

**STATE OF NEW MEXICO
COUNTY OF LINCOLN
TWELFTH JUDICIAL DISTRICT COURT**

TIERRA REALTY TRUST, LLC, a New Mexico
Limited Liability Company and all other residential
wastewater and sewer customers of the Village of Ruidoso,
New Mexico who are similarly situated,

Plaintiffs,

vs.

No. D-1226-CV-2009-00316

VILLAGE OF RUIDOSO, NEW MEXICO,
a New Mexico incorporated municipality,

Defendant.

**STIPULATED ORDER GRANTING PRELIMINARY APPROVAL
OF CLASS ACTION SETTLEMENT**

Plaintiff Tierra Realty Trust, LLC (the “Named Plaintiff”), individually and as representative of the Settlement Class defined in Paragraph 1 below (collectively, “Plaintiffs”), and Defendant Village of Ruidoso, New Mexico, a New Mexico incorporated municipality (“Defendant”), have entered into a Class Action Settlement Agreement, including the Exhibits incorporated therein (the “Agreement”), to settle the above-captioned lawsuit (“Lawsuit”). The Agreement sets forth the terms and conditions for a proposed settlement and dismissal with prejudice of this Lawsuit.

The Court has carefully considered the Joint Motion for Preliminary Approval, the Agreement, and the record in this case, and is otherwise advised in the premises. The Court hereby gives its preliminary approval to the settlement and the Agreement; finds that the settlement and Agreement are sufficiently fair, reasonable, and adequate to allow notice of the settlement to be given to the Class and to hold a Final Approval Hearing; orders that notice be sent to the Class in accordance with the Agreement; and schedules a Final Approval Hearing to determine whether the settlement is fair, reasonable, and adequate.

IT IS HEREBY ORDERED AND ADJUDGED:

1. The Court has previously certified a class in this case composed of all past and present residential wastewater and sewer customers of the Village of Ruidoso from the date of adoption of Village Ordinance Number 2007-11 (November 27, 2011) through the date of the trial of this matter (the "Class").

2. The Agreement is hereby incorporated by reference in this Order, and all terms and phrases used in this Order shall have the same meaning as in the Settlement Agreement.

3. This State Court has personal jurisdiction over all Class Members and subject matter jurisdiction to approve the Agreement.

4. The Court preliminarily approves the Agreement and finds that the proposed settlement is sufficiently fair, reasonable, and adequate to warrant providing notice to the Class.

5. The Court has reviewed and approves the Notice, the content of which shall be without material alteration from Exhibit 1 to the Agreement. The Notice shall be included in the next billing cycle sent to the Class. Defendant shall file proof of mailing of the Notice at or before the Final Approval Hearing.

6. The Court has reviewed and approves the Published Notice, the content of which shall be without material alteration from Exhibit 2 to the Agreement. This Published Notice shall be placed on Defendant's website addressing utility matters and taking payments on utility bills for no less than thirty (30) days after the entry of this Order and shall include a link to the Agreement as well as this Order. Defendant shall file proof of publication of the Published Notice at or before the Final Approval Hearing.

7. Other than the Mailed Notice and Published Notice, the Parties shall not be obligated to provide any additional notice of this settlement.

8. The Court finds that the procedures outlined in the Agreement for providing notice to all Class Members constitute reasonable and the best practicable notice under the circumstances, and

an appropriate and sufficient effort to locate current addresses for Class Members and to provide adequate notice to all Class Members, such that no additional efforts shall be required.

9. The Court finds that the form, content, and method of dissemination of the Notices to Class Members as described in the Agreement (i) is the best practicable notice; (ii) is reasonably calculated, under the circumstances, to apprise Class Members of the pendency of the Lawsuit and of their right to object to or exclude themselves from the proposed settlement; (iii) is reasonable and constitutes due, adequate, and sufficient notice to all persons entitled to receive notice; and (iv) meets all applicable requirements of Rule 1-023 NMRA, Due Process, New Mexico law, and any other applicable rules or laws.

10. Pursuant to Rule 1-023(B)(3) NMRA, Class Members have the right to exclude themselves from the Class. Any Class Member who wishes to exclude himself or herself from the Class must comply with the terms set forth in the Agreement and the Notice. To be considered timely, a request for exclusion must be mailed to counsel for the Named Plaintiff postmarked no later than February 2, 2015 (60 days after the Mailed Notice Date). Requests for exclusion must be exercised individually by a Class Member, not as or on behalf of a group, class, or subclass, except that such exclusion requests may be submitted on behalf of an individual Class Member by that Class Member's Legally Authorized Representative.

