leave to Amend and Supplement the Amended Complaint, and a Second Amended and Supplemented Complaint were filed in each action on February 3, 2021; and

WHEREAS, the parties have engaged in extensive discovery, including propounding multiple sets of written discovery, issuing several subpoenas *duces tecum* to third-party engineering, planning, and financial consultants contracted by the Town, reviewing voluminous document productions, and deposing Town representatives including the Public Utilities Director Allison Kraft, Chief Financial Officer Deborah Hockett, Deputy Finance Director Sarah Muller, Assistant Town Manager Ryan Rase, and the Town's contracted utility fee and rate consultant, Richard McClung, of Willdan Financial Advisors, Inc.; and

WHEREAS, after over two (2) years of protracted litigation and arms-length settlement negotiations between Counsel for the Settlement Class (as defined below) and the Town, including informal discussions and a formal mediation session on January 11, 2021 conducted by certified mediator Hon. Timothy Patti (Ret.), which resulted in an impasse, and then a reconvened mediation on February 12, 2021, 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 System Development Fees paid to the Town from November 9, 2015 through March 1, 2021. Counsel for the Settlement Class 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 of Ferguson, Hayes, Hawkins & DeMay, PLLC; James E. Scarbrough, John F. Scarbrough, and Madeline J. Trilling of Scarbrough, Scarbrough & Trilling, PLLC; and William G. Wright and Gary K. Shipman of Shipman & Wright, L.L.P. are counsel for Plaintiffs, and are fully authorized to enter into this Settlement Agreement on behalf of Plaintiffs 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, it is agreed by the undersigned, subject to Court approval, on behalf of the Settlement Class and the Town, that All Claims (as defined below) of the Settlement Class against the Town 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” 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 Claims Administrator, and any expenses of mailing notices, and paying Settlement Benefits and expenses.

B. “Agreement” or “Settlement Agreement” mean 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 System Development Fees to the Town from November 9, 2015 to March 1, 2021. 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 Member’s 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 System Development Fees paid to the Town from November 9, 2015 to March 1, 2021.

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. “Claim” means the claim of a Class Member or his or her representative submitted on a Claim Form as provided in this Settlement Agreement.

F. “Claim Amount” means the amount of System Development Fees paid by the Class Member to the Town.

G. “Claimant” means a Class Member who has timely and correctly submitted a Claim.

H. “Claim Form” means the document, in substantially the same form as the version attached to other papers and affidavits filed to effectuate this Settlement Agreement.

I. “Claim Form Deadline” or “Claim Form Period” means the date by which completed Claim Forms must be received by the Claims Administrator. The Claim Form Deadline shall be specified in the Settlement Notice and the settlement website, and shall be the date corresponding to the one-hundred and twentieth (120<sup>th</sup>) day following the date of the mailing of the Settlement Notice.

J. “Claims Administrator” shall mean Settlement Services, Inc., who will administer the Settlement. The Parties have agreed to retain Settlement Services, Inc., as the Claims Administrator, and to seek the Court’s approval of Settlement Services, Inc., in connection with the preliminary approval of this Agreement and Settlement.

K. “Claims Process” means the process for submitting and processing Claim Forms.

L. “Class Action” or “Class Action Litigation” shall be the class-action litigation bearing the following caption: *Lennar Carolinas, LLC, et al., individually and on behalf of all others similarly situated v. Town of Mooresville, pending in the General Court of Justice, Superior Court Division, Iredell County, North Carolina, Case Number 18-CVS-2792*; and *M/I Homes of Charlotte, LLC, et al., individually and on behalf of all others similarly situated v. Town of Mooresville, pending in the General Court of Justice, Superior Court Division, Iredell County, North Carolina, Case Number 18-CVS-3105*.

M. “Class Counsel” or “Counsel for the Settlement Class” shall mean James R. DeMay of Ferguson, Hayes, Hawkins & DeMay, PLLC; James E. Scarbrough, John F. Scarbrough, and Madeline J. Trilling of Scarbrough, Scarbrough & Trilling, PLLC; and William G. Wright and Gary K. Shipman of Shipman & Wright, L.L.P.

N. “Class Members” shall mean members of the Settlement Class.

O. “Class Representative” shall mean Lennar Carolinas, LLC, D.R. Horton, Inc., D.R. Horton-Regent, LLC, Taylor Morrison of the Carolinas, LLC, TAC Stafford, LLC, Eastwood Construction, LLC, M/I Homes of Charlotte, LLC, Niblock Homes, LLC, and Niblock Development Corp.

