THIRTEENTH JUDICIAL DISTRICT
COUNTY OF SANDOVAL
STATE OF NEW MEXICO

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

Plaintiffs,

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

GROUP 1 DEFENDANTS: HIGH DESERT INVESTMENT CORPORATION and ALBUQUERQUE ACADEMY,

And

GROUP 2 DEFENDANTS: THE CITY OF RIO RANCHO, MARIPOSA EAST PUBLIC IMPROVEMENT DISTRICT, BANK OF ALBUQUERQUE as Trustee of the Mariposa East Public Improvement District Bond Indenture, and MEAST HOLDINGS, LLC.

Defendants.

SECOND AMENDED CLASS ACTION COMPLAINT FOR:

GROUP 1 DEFENDANTS: BREACH OF CONTRACT, VIOLATIONS OF THE UNFAIR PRACTICES ACT, AND NEGLIGENCE (Counts 1, 2, and 3)

GROUP 2 DEFENDANTS: VIOLATIONS OF THE NEW MEXICO STATE CONSTITUTION (Counts 4, 5 and 6)

COME NOW Plaintiffs through their undersigned counsel, and for their class action complaint state as follows:

CLAIMS FOR RELIEF, PARTIES, JURISDICTION AND VENUE

Factual Allegations

1. Claims for relief found within this Complaint arise under New Mexico statutory and common laws and the New Mexico Constitution, namely breach of contract, the New Mexico Unfair Trade Practices Act ("UPA"), NMSA §§57-12-1 *et seq.*, negligence, and other elements

ofNew Mexico common law, including equitable concepts and injunctive relief.

2. High Desert Investment Corporation (the "Founder") is a New Mexico corporation that developed the Mariposa Subdivision in Sandoval County. The Founder is the wholly owned investment arm and agent of Albuquerque Academy.

3. Albuquerque Academy (the "Academy") is a New Mexico non-for-profit corporation.

4. The City of Rio Rancho (the "City") is a municipality within the state of New Mexico.

5. The East Mariposa Public Improvement District is a Public Improvement District formed under NMSA § 5-11-1 *et seq.,* encompassing the East Section of the Mariposa Master Planned Community. It is within Sandoval County, New Mexico (the "District" or the "PID").

6. The Bank of Albuquerque is the Trustee (the "Trustee") under the Indenture of Trust and Security Agreement between the District and the Trustee dated June 1, 2006, as supplemented by that certain Supplement Indenture No. 1 between the District and the Trustee dated August 1, 2012.

7. Upon information and belief, MEast Holding, LLC is a Delaware limited liability company established by the Trustee to hold title to property transferred by the Founder.

8. Upon information and belief, the Group I Defendants at all times material to this lawsuit acted by and through their officers and/or members of their respective governing boards ("Executives").

9. The property which is the subject of this action is generally referred to as the Mariposa East Subdivision and is located in Sandoval County, New Mexico ("Mariposa").

The Status of Litigation

In June, 2012, the Founder unilaterally announced to the Plaintiffs that despite its promise

to develop Mariposa into a unique Community and living experience and to work together with the Plaintiffs to uphold Community standards and achieve the vision and goals for the Community, it was unilaterally breaching its covenants and promises with the Plaintiffs and would be withdrawing as the Founder of Mariposa. The Founder's decision to breach its trust and its promises with the Plaintiffs was due, in large part, to the Founder's failure to achieve its cash flow projections needed to pay off a bond indenture that the Founder had sought to reimburse itself for certain infrastructure costs, namely a water and wastewater system. When it became clear that the Founder would be unable to reverse the fundamental shortfall in the cash flow, thus requiring the Founder to reach into its own pockets to pay the bond debt, the Founder in concert with its parent and principal, the Albuquerque Academy, simply decided to walk away.

The Plaintiffs soon realized that the Founder had failed to disclose material facts that would have informed the Plaintiffs of substantial risks relating to the bond indenture.[1] The immediate effect of the Founder's decision to walk away from its obligations to the Plaintiffs was severe and resulted in a significant diminution in the Plaintiffs' property values. Valuable Community services were lost, the Community's reputation was tarnished and the Plaintiffs stood helplessly by while the Founder "cut a deal" with the District and the Trustee that while letting the Founder off the hook, left the Plaintiffs "high and dry."

One significant effect of the Founder's breach was that the Plaintiffs faced the prospect of having their property ad valorem taxes increased to an untenable level to service the bond debt. Between the filing of the First Amended Complaint and now, the Plaintiffs successfully negotiated a settlement with the District, the City, the Trustee and MEast (the Group 2 Defendants) that

[1] In the New Mexico State Attorney General's opinion, the Founder and others "failed to disclose to prospective purchases [sic] in a timely manner material facts pertaining to the [District] and tax levy and rates." *See* Attorney General Letter dated 12/7/2012 attached as Exhibit 1 to Plaintiffs Response to Motion to Dismiss by Defendant High Desert Investment Corp. et. al.

