

INCORPORATED COUNTY OF LOS ALAMOS RESOLUTION NO. 18-25

**A RESOLUTION APPROVING THE APPLICATION AND PETITION OF
SITE A-19-A-1 ACQUISITION GROUP, LLC, FOR FORMATION OF THE
MIRADOR PUBLIC IMPROVEMENT DISTRICT**

RESOLUTION

APPROVING THE APPLICATION AND PETITION OF SITE A-19-A-1 ACQUISITION GROUP, LLC, FOR FORMATION OF THE MIRADOR PUBLIC IMPROVEMENT DISTRICT PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT, NMSA 1978, §§ 5-11-1 to -27 (2001, AS AMENDED); MAKING FINDINGS IN CONNECTION WITH THE APPLICATION AND PETITION AND SUPPORTING DOCUMENTATION REQUESTING APPROVAL OF THE FORMATION OF THE DISTRICT; DETERMINING THE REAL PROPERTY TO BE INCLUDED WITHIN THE DISTRICT AND THE PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE GENERAL PLAN, FEASIBILITY STUDY, RATE, METHOD OF APPORTIONMENT AND MANNER OF COLLECTION OF A SPECIAL LEVY TO BE IMPOSED UPON REAL PROPERTY WITHIN THE DISTRICT, AND APPROVING A DEVELOPMENT AGREEMENT FOR THE DISTRICT; ESTABLISHING PARAMETERS FOR THE ISSUANCE OF SPECIAL LEVY BONDS; AUTHORIZING THE DISTRICT TO ISSUE SUBORDINATE OBLIGATIONS; PROVIDING FOR GOVERNANCE OF THE DISTRICT; PROVIDING THAT BONDS AND OTHER OBLIGATIONS OF THE DISTRICT SHALL NOT BE OBLIGATIONS OF THE INCORPORATED COUNTY OF LOS ALAMOS; WAIVING CERTAIN REQUIREMENTS TO FORMATION OF A PUBLIC IMPROVEMENT DISTRICT; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS FORMATION RESOLUTION; DIRECTING THE MAILING OF A NOTICE OF ADOPTION OF THIS FORMATION RESOLUTION BY THE CLERK OF THE INCORPORATED COUNTY OF LOS ALAMOS; AND TAKING RELATED ACTION.

Capitalized terms used in the recitals below and not defined therein shall have the meanings ascribed to such terms in Section 1 hereof.

WHEREAS, the New Mexico Public Improvement District Act, NMSA 1978, §§ 5-11-1 to -27 (2001, as amended) (hereafter “Act”) provides that an application and petition may be filed with the governing body of a municipality for the formation of a public improvement district (hereafter “PID” or “District”) for the purpose of financing public infrastructure improvements; that, unless waived pursuant to the Act, and upon a finding of cause, a governing body shall hold a hearing to determine whether a public improvement district should be formed; and, upon determination that formation of a PID is in the interest of the property owners and the citizens of the governing body's jurisdiction, shall order that the PID be formed, and that the PID shall be formed without an owner election if the application and petition was submitted by the owner(s) of one hundred percent (100%) of the property proposed to be included within the district; and

WHEREAS, the formation of a PID may result in the imposition of special levies to pay the costs of public infrastructure to be acquired by a PID; and

WHEREAS, the Act authorizes owners, PIDs, and counties to enter into PID development agreements to establish the obligations of the owner or developer, the County and the PID concerning the zoning, subdivision, improvement, impact fees, financial responsibilities, and other matters relating to the development, improvement and use of real property within the district; and

WHEREAS, the Applicant, pursuant to the Act, has presented to the governing body of the County an *Application and Petition for Approval of the Formation of the Mirador Public Improvement District* (hereafter “Petition”) and the following documents in support of its Petition:

(i) a description of the proposed District, including a legal description and current title report for the Land, the identity and addresses of all persons or entities with any interest in the property, evidence that there are no resident qualified electors on the Land and that the owners of the Land have unanimously consented to the formation of the District, and a description of the appropriateness of the boundaries;

