

SETTLEMENT AGREEMENT

This Settlement Agreement is made and entered into this 31 day of January, 2023 by and between Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc. (collectively, “Plaintiffs”), individually and on behalf of the Settlement Class (as defined below) and the City of Charlotte (“the City”) in *Daedalus, LLC, et al. v. City of Charlotte*, pending in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, Case Number 18-CVS-21073 (the “2018 Action”), and in *Daedalus, LLC v. City of Charlotte*, pending in the General Court of Justice, Superior Court Division, Mecklenburg County, North Carolina, Case No. 21-CVS-6852 (the “2021 Action”) (the 2018 Action and the 2021 Action are collectively referred to herein as the “Class Actions”),

WHEREAS, on November 5, 2018, Daedalus, LLC commenced the 2018 Action against the City in the Superior Court of Mecklenburg 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 City’s collection of water and sewer “capacity fees” (also called “system development fees”) (collectively, “Capacity Fees”) for the period of three (3) years prior to commencement of the action through June 30, 2018 (the “Pre-July 1, 2018 Capacity Fees”) exceeded the City’s legal authority and was *ultra vires*, and that the Pre-July 1, 2018 Capacity Fees must be refunded to plaintiff and the class. The Complaint alleged, among other things, that the City collected Pre-July 1, 2018 Capacity Fees in fiscal years 2016, 2017, and 2018 in violation of *Quality Built Homes, Inc. v. City 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 Pre-July 1, 2018 Capacity Fees; and

WHEREAS, on February 21, 2019, an Amended Complaint was filed in the 2018 Action to including Epcon Communities Carolinas, LLC as an additional plaintiff; and



WHEREAS, on September 13, 2019, a Second Amended and Supplemented Complaint was filed in the 2018 Action, which includes NVR, Inc. as an additional plaintiff. The Second Amended and Supplemented Complaint also alleged that the City's Capacity Fees charged on and after July 1, 2018 (the "Post-July 1, 2018 Capacity Fees") in fiscal years 2019 and 2020 exceeded the City's lawful authority under the Public Water and Sewer System Development Fee Act, N.C.G.S. § 162A-201, *et seq*, and that these Post-July 1, 2018 Capacity Fees must be refunded to plaintiffs and the class;

WHEREAS, the City denies each one of the Plaintiff's allegations of unlawful conduct and damages in the 2018 Action, and the City has asserted various legal and other affirmative defenses; and

WHEREAS, following extensive discovery in the 2018 Action, the parties conducted a mediation on July 24, 2019, the Ret. Hon. J. Douglas McCullough serving as mediator, which resulted in an impasse;

WHEREAS, on February 19, 2020, the Hon. Donnie Hoover, Mecklenburg County Superior Court Judge, entered a Class Certification Order in the 2018 Action certifying a Class of Capacity Fee payors, consisting of the following two sub-classes:

The Pre-July 1, 2018 Capacity Fee Class

All natural persons, corporations, or other entities who (a) from November 5, 2015 through June 30, 2018 (b) paid Capacity Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

The Post-July 1, 2018 Capacity Fee Class

All natural persons, corporations, or other entities who (a) from July 1, 2018 until the present (b) paid Capacity Fees and/or System Development Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.

WHEREAS, notice of the certified Class in the 2018 Action was sent by the Notice Administrator, Settlement Services, Inc., to a total of all 3,152 Capacity Fees payors from November 5, 2015 through February 19, 2020 to their last-known addresses, and six (6) Capacity Fee payors excluded themselves from the Class, as set forth in the Affidavit of Robert HYTE dated October 14, 2020; and

WHEREAS, plaintiffs and the City both moved for summary judgment on all claims in the 2018 Action; and

WHEREAS, on March 18, 2021, the Hon. Carla N. Archie, Mecklenburg County Superior Court Judge, entered an Order in the 2018 Action granting summary judgment for plaintiffs with respect to the Pre-July 1, 2018 Capacity Fees, holding that the City lacked legal authority to charge the Pre-July 1, 2018 Capacity Fees and ordering that these Capacity Fees be refunded to plaintiffs and class members, plus interest at the rate of 6% per annum from the date of each payment (the "Summary Judgment Order"). Judge Archie also held in the Summary Judgment Order that the calculation of refunds and interest to the Pre-July 1, 2018 Capacity Fee Class shall be determined by a referee, and that Plaintiff's claim for attorneys' fees and costs shall be decided by the Court following the conclusion of any appeal from the Summary Judgment Order; and

