

**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 17, 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

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 (also laid out in the Plan of Allocation attached as Exhibit 1 to this Notice):

- a. Claim 1 Funds. \$250,000 of the Net Settlement Amount shall be allocated to Claim 1.
 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. There are approximately one-hundred-twenty-seven (127) 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 V below shall be included as Eligible Class Members for the purposes of calculating the percentage share of Claim 2 Funds.

Each Eligible Class Member's share of the Claim 2 funds shall be determined as follows:

- i. The Individual Projected Value on June 20, 2012, of each Eligible Class Member's Property shall be calculated by applying a 2.5% yearly rate of appreciation in value to each property from the time that the individual Eligible Class Member acquired title to the Property until the earlier of either the date the Eligible Class Member relinquished title to the Property or June 20, 2012.
 - A. In order to determine the Estimated Value of a Property at the time an Eligible Class Member acquired title to the Property, Class Counsel subpoenaed HUD-1's from title companies, and reviewed Sandoval County Assessor records. Where Class Counsel has been unable to obtain HUD-1 records, Sandoval County Assessor valuations for the year following the sale will be used as a proxy.
 - B. A 2.5% rate of appreciation is used because it is equal to the average rate of inflation measured by the increase in the Consumer Price Index between 2001 and 2005, the most recent years before the inception of Mariposa.

- ii. The Total Projected Value of the Mariposa Property owned by Eligible Class Members on June 20, 2012, is then calculated by adding together the values of the Eligible Class Member's Property calculated in Subsection b(i) above.
 - iii. The amount of Claim 2 Funds (equal to the Net Settlement Amount minus \$250,000 allocated to Claim 1) shall be divided by the Total Projected Value calculated under Subsection b(ii) above to yield the Claim 2 Reimbursement Multiplier.
 - A. The amount of Claim 2 funds is subject to variance depending on multiple factors including court-approved costs of settlement notice, claims administration, Class Representatives' incentive awards, Class Counsel's attorneys' fees (as approved by District Court), reimbursement of Class Counsel of actual expenses of this litigation (as approved by the District Court), and the number of Prior Owners who provide Notice of Eligibility to receive Claim 2 Funds under Subsection c below.
 - B. Notwithstanding the possibility that the amount of Claim 2 funds may vary, Class Counsel currently anticipates that the amount of Claim 2 funds will be approximately \$2.75-million.
 - iv. The Claim 2 recovery for each Eligible Class Member shall be equal to the Individual Projected Value of the Eligible Class Member's Property, as calculated in Subsection b(i) above, multiplied by the Claim 2 Reimbursement Multiplier, as calculated in Subsection b(iii) above.
 - v. If a Prior Owner, who is a Class Member provides notice, the Eligible Class Member's award will be reduced by the amount of the Prior Owner's Award as described in Section c. below.
- c. Prior Owners will be afforded a reasonable opportunity to receive a pro-rated 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 pro-rated share of the Claim 2 Funds. If a Prior Owner provides notice to Class Counsel before May 12, 2015, the Eligible Owner and the Prior Owner's distribution for the property that was owned by both Class Members before June 20, 2012 shall be determined based on the Prior Owner's purchase date and price, and shall be prorated between the two Class Members based on the amount of time the property was owned by each Class Member during the class Period.
 - d. If a financial institution received title to a Prior Owner's Claim 2 Qualifying Property before June 20, 2012, or if for any other reason the property was not owned by an Eligible Class Member on June 20, 2012, and the Prior Owner sends notice to Class Counsel on or Before May 12, 2015, the Prior Owner shall receive an award of 1 dollar per day that the property was owned by the Prior Owner.

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 by Eligible Class Members.

1. Claim 1 Qualifying Property¹ Exemplar:

Assuming that there are one hundred and twenty seven (127) Claim 1 Qualifying Properties, each Claim 1 Qualifying Property entitles the owner to a recovery of:

$$\mathbf{\$250,000 / 127 = \$1968.50}$$

2. Claim 2 Qualifying Property² Exemplar #1:

Assuming that (a) the Total Projected Value of Property (as calculated according to Subsection b(i) above) owned by Eligible Class Members on June 20, 2012 is \$67,671,164; and (b) the total Claim 2 Funds equal \$2,750,000; an Eligible Class Member who purchased Property on December 1, 2005 valued on that date at \$100,000 would be entitled to a recovery of approximately:

$$\mathbf{(\$100,000 \times 1.025 \text{ rate of appreciation} \wedge 6.556164 \text{ years}) \times .04064 \text{ Reimbursement Multiplier} = \$4,777.89}$$

3. Claim 2 Qualifying Property Exemplar #2:

Assuming that (a) the Total Projected Value of Property (as calculated according to Subsection b(i) above) owned by Eligible Class Members on June 20, 2012 is \$70,000,000; and (b) the total Claim 2 Funds equal \$2,700,000; an Eligible Class Member who purchased Property on June 14, 2007 valued on that date at \$400,000 would be entitled to a recovery of approximately:

$$\mathbf{(\$400,000 \times 1.025 \text{ rate of appreciation} \wedge 5.021918 \text{ years}) \times .03857 \text{ Reimbursement Multiplier} = \$17,465.46}$$

4. Claim 2 Qualifying Property Exemplar #3:

Assuming that (a) the Total Projected Value of Property (as calculated according to Subsection b(i) above) owned by Eligible Class Members on June 20, 2012 is \$75,000,000; and (b) the total Claim 2 Funds equal \$2,600,000; an Eligible Class Member who purchased Property on March 14, 2008 valued on that date at \$800,000 would be entitled to recover approximately:

$$\mathbf{(\$800,000 \times 1.025 \text{ rate of appreciation} \wedge 4.271233 \text{ years}) \times .03467 \text{ Reimbursement Multiplier} = \$30,818.12}$$

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

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

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.

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