

STATE OF NEW MEXICO  
COUNTY OF SANTA FE  
FIRST JUDICIAL DISTRICT COURT

Case No.: D-101-CV-2021-02418

DURAN FAMILY TRUST, LLC, a New  
Mexico Limited Liability Company,

Plaintiff,

v.

THE CITY OF SANTA FE, a New Mexico  
Municipal Corporation,

Defendant.

**SETTLEMENT AGREEMENT AND MUTUAL RELEASE**

This Settlement Agreement and Mutual Release (“Agreement”) is made and enter into by Plaintiff, Duran Family Trust, LLC (“**Plaintiff**”), and Defendant, The City of Santa Fe (“**Defendant**”), collectively the “Parties”. The Parties hereby agree to resolve the above-captioned lawsuit and any other disputes, claims, and potential claims between the Parties arising from or relating to the above-captioned lawsuit by entering into this Agreement. This Agreement is effective as of the date of the last Party signature entered below. The Parties recite and agree as follows:

**RECITALS**

A. On December 16, 2021, the Defendant was served with the Amended Complaint for Declaratory Relief (“Amended Complaint”), seeking to define and limit the City’s property interest in 730 Alto Street and its buildings and improvements, which is described in the City’s Quitclaim Deed as:

The building and all improvements made in whole or in part with publicly appropriated monies which are located upon the following described real estate in

Santa Fe County, New Mexico:

Legal Description:

A certain Parcel of land designated as Parcel 93, within the Guadalupe Neighborhood, being the Santa Fe Boys & Girls Club, Lying and being situate at 730 Alto Street, within the Santa Fe Grant, within projected Section 23, Township 17 North, Range 9 East, N.M.P.M., City of Santa Fe, County of Santa Fe New Mexico Being more particularly described as follows:

Beginning at a City of Santa Fe 2 1/2" brass disk designated as CD-24, located at the center line of the North end of a concrete foot bridge across the Santa Fe River, located near Closson Street, Thence South 75°10' 27" West a distance of 975.33 feet to the point and place of beginning the Northeast corner of Parcel 93, a point on the South right of way of Alto Street;

Thence from said point of beginning South 03° 57' 48" West, a distance of 68.57 feet; thence South 02° 29' 01" West, a distance of 41.19 feet; thence South 03° 19' 45" West, a distance of 99.93 feet; thence South 01 ° 52' 53" West, a distance of 49.88 feet; thence South 03° 20' 09" West, a distance of 50.01 feet; thence South 01 ° 57' 41 " West, a distance of 61.93 feet; thence South 05° 18' 50" West, a distance of 95.64 feet; thence South 05° 18' 39" West, a distance of 96.20 feet the southeast corner of this Parcel; thence North 87° 42' 34" West a distance of 14.85 feet; thence North 87° 39' 37" West, a distance of 181.02 feet the south west corner of this Parcel; thence North 02° 35' 24" East, a distance of 200.23 feet; thence North 00° 45' 39" East, a distance of 39.98 feet; thence North 03° 16' 17" East, a distance of 110.09 feet; thence North 03° 36' 09" East, a distance of 50.19 feet; thence North 03° 12' 39" East, a distance of 79.45 feet; thence North 02 ° 23' 27" East, a distance of 97. 66 feet the Northwest corner of this Parcel; thence South 83° 37' 44" East, a distance of 206.19 feet to the point of Beginning.

Containing 2.661 acres, more or less.

Stated in the Amended Complaint as follows:

Parcel Guadalupe 93 as shown Neighborhood on Plat of Rep lat Survey of Portions entitled of "Plat Kings of Map Survey Block Showing 61 & 62, Lands Plat in G ... "filed for record on January 29, 1979 as Document 433,628, in Plat Book 68, Page 11, and Plat Book 300, Page 038 records of Santa Fe County, New Mexico. (the "Property").

B. Plaintiff's ownership interest arises from that certain Warranty Deed recorded in the real property records of Santa Fe County on December 22, 2020, as Instrument No. 1938309, and Defendant's ownership interest arises from that certain Quitclaim Deed recorded in the real property

records of Santa Fe County on December 24, 2020, as Instrument No. 1938524.

C. Each party has been informed and advised by its counsel, Duran Family Trust, LLC, a New Mexico limited liability company, represented by Karl H. Sommer at Sommer Karnes & Associates, LLP, and the City of Santa Fe represented by Erin K. McSherry, City Attorney, and Andrea Salazar, Assistant City Attorney the terms entered into within the agreement below.

D. The Parties have each agreed to settle this dispute, including, but not limited to, each and every issue that is raised in the Amended Complaint, Answer, and Cross-Complaint, as well as each and every claim that could have been raised by the parties.

E. The parties are each entering into this Agreement to avoid the further expense of litigation and to settle the claims which have been asserted or could have been asserted in litigation.