(ii) a General Plan, which includes, among other things, a description of the District's boundaries, anticipated types and locations of Infrastructure Improvements,

information regarding the future ownership and maintenance of the Infrastructure Improvements, and adequate information to establish financial parameters for operation of the District;

(iii) a Feasibility Study, which includes a market absorption study, description of improvements to be constructed, construction schedule and financing plan for the Infrastructure Improvements upon formation of the District, a description of the Applicant's equity contribution and the timing and sources of the contribution, and an operating plan for the Infrastructure Improvements;

(iv) a Rate and Method of Special Levy Apportionment in sufficient detail to enable each owner or resident within the District to estimate the maximum amount of the proposed District Special Levy;

(v) an appraisal by a Member, Appraisal Institute ("MAI");

(vi) a description of Applicant's development experience and financial ability to complete the Infrastructure Improvements;

(vii) forms of Disclosure of District Special Levy;

(viii) a description of the consistency of the District with the County's development policies and objectives;

(ix) a draft Development Agreement to be entered into by and between the County, the District, and the Applicant;

(x) a draft of this Formation Resolution; and

WHEREAS, except for those improvements that are dedicated and conveyed to another governmental entity, the PID Funded Infrastructure Improvements shall be designed and constructed according to all applicable local, State, County, or federal requirements, shall be suitable for dedication to the County upon completion by Developer, and shall be acquired by the District and then dedicated to, owned and operated by the County; and

WHEREAS, pursuant to the PID Development Agreement, the District shall fund the cost of formation and acquisition of PID Funded Infrastructure Improvements from the Applicant with proceeds of (i) one or more series of District Bonds, as provided in the Act, which shall be payable from the District Special Levy, and/or (ii) the collection of the District Special Levy, with or without the issuance of the District Bonds, through, among

other things, the satisfaction of one or more Subordinate Obligations; and

WHEREAS, pursuant to the Petition, the District shall (i) be responsible for imposing the District Special Levy as provided in the Act, (ii) adopt procedures for the foreclosure of delinquent District Special Levy liens on the Land, and (iii) administer the District Special Levy, including any required payments to the County Assessor and County Treasurer from the proceeds of the District Special Levy; and

WHEREAS, pursuant to the Formation Documents, the PID shall finance and acquire the PID Funded Infrastructure Improvements to serve approximately forty-seven (47) acres of land, located wholly within the corporate boundaries of the County to consist of an estimated one hundred sixty-one (161) single family residential dwelling units, fifty-four (54) multifamily residential dwelling units, and four thousand two hundred fifty (4,250) building square feet of commercial/retail, which is an authorized purpose and appropriate use of a public improvement district as set forth in the Act; and

WHEREAS, the County Council has considered the Application and Petition and has determined that the formation of the District is consistent with the Act and promotes the interests, convenience and necessity of the owners, residents of the PID, and citizens of the County.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE INCORPORATED COUNTY OF LOS ALAMOS THAT:

Section 1. As used in this Formation Resolution, the following terms shall have the meanings specified, unless the context clearly requires otherwise (such meanings to be equally applicable to both the singular and the plural forms of the terms defined):

A. “Act” means the Public Improvement District Act, NMSA 1978, §§ 5-11-1 to 5-11-27 (2001, as amended) and the home rule powers and all enactments of the County Council.

B. “Applicant” means Site A-19-A-1 Acquisition Group, LLC, a New Mexico limited liability company.

C. “Application” means the Application and Petition filed with the County for the formation of the Mirador Public Improvement District and all documentation incorporated by reference in the Petition, submitted to the County pursuant to the Act.

D. "Bond Resolution" means one or more resolutions of the District Board authorizing issuance of one or more series of District Bonds for the purpose of financing the acquisition of the PID Funded Infrastructure Improvements and other eligible costs, which are subject to the financing parameters and other applicable requirements established in this Formation Resolution.

