STATE OF NORTH CAROLINA BUNCOMBE COUNTY	IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION 18-CVS-04870
MAYFAIR PARTNERS, LLC, and ED HOLLAND BUILDERS, INC. Plaintiffs, v. CITY OF ASHEVILLE, Defendant.	**ORDER GRANTING FINAL APPROVAL OF SETTLEMENT, AWARDING ATTORNEYS' FEES AND EXPENSES AND THE CLASS REPRESENTATIVE A SERVICE AWARD**

THIS MATTER comes before the Court on Plaintiffs' Motion for Final Approval of Settlement and Award of Attorneys' Fees and Expenses and Service Awards (the "Motion") pursuant to Rule 23 of the North Carolina Rules of Civil Procedure ("Rule(s)"). The motion is unopposed by Defendant City of Asheville ("Asheville"), and after appropriate notice to class members was provided as required by the Court's Order Granting Preliminary Approval of Settlement, no objections were received and no opt-outs were received pursuant to the settlement conditionally entered on March 12, 2020 ("Settlement").

On June 9, 2020, the Court held a hearing on the Motion and is satisfied as to the fairness, reasonableness, and adequacy of the Settlement, and the fairness and reasonableness of the fees, expenses, and service awards provided herein. Therefore, having considered the Motion, the supporting Memorandums, materials filed with the Motion, discussions with counsel during hearing held June 9, 2020, and other appropriate matters of record, concludes that good cause exists to grant the Motion. Therefore, the Court GRANTS the Final Approval Motion,

CERTIFIES the class as defined below for settlement purposes only, APPROVES the Settlement, and GRANTS the Fee Motion.

Whitfield Bryson & Mason LLP, by Daniel K. Bryson, and John Hunter Bryson for Plaintiffs.

Parker Poe Adams & Bernstein LLP, by Charles C. Meeker and Stephen V. Carey, for Defendant City of Asheville.

Background

1. Plaintiffs in this action are builders who paid Development Fees as precondition to development approval in Asheville, North Carolina

2. On October 29, 2018, Plaintiffs Mayfair Partners, LLC and Ed Holland Builders, Inc., through the undersigned Class Counsel, filed a putative class action lawsuit against the City in the Superior Court of Buncombe County, seeking relief under a cause of action seeking a judgment declaring that the City's collection of "Development Fees" in addition to usage and connection fees for water, exceeded the City's legal authority and is *ultra vires*, based on allegations that the City collected Development Fees in violation of the *Quality Built Homes, Inc. v. City of Carthage,* 369 N.C. 15, 789 S.E.2d 454 (2016) and exceeded their authority the Public Enterprise Statute at the time it collected the Development Fees, N.C. Gen. Stat. §§ 160A-311, *et seq*.

3. Upon receipt of the *Mayfair* complaint, the City timely responded to the complaint, raising multiple justifications and defenses to its collection of Development Fees, including statutory authority under N.C. Gen. Stat. §§ 160A-311, *et seq*.

4. Class Counsel initiated discovery proceedings where the relevant records at the City were made available to and were thereafter reviewed by Class Counsel. Interrogatories and requests for production of documents were served on the City, and the City timely responded to

all discovery matters. Although a Rule 30(b)(6) deposition of the City was never taken, Class Council noticed the deposition, and the Parties were in the process of rescheduling the deposition after a scheduling conflict arose. The City took the depositions of the named plaintiffs, and received responses to its written discovery. In addition, Class Counsel had provided expert designations, the City was preparing its expert designations, and the Parties were in the process of scheduling expert depositions.

5. The Parties agreed to conduct a court ordered mediation before the Honorable retired Court of Appeals Judge, Douglas McCullough on November 14, 2019 to determine if settlement between the parties was possible or if protracted litigation would be required.

6. On November 14, 2019, the parties mediated in good faith and at arms-length. After several hours of mediation, the parties reached an impasse; however, Class Counsel and City Counsel agreed to keep the settlement discussions open despite the impasse.