NOW, THEREFORE, in consideration of the promises and of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, it is agreed by and between the Parties hereto that:

### **AGREEMENT**

1. **Purchase of Property.** Plaintiff agrees to purchase from Defendant, and Defendant agrees to sell to Plaintiff, all of Defendant's claimed right, title, and interest to the Property ("**Defendant's Property Interest**"), subject to the completion of the statutory requirement for the sale of property, NMSA 1978, Section 3-54-1. Defendant shall deliver title by Quitclaim to Plaintiff at Closing in the form of the attached **Exhibit A**.

2. **Purchase Price.** Plaintiff shall pay \$400,000.00 in cash at Closing, together with all rental payments received by Plaintiff for the Property from December 22, 2020, through the present in the amount of \$90,000.00, which Plaintiff represents and warrants to Defendant is the total amount received by Plaintiff from any and all tenants for the occupancy of the buildings on the

Property since Plaintiff acquired its interest in the Property. The \$90,000 amount is equal to the amount owed to Defendant in rent for the period of time since the City's prior tenant assigned a lease agreement to Plaintiff.

3. Closing; Closing Costs. Closing shall take place no later than five (5) days following the completion of the statutory requirements in Section 3-54-1 by all parties hereto. Closing shall take place at Southwestern Title & Escrow (Amanda Adelo). The Parties shall share equally in all closing costs, except that Defendant shall pay the cost of an owner's policy of title insurance in the amount of \$400,000.00, naming Plaintiff as the insured.

4. Purchase "As Is". Plaintiff is purchasing the Defendant's Property Interest in an "as is" condition with all known and latent defects. Defendant makes no representations or warranties as to the physical condition of the Property, and Plaintiff is not relying upon any statements or information obtained from Defendant concerning the condition of the Property in Plaintiff's decision to purchase the Property.

5. Dismissal With Prejudice. Upon complete performance of the obligations of the Parties at Closing as defined above, the Parties agree to file a Joint Motion and Stipulated Order to Dismiss the above-captioned lawsuit with prejudice and to pay their own costs and attorney fees related thereto. In making this Agreement, neither Party admits, concedes, or concurs as to any liability or wrongdoing set forth in the Complaint, Amended Complaint, or Cross-Complaint in the above-captioned case, nor to any facts alleged in those pleadings. Plaintiff's counsel shall prepare and submit to Defendant's counsel the form of the Joint Motion and Order at Closing.

6. Mutual Releases.

A. Except for the obligations arising out of this Agreement, Plaintiff hereby releases and forever discharges Defendant and its employees, officials, administrators, successors,

agents, assigns, transferees and transferors, and legal representatives (“**Defendant Releasees**”) from all demands, liabilities, losses, harm, injury, charges, claims, judgments, causes of action, or suits, of whatever kind or nature, whether accrued, absolute, contingent, unliquidated, or otherwise, known or unknown, which the Plaintiff ever had, now has, or hereafter can, shall, or may have against Defendant Releasees for, upon, or by reason of any matter, cause, or thing whatsoever arising from or concerning the above-captioned lawsuit or related in any way to the transaction that gave rise to the above-captioned lawsuit.

B. Except for the obligations arising out of this Agreement, Defendant hereby releases and forever discharges Plaintiff and its employees, officials, administrators, successors, agents, assigns, transferees and transferors, and legal representatives (“**Plaintiff Releasees**”) from all demands, liabilities, losses, harm, injury, charges, claims, judgments, causes of action, or suits, of whatever kind or nature, whether accrued, absolute, contingent, unliquidated, or otherwise, known or unknown, which the Defendant ever had, now has, or hereafter can, shall, or may have against Plaintiff Releasees for, upon, or by reason of any matter, cause, or thing whatsoever arising from or concerning the above-captioned lawsuit or related in any way to the transaction that gave rise to the above-captioned lawsuit.

7. Authority. The Parties represent and warrant that they possess the full power and authority to enter, execute, deliver, and perform this Agreement and to lawfully and effectively release the other or opposing Party as set forth herein, free of any rights of settlement, approval, subrogation, or other condition or impediment. This undertaking includes specifically, without limitation, the representation and warranty that no third party has now acquired or will acquire rights to present or pursue any claims arising from or based upon the claims that have been released herein.

8. Necessary Documents. The Parties agree to enter into and execute such further documents or instruments as may be necessary and appropriate to effectuate this Agreement.

9. Counterparts. This Agreement may be executed in separate counterparts, each of which shall be deemed to be a fully executed original as to all parties that have executed any one or more of those separate counterparts.

10. Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and each and all of their heirs, personal representatives, successors, and assigns.

11. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of New Mexico.

12. Modification. No oral agreement, statement, promise, undertaking, understanding, arrangement, act, or omission of any Party, occurring subsequent to the execution and effective date of this Agreement may be deemed an amendment or modification of this Agreement unless reduced to writing and signed by the Parties hereto or their respective successors or assigns.

13. Severability. The Parties agree that if, for any reason, a provision of this Agreement is held unenforceable or invalid by any court of competent jurisdiction, such unenforceability or invalidity shall not affect other provisions of this Agreement which are capable of being given effect without the unenforceable or invalid provisions.

