

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT

LYNN HARTENBERGER and NANCY STEVENS,
Individually and on Behalf of a Class of Similarly
Situated Persons,

Plaintiffs,

v.

Cause No. D-1329-CV-2012-02350

HIGH DESERT INVESTMENT CORPORATION
And ALBUQUERQUE ACADEMY,

Defendants.

**PLAINTIFFS' UNOPPOSED MOTION FOR PRELIMINARY APPROVAL OF
SETTLEMENT, APPROVING AND DIRECTING THE ISSUANCE OF CLASS
NOTICE, AND SCHEDULING A FINAL FAIRNESS HEARING**

Plaintiffs/Class Representatives, Lynn Hartenberger and Nancy Stevens, by and through undersigned Class Counsel, hereby move the Court to preliminarily approve a Class Settlement, and to enter an Order directing the issuance of Class Notice and scheduling a Final Fairness Hearing. The Defendants do not oppose this motion.

I. INTRODUCTION

This class action began in 2012 when the original class representatives sued the defendants, High Desert Investment Corporation (“HDIC”) and the Albuquerque Academy (“AA”) (hereinafter collectively referred to as Group 1 Defendants”), as well as the City of Rio Rancho (“The City”) and Mariposa East Public Improvement District (“PID”) (hereinafter collectively referred to as Group 2 Defendants”).

In October of 2013, Plaintiffs moved this Court to certify a Settlement Class for the limited purpose of approving the settlement of all claims asserted against the Group 2 Defendants. Under that settlement agreement the PID and the Trustee for the PID Bonds

(“Trustee”) agreed to exchange Series 2006 PID Bonds, which were secured by an uncapped *ad valorem* property tax, for Series 2013 Bonds, the payment of which would be secured in part by a capped special levy. The Trustee also agreed to apply revenues from the sale of land conveyed by HDIC to the Trustee to reduce the total PID Bond debt by about \$8,000,000. As a result of the settlement and the reduction of the PID debt, Class Members and the other owners of property in the Mariposa East subdivision received a substantial reduction in their PID taxes and benefited from discontinuation of the uncertainty surrounding the uncapped PID tax rate. The Court approved the settlement agreement with the Group 2 Defendants at a fairness hearing held on January 24, 2014.

A mediation of the Plaintiffs’ claims against the Group 1 Defendants was held in June of 2014, but was not successful. A second mediation occurred in December of 2014 but was again unsuccessful. On February 3, 2015, the day before the class certification hearing was scheduled to begin, the Plaintiffs and Group 1 Defendants agreed to settle all claims and causes of action in the Plaintiffs’ Second Amended Complaint, as well as all claims and causes of action that could have been brought in the action and all claims and causes of action which were related, in whole or in part, to the subject matter of this lawsuit, including all assigned claims by the Group 2 Defendants. The proposed settlement is the result of extensive and vigorous arm’s length negotiations. The Plaintiffs request this Court to preliminarily approve the Settlement Agreement attached hereto as Exhibit A.

II. BACKGROUND OF THE PRESENT SETTLEMENT

Plaintiffs filed this class action in the Thirteenth Judicial District Court on October 31, 2012, and subsequently amended their complaint twice. The Plaintiffs’ Second Amended Complaint, the operative complaint in this lawsuit, asserts a breach of contract claim, which

alleges, *inter alia*, that HDIC breached a Replenishment Agreement when it was unable to contribute to a Debt Service Reserve Fund for the PID bonds in an amount necessary to keep the Plaintiffs' PID taxes from exceeding 20 mills, and negligence and violation of the Unfair Practices Act claims, which allege, *inter alia*, that the Defendants deviated from a 2005 Feasibility Study with regard to house pricing in the Mariposa East subdivision, and subsequently discontinued development services and thereby caused the Class Members' Mariposa East property values to diminish by an amount greater than that attributable to general market conditions.

After the Plaintiffs filed their Second Amended Complaint, this Court bifurcated discovery between class certification issues and the merits of the Plaintiffs' claims against the Group 1 Defendants. Pursuant to the Court's case management order, the parties engaged in extensive discovery on class certification issues, which included depositions of the two Named Plaintiffs, six (6) fact witness depositions, five expert witness depositions, eight sets of interrogatories, seven sets of requests for production of documents and 37 document production subpoenas. Over 33,000 pages of documents and information were exchanged in discovery. The court docket includes over 254 separate filings, two of which are dispositive motions filed by the Group 1 Defendants.

The Plaintiffs' claims included novel and difficult causes of action which raised several issues of first impression in New Mexico, as well as other issues which, if this case were litigated through to conclusion, would likely require lengthy and protracted litigation in both the district and appellate courts.

The litigation costs advanced by Class Counsel in this case have been considerable, exceeding, according to Class Counsel's records, \$200,000. Class Counsel retained costly

consultants and expert witnesses to offer opinions regarding causation and damages, and to rebut the opinions of the experts hired by the Defendants.

Class Counsel issued multiple subpoenas to title companies in order to discover the sales prices of lots and homes for damages calculations and to determine the identity of Class Members. Class Counsel also contracted for a title search to further identify relevant transactions and Class Members.

The acceptance of this case by Class Counsel precluded employment by other clients and required substantial devotion of both time and resources to finance the class action and handle this very challenging case against Defendants. Class Counsel has worked diligently for two and one-half years without compensation or reimbursement to pursue those claims against competent and experienced class action lawyers who vigorously defended against those claims. Class Counsel reviewed and responded to over 3,900 emails from individuals involved in this litigation such as opposing counsel, co-counsel, consultants, and the Class Members, and spent hundreds of hours talking to Class Members, conducting numerous public meetings, listening to concerns about the Mariposa East subdivision and responding to questions about the lawsuit.

III. STANDARDS FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENTS

Review and approval of a proposed class action settlement generally involves two hearings. At the first hearing, Class Counsel submit the proposed terms of a settlement to the trial court and the judge makes a preliminary fairness evaluation on the basis of information already known, supplemented as necessary by briefs, motions, and informal presentations by the parties. Once the Court is satisfied that the settlement meets the basic standards of fairness, reasonableness and adequacy of the proposed relief, and determines that the proposed notice to the Class is adequate, the Court authorizes notice of the settlement to the Class Members and

schedules a second hearing. The second hearing in the process of reviewing and approving a Class settlement is a formal Rule 1-023(E) fairness hearing at which final approval of the proposed settlement agreement and any objections raised by Class Members are considered by the Court. At this second hearing, the Court also determines the amount of the attorneys' fee and cost awards, and class representative incentive fees which are paid from the common settlement fund. *See*, Manual for Complex Litigation, Fourth, §21.632 and 21.633.

“In order to approve such a settlement, the court must assure itself that the settlement is ‘fair, adequate, and reasonable, and not a product of collusion.’” *In re Visa Check/Mastermoney Antitrust Litig.*, 297 F. Supp. 2d 503, 509 (E.D.N.Y. 2003) (quoting *Joel A. v. Giuliani*, 218 F.3d 132, 138 (2d Cir.2000)), *aff'd sub nom. Wal-Mart Stores, Inc. v. Visa U.S.A., Inc.*, 396F.3d 96 (2d Cir.2005); *see also D'Amato v. Deutsche Bank*, 236 F.3d 78,85 (2d Cir. 2001). In determining whether a settlement meets these criteria, courts often consider “both the settlement’s terms and the negotiating process leading to settlement.” *Wal-Mart*, 396 F.3d at 116. The Second Circuit recognizes a “presumption of fairness”, reasonableness, and adequacy . . .where a class settlement [is] reached in arm’s-length negotiations between experienced, capable counsel after meaningful discovery.” *McReynolds v. Richards-Cantave*, 588 F.3d 790, 803 (2d Cir. 2009) (alteration in original) (internal quotation marks omitted).

IV. PRELIMINARY APPROVAL OF THE SETTLEMENT IS APPROPRIATE

The Settlement Agreement provides for a common settlement fund of Five Million Dollars (\$5,000,000.00) (“Settlement Amount”). As compared to the calculations of the Class real estate appraiser, Dean Zantow, that amount, without deductions for attorney’s fees, litigation costs and expenses, costs of administration, and class representative incentive fees, constitutes approximately sixty two and one half percent (62.5%) of the maximum, total amount of the claimed diminution in property value damages that can be attributed to the actions of the Defendants.

Two Hundred and Fifty Thousand Dollars (\$250,000) of the common settlement fund is proposed to be allocated to the Plaintiffs’ alleged breach of contract damages. That amount

constitutes 58% of the maximum total damages in the form of alleged PID tax damages attributed by Plaintiffs' experts to the Defendants' alleged breach of contract.

Individual notice and a publication notice will advise Class Members of their rights to participate in the settlement payments. Subject to the settlement being approved by the Court and becoming final, and after deductions for expenses of administration, Court-approved awards of Class Counsel's attorneys' fees, gross receipts taxes and litigation expenses and Class Representatives' incentive awards, the common settlement fund will be distributed to Class Members as set forth in the Plan of Allocation, a copy of which is attached as Exhibit D to the Settlement Agreement. Disbursements from the common settlement fund will be mailed directly by Class Counsel to each Class Member.

The Settlement Agreement, if finally approved, will dispose of the Released Claims, as defined therein. Because this settlement involves a Rule 1-023(B)(3) class action, it will not be final until (1) the Notice describing the settlement and disclosing Class Members' right to object to it is mailed to Class Members and published; (2) the Court holds a Final Fairness Hearing to decide whether to approve the settlement as fair, adequate and reasonable in light of the parties' submissions, to consider any objections from Settlement Class Members, to award attorneys' fees and costs to Class Counsel and to make incentive awards to the Class Representatives; (3) the Court concludes that the settlement is fair, adequate and reasonable; and (4) the settlement becomes "final" as defined in the Settlement Agreement.

The Plaintiffs believe that, given the risks and uncertainties of litigation, the probability of extensive delays through multiple appeals in achieving final resolution through litigation and the strengths of the defenses which the Defendants have asserted in this case, this settlement is fair, and adequate, and is in the best interest of the Class.

V. LEGAL STANDARDS FOR PRELIMINARY APPROVAL

“It is well established that there is an overriding interest in settling and quieting litigation, and this is particularly true in class actions.” *In re Prudential Sec. Inc. Limited Partnership Lit.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995); *see also Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (“strong judicial policy . . . favors settlements, particularly where complex class action litigation is concerned”); *In re Michael Milken & Assoc. Sec. Litig.*, 150 F.R.D. at 53 (“the law favors and encourages the settlement of class action suits”). With this precept in mind, the proposed settlement now before this Court for preliminary approval should be reviewed for the purpose of determining whether it is reasonable, fair and adequate, and not the product of collusion between the parties.

In deciding whether to grant preliminary approval to a proposed class settlement, the Court does not try the case; indeed, the very purpose of compromise is to avoid the delay and expense of trial. *See Grunin*, 513 F.2d at 124. Rather, in this phase of the Class action settlement process, the Court’s function is “to ascertain whether there is any reason to notify the Class members of the proposed settlement and to proceed with a fairness hearing.” *See In re In Re Prudential Sec. Inc. Ltd. Pshps. Litig.*, 163 F.R.D. 200, 209 (S.D.N.Y. 1995) quoting *Armstrong v. Board of School Directors of the City of Milwaukee*, 616 F.2d 305, 314 (7th Cir. 1980). The purpose of a “first look” at settlement is simply to determine whether they are within a “range of acceptable settlements,” thereby making them worthy of consideration by the settlement class and the expenditure of notice to the settlement class. Preliminary approval of this settlement does not require that the Court definitively determine that the proposed settlement is fair, reasonable, and adequate at this time, but only that it appears within the range of an

acceptable settlement. The Court's final determination as to this settlement's fairness should only be made after Class Members have received notice of the settlement and have had a reasonable opportunity to respond. *See* 5 James Wm. Moore, *Moore's Federal Practice* §23.85 (3d ed. 2000).