P. “Common Fund” or “Fund” means an amount of money paid by the Town that represents the full settlement value of \$8,000,000.

Q. “Court” or “Trial Court” means the General Court of Justice, Superior Court Division of Iredell County, North Carolina and Rule 2.1 designee and Superior Court Judge R. Gregory Horne of Buncombe County, North Carolina.

R. “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.

S. “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.

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

U. “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.

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



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

X. “Preliminary Approval Hearing” shall mean the hearing, which may be conducted via Zoom or Web-Ex, in North Carolina Superior Court, as designated by Judge Horne, upon motion for an Order Granting Preliminary approval of the Settlement Agreement as specified herein.

Y. “Service Awards” means such funds as may be awarded by the Court to the Class Plaintiffs within the limits set forth in this Agreement, to compensate the Class Plaintiffs for the efforts and risks taken by them 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.

Z. “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.

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

1. “All individuals, proprietorships, partnerships, corporations, or other entities who: (a) from November 9, 2015 through June 30, 2018 (b) paid water or sewer system development fees and/or availability fees to the Town;” and
2. “All individuals, proprietorships, partnerships, corporations, or other entities who: (a) from July 1, 2018 through March 1, 2021 (b) paid water or sewer system development fees and/or availability fees to the Town.”

BB. “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 has agreed to state to the Court, if asked, that they are contractually bound not to object 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 by the Claims Administrator from the relief offered to 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 each of the Class Members and a copy of the Stipulation is available for review from the Claims 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 Claims Administrator is directed within a timely and properly submitted Claim Form to forward settlement funds to a third party, the Claims Administrator will do so.
7. The Settlement Notice shall disclose where Class Members may direct written or oral inquiries regarding the Settlement.

CC. “System Development Fees” shall be defined to include water and sewer system development fees and availability fees paid to the Town from November 9, 2015 to March 1, 2021.

DD. “The Town” means the Town of Mooresville, 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

Plaintiffs Lennar Carolinas, LLC, D.R. Horton, Inc., D.R. Horton-Regent, LLC, Taylor Morrison of the Carolinas, LLC, TAC Stafford, LLC, Eastwood Construction, LLC, M/I Homes of Charlotte, LLC, Niblock Homes, LLC, and Niblock Development Corp. 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 System Development Fees paid by the Settlement Class to the Town from November 9, 2015 through March 1, 2021. 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, without prejudice to the ability of any party thereafter to request or oppose class certification on any basis.

C. Approval by The Court

1. Class Counsel shall submit to the Court on or before March 8, 2021, a motion for preliminary approval of the Settlement Agreement on behalf of the Settlement Class, together with a proposed preliminary approval order. Counsel for the Town shall have the right to review and approve such

motion prior to its submission. The motion for preliminary approval shall seek: (i) certification of the Settlement Class (for settlement purposes only); (ii) appointment of Lennar Carolinas, LLC, D.R. Horton, Inc., D.R. Horton-Regent, LLC, Taylor Morrison of the Carolinas, LLC, TAC Stafford, LLC, Eastwood Construction, LLC, M/I Homes of Charlotte, LLC, Niblock Homes, LLC and Niblock Development Corp. 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. Within 45 days after the Opt-Out Date, Class Counsel and counsel for the Town shall seek entry by the Court of a Final Order and Judgment, in a form mutually agreeable to the Parties:
  - (a) Certifying the Settlement Class and appointing the Plaintiffs Lennar Carolinas, LLC, D.R. Horton, Inc., D.R. Horton-Regent, LLC, Taylor Morrison of the Carolinas, LLC, TAC Stafford, LLC, Eastwood Construction, LLC, M/I Homes of Charlotte, LLC,

