



**CITY OF RIO RANCHO
RESOLUTION**

RESOLUTION NO. 135

ENACTMENT NO. 09-133

1 **CONDITIONALLY APPROVING THE PETITION AND APPLICATION OF SANDIA VIEW,**
2 **LLC, FOR FORMATION OF THE VILLAGE AT RIO RANCHO TAX INCREMENT**
3 **DEVELOPMENT DISTRICT (THE "DISTRICT" OR "TIDD") PURSUANT TO THE TAX**
4 **INCREMENT FOR DEVELOPMENT ACT, SECTIONS 5-15-1 THROUGH 5-15-28, NMSA**
5 **1978 AND CITY COUNCIL RESOLUTION NO. 09-005; MAKING FINDINGS IN**
6 **CONNECTION WITH THE PETITION AND SUPPORTING DOCUMENTATION**
7 **REQUESTING APPROVAL OF THE FORMATION OF THE DISTRICT; DETERMINING**
8 **THE REAL PROPERTY TO BE INCLUDED WITHIN THE DISTRICT AND THE**
9 **PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE**
10 **APPLICATION, PETITION, FINANCIAL FEASIBILITY STUDY AND A FORM OF**
11 **DEVELOPMENT AGREEMENT FOR IMPLEMENTATION OF THE DISTRICT;**
12 **RATIFYING THE TAX INCREMENT DEVELOPMENT PLAN APPROVED FOR**
13 **CONSIDERATION IN CONNECTION WITH THE FORMATION OF THE DISTRICT;**
14 **PROVIDING THAT THE FORMATION OF THE DISTRICT IS SUBJECT TO THE**
15 **EXECUTION AND DELIVERY BY THE DEVELOPER OF THE DISTRICT**
16 **DEVELOPMENT AGREEMENT, A SUBDIVISION IMPROVEMENT AGREEMENT AND**
17 **RELATED GUARANTY OF THE COMPLETION OF CERTAIN INFRASTRUCTURE, AND**
18 **THAT THIS RESOLUTION SHALL EXPIRE UPON FAILURE TO MEET SUCH**
19 **CONDITIONS; CONDITIONALLY DEDICATING SEVENTY PERCENT (70%) OF THE**
20 **GROSS RECEIPTS TAX INCREMENT REVENUE FOR THE DISTRICT, AS PROVIDED**
21 **IN THE DEVELOPMENT AGREEMENT; ESTABLISHING PARAMETERS FOR THE**
22 **ISSUANCE OF TAX INCREMENT BONDS BY THE DISTRICT; PROVIDING FOR**
23 **GOVERNANCE OF THE DISTRICT THROUGH THE APPOINTMENT OF MEMBERS OF**
24 **THE GOVERNING BODY OF THE DISTRICT; PROVIDING THAT TAX INCREMENT**
25 **BONDS OF THE DISTRICT AND OTHER OBLIGATIONS OF THE DISTRICT SHALL**
26 **NOT BE OBLIGATIONS OF THE CITY OF RIO RANCHO; RATIFYING CERTAIN**
27 **ACTIONS HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH**
28 **THIS RESOLUTION OTHER THAN CITY COUNCIL RESOLUTION NO. 09-005..**

29
30 Capitalized terms used in the recitals below and not defined therein shall have the
31 meanings given to such terms in Section 1 hereof.