Where, as here, "the proposed settlement[s] appears to be the product of serious, informed, non-collusive negotiations, has no obvious deficiencies, does not improperly grant preferential treatment to Class representatives or segments of the Class and falls within the range of possible approval, preliminary approval is granted." *In Re NASDAQ Market-Makers antitrust Litig.* 176 F.R.D. 99, 102 (S.D N.Y. 1997) (citation omitted).

The proposed settlement warrants preliminary approval by the Court. At the Final Fairness Hearing, after notice and briefing by the parties and any objectors, the Court has the discretion to finally approve the settlement if the Court finds from the evidence that it is fair, reasonable and adequate for the Class Members.

Before commencing the Action and throughout its pendency, and during settlement negotiations, Class Counsel and Plaintiffs conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of their claims and potential claims and to determine how best to serve the interests of Plaintiffs and the Class Members. In the course of their examination, Class Counsel reviewed thousands of pages of documents and electronic files, and conducted other formal and informal discovery. Class counsel have considered the defenses available to the Defendants and analyzed the law relating to the allegations contained in the lawsuit. Class Counsel have employed three expert witnesses, Allan Parkman, J.D., Ph.D. , Dean Zantow, SRA, and John Kilpatrick, Ph.D., MAI, FRICS, to give their opinions and analyses of this action and the fairness of the settlement. Those experts have submitted expert

reports in this action and have also given their deposition testimony. If necessary, their additional testimony by affidavits will be presented to this Court in support of final approval.

VI. SUMMARY OF THE SETTLEMENT TERMS

The Settlement Agreement is attached to this Motion as Exhibit A. Attached to the Settlement Agreement are Settlement Agreement Exhibits A, B, C, D and E, which, respectively, are the proposed Class Settlement Notice, Publication Notice, List of Entities Excluded from the Class, Plan of Allocation, and Order Granting Preliminary Approval. The Settlement Agreement, if approved by this Court and upon becoming final, as defined in the Settlement Agreement, releases all Class Claims against the Defendants. Some of the most important points of the settlement are the following:

A. Cash Payments to Owners of the Class Properties

As set forth in the Plaintiffs' proposed Plan of Allocation, this settlement is significant in that it provides the Class Members with cash payments, or the opportunity to receive cash payments in the case of former property owners, from a Net Settlement Amount. Under the terms of the Settlement Agreement, Defendants will deposit the Settlement Amount into the Trust Account for Class Counsel which serves as the common settlement fund, within fourteen (14) days after Final Approval.

B. Administration and Distribution of Settlement Funds

The average settlement values will vary depending on application of the Plan of Allocation, the amount of attorneys' fees, plus New Mexico gross receipts taxes, Class Representatives' incentive fees, litigation costs and all costs of administering this settlement which are approved by the Court. The Class Members' proportionate share of these fees and costs will be deducted from their settlement checks, based upon the Plan of Allocation.

The cost of administering the settlement will be paid from the common settlement fund prior to calculation the amount of individual settlement checks to be mailed to the Class Members. After all funds have been distributed, including any subsequent distributions described below, and expenses paid, any remaining undistributed funds will either be paid to the Class Members, if it is reasonable to do so, or will be distributed as *Cy Pres*¹ payments as ordered by this Court.

Any distribution check that is not cashed within 90 days of mailing may be deemed unclaimed. Class Counsel shall make timely reports of the amount of such unclaimed distributions to the Court. Subject to further order of the Court, Class Counsel shall, no later than 180 days after mailing of the initial distribution checks, distribute unclaimed funds among the Class Members who did receive and cash their distributions. The distribution of unclaimed settlement amounts will be equal to the same proportionate percentage of the net settlement fund to which each Class Member was entitled under the Plan of Allocation as an eligible Class Member. If, after such supplemental distribution, any sums remain, the Class Counsel shall report to the Court and seek further direction, including the *Cy Pres* of the remaining funds.

C. Procedure for Locating Class Members

Rule 1-023(E) NMRA requires that “a class action shall not be dismissed or compromised without approval of the court, and notice of the proposed dismissal or compromise shall be given to all members of the Class in such manner as the court directs.” The procedures for locating Class Members shall be those deemed reasonable by this Court. If the Court preliminarily approves the settlement, Class Members for whom good current addresses are

¹ In class settlements, courts applying the *cy pres* doctrine may, when it is sufficiently difficult or infeasible to distribute a portion of the settlement amount to class members, approve distribution of that portion to charitable or nonprofit organizations instead of to class members.

found will receive, by first class mail, a Class Settlement Notice (“Notice”). A copy of the Notice is attached as Exhibit A to the Settlement Agreement. The standard for notice to the Class is that it must be “reasonably calculated, under all the circumstances” to inform the class members of the pendency of the action, afford them an opportunity to object, and inform them of the location, date and time of the final fairness hearing. *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 121 (8th Cir. 1975). The notice to the Class and the mechanics of the notice is left to the broad discretion of the court. *Id.*

Here, Class Counsel will disseminate notice to the Class Members by mailing the Court approved form of Notice to the current addresses of the Class Members derived from the Sandoval County Assessors Office’s records and from County Clerk property records obtained through a title search. For Class Members whose addresses could not be obtained from the Sandoval County Assessor or from County Clerk property records obtained through a title search, Class Counsel obtained addresses using a Lexis Nexis Public Records search. If a Notice is returned by the U.S. Postal Service with forwarding address information the new address will be put into the Class address database and the Notice will be re-mailed. Where Notices are returned with no forwarding address, the Class Counsel will conduct an address search using the Class Members’ name and last-known address. Where the search results in a new address, it will be put into the Class address data base and the Notice will be re-mailed by First Class Mail to the new address. Other additional procedures will be used as necessary.

In addition to individual notice, Class Counsel will cause publication of the Summary Notice on two occasions in both the *Albuquerque Journal* and the *Rio Rancho Observer*. A copy of the Publication Notice is attached as Exhibit B to the Settlement Agreement.

D. Procedure for Mailing Settlement Checks

If the Court grants Final Approval of the Settlement and there is no termination of the settlement pursuant to the Settlement Agreement, Class Counsel will mail settlement checks to the Class Members for whom good addresses have been ascertained. A “good address” is ascertained if the Notice is not returned after employing the procedures described, *supra*. To the extent any settlement checks are returned, Class Counsel will follow the same procedures outlined above to ascertain current addresses and will re-mail the settlement checks if a good address is obtained.

E. The Proposed Notice Will Adequately Advise the Class Member of the Terms of the Settlement and Their Rights.

The content of the proposed Notices exceeds the requirements of due process. “Normally, settlement notices need only describe the terms of the settlement generally.” *In re Michael Milken & Assoc. Sec. Litig.*, 150 F.R.D. 46, 52 (S.D.N.Y.) 1993). To satisfy due process, the content of a Rule 1-023(E) notice is sufficient if it informs the Class Members of the nature of pending action, the general terms of the settlement, that complete and detailed information is available from the court files, and that the Class Members may opt-out, object, or appear and be heard at the final fairness hearing. *Newberg on Class Actions 4th ed.* §8:32 at 260 (and the cases cited therein). The proposed Notices meet these requirements.

F. Attorneys’ Fees and Expenses

If this case were to go to trial and result in a judgment in favor of the Settlement Class, Class Counsels’ attorneys’ fees and expenses would be taken out of the amounts awarded to the Settlement Class, because this is a contingency fee case. As part of the settlement, Class Counsels’ attorneys’ fees and expenses, as approved by the Court, will be paid from the common settlement fund prior to any distribution to the Class Members.

In re New Mexico Indirect Purchasers Microsoft Corporation Antitrust Litigation, 2007-NMCA-007 ¶ 18M 140 N.M. 879, 149 P.3d 976, contains an overview of fee awards under the common fund doctrine.

The common fund doctrine is an equitable exception to the American rule. Under the American rule, litigants are responsible for payment of their own attorney fees, unless otherwise provided by statute, court rule, or contract. Under the common fund doctrine, a litigant or a lawyer who recovers, preserves, or increases the value of a common fund, thereby benefiting other persons, may be reimbursed for reasonable fees and expenses from the fund as a whole. The common fund doctrine generally rests on the principles of *quantum meruit* and unjust enrichment. Attorneys are entitled to compensation in proportion to the benefit obtained for the class and unnamed class members who share in a common recovery are unjustly enriched if named class members must bear the burden of litigation. The common fund doctrine is consistent with the American rule; fees are spread among all of the class members of the prevailing party by the allocation of proportional shares of the recovery. (internal citations omitted).

Attorneys who contributed to the creation of a common fund for the benefit of the class members “are entitled to a reasonable fee [from the fund].” *In re Copley Pharmaceuticals, Inc.* 1 F. Supp. 2d 1407, 1409 (D. Wyo. 1998). “The primary rationale for [this concept] is that unless the costs of litigation are spread to the beneficiaries of the fund, they will be unjustly enriched by the attorney’s efforts.” *Fresh Kist Produce v. Choi Corp.*, 362 F. Supp. 2d 118, 126 (D. D.C. 2005). An award of attorney fees is reviewed for an abuse of discretion. *N.M. Right to Choose/NARAL v. Johnson*, 1999-NMSC-028, ¶ 6, 127 N.M. 654, 986 P.2d 450; *Gavin Maloof & Co. v. Sw. Distrib. Co.*, 106 N.M. 413, 415, 744 P.2d 541, 543 (1987) (“[T]he amount of an award of attorney fees lies within the sound discretion of the trial court.”); *Hertz v. Hertz*, 99 N.M. 320, 331, 657 P.2d 1169, 1180 (1983). (“It is well settled that an award of attorney’s fees on the basis of reasonable compensation is a finding not to be distributed unless patently erroneous as reflecting an abuse of discretion.” (emphasis, internal quotation marks, and citations omitted)).

Class Counsel is requesting attorneys' fees in the amount of 33.33% of the Settlement Amount from the settlement with the Group 1 Defendants, and reimbursement of all litigation expenses advanced on behalf of the Settlement Class for the claims against both Group 1 and Group 2 Defendants. Class Counsel does not request an attorney fee for the benefit conferred on the Settlement Class by the settlement with the Group 2 Defendants.

The two Class Representatives are requesting an incentive fee of \$7,500 each for their service as class representatives.

Defendants do not take a position on the award of attorneys' fees plus New Mexico gross receipts taxes, litigation expenses or the Class Representatives' fees.

G. Release of Claims

In return for the benefits and disclosures described above, the Plaintiffs and the Class Members shall release Defendants, their current and former parents, their predecessors, affiliates, assigns, successors, subsidiaries, insurance carriers, attorneys, and their respective members, partners, officers, directors, agents, representatives, and employees, as set forth in the Settlement Agreement.

VII. CONCLUSION AND RELIEF REQUESTED

Having considered the facts developed to date and the applicable law, and having taken into account all of the circumstances, including the risks, costs, uncertainties and delays of further litigation, the Class Representatives believe that the proposed settlement will confer acceptable and substantial benefits to the Settlement Class. Accordingly, Class Counsel and the Class Representatives believe that it is desirable and in the best interests of the Class Members to settle this lawsuit on the terms set forth in the Settlement Agreement, and that the terms and conditions are fair, reasonable and beneficial to the Settlement Class. The proposed settlement is

the result of extensive arms-length negotiations between the Class Counsel, the Class Representatives and counsel for Defendants. Further, because notice, by first Class mail to each Class Member for whom physical addresses are available plus publication in a required newspaper provides the best notice practicable under the circumstances of the settlement and of the Class Members' rights to appear and be heard by the Court, it satisfies the requirements of Rule 1-023(C) and (E). Accordingly, the Plaintiffs request that the Court preliminarily approve the Settlement Agreement, authorize notice of the settlement to Class Members and hold the Final Fairness Hearing scheduled for May 27, 2015.