Niblock Homes, LLC and Niblock Development Corp. 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 of water and sewer System Development Fees paid to the Town from November 9, 2015 to March 1, 2021 be dismissed with prejudice 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. If the Court for any reason: (1) determines not to approve the Settlement Agreement; (2) does not enter the Final Order and Judgment substantially in the form described in the Settlement Agreement; or (3) if the Court's approval is modified, reversed, or set aside on appeal, then the Settlement Agreement terminates and becomes null and void except as otherwise provided herein.
4. 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 water and sewer System Development Fees from November 9, 2015 to March 1, 2021, 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 Claims 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 Common 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 Claims 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 demonstrate their eligibility to participate in the Settlement Class. The Internet website shall post copies of the Second Amended 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 Claims 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 Claims 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 Settlement 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 Claims 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 Claims Administrator on or before the Opt-Out Date.
3. The Claims Administrator shall promptly forward copies of any Opt-Out letter that it receives to Class Counsel and counsel for the Town, and the Claims 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 Settlement Notice, and serve the same upon the Claims 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 *Lennar Carolinas, LLC, et al. v. Town of Mooresville*, Iredell County No. 18-CVS-2792 and *M/I Homes of Charlotte, LLC, et al. v. Town of Mooresville*, Iredell County No. 18-CVS-3105;” (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; (f) include an identification, by case style and number, of any other class settlements the objector or the objector’s attorney(s) have asserted an objection; and (g) include an identification of all attorneys having a financial interest or stake in the objection.
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 Iredell County Clerk of Superior Court in *Lennar Carolinas, LLC, et al. v. Town of Mooresville*,

Iredell County No. 18-CVS-2792 and in *M/I Homes of Charlotte, LLC, et al. v. Town of Mooresville*, Iredell County No. 18-CVS-3105, and 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 an 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 Claims 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. Payment by Town to Common Fund: The Common Fund shall be payable by the Town pursuant to the terms contained herein. The Town shall pay a total of \$8,000,000.00 to the Common Fund for Class Member benefits, Claims Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement. Of that \$8,000,000.00, the sum of \$7,250,000.00 shall be reserved for payments to Claimants who paid System Development Fees to the Town from November 9, 2015 through June 30, 2018, and the sum of \$750,000.00 shall be reserved for Claimants who paid Water System Development Fees to the Town from July 1, 2018 through March 1, 2021. The payment of Claims Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement

shall be allocated *pro rata* between the two settlement subclasses. Except as otherwise provided herein, payments by the Town to the Common Fund shall be made within seven (7) days of Final Judicial Approval of this Settlement.

B. Class Member Benefit Payments: Subject to the Final Judgment and Order being first entered, the Settlement Class Members who are Claimants through the Claim Form procedure shall be accorded relief in the following manner from the Common Fund:

1. From the portion of the Settlement reserved for Claimants who paid System Development Fees to the Town from November 9, 2015 through June 30, 2018, the Town will pay to all proper Claimants who paid System Development Fees to the Town from November 9, 2015 through June 30, 2018, an amount up to 67.5% of the Claimant's Claim Amount for System Development Fees paid by the Claimant during this period. In the event that this portion of the Fund is oversubscribed, Claims Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement will reduce the percentage of payouts to Claimants to a percentage lower than 67.5% of the Claimants' Claim Amounts for System Development Fees paid, and Claimants will be paid a *pro-rata* amount of the remaining available balance of the Fund. In no event shall any Claims Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement or any other cost reduce a Claimant's refund percentage from 67.5% of the Claimant's Claim Amount as long as this portion of the Fund is undersubscribed. Claims Administration, Attorneys' Fees and Expenses, Service Awards,

and other costs of this Settlement Agreement shall not be individually deducted from each Claimant's recovery as long as this portion of the Fund is undersubscribed at the conclusion of the claims period. Any funds which remain in this portion of the Fund shall be redistributed to proper Claimants of this portion of the Fund as set forth in Section IV(H).

2. From the portion of the Settlement reserved for Claimants who paid System Development Fees to the Town from July 1, 2018 through March 1, 2021, the Town will pay to all proper Claimants an amount up to 10% of the Claimant's Claim Amount for Water System Development Fees paid by the Claimant during this period. In the event that this portion of the Fund is oversubscribed, Claims Administration, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement and other expenses will reduce the percentage of payouts to Claimants to a percentage lower than 10% of the Claimant's Claim Amount for Water System Development Fees paid by the Claimant during this period, and Claimants will be paid a pro rata amount of the remaining available balance of the Fund. In no event shall any Claims Administration, Attorneys' Fees and Expenses, Service Awards, or other costs of this Settlement Agreement or any other cost reduce a Claimant's refund percentage from 10% of the Claimant's Claim Amount for Water System Development Fees paid by the Claimant during this period as long as this portion of the Fund is undersubscribed. Claims Administration, Attorneys' Fees and Expenses, and Service Awards shall not be

individually deducted from each Claimant's recovery as long as this portion of the Fund is undersubscribed at the conclusion of the claims period. Any funds which remain in this portion of the Fund shall be redistributed to proper Claimants of this portion of the Fund as set forth in Section IV(H).

