

SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is entered into between Bufflehead Point, LLC (“**Bufflehead**”), on the one hand; and Pamlico County (the “**County**”) and the North Carolina Department of Health and Human Services (“**DHHS**”), on the other hand. Together, Bufflehead, the County, and DHHS are referred to in this Agreement as the “**Parties**.”

WHEREAS, Bufflehead Point developed the Windmill Pointe subdivision in Pamlico County, North Carolina (“**Windmill Pointe**”) and is the current record owner of Lots 1, 13, 24, 25, 28, and 29 in Windmill Pointe;

WHEREAS, in and around April 2008, Bufflehead Point submitted applications for Improvement Permits for each of the 39 lots in Windmill Pointe;

WHEREAS, on March 22, 2018, the County and DHHS issued a Notice of Intent to Suspend Improvement Permits, in which they alleged violations of certain North Carolina statutes and administrative regulations (the “**Suspension Notice**”);

WHEREAS, following the issuance of the Suspension Notice, Bufflehead Point and other lot owners in Windmill Pointe filed petitions for contested case hearings with the North Carolina Office of Administrative Hearings;

WHEREAS, on December 7, 2018, Administrative Law Judge Melissa Owens Lassiter granted summary judgment in favor of Bufflehead Point and other property owners, finding that DHHS acted erroneously, arbitrarily, and capriciously with respect to the issuance of the Suspension Notice;

WHEREAS, it has been determined that the Improvement Permits held by the owners of the lots within Windmill Pointe may not be suspended and remain valid and binding;

WHEREAS, on November 15, 2019, Bufflehead Point filed a lawsuit against the County, DHHS, and Scott Lenhart in the United States District Court for the Eastern District of North Carolina, said lawsuit bearing Civil Action No. 4:19-CV-163 (the “**Federal Action**”);

WHEREAS, DHHS was later voluntarily dismissed from the Federal Action;

WHEREAS, on March 19, 2020, Bufflehead Point filed a lawsuit against the County, DHHS, and Scott Lenhart in Pamlico County Superior Court, said lawsuit bearing file number 20 CVS 60 (the “**State Action**”);

WHEREAS, to avoid the further burden, expense and uncertainty of litigation, the Parties desire to finally resolve and settle the differences between them, including without limitation any potential claims that could be asserted between them; and

WHEREAS, the Parties have agreed to finalize the terms of settlement between them in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained herein, and for good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference. The recitals are a substantive, contractual part of this Agreement and are binding on the Parties hereto.
2. Payment by DHHS. DHHS shall pay or cause to be paid the total sum of Two Hundred Seventy-Five Thousand Dollars and Zero Cents (\$275,000.00) to Bufflehead Point, LLC (the “**DHHS Settlement Proceeds**”) in complete settlement of the claims asserted by Bufflehead Point against DHHS in the Federal Action and the State Action. This settlement releases DHHS, and all of its officers, employees, or agents. Within 45 days of the complete execution of this Agreement, the DHHS Settlement Proceeds shall be transmitted by check to counsel for Bufflehead Point. Of the DHHS Settlement Proceeds, the sum of One Hundred Sixty Five Thousand Dollars and Zero Cents (\$165,000.00) constitutes attorneys’ fees and expenses, and the sum of One Hundred Ten Thousand Dollars and Zero Cents (\$110,000.00) constitutes compensation for damages alleged to have been sustained as a result of DHHS’s actions alleged in the Federal Action and the State Action.
3. Payment by the County. The County shall pay or cause to be paid the total sum of Three Hundred Thousand Dollars and Zero Cents (\$300,000.00) to Bufflehead Point, LLC (the “**County Settlement Proceeds**”) in complete settlement of the claims asserted by Bufflehead Point against the County in the Federal Action and the State Action. Within fifteen days of the complete execution of this Agreement, the County Settlement Proceeds shall be transmitted by check to counsel for Bufflehead Point. Of the County Settlement Proceeds, the sum of One Hundred Eighty Thousand Dollars and Zero Cents (\$180,000.00) constitutes attorneys’ fees and expenses, and the sum of One Hundred Twenty Thousand Dollars and Zero Cents (\$120,000.00) constitutes compensation for damages alleged to have been sustained as a result of the County’s actions alleged in the Federal Action and the State Action.
4. Stipulation of Dismissal. Within five days of the receipt of the DHHS Settlement Proceeds and the County Settlement Proceeds, the Parties shall

file a stipulation of dismissal of DHHS and the County from the State Action. Within five days of the receipt of the DHHS Settlement Proceeds and the County Settlement Proceeds, Bufflehead Point and the County shall file a stipulation of dismissal of the County from the Federal Action. Each stipulation of dismissal shall recite that the matter has been resolved among the parties to the stipulation, that each party shall bear its own costs and fees, and that Scott Lenhart remains a party to the Federal Action or the State Action (whichever the case may be) and that Bufflehead Point's claims against him are not released, settled, or dismissed.

