



(the "Settlement" or "Settlement Agreement") should be preliminary approved, with notice of the Settlement to be issued to Class Members, and that a hearing should be set for consideration of final approval of the Settlement.

### Background

1. Unless otherwise defined herein, all defined terms shall have the meanings as set forth in the Settlement Agreement attached to the Preliminary Approval Motion as "Exhibit A."

2. Plaintiffs commenced this action on March 4, 2022, alleging, *inter alia*, that Defendant assessed certain "road impact fees" to new construction in the Carolina Shores North subdivision without proper authority and failed to properly use the road impact fees for the purpose of improving the roads within the subdivision. Plaintiffs also alleged that Defendant assessed certain unrefunded "adherence to requirements deposits" and fines without proper authority.

3. Defendant has denied each one of Plaintiffs' allegations of unlawful conduct and damages and has asserted various legal and other affirmative defenses.

4. The parties mediated the case with Bonnie Weyher, certified mediator, on November 9, 2023, and the parties reached a settlement. On January 10, 2024, Plaintiffs and Defendant entered into the Settlement Agreement that resolves all claims in this lawsuit.

5. Plaintiffs have entered into the Settlement on behalf of a settlement class defined as follows (the "Class"):

All individuals, proprietorships, partnerships, corporations, and

other entities who (a) from March 4, 2012 through the Effective Date (b) paid Road Impact Fees, unrefunded Adherence to Requirements Deposits, or Fines assessed by the Carolina Shores North Homeowners' Association, Inc.

6. Pursuant to the Settlement, a mutually-agreed upon engineer (or if an engineer cannot be agreed upon, an engineer as selected by the Court) shall evaluate the condition of the roads and drainage systems throughout the HOA and shall outline and prioritize a plan for the improvement of the roads and drainage systems. The HOA shall pay into a Common Settlement Fund (the "Common Fund") the sum of \$350,000 (with HOA's position being that the allocation thereof is \$164,294.00 of allegedly inappropriate collection of Road Impact Fees and Fines and \$170,706 in previously earmarked road improvement funding), which shall be used for the initial phases of the engineer's improvement plan. All settlement administration costs, class counsel attorneys' fees and expenses, and class representative service awards shall also be paid from the Common Fund. For the remaining scope of work outlined in the engineer's plan after the Common Fund is exhausted, the HOA shall use its best efforts to complete this remaining work as soon as possible, including through annual special assessments. The special assessments will not exceed \$500 per lot, per assessment.

7. Rule 23(c) of the North Carolina Rules of Civil Procedure states that a "class action shall not be dismissed or compromised without the approval of the judge." Under Rule 23 and the applicable case law, the procedure for approving a class action settlement consists of two steps: (1) a preliminary approval order; and (2)

a final approval order issued after notice of the settlement is provided to Class Members and a final approval hearing is held to consider the fairness of the proposed settlement. 4 *Newberg and Rubenstein on Class Actions* § 13:10 (6th ed.); *Horton v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 855 F. Supp. 825, 827 (E.D.N.C. 1994).

8. The standard for the Court on preliminary approval of a class action settlement is “whether the settlement is the result of good-faith bargaining at arm’s length, without collusion,” *Manual for Complex Litigation* 4th § 21.632; *In re Jiffy Lube Secs. Litig.*, 927 F.2d 155, 159 (4th Cir. 1991), and whether there is “probable cause” to justify notifying the class members of the proposed settlement. *Horton*, 855 F. Supp. at 827.

9. The Court finds that the Settlement is the result of good-faith bargaining at arm’s length, without collusion, and that there is probable cause to justify notifying the class members of the Settlement, and that a final approval hearing should be had for the Settlement.

IT IS HEREBY ORDERED THAT:

*Approval of the Notice Plan*

10. The Court has reviewed and hereby approves the Notice Plan described in the Settlement Agreement.

11. The Court hereby approves and appoints CPT Group (further identified in the Settlement Notice) to serve as the Settlement Administrator to administer the Settlement.

12. Responsibilities of the Settlement Administrator include: (i) disseminating the Settlement Notice to Class Members; (ii) accepting and maintaining documents sent from Class Members, including any exclusion requests, objections, and other documents relating to settlement administration; (iii) communicating with Class Counsel and counsel for Defendant concerning settlement administration; and (iv) carrying out any other tasks assigned to the Settlement Administrator by the Settlement.

13. The Notice Plan includes mailing to Class Members the Settlement Notice, which, among other things, will inform Class Members of the Settlement terms, allow Class Members an opportunity to opt out of the Settlement or object to the same, and provide contact information for Class Counsel in the event Class Members have questions about the Settlement. Prior to mailing out the Settlement Notice, the Settlement Administrator shall add a phone number to the Settlement Notice so that Class Members may call with questions.