32
33 **WHEREAS:** the TIDD Act provides in part that the owners of real property may petition
34 the governing body of the municipality in which the real property is located for
35 the formation of a tax increment development district to provide gross
36 receipts tax increment financing for public infrastructure in order to support
37 economic development and job creation; that the governing body shall hold a
38 hearing to determine whether a tax increment development district should be
39 formed; and, upon determination that formation of a tax increment
40 development district is in the interest of the property owner and the citizens
41 of the governing body's jurisdiction, shall order that the tax increment
42 development district be formed; and that an election for the formation of the
43 tax increment development district by owners of real property and residents

1 qualified within the tax increment development district may be waived and
2 the tax increment development district formed if the petition was submitted
3 by or on behalf of the owner(s) of 100% of the real property proposed to be
4 included within the tax increment development district and not located within
5 City right of way; and
6

7 **WHEREAS:** Sandia View, LLC (the "Applicant") has submitted to the City a Petition and
8 Application for the formation of The Village at Rio Rancho Tax Increment
9 Development District which includes, without limitation, a Tax Increment
10 Development Plan for the District and a map depicting the boundaries of the
11 District, a study of the feasibility, the financing and the estimated costs of
12 improvements, services and benefits to result from the formation of proposed
13 District (the "Financial Feasibility Study") and a proposed Development
14 Agreement for the District (the "Development Agreement"); and
15

16 **WHEREAS:** pursuant to the Petition and Application and Development Agreement, the
17 purpose of The Village at Rio Rancho Tax Increment Development District is
18 to finance public infrastructure to serve, in part, approximately 75.8 acres of
19 land known as The Village at Rio Rancho (the "Project"); and
20

21 **WHEREAS:** the Applicant estimates that the initial cost of public infrastructure, is
22 \$11,475,580 which may be financed with proceeds of Tax Increment
23 Revenue Bonds issued by the District (the "TIDD Infrastructure"), as provided
24 in the Act and the TIDD Resolution; and
25

26 **WHEREAS:** the Act authorizes owners, tax increment for development districts,
27 municipalities and counties to enter into development agreements to
28 establish the obligations of the owner or developer, the municipality and the
29 tax increment development district concerning the zoning, subdivision,
30 improvement, impact fees, financial responsibilities, and other matters
31 relating to the development, improvement and use of real property within the
32 District; and
33

34 **WHEREAS:** pursuant to the TIDD Resolution, the City has enacted policy guidelines and
35 application procedures for the establishment of tax increment development
36 districts within the City; and
37

38 **WHEREAS:** the Applicant has presented a Petition and Application for formation of the
39 District, together with the following documents in support of the Petition and Application:

40
41 (i) a description and boundary map of the proposed District, including a legal
42 description of the District's boundaries, identity and addresses of all persons or entities with
43 any interest in the property;
44

45 (ii) a current title report for the real property within the boundaries of the District and
46 evidence of the unanimous consent of owners of real property within the proposed District's
47 boundaries;
48

49 (iii) a Tax Increment Development Plan setting forth the information required by the
50 TIDD Resolution and the TIDD Act, which has been approved by the City Council pursuant

1 to Section 5-15-4(A) of the TIDD Act, subject to further proceedings and additional
2 necessary approvals of the City Council concerning the formation of the District and is on
3 file with the City Clerk; which Tax Increment Development Plan includes a detailed
4 description of the TIDD Infrastructure financed with proceeds of bonds to be issued by the
5 District, including the estimated construction or acquisition costs, projection of working
6 capital needs, including adequate funds for repair and replacement of infrastructure,
7 annual operation and maintenance costs of the TIDD Infrastructure and the required
8 governmental approvals and licenses;

9
10 (iv) a proposed schedule for commencement and completion of the TIDD
11 Infrastructure and Developer Improvements;

12
13 (v) a financing plan for public improvements and a Financial Feasibility Study for the
14 District setting forth the information required by the TIDD Resolution;

15
16 (vi) to the extent required, a market demand study for private development in the
17 District;

18
19 (vii) a description of Applicant's development experience and financial ability to
20 complete the TIDD Infrastructure Improvements and the Project (including Developer
21 Improvements), including a description of the Applicant's equity contribution toward the
22 initial costs of public infrastructure to serve the real property within the District, and the
23 timing and sources of the contribution;

24
25 (viii) a statement that no *ad valorem* tax increment is being requested and thus no
26 form of disclosure to prospective District landowners need be presented;