The Plaintiffs/Class representatives respectfully request that the Court enter the proposed Order Granting Preliminary Approval, a copy of which is attached hereto as Exhibit B. The Order Granting Preliminary Approval (1) makes a preliminary determination on the fairness, reasonableness and adequacy of the proposed settlement terms; (2) grants preliminary approval of the settlement; (3) approves the form and content of the Notice to be provided to Class Members; (4) directs that such Notice be provided to Class Members; and, (5) sets the date for the Final Fairness Hearing and for the consideration of Class Counsels' attorneys' fees and expenses application and the Class Representatives' application for a Class Representative fee.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the ____ day of April, 2015, the foregoing Motion was electronically filed, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing, and that a true and correct copy of the foregoing was sent by electronic mail to counsel listed below.

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By: /s/ Christopher Bauman
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STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT

No. D-1329-CV-2012-02350

LYNN HARTENBERGER and NANCY STEVENS,
Individually and on Behalf of a Class of Similarly
Situated Persons,

Plaintiffs,

v.

HIGH DESERT INVESTMENT CORPORATION and
ALBUQUERQUE ACADEMY,

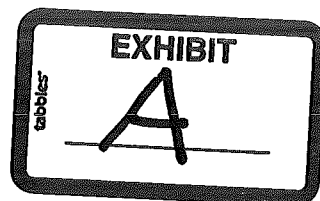
Defendants.

**SETTLEMENT AGREEMENT BETWEEN PLAINTIFFS
AND DEFENDANTS**

This Settlement Agreement is entered into between Plaintiffs Lynn Hartenberger and Nancy Stevens, individually and on behalf of the Settlement Class as defined below (“**Plaintiffs**”), and the Defendants High Desert Investment Corporation and Albuquerque Academy as defined below (“**Defendants**”), and is subject to approval by the Thirteenth Judicial District Court, County of Sandoval, State of New Mexico (the “**District Court**”). This agreement is referred to herein as the “**Settlement Agreement.**” The Plaintiffs and Class Members in the Action (as defined herein) and Defendants are referred to herein as the “Settling Parties” or “Parties.”

RECITALS

WHEREAS, Plaintiffs filed the Action in the District Court on October 31, 2012 and subsequently, on December 18, 2013, filed their Second Amended Class Action Complaint, which is the operative complaint in the Action; and



WHEREAS, in the Second Amended Class Action Complaint Plaintiffs brought certain claims, including claims for breach of contract, violation of the New Mexico Unfair Trade Practices Act (“UPA”), NMSA §§ 57-12-1 *et seq.*, negligence, and other elements of New Mexico common law, including equitable concepts and injunctive relief. Specifically, Plaintiffs alleged they suffered losses as a result of real estate purchases they made in the Mariposa East Subdivision in Sandoval County that was developed by High Desert Investment Corporation; and

WHEREAS, before commencing the Action and throughout its pendency, and during settlement negotiations, Class Counsel and Plaintiffs conducted a thorough examination and evaluation of the relevant law and facts to assess the merits of their claims and potential claims and to determine how best to serve the interests of Plaintiffs and the Class Members. In the course of their examination, Class Counsel reviewed thousands of pages of documents and electronic files, and conducted other formal and informal discovery; and

WHEREAS, the Parties engaged in extensive and contentious settlement negotiations and mediation sessions with the assistance of mediator that resulted in a settlement on February 3, 2015; and

WHEREAS, Class Counsel believe that the Class Claims (defined herein) have merit and are supported by the evidence, and Plaintiffs are prepared to vigorously prosecute the claims raised in this action against the Defendants. However, Class Counsel recognize the risks and uncertainties of prosecuting any action and the expense and length of proceedings necessary to prosecute the Action through trial and appeals. Class Counsel believe this proposed Settlement Agreement confers significant benefits to the Class Members. Based upon their evaluation, and as a result of extensive, lengthy and difficult arms-length negotiations with the Defendants, Class

Counsel are satisfied that the terms and conditions of this proposed Settlement Agreement are fair, reasonable, adequate and in the best interests of the Class Members, as defined herein; and

WHEREAS, the Defendants deny any and all alleged wrongdoing concerning the Class Claims and have in the past and are prepared to continue in the future to vigorously defend against those claims. Nevertheless, taking into consideration the cost and expense of further proceedings, the strengths and weaknesses of the Class Claims and the Defendants' defenses, the uncertainties and risks associated with further litigation, and other appropriate factors, the Defendants desire to effectuate the proposed Settlement in order to avoid further expense, inconvenience, and the distraction of burdensome and protracted litigation, to obtain the orders contemplated by this Settlement Agreement, and to finally resolve all claims which were or could have been alleged in the Action against the Defendants; and

WHEREAS, the Parties have voluntarily agreed to settle the Action after consultation with competent legal counsel of their own selection;

NOW, THEREFORE, IT IS HEREBY AGREED by the Settling Parties that, subject to final approval by the District Court and entry of the Final Order, the Class Claims shall be released, settled and dismissed with prejudice and on the merits, subject to the following terms and conditions:

SECTION 1.0 -- DEFINITIONS.

Unless otherwise expressly provided in this Settlement Agreement, the following terms, as used in this Settlement Agreement, have the following meanings:

1.1 “**Action**” means the litigation filed by the Plaintiffs and presently entitled *Lynn Hartenberger and Nancy Stevens v. High Desert Investment Corporation and Albuquerque Academy* filed in the Thirteenth Judicial District Court, County of Sandoval, State of New

Mexico, Case No. D-1329-CV-2012-02350. The “Action” includes all prior claims and complaints and all pleadings and amended pleadings of the Action, including without limitation all claims and causes of action that could have been brought in the Action and all claims and causes of action that were dismissed without prejudice during the course of the Action, which are collectively referred to herein as “**Class Claims**”.

1.2 “**Albuquerque Academy**” means Albuquerque Academy, its current and former parents, their predecessors, affiliates, assigns, successors, subsidiaries and its members, partners, officers, directors, agents, trustees, representatives, employees, attorneys, insurers and independent contractors.

1.3 “**Class Counsel**” means Christopher P. Bauman and Deborah R. Stambaugh of Bauman, Dow & Leon, P.C., and Maureen A. Sanders and Duff Westbrook of Sanders & Westbrook, P.C. counsel to the Plaintiffs.

1.4 “**Class Members**” means all members of the Settlement Class, including without limitation Plaintiffs Nancy Stevens and Lynn Hartenberger.

1.5 “**Class Settlement Notice**” means the notice to Class Members of the Final Approval Hearing and terms of the Settlement, substantially in the form attached as Exhibit A to this Settlement Agreement, and as approved by the District Court, advising the Class Members of their rights concerning this Settlement and other procedures appropriate for obtaining Final Approval of this Settlement Agreement.

1.6 “**Court Approval**” means the entry by the District Court in the Action of a Final Order of approval, in the form of an order to be agreed upon by the Parties after notice to the Class Members and a final approval hearing, signifying final approval of this Settlement Agreement in accordance with Rule 1-023(E) NMRA.

1.7 The “**Defendants**” means High Desert Investment Corporation and Albuquerque Academy.

1.8 “**Defendants’ Counsel**” means Charles R. Peifer and Cerianne L. Mullins of Peifer, Hanson & Mullins, P.A., counsel for Albuquerque Academy, and Richard L. Alvidrez and Nathan Cobb of Miller Stratvert P.A., counsel for High Desert Investment Corporation.

1.9 The “**District Court**” means the Thirteenth Judicial District Court, County of Sandoval, State of New Mexico.

1.10 “**Trust Account**” means Class Counsel’s IOLTA Trust Account which Class Counsel shall ensure qualifies as a Qualified Settlement Fund.

1.11 “**Final Approval**” means that Court Approval has become final by the District Court’s entry of the Final Order, either by: exhaustion of any time for a Class Member who has properly and timely objected to the Settlement Agreement to appeal the Court Approval, with no appeal being filed; by completion of any appeals filed by members of the Class which appeals have been resolved favorably; or, if there are no objections to the settlement of Class Claims, by the District Court’s entry of the Final Order.

1.12 “**Final Fairness Hearing**” means the hearing at which the District Court shall consider:

A. Whether this Settlement Agreement, including the attached Exhibits, should be approved as fair, adequate, and reasonable;

B. Whether a Final Order should be entered;

C. Whether the application of Class Counsel for payment of attorneys’ fees plus New Mexico gross receipts taxes, and all costs and expenses, should be approved;

D. Whether the application for payment of an incentive award to the Class

Representative should be approved; and,

E. Any other matters addressed by the District Court in conjunction with items (A) - (D) of this paragraph.

1.13 “**Final Order**” means the Final Order, Judgment of Dismissal and Release to be drafted by Class Counsel and Defendants’ Counsel.

1.14 “**High Desert Investment Corporation**” means High Desert Investment Corporation, its current and former parents, their predecessors, affiliates, assigns, successors, subsidiaries and its shareholders, members, partners, officers, directors, agents, representatives, employees, attorneys, insurers and independent contractors.

1.15 “**Net Settlement Amount**” means the Settlement Amount less the Class Representative’s incentive awards, Class Counsel’s attorneys’ fees and New Mexico gross receipts taxes (as approved by the District Court), all costs of settlement administration, class notice and settlement distribution, reimbursement of Class Counsel of all actual expenses of the Action (as approved by the District Court), any other approved costs and expenses of Plaintiffs and all appropriate taxes, if any, assessable on the Settlement Amount or any portion thereof.

1.16 “**Party**” or “**Parties**” means the Plaintiffs, Class Members and the Defendants.

1.17 The “**Plaintiffs**” means Lynn Hartenberger and Nancy Stevens, individually and on behalf of the Class Members.

1.18 The “**Plan of Allocation**” means the document subject to approval by the District Court describing the distribution of the proceeds of the Net Settlement Amount.

1.19 “**Preliminary Approval**” means the preliminary approval of the Settlement Agreement by the District Court pursuant to an Order Granting Preliminary Approval.

1.20 “**Publication Notice**” means the notice of settlement published to Class Members

after Preliminary Approval of the Settlement Agreement. The Publication Notice is attached as Exhibit B to this Settlement Agreement.

1.21 “**Qualified Settlement Fund**” means the Settlement Amount which is to be deposited in a Qualified Settlement Fund pursuant to, and within the meaning of, Sections 1.468B-1 *et seq.*, of the Regulations of the United States Department of the Treasury.

1.22 “**Released Claims**” means:

(A) All Class Members’ Class Claims, claims, demands, damages, contracts, warranties, injuries, both to person and property, actions, causes of action, and suits of every kind and nature, including but not limited to claims for attorneys’ fees, costs and interest, existing, claimed to exist, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent or which may hereafter arise out of or result from or be incident or attributable to in whole or in part to the facts, allegations and events that formed the basis of the Class Claims, the Action, or any actual or potential claim in the Action.

(B) And, without in any manner limiting the foregoing mentioned in Paragraph (A), all Class Members’ Class Claims, claims, demands, damages, contracts, warranties, injuries, both to person and property, actions, causes of action, and suits of every kind and nature, including but not limited to claims for attorneys’ fees, costs and interest, existing, claimed to exist, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent which could have been set forth in the pleadings of the Action or could have been set forth in an amended complaint or other amended pleading of the Action.

(C) And, without in any manner limiting the foregoing mentioned in Paragraphs (A) and (B), all Class Members’ Class Claims, claims, demands, damages, actions, causes of action, and suits of every kind and nature, including but not limited to claims for attorneys’ fees,

costs and interest, existing, claimed to exist, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent which could have been brought or sustained by the Class Members and/or anyone claiming by, under, or through the releasing parties or by anyone subrogated to any of the rights of the releasing parties or by anyone claiming any right of reimbursement through the releasing parties, and any parties having or claiming liens.

