



Builders Inc. and Legacy Custom Homes, Inc., individually, on behalf of themselves and all others similarly situated (collectively, “Class Plaintiffs”).

WHEREAS, the Court finds that it has jurisdiction over this action and the parties;

WHEREAS, this Court is otherwise fully advised of the facts and circumstances of the proposed settlement;

IT IS HEREBY ORDERED THAT:

**The Settlement Agreement is Preliminarily Approved**

1. The Court preliminarily approves the Stipulation of Settlement (the “Settlement”), between Class Plaintiffs and Defendant Town of Apex (“Apex”), executed by Apex on February 27, 2019, subject to further consideration thereof at the Final Approval Hearing provided for below. The Settlement calls for Apex to provide benefits to Class Members in accordance to which fee they paid Apex. Settlement Class members may make a claim to receive a partial refund of the Capacity Fee or Transportation Fee they paid Apex minus attorneys fees, costs, and Service Awards. Apex has agreed not to object to Service Awards to the Class Plaintiffs of \$5,000.00 each, for an aggregate total of \$10,000.00. In addition, Apex separately agreed to pay up to a total of \$100,000 for a notice plan. Additionally, Apex has agreed not to oppose Class Counsel’s request for attorneys’ fees and expenses provided that Class Counsel complies with all provisions in the Settlement. The Settlement was entered into after extensive litigation and arm’s length negotiation by experienced counsel for the parties, assisted by a neutral mediator after a contentious and lengthy mediation. The Court finds that the Settlement is sufficiently within the range of reasonableness so that notice of the settlement should be given as provided in this Order.

**The Settlement Class is Preliminarily Approved**

2. The Court preliminarily finds that the proposed Settlement Classes, for the purpose of this settlement only, meet the applicable requirements of North Carolina Rule of Civil Procedure 23 and hereby conditionally certifies the following Settlement Classes for settlement purposes only:

Settlement Class shall be defined as:

All persons or organizations who paid Apex Capacity Fees on or between March 23, 2015, and June 20, 2018 or Transportation Fees on or between April 9, 2015 and June 1, 2018, at issue in the Actions and all other similarly situated.

A complete and exhaustive list of all Class Members will be provided by Apex's Counsel at the preliminary approval hearing.

3. The Court preliminarily finds that the following Class Plaintiffs are adequate representatives of Settlement Class for settlement purposes only: Upright Builders Inc. and Legacy Custom Homes, Inc.

4. If the Settlement is terminated or is not consummated for any reason, the certification of the Settlement Classes shall be void, and Plaintiffs and Defendant shall be deemed to have reserved all of their rights to propose or oppose any and all certification and class representation issues.

5. The Court further preliminarily finds that the following attorneys fairly and adequately represent the interests of the Settlement Class and hereby appoints them as Class Counsel for settlement purposes only as follows:

Daniel K. Bryson  
J. Hunter Bryson  
WHITFIELD BRYSON & MASON, LLP  
900 W. Morgan Street  
Raleigh, North Carolina 27603

6. The Court preliminarily approves the allocation and distribution of settlement proceeds as described in the Settlement. In addition to the settlement proceeds, Apex will also pay the costs of the Settlement Administrator, attorneys' fees and expenses, costs, and Service Awards awarded by the Court, all pursuant to the terms and conditions specified in the Settlement.

**The Notice Plan and Schedule are Approved**

7. The Court has reviewed and hereby approves the notice plan designed by Angeion Group (the "Notice Plan") described in the affidavit by the Angeion Group. The Court finds that the notice to be provided to the Settlement Classes as set forth in the Notice Plan 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.

8. The Court appoints Angeion Group as the Settlement Administrator. Responsibilities of the Settlement Administrator include: (i) disseminating the Settlement Notice to the Settlement Class Members; (ii) establishing and maintaining a website for purposes of posting the notices, the complaint and other case pleadings, and related documents; (iii) accepting and maintaining documents sent from Settlement Class Members, including Claim Forms, exclusion requests, objections, and other documents relating to settlement administration; (iv) processing Claim Forms; (v) communicating with Class Counsel and counsel for Apex concerning settlement administration; (vi) determining the benefits due to eligible Settlement Class Members in strict accordance with the terms and conditions of the Settlement; and (vii)



