14. The Court hereby orders the Settlement Administrator to implement the events identified in the Settlement pursuant to the following schedule:

<u>EVENT</u>	<u>DEADLINE</u>
<i>Notice Plan to Begin</i>	February 24, 2024
<i>Post-Notice Declaration of Settlement Administrator Attesting to its Compliance with this Order</i>	April 1, 2024 (7 days after the Opt-Out Date)

15. The Court finds that the notice to be provided to the Class Members as set forth in the Settlement Agreement to be the best practicable notice under the

circumstances and, when completed, shall constitute fair, reasonable, and adequate notice of the Settlement to all persons and entities affected by and/or entitled to participate in the Settlement, in full compliance with the notice requirements of North Carolina Rule of Civil Procedure 23 and due process.

**Approval of Procedure for Opt-Outs and Objections**

16. Any Class Members who desire to opt-out of the Settlement or object to the same shall file a written objection or exclusion request with the Court, with a written copy delivered to the Settlement Administrator, Class Counsel, Defendant's Counsel, and the Brunswick County Clerk of Court by the deadline set forth below ("Opt-Out Date").

*Deadline for Opt-Outs and Objections*

March 25, 2024 (30 days from the beginning of the Notice Plan)

17. Any written objection must: (a) contain a caption or title that identifies it as "Objection to Class Settlement in *Atrium Homes, Inc., Daniel S. Baldwin, Pamela Baldwin, and Grand Strand Contracting, Inc. v. Carolina Shores North Homeowners' Association, Inc.*, pending in General Court of Justice, Superior Court Division, Brunswick County, North Carolina, Case Number 22-CVS-411" (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; and (g) include an identification of all attorneys having a financial interest or stake in the objection.

18. Any exclusion request must: (a) be signed the Class Member; (b) contain the name, address and valid telephone number of the Class Member; (c) clearly manifest an intent to be excluded from the Settlement Class, and (d) be submit timely written notice to an address designated by the Settlement Administrator.

19. Any Class Member who submits a timely request for exclusion that complies with this Order shall not be bound by the Settlement or the Final Order and Judgment.

20. Any Class Member who does not properly and timely file and serve an exclusion request as set forth herein shall remain in the Class and shall be bound by the terms of the Settlement and Final Order and Judgment if the Settlement is approved, whether or not such Class Member shall have otherwise objected to the Settlement or sought exclusion.

21. Any Class Member who submits an exclusion request that complies with the requirements of this Order and also objects to the Settlement shall be deemed to be excluded from the Class and such objections shall not be considered by the Court.

#### **Conditional Settlement Class Certification**

22. For purposes of Settlement Class certification, the Court first turns to whether the Settlement Class should be conditionally certified. Rule 23 of the North

Carolina Rules of Civil Procedure governs class actions. The basic requirements to establish class certification under Rule 23 are as follows:

[P]arties seeking to employ the class action procedure pursuant to our Rule 23 must establish the existence of a class. A class exists when each of the members has an interest in either the same issue of law or of fact, and that issue predominates over issues affecting only individual class members. The party seeking to bring a class action also bears the burden of demonstrating the existence of other prerequisites: (1) the named representatives must establish that they will fairly and adequately represent the interests of all members of the class; (2) there must be no conflict of interest between the named representatives and members of the class; (3) the named representatives must have a genuine personal interest, not a mere technical interest, in the outcome of the case; (4) class representatives within this jurisdiction will adequately represent members outside the state; (5) class members are so numerous that it is impractical to bring them all before the court; and (6) adequate notice must be given to all members of the class.

*Beroth Oil Co. v. N.C. Dep't of Transp.*, 367 N.C. 333, 336 (2014) (citations omitted).

“When all the prerequisites are met, it is left to the trial court’s discretion whether a class action is superior to other available methods for the adjudication of the controversy.” *Id.*

23. The Court finds that the Settlement Class meets the prerequisites under Rule 23.

24. The Plaintiffs’ claims are typical of the claims of the respective Settlement Class members. The representatives for the Settlement Class, Atrium Homes, Inc., Daniel S. Baldwin, and Pamela Baldwin, each have the same interest in this action in that they paid Road Impact Fees, Adherence to Deposits Requirements, and/or Fines to Defendant, and their claims are based on the same alleged legal



injury, that the Defendant unlawfully charged them Road Impact Fees, Adherence to Deposits Requirements, and Fines.

25. Here, Plaintiffs' evidence regarding Defendant's alleged liability is common class-wide evidence. Common questions include, but are not limited to, whether Defendant possessed the lawful authority to charge Road Impact Fees, Adherence to Deposits Requirements, and Fines, and whether Defendant properly expended the Road Impact Fees, Adherence to Deposits Requirements, and Fines. Because these issues predominate over any individual issue or interest of the Settlement Class member, a proper Class exists.