includes a restructuring of the bond debt so as to assure the Plaintiffs that their property taxes will not increase beyond the tax rate that existed before the Founder's default, thus successfully mitigating damages that the Plaintiffs had sought against the Defendants. In consideration for this tax restructuring, the individually named plaintiffs who executed the settlement agreements filed December 13, 2012, including the named Plaintiffs herein, agreed to dismiss with prejudice all of their claims against the Group 2 Defendants and to fully and finally release the Group 2 Defendants from any and all known or unknown claims that were or could have been made against the Group 2 Defendants. With respect to the City and the PID, the allegations in the Second Amended Complaint simply restate the claims made in the first amended complaint, which have been settled by the named plaintiffs thereto, and are intended solely to facilitate the certification of a proposed class for settlement as already agreed by the named plaintiffs, and for no other purpose. The Second Amended Complaint is not intended to revive or to continue to pursue any claim previously asserted against the City or the PID in the initial complaint or in the first amended complaint or to assert any new claims that could have been asserted against the Group 2 Defendants in connection with this lawsuit. In the event that the Court does not approve the settlement agreements with the Group 2 Defendants on behalf of the proposed settlement class, the claims asserted herein against the Group 2 Defendants by the plaintiffs who executed the settlement agreements in their individual capacities shall be dismissed with prejudice. Alternatively, immediately following Court approval of the settlement agreements with the Group 2 Defendants on behalf of the proposed settlement class, the claims asserted herein against the Group 2 Defendants by the named plaintiffs in their individual and class representative capacities shall be dismissed with prejudice.

While the Plaintiffs succeeded in mitigating damages caused by the Founder's default of

its obligation to pay the shortfall in tax revenues to meet the bond obligation, the Founder's abandonment of Mariposa caused and continues to cause the Plaintiffs additional harm as is described in more detail herein. The Plaintiffs thus will be seeking the Court's certification to proceed as a class to recover those damages.

The Founder is the Academy's Agent

10. The Academy ". . . formed [the Founder] to develop the Academy's 1,000-acre High Desert community" and expressly represented that the Founder would be the Academy's "agent" for the purpose of developing the Mariposa Subdivision.

11. In addition, the course of conduct between the Academy and the Founder indicates the Founder is the agent of the Academy for development of Mariposa.

12. The Founder's goal at Mariposa was to obtain the "highest and best" return for the Academy.

13. The Academy dominated the finances, policy and work performed by the Founder because current and former Academy Executives controlled the Founder's Board of Directors, which set board policies and approved major decisions governing Mariposa.

14. At all times material to this complaint, the Founder was acting within the scope of its agency and on behalf of the Academy.

15. Because the Founder is the agent of the Academy, the Academy is liable to Plaintiffs for all tortuous conduct of the Founder alleged in this Second Amended Complaint.

The Founder is an Alter Ego of the Academy and the Corporate Veil Should be Pierced

16. The Founder, a wholly owned subsidiary of the Academy, was created in 1991 for the express purpose of acting as an agent of the Academy to make money to benefit the Academy, and is commonly referred to by the Academy as its "investment arm."

17. All profit earned by the Founder is delivered to the Academy.

18. Upon information and belief, plans for the Mariposa subdivision and the District's Bonds were submitted to the Academy's board for review and approval before the Founder petitioned the City to form the District.

19. Founder and Academy Executives represented to Plaintiffs that "The Academy has deep pockets and financially supports the Founder, so we'll be here for the long term."

20. The Academy Executives caused Plaintiffs and other parties and public officials authorized to make decisions affecting Plaintiffs' property to believe that the Academy supported the long term viability of Mariposa, and no one informed Plaintiffs there was no cap on the tax rate associated with the District.

21. Instead, the Academy's intention with respect to Mariposa was to recover costs of development and privatize for itself any profit earned from the development while causing Plaintiffs and the public to bear the associated risks, including unlimited District taxes.

22. The Founder represented to the City that it had "a net worth in the mid eight-figure range."

23. The City relied upon the Founder's representation about its net worth when the City approved the Founder's General Plan for the Mariposa East Development and when the City authorized the Founder to form the public improvement district.

24. Upon information and belief, the Founder did not have assets in the mid eight-figure range.

25. Upon information and belief, the Academy did have assets in the mid eight-figure range. The Academy reviewed the Founder's representations and allowed the Founder to make

representations about the Academy's assets when such representations were beneficial to the Academy.

26. The Academy and the Founder undertook a momentous risk without regard for consequences by substantially deviating from the feasibility study, including the pricing structure that would have made Mariposa feasible.

27. The Founder was undercapitalized for the risk it undertook on behalf of the Academy, and its Executives represented to Plaintiffs that "as soon as the first law suit is filed, Founder will be forced to file bankruptcy."

28. Upon information and belief, the Academy so manipulated the Founder to further its own individual interest that the identity of the Academy and the Founder are the same.

29. Upon information and belief, the Founder selectively chose to repay its obligation (or obligations) to the Academy, but not to repay other obligations.

30. Upon information and belief, the Academy used facilities such as the Mariposa Community Center for the benefit of the Academy, and collected rent payments by third party lessees that were remitted to the Academy.

31. Upon information and belief, Academy board members were frequently cycled onto the Founder's board when their terms on the Academy's board expired.

32. Upon information and belief, Executives served concurrently on both the Founder's and the Academy's governing boards.

33. Recognizing the separate existence of the Academy and the Founder would sanction fraud or another improper purpose.

34. The Academy is liable for the damages it's alter ego, the Founder, caused to Plaintiffs.

Civil Conspiracy and Aiding and Abetting

35. The Academy aided and abetted the Founder in committing the statutory violations complained of herein.

36. The Academy carried out specific wrongful acts pursuant to the conspiracy by continuing to promote Mariposa to Plaintiffs and the Group 2 Defendants while hiding true facts regarding the unviability of the development and the scheduled repayment of the bonds.

37. Upon information and belief, under the Academy's direction, the Founder intentionally engineered, designed and built a wastewater treatment facility that is, or will be, capable of servicing property other than Mariposa East, including Mariposa West, which is owned by the Academy.

38. Plaintiffs shoulder the debt of the wastewater treatment facility and the Academy does not participate in paying the debt associated with the facility even though it is engineered to service property owned by the Academy.

