

SETTLEMENT AGREEMENT

In consideration of their agreements set forth in this Settlement Agreement, Bruce Throne, Annie Campbell, Mark Baker, Robert Josephs, Christopher Worland, Steven Clark, Sol y Lomas Homeowner Association, Inc. and Plazas at Pecos Trail Homeowners Association, Inc., Plaintiffs-Appellants in First Judicial District Court Case No. D-101-CV-00892 (collectively, “Appellants”), the Governing Body of the City of Santa Fe, Defendant-Appellee (“the City”) and Pierre Amestoy, Real Party in Interest (“Amestoy”) in that case (collectively, “the Parties”) intend to fully and finally settle all claims and issues between and among them regarding the City’s approval of Amestoy’s final subdivision plat (“Final Plat”) for property located at 2200 Old Pecos Trail, Santa Fe, New Mexico (the “Property”) in City Appeal Case No. 2023-7297-APPL and the March 21, 2025 Order Affirming the Decision of the Governing Body of the City of Santa Fe by the First Judicial District Court (Honorable Bryan Biedscheid):

I. Agreements by the City.

1. Prior to recordation of the Final Plat with Santa Fe County, notes shall be added to the Final Plat stating as follows:

a. “No dwelling or other structure on any lot shall exceed 18’ in height, including parapets and pitched roofs.”

b. “Walls/fences are prohibited within the minimum 75’ building setback from the Old Pecos Trail right-of-way. Walls/fences along the 75’ building setback shall be of a design type (such as wood split rail fencing approved by the Land Use Director prior to submitting a construction permit.”

c. “Each lot in this subdivision is subject to the 50% ‘open space’ requirement in SFCC 1987, § 14-5.5(A)(4)(b)(v), the general ‘open space’ provisions in SFCC 1987, § 14-7.5.A

and, if lot coverage exceeds 40%, the ‘residential private open space standards’ in SFCC 1987 § 14-7.5(C).”

2. Prior to recordation of the Final Plat with Santa Fe County, the City shall not remove or allow the removal of any notes or other statements on the Final Plat addressing building or other development restrictions applicable to the subdivision of 2200 Old Pecos Trail that were shown on the Final Plat as of March 13, 2024 when the Governing Body adopted its Findings and Conclusions in City Case No. 2023-7297-APPL except as necessary to implement the Motion to Modify the Planning Commission’s decision passed by the Governing Body in that case and the City’s agreement regarding the notes described in items I.1(a) through 1(c) of this Settlement Agreement.

3. The City’s agreements under this Settlement Agreement are subject to approval by its Governing Body, which shall be indicated by the City’s execution of this Agreement by its authorized representative.

II. Appellants’ and Amestoy’s Agreements.

4. Within sixty (60) days of the effective date of this Settlement Agreement, Amestoy’s counsel shall submit proposed CC&Rs for the subdivision by electronic mail to Appellants’ counsel that Amestoy’s counsel believes accurately set forth all building restrictions and development requirements stated on Amestoy’s Final Plat as agreed to in this Settlement Agreement.

5. For the purpose of determining whether Amestoy’s proposed CC&Rs accurately set forth all building restrictions and development requirements stated on Amestoy’s Final Plat as agreed to in this Settlement Agreement, Amestoy’s counsel shall consider the alleged inconsistencies between provisions in the CC&Rs Amestoy submitted to the City on April 10,

2023 and the building restrictions and development requirements stated on Amestoy's Final Plat, as agreed to in this Settlement Agreement, described at pages 41-42 of Appellants' Verified Appeal Petition to the Governing Body in City Case No. 2023-7297-APPL.

6. Appellants' counsel shall have fourteen (14) days following receipt of Amestoy's proposed CC&Rs to notify Amestoy's counsel by electronic mail if he or she believes those CC&Rs do not accurately set forth the building restrictions and development requirements stated on Amestoy's Final Plat as agreed to in this Settlement Agreement and, if so, why.

7. If Appellants' counsel notifies Amestoy's counsel that, in his or her opinion, Amestoy's proposed CC&Rs do not accurately set forth the building restrictions and development requirements stated on Amestoy's Final Plat as agreed to in this Settlement Agreement, counsel for Amestoy and counsel for Appellants shall engage in good faith efforts to resolve any such differences of opinion within fourteen (14) days after such notice.