(D) And, without in any manner limiting the foregoing mentioned in Paragraphs (A), (B), and (C), all Class Claims, claims, demands, damages, actions, causes of action, and suits of every kind and nature, including but not limited to claims for attorneys' fees, costs and interest, existing, claimed to exist, whether known or unknown, liquidated or unliquidated, accrued or unaccrued, fixed or contingent which were received, obtained or acquired by any Class Member by any assignment or transfer of claims, including without limitation the Assigned Claims set forth in the Settlement Agreement and Release between the City of Rio Rancho, New Mexico, the Mariposa East Public Improvement District, and the Class Members and approved by the District Court on January 21, 2014.

1.23 **"Settlement Amount"** means the total sum of Five Millions and No/100 Dollars (\$5,000,000.00).

1.24 **"Settlement Class"** means any and all persons and entities who purchased or acquired real property, consisting of unimproved residential lots or improved residential lots (lots with a completed residence or where construction on a residence has commenced), within the Mariposa East Subdivision from the date of its inception through June 20, 2012. The Settlement Class excludes the following: (i) any person or entity who purchased, pursuant to a single deed, more than three (3) lots in the Mariposa East Subdivision; (ii) any person or entity who

purchased or otherwise acquired an unimproved development tract in the Mariposa East Subdivision; (iii) the Defendants and their respective parent companies, subsidiaries and affiliated business entities; (iv) any person who is currently, or who was for the period from the date of inception of the Mariposa East Subdivision through June 20, 2012, a managerial employee, officer, director, member or trustee of either the Albuquerque Academy or High Desert Investment Corporation; (v) any financial institution that acquired improved or unimproved property in the Mariposa East Subdivision as a result of a default pursuant to a mortgage or other security instrument; and (vi) any affiliated entity of any party excluded in subsections (i), (ii), (iii), or (v) above. Exhibit C attached hereto is a list of all persons and entities that have been identified by Class Counsel as excluded from the Settlement Class pursuant to subsections (i), (ii), (iii), (v) and (vi) based on Class Counsel's due diligence and review of relevant records. There shall be a rebuttable presumption that Exhibit C is a complete list of persons and entities excluded from the Settlement Class pursuant to subsections (i), (ii), (iii) (v) and (vi). However, in the event an entity or person is not listed on Exhibit C but is excluded pursuant to the definitions for exclusion stated in paragraphs (i), (ii), (iii), (v) and (vi), the definitions for exclusion shall prevail. Notwithstanding any of the exclusions set forth above, including the exclusion defined in subsection (i), SunWest Trust, Inc., as custodian for the Nola Kay Stofac IRA, shall be included in the Settlement Class.

1.25 **"Settling Parties"** means the Plaintiffs, Class Members and the Defendants.

SECTION 2.0 -- MUTUAL INTENT TO IMPLEMENT THIS SETTLEMENT AGREEMENT PROMPTLY.

2.1 It is the mutual intent of the Settling Parties to consummate and implement this Settlement Agreement promptly.

A. The Settling Parties will cooperate in good faith and exercise their reasonable best efforts to effectuate and implement all of the terms and conditions of this Settlement Agreement within the time periods set out herein. The Settling Parties agree to use their reasonable best efforts to prepare any other documents necessary to implement and consummate this settlement including, but not limited to, a Class Settlement Notice to Class Members, Publication Notice to Class Members, Preliminary and Final Approval Orders, and related documents to be submitted to the District Court for Preliminary and Final Approval as may be necessary to effectuate the purposes and intent of this Settlement Agreement;

B. The Class Members shall be bound by the Settlement Agreement and all proceedings, orders and judgments in the Action if the Settlement Agreement receives Final Approval;

C. The Settling Parties shall jointly submit this Settlement Agreement, including the Exhibits attached to this Agreement, to the District Court for preliminary approval as soon as is reasonably practical;

D. Upon submission of the Settlement Agreement for Preliminary Approval, the Settling Parties shall request that the District Court enter an Order of Preliminary Approval;

E. In proceedings before the District Court (and before any appellate courts, if necessary), the Parties shall take all steps reasonably necessary to obtain Final Approval of the Settlement;

F. The Settling Parties shall agree to entry of a Final Order approving the Settlement Agreement by the District Court following the Final Fairness Hearing; and

G. The Settling Parties specifically agree to cooperate and share information reasonably available in the ordinary course of business and calculated to locate Class Members

or their lawful successors or assigns and to calculate payments pursuant to the Plan of Allocation.

SECTION 3.0 -- RELIEF FOR THE CLASS.

3.1 **Settlement Amount.** In consideration for this Settlement Agreement, and in full and final settlement of the Released Claims, and unless termination occurs as set forth in Section 5.4, herein, Defendants shall make payment of the Settlement Amount in good funds by wire transfer as provided in Section 3.4 of this Settlement Agreement.

3.2 **Costs, Fees, Expenses and Taxes Included.** The Settlement Amount includes the Class Members' compensation, Class Representative's incentive awards (as approved by the District Court), Class Counsel's attorneys' fees plus gross receipts taxes (as approved by the District Court) and reimbursement of Class Counsel of all actual expenses of this Action (as approved by the District Court), all costs of settlement administration, any other litigation costs of Plaintiffs, and all applicable taxes, if any, assessable on the Settlement Amount or any portion thereof. All such costs, compensation, awards, fees, expenses and applicable taxes, if any, assessable on the Settlement Amount shall be deducted from the Settlement Amount, and shall not be the Defendants' responsibility. For the avoidance of doubt, in no event will the Settlement Amount exceed Five Millions and No/100 Dollars (\$5,000,000.00). Defendants shall be responsible for their own attorneys' fees, costs, and expenses.

3.3 **Plan of Allocation.** The distribution of the Net Settlement Amount shall be administered pursuant to a Plan of Allocation which is attached as Exhibit D to this Settlement Agreement and is subject to the approval of the District Court. Defendants shall have no participatory or approval rights with respect to the Plan of Allocation, and the District Court's rejection of Plaintiffs' Plan of Allocation shall not affect the validity or enforceability of this

Settlement Agreement. Defendants take no position with respect to the form and/or substance of Plaintiffs' Plan of Allocation and shall have no responsibility or liability of any kind for the implementation, supervision, or administration of Plaintiffs' Plan of Allocation. Subject to the District Court's authority to disapprove the Settlement Agreement, the District Court's refusal to approve a particular Plan of Allocation shall not otherwise affect the validity or enforceability of the Settlement Agreement. With respect to the Plan of Allocation, Class Counsel, under direction of the District Court, will be responsible for the implementation, supervision, and administration of this Settlement Agreement, the Plan of Allocation, and Class Settlement Notice to the Class. Class Counsel will be responsible for calculating distributions under the Plan of Allocation and issuing the checks from the Net Settlement Amount to the Class Members.

3.4 **Deposit of Settlement Amount.** Within fourteen (14) business days after Final Approval, Defendants will deposit the Settlement Amount into the Trust Account to be distributed pursuant to the Plan of Allocation.

SECTION 4.0 -- ATTORNEYS' FEES AND EXPENSES AND CLASS REPRESENTATIVES INCENTIVE AWARDS.

4.1 **Attorney Fee Application.** Class Counsel intend to apply to the District Court for an award of attorneys' fees plus applicable New Mexico gross receipts taxes thereon incurred in prosecuting Class Claims and for services rendered up to and including the date this Settlement is final, with such award to be paid out of the Trust Account from the Settlement Amount. Any such application for an award of attorneys' fees shall not exceed Thirty Three and a Third (33 1/3) percent of the Settlement Amount, plus applicable New Mexico gross receipts taxes thereon.

4.2 **Costs and Expenses.** At the Final Fairness Hearing, Class Counsel may apply

to the District Court for reimbursement from the Settlement Amount of reasonable out of pocket litigation expenses, to include expenses incurred up to the Final Fairness Hearing, all costs of settlement administration, class notice and distribution of the Settlement Amount to the Settlement Class and completion of the administration of the Settlement Amount as ordered by the District Court.

4.3 **Class Representatives' Compensation.** Subject to approval and modification by the District Court, the Class Representatives shall each be entitled to seek District Court approval of a payment of up to \$7,500 out of the Settlement Amount for services as Class Representatives, to be made by Class Counsel after Final Approval and expiration of the time for the Parties to exercise their termination rights pursuant to Section 5.4 of this Agreement without the Parties exercising their termination rights and within fourteen (14) business days after Final Approval, in addition to any amounts due to them as a Class Member to be paid by Class Counsel from the corpus of the Trust Account. District Court approval of Class Representatives' compensation in an amount less than stated herein shall not negate any other provisions of this Settlement Agreement, which shall remain fully effective and enforceable.

4.4 **Fees, Costs and Expenses.** Any costs of suit or attorneys' fees approved by the District Court shall be paid by Class Counsel out of the Settlement Amount after Final Approval and expiration of the time for the Parties to exercise their termination rights pursuant to Section 5.4 of this Agreement without the Parties exercising their termination rights and within fourteen (14) business days after Final Approval. The District Court's approval of an attorneys' fee and/or costs in an amount less than the amount requested by Class Counsel - or the District Court's disallowance of any award of fees or expenses - shall not negate any other provisions of this Settlement Agreement, which shall remain fully effective and enforceable.

4.5 **Approval by the Court.** All fees, costs and expenses to be deducted from the Settlement Amount must be approved by the District Court. Defendants shall take no position on any application for fees and reimbursement of costs or expenses made by Class Counsel or by the Class Representatives or any application for awards out of the Trust Account to the Class Representatives. This Settlement Agreement is not contingent on the District Court's approval of any application for such fees, expenses or awards out of the Settlement Amount.

SECTION 5.0 -- ADMINISTRATION.

5.1 **Class Counsel.** Class Counsel shall be solely responsible for the supervision and administration of the Settlement Amount, the allocation (in accordance with the Plan of Allocation) and distribution of the Settlement Amount and Net Settlement Amount, and any required notification of Class Members regarding the Settlement.

Class Counsel shall be solely responsible for communicating, calculating, distributing, allocating and administering any matters pertaining to the settlement and the Settlement Amount among or with Class Members or any persons claiming to be a part of the Class. Defendants shall refer all inquiries concerning the Settlement Agreement to Class Counsel, and shall have no responsibility for supervision, communication, calculation, distribution, administration, or allocation of the Settlement Amount or the Net Settlement Amount.

In accordance with the settlement approval provisions of Rule 1-023 NMRA, notice of this settlement, as approved by the District Court, will be provided to all Class Members as ordered by the District Court.

5.2 **Court Approval.** Promptly after the execution of this Settlement Agreement, the Parties shall submit this Settlement Agreement and supporting papers, including the Plan of Allocation, to the District Court.

The Plaintiffs shall (i) file with the District Court a Motion for Order of Preliminary Approval, (ii) submit to the District Court an Order Granting Preliminary Approval in the form attached as Exhibit E to this Settlement Agreement, and (iii) jointly request the District Court to enter an Order establishing procedures for notice to the Class Members for Final Approval, and other procedures appropriate for obtaining Court Approval of this Settlement Agreement.