39. The Academy and the Developer knew of the statutory violations complained of herein, including and specifically the Founder's continued misrepresentations and omissions to Plaintiffs regarding their potential tax burdens and the Community services and amenities that would be supported by the Founder within Mariposa.

40. The Academy provided substantial assistance to the Founder in continuing the misrepresentations and omissions.

The Class

41. The Class Members are consumers who purchased property within Mariposa from the date of its inception through June 20, 2012. The Class will consist of owners of both unimproved lots and improved lots (residential homes have been constructed upon the lot). Some Class

members own only unimproved lots, some improved lots and some both.

42. Plaintiffs Lynn Hartenberger and Nancy Stevens represent this Class of consumers who purchased property in Mariposa.

43. Plaintiff Lynn Hartenberger purchased property in Mariposa. Initially the owner of an unimproved lot in the Subdivision, her lot is now improved (her home was built on it).

44. Plaintiff Lynn Hartenberger is a victim of the acts and omissions of Defendants which are common to all purchasers/Class Members and has been damaged.

45. Plaintiff Nancy Stevens purchased property in Mariposa. She purchased an improved lot (home built on it) in the Subdivision.

46. Plaintiff Nancy Stevens is a victim of the acts and omissions of Defendants which are common to all purchasers/Class Members and has been damaged.

47. Plaintiffs Hartenberger and Stevens will serve as the Class Committee/Class Representatives. They have been victims of the same series of unlawful actions by Defendants. Their individual claims, as well as the claims they assert on behalf of the Class are predominated by common questions of law and fact and arise from a scheme common to all member of the Class.

48. Plaintiffs Hartenberger and Stevens bring this Class action in each of their individual capacities and as representatives on behalf of other similarly situated persons.

49. Venue is proper in Sandoval County, New Mexico inasmuch as this cause arises from occurrences and transactions in Sandoval County. Further, Plaintiffs Hartenberger and Stevens as well as other Class members are residents of Sandoval County and were subject to the circumstances complained of herein within Sandoval County, New Mexico.

Additional General Allegations

50. The Academy began planning for the Mariposa Subdivision in 1998. The Mariposa Subdivision consists of three sections: Mariposa East, Mariposa West, and the Preserve.

51. The Academy formulated and filed a "Mariposa Master Plan" on January 29, 2002 providing for the annexation, zoning, master planning and development of the Mariposa Subdivision, and identifying the Founder as "the agent for the Academy" for purposes of providing development services for the Mariposa Subdivision.

52. The Founder, using its own funds and/or funds borrowed from the Academy, built a water and wastewater facility to service the Mariposa Subdivision.

53. The Founder petitioned the City for formation of a public improvement district ("PID"), and filed with the City Clerk a General Plan. The General Plan, which is required under NMSA § 5-11-3, should provide property owners within a proposed public improvement district the information necessary to decide whether to vote in favor of or against formation of the district.

54. The Founder's purpose in petitioning the City for the PID was to provide a vehicle for the issuance of tax-free bonds in order to repay the Founder and the Academy for the cost of the water and wastewater facility.

55. NMSA § 5-11-3 requires the General Plan to provide cost estimates, proposed financing methods, and anticipated tax levies.

56. The General Plan indicates the purpose of forming the District was to finance the acquisition of the water supply system ($3,390,037) and a wastewater treatment facility ($6,864,113).

57. The wastewater treatment facility was designed to service all of the Mariposa Subdivision.

58. The General Plan further provides that the District would dedicate the water supply system and wastewater treatment facility to the City.

59. The General Plan indicated bonds would be issued in an amount not to exceed $16,000,000. The indenture documents provided that bond funds were to be used as follows:

a. $2,599,365.26 for capitalized interest payments;

b. $257,000 for District formation costs, legal and financing costs, printing, Trustee fees, Bond Counsel fees, and fees for preparation of the Preliminary and Final Limited Offering Memorandum;

c. $1,268,037.50 for deposit into the Reserve Fund (which was also used, in part, for interest payments);

d. $11,555,597.24 for deposit into the Project Fund; and

e. $320,000 for the Underwriter's Discount.

60. On February 8, 2006, the City passed Resolution 12, forming the District.

61. The Founder was required by NMSA § 5-11-16 to submit a Feasibility Study to the City, which should describe, among other things, the infrastructure to be acquired by the public improvement district and the plan for financing it.

62. The Feasibility Study, conducted by CB Richard Ellis Consulting indicated the Founder would market houses and lots within the District, to be developed and sold as follows:

Home Type	**Home Price**	**Number of Units**	**Lot Value**
Custom 1	$225,000	689	$45,000
Custom2	$275,000	176	$55,000

Custom3	$375,000	335	$93,750
Casitas	$200,000	165	$40,000
Estate	$585,000	285	$195,000

63. The Feasibility Study reported purchasing trends in the Rio Rancho and Northwest Albuquerque market, and estimated that during 2004:

a. new houses priced between $200,000 and $249,000 captured 27% of the market;

b. new houses priced between $250,000 and $299,999 captured 3.6% of the market; and

c. new houses priced above $300,000 capture only 2.3% of the market.

64. The Feasibility Study indicated that if properly marketed and developed, over the course often years 1,650 homes could be built and sold within the District, 1030 of which would be priced between $200,000 and $299,000. Assuming those price points, the Feasibility Study projected that a sufficient number of houses would be sold within the District (absorbed) to service Bond debt with a 9.5 mill rate.