7. On December 11, 2019, the parties met at Class Counsel's office in Raleigh and resumed settlement negotiations of this case as well as a previously filed class-action case involving another of the City's utility fees. Both cases were negotiated separately and apart from one another. A settlement of this case was reached and is documented by this Stipulation.

8. Shortly thereafter, the City Council approved the settlement agreement (the "Settlement") and resolved the litigation.

9. On March 6, 2020, Plaintiffs filed their Unopposed Motion for Preliminary Approval of Class Action Settlement, Certifying Classes for Purpose of Settlement, Directing Notice To The Classes, and Scheduling of Final Approval Hearing. On April 20, 2020, this Court entered its Order Granting Preliminary Approval of Settlement, Certifying Classes for Purposes

of Settlement, Directing Notice to the Class, and Scheduling Final Approval Hearing ("Preliminary Approval").

10. Plaintiffs filed their Final Approval Motion and the Fee Motion on May 5, 2020. This Court held a hearing on June 9, 2020.

11. In evaluating whether to finally approve a class action settlement, courts follow a two-step process that first examines whether the proposed class satisfies North Carolina Rule of Civil Procedure 23, and second whether the settlement is "fair, reasonable, and adequate."

Class Certification

12. The Court first turns to whether the Settlement Classes should be finally certified. Rule 23 of the North Carolina Rules of Civil Procedure governs class actions. There are three basic requirements to establish class certification under Rule 23:

> First, parties 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.*

13. The Court finds that the Settlement Class meet the prerequisites under Rule 23. The Settlement Class Representatives' claims are typical of the claims of the respective

Settlement Class members. The representatives for the Settlement Class, Plaintiffs Mayfair Partners, LLC and Ed Holland Builders, have the same interests getting a refund of unlawful fees exacted form them and their claims are based on the same alleged legal injury—that Asheville unlawfully charged them Development Fees and without the requisite statutory authority.

14. The questions of fact and law are common to all Settlement Class members in the defined period, and predominate over any potential individual claim that might be asserted by the Settlement Class Representatives. The common questions of fact involved in this matter included whether Asheville's pattern, practice, and policy of collecting Development Fees violates applicable North Carolina law. The common legal issue is whether Asheville improperly charged and collected Development Fees for the future expansion of its water systems or for services to be furnished, without being specifically authorized by the General Assembly of North Carolina to charge such fees. This single factual inquiry and legal issue makes the Settlement Class sufficiently cohesive. Because these issues predominate over any individual issue or interest of the Settlement Class Representatives, a proper class exists.

15. Additionally, the Court concludes that the Settlement Class Representatives have no conflict of interest with the Settlement Class, and that they, as current developers, have a genuine personal interest in the outcome of the case and that interest is shared by all class members. The Settlement Class Representatives have shown a commitment to vigorously prosecute this action by complying with document requests, staying in contact with Class Counsel, being deposed, and negotiating settlement terms with Settlement Class Counsel. Accordingly, the Settlement Class Representatives fairly and adequately represent the interests of the Settlement Class.

16. The Settlement Class now consists of 1,006 builders, developers, and other entities. Clearly, the class is so numerous that it is impractical to join all members. *See, e.g.*, *Pope v. Harvard Banschares, Inc.*, 240 F.R.D. 383, 387 (N.D. Ill. 2006) ("Generally, where the membership of the proposed class is at least 40, joinder is impracticable and the numerosity requirement is met").

17. Because Plaintiffs have satisfied all class action prerequisites, this Court has the discretion to determine whether a class action is superior to all other methods for adjudication of this controversy. *Beroth Oil Co.*, 367 N.C. at 336. After a thorough and careful review of the Approval Motion, the affidavits and evidence provided in support of the Approval Motion, the Court concludes, in its discretion, that class certification is proper in this matter.

Accordingly, the Court certifies the following Settlement Class:

> All persons or organizations who paid to Asheville Development Fees on or between October 29, 2015, and June 30, 2018 which are at issue in this Action.