E. "County" means the Incorporated County of Los Alamos, New Mexico.

F. "County Clerk" means the Clerk of the Incorporated County of Los Alamos, New Mexico.

G. "Council" means the elected Council of the County.

H. "PID Development Agreement" means the Infrastructure Development and Acquisition Agreement dated as of even date herewith by and between the County, the District, and the Applicant, which agreement shall memorialize the obligations of the District to the County and the Applicant, shall be binding upon and enforceable against the District immediately following adoption of this Formation Resolution, with no further action by the District, and shall then be subsequently ratified and executed by the District.

I. "Disclosure of District Special Levy" means each disclosure of special levy in the forms attached as Exhibit 8 to the Application.

J. "District" means the Mirador Public Improvement District.

K. "District Board" means the governing body of the District.

L. "District Bonds" means one or more series of bonds proposed to be issued by the District pursuant to the Act, which are secured by a first lien and pledge of the District Special Levy.

M. "District Boundary Map" means the map attached as Exhibit A to the General Plan.

N. "District Special Levy" or "District Special Levies" means the special levy or special levies to be imposed on the Land pursuant to NMSA 1978, § 5-11-20 (2013).

O. "Feasibility Study" means the study of the estimated costs and financing methods of the Infrastructure Improvements, including the Plan of Finance,

submitted by the Applicant in connection with the Application and as supplemented or amended from time to time.

P. “Formation Documents” means the Application, the Petition, the General Plan, the Feasibility Study, Rate and Method of Special Levy Apportionment, the Development Agreement, and such other documents as are required by the Act to be submitted by the Applicant in connection with an application for the formation of the District.

Q. “Formation Resolution” means this resolution adopted by the County Council in connection with its approval of the formation of the District.

R. “General Plan” means the General Plan submitted by the Applicant in connection with the Application and as supplemented or amended from time to time, which is on file with the County Clerk and includes, among other information, a map depicting the boundaries of the District and the real property proposed to be included in the District, a general description of anticipated improvements and their locations, and general cost estimates, proposed financing methods and anticipated District Special Levies.

S. “Infrastructure Improvements” means the PID Funded Infrastructure Improvements, as well as all other public and private improvements on the Land to be financed from sources other than the District Special Levy.

T. “Land” means the real property described in the District Boundary Map.

U. “MAI Appraisal” means the valuation of the Land as of July 25, 2018, as prepared by David Pearson, MAI.

V. “Petition” means the petition for formation of the District submitted by the Petitioner to the County pursuant to the Act, which contains the signature of the owner of one hundred percent (100%) of the Land and requests that the County declare the District formed without requiring compliance with the provisions for posting, publication, mailing, notice, hearing and owner election provided in the Act.

W. “Petitioner” means Site A-19-A-1 Acquisition Group, LLC, a New Mexico limited liability company, which is the sole owner of 100% of the Land.

X. “PID Funded Infrastructure Improvements” means the portion of the

Infrastructure Improvements financed with the proceeds of the District Bonds, Subordinate Obligations, and/or revenues derived from the collection of the District Special Levy, as identified in the General Plan.

Y. "Plan of Finance" means the plan of finance included in Section VI of the Feasibility Study as contained in the Application and Petition.

Z. "Rate and Method of Special Levy Apportionment" means the rate, method of apportionment and manner of collection of the District Special Levy submitted by the Applicant in connection with the Application and as supplemented or amended from time to time.

AA. "State" means the State of New Mexico.

BB. "Subordinate Obligations" means one or more subordinate bonds, subordinate promissory notes and/or other subordinate obligations, secured by a second priority pledge of the District Special Levy and constituting a reimbursement obligation, issued by the District to memorialize the obligation of the District to pay the costs of PID Funded Infrastructure Improvements received by the District plus interest at a rate authorized by the District Board on the principal amount of such promissory notes and/or other subordinate obligations.

Section 2. Construction of Formation Resolution. Except as otherwise expressly provided in this Formation Resolution, or unless the context otherwise requires:

A. All words and phrases shall be construed and understood according to the common and approved usage of language, but technical words and phrases and such others as may have acquired a peculiar and appropriate meaning in the law shall be construed and understood according to such peculiar and appropriate meaning.