WHEREAS, Judge Archie further held in the Summary Judgment Order that the parties' motions for summary judgment as to the Post-July 1, 2018 Capacity Fees are denied, and that the Post-July 1, 2018 Capacity Fee claims be set for trial; and

WHEREAS, the City gave notice of appeal from the Summary Judgment Order in the 2018 Action to the North Carolina Court of Appeals on April 14, 2021, and plaintiffs gave Conditional Notice of Cross-Appeal on April 26, 2021; and

WHEREAS, Daedalus, LLC commenced the 2021 Action against the City in the Superior Court of Mecklenburg 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 City's collection of Post-July 1, 2018 Capacity Fees in fiscal years 2021, 2022, and through the present exceeded the City's lawful authority under the Public Water and Sewer System Development Fee Act, N.C.G.S. § 162A-201, *et seq*, and that these Post-July 1, 2018 Capacity Fees must be refunded to plaintiffs and the class; and

WHEREAS, the City denies each one of the Plaintiff's allegations of unlawful conduct and damages in the 2021 Action, and the City has asserted various legal and other affirmative defenses; and

WHEREAS, on July 22, 2021, the Hon. Louis A. Trosch, Jr., Mecklenburg County Superior Court Judge, entered an Order consolidating the 2018 Action and the 2021 Action, and further recommending the 2018 Action and the 2021 Action to the Chief Justice of the North Carolina Supreme Court as exceptional cases under Rule 2.1 of the North Carolina General Rules of Practice; and

WHEREAS, the Chief Justice of the North Carolina Supreme Court entered an Order designating the 2018 Action and the 2021 Action as exceptional cases under Rule 2.1 of the North Carolina General Rules of Practice, and designating the Hon. Christopher W. Bragg, Superior Court Judge, as the Rule 2.1 Judge; and

WHEREAS, following oral arguments on January 11, 2022, the North Carolina Court of Appeals filed an opinion on April 5, 2022 affirming Judge Archie's Order on Summary Judgment; and

WHEREAS, the City filed a Petition for Discretionary Review of the decision of the North Carolina Court of Appeals with the North Carolina Supreme Court on May 10, 2022, and Plaintiffs filed a Conditional Petition for Discretionary Review on May 23, 2022; and

WHEREAS, the North Carolina Supreme Court denied the City's Petition for Discretionary Review and Plaintiffs' Conditional Petition for Discretionary Review by Order entered August 17, 2022; and

WHEREAS, Plaintiffs and the City have engaged in extensive discovery regarding the total amount of Capacity Fees collected by the City in the Pre-July 1, 2018 and the Post-July 1, 2018 periods; and

WHEREAS, the City has verified that from November 1, 2015 through June 30, 2018, the City collected a total of \$66,011,212.33 in Pre-July 1, 2018 Capacity Fees, and that through December 31, 2022, a total of \$22,567,808.68 in interest at the rate of 6% per annum has accrued on that principal amount, for a total amount of \$88,566,695.94; and

WHEREAS, the City has verified that from July 1, 2018 through December 31, 2022, the City collected a total of \$168,511,244.12 in Post-July 1, 2018 Capacity Fees; and

WHEREAS, the parties have otherwise engaged in extensive discovery in the 2018 Action and 2021 Action, including (i) multiple sets of interrogatories, (ii) issuing subpoenas *duces tecum* to third-party engineering, planning, and financial consultants contracted by the City and to third-party municipalities, (iii) voluminous document production consisting of tens of thousands of pages of documents, (iv) deposing at least twelve (12) City employees, (v) a Rule 30(b)(6) deposition of the City, (vi) the depositions of the City's two rate consultants with Raftelis Financial Consultants, Inc., and (vii) the deposition of the Plaintiffs' expert witness; and

WHEREAS, after several years of protracted litigation and arms-length settlement negotiations between Counsel for the Settlement Class (as defined below) and the City, 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 Capacity Fees paid to the City from November 5, 2015 through December 31, 2022. 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, Daniel J. Bryson, James R. DeMay, and J. Hunter Bryson of Milberg Coleman Bryson Phillips Grossman, 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, LLP 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 City 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" 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 Administrator, and any expenses of mailing notices, and paying Settlement Benefits and expenses.