The motion for Preliminary Approval shall, among other things:

- (1) Preliminarily approve this Settlement Agreement as sufficiently fair and reasonable to warrant sending notice to the Class Members;
- (2) Preliminarily certify the Settlement Class for settlement purposes, as defined herein, and designating Plaintiffs as the Class Representatives and Class Counsel as counsel for the Settlement Class on the condition that the certification and designations shall be automatically vacated if this Settlement Agreement is terminated or is disapproved or materially altered in whole or in part by the Court, any appellate Court, or any of the Settling Parties (pursuant to Section 5.4);
- (3) Stay consideration of all other motions and deadlines pending in the Action;
- (4) Schedule the Final Fairness Hearing to be held no sooner than 45 days after entry of the order granting Preliminary Approval to consider the fairness, reasonableness and adequacy of this Settlement Agreement and whether it should be approved by the District Court;
- (5) Approve the Settlement Class Notice and Publication Notice;
- (6) Cause the Settlement Class Notice and Publication Notice to be mailed and published;

(7) Determine that the Settlement Class Notice and Publication Notice constitutes the most effective notice practicable of the pendency of the Action, this Settlement Agreement and the Final Fairness Hearing to all potential Class Members who can be identified through reasonable effort, and constitutes due and sufficient notice for all other purposes to all persons entitled to receive notice;

(8) Require Class Counsel to file with the District Court proof of the mailing and publication of the Settlement Class Notice and Publication Notice before the Final Fairness Hearing;

(9) Require each potential Class Member who wishes to exclude himself or herself from the Class to send to Class Counsel and Defendants' Counsel an appropriate request for exclusion postmarked no later than fifteen (15) days before the date of the Final Fairness Hearing;

(10) Require each Class Member who wishes to appear through separate counsel and/or to address or object to the fairness, reasonableness or adequacy of this Settlement Agreement to serve on Class Counsel and Defendants' Counsel, and to file with the District Court, no later than fifteen (15) days before the Final Fairness Hearing, a notice of intention to appear and/or object, together with copies of any papers the Class Member intends to present to the District Court in connection with this Settlement Agreement, or be forever barred from separately appearing and/or objecting;

(11) Direct the Settling Parties to promptly furnish the other Settling Parties with copies of any and all objections or written requests for exclusion that might come into their possession;

(12) Preliminarily enjoin all Class Members, acting individually or together, from instituting, maintaining, prosecuting, suing, asserting or cooperating in any action or proceeding against any of the Defendants for any of the Released Claims; and

(13) Contain any additional provisions that might be necessary to implement and administer this Settlement Agreement.

5.3 **Reasonable Best Efforts.** The Parties agree to make reasonable best efforts to do all things reasonably necessary to secure Preliminary Approval and Final Approval of this Settlement Agreement by the District Court at the earliest possible date and to effectuate immediately such Court Approval, if granted; provided that the foregoing shall not require Defendants to provide any additional consideration or to take or forebear from taking any action for the benefit of the Class Members. The Settling Parties specifically agree to cooperate and share information reasonably available in the ordinary course of business and calculated to locate Class Members or their lawful successors or assigns and to calculate payments pursuant to the Plan of Allocation.

5.4 **Termination.** If the substance of this Settlement Agreement or a material provision of the Settlement Agreement does not receive Final Approval or is materially modified by the District Court, then Class Counsel, any Class Representative or Defendants may, at his, her or its option, declare the Settlement Agreement null and void by written notice to the District Court and to counsel for the other parties filed and served within ten (10) business days of the entry of an order not granting District Court approval or Final Approval or having the effect of disapproving or materially modifying the terms of the Settlement Agreement. Furthermore, if any Class Member should elect to opt-out of this Settlement Agreement,

then the Defendants, in their sole discretion, may declare the Settlement Agreement null and void by written notice to the District Court and to Class Counsel filed and served within ten (10) business days of Final Approval. Should any Class Member elect to opt-out of this Settlement Agreement and the Defendants, thereafter forego exercising their right to terminate this Settlement Agreement, the Defendants understand that the Plaintiffs do not agree to and will not be responsible for paying for, resolving or indemnifying the Defendants for resolution of disputes between the Defendants and any Class Member who opts out of the settlement, and that none of the Settlement Amount can or will be used to pay any such claims, or can or will be used to pay the Defendants' attorney's fees and costs.

If this Settlement Agreement is terminated pursuant to this Section 5.4, or for any other valid reason under this Settlement Agreement, then the Parties will be restored to their respective positions in the Action as of the date of this Settlement Agreement. In that event, the litigation will proceed as if this Settlement Agreement had never been executed, and this Settlement Agreement and representations made in conjunction with this Settlement Agreement may not be used in the Action or otherwise for any purpose.

5.5 **Stay.** The Parties agree that all proceedings other than those directed toward settlement of this Action shall be held in abeyance.

5.6 **Class Notice of Settlement; Objections.** In accordance with the settlement approval provisions of Rule 1-023 NMRA, the Class Settlement Notice and publication of the Publication Notice (along with a website link to this Settlement Agreement, exhibits and the First Notice) shall be provided to all Class Members by the Class Counsel. Any Class Member may object to the Settlement by mailing it to Class Counsel and to Defendants Counsel, by first-class mail postmarked no later than fifteen (15) calendar days prior to the Final Fairness Hearing. The

objection must set forth: (a) an identification of the action, *e.g.*, *Lynn Hartenberger and Nancy Stevens v. High Desert Investment Corporation and Albuquerque Academy*, Thirteenth Judicial District Cause No. D-1329-CV-2012-02350; (b) the Class Member's full name, address, and daytime telephone number (c) information sufficient to identify the Class Member's ownership interest in any real property in the Mariposa East Development; (d) a statement, in clear and concise terms, of the objection to the Settlement and a detailed statement of the grounds for such objection; (e) all documents or writings which the Class Member wants the District Court to consider, if any; (f) a summary of the legal and factual arguments supporting the objection; and (g) a detailed description of any documents or witness statements the Class Member wants the District Court to consider. The objection must contain a statement that the Class Member has not opted out of the Action, and such statement must be signed personally by the Class Member objecting.

5.7 **Allocation and Distribution.** To the extent practicable and consistent with the principle that only actual Class Members should be paid, the distribution of the Net Settlement Amount will be made in accordance with the procedures to be set forth in the Settlement Agreement and Plan of Allocation, subject to approval by the District Court. The Plan of Allocation, when approved by the District Court shall govern distribution of the Net Settlement Amount.

5.8 **Sole Recourse.** Except as otherwise provided in this Settlement Agreement, all approved payments to Class Members, Class Representatives, Class Counsel, and any other payments in connection with this Settlement, after Final Approval, shall be paid exclusively from the Settlement Amount. In no event shall Defendants be liable for any payment other than the Settlement Amount. The sole recourse of any person claiming any payment under the Settlement

Agreement, any right to payment under or in any way related to this Settlement Agreement or to any matter related in any way to the Released Claims including, without limitation, Class Members, Class Counsel, or any person claiming by, through, or on behalf of any of the foregoing, or any costs of litigation or resulting from a dispute among the Class Members regarding the distributions of the Settlement Amount shall be solely against the Settlement Amount.

SECTION 6.0 -- RELEASE IN FAVOR OF DEFENDANTS.

Upon the later to occur of (i) Final Approval, (ii) expiration of the time for the Parties to exercise their termination rights without the Parties exercising their termination rights or (iii) deposit by Defendants of the Settlement Amount, the Class Representatives and each Class Member shall be conclusively deemed to have fully, finally, completely, irrevocably, unconditionally and forever released and discharged Defendants from liability on and for all of the Released Claims. Such release will be effective as of the date of Final Approval.

In connection with this Release, Plaintiffs acknowledge for themselves and the Class Members that they are aware that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true with respect to the Released Claims. Nevertheless it is the intention of Plaintiffs in executing this Release for themselves and the Class Members that they fully, finally and forever settle and release all such matters, and all claims relating thereto, which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Released Claims. To the extent that any applicable statutes or principles of law limit this Release of unknown claims, such statutes

and principles are hereby knowingly and voluntarily waived to the maximum extent permitted by law.

SECTION 7.0 -- DISMISSAL.

In connection with the motion for Final Approval, Class Counsel shall provide to Defendants' counsel a Final Order that includes an order dismissing with prejudice the Action and the Released Claims. The proposed order of dismissal shall dismiss all Released Claims in the Action with respect to Defendants with prejudice and such order of dismissal will extinguish any liability of Defendants with respect to such Released Claims.

SECTION 8.0 -- NO ADMISSION OF LIABILITY.

This Settlement Agreement represents the proposed settlement of disputed claims and does not constitute, nor shall it be construed as, an admission of the correctness of any position asserted by any Party, nor an admission of liability or of any wrongdoing by any Party or as an admission of any strengths or weaknesses of the claims of the Plaintiffs or Defendants' defenses. In addition, this Settlement Agreement, nor any statement, transaction or proceeding in connection with the negotiation, execution, or implementation of the Settlement Agreement will be intended to be or construed as or deemed to be evidence of an admission or concession by Defendants of any liability or wrongdoing or of the truth of any allegations against Defendants, of any evidence that Defendants accedes in certification of a class for purposes other than settlement, and none of them shall be admissible in evidence for any such purpose in any proceeding.

SECTION 9.0 – MISCELLANEOUS.

9.1 **Confidentiality.** Except to alert the District Court of the need to schedule a hearing on the preliminary approval of this settlement, no Party shall initiate any publicity

relating to or making any public comment regarding this Agreement or settlement until the District Court has issued the Preliminary Approval Order.

9.2 **Jurisdiction; Governing Law.** The District Court shall retain exclusive and continuing jurisdiction with respect to implementation and enforcement of the terms and conditions of this Settlement Agreement, for the sole purpose of assuring that all benefits hereunder are properly provided, and all Parties to this Settlement Agreement submit to the jurisdiction of the District Court for such purposes. This Settlement Agreement shall be interpreted and enforced under and in accordance with the laws of the State of New Mexico.

9.3 **Authority.** Each Party represents (a) that he, she or it has authority to enter into this Settlement Agreement, (b) that the signatory below signing on his, her or its behalf is authorized to sign on behalf of such Party for which he or she has signed, subject to Final Approval of this Settlement Agreement by the District Court and (c) assuming the due authorization, execution, and delivery of this Settlement Agreement by the other Parties, this Settlement Agreement constitutes the legal, valid, and binding obligations of such Party, enforceable against such Party in accordance with its terms.

9.4 **Binding Agreement.** This Settlement Agreement shall be binding upon and inure to the benefit of the Parties' successors and assigns. Neither this Settlement Agreement nor any of the rights, interests, or obligations hereunder shall be assigned, in whole or in part, by any of the Parties without the prior written consent of each of the other Parties, other than an assignment by will or by the laws of descent and distribution, and any attempted assignment in violation of this provision shall be null and void.

9.5 **Enforcement.** The Parties agree and intend that this Settlement Agreement is binding and fully enforceable and that, once signed by all Parties with appropriate authority, no

Party may withdraw or seek to alter the material terms of this Settlement Agreement, except as authorized under Section 5.4, above.

9.6 **Non-Disparagement.** Plaintiffs, Defendants and their respective counsel will not knowingly disparage the litigation or the settlement, the application for attorney fees or the application for incentive awards.

9.7 **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which is hereby deemed an original, but all of which together shall constitute one and the same instrument.

9.8 **Entire Agreement.** This Settlement Agreement and the exhibits hereto (the “**Exhibits**”), constitute the entire agreement and obligation between and among the Parties with respect to the claims and defenses in the Action and Released Claims, and supersede all prior oral and written settlement negotiations, agreements, understandings, discussions and communications between and among the Parties with respect to the subject matter hereof. Except for this Settlement Agreement and the Exhibits, there are no other warranties, representations, covenants, promises, undertakings or understandings by or among the Parties to this Settlement Agreement related in any way to the Settlement. Any modification or waiver of, deletion or addition to the terms of this Settlement Agreement must be in writing, mutually agreed upon, signed by or on behalf of all Parties or their successors in interest and approved by the District Court in this Action.

9.9 **Incorporation by Reference.** All of the Exhibits are material and integral parts of this Settlement Agreement and are fully incorporated herein by reference.

9.10 **Advice of Counsel.** Each Party acknowledges that he, she or it has been and is being fully advised by competent legal counsel of such Party’s own choice and fully

understand the terms and conditions of this Settlement Agreement, and the meaning and import thereof, and that such Party's execution of this Settlement Agreement is with the advice of such Party's counsel and of such Party's own free will.