3. Subject to the Final Judgment and Order being first entered, the payment described above to the Settlement Class for Settlement Claims, including Claims 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 \$8,000,000.00. The final amount that the Claims Administrator will pay to Claimants shall be determined upon receipt of all valid claim forms within the prescribed claim form period. 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(H).

C. Claims Process.

1. The Claim Forms for Settlement Class shall be included with the Settlement Notice sent by the Claims Administrator, and shall also be made available on the internet settlement website created and maintained by the Claims Administrator for purposes of this Settlement, or by contacting by telephone or mail the Claims Administrator.

2. In order to be eligible for their desired relief provided herein, Class Members must complete and timely submit a Claim Form to the Claims Administrator. The Class Members need not state the amount of System Development Fees paid in the Claim Form, nor provide any supporting evidence unless the amount is contested, because the Town will provide the Claims Administrator with records of said amounts in order to have a valid claim. The Claim Form must be postmarked to the Claim Administrator on or before the Claim Form Deadline.<sup>1</sup> Claim Forms will provide the sole means by which Settlement Class Members may seek and receive the relief for which they may be eligible under the Settlement. The Claims Administrator shall review and process each timely and complete Claim Form in strict accordance with the terms of this Paragraph. Class Members who fail to submit a timely and complete Claim Form and do not opt out shall nevertheless be bound by all other terms of this Settlement Agreement, including but not limited to the Release set forth in this Settlement Agreement.
3. The Claims Administrator shall be responsible for receiving and processing Claim Forms, as well as requests for Claim Forms, and for promptly delivering Claim Forms to the Class Members who request them.

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<sup>1</sup> To be timely, the Claim Form must either: (a) be uploaded and received by the Claims Administrator on or before the one-hundred and twentieth (120<sup>th</sup>) day following the date of the mailing of the Settlement Notice; (b) be sent by U.S. Mail to the Claims Administrator and must be postmarked on or before the one-hundred and twentieth (120<sup>th</sup>) day following the date of mailing of the Settlement Notice.



4. Beginning not later than thirty (30) days after the implementation of the notice plan and continuing on no less than a weekly basis thereafter, the Claims Administrator shall provide periodic updates to Class Counsel and Town Counsel regarding the number, status, nature and disposition of Claim Forms that have been submitted to the Claims Administrator, and the identities of the Claimants.
5. Class Counsel and Town Counsel shall have a right to examine Claim Forms received by the Claims Administrator on reasonable notice, and to object or request the Claims Administrator request verification of further documentation prior to approving said claim.

D. Claim Form Review and Processing.

1. The Claims Administrator shall gather, review, prepare and address the Claim Forms received pursuant to the Claims Process.
2. Claim Forms that have been properly and timely submitted and which are complete shall be designated as approved Claims unless the Claims Administrator determines that a particular Claim Form fails and further investigation is needed. The Claims Administrator shall examine the Claim Form before designating the Claim as an approved claim, to verify that the information on the Claim Form is complete. The Claims Administrator shall be further authorized to take steps it deems appropriate to prevent fraud and abuse in the Claims Process. However, prior to issuing a request to a Claimant, or taking other investigative steps not explicitly provided for herein, the Claims Administrator shall inform Class

Counsel and Town Counsel of its intent to make such a request or take such steps, and Class Counsel and Town Counsel may, by mutual agreement, direct the Claims Administrator to dispense with making such a request or taking such steps and deem the Claim Form as complete and adequate. The Claims Administrator shall deny any claim determined to be false or fraudulent in any respect. Any dispute by a Claimant as to a determination of his, her or its Claim by the Claims Administrator shall be resolved solely and exclusively by the Claims Administrator, this includes, but is not limited to, if a Claimant disagrees with the Town's record of the amount of System Development Fees paid by the Claimant.

3. Any Claimant, or Claimant's employee or other representative, may submit a claim on behalf of the Claimant; however, duplicate claims will not be accepted. The Claims Administrator shall endeavor to identify Claim Forms that appear to seek relief for the same property address for the associated fee ("Duplicative Claim Forms"). The Claims Administrator shall verify and determine whether there is any duplication of Claims, if necessary, by contacting the Claimant(s) or, if applicable, their counsel. The Claims Administrator shall designate all Duplicative Claim Forms as rejected Claims unless and until the rightful Claimant is determined by the Claims Administrator or by the Court under the Court's expressly reserved continuing exclusive jurisdiction over the Action and this Settlement.