Final Approval of Settlement

18. The Court next looks at the Settlement to determine whether the Settlement is "fair, reasonable, and adequate." *Ehrenhaus v. Baker*, 216 N.C. App. 59, 73 (2011). The burden of showing that the Settlement satisfies this standard rests on Plaintiff. *Id.* The determination of whether Plaintiff has satisfied this burden rests in the trial court's sound discretion. *Id.*

19. While there are a variety of factors used to evaluate a settlement, the court of appeals has identified two key factors in determining whether to approve a proposed settlement of a class action: "the first is the likelihood the class will prevail should litigation go forward and the potential spoils of victory, balanced against benefits to the class offered in the settlement." *Id.* at 74. The second factor "is the class's reaction to the settlement." *Id.*

20. As to the first factor, this Court notes that the early resolution of this case illustrates that there is a likelihood of success if this action were to go to trial.

21. Notwithstanding these rulings, Plaintiffs and the Class would face risks if this action were to proceed. For example, if filed, a summary judgement motion would turn on a court's interpretation of the North Carolina Supreme Court's holding *Quality Built Homes, Inc. v. Town of Carthage,* 369 N.C. 15, 789 S.E.2d 454 (2016) in comparison with Asheville's conduct in charging the Development Fees at issue and where it used the fees for contemporaneous services rather than "to be furnished" services. Asheville contends that the Development Fees were used for contemporaneous services for its aging water infrastructure.

22. Balanced against the likelihood that the class would prevail if the action were to continue are the benefits offered to the class in the settlement. Under the settlement, the Settlement Class is able to receive an appreciable cash refund percentage of the Development Fees paid to Asheville as a precondition to development approval.

23. The benefits available to the Settlement Class are in line with the damages they would receive if Plaintiffs were to proceed to a successful litigated result. The Settlement Class members would generally be entitled to the refund of Development Fees that were deemed unlawful and used for an unlawful future use if they were successful at trial.

24. Following sending notice to the class, the Settlement received no objections and one opt out from one Class Member out of the 1,006 total Class Members."[T]he reaction of the class to the settlement is perhaps the most significant factor to be weighed in considering its adequacy." *Ehrenhaus v. Baker*, 216 N.C. App. 59, 74, 717 S.E.2d 9, 20 (2011). (quoting *Sala v. Nat'l R.R. Passenger Corp.*, 721 F. Supp. 80, 83 (E.D. Pa. 1989). *See Varacallo v. Mass. Mut. Life Ins. Co.*, 226 F.R.D. 207, 25 I (D.N.J. 2005) (where only 0.06% of class members opted out,

this weighed in favor of approval); *Bell Atlantic Corp., v. Bolger*, 2 F.3d 1304, 1313- 14 (3rd Cir. 1993) (where "[l]ess than 30 of approximately 1.1 million shareholders objected," the "small proportion of objectors does not favor derailing settlement"); *In re Cardizem CD Antitrust Litig.*, 218 F.R.D. 508, 527 (E.D. Mich. 2003) ("If only a small number of objections are received, that fact can be viewed as indicative of the adequacy of the settlement.").

25. As to the adequacy of the settlement benefits, the Court notes that the Settlement was negotiated by adverse parties engaged in litigation for over a year and was the product of arms-length negotiating and compromise. Nothing in the record indicates that the Settlement involved any type collusion by the parties or was somehow not a result of arms-length negotiating and bargaining. Asheville continues to deny any and all liability about its collection of Development Fees and would have continued to litigate this case had the Settlement not been reached. Asheville still contends all of those fees were legally collected and used within its statutory authority under the Public Enterprise Statute.

26. Ultimately, after thorough consideration of the nature and strength of Plaintiffs' claims, the numerous potential legal defenses they would have faced had the case continued to a dispositive motion stage, and the impact that prolonged litigation has already had and likely will continue to have on class membership had the case continued, the Court concludes, in its discretion, that the Settlement is fair, reasonable and should be approved.