26. The interests of the Plaintiffs fully align with the members of the Settlement Class and there is no conflict of interest. Plaintiffs are prosecuting the same claims as the Settlement Class and these claims uniformly arise from Defendant's practice of charging and collecting Road Impact Fees, Adherence to Deposits Requirements, and Fines. Plaintiffs have also demonstrated their commitment to participate in, monitor, and supervise the prosecution of the case on behalf of the Settlement Class. They have, among other things, reviewed the pleadings, helped with the pre-filing investigation, provided information and documentation, discussed Settlement mechanics with Class Counsel, attended mediation and court hearings, and maintained regular communications with Class Counsel.

27. In addition, Plaintiffs have a genuine personal interest in the outcome of this action. Plaintiffs have collectively been required to pay Road Impact Fees,

Adherence to Deposits Requirements, and/or Fines to Defendant. Therefore, Plaintiffs have fairly and adequately represented all of the Settlement Class members.

28. The Settlement Class consists of at least 40 individuals, businesses, and other entities such that the numerosity requirement is met.

29. Set forth in the Settlement Agreement is a settlement notice plan that is consistent with Rule 23 of the North Carolina Rules of Civil procedure to provide notice and due process to prospective settlement class members ("Notice Plan."). The Notice Plan will be properly administered and followed by the Settlement Administrator. The form and manner of the Settlement Notice will be the best notice practicable under the circumstances and will be given in full compliance with the requirements of North Carolina Rule of Civil Procedure 23, due process, and applicable law. The form of the Settlement Notice that is approved by the Court is attached hereto as "Exhibit A."

30. After a thorough and careful review of the Preliminary Approval Motion and the record in this action, the Court concludes that Conditional Settlement Class certification is proper in this matter.

31. Therefore, based on the record in this action, the Court conditionally finds, pursuant to North Carolina Rule of Civil Procedure 23, as follows:

- a. A Class exists and it is the Settlement Class as set forth in this Order.
- b. The Plaintiffs/Class Representatives and Class Counsel have fairly and adequately represented all Class Members within and outside this state.

- c. There is no conflict of interest between the Class Representatives and the Settlement Class members.
- d. The Settlement Class members are so numerous that it is impractical to bring them all before this Court.
- e. Adequate notice of the Settlement will be given to all Settlement Class members as set forth above.
- f. All requirements of North Carolina Rule of Civil Procedure 23 have been satisfied.

32. Thus, pursuant to North Carolina Rule of Civil Procedure 23, Plaintiffs Atrium Homes, Inc., Daniel S. Baldwin, and Pamela Baldwin, are conditionally certified as the Settlement Class Representatives. Christopher M. Theriault, Theriault Law, P.C., and James R. DeMay and J. Hunter Bryson, Milberg Coleman Bryson Phillips Grossman, PLLC, are conditionally certified as Settlement Class Counsel.

33. In addition, pursuant to North Carolina Rule of Civil Procedure 23, this action is conditionally certified for settlement purposes, and the following Settlement Class is hereby conditionally certified:

All individuals, proprietorships, partnerships, corporations, and other entities who (a) from March 4, 2012 through the Effective Date (b) paid Road Impact Fees, unrefunded Adherence to Requirements Deposits, or Fines assessed by the Carolina Shores North Homeowners' Association, Inc.

**Conditional Approval of Settlement**

34. The Settlement calls for a mutually-agreed upon engineer (or if an engineer cannot be agreed upon, an engineer as selected by the Court) to evaluate the condition of the roads and drainage systems throughout the HOA and to outline and prioritize a plan for the improvement of the roads and drainage systems. The HOA shall pay into a Common Settlement Fund (the "Common Fund") the sum of \$350,000, which shall be used for the initial phases of the engineer's improvement plan. All settlement administration costs, class counsel attorneys' fees and expenses, and class representative service awards shall also be paid from the Common Fund. For the remaining scope of work outlined in the engineer's plan after the Common Fund is exhausted, the HOA shall use its best efforts to complete this remaining work as soon as possible, including through annual special assessments. The special assessments will not exceed \$500 per lot, per assessment.

35. To effectuate the Settlement and the provisions of the Notice Plan, the Settlement Administrator shall be responsible for the receipt of all notices of exclusion. The Settlement Administrator shall preserve all notices of exclusion and any and all other documents received from members of the Class Members in response to the notices for a period of three (3) years, or pursuant to further order of the Court. All written communications received by the Settlement Administrator from members of the Settlement Class relating to the Settlement shall be available at all reasonable times for inspection and copying by Class Counsel and Defendant's Counsel.