4. If a Claim is rejected by the Claims Administrator for any reason, including but not limited to the Claim Form being untimely or incomplete, or the Claimant failing to timely or adequately respond to a request by the Claims Administrator for verification of the Claim under oath, or the Claim being deemed a Duplicative Claim Form, then the Claims Administrator shall notify the Claimant in writing and provide the Claimant with twenty-one (21) days upon sending of the rejection to dispute the rejection and provide additional information. In the event the Claimant timely responds with documentation or verification deemed adequate by the Claims Administrator, the Claim shall then be deemed an approved Claim. However, if the Claimant does not timely respond, or does not provide documentation or verification deemed sufficient by the Claims Administrator, the Claims Administrator shall send the Claimant a letter within five (5) days notifying the Claimant that the Claim is being denied.
5. Within ten (10) days following the Claim Form Deadline, the Claims Administrator shall provide Class Counsel and Town Counsel with: (a) a list of Claims to be paid; and (b) a list of Claims that were rejected along with the reason(s) for the rejection of each Claim. Upon written request, the Claims Administrator shall make available for review by Class Counsel and Town Counsel all data and documents relating to the Claims.
6. Within fifteen (15) days following distribution of the list described in Paragraph IV(D)(5), Class Counsel and Town Counsel may by mutual

agreement designate a rejected or denied Claim as an approved Claim. In the event of any dispute as to whether a Claim was properly approved, denied or rejected, Class Counsel, Town Counsel or the affected Claimant may, within thirty (30) days of the Claims Administrator's decision on the validity of the Claim, petition the Claims Administrator to determine the validity of that Claim. The Claims Administrator's decision will be binding. No costs or fees associated with the resolution of any such petition, other than the fees and expenses of the Claims Administrator and the fees and expenses of its own counsel, shall be borne by the Town.

E. Payment of Valid Claims: The Claims Administrator shall begin to pay timely, valid and approved Claims within thirty (30) days following the Claim Form Deadline.

F. Attorneys' Fees and Expenses and Incentive Awards. As additional consideration for the dismissal of the Action with prejudice on the merits and entry of the Release, the Claims 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. Attorneys' Fees and Expenses and Service Awards in the amount as determined by the Court shall be paid from the Common Fund within seven (7) days of the Final Judicial Approval date.

G. Notice and Settlement Administration Costs. Up to \$22,300.00 of reasonable costs of notice and administration associated with this Settlement, including but not limited to, the fees and expenses of the Claims Administrator and the cost of providing notice to the Settlement Class which are detailed in this Agreement, shall be paid to the Claims Administrator by the Town from the Fund within 10 days after the Court's entry of a Preliminary Approval

Order. In the event the costs exceed \$22,300.00, all such remaining costs and fees will be paid from the Common Fund. Other than for good cause shown, the costs and fees due to the Claims Administrator shall be capped at \$50,000.00.

H. Unclaimed Funds. The Parties agree that following the closing of the Claims Period, any unclaimed funds shall first be redistributed to proper Claimants on a *pro-rata* basis up to the point of making Claimants who make timely claims paid in full up to their Claim Amount. The issue of any further unclaimed funds that remain after the redistribution method outlined in this section shall revert to the Town for the Town to use in the provision of water and sewer services for its customers.

## V. **RELEASE**

A. Upon Final Approval, 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 payment to the Town of System Development Fees from November 9, 2015 to March 1, 2021. 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 related to refunds, damages, etc., as it relates to System Development Fees paid to the Town from November 9, 2015 to March 1, 2021.

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, through the Claims Administrator, pay funds to Class Members in accordance with the procedures set forth below.

## **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 twenty-five percent (25%) of the Common Fund. Class Counsel agrees not to seek an award of Attorneys' Fees and Expenses from the Court of more than twenty-five percent (25%) of the Common Fund. In no event shall the Town be obligated or required to pay any amount greater than twenty-five percent (25%) of the Common Fund for any past, present or future Attorneys' Fees and Expenses incurred by

Class Counsel for all or any plaintiffs 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. Any award of Attorneys' Fees and Expenses to Class Counsel shall be subject to reasonable documentation and approval by the Court.

E. Awarded Attorneys' Fees and Expenses shall be paid from the Common Fund within ten (10) days following the Final Judicial Approval date.

