

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. 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 2(c) 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 Section 2(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 Section 2(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 Section 2(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 Section 2(b)(i) above, multiplied by the Claim 2 Reimbursement Multiplier, as calculated in Section 2(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.

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:

By: /s/ Deborah R. Stambaugh
Christopher P. Bauman
Mark C. Dow
Deborah R. Stambaugh
BAUMAN, DOW & LEON, P.C.
cpb@bdllawfirm.com
drs@bdllawfirm.com

By: /s/ Duff Westbrook
Duff Westbrook
Maureen A. Sanders

Brian L. Moore
SANDERS & WESTBROOK, PC
d.sanderswestbrook@qwestoffice.net
m.sanderswestbrook@qwestoffice.net
b.sanderswestbrook@qwestoffice.net