65. The City formed a Review Team to analyze the Feasibility Study.

66. The Review team specifically analyzed the house prices and absorption rates in the Feasibility Study.

67. In April of2006, in reliance upon the analysis of the Review Team, the City approved the Feasibility Study, including the described plan for financing the infrastructure, and granted authority for the District to sell the Bonds.

68. On or around June 14, 2006, the District offered general obligation bonds in

the amount of $16 million (the "Bonds").

69. On or around the day the Bonds were offered, the Founder unilaterally issued a "Cash Flow Projection" dated June 14, 2006. The Founder included the Cash Flow Projection in the Bond Indenture documents.

70. The Cash Flow Projection showed that the Founder did not plan to market and develop the District for sale of any houses below $345,000, and that the Founder instead planned to market and develop the District so that houses would be built and sold between the prices of $345,000 and $700,000. When the Founder unilaterally changed the target market, it did not make corresponding changes to the absorption rates and continued to project that 1,650 homes would be built and sold within ten years.

71. The Founder did not notify or request approval from the City to deviate from the Feasibility Study, and effectively increase the pricing structure of houses within the development into a range that would attract only 2.3 percent of the local market.

72. In the Cash Flow Projection, the Founder revealed for the first time its intention to market lots for development within the District as follows:

Home Type	**Home Price**	**Number of Units**	**Lot Value**
Custom 1	$345,000	703	$68,000
Custom2	$370,000	327	$75,000
Custom 3	$455,000	225	$97,500
Custom 4 *(new, Casitas removed)*	$350,000	45	$125,000
Estate	$700,000	350	$195,000

73. There was no justification for changing the house price market without changing the

corresponding absorption rates.

74. Upon information and belief, the Founder affected and/or controlled the sale price of lots and corresponding home prices within the District.

75. The Feasibility Study showed 1030 houses would be sold at the $200,000 to $275,000 price range within eleven years. Yet the Founder's Cash Flow Projection showed intent to offer 1030 houses at the $345,000 and $370,000 price points in eleven years, and an additional 45 houses at the $350,000 price point, without offering any houses below $345,000. As indicated in the Feasibility Study, the expected absorption rates of houses offered at prices above $275,000 was significantly lower than the expected absorption rates of houses offered at $200,000 to $275,000.

76. As a result of the significant increase in offering prices, the Founder and the District knew or should have known that the absorption rates in the Cash Flow Projection were grossly overestimated for the Rio Rancho housing market, and could not be met.

77. Because the District capitalized several years of interest payments, the only means of measuring the true financial health of the District for its first several years of existence was to compare actual home absorption rates with projected absorption rates.

78. It was obvious to the District and the Founder as early as 2005 that actual absorption rates were not and would not meet the projections in the "Cash Flow Projection." Upon information and belief, between 2006 and 2012 the Founder and the Academy had internal "confidential" discussions regarding the failed absorption rates.

79. A reasonably prudent person in the position of the Founder should have informed the Group 2 Defendants as well as purchasers and prospective purchasers within Mariposa including Plaintiffs, that actual home and lot sales would never meet and were not meeting the projections in

the Cash Flow Projection. However, because the Founder was interested in recovering its water and wastewater infrastructure costs, it failed to so inform anyone.

80. The Founder's aggressive marketing and promotion of the Mariposa Subdivision to the Plaintiffs omitted information the Founder knew would have been material to the Plaintiffs' decision to purchase lots and build homes in the Mariposa Subdivision, including but not limited to the Founder's unilateral changes to the Cash Flow projections, or the actual absorptions rates as compared to the required absorption rates.

81. The Founder knew or should have know at the time that the Bonds were issued that the absorption rates that were required to meet the Bond debt obligation would not be achieved.

82. The Founder represented itself as one of the Southwest's "premier community developers and promised Plaintiffs valuable "Community" services and conveniences such as the Community Center with exercise facilities, great hall, meeting rooms, classrooms, library and game rooms, catering kitchen, swimming pool, parks and cafe.

83. Mariposa is remotely located far away from existing housing, retail outlets, stores and businesses. The Founder successfully recruited Plaintiffs to purchase property in Mariposa, notwithstanding its remoteness because of its status as a "premier developer," Mariposa's unique "Community" vision and features and the Founder's professed commitment to the long-term viability of Mariposa as the "investment arm" of the Academy.

84. The Founder caused to be published to Plaintiffs the "Property Owner Information Related to Mariposa Public Improvement District General Obligation Bonds" (hereinafter Disclosure).

85. The original Disclosure represents:

"The tax rate of the [District] is not expected to exceed $9.50 per $1,000 **(9.5 mills) (9 mill**

debt service, **0.5 mill** administrative expenses) of secondary assessed valuation while the bonds are outstanding. The $9.50 per $1,000 level (9.5 mill) is anticipated based on the proposed forms of collateral, bond structure, change in assessed value over time, and absorption of developed property within the District. In the event that these assumptions are not correct, the 9.5 mill levy may change; **if the required debt service (net of capitalized interest) for the bonds exceeds pledged revenues based on a debt service levy of 20 mill, the Developer will make a contribution to debt service funds in the amount of such excess."** (Emphasis added)

86. On August 8, 2006, after issuing the bonds, the Founder edited the Disclosure to include the following: "If High Desert fails to pay the difference between the debt service requirements on the [District] Bonds and the revenue generated at the $20 per $1000 rate, the [District] will increase the property tax rate to the extent necessary to pay the debt service next coming due." The edited Disclosure continues to represent and warrant that the **"tax rate of the [District] is not expected to exceed $9.50 per $l,000…of secondary assessed valuation while the bonds are outstanding,"** and that the Founder will cover any excess debt service levy over 20 mill. (Emphasis added)

87. At no time did the Founder ever inform Plaintiffs that its assumptions regarding the amount of debt service levy and tax rate was based on an absorption rate that required over 86.4% of the residential lots to be fully developed within five years of issuance of the Bonds.