Attorneys' Fees and Reimbursement of Expenses

27. Plaintiffs' counsel also moves the Court to approve their request for an award of $616,666 in attorneys' fees and reimbursement of expenses. The request is comprised of $592,271 in attorneys' fees and $24,395 in out of pocket expenses. Additionally, Plaintiffs request that the Class Representatives receive an award of $10,000, for a total of $20,000. The

attorneys' fees are not opposed by Asheville and Asheville agreed not to object up to $10,000 for a Service Award for each of the Class Representatives. The settlement of this action is not contingent on the award of attorneys' fees to Settlement Class Counsel, and Settlement Class members are not being asked to pay any of the fees or expenses because they are paid from the Settlement Fund.

28. While a court may not modify a contractual attorneys' fees arrangement reached in a settlement of a Rule 23 class action, it nevertheless must review the fees sought for reasonableness and must approve any fees paid by way of settlement. *See Ehrenhaus*, 216 N.C. App. at 74 ("While any 'compromise' in a class action must be reviewed by a court, a court cannot modify a purely contractual settlement."). Here, the parties agreed that Plaintiffs could apply to the Court for an award of attorneys' fees and reimbursement of expenses up to one third of the Settlement Fund. The determination of the amount of attorneys' fees to be awarded is in the sound discretion of the Court. *G.E. Betz, Inc. v. Conrad*, 231 N.C. App. 214, 242 (2013). Accordingly, the issue before the Court is whether Plaintiffs' counsel's request for $616,666 in both fees and reimbursement of expenses is reasonable.

29. The Court notes that common fund cases like Class Counsel have created in this case, a situation where taxpayer money was misapplied, routinely result in attorneys' fees being awarded under a percentage of the fund method.[1]

> After discussing several cases from other jurisdictions, the Horner court concluded: that where, as in the present case, on refusal of

[1] See also *Faulkenbury v. Teachers' & State Employees' Retirement Sys.*, 345 N.C. 683, 483 S.E.2d 422 (1997) (holding that the common-fund doctrine applied to a change in calculation of benefits under the State's retirement system resulting in the creation of a recovery fund). "As such, we are persuaded that the recovery at issue in this case properly constitutes a common fund for purposes of shifting attorney's fees under the common-fund doctrine of Horner and its progeny." *Bailey*, 348 N.C. 130, 162, at 500.

> municipal authorities to act, a taxpayer successfully prosecutes an action to recover, and does actually recover and collect, funds of the municipality which had been expended [wrongfully or misapplied, the court has implied power in the exercise of a sound discretion to make a reasonable allowance, from the funds actually recovered, to be used as compensation for the plaintiff taxpayer's attorney fees.

Raleigh-Durham Airport Auth. v. Howard, 88 N.C. App. 207, 213, 363 S.E.2d 184, 187 (1987) (quoting Horner at 101, 72 S.E. 2d at 24).

The North Carolina Business Court in *Byers v. Carpenter*, 1998 NCBC LEXIS 3, **32 (January 30, 1998) held that the appropriate level of compensation in cases such as these is typically 25% of the relief obtained if the case is settled before filing; one-third if after filing; and 40% if after an appeal has been taken. This action settled after filing of the complaint, substantial and involved discovery in the complex issues into the case, and a mediation. Under *Byers*, and the above cited case law, Plaintiffs' attorneys' fee request is therefore well within the range of reasonableness for North Carolina. In addition the declaration if Plaintiffs' counsel Dan Bryson indicates that the Fee arrangement with the class representative was for a one-third (1/3) contingency fee.