B. The singular includes the plural and the plural includes the singular.

C. Words importing any gender include the other gender.

D. All references to Sections shall refer to Sections of this Formation Resolution, unless otherwise stated.

E. "Herein," "hereby," "hereunder," "hereof," "hereinbefore" and "hereafter" refer to this Formation Resolution and not solely to the particular portion of this Formation Resolution in which such word is used.

F. All times shall be local time in the County unless otherwise designated in this Formation Resolution.

Section 3. Findings. The County hereby declares that it has considered the Application and all other relevant information and data, and hereby makes the following findings:

A. The Petitioner owns one hundred percent (100%) of the Land and no resident qualified electors or any other persons are located on the Land within the fifty (50) days immediately preceding the date of adoption of this Formation Resolution.

B. As planned and proposed by the Applicant, the Infrastructure Improvements to be conveyed to the County have been or will be constructed to County specifications and shall be subject to inspection, approval and acceptance by the County prior to conveyance to the County, as described in the PID Development Agreement.

C. The District Bonds and Subordinate Obligations shall not be backed by the credit, general funds, or resources of the County in any manner. Owners of the District Bonds or the Subordinate Obligations shall have no right to require the County or the District to impose ad valorem property taxes to pay amounts due under the District Bonds or the Subordinate Obligations.

D. The District shall serve the interests, convenience and necessity of the Applicant, the Petitioner, the future owners of the Land and the citizens of the County:

(i) The District shall be utilized to finance PID Funded Infrastructure Improvements benefitting the Land, which shall be developed as a master planned development, consisting of residential uses;

(ii) The information provided in the Application provides a reasonable basis upon which the Council has determined that all the Land is directly or indirectly benefited by the District, as contemplated by NMSA 1978, §§ 5-11-2(T) (2013) and 5-11-6(A) (2013);

(iii) The cost of constructing the PID Funded Infrastructure Improvements shall be apportioned in a reasonable manner among the owners of Land, in accordance with the Rate and Method of Special Levy Apportionment, and shall not be passed on to the citizens of the County, other than the owners of the Land, or the County

itself;

(iv) The County shall receive the benefit of the PID Funded Infrastructure Improvements through dedication of the Infrastructure Improvements not otherwise dedicated to another applicable governmental entity.

E. The Applicant has the financial capacity to undertake the development of the Infrastructure Improvements.

F. The Plan of Finance is feasible and shall not impose an undue burden on the future owners of the Land or served by the PID Funded Infrastructure Improvements.

G. The Plan of Finance shall enable the District to acquire the PID Funded Infrastructure Improvements in a cost-effective manner.

H. The District is planned and shall be implemented in a manner which provides for the expenses to be paid by the Applicant and the District, as applicable.

I. As planned, the District and the PID Funded Infrastructure Improvements are consistent with the County's existing development goals, growth management policies, and conservation policies.

J. The formation of the District and the issuance of District Bonds and Subordinate Obligations, subject to the requirements and limitations specified in this Formation Resolution, are consistent with the requirements of the Act.

Section 4. Formation of District; District Foreclosure Procedures for Delinquent Special Levies; Property Tax Levy.

A. The District is hereby ordered approved and formed to carry out the purposes set forth in, and according to the provisions of, this Formation Resolution. The District shall include the Land, which is the real property described in the General Plan's District Boundary Map and more particularly identified in the legal description attached as Exhibit 1 to the Application and Petition. In the event the District Board seeks a change in the boundaries of the District in compliance with NMSA 1978, § 5-11-13 (A) (2001), the District shall be deemed to have been formed after a formation election, which is waived herein pursuant to NMSA 1978, § 5-11-7(I) (2001), solely for purpose of permitting an area to be deleted from the boundaries of the District.

B. The Application and Petition are hereby accepted and approved.

C. The General Plan is hereby accepted and approved.

D. The Feasibility Study is hereby accepted and approved. The District shall implement and reasonably carry out the Plan of Finance.