88. The Feasibility Study indicated that the tax rate would be kept at 9.5 mills if prices in the Feasibility Study were used and if the Founder had caused a sufficient number of houses in the $200,000 to $299,000 price range to be offered.

89. Because the Founder required the lots be developed for sale of houses at $345,000 or higher, there was insufficient demand to sell the quantity of houses necessary to make the District solvent.

90. On June 14, 2006 when the Cash Flow Projection was published to prospective bond

purchasers, Defendants were aware or should have been aware that the 9.5 mills tax rate, justified in the Feasibility Study, was not supported by the "Cash Flow Projection," which assumed without justification that 1,650 houses would be sold at prices exceeding $345,000.

91. Defendants were aware or should have been aware from the outset that due to the substantial increase in prices between the Feasibility Study, and the Cash Flow Projection an insufficient number of houses would be sold to meet the absorption rate required to keep the tax at 9.5 mills.

92. On June 20, 2012, the Founder issued a formal statement to the Plaintiffs for the first time informing them that it was closing its operations and defaulting on all of its obligations and promises to the Plaintiffs, including but not limited to the Founder's promise to contribute funds to cover any excess debt service levy over 20 mills, and to provide the valuable community conveniences and services. At no time prior to June 20, 2012 were Plaintiffs informed by the Founder or the District that Mariposa and Community services and conveniences were unsustainable.

93. Upon information and belief, beginning in 2011, the Founder, the District and others began negotiating with the Trustee to tender a major portion of the Founder's assets, specifically 800 acres of undeveloped real property, including 53 specified lots, to the Trustee, in exchange for a forbearance agreement wherein the Trustee would agree not to pursue remedies against the Founder and the District.

94. Upon information and belief, the Founder agreed to transfer a majority of its remaining assets to MEast without requiring an agreement on a minimum valuation of the assets being transferred.

95. At no time has the Founder informed or consulted Plaintiffs with respect to their rights

and remedies that will be affected as a result of the Founder's agreement to transfer its assets without valuation to MEast.

96. The difference between the projected tax rate, $9.5 per $1,000 of assessed value (9.5 mills), and the tax rate currently required to service the bond debt, $110 per $1,000 of assessed value (II 0 mills), is a factor of ten.

97. The District incurred $16,000,000 in debt. The total of all assessed values of properties within the District is $20,565,921.

98. The Founder failed to inform Plaintiffs that there was no cap on the amount of tax that could be charged for the bonds.

99. At all times, the Founder continuously represented to all Plaintiffs that "the tax rate of the [District] is not expected to exceed $9.50 per $1,000...of secondary assessed valuation while the bonds are outstanding."

100. Upon information and belief, the Founder was aware as early as June 14, 2006 that "the tax rate of assessed value will need to increase to more than 9.5 mills for collection year 2012."

101. Upon information and belief, the Founder was aware as early as June 14, 2006, that the absorption rates in the Cash Flow Projection were not critically analyzed or supported by any market analysis, that they were in conflict with the Feasibility Study, and that the tax rate would exceed 9.5 mills when absorption rates were not satisfied.

102. Upon information and belief, the Founder intentionally made misrepresentations regarding the anticipated tax rate for the purpose of inducing Plaintiffs to purchase lots and homes within the District in spite of the extraordinary tax burden Plaintiffs would unknowingly bear.

103. Alternatively, the Founder negligently omitted to inform Plaintiffs the tax rate would exceed 9.5 mills.

104. The Founder knew or should have known and failed to inform Plaintiffs that it would be unable to sustain its financial commitments to Plaintiffs including the promise to pay tax levy in excess of 20 mills and to sustain valuable Community services and conveniences.

105. The Founder omitted to inform Plaintiffs that 86.4% of Mariposa would need to be built and sold within five years of the sale of the Bonds in order to service Bond debt in the year 2012.

106. After Mariposa failed to meet projected home sales for 2006, the Founder continued not to disclose to Plaintiffs the resulting unsustainability of the bond debt.

107. Upon information and belief the Academy and the Founder and their Executives were aware of information material to the level of risk associated with investing in Mariposa such as the following:

a. As early as 2006 an insufficient number of houses were being sold/built within Mariposa for the District to be solvent;

b. There was no cap on the tax rate that could be imposed on Mariposa lot and homeowners by the District; and

c. Mariposa was running against a clock, or that a certain number of houses needed to be complete before 2012 in order for the District to be solvent before the reserve fund was extinguished.

108. Upon information and belief, the Academy and its Executives were aware of the Founder's continuous and intentional misrepresentation that the Founder did not expect taxes for the District to exceed 9.5 mills.

109. Upon information and belief, the Academy and its Executives were aware the Founder had not informed Plaintiffs of material information relevant to the level of risk associated with the Development.

110. Upon information and belief, the Academy and its Executives provided substantial assistance to the Founder in continuing to sell lots and houses within Mariposa without adequate disclosure.

RULE 1-023

111. The disclosures/failures to disclose at issue were the same or substantially the same, with small variation.

112. The disclosures/failures to disclose at issue contained similar terms regarding all Class members.

113. Plaintiffs' property values have uniformly suffered due to the loss of Community services and amenities caused by the Founder's abandonment of Mariposa and failure to support the Community that the Plaintiffs were promised when they purchased their property in Mariposa.