30. The Fee Motion is unopposed by Defendant, and Class Counsel has provided sufficient information and evidence to establish the reasonableness of their fee request under *Byers* and other relevant North Carolina case law submitted in their other briefing. Settlement Class Counsel worked comprehensively and extensively for over a year on a similar case that put them in the position to understands the strength and weaknesses of this one and anticipate additional work to effectuate the Settlement and assist Settlement Class members in receiving the settlement benefits. Plaintiffs' counsel also has established that they obtained a highly favorable result for the Settlement Class by providing cash benefits. Settlement Class Counsel provided

sufficient information to establish their experience, skill, and ability to successfully conduct complex litigation. Settlement Class Counsel represented the Settlement Class Representative for over a year and engaged in lengthy discovery and navigated a contentious mediation. The skill and labor required to litigate this action over a year through complicated discovery and the fact that one firm performed the work, also favorably weighs in Settlement Class Counsel's favor.

31. After carefully reviewing the foregoing, the Court finds, in its discretion, that $592,271 is a reasonable attorney fee.

32. Plaintiffs' Counsel's requested reimbursement of expenses of $24,395 are also reasonable under the circumstances and the Court in its discretion awards the full amount of these expenses.

33. Accordingly, the Court concludes that Plaintiff's counsel should be awarded $592,271 in attorneys' fees and reimbursement of expenses.

34. Further, this Court finds in its discretion that $10,000 each Class Representative is reasonable for the Settlement Class Representatives' time and dedication to the Settlement Class.

35. Unless otherwise defined herein, all defined terms shall have the meanings as set forth in the Settlement Agreement.

36. The Settlement Notice has been given to the Settlement Class pursuant to and in the manner directed by the Order Granting Preliminary Approval, proof of the mailing of the Settlement Notice has been filed with the Court and full opportunity to be heard has been offered to all parties to the Action, the Settlement Class and persons in interest. The form and manner of the Settlement Notice is hereby determined to have been the best notice practicable under the circumstances and to have been given in full compliance with each of the requirements of North

Carolina Rule of Civil Procedure 23, due process and applicable law, and it is further determined that all members of the Settlement Class are bound by the Order and Final Judgment herein.

37. Factual differences between the Settlement Class members do not defeat predominance where "the principle questions surrounding plaintiffs'... claim are the same." *Id.* (citing *Martinez-Hernandez v. Butterball, LLC,* No. 5:07-CV-174-H(2), 2008 U.S. Dist. LEXIS 111931, at *13 (E.D.N.C. Nov. 14, 2008)). Furthermore, the likelihood that class members may have suffered individual damages does not impact the predominance analysis. *See Gunnells v. Healthplan Servs.,* 348 F.3d 417 at 427-28 (4th Cir. 2003) ("Rule 23 contains no suggestion that the necessity for individual damage determinations destroys commonality, typicality, or predominance, or otherwise forecloses class certification."). Parties seeking to employ the class action procedure pursuant to Rule 23 must establish the existence of a class. *Neil v. Kuester Real Estate Servs.*, 237 N.C. App. 132, 141, 764 S.E.2d 498, 505 (2014). 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. *Id.*

38. Asheville's records that were produced to Class Counsel indicate the class to be 1,006 members. The number of Settlement Class members is sufficient to satisfy the numerosity requirement because there are 1,006 class members at issue. *See Olivera- Morales v. Int'l Labor Mgmt. Corp.,* 246 F.R.D. 250, 256 (M.D.N.C. 2007) (quoting *Hewlett v. Premier Salons Int'l, Inc.,* 185 F.R.D. 211, 215 (D. Md. 1997)) (finding that large numbers alone "may allow the court to presume impracticality of joinder and find that the numerosity requirement has been met").

39. Here, Plaintiffs believe that they can establish Asheville's liability using common class-wide evidence. Common questions include, but are not limited to: whether Asheville's

pattern, practice and policy of collecting Development Fees violates applicable North Carolina law; whether Asheville improperly charged and collected Development Fees pursuant to its Code of Ordinances for future expansion of its water systems or services to be furnished without being specifically authorized by the General Assembly of North Carolina to charge such fees; whether Plaintiffs have been deprived of their property interests by the actions of Asheville which has no rational relation to a valid governmental objective. Depositions of Asheville's employees, its Consolidated Annual Financial Reports, its Annual Budgets, budget amendments, and city minutes, are all evidence that would prove Asheville's liability. Defendant's conduct presents common operative facts and common questions of law. This common evidence forms the basis the Settlement Class Members' claims. Importantly, Defendant has not identified individual issues that would compromise the legal claims of the Settlement Classes and Plaintiffs cannot identify individual issues that would predominate over the common legal claims and questions in light of Defendant's uniform conduct.