B. "Administrator" means Settlement Services, Inc., who will administer the Settlement. The Parties have agreed to retain Settlement Services, Inc., as the Settlement Administrator, and to seek the Court's approval of such entity, in connection with the preliminary approval of this Settlement.

C. "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").

D. "All Claims" shall mean any and all claims, demands, actions, suits and causes of action against the City 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 arising out of or relating to the payment of Capacity Fees to the City from November 5, 2015 to December 31, 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 City's *ultra vires* conduct, as it relates to Capacity Fees paid to the City from November 5, 2015 to December 31, 2022.

E. "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.

F. "Capacity Fees" means Water and Sewer Capacity Fees (including Water and Sewer System Development Fees) paid to the City.

G. "Claim Amount" means a Class Member's total Capacity Fees paid to the City, plus interest at the rate of 6% per annum from the date of payment through December 31, 2022.

H. "Class Action" or "Class Action Litigation" shall collectively mean the class-action litigations bearing the following caption: *Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc. v. City of Charlotte*, Mecklenburg County Case No. 18-CVS-21073, and *Daedalus, LLC v. City of Charlotte*, Mecklenburg County Case No. 21-CVS-6852.

I. "Class Counsel" or "Counsel for the Settlement Class" shall mean Daniel J. Bryson, James R. DeMay, and J. Hunter Bryson of Milberg, Coleman, Bryson, Phillips, Grossman, PLLC; James E. Scarbrough and John F. Scarbrough, and Madeline J. Trilling of Scarbrough, Scarbrough & Trilling, PLLC; and William G. Wright and Gary K. Shipman of Shipman & Wright, LLP.

J. "Class Members" shall mean members of the two Settlement Classes.

K. "Class Representatives" shall mean Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc.

L. "Court" or "Trial Court" means the General Court of Justice, Superior Court Division of Mecklenburg County, North Carolina and Rule 2.1 designee and Superior Court Judge Christopher W. Bragg of Union 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 City, the Plaintiffs and the Class Representatives 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, as designated by the Trial 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 Representatives within the limits set forth in this Agreement, to compensate the Class Representatives 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.

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 City.

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

1. “All natural persons, corporations, or other entities who (a) at any point between November 5, 2015 and June 30, 2018 paid Water and Sewer Capacity Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte”; and
2. “All natural persons, corporations, or other entities who (a) at any point between July 1, 2018 and December 31, 2022 paid Water and Sewer

Capacity Fees to the City of Charlotte pursuant to the schedule of fees and/or Code of Ordinances adopted by the City of Charlotte.”

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 City of Charlotte 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 Settlement; and (d) that the sums paid in this Settlement are made in exchange for release of the Released Claims by the named Plaintiffs and each of the Class Members and a copy of the Stipulation is available for review from the 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 Settlement.
6. The Settlement Notice shall disclose where Class Members may direct written or oral inquiries regarding the Settlement.

X. "The City" means the City of Charlotte, North Carolina.

II. COURT APPROVAL AND CLASS NOTICE

A. Best Efforts: Class Counsel and counsel for City agree to recommend approval of this Settlement Agreement to the Court. Class Counsel and counsel for the City 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 Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc., and Class Counsel as representatives of the Settlement Class.

2. The City 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 Capacity Fees paid by the Settlement Class to the City from November 5, 2015 through December 31, 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) days 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 Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, 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 City shall file a motion seeking entry by the Court of a Final Order and Judgment:

- (a) Certifying the Settlement Class and appointing the Plaintiffs Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc., and Class Counsel as representatives of the Settlement Class;
- (b) Determining that the City 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 City and all members of the Settlement Class and that the Court has jurisdiction to approve this Settlement Agreement as fair, reasonable and adequate under Rule 23 of the North Carolina Rules of Civil Procedure;
- (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) Reserving for the Court exclusive jurisdiction over this Settlement, including the administration, consummation, and enforcement of this Settlement Agreement;
- (e) Determining that there is no just reason for delay and directing that the final judgment shall be final and appealable;
- (f) 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
- (g) Incorporating the release set forth in the Settlement Agreement and forever discharging the City from All Claims.

- 3. Upon final approval of this Settlement Agreement, Class Counsel and counsel for the City shall join in seeking dismissal with prejudice of the claims in the Class Action Litigation as they relate to the City's collection of water and sewer Capacity Fees from November 5, 2015 through December 31, 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 City agree that under the circumstances, the best practicable means of notice to the Settlement Class is notice by direct mail.
3. The 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 City shall agree on an Internet web site address. The 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 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 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 City 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 City 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 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 Administrator on or before the Opt-Out Date.