9.11 **Construction.** The provisions of this Settlement Agreement shall, where possible, be interpreted in a manner to sustain their legality and enforceability.

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This Settlement Agreement has been executed by the undersigned as set forth below:

Named Plaintiff:

LYNN HARTENBERGER

Dated: _____

Named Plaintiff:

NANCY STEVENS

Dated: _____

Approved:

Christopher P. Bauman
Deborah Stambaugh
BAUMAN, DOW & LEON, P.C.
P.O. Box 30684
Albuquerque, NM 87190
(505) 883-3191

Dated: _____

and

SANDERS & WESTBROOK, PC
Duff Westbrook
Maureen Sanders
Brian Moore
102 Granite NW
Albuquerque, New Mexico 87102

Dated: _____

Attorneys for Plaintiffs

Albuquerque Academy:

By: _____

Dated: _____

Name: _____

Title: _____

Approved:

Charles Peifer
Cerianne Mullins
PEIFER, HANSON & MULLINS, P.A.
Post Office Box 25245
Albuquerque, NM 87125-5245
Tel: (505) 247-4800
FAX: (505) 243-6458

Dated: _____

Attorneys for Defendant Albuquerque Academy

High Desert Investment Corporation:

By: _____

Dated: _____

Name: _____

Title: _____

Approved:

Dated: _____

Richard L. Alvidrez, Esq.
Nathan A. Cobb, Esq.
MILLER STRATVERT, P.A.
P.O. Box 25687
Albuquerque, NM 87125
Tel: (505) 842-1950
FAX: (505) 243-4408

Attorneys for Defendant High Desert Investment Corporation

THIRTEENTH JUDICIAL DISTRICT
COUNTY OF SANDOVAL
STATE OF NEW MEXICO

LYNN HARTENBERGER and NANCY STEVENS,
Plaintiffs

v.

Case No. D-1329-CV-2012-02350

HIGH DESERT INVESTMENT CORPORATION
AND ALBUQUERQUE ACADEMY,
Defendants

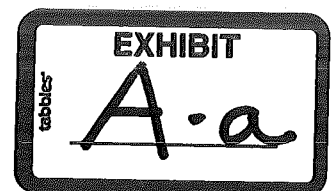
NOTICE OF CLASS ACTION SETTLEMENT

DATED: April , 2015

TO: ANY AND ALL PERSONS AND ENTITIES WHO PURCHASED OR ACQUIRED REAL PROPERTY, CONSISTING OF UNIMPROVED RESIDENTIAL LOTS OR IMPROVED RESIDENTIAL LOTS (LOTS WITH A COMPLETED RESIDENCE OR WHERE CONSTRUCTION ON A RESIDENCE HAS COMMENCED), WITHIN THE MARIPOSA EAST SUBDIVISION FROM THE DATE OF ITS INCEPTION THROUGH JUNE 20, 2012, EXCLUDING THE FOLLOWING: (i) ANY PERSON OR ENTITY WHO PURCHASED, PURSUANT TO A SINGLE DEED, MORE THAN THREE (3) LOTS IN THE MARIPOSA EAST SUBDIVISION, (ii) ANY PERSON OR ENTITY WHO PURCHASED OR OTHERWISE ACQUIRED AN UNIMPROVED DEVELOPMENT TRACT IN THE MARIPOSA EAST SUBDIVISION; (iii) THE DEFENDANTS AND THEIR RESPECTIVE PARENT COMPANIES, SUBSIDIARIES AND AFFILIATED BUSINESS ENTITIES; (iv) ANY PERSON WHO IS CURRENTLY, OR WHO WAS FOR THE PERIOD FROM THE DATE OF INCEPTION OF THE MARIPOSA EAST SUBDIVISION THROUGH JUNE 20, 2012, A MANAGERIAL EMPLOYEE, OFFICER, DIRECTOR, MEMBER OR TRUSTEE OF EITHER THE ALBUQUERQUE ACADEMY OR HIGH DESERT INVESTMENT CORPORATION; (v) ANY FINANCIAL INSTITUTION THAT ACQUIRED IMPROVED OR UNIMPROVED PROPERTY IN THE MARIPOSA EAST SUBDIVISION AS A RESULT OF A DEFAULT PURSUANT TO A MORTGAGE OR OTHER SECURITY INSTRUMENT; AND (vi) ANY AFFILIATED ENTITY OF ANY PARTY EXCLUDED IN SUBSECTIONS (i), (ii), (iii) or (v) ABOVE.

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR RIGHTS MAY BE AFFECTED BY A LAWSUIT PENDING IN THIS COURT. A NEW MEXICO COURT AUTHORIZED THIS NOTICE. IT IS NOT A SOLICITATION FROM A LAWYER

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Notice Mailed on April , 2015



I. PURPOSE OF THIS NOTICE OF CLASS ACTION SETTLEMENT

The purpose of this Notice is to inform you of a proposed class action settlement of claims ("Settlement") against High Desert Investment Corporation and the Albuquerque Academy (collectively "Defendants"), and your rights to share in the possible settlement recovery as a potential member of the Class.

Subject to court approval and to the "Termination" provision of the Settlement (see Section II, below), the Class and Defendants have agreed to enter into a Settlement Agreement that will settle all claims and allegations the Class has asserted, or could have asserted, against the Defendants.

The Defendants deny any wrongdoing or liability. The Settlement is a compromise of disputed claims and allegations. The Settlement does not mean that the Defendants are responsible or liable for the claims the Class has asserted or could have asserted.

II. TERMS OF THE SETTLEMENT

Subject to Final Approval and after the Final Approval of Settlement Hearing (see below), the Class and the Defendants have agreed to settle the Class's claims against the Defendants for the payment of five million dollars (\$5,000,000) (the "Settlement Amount"). Each Class Member who held title to property in Mariposa on June 20, 2012 is an Eligible Class Member.

If you held title to property in Mariposa BEFORE June 20, 2012 but did not hold title to that property ON June 20, 2012, you are a Class Member and a Prior Owner. However, in order to receive a percentage share of the Settlement Amount, you must provide written notice to Class Counsel of your intention to become an Eligible Class Member. See Section III(1)(i) and Section VI below. All Class Members who are Prior Owners will be bound by the Settlement Agreement and Release even if they do not provide written notice of their intention to become an Eligible Class Member and/or even if they do not receive any payment from the Settlement Amount.

Each Eligible Class Member will receive a distribution from the Settlement Amount according to the Plaintiffs' Plan of Allocation, which is attached hereto as Exhibit 1. When used herein, "Final Approval" means that entry by the Thirteenth Judicial District Court of a final order signifying approval of the Settlement Agreement, either by (i) the exhaustion of any time for a member of the Class who has properly and timely objected to the settlement to appeal the approval, with no appeal being filed, or (ii) the completion of any appeals filed by members of the Class which appeals have been resolved in favor of approval of the Settlement Agreement, or, (iii) if there are no objections to the Settlement, by the District Court's entry of the Final Order.

Plaintiffs' Plan for Allocation of the Settlement Amount

The Court must approve the Plaintiffs' Plan of Allocation for the Settlement Amount. Under the Plaintiffs' Plan submitted by Class Counsel, after the deduction of court-approved costs, attorneys' fees, expenses, taxes, and incentive payments to the class representatives Nancy Stevens and Lynn Hartenberger (the "Class Representatives"), Class Counsel propose to allocate the Net Settlement Funds as set forth in the Plan of Allocation, which is attached to this Notice as Exhibit 1.

The distributions of the Net Settlement Funds to each individual class member will be determined using the following formula: [INSERT FORMULA HERE]

Because the exact amount of Net Settlement Funds is not yet determined, it is impossible to provide anything other than examples and estimations of what Eligible Class Members will receive as a distribution if the Settlement is approved. The following exemplars of potential individual disbursements using the above-described formula are provided by way of illustration and approximation only, and are not accurate depictions of actual Net Settlement Fund distributions to be received Eligible Class Members.

Claim 1 Qualifying Property¹ Exemplar #1

Claim 1 Qualifying Property Exemplar #2

Claim 1 Qualifying Property Exemplar #3

Claim 2 Qualifying Property² Exemplar #1

Claim 2 Qualifying Property Exemplar #2

Claim 2 Qualifying Property Exemplar #3

Release and Dismissal with Prejudice

In exchange for receipt of the Settlement Amount and other provisions contained in the Settlement Agreement, and subject to the other terms of the Settlement Agreement, the Class and each of its members shall be conclusively deemed to have fully, finally, completely, irrevocably, unconditionally and forever released and discharged Defendants from liability on and for all of the Released Claims (as defined in the Settlement Agreement). The release will be effective as of the date of Final Approval.

Pursuant to the Settlement Agreement, if approved, the Class will dismiss with prejudice the Action and the Released Claims, and the Order of Dismissal will extinguish any liability of Defendants with respect to the Released Claims.

¹ See Plan of Allocation attached as Exhibit 1 for definition of Claim 1 Qualifying Property

² See Plan of Allocation attached as Exhibit 1 for definition of Claim 2 Qualifying Property

Settlement Subject to "Termination" Provision

The Settlement is conditioned on all Class Members electing not to opt-out of the Settlement. Specifically, the Settlement Agreement provides as follows:

[I]f any Class Member should elect to opt-out of this Settlement Agreement, then the Defendants, in their sole discretion, may declare the Settlement Agreement null and void by written notice to the District Court and to Class Counsel filed and served within ten (10) business days of Final Approval.

Consequently, should any Class Member(s) elect to opt-out of the Settlement Agreement, the Defendants may terminate the entire Settlement, the Settlement Amount will be returned to the Defendants, no settlement money will be paid to any Class Member and the Class Action litigation will continue with an uncertain outcome.

III. YOUR OPTIONS

Each Class Member has three options:

1. Accept the Settlement. If you choose this option, you don't need to do or file anything unless you are a Prior Owner. If you are an Eligible Class Member, you will receive a payment from the Net Settlement Amount as calculated pursuant to Plaintiffs' Plan of Allocation unless a Class Member timely elects to opt-out of the Settlement and the Defendants thereafter choose to terminate the Settlement.
 - i. If you are a Prior Owner, you must mail notice of your intent to be an Eligible Class Member to receive a payment from the Net Settlement Amount. The instructions for filing Notice of Eligibility as a Prior Owner are set out in Section V below.
2. Object to the Settlement. If you believe that the terms of the Settlement are not justified, you can file a written objection with the Court describing the reasons you claim the Settlement should not be approved. The instructions for filing a written objection to the Settlement are set out in Section VI below.
3. Opt-out of the Settlement. You may opt-out of the Settlement. The instructions for filing an opt-out are explained in Section VII below. **Opting-out of the Settlement may result in voiding the entire Settlement (See above, Termination Provision)**

All Class Members who do not opt out of the settlement will be bound by the Settlement Agreement and Release and, if determined to be an Eligible Class Member, will be entitled to receive a distribution upon Final Approval of the settlement by the court if the settlement is not terminated under the "Termination Provision" described above.

IV. FINAL FAIRNESS HEARING

A Final Fairness Hearing will be held at 9:00am on May 27, 2015, before the Honorable James L. Sanchez in his courtroom at the Thirteenth Judicial District Court, Valencia County, New Mexico, which is located at 1835 Highway 314 SW, Los Lunas, NM 87031. The purpose of the hearing is to determine:

1. Whether the Settlement is fair, adequate and reasonable and whether the Settlement Agreement will be approved;
2. Whether the Court should enter a Final Order approving the Settlement, dismissing with prejudice and on the merits the Released Claims against the Defendants;
3. Whether the Court should approve the applications of Class Counsel for payment of attorneys' fees, costs, and expenses;
4. Whether the Court should approve the applications of Class Representatives for payment of an incentive fee for serving as Class Representatives; and
5. Any other matters raised or addressed by the Court.