E. The PID Development Agreement is hereby accepted and approved. The County Manager is hereby authorized and directed to execute the PID Development Agreement on behalf of the County. Any changes, insertions, deletions and modifications to the PID Development Agreement shall be deemed to have been approved by the Council upon execution and delivery of the PID Development Agreement by the County Manager, such execution and delivery to be conclusive evidence of such approval. The District shall be a party to the PID Development Agreement, as approved by the Council, immediately upon formation of the District and without any further action by the District and shall be bound to the obligations set forth therein.

F. The Rate and Method of Special Levy Apportionment, establishing the apportionment and manner of collection of District Special Levy in sufficient detail to enable each owner of all or a portion of the Land or resident within the District to estimate the maximum amount of the proposed District Special Levy, is hereby accepted and approved.

G. The Disclosure of District Special Levy is hereby approved.

H. The District shall be self-supporting and shall have the powers necessary and convenient to pay the costs of the District, including administrative and formation costs, and finance the acquisition of the PID Funded Infrastructure Improvements as provided in the Formation Documents. The District and the County shall be bound by the terms thereof; however, the Formation Documents (excluding the PID Development Agreement) may be amended or supplemented by the District, without further action by the County, provided that such amendment or supplement is within the financial parameters set by this Formation Resolution.

I. The officers, agents and employees of the County are hereby directed, authorized and empowered to do all acts and things and to execute and deliver all documents relating to or requested by the District and necessary to carry out and comply with the provisions of the Formation Documents.

J. The principal purpose of the District shall be to finance the acquisition of the PID Funded Infrastructure Improvements.

K. The District Special Levies to be imposed by the District shall not exceed the maximum amounts set forth in the Application, subject to adjustment consistent with the terms of the Act and the Rate and Method of Special Levy Apportionment.

L. The District Board shall use its best efforts to hold a public meeting within 60 days following the date of adoption of this Formation Resolution. At that meeting, the District Board shall adopt an open meeting policy and bylaws for the District; ratify and execute the PID Development Agreement, the terms of which shall be binding upon and enforceable against the District immediately upon formation notwithstanding this instruction by the Council to the District Board; direct the recording of the PID Development Agreement, the notice of formation, the notice of information, and certain related filings with the County Clerk, as contemplated by the Act; and, in compliance with NMSA 1978, § 5-11-8(D) (2001), take such other action toward administering in a reasonable manner the implementation of the General Plan including, but not limited to, the imposition of the District Special Levy, the acquisition of PID Funded Infrastructure Improvements, and the issuance of the District Bonds and/or Subordinate Obligations, as authorized by this Formation Resolution.

M. Pursuant to the authority granted in NMSA 1978, §§ 5-11-20(I) (2013) and 5-11-23(F) (2001), the District shall establish procedures for foreclosure of delinquent District Special Levies and for redemption of foreclosed property, which procedures shall be substantially similar to the foreclosure and redemption procedures applicable to Municipal Improvement Districts set forth in NMSA 1978, §§ 3-33-28 to 3-33-30 (1965, as amended), and as set forth for the District in the PID Development Agreement approved by this Formation Resolution.

N. The District is authorized to impose a tax levy in an amount not to exceed Three Dollars (\$3.00) per One Thousand Dollars (\$1,000.00) of net taxable value of taxable property within the boundaries of the District, unless a higher rate is approved pursuant to § 5-11-23(A) (2001).

Section 5. Authorization of District Bonds. The District may issue District Bonds pursuant to the terms of one or more Bond Resolutions in the amounts and subject to the financing requirements and limitations set forth in this Formation Resolution.

A. The maximum aggregate principal amount of the District Bonds shall not exceed Four Million Seven Hundred Forty Thousand Dollars (\$4,740,000.00) unless the District Bonds issued have an average coupon rate less than four and one-half percent (4.5%).

B. Each Bond Resolution shall include, at minimum, the following provisions for the protection of owners of the Bonds:

(i) Each Bond Resolution shall provide for the establishment of a debt service reserve fund in an amount acceptable to the District Board.

(ii) Each Bond Resolution shall include provisions for the public offering or private placement of District Bonds in accordance with the Act.