3. The Administrator shall promptly forward copies of any Opt-Out letter that it receives to Class Counsel and counsel for the City, and the 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 Administrator, Class Counsel, and Counsel for the City.
2. Objections to the Settlement Agreement must: (a) contain a caption or title that identifies it as “Objection to Class Settlement in *Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc. v. City of Charlotte, Mecklenburg County Case No. 18-CVS-21073, and Daedalus, LLC v. City*

of *Charlotte*, Mecklenburg County Case No. 21-CVS-6852;” (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 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) provide three dates within the calendar month they are submitting the objection in which they can be available for a deposition taken by counsel for Plaintiffs and/or the City.

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 Mecklenburg County Clerk of Superior Court in *Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc. v. City of Charlotte*, Mecklenburg County Case No. 18-CVS-21073, and in *Daedalus, LLC v. City of Charlotte*, Mecklenburg County Case No. 21-CVS-6852, 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 an objection to the Settlement Agreement in accordance with the terms set forth herein prior to the Fairness Hearing shall be foreclosed from seeking review of the Settlement Agreement by appeal or otherwise without Court approval.
5. The Administrator will provide a summary chart and file all original opt-out notices with the Court, along with copies to Class Counsel and Counsel for the City.

IV. CLASS SETTLEMENT & BENEFITS

A. Class Settlement Amount & Payment from the Common Fund: The City shall pay to the Class Action Settlement Fund (or Common Fund) a total of \$106,000,000.00 for Class Member benefits, Administration Costs, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement. Those funds will be paid as follows: \$90,000,000.00 will be paid to the Common Fund on or before July 1, 2023. The remaining \$16,000,000.00 will be paid to the Common Fund on or before July 1, 2024. Of that \$106,000,000.00, the sum of \$89,148,755.88 shall be reserved for the Pre-July 1, 2018 Subclass, and the sum of \$16,851,244.12 shall be reserved for the Post-July 1, 2018 Subclass. From the Common Fund, the Administrator shall issue payments for Class Member benefits, the Court approved Administration Costs, the Class Representative Service awards and Class Counsel's Attorney Fee and Expense award. The payment of Administration Costs, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement shall be allocated *pro rata* between the two settlement subclasses.

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 Capacity Fee payments to the City for the Pre-July 1, 2018 Subclass and Post-July 1, 2018 Subclass, after deducting expenses for the Court approved Class Notice and Administration expenses, the Class Representative Service awards and Class Counsel's Attorney Fee and Expense award.

Any Class Member that has not opted out of the Class Action Settlement will be issued a Settlement check from the Administrator for their Class Member benefit from the settlement fund in the manner as described below. The Administrator will mail the Class Member benefit checks to Class Members.

Class Members shall be paid Class Benefits as follows:

1. From the portion of the Settlement reserved for Class Members who paid Capacity Fees to the City from November 5, 2015 through June 30, 2018 (the "Pre-July 1, 2018 Subclass"), the City will pay to all Class Members who paid Water and Sewer Capacity Fees to the City from November 5, 2015 through June 30, 2018, and who have not opted out of this Pre-July 1, 2018 Subclass, an amount up to 100% of the Class Member's Claim Amount for Capacity Fees paid by the Class Member during this period. Administration Costs, 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 100% 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. Payment of Class Member benefits shall be on the following schedule: 84.9% paid from the Common Fund on or before July 15, 2023, and the remaining 15.1% paid from the Common Fund on or before July 15, 2024. For any Class Member benefit checks from this portion of the Common Settlement Fund that have not been cashed or deposited within one-hundred and eighty (180) days of issuance, those funds shall revert back to the Common Settlement Fund to be distributed to the City of Charlotte Water operating fund to use in the provision of furnishing water and sewer.