27
28 (ix) a draft operating plan for the TIDD Infrastructure;

29
30 (x) a certificate that the District will comply with the City's current zoning
31 requirements;

32
33 (xi) a proposed Development Agreement to be entered into by the Applicant, the
34 City and the District;

35
36 (xii) a statement that the application is not requesting state or county gross receipts
37 tax increment or *ad valorem* property tax increment revenue and thus no state or county
38 application materials need be presented;

39
40 (xiii) a proposed form of intent to form and adoption of Tax Increment Development
41 Plan Resolution; and

42
43 (xiv) a proposed form of Formation Resolution.

44
45 **WHEREAS:** pursuant to the Development Agreement, following formation of the District,
46 the Applicant will construct the TIDD Infrastructure Improvements in
47 accordance with the estimated construction schedule included in the
48 Application, the City's rules and regulations and the Development
49 Agreement; and
50

1 **WHEREAS:** pursuant to the Development Agreement and the Petition and Application,
2 the TIDD Infrastructure Improvements financed with gross receipts tax
3 dedicated by the City to the TIDD are to be designed and constructed
4 according to all applicable City standards, are to be suitable for dedication to
5 the City upon completion, and will be dedicated to, owned and operated by
6 the City; and
7

8 **WHEREAS:** pursuant to the Petition and Application and as provided for in the TIDD Act,
9 the Applicant anticipates that the TIDD Infrastructure will be financed, in part,
10 through the issuance by the District of Bonds secured by the portion of gross
11 receipts tax increment revenues generated within the District and dedicated
12 by the City to the District, and the City will have no responsibility for
13 construction of the TIDD Infrastructure, payment of the Bonds or other
14 financial obligations of the District; and
15

16 **WHEREAS:** pursuant to Section 5-15-15(E) of the TIDD Act, the Applicant requests the
17 dedication of seventy percent (70%) of the (a) general purposes municipal
18 gross receipts taxes referenced in Section 5-15-15(B)(1) of the Act (the
19 "General Purposes GRT"), (b) municipal infrastructure gross receipts taxes
20 referenced in Section 5-15-15(B)(3) of the Act (the "Municipal Infrastructure
21 GRT"), and (c) state shared gross receipts taxes distributed to the City
22 pursuant to Section 7-1-6.4 NMSA 1978, as provided in Section 5-15-
23 15(B)(6) of the Act (the "State Shared GRT"); and
24

25 **WHEREAS:** the General Purposes GRT relates to local option gross receipts taxes
26 enacted by the City pursuant to City's 81-020, 81-021, 82-059, 85-132, and
27 85-133 (together with any replacements or amendments thereof, the "City
28 General Purposes GRT Ordinances"), which enacted an aggregate 1.25%
29 gross receipts tax; and
30

31 **WHEREAS:** pursuant to the City General Purposes GRT Ordinances, no portions of such
32 gross receipts taxes have been dedicated to particular uses other than a
33 0.25% portion, which has been dedicated to "Sanitary sewer lines, storm
34 sewers & other drainage improvements, streets and alleys--specifically the
35 widening of Southern Boulevard, acquisition of rights-of-way, related
36 facilities" (the "Quarter Percent General Purposes GRT Purpose"); and
37

38 **WHEREAS:** an allocable portion of Gross Receipts Tax Increment that is restricted by the
39 Quarter Percent General Purposes GRT Purpose shall be used for the
40 Quarter Percent General Purposes GRT Purpose; and
41

42 **WHEREAS:** the Municipal Infrastructure GRT relates to local option gross receipts taxes
43 enacted by the City pursuant to City Ordinances 92-016 and 92-017
44 (together with any replacements or amendments thereof, the "City Municipal
45 Infrastructure GRT Ordinances"), which enacted an aggregate 0.125% gross
46 receipts tax; and
47

48 **WHEREAS:** pursuant to the City