114. Significant risk factors which should have been disclosed to all of the Plaintiffs were not disclosed, including the potential for an unlimited property tax increase and an absorption rate (to prevent a tax increase) that required that Mariposa be substantially built out in 5 years.

115. The Founder failed to inform all of the Plaintiffs at the time of their property purchases that the Founder expected property taxes to increase beyond the disclosed rate, even though the Founder knew, or should have known that the taxes would be increasing beyond the disclosed rate.

116. The Founder unilaterally and without any notice decided to increase lot prices

which guaranteed that the absorption rate (volume of sales of property) would not be met.

117. The Founder failed to inform all of the Plaintiffs that the cash flow projections and absorption rates were not being met from the very inception of the District.

118. The Founder represented to all of the Plaintiffs (to induce them into purchase property) of its premier Founder reputation, close ties with the Academy, and the Founder's vast resources and staying power to create and sustain a unique and viable Community in order to lend Mariposa a status and quality that has now been forever lost.

119. As a result, Mariposa that was conceived of and built as a premier "Community" with unique amenities and services and qualities has been lost and is replaced with the stigma of a failed development.

120. The common allegations of fact and law arise from uniform plans and practices of Defendants that apply to all Class members.

121. The putative Class members were together victims of a common pattern and practice and/or plan of Defendants.

Definition.

122. Plaintiffs bring this action pursuant to New Mexico Rules of Civil Procedure, Rule 1-023 on behalf of a Class defined as and consisting of:

> **All persons who purchased property in Mariposa from the date of its inception through June 20, 2012.**

123. Excluded from the Class are Defendants, any parent, subsidiary, affiliate, or controlled person of any Defendant, the officers, directors, agents, servants, and/or employees of any Defendant and the members of the immediate family of any such person and members of the New Mexico state judiciary.

124. Plaintiffs are members of the Class they seek to represent.

Numerosity.

125. The Class includes hundreds of persons residing in New Mexico and mostly in Sandoval County and thus, is so numerous that joinder of all members is impractical.

126. Knowledge of the precise size of the Class is within the Defendants control and will be determined through discovery.

127. Upon certification of the Class, Class members may be notified of the pendency of this action by published class notice supplemented, if deemed necessary or appropriate by the Court, by individual mailed notices.

Commonality.

128. Common questions of law and fact exist as to all members of the Class, which predominate over any questions affecting only individual members of the Class. These common legal and factual questions include, but are not limited to:

(a) Whether members of the Class failed to receive the benefit of the disclosures at issue under New Mexico law;

(b) Whether members of the Class were victims of both unreasonable and/or unconscionable acts and omissions by the Defendants;

(c) Whether there were failures to make material disclosures to Class members by Group 1 Defendants.

(d) Whether there were material misrepresentations common to the Class members would be in violation of the New Mexico Unfair Practices Act.

129. All Class claims arise from the same practices of Defendants and are all based on the same legal theories. When common questions are resolved as to Plaintiffs, they will be resolved as to all members of the Class.

130. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications with respect to individual members of the Class which could establish incompatible standards of conduct for the Defendants.

131. The prosecution of separate actions by individual members of the Class would create a risk of adjudications with respect to individual members of the Class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests.

132. Defendants have acted with grounds generally applicable to the Class, thereby making appropriate, final injunctive relief and/or corresponding declaratory relief to the Class as a whole.

Typicality.

133. The claims of the named Plaintiffs are typical of the claims of the Class they seek to represent.

134. Plaintiffs have claims against Defendants for the unlawful conduct and practices described herein.

135. These claims have the same essential characteristics as the claims of the Class as a whole, arise from the same course of conduct, and are based upon identical legal and remedial theories.

136. All members of the Class were subjected to the same acts and omissions.

137. The members of the Class have suffered the same types of legal injuries and possess the same interests as the Plaintiffs.

Adequate Representation.

138. Plaintiffs will fairly and adequately represent and protect the interests of the Class

members and have no interests antagonistic to those of the Class members.

139. Plaintiffs have retained competent counsel, experienced in the prosecution and trial of complex cases and experienced in the legal theories under which this case will be advanced.

Predominance and Superiority.

140. This suit is maintainable as a class action pursuant to and in compliance with New Mexico Rule of Civil Procedure Rule 1-023(B)(2) and (B)(3).[2] because the common questions of law and fact predominate over any questions affecting only individual members, making a class action superior to all other methods available for the fair and efficient adjudication of this controversy.

141. While the aggregate damage sustained by the Class is likely to be millions of dollars, the damages suffered by some individual members of the Class may be relatively modest.

142. As a result, the expense and burden of individual litigation make it economically infeasible and procedurally impracticable for each member of the Class to seek redress individually for the wrongs done to them by Defendants.

143. The existing issues can be determined in a class action in a manageable, time efficient, yet fair manner, and by a single jury.

CAUSES OF ACTION:

Count 1 - Group 1 - Breach of Contract

144. All preceding allegations are incorporated as though expressly stated herein.

145. Plaintiffs are intended third party beneficiaries of the Replenishment Agreement between the Founder, the District and Trustee.

146. In the Replenishment Agreement, and other written agreements, the Founder

[2] As to the Group 2 Defendants, Counts 4-6, the claims are being brought only under Rule 1-023(B)(2).

agreed to continue in its role and fulfill its obligations and responsibilities as the Developer of Mariposa even if the tax revenues were insufficient to service the Bond debt. Included in its promise to "always be here" was the promise to make a contribution to debt service funds in the amount necessary to service the bond in the event the debt service for the Bonds exceeds pledged revenues based on a debt service levy of 20 mill.