2. From the portion of the Settlement reserved for Class Members who paid Capacity Fees to the City from July 1, 2018 through December 31, 2022 (the "Post-July 1, 2018 Subclass"), and who have not opted out of this Post-July 1, 2018 Subclass, the City will pay to all Class Members an amount up to 10% of the Class Member's Claim Amount for Water and Sewer Capacity 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 10% of the Class Member's Claim Amount for Water and Sewer Capacity 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. Payment of Class Member benefits shall be on the following schedule: 84.9% paid from the Common Fund on or before

July 15, 2023, and the remaining 15.1% paid from the Common Fund on or before July 15, 2024. For any Class Member benefit checks from this portion of the Common Settlement Fund that have not been cashed or deposited within one-hundred and eighty (180) days of issuance, those funds shall revert back to the Common Settlement Fund and shall be distributed *pro rata* to Class Members that previously cashed or deposited checks through an additional round of checks, up to making these Class Members whole on their Claim Amount for this portion of the Common Settlement Fund.

3. Subject to the Final Judgment and Order being first entered, the payment described above to Class Members, including Administration Costs, Attorneys' Fees and Expenses, Service Awards, and other costs of this Settlement Agreement, or any other costs, are subject to a maximum payout, or maximum settlement value, of \$106,000,000.00 as further delineated for the Pre-July 1, 2018 Subclass with a maximum settlement value of \$89,148,755.88 and Post-July 1, 2018 Subclass with a maximum settlement value of \$16,851,244.12. The final amount that will be paid to Class Members shall be determined by the Administrator after determining request for exclusions from the Class and deducting expenses for Administration Costs, 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 as provided herein.

C. Review of Capacity Fees by the City. The City shall conduct a comprehensive review of its Capacity Fees to ensure that the Capacity Fees comply with the directives of Chapter 162A, Article 8 of the North Carolina General Statutes. This comprehensive review shall include the City engaging in a “System Development Fee Analysis” pursuant to N.C.G.S. § 162A-205 during the calendar year 2023 that shall be reviewed by at least one financial professional or a licensed professional engineer qualified by experience and training or education to employ generally accepted accounting, engineering, and planning methodologies to calculate system development fees for public water and sewer systems.

D. 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 Administrator will pay or cause to be paid from the Common 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 on the following schedule: 84.9% of the Attorneys’ Fees and Expenses and Service Awards shall be paid from the Common Fund on or before July 15, 2023, and the remaining 15.1% shall be paid from the Common Fund on or before July 15, 2024.

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

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 City 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 City of Capacity Fees from November 5, 2015 to December 31, 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 Capacity Fees paid to the City from November 5, 2015 to December 31, 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 Administrator 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 City Capacity Fees from November 5, 2015 to December 31, 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 Capacity Fee payments to the City: (a) for the Pre-July 1, 2018 Sub-Class period from November 5, 2015 through June 30, 2018 and (b) for the Post-July 1, 2018 Sub-Class period from July 1, 2018 through December 31, 2022, after deducting expenses for the Court approved Class Notice and Administration expenses, the Class Representative Service awards and Class Counsel's Attorney Fee and Expense 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 Administrator will pay from the Common Fund, subject to Court approval, and the City 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 City be obligated or required to fund 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 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. Awarded Attorneys' Fees and Expenses shall be paid from the Common Fund on the following schedule: 84.9% of the Attorneys' Fees and Expenses and Service Awards shall be paid from the Common Fund on or before July 15, 2023, and the remaining 15.1% shall be paid from the Common Fund on or before July 15, 2024.

VII. SERVICE AWARDS

A. The City agrees to pay, subject to Court approval, and will not challenge Class Counsel's request for Service Awards to Daedalus, LLC, Epcon Communities Carolinas, LLC, and NVR, Inc. as class representatives, in the amount of \$15,000 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 City 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 City 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 City 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 City 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 Plaintiffs, each member of the Settlement Class, and the City, 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 City 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 City to Class Counsel, or vice versa, shall be in writing and (a) delivered personally, or (b) sent by overnight delivery service and facsimile.

If to the City:

Patrick H. Flanagan
Ariella Zulman
Cranfill Sumner LLP
P.O. Box 30787
Charlotte, NC 28230

Sean Perrin
Womble Bond Dickinson (US) LLP
One Wells Fargo Center
Suite 3500
301 South College Street
Charlotte, NC 28202-6037

If to the Settlement Class:

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

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

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, Counsel for the Settlement Class and counsel for the City have duly executed this Settlement Agreement as of this 31 day of January, 2023.