14. Entire Agreement. This Agreement constitutes the entire agreement of the Parties and supersedes all prior or contemporaneous agreements, discussions, or representations, oral or written, with respect to the subject matter hereof, and each of the parties hereto states that they have read each of the paragraphs hereof and that they understand the same and understand the legal obligations created thereby.

15. Notices. Any notices given or required to be given under this Agreement shall be in writing and delivered either personally, by first class mail, via commercial overnight courier, via facsimile transmission, or via electronic mail (e-mail) as follows:

Any notice given to Plaintiff shall be sent as follows:

Duran Family Trust, LLC  
c/o Karl H. Sommer  
Sommer Karnes & Associates, LLP  
P. O. Box 2476  
Santa Fe, NM 87504  
(505) 989-3800  
[khs@sommerkarnes.com](mailto:khs@sommerkarnes.com)

Any notice given to Defendant shall be sent as follows:

City of Santa Fe  
c/o Erin K. McSherry, City Attorney  
P. O. Box 909  
Santa Fe, NM 87504  
[ekmesherry@santafenm.gov](mailto:ekmesherry@santafenm.gov)

Notices delivered personally, by electronic mail, by overnight mail, or by facsimile shall be deemed given when received. Notices delivered by mail shall be deemed given three business days after mailing. Parties may change their address for notices in a notice given pursuant to this paragraph.

**IN WITNESS WHEREOF**, and intending to be legally bound thereby, the Parties have executed this Mutual Release and Settlement Agreement as of the date last entered below.

Plaintiff:

**DURAN FAMILY TRUST, LLC**


By :   
Bronson Duran Managing Member

2/6/2023  
Date

Approved as to form:


Sommer Karnes & Associates, LLP PO Box 2476

Attorneys for Plaintiff

By:   
Karl H. Sommer  
P. O. Box 2476  
Santa Fe, NM 87504  
(505) 989-3800  
[khs@sommerkarnes.com](mailto:khs@sommerkarnes.com)


Defendant:

**CITY OF SANTA FE**

By :   
Mayor Allen Webber


Feb 28, 2023  
Date

Attested:

  
Kristine Bustos-Mihelcic *XIV*  
City Clerk  
City of Santa Fe GB MTG 2/22/23

Feb 28, 2023  
Date

Approved as to form:

  
Erin McSherry  
City Attorney  
P. O. Box 909  
Santa Fe, New Mexico 87504  
(505) 955-6511

Feb 28, 2023  
Date



**EXHIBIT A**

**QUITCLAIM DEED**

The City of Santa Fe, a Municipal Corporation, herein “Grantor”, for adequate consideration paid, quitclaims to Duran Family Trust LLC, a New Mexico limited liability company, herein “Grantee”, whose address is P.O. Box 94327, Albuquerque, NM 87119, its ownership interest in building improvements located on the following described real estate in the City and County of Santa Fe, New Mexico, being more particularly described as follows to-wit:

Ownership interest in the buildings and improvements which are located upon the following described real estate more, particularly described as Parcel 93 of the Guadalupe Neighborhood as shown and delineated on “PLAT OF SURVEY FOR THE SANTA FE BOYS AND GIRLS CLUB - PARCEL 93 - 730 ALTO ST”, filed for record as Document No. 901,534 in Plat Book 300, page 038, records of Santa Fe County, New Mexico.

Subject to reservations, restrictions, easements of record and taxes for the year of 2023 and thereafter.

Witness my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, 2023.

CITY OF SANTA FE,  
A MUNICIPAL CORPORATION

By: \_\_\_\_\_  
ALAN WEBBER, MAYOR

ATTEST:

\_\_\_\_\_  
KRISTINE BUSTOS-MIHELICIC,  
CITY CLERK

APPROVED AS TO LEGAL SUFFICIENCY:

\_\_\_\_\_  
CITY ATTORNEY

ACKNOWLEDGMENT

STATE OF NEW MEXICO)  
                                          )SS.  
COUNTY OF SANTA FE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023 by Alan Webber, Mayor, on behalf of the City of Santa Fe, a Municipal Corporation.

My commission expires:

\_\_\_\_\_  
(Seal)

\_\_\_\_\_  
Notary Public












# 23-0051 Duran Family Trust CAO GB

Final Audit Report

2023-02-28

Created:	2023-02-23
By:	Xavier Vigil (xivigil@ci.santa-fe.nm.us)
Status:	Signed
Transaction ID:	CBJCHBCAABAARHQdbpFeXxQvkXQLFaPn6IoxN5_g31ys

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-  Document created by Xavier Vigil (xivigil@ci.santa-fe.nm.us)  
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2023-02-28 - 7:21:41 PM GMT- IP address: 63.232.20.2
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Signature Date: 2023-02-28 - 7:45:13 PM GMT - Time Source: server- IP address: 63.232.20.2
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2023-02-28 - 7:49:48 PM GMT- IP address: 104.47.64.254
-  Document e-signed by Kristine Mihelcic (kmmihelcic@santafenm.gov)  
Signature Date: 2023-02-28 - 7:50:11 PM GMT - Time Source: server- IP address: 63.232.20.2
-  Agreement completed.  
2023-02-28 - 7:50:11 PM GMT