11. All Class Members who do not submit a timely, written request for exclusion from the Settlement Class ("Opt Out"), will be bound by all proceedings, orders, and judgments in the Lawsuit, even if the Class Member has previously initiated or subsequently initiates individual litigation or other proceedings encompassed by the Released Claims, and even if such Class Member never received actual notice of the Lawsuit or this proposed settlement.

12. The Court preliminarily enjoins all Class Members and their legally authorized representatives, unless and until they have submitted a timely and proper request for exclusion from the Class, (i) from filing, commencing, prosecuting, intervening in, or participating as plaintiff,

claimant, or class member in any other lawsuit or administrative, regulatory, arbitration, or other proceeding in any jurisdiction based on the Released Claims; (ii) from filing, commencing, or prosecuting a lawsuit or administrative, regulatory, arbitration, or other proceeding as a class action on behalf of any Class Members (including by seeking to amend a pending complaint to include class allegations or seeking class certification in a pending action), based on the Released Claims; and (iii) from attempting to effect an opt-out of a group, class, or subclass of individuals in any lawsuit or administrative, regulatory, arbitration, or other proceeding based on the Released Claims.

13. Before the Final Approval Hearing, Plaintiff's Counsel shall file with the Court the Opt-Out List, along with an affidavit attesting to the accuracy of the Opt-Out List.

14. Each Class Member who has not submitted a timely and proper request for exclusion from the Class and who wishes to object to the fairness, reasonableness, or adequacy of the Agreement or any term or aspect of the proposed settlement, or to intervene in the Lawsuit, must mail to Plaintiff's Counsel (who shall forward it to Counsel for Defendant) and file with the Court no later than February 2, 2015 (60 days after the Mailed Notice Date) a statement of the objection or motion to intervene, as well as the specific legal and factual reasons for each objection or motion to intervene, including any support the Class Member wishes to bring to the State Court's attention, and all evidence the Class Member wishes to introduce in support of his or her objection or motion, or be forever barred from objection or motion to intervene. The objection must comply with the Agreement and the Mailed Notice, and must contain at least the following: (1) a heading that refers to the Lawsuit by case name and Case Number; (2) a statement of the specific legal and factual basis for each objection or intervention argument; (3) a statement whether the objecting or intervening person intends to appear at the Final Approval Hearing, either in person or through counsel and, if through counsel, a statement identifying that counsel by name, bar number, address, and telephone number; (4) a description of any and all evidence the objecting person may offer at the Final Approval Hearing, including but not limited to the names, addresses, and expected testimony of

any witnesses; all exhibits intended to be introduced at the Final Approval Hearing; and documentary proof of the objecting person's membership in the Settlement Class; and (5) a list of other cases in which the objector or intervenor or counsel for the objector or intervenor has appeared either as an objector or counsel for an objector in the last five years. All objections shall be signed by the objecting Class Member (or his or her legally authorized representative), even if the Class Member is represented by counsel. Any motion to intervene must further comply with the New Mexico Rules of Civil Procedure and the Local Rules of the Court. Furthermore, all objectors shall make themselves available to be deposed by any Party in Lincoln county within seven (7) days of service of his or her timely written objection.

15. Any attorney hired by, representing, or assisting (including, but not limited to, by drafting or preparing papers for a Class Member) a Class Member for the purpose of objecting to any term or aspect of the Agreement or to the proposed settlement or intervening in the Lawsuit shall mail to Plaintiff's Counsel (who shall forward it to Counsel for Defendant) and file with the Clerk of the Court a notice of appearance no later than February 2, 2015 (60 days after the Mailed Notice Date).

16. The right to object to the proposed settlement or to intervene must be exercised individually by a Class Member or his or her attorney, and not as a member of a group, class, or subclass, except that such objections and motions to intervene may be submitted by a Class Member's legally authorized representative.

17. The Court stays all proceedings in this Lawsuit until further order of the Court, except that the Parties may conduct such limited proceedings as may be necessary to implement the proposed settlement or to effectuate the terms of the Settlement Agreement.

18. The Final Approval Hearing shall be held at 10:00 a.m./p.m. on April 13, 2015, for the purpose of determining (a) whether the settlement is fair,

reasonable, and adequate and should be finally approved by the Court; (b) the merit of any objections to the settlement; and (c) entry of final judgment approving the settlement.

19. The Court may, for good cause, extend any of the deadlines set forth in this Order without further notice to the Settlement Class.

SO ORDERED



THE HONORABLE KAREN L. PARSONS
DISTRICT JUDGE, 12TH JUDICIAL DISTRICT

SUBMITTED BY:

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