Members of the Class wishing to be heard orally in opposition to the Settlement must indicate in their written objections their intention to appear at the hearing and then appear at the hearing either in person or through counsel to be heard orally. See Instructions for Objecting to Settlement, below.

Class Members who want to share in the benefits of the Settlement do not need to appear at the hearing or take any other action to indicate their approval of the Settlement.

The Final Approval of Settlement Hearing may be postponed or adjourned by the Court, without further notice to the Class.

At the conclusion of the Final Fairness Hearing on the Settlement, the Court may approve the Settlement, decline to approve the Settlement, or approve the Settlement with changes that the Class and Defendants must then agree upon, but without further notice to the Class.

V. INSTRUCTIONS FOR A PRIOR OWNER TO FILE NOTICE OF ELIGIBILITY

If you are a Prior Owner as defined in Section II above and you want to be an Eligible Class Member and receive a payment from the Settlement Amount, here is what you must do:

- (A) Prepare a written Notice of Eligibility. The Notice of Eligibility must contain:
- a. Your full name, address, and daytime telephone number;
 - b. Documentation sufficient to identify:

- i. The date on which you acquired title to Property in the Mariposa East Subdivision;
 - ii. The value of the Property on the date on which you acquired title;
 - iii. The date on which you relinquished title to that Property;
- c. A statement that you are a Prior Owner Class Member and you wish to be an Eligible Class Member and receive a payment from the Settlement Amount; and
- d. Your signature on the Notice of Eligibility

(B) Mail your Notice of Eligibility, postmarked no later than May 12, 2015 to the following:

- a. Class Counsel, Bauman, Dow & Leon, P.C. *Attn:* Mariposa Settlement P.O. Box 30684, Albuquerque NM 87190.

Note: If your Notice of Eligibility is not postmarked on or before May 12, 2015, it will not be considered by the Court and you will not receive payment from the Settlement Amount. However, you will still be bound by the terms of the Settlement Agreement.

VI. INSTRUCTIONS FOR OBJECTING TO THE SETTLEMENT

If you want to object to the Settlement, here is what you must do:

(A) Prepare a written objection. The objection must contain:

- a. The case name and case number of this Action;
- b. Your full name, address, and daytime telephone number;
- c. Information sufficient to identify your ownership interest in the Mariposa East Subdivision;
- d. A statement, in clear and concise terms, of the objection to the Settlement and a detailed statement of the grounds for such objection;
- e. All documents or writings which you want the District Court to consider, if any;
- f. A summary of any legal and/or factual support you want the District Court to consider; and
- g. A detailed description of any documents or witness statements you want the District Court to consider;
- h. A statement that you have not opted out of the Action; and
- i. Your signature on the written objection

(B) Mail your objection by first-class mail, postmarked no later than May 12, 2015 to each of the following:

- a. Class Counsel, Bauman, Dow & Leon, P.C. *Attn:* Mariposa Settlement P.O. Box 30684, Albuquerque NM 87190.

- b. Albuquerque Academy's Counsel, Peifer, Hanson & Mullins, P.A., Attn: Mariposa Settlement, P.O. Box 25245, Albuquerque, New Mexico 87125; and
- c. High Desert Investment Corporation's Counsel, Miller Stratvert P.A., Attn: Mariposa Settlement, P.O. Box 25687, Albuquerque, NM 87125-0687

Note: If your objection is not postmarked on or before May 12, 2015 it will not be considered by the Court.

VII. INSTRUCTIONS FOR OPTING OUT OF THE SETTLEMENT

OPTING OUT OF THE SETTLEMENT MAY RESULT IN VOIDING THE ENTIRE SETTLEMENT AGREEMENT (See Section II, Settlement Subject to "Termination" Provision, above)

If you want to opt-out of the Settlement to be excluded from the Class, here is what you must do:

(A) Prepare a written request for exclusion. The request for exclusion must contain:

- a. Your full name, address, and daytime telephone number;
- b. Information sufficient to identify your ownership interest in the Mariposa East Subdivision
- c. A detailed statement regarding the reasons for your request for exclusion from the Class; and
- d. Your signature on the written request for exclusion

(B) Mail your request for exclusion by first-class mail, postmarked no later than May 12, 2015 to each of the following:

- a. Class Counsel, Bauman, Dow & Leon, P.C. *Attn:* Mariposa Settlement P.O. Box 30684, Albuquerque NM 87190.

Note: If your request for exclusion is not postmarked on or before May 12, 2015 it will not be considered by the Court. If you opt-out of the Settlement you do not need to appear at the Final Fairness Hearing.

VIII. OBJECTOR'S APPEARANCE AT FINAL FAIRNESS HEARING AND LEGAL REPRESENTATION

If you are not represented by a lawyer and want to appear and address the Court at the Final Fairness Hearing on the Settlement to object to the Settlement, you must file with the Court a notice of intention to appear at the Final Fairness Hearing, serving by first-class mail Class

Counsel and Defendants' Counsel at the addresses set forth above, postmarked no later than fifteen (15) days prior to the Final Fairness Hearing.

If you retain an attorney and want to appear at the Final Fairness Hearing, the attorney must: (i) file a notice of appearance with the Clerk of the Court no later than fifteen (15) days before the Final Fairness Hearing or as the Court may otherwise direct; and (ii) serve by first-class mail copies of same on Class Counsel and Defendants' Counsel at the addresses set forth above, postmarked no later than fifteen (15) days before the Final Fairness Hearing.

If you are represented by an attorney and you have properly and timely filed an objection, your attorney may appear at the Final Fairness Hearing, if your attorney complies with the following: (i) files and serves by first-class mail on Class Counsel and Defendants' Counsel at the addresses set forth above, postmarked no later than fifteen (15) days prior to the Final Fairness Hearing, a notice of intention to appear at the Final Fairness Hearing; and (ii) no later than fifteen (15) days prior to the Final Fairness Hearing, moves to intervene in this action, filing and serving on Class Counsel and Defendants' Counsel, a motion to intervene, complying with all state and local rules of procedure.

IX. WHAT IF I HAVE QUESTIONS?

If you have any questions or would like additional information about the case, please visit the website: www.bdllawfirm.com which has links to the proposed Settlement documents, or call Class Counsel at (505) 883-3191. You may also contact Class Counsel at Bauman, Dow & Leon, P.C. 7309 Indian School Rd NE, Albuquerque, NM 87110.

PLEASE DO NOT CONTACT THE COURT OR DEFENDANTS' COUNSEL FOR INFORMATION ABOUT THE SETTLEMENT OR THIS LAWSUIT.

BY ORDER OF THE COURT

[Signature on Order Dated April __, 2015]

THE HONORABLE JAMES L. SANCHEZ
DISTRICT COURT JUDGE

NOTICE OF CLASS ACTION SETTLEMENT IN THE LAWSUIT CAPTIONED
HARTENBERGER ET. AL. v. HIGH DESERT INVESTMENT CORPORATION AND
ALBUQUERQUE ACADEMY
(MARIPOSA EAST CLASS ACTION)

To: Any and all persons and entities who purchased or acquired real property, consisting of unimproved residential lots or improved residential lots (lots with a completed residence or where construction on a residence has commenced), within the Mariposa East Subdivision in Rio Rancho, New Mexico from the date of its inception through June 20, 2012.

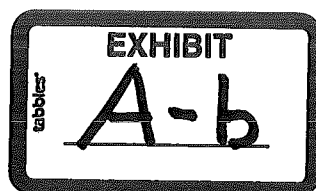
PLEASE TAKE NOTICE that your rights may be affected by a settlement of claims brought on your behalf in a lawsuit pending in the Thirteenth Judicial District Court, Valencia County, New Mexico. You have a right to participate in the settlement; you also have the right to opt-out of the class and not be bound by the settlement; and you have the right to object to the settlement. Complete details about the lawsuit, the settlement, and your rights is available from the attorneys identified at the end of this notice.

The Settlement Class excludes the following: (i) any person or entity who purchased, pursuant to a single deed, more than three (3) lots in the Mariposa East Subdivision; (ii) any person or entity who purchased or otherwise acquired an unimproved development tract in the Mariposa East Subdivision; (iii) the Defendants and their respective parent companies, subsidiaries and affiliated business entities; (iv) any person who is currently, or who was for the period from the date of inception of the Mariposa East Subdivision through June 20, 2012, a managerial employee, officer, director, member or trustee of either the Albuquerque Academy or High Desert Investment Corporation; (v) any financial institution that acquired improved or unimproved property in the Mariposa East Subdivision as a result of a default pursuant to a mortgage or other security instrument; and (vi) any affiliated entity of any party excluded in subsections (i), (ii), (iii), or (v) above.

PLEASE TAKE NOTICE that a hearing is to be held on May 27, 2015, at 9:00 am before the Honorable James L. Sanchez in his courtroom at the Thirteenth Judicial District Court, Valencia County, New Mexico, which is located at 1835 Highway 314 SW, Los Lunas, NM 87031.

The purpose of the hearing is to consider a proposed class action settlement of all claims asserted in the lawsuit captioned Lynn Hartenberger and Nancy Stevens et al. v. High Desert Investment Corporation and Albuquerque Academy and filed as Cause No. D-1329-CV-2012-02350 in the Thirteenth Judicial District in Valencia County, New Mexico. The Defendants agreed to the settlement to avoid further litigation, but deny all claims and allegations of wrongdoing.

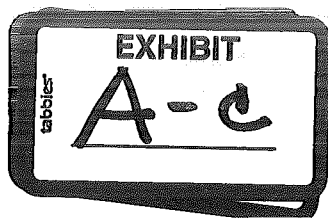
A detailed settlement notice has been mailed to all known Class Members describing the settlement and deadlines and instructions for objections and opting out of the settlement class. Because the proposed settlement and the scheduled court hearing may affect your rights to share in the possible settlement recovery, you should immediately obtain a copy of the Class Settlement Notice if you have not received one in the mail. You may obtain a copy by writing to Class Counsel, Christopher Bauman at Bauman Dow & León, P.C., P.O. Box 30684, Albuquerque, NM 87190.



List of individuals and entities excluded
from the Class

MA

ASW Realty Partners, LLC
B&B Real Estate Investments LLC
Beal Bank
Beal Nevada Corporation
Bravo Land Investors, LLC
BT Homes, Inc.
Burmout Investments, Inc.
Burmout Investments, Inc.
Charter Bank
Charter Building & Development Corp.
Charter Homes, Inc.
Exchange Accommodation Title Holder, LLC
Federal Deposit Insurance Corporation
First Community Bank
JDZT LLC
LLP Mortgage, Ltd.
Mariposa Land Holdings, LLC
Mariposa Ventures, LLC
Mesa Verde Development Corporation
Mock Associates, Inc.
New Mexico Bank & Trust
RHS Properties, Inc.
Scott Patrick, Inc.
Sierra Vista at Mariposa, LLC
Sivage Community Development, LLC
Sky View Homes, Inc.
The Bank of New York Mellon
The Peaks, LLC
The Troughs, LLC
U.S. Bank National Association



STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT

LYNN HARTENBERGER and NANCY STEVENS,
Individually and on Behalf of a Class of Similarly
Situated Persons,

Plaintiffs,

v.

Cause No. D-1329-CV-2012-02350

HIGH DESERT INVESTMENT CORPORATION
and ALBUQUERQUE ACADEMY,

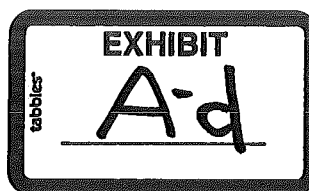
Defendants

PLAN OF ALLOCATION

This Plan of Allocation sets forth the manner of distribution of the proceeds of the Class Action Settlement Agreement in the litigation captioned Lynn Hartenberger et al. v. High Desert Investment Corporation et al., filed on October 31, 2012 in the Thirteenth Judicial District Court, County of Sandoval, State of New Mexico (the "District Court") (Case No. D-1329-CV-2012-02350). The Net Settlement Amount will be allocated to the Eligible Class Members pursuant to this Plan.