5. Sales of Lots. In the event that one or more of Lots 13, 24, 25, 28, or 29 are sold by Bufflehead Point for more than \$200,000 per lot at any point between the Effective Date and one year thereafter, then DHHS and the County shall each be entitled to 15% of the amount exceeding \$200,000. By way of example, a lot sale of \$300,000 shall entitle DHHS to \$15,000 and the County to \$15,000. The obligation set forth in this Paragraph is personal to Bufflehead Point, DHHS, and the County; it shall not run with the land nor shall it be binding on any of their successors-in-interest. The Parties acknowledge and agree that the listing and sale prices of Lots 13, 24, 25, 28, and 29 are within Bufflehead Point's sole discretion.
6. Continued Effect of Orders. All prior orders from the North Carolina Office of Administrative Hearings and the Wake County Superior Court that were entered in prior litigation between Bufflehead Point and DHHS in those courts remain valid, binding, and enforceable. No obligation or ruling contained in any such order shall be deemed to have been settled, released, waived, or the like.
7. Continued Effect of Permits. DHHS agrees that all permits issued for any property within the Windmill Pointe subdivision are and shall remain valid and binding, with the exception of any lot where an Engineer Option Permit ("*EOP*") has been issued and a system installed pursuant to an EOP. Such permits are subject to future action by DHHS if such systems shall fail or malfunction, or the wastewater system is altered from the permitted systems without approval by the local health department. Each property owner shall subject to all inspection, maintenance, and operation requirements in State wastewater laws and rules. Pamlico County shall not contest this agreement.
8. Fees and Costs. Except as explicitly provided otherwise herein, each of the Parties shall bear its own fees and costs (including but not limited to any attorneys' fees) incurred in connection with the Federal Action and the State Action.
9. No Admission of Liability; Inadmissibility. The Parties acknowledge and agree that this Agreement is a compromise and settlement of each party's disputed

claims and/or defenses and that neither the execution nor the terms hereof may be construed as an admission of liability on the part of any party with respect to the disputed matters. This Agreement shall not be admissible into evidence in any legal proceedings except in a proceeding to enforce the terms of this Agreement.

10. No Recording. This Agreement shall not be recorded with the Pamlico County Register of Deeds, nor shall any memorandum evidencing the contents thereof be recorded with the Pamlico County Register of Deeds.
11. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any and all other agreements, understandings, negotiations, or discussions, whether oral or in writing, expressed or implied, between or among the Parties. The Parties acknowledge that no representations, inducements, promises, agreements, or warranties have been made to them or by them, or by anyone acting on their behalf, which are not embodied in this Agreement, that they have not executed this Agreement in reliance upon any such representation, inducement, promise, agreement, or warranty, and that no representation, inducement, promise, agreement, or warranty not contained in this Agreement, including but not limited to any purported supplements, modifications, waivers, or terminations of this Agreement, shall be valid or binding unless executed in writing by each of the Parties to this Agreement.
12. Agreement to Be Construed Fairly. The Parties acknowledge that this Agreement was negotiated as part of a settlement process. This Agreement is to be construed fairly and not in favor of or against any party, regardless of which party drafted or participated in the drafting of its terms. Any rule of construction that a document is to be construed against the drafting party shall not be applicable to this Agreement.
13. Authority to Enter into Agreement. Each of the Parties represents and warrants that any person executing this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of said party, and has the full right and authority to execute this Agreement and to fully bind that party to the terms and obligations of this Agreement. This Agreement has been reviewed and approved by the Pamlico County Board of Commissioners and reviewed by the North Carolina Department of Justice in accordance with N.C. Gen. Stat. 114-2.4.
14. Successors and Assigns. Except as explicitly provided otherwise herein, this Agreement and all documents and instruments executed in connection herewith shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. Notwithstanding the foregoing, nothing in

this Agreement shall operate to provide a release of or any benefit to Scott Lenhart.

15. Effective Date. The effective date of this Agreement (the “*Effective Date*”) is the date on which all of the Parties signed this Agreement.
16. Headings. The various headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of the Agreement or any provision of it.
17. Severability. Except for the obligations of payment of money, the provisions of this Agreement are severable, and if any part of it is found to be unenforceable, the other provisions shall remain fully valid and enforceable.
18. Reasonable Time to Review. The Parties acknowledge that they have had a reasonable time to review this Agreement and to consult their respective attorneys.
19. Counterparts. This Agreement may be executed by facsimile or other electronic means in one or more counterparts, but all of the counterparts shall constitute one Agreement. A facsimile, electronic copy, or scanned copy of a signature shall be deemed to be an original signature on this Agreement as if they were ink-signed documents. This Agreement shall be effective when executed by all of the Parties hereto.
20. Additional Documents. The Parties agree to cooperate in good faith to prepare and execute any further documents that may be necessary to effectuate the terms of this Agreement.

[signature page follows]

BUFFLEHEAD POINT, LLC

By: _____

Title: _____

Date: _____

PAMLICO COUNTY

By: _____

Title: _____

Date: _____

NORTH CAROLINA DEPARTMENT OF
HEALTH AND HUMAN SERVICES

By: _____

Title: _____

Date: _____