147. The Founder's obligations under the Replenishment Agreement to contribute to a debt service fund were intended to benefit Plaintiffs.

148. The Founder determined to breach its promise to contribute to the debt service fund in late 2011, but failed to inform the Plaintiffs that it would default on its obligations as Founder until June, 2012, and will not contribute funds even though tax rate necessary to service the Bonds would greatly exceed the disclosed rate of 20 mills.

149. The Founder promised to create and sustain a unique "Community" and provide and sustain significant Community services and conveniences to the Plaintiffs.

150. The Founder promised to be a "trust," with its Executives acting as "trustees" who would govern the Community for the benefit of Plaintiffs.

151. The Founder promised to work to "uphold" Community standards and to "achieve the vision and goals" for the Community."

152. The Founder breached its promise to Plaintiffs to "always be here", and to always lend its statue, reputation and distinction as a premier Developer and as the "investment arm of the Academy" to Mariposa.

153. The Founder breached its promise to provide valuable community services and conveniences to the Plaintiffs and has shut down the Community Center.

154. As a direct and proximate result of the breaches, Plaintiffs and the Class have

suffered, and continue to suffer, damages in an amount to be proven at trial.

155. As a result of the Founder's breach of contract, Plaintiffs are entitled compensatory damages, attorneys' fees and costs of this lawsuit.

156. The actions and omissions of the Founder regarding the contracts, its intentions, and its breaching of the contracts and other unlawful conduct regarding the contracts were malicious, reckless, wanton, oppressive and/or fraudulent justifying an award of punitive damages.

Count 2- Group 1 -Violation of the Unfair Practices Act- NMSA 57-12-1, *et seq.*

157. All preceding allegations are incorporated as though expressly stated herein.

158. The Founder and its Executives advertised, offered for sale and sold development and marketing services in relation to the sale of property within Mariposa.

159. The Founder and its Executives promised Mariposa would be a unique and high end Community and that the Founder would ensure that all builders would transfer the vision of the Community to the people who choose to make Mariposa their home.

160. The Founder and its Executives promised that its approach to development is a reflection of the Academy's continued commitment to the Community.

161. The Founder's General Plan, created at the direction of the Academy and published to the City and with the bond documents promises that "Careful stewardship will guide the planning, development and continued existence of Mariposa."

162. The Founder breached its representation that it is committed to the Community, failed to exercise careful stewardship in the continued development and existence of the Community.

163. Mariposa is not the high-end community promised by the Founder, and the

Founder breached its promise to sustain such a Community.

164. During the course of its trade or business, the Founder and its Executives used unfair or deceptive trade practices, including:

a. causing confusion or misunderstanding as to the Academy's affiliation, connection or association with the Founder;

b. representing that the Founder had the ability through the Academy to provide the services and benefits promised to Plaintiffs;

c. offering services and benefits to the Plaintiffs with no intent to supply them;

d. making false or misleading statements of fact concerning the value of the lots being marketed within the District, and the services promised;

e. failing to state material facts in order to deceive the Plaintiffs;

f. stating that the Plaintiffs' purchases involved rights, remedies or obligations that were not provided;

165. The Founder and its Executives took advantage of the lack of knowledge, ability, experience or capacity of Plaintiffs to a grossly unfair degree, resulting in a gross disparity between the value received by Plaintiffs and the price paid for the Founder's services.

166. As a result, Plaintiffs and the Class have been damaged and are entitled to recover compensatory damages, treble damages, attorneys' fees and costs.

Count 3- Group 1- Negligence

167. All preceding allegations are incorporated as though expressly stated herein.

168. The Founder, the Academy and their Executives were grossly negligent or reckless when they chose not to follow the feasibility study and to increase home prices without

any plan to deal with the reduced demand that would result from significantly higher prices.

169. Defendants were negligent when they continuously represented to Plaintiffs that taxes were not expected to exceed 9.5 mills.

170. Although the Founder was aware 86% of Mariposa needed to be built within 5 years, the Founder sold numerous lots to individual investors without any requirement that the individuals build houses within any specific time frame.

171. The Founder, the Academy and their Executives negligently and/or recklessly with wanton disregard to consequences failed to inform Plaintiffs that the cash flow and absorption rate projections would not be met, and that the Founder had no intention of complying with its promises and obligations to the Plaintiffs and the Community.

172. Defendants knew or should have known Plaintiffs would be injured by Defendants significant deviation from the pricing structure outlined in their feasibility study.

173. Defendants' negligence caused damages to Plaintiffs.

174. Plaintiffs are entitled to damages in an amount to be proved at trial, including compensatory and punitive damages, attorney fees and costs of this lawsuit.

Count 4- Group 2 -Violations of the New Mexico State Constitution, Article 2, and Section 18 ***(This Count Is Tentatively Settled on Behalf of the Class With Group 2 Defendants Pending the Certification/Approval Process)***

175. All preceding allegations are incorporated as though expressly stated herein.

176. The District is a political subdivision of the State of New Mexico and is a state actor.

177. The District Purchased Infrastructure valued at roughly $10 million.

178. In order to purchase the $10 million Public Infrastructure, the District caused

encumbrances in the amount of over $16 million plus interest that is accruing, to be placed on the property located within the District.

179. Because the amount of the debt is over $16 million, and the assessed value of the property within the district is roughly $20.5 million, the amount of the debt is "a flagrant abuse" that is "so arbitrary as to amount to a mere confiscation of property", and constitutes deprivation of property without due process of law in violation of Article 2, Section 18 of the New Mexico Constitution.

180. The petition to form the District was required to provide property owners with information necessary to decide whether to vote in favor of or against formation of the district, and required the General Plan to provide cost estimates, proposed financing methods and anticipated tax levies.