(iii) Each Bond Resolution shall provide that the District Bonds shall be sold pursuant to a limited public offering or private placement and issued in such denominations as determined by the District Board.

(iv) The minimum maturity of District Bonds shall be at least one (1) day. The final maturity date for Bonds shall not be more than thirty (30) years after the date of issuance of such series of District Bonds by a District.

(v) Each Bond Resolution shall include provisions for appointment of a trustee pursuant to an indenture of trust, a supplemental indenture of trust, or other similar instrument.

(vi) The District Bonds shall bear interest at rates not to exceed twelve percent (12%) per annum.

(vii) The maximum aggregate principal amount of District Bonds issued shall not exceed the estimated cost of the PID Funded Infrastructure Improvements to be financed by the District, as determined at the time a series of District Bonds is issued by the District, plus all costs connected with the issuance and sale of the District Bonds, including, without limitation, formation costs, credit enhancement and liquidity support fees and costs.

C. In addition to any other express or implied authority granted by the

Act, the District may issue Subordinate Obligations pursuant to NMSA 1978, §§ 5-11-10 (2001) and 5-11-20 (2013), the Formation Documents, and the terms of one or more resolutions of the District Board authorizing issuance of one or more Subordinate Obligations, for the purpose memorializing and/or satisfying the obligation of the District to pay for the value of the PID Funded Infrastructure Improvements received by the District.

Section 6. District Governance.

- A. The District Board shall initially be composed of the five (5) members:
- (i) one of whom shall be the County's Department of Public Works Director, or designee;
 - (ii) one of whom shall be the County's Chief Financial Officer, or designee;
 - (iii) one of whom shall be the Community Development Department Director, or designee; and
 - (iv) two members nominated by the Applicant, and consented to by the County Council, which members shall initially be Scott Grady and Adam Thornton;
- B. the Public Works Director, the Community Development Director, or designees, and Adam Thornton shall serve six (6) year terms.
- C. the County's Chief Financial Officer, or designee, and Scott Grady shall serve four (4) year terms.
- D. Pursuant to § 5-11-6(A), Scott Grady is appointed to be the clerk of the District and Adam Thornton is appointed to be treasurer of the District.
- E. At the end of the appointed directors' initial terms, the District shall pay the costs of an election, if so elected by the Council, to be held by the County in conformance with the Act, to select a new slate of directors for the District Board. Vacancies of the District Board shall be filled pursuant to NMSA 19878, § 5-11-9 (2013).

Section 7. Waiver of Additional Hearing and Election. Based on the information provided by the Applicant in the Application, the Petition has been signed by and on behalf of the owners of one hundred percent (100%) of the Land to be included in the proposed District and no resident qualified electors or any other persons are located on the Land,

and on that basis County waives the requirements for posting, publication, mailing, notice, hearing and owner election, as authorized by § 5-11-7(I). Furthermore, there shall be no election concerning the formation of the District among a resident qualified electors as prescribed by § 5-11-7(J).

Section 8. Amendments. This Formation Resolution may be amended or supplemented by ordinance or resolution adopted by the Council in accordance with the laws of the County and the State.

Section 9. Repealer. All ordinances or resolutions, or parts thereof in conflict with the provisions of this Formation Resolution, are hereby repealed to the extent only of such inconsistency. This repealer shall not be construed to revive any ordinance or resolution, or part thereof, heretofore repealed.

Section 10. Severability. If any section, paragraph, clause or provision of this Formation Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this Formation Resolution.

Section 11. Notice of Adoption of Formation Resolution. In compliance with § 5-11-8(A), the County Clerk is hereby directed to cause a copy of this Formation Resolution to be delivered, by certified mail, return receipt requested, to the County Assessor, the County Manager, the Secretary of the New Mexico Taxation and Revenue Department, and the Director of the Local Government Division of the New Mexico Department of Finance and Administration.

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PASSED AND ADOPTED this 30th day of October, 2018.

COUNCIL OF THE INCORPORATED
COUNTY OF LOS ALAMOS, NEW MEXICO

David Izraelevitz
Council Chair

ATTEST:

Naomi D. Maestas
Los Alamos County Clerk