36. The Court finds that the Settlement was entered into after extensive litigation and arm's length negotiation by experienced counsel for the parties and exceeds the standard for preliminary approval of a class action settlement.

37. The Court further finds that notice of the Settlement should be given as provided in this Order, and the Court preliminarily approves the Settlement subject to final approval at the Final Approval Hearing.

**Final Approval Hearing**

38. Any Class Member who properly files and serves a written objection as described in this Order may appear at the Final Approval Hearing in person or through counsel hired at the Class Member's own expense. However, any Class Member who intends to appear at the Final Approval Hearing must include a statement to that effect in the objection. If a Class Member hires his or her own personal attorney to represent him or her in connection with an objection, and if the attorney wishes to appear at the Final Approval Hearing, the attorney must do the following by the Opt-Out Date: (a) file a notice of appearance with the Clerk of Court in this action; and (b) serve a copy of the notice of appearance on Class Counsel and Defendant's Counsel.

39. Any Class Member who fails to strictly comply with the deadlines in this Order shall waive and forfeit all rights to appear and to object and will be deemed to have consented to the jurisdiction of the Court, to be part of the Settlement Class, and to be bound by all subsequent proceedings, orders, and judgments in this action, including, but not limited to, the Settlement.

40. Any Class Member who objects to the Settlement but does not file an exclusion request shall, unless he or she is subsequently excluded by Order of the Court, remain a Class Member and therefore be entitled to all of the benefits, obligations, and terms of the Settlement if the same receives final approval.

41. The deadline for the Motion for Final Approval and the date of the Final Approval Hearing shall be as follows:

*Motion for Final Settlement Approval to be  
Filed by Class Counsel* April 1, 2024

*Final Approval Hearing date* April 8, 2024

42. The Final Approval Hearing date shall be set forth in the Settlement Notice but shall be subject to continuance by the Court without further notice other than that posted at the Court, on the Court's website, and/or the website to be established by the Settlement Administrator.

43. Upon the entry of the Final Order and Judgment, each and every term and provision of the Settlement Agreement shall be deemed incorporated into the Final Order and Judgment as if expressly set forth therein and the same shall have the full force and effect of an Order and Judgment of the Court.

**Status of Settlement and this Action**

44. All proceedings and deadlines in this action are hereby stayed and suspended, pending the Final Approval Hearing, except for proceedings and deadlines provided for in this Order or the Settlement, or which may be necessary to implement the Settlement or this Order.

45. Pending Final Approval, no Class Member, either directly, representatively, or in any other capacity (other than a Class Member who validly and timely elects to be excluded from the Settlement Class), shall commence, continue, or prosecute in any court any of the released claims against any of the released parties, with the same being subject to final settlement approval by this Court, and such Class Members are hereby enjoined from so proceeding.

46. Upon entry of the Final Order and Judgment, all Class Members who do not file and serve a timely notice of exclusion shall be forever enjoined and barred from asserting any of the matters, claims or causes of action released pursuant to the Settlement, and any such Class Member shall be deemed to have forever released the released parties from the released claims pursuant to the Settlement.

47. In the event the Settlement is terminated in accordance with its provisions, the Settlement and all proceedings had in connection therewith shall be null and void, except insofar as expressly provided in the Settlement, and without prejudice to the *status quo ante* rights of Class Members and Defendant.

48. Neither this Order nor the Settlement nor any filings in support thereof shall constitute any evidence or admission of liability by the Defendant, or an admission regarding the propriety of the certification of a settlement class, nor shall they be offered in evidence in this or any other proceeding except to consummate or enforce the Settlement or the terms of this Order, or by any released party in connection with any action asserting released claims.

**Filing and Service of Documents**

49. When this Order directs that pleadings, briefs, objections, exclusion requests or opt-outs, notices, and other documents be served upon Class Counsel and the Defendant's Counsel, service shall be made to the attorneys listed below by United States Mail, first class, addressed as set forth below and filing shall be made with the Clerk of Court at the following address:

Class Counsel  
Christopher M. Theriault  
Theriault Law, P.C.  
P.O. Box 430  
Oak Island, NC 28465

James R. DeMay  
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900 W. Morgan Street  
Raleigh, NC 27603

Defendant's Counsel  
Ryan Bostic  
Cranfill Sumner LLP  
5535 Currituck Drive, Suite 210  
Wilmington, NC 28403

Clerk of Court  
Clerk of Superior Court  
Brunswick County Superior Court  
310 Government Center Dr. NE  
Bolivia, NC 28422

IT SO ORDERED this 5<sup>th</sup> day of February, 2024.

  
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HON. JASON C. DISBROW  
SUPERIOR COURT JUDGE

[CONSENT SIGNATURES ON THE FOLLOWING PAGE]



We Consent:



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*Counsel for Plaintiffs*

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We Consent:

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