1. **Definitions.** The following definitions apply to this Plan of Allocation

- a. "Claim 1" means the Plaintiffs' breach of contract claim which alleges that Defendants breached the Replenishment Agreement and failed to contribute to a Debt Service Reserve Fund for the Mariposa East Public Improvement District (PID) bonds in an amount necessary to keep Plaintiffs' PID taxes from exceeding 20 mils.
- b. "Claim 1 Qualifying Property" means any lot in Mariposa that was owned by a Class Member as of June 20, 2012, upon which no residence is constructed or under construction as of May 27, 2015.
- c. "Claim 2" means Plaintiffs' negligence and Unfair Practices Act claims that allege Defendants deviated from their Feasibility Study, artificially inflated prices in Mariposa, and subsequently discontinued development services and thereby caused the Class Members' Mariposa property values to diminish by an amount greater than that attributable to general market conditions.
- d. "Claim 2 Qualifying Property" means any real property in Mariposa that was owned by a Class Member as of June 20, 2012.



- e. "Class Member" means any and all persons and entities who purchased or acquired real property, consisting of unimproved residential lots or improved residential lots (lots with a completed residence or where construction on a residence has commenced), within the Mariposa East Subdivision from the date of its inception through June 20, 2012. The Settlement Class excludes the following: (i) any person or entity who purchased, pursuant to a single deed, more than three (3) lots in the Mariposa East Subdivision; (ii) any person or entity who purchased or otherwise acquired an unimproved development tract in the Mariposa East Subdivision; (iii) the Defendants and their respective parent companies, subsidiaries and affiliated business entities; (iv) any person who is currently, or who was for the period from the date of inception of the Mariposa East Subdivision through June 20, 2012, a managerial employee, officer, director, member or trustee of either the Albuquerque Academy or High Desert Investment Corporation; (v) any financial institution that acquired improved or unimproved property in the Mariposa East Subdivision as a result of a default pursuant to a mortgage or other security instrument; and (vi) any affiliated entity of any party excluded in subsections (i), (ii), (iii), or (v) above. Exhibit 1 attached hereto is a list of all persons and entities that have been identified by Class Counsel as excluded from the Settlement Class pursuant to subsections (i), (ii), (iii), (v), and (vi) based on Class Counsel's due diligence and review of relevant records. There shall be a rebuttable presumption that Exhibit 1 is a complete list of persons and entities excluded from the Settlement Class pursuant to subsections (i), (ii), (iii), (v) and (vi). However, in the event an entity or person is not listed on Exhibit 1 but is excluded pursuant to the definitions for exclusion stated in paragraphs (i), (ii), (iii), (v) and (vi), the definitions for exclusion shall prevail. Notwithstanding any of the exclusions set forth above, including the exclusion defined in subsection (i), SunWest Trust, Inc., as custodian for the Nola Kay Stofac IRA, shall be included in the Settlement Class.
- f. "Eligible Class Member" means any Class Member who is entitled to receive a portion of the Net Settlement Amount. To be an Eligible Class Member a person or entity must be a "Class Member" as defined above, and must have held title to their Claim 1 Qualifying Property or Claim 2 Qualifying Property as of June 20, 2012, or be a Prior Owner who follows the procedure outlined in Section 2(c) of this Plan of Allocation. Prior Owners are not Eligible Class Members unless they follow the procedure in Section 2(c).
- f. "Mariposa" means the Mariposa East Development in Rio Rancho, New Mexico, and includes only the following subdivisions in Rio Rancho, New Mexico: Desert Highlands, Desert View, Highland Meadows Unit 1 Mariposa New Mexico, Highland Meadows Unit 2 Mariposa New Mexico, Ridgeline Estates Unit 1 Mariposa New Mexico, Ridgeline Estates Unit 2 Mariposa New Mexico, Sierra Vista Mariposa New Mexico, The Peaks, Venada Estates, Vista De Santa Fe Mariposa New Mexico, Vista Manzano Mariposa New Mexico, and Vista Sandia Mariposa East.

- g. "Net Settlement Amount" means the amount remaining of the Settlement Amount after deduction of any court-approved costs of settlement notice, claims administration, Class Representatives' incentive awards, Class Counsel's attorneys' fees (as approved by District Court) and reimbursement of Class Counsel of all actual expenses of this litigation (as approved by the District Court), and any other Court-approved costs and expenses of Plaintiffs and Class Counsel, expenses of settlement administration, and all applicable gross receipts taxes, if any, assessable on the Settlement Amount or any portion thereof.
- h. "Prior Owner" means any Class Member who held title to Claim 2 Qualifying Property prior to June 20, 2012, but did not hold title to that Claim 2 Qualifying Property on June 20, 2012.
- i. "Settlement Amount" means the sum of \$5,000,000 to be paid by or on behalf of High Desert Investment Corporation and Albuquerque Academy to the Plaintiffs, as contemplated under the parties' Settlement Agreement. The Settlement Amount includes the full and complete cost of the settlement notice, claims administration, Class Members' compensation, Class Representative's incentive award, Class Counsel's attorneys' fees (as approved by the District Court) and reimbursement of Class Counsel of all actual expenses of this litigation (as approved by the District Court), any other Court-approved costs and expenses of Plaintiffs and Class Counsel, expenses of settlement administration, and all applicable gross receipts taxes, if any, assessable on the Settlement Amount or any portion thereof). The Settlement Amount shall not exceed \$5 million.

2. Allocation of Net Settlement Amount

The structure of this Plan of Allocation takes into account the different economic consequences experienced by different Class Members. The Plan of allocation is based on the relative merits and aggregate value of the Class Claims, which are common but not identical, and also takes into consideration that the strengths and weaknesses of Claim 1 differ from the strengths and weaknesses of Claim 2. In addition, Claim 1 and Claim 2 both involve different ranges of possible recoveries.

Distribution is made to Class Members who held title as of June 20, 2012, because that is the date High Desert Investment Corporation publicly announced it would no longer develop Mariposa and contribute to the debt service reserve fund.

Net Settlement Funds shall be allocated as follows:

- a. Claim 1 Funds. \$250,000 of the Net Settlement Amount shall be allocated to Claim 1. Each Eligible Class Member who owned one or more Claim 1 Qualifying Property(ies) on June 20, 2012 shall receive a distribution for each Claim 1 Qualifying Property owned by that Class Member. The distribution for

each Claim 1 Qualifying Property shall be equal to \$250,000 divided by the total number of Claim 1 Qualifying Properties.

- b. Claim 2 Funds. After \$250,000 for Claim 1 has been removed from the Net Settlement Amount the remainder of the Net Settlement Amount shall be allocated to Claim 2.

Each Eligible Class Member shall receive a percentage share of the Claim 2 Funds. Prior Owners who follow the procedure in Section 2(c) shall be included as Eligible Class Members for the purposes of calculating the percentage share of Claim 2 Funds.

The formula for distributing the Claim 2 Funds to Eligible Class Members shall be as follows: [insert when available]

Class Counsel conducted a diligent search to obtain records of the price paid for all Mariposa property, but was unable to obtain a HUD-1 for every purchase. Where Class Counsel was unable to obtain HUD-1 records Sandoval County Assessor valuations for the year following the sale may be used as a proxy.

If the Class Member constructed a residence after purchasing a lot residence the date of completion of construction will serve as a substitute for the date of purchase and either Sandoval County Assessor values or post construction appraisals may be used as a proxy for the price paid.

- c. Those Class Members who are Prior Owners will be afforded a reasonable opportunity to be included as Eligible Class Members for the purpose of receiving a percentage share of Claim 2 Funds. Prior Owners shall have until May 12, 2015 to mail in writing to Class Counsel their desire to receive a percentage share of the Claim 2 Funds according to Section 2(b).

3. Attorney Fees, Costs, Incentive Fee and Reserve Amount.

- a. An attorney fee equal to 33.33% of the Settlement Amount shall be paid to the Class Counsel.
- b. NM Gross Receipts tax on the attorney fee shall be received by Class Counsel and then paid to the State of New Mexico.
- c. Starting in July of 2012, certain Class Members deposited funds into Class Counsel's IOLTA Trust Account for partial payment of expert witness fees. Such deposits totaled \$33,050. Those deposits shall be refunded to each Class Member

who deposited retainer funds in the exact amount deposited by such Class Member.

- d. Court-approved costs and expenses of Class Counsel for this litigation in the total amount of \$203,590.33, less the retainer amount of \$33,050 described in Section 3.c. immediately above shall be refunded to Class Counsel. The total amount of costs and expenses refunded to Class Counsel shall be \$170,540.33.
- e. A reserve amount of \$20,000 shall be deposited into the Bauman, Dow & Leon, P.C. trust account for costs associated with settlement administration, including publication of notice, a public meeting, expert testimony at the Final Approval Hearing, if necessary, and mailing and printing expenses for distribution of the Net Settlement Amount. Any portion of the reserve amount that is not used for costs of settlement administration shall be added to the Net Settlement Amount and distributed to the Class Members along with the Supplemental Distribution of Unclaimed Settlement Funds described in Section 5 below.
- f. An incentive fee of \$7,500 each shall be paid to the class representatives, Nancy Stevens and Lynn Hartenberger.
- g. After the amounts described in paragraphs 3.a. through 3.f. above are subtracted from the Settlement Amount the remaining amount is the "Net Settlement Amount."

4. Method of Distribution.

- a. The Settlement Agreement and this Plan of Allocation were approved by the District Court at the Preliminary Approval Hearing. Once Final Approval occurs and the time allowed for Prior Owners to follow the procedures in Section 2(c) of this Plan of Allocation, the Class Counsel and the Settlement Administrator shall distribute the Net Settlement Amount among the Eligible Class Members pursuant to the methods and calculations set forth above. The distributions to Eligible Class Members shall be based on the total amount of Net Settlement Amount remaining subject to any reserve amount determined by the District Court for the payment of future administrative expenses.
- b. All distributions made hereunder shall be by check or draft sent to the last known address of the Eligible Class Member. All such checks shall remain payable for 90 days from mailing. Class Counsel is entitled to rely on the address and information on file with the Sandoval County Clerk's office in identifying Class Members and obtaining addresses. Class Counsel may, but is not required to, make any additional investigation it deems prudent to identify the location to which any payment is to be sent.
- c. Each settlement check issued by Class Counsel shall include a legend on the back of the check stating that:

By endorsing this Distribution check payee represents and warrants that the payee is or was the owner of the Released Claims hereby released, has not assigned or otherwise transferred the Released Claims to anyone else, and will indemnify the Class Representative, Class Counsel and the Defendants against a claim by anyone else as the owner of that Released Claim.

- d. Within a reasonable period of time after making distributions, Class Counsel shall file with the District Court an Affidavit of Mailing reflecting said distributions.

5. Supplemental Distribution of Unclaimed Settlement Funds

Any distribution check that is not cashed within 90 days of mailing may be deemed unclaimed. Class counsel shall make timely reports of the amount of such unclaimed distributions to the Court. Subject to further order of the Court, Class counsel shall, no later than 180 days after mailing of the initial distribution checks, distribute unclaimed funds among the Class members who did receive and cash their distributions. The distribution of unclaimed settlement amounts will be equal to the same proportionate percentage of the net settlement fund to which the Class Member was entitled as an eligible Class Member. If after such supplemental distribution, any sums remain, the Class Counsel shall report to the Court and seek further direction, including cy-près of the remaining funds.

6. Manner of Interpretation.

The terms and provisions in this Plan of Allocation are to be read with reference to the Settlement Agreement.

It is so ordered on May 27, 2015.

THE HONORABLE JAMES SANCHEZ
DISTRICT COURT JUDGE

Submitted By:

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