8. As soon as practicable after agreeing that Amestoy's proposed CC&Rs accurately set forth the building restrictions and development requirements stated on Amestoy's Final Plat as agreed to in this Settlement Agreement, Amestoy's counsel and Appellants' counsel, either jointly or separately, shall so notify the City Attorney by electronic mail.

9. Amestoy, or his successor(s) or assign(s) if any, shall not sell or convey any lots in the subdivision to any other person(s) or entity until the CC&Rs applicable to the subdivision, as agreed to in this Settlement Agreement, have been recorded with Santa Fe County, subject to the following exception : Amestoy may sell the entire subdivision to another person or entity prior to recordation of the CC&Rs in Santa Fe County as agreed to in this Settlement Agreement, provided that he discloses this Settlement Agreement to any such person or entity prior such a

sale and Amestoy's obligations under this Agreement shall be binding on any such person(s) or entity.

10. Amestoy shall not submit the Final Plat to the City for recording with Santa Fe County until such time as counsel for Appellants and Amestoy notify the City Attorney, in the manner provided below, that they agree that Amestoy's Declaration of Covenants, Conditions and Restrictions ("CC&Rs") applicable to lots in the subdivision of the Property approved by the City accurately set forth the building restrictions and development requirements stated on the Final Plat.

11. Amestoy's counsel shall notify Appellants' counsel by electronic mail that the CC&Rs for the subdivision have been recorded with Santa Fe County once Amestoy is informed by the City that it has recorded the CC&Rs.. Appellants will not appeal any future decision by the City Land Use Department Director or the City Engineer regarding whether any public street lighting is required for Amestoy's subdivision of the Property.

12. Nothing in this Settlement agreement shall prevent any of the Appellants from submitting comments to the City Land Use Department's director or staff or the City Engineer addressing whether public street lighting should be required for Amestoy's subdivision of the Property.

13. As soon as practicable after the effective date of this Settlement Agreement, Appellants (through their counsel) shall file a notice of withdrawal of appeal with the New Mexico Court of Appeals and withdraw their Petition for Writ of Certiorari and Notice of Appeal in Case No. A-1-CA-42608, challenging the First Judicial District Court's March 21, 2025 Order Affirming the Decision of the Governing Body of the City of Santa Fe in Case No. D-101-CV-00892.

III. Agreements by All of the Parties

14. Nothing in this Settlement Agreement is intended to address or affect the merits of Appellants' pending appeal of the City's Rezoning Decision regarding 2200 Old Pecos Trail in Case No. No. A-1-CA-41954, or may be referred to by any Party in that appeal.

15. Any of the Parties to this Settlement Agreement shall have the right to enforce it in the First Judicial District Court; if any such enforcement action is filed with that Court by any of the Parties and that Court accepts jurisdiction over the matter, the prevailing party as between any of the Appellants named in such action and Amestoy and/or his successor(s) or assign(s), if any, shall be entitled to recover their reasonable attorney fees and costs, and in no event shall the City be responsible for paying any such fees or costs.

16. This Settlement Agreement shall be binding on each of the Parties and their successor(s) or assign(s), if any.

17. This Settlement Agreement shall become effective on the latest date on which it is executed by the Parties as indicated below.

18. This Settlement Agreement constitutes the entire agreement by the Parties regarding settlement of the subject matter addressed herein and there are no other written or oral agreements between or among the Parties regarding the subject matter of this Agreement.

For Appellants by:

Thomas Hnasko
Hinkle Shanor LLP
Counsel for Appellants

Dated: _____, 2025

For Pierre Amestoy by:

Joseph Karnes, Esq., Attorney for Pierre Amestoy

Dated: _____, 2025

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the date of the signature by the required approval authorities below:

CITY OF SANTA FE:

ALAN WEBBER, MAYOR

ATTEST:

ANDREA SALAZAR, INTERIM CITY CLERK

CITY ATTORNEY'S OFFICE:

ASSISTANT CITY ATTORNEY

APPROVED FOR FINANCES:

EMILY OSTER, FINANCE DIRECTOR