## **VII. INCENTIVE AWARDS**

A. The Town agrees to pay, subject to Court approval, and will not challenge Class Counsel's request for Service Awards to Lennar Carolinas, LLC, D.R. Horton, Inc., D.R. Horton-Regent, LLC, Taylor Morrison of the Carolinas, LLC, TAC Stafford, LLC, Eastwood Construction, LLC d/b/a Eastwood Homes, M/I Homes of Charlotte, LLC, Niblock Homes, LLC, and Niblock Development Corp. as class representatives, in the amount of \$5,000 each.

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 each member of the Settlement Class, 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:

Patrick H. Flanagan



Cranfill Sumner & Hartzog LLP  
2907 Providence Road, Ste. 200  
Charlotte, North Carolina 28230  
Facsimile: (704) 831-5522

If to the Settlement Class:

Gary K. Shipman & William G. Wright  
Shipman & Wright, L.L.P.  
575 Military Cutoff Road, Suite 106  
Wilmington, North Carolina 28405  
Facsimile: (910) 762-6752

Jim Scarbrough, John Scarbrough, & Madeline J. Trilling  
Scarbrough, Scarbrough & Trilling, PLLC  
137 Union Street South  
Concord, North Carolina 28025  
Facsimile: (704) 782-3116

James R. DeMay  
Ferguson, Hayes, Hawkins & DeMay, PLLC  
45 Church St. South  
Concord, North Carolina 28025  
Facsimile: (704) 784-3211

G. Electronic Execution in Counterparts: The Settlement Agreement may be executed with an electronic or facsimile signature and be executed in counterparts by the parties hereto, each of which shall constitute a duplicate original.

IN WITNESS WHEREOF, Counsel for the Settlement Class and counsel for the Town have duly executed this Settlement Agreement as of this 12<sup>th</sup> day of February, 2021.

[SIGNATURES ON FOLLOWING PAGES]

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APPROVED BY CLASS COUNSEL AND CLASS PLAINTIFFS:

Dated: \_\_\_\_\_

\_\_\_\_\_  
Gary K. Shipman  
William G. Wright  
Shipman & Wright, L.L.P.  
575 Military Cutoff Road, Suite 106  
Wilmington, North Carolina 28405  
Telephone: (910) 762-1990  
Facsimile: (910) 762-6752

Jim Scarbrough, John Scarbrough, & Madeline J.  
Trilling  
Scarbrough, Scarbrough & Trilling, PLLC  
137 Union Street South  
Concord, North Carolina 28025  
Facsimile: (67.54) 782-3116

James R. DeMay  
Ferguson, Hayes, Hawkins & DeMay, PLLC  
45 Church St. South  
Concord, North Carolina 28025  
Facsimile: (67.54) 784-3211

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Lennar Carolinas, LLC

By: Jon Hardy

Title: VP, Land Acquisitions

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Dated: \_\_\_\_\_

\_\_\_\_\_  
D.R. Horton, Inc.  
By: Cammy Kennedy  
Title: Legal Counsel

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Dated: \_\_\_\_\_

\_\_\_\_\_  
D.R. Horton-Regent, LLC  
By: Cammy Kennedy  
Title: Legal Counsel

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Taylor Morrison of the Carolinas, LLC  
By: Alan Kerley  
Title: VP, Land Acquisition

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Dated: \_\_\_\_\_

\_\_\_\_\_  
TAC Stafford, LLC  
By: Todd Terwilliger  
Title: Partner

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Eastwood Construction, LLC  
By: Kevin Hutchins  
Title: CFO

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Dated: \_\_\_\_\_

\_\_\_\_\_  
M/I Homes of Charlotte, LLC  
By: George Schulmeyer  
Title: Division President

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Dated: \_\_\_\_\_

\_\_\_\_\_  
Niblock Homes, LLC  
By: William Niblock  
Title: President

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

Dated: \_\_\_\_\_

\_\_\_\_\_  
Niblock Development Corp.  
By: William Niblock  
Title: President

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APPROVED ON BEHALF OF TOWN OF MOORESVILLE:

Dated: \_\_\_\_\_

TOWN OF MOORESVILLE:

By: \_\_\_\_\_

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

\_\_\_\_\_  
Finance Officer, Town of Mooresville

Counsel for the Town of Mooresville:

\_\_\_\_\_  
Patrick H. Flanagan  
Cranfill Sumner & Hartzog LLP  
2907 Providence Road, Ste. 200  
Charlotte, North Carolina 28230  
Facsimile: (704) 831-5522