181. The petitioner (the Founder) was required to submit a feasibility study to the City, describing the infrastructure to be financed and the plan for financing it.

182. The feasibility study the Founder submitted to the City contained misinformation and represented 60% of the development would be priced below $275,000.

183. The Founder did not provide notice and an opportunity to object because it failed to provide its actual plans to the City or voters and did not give adequate notice of its plan to sell all houses at prices of $345,000 or higher.

184. The Founder did not provide notice and an opportunity to object because it failed to inform Plaintiffs that the District would be insolvent if the Founder did not sell and build 86% of the homes within the District before the year 2012, or within 5 years.

185. Because owners were not given notice and an opportunity to be heard on important issues related to the level of risk undertaken by the District, they were denied due

process.

186. Therefore, judgment should be entered declaring the debt incurred by the District to be in violation of the New Mexico Constitution, and requiring the District and the City to cure the encumbrances levied against Plaintiffs' property or for the Public Infrastructure received by the City. Plaintiffs are entitled injunctive/declaratory relief from this tax debt.

Count 5- Group 2 -Violation of the New Mexico State Constitution, Article 2, Section 20 and NMSA § 42-1-23. ***(This Count Tentatively Settled on Behalf of the Class With Group 2 Defendants, Pending the Certification/Approval Process)***

187. All preceding allegations are incorporated as though expressly stated herein.

188. The encumbrances placed by the District on Plaintiffs' property is flagrant abuse that is so arbitrary as to amount to a mere confiscation of property because the amount of debt, upon which interest accrues, is 160% of the actual cost of the Public Infrastructure purchased, and because the amount of the debt is more than 75% of the total assessed value of properties within the District.

189. The property is for a public purpose; upon information and belief, the Public Infrastructure purchased by the District has been and will be used to benefit other property that is not located within the District, but is located within the City or Sandoval County.

190. Upon information and belief, the infrastructure financed by the District was overbuilt so that the Academy or others would have lower costs for developing Mariposa West.

191. By causing encumbrances significantly higher than the value of the infrastructure purchased to be levied against Plaintiffs properties, and by purchasing infrastructure that is for a public purpose, the District violated Article 2, Section 20 of the New Mexico Constitution.

192. The City took title and possession of the Public Infrastructure purchased by the District.

193. By encumbering Plaintiffs property in order to purchase Public Infrastructure for the benefit of citizens of the City who do not reside within the District, and by encumbering Plaintiffs' property with a debt that is disproportionate to the value of their property, the City violated Article II, Section 20 of the New Mexico Constitution and NMSA § 42-1-23.

194. Therefore, judgment should be entered declaring the debt incurred by the District, and the transfer of real property to the City to be in violation of the New Mexico Constitution and NMSA § 42-1-23, and requiring the District and the City to cure the encumbrances levied against Plaintiffs' property. Alternatively, the District should be enjoined from taxing Plaintiffs property without fairly distributing the tax burden to all the property that can be serviced by the wastewater treatment facility and the well 15 pump station financed through the District bonds. Plaintiffs are entitled declaratory and/or injunctive relief.

Count 6- Group 2- Violations of the New Mexico State Constitution, Article 8, and Section 9. ***(This Count Is Tentatively Settled on Behalf of the Class With Group 2 Defendants Pending the Certification/Approval Process)***

195. All preceding allegations are incorporated as though expressly stated herein.

196. NMSA Section 5-11-9 permitted the first District board to be appointed by the governing body of the City (the Rio Rancho City Council).

197. The statute allows three of the original District Board members to serve for a term of six (6) years and two other board members to serve for a term of four (4) years.

198. After expiration of the first terms of the original board members, NMSA Section 5-11-9 required an election to fill board vacancies.

199. Rather than holding an election, the Board self appointed additional board members to fill vacancies.

200. Taxes assessed by the District after February 8, 2012, when an elected board did

not control the District violate N.M. Const. Art. VIII, Section 9.

201. Therefore, judgment should be entered declaring any tax assessed after February 8, 2012 to be unconstitutional, and requiring the District to cure/dissolve any tax assessment in violation ofN.M. Canst. Art. VIII, Section 9. Plaintiffs are entitled to Declaratory and/or injunctive relief.

WHEREFORE Plaintiffs respectfully seek judgment against Defendants, including:

1. compensatory, special statutory, treble and punitive damages from Group 1 Defendants
2. declaration that the District's debt violate Article II, Sections 18 and 20 of the New Mexico Constitution, and therefore the District's debt is void,
3. declaration that transfer of real property and improvements by the District to the City violates the New Mexico Constitution, Article II, Section 20, and
4. attorney fees, and costs from Group 1 Defendants.

Respectfully submitted,

BAUMAN, DOW & LEON, P.C.

By: */s/ Christopher P. Bauman*
Christopher P. Bauman, Esq.
Deborah R. Stambaugh, Esq.
PO Box 30684
Albuquerque, NM 87190
Tel: (505) 883-3191
FAX: (505) 883-3194
e-mail: cpb@bdllawfirm.com
drs@bdllawfinn.com

AND

RANDY K. CLARK, P.C.

By: */s/ Randy Clark*
Randy Clark, Esq.

PO Box 2685
Roswell, NM 88202-2685
Tel: (575) 622-4241
FAX: (575) 625-0137
e-mail: randyclark@cableone.net

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Second Amended Complaint was served to all Counsel of via the Odyssey Electronic filing system on this 18th day of December, 2013

/s/ Christopher P. Bauman
Christopher P. Bauman, Esq.