40. The named representatives must show that there is no conflict of interest between them and the members of the class who are not named parties, so that the interests of the unnamed class members will be adequately and fairly protected. *Crow*, 319 N.C. 274, 282, 354 S.E.2d 459, at 465. The named parties also must have a genuine personal interest, not a mere technical interest, in the outcome of the action. *English v. Holden Beach Realty Corp.*, 41 N.C. App. 1, 7, 254 S.E. 2d 223, 230, disc. rev. denied, 297 N.C. 609, 257 S.E. 2d 217 (1979), citing *Hughes v. Teaster*, 203 N.C. 651, 166 S.E. 745 (1932).

41. First, the interests of the Class Representatives fully aligns with the members of the Settlement Classes and has no conflict of interest. The Class Representative is prosecuting the same claims as the Settlement Class and these claims uniformly arise from Asheville's

practice of improperly charging them Development Fees in violation of North Carolina law. The Class Representatives have also demonstrated their commitment to monitor and supervise the prosecution of the case on behalf of the Settlement Class. They have, among other things, reviewed the pleadings, provided documents in support of the case, been deposed, and maintained regular communications with Counsel. Second, the Class Representatives have a genuine personal interest in the outcome of the action. The Class Representatives have built numerous residences in Asheville and paid Development Fees in connection with those residences. Therefore, the Class Representatives are adequate Class Representatives.

42. Therefore, based on the record of the Action, the Court expressly and conclusively finds, pursuant to North Carolina Rule of Civil Procedure 23, as follows:

a. that (i) the Settlement Class, as defined above, are so numerous that separate joinder of all members is impracticable, (ii) there are questions of law and fact common to the Settlement Class, (iii) the claims of the Settlement Class Representatives are typical of the claims of the Settlement Class, and (iv) the Settlement Class Representative and their counsel have fairly and adequately protected the interests of the Settlement Class; and

b. that the requirements of North Carolina Rule of Civil Procedure 23 have been satisfied;

43. The Action is finally certified as a class action, pursuant to North Carolina Rule of Civil Procedure 23.

44. Pursuant to North Carolina Rule of Civil Procedure 23, Plaintiffs Mayfair Partners, LLC and Ed Holland Builders, Inc. are finally certified as the Settlement Class

Representatives. Daniel K. Bryson and John Hunter Bryson of Whitfield Bryson & Mason LLP is finally certified as Settlement Class Counsel.

45. The Settlement Agreement and the Settlement Notice are found to be fair, reasonable, adequate, and in the best interests of the Settlement Class, and are hereby approved pursuant to North Carolina Rule of Civil Procedure 23. The parties are hereby authorized and directed to comply with and to consummate the Settlement Agreement in accordance with the terms and provisions set forth in the Settlement Agreement, and the Clerk of Court is directed to enter and docket this Order and Final Judgment in the Actions.

46. This Order and Final Judgment shall not constitute any evidence or admission by any Party.

47. By order of this Court dated April 20, 2020 by the Honorable Alan Z. Thornburg, a preliminary approval of the settlement was granted. That order set forth a plan consistent with Rule 23 of the North Carolina Rules of Civil procedure to provide notice and due process to prospective class members ("Notice Plan.").

48. The Notice Plan was administered and followed properly by a third party administrator, which affixed a date for class members to object or opt out of this settlement, and that date has passed without any objectors and one party who opted out of the proposed settlement.