[SIGNATURES ON FOLLOWING PAGES]

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APPROVED BY CLASS COUNSEL AND CLASS PLAINTIFFS:

Dated: January 31, 2023

James R. DeMay

Daniel K. Bryson

James R. DeMay

J. Hunter Bryson

Milberg Coleman Bryson Phillips Grossman PLLC

900 W. Morgan Street

Raleigh, North Carolina 27603

Facsimile: (919) 600-5035

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: (704) 782-3116

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Dated: Jan 31, 2023



Daedalus, LLC

By: Jason Murphy

Title: Member manager

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Settlement Agreement Final 1.27.23

Final Audit Report

2023-01-31

Created:	2023-01-27
By:	Jim DeMay (jdemay8@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAaVa0XDo9Ragsl7luTM8DHlOMRNTanXxqx

"Settlement Agreement Final 1.27.23" History

-  Document created by Jim DeMay (jdemay8@gmail.com)
2023-01-27 - 4:23:24 PM GMT- IP address: 40.142.142.146
-  Document emailed to Jason Murphy (jason@homeshopcharlotte.com) for signature
2023-01-27 - 4:24:14 PM GMT
-  Email viewed by Jason Murphy (jason@homeshopcharlotte.com)
2023-01-27 - 4:26:26 PM GMT- IP address: 172.59.64.245
-  Document e-signed by Jason Murphy (jason@homeshopcharlotte.com)
Signature Date: 2023-01-31 - 9:33:32 AM GMT - Time Source: server- IP address: 172.58.248.50
-  Agreement completed.
2023-01-31 - 9:33:32 AM GMT

Dated: Jan 31, 2023

Joseph R Karpowicz

Joseph R Karpowicz (Jan 31, 2023 09:44 EST)
Epcn Communities Carolinas, LLC

By: Joseph R Karpowicz

Title: Assistant General Counsel

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Settlement Agreement Final 1.27.23

Final Audit Report

2023-01-31

Created:	2023-01-27
By:	Jim DeMay (jdemay8@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAAT3f1JMjsvNxlzM1PqscBvDgaKCJgwKp

"Settlement Agreement Final 1.27.23" History

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-  Document emailed to jkarpowicz@epconcommunities.com for signature
2023-01-27 - 4:25:57 PM GMT
-  Email viewed by jkarpowicz@epconcommunities.com
2023-01-27 - 6:58:31 PM GMT- IP address: 172.225.248.137
-  Signer jkarpowicz@epconcommunities.com entered name at signing as Joseph R Karpowicz
2023-01-31 - 2:44:40 PM GMT- IP address: 98.103.27.10
-  Document e-signed by Joseph R Karpowicz (jkarpowicz@epconcommunities.com)
Signature Date: 2023-01-31 - 2:44:42 PM GMT - Time Source: server- IP address: 98.103.27.10
-  Agreement completed.
2023-01-31 - 2:44:42 PM GMT



Adobe Acrobat Sign

Dated: Jan 30, 2023

James Sack

James Sack / Jan 30, 2023 15:09 EST

NVR, Inc.

By: James Sack

Title: Vice President and General Counsel

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

Settlement Agreement Final 1.27.23

Final Audit Report

2023-01-30

Created:	2023-01-30
By:	Jim DeMay (jdemay8@gmail.com)
Status:	Signed
Transaction ID:	CBJCHBCAABAAsRSgwpRjvovAaSDaelHd72UthUqbsTCV

"Settlement Agreement Final 1.27.23" History

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-  Document emailed to jms@sacklaw.com for signature
2023-01-30 - 7:52:27 PM GMT
-  Email viewed by jms@sacklaw.com
2023-01-30 - 7:53:51 PM GMT- IP address: 98.188.213.114
-  Signer jms@sacklaw.com entered name at signing as James Sack
2023-01-30 - 8:09:17 PM GMT- IP address: 98.188.213.114
-  Document e-signed by James Sack (jms@sacklaw.com)
Signature Date: 2023-01-30 - 8:09:19 PM GMT - Time Source: server- IP address: 98.188.213.114
-  Agreement completed.
2023-01-30 - 8:09:19 PM GMT

APPROVED ON BEHALF OF CITY OF CHARLOTTE:

Dated: February 2, 2023


CITY OF CHARLOTTE:

By: 

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

Finance Officer, City of Charlotte

Counsel for the City of Charlotte:

No preaudit required.
No payment obligation
in the current fiscal year.

Finance Officer



M.I. Price on behalf
of Teresa Smith
02/02/2023