49. Plaintiffs and the other members of the Settlement Class who have not timely and validly exclude themselves in accordance with the procedures set forth in the Settlement Notice, on behalf of themselves and on behalf of their heirs, guardians, executors, administrators, predecessors, successors and assigns, as well as any person accepting benefits under this Agreement, have, by virtue of this Agreement and by virtue of the Court's Preliminary and Final

Order and Judgment, are deemed to have fully, finally and forever released, remised, relinquished, acquitted, and forever discharged the City of Asheville of and from, and shall not now or hereafter institute, maintain, or assert on their own behalf, on behalf of the Settlement Class or on behalf of any other person or entity, any claims, actions, causes of action, suits, rights, debts, obligations, reckonings, contracts, agreements, executions, promises, damages, liens, judgments and demands of whatever kind, type or nature whatsoever, both at law and in equity, whether past, present or future, mature or not yet mature, known or unknown, suspected or unsuspected, contingent or non-contingent, whether based on federal, state or local law, statute, ordinance, regulation, code (including but not limited to building code), contract, common law, or any other source, or any claim that Plaintiffs or Settlement Class Members had, or may have had against the City of Asheville that were or reasonably could have been alleged by them or on their behalf in the Action or in any other court, tribunal, arbitration panel, commission, agency, or before any governmental and/or administrative body, or any other adjudicatory body, on the basis of, connected with, arising out of or relating to the charge of Development Fees collected by Asheville from October 29, 2015, through June 30, 2018, or any other issues with their fees that were or reasonably could have been discovered and/or alleged in the Action, including, but without in any way limiting the generality of the foregoing, the claims alleged in the Action, and any claims for breach of contract, breach of express or implied warranty, tort, or statutory violations arising from, or directly or indirectly, or in any way whatsoever, pertaining to or relating to the charge or collection of Development Fees on or between October 29, 2015, and June 30, 2018 which are at issue in this Action.

50. This order releasing the Defendant City of Asheville covers by example and without limitation, any and all claims for damages, equitable relief, attorneys' fees, costs,

expenses, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, expenses and/or disbursements incurred by Settlement Class Counsel, or by Settlement Class Representatives or by the Settlement Class members regarding Released Claims, described in Paragraph 49 above, for which any of the Released Parties might otherwise be claimed liable.

51. All persons or corporations who did not timely and validly exclude themselves shall be permanently barred and enjoined from hereafter instituting, participating in, prosecuting or maintaining, either directly or indirectly, on their own behalf, or on behalf of the Settlement Class or any other Settlement Class Member, person or entity, any action or proceeding of any kind asserting any of the Released Claims.

52. The Parties shall be deemed to have agreed that the release described in the Settlement Agreement will be and may be raised as a complete defense to and will preclude any action or proceeding based on the claims released by and through the Settlement Agreement.

53. Settlement Class Counsel is hereby awarded attorneys' fees and reimbursement of expenses in the amount of $616,666 from Asheville to be paid from the Settlement Fund, as that term is defined in the Settlement Agreement, which amount the Court finds to be fair and reasonable and which shall be paid to Plaintiff's counsel in accordance with the terms of the Settlement Agreement. The Court also finds to be a fair and reasonable service award of $10,000 each to Plaintiffs Mayfair Partners, LLC and Ed Holland Builders, Inc. to be paid from the Settlement Fund.

54. Plaintiffs and Settlement Class Members, and any of their respective successors in interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, are hereby individually and severally permanently barred and enjoined from commencing, prosecuting, instigating or in any way participating in the

commencement or prosecution of any action asserting any Settled Claims, described in Paragraph 49 above, either directly, representatively, derivatively or in any other capacity, against any of the Released Persons.

55. Without affecting the finality of this Order and Final Judgment, jurisdiction is hereby retained by this Court for the purpose of protecting and implementing the Stipulation and the terms of this Order and Final Judgment, including the resolution of any disputes arising out of the Stipulation or Settlement, and for the entry of such further orders as may be necessary or appropriate in administering and implementing the terms and provisions of the Settlement and this Order and Final Judgment.

This is the 10th day of June 2020.

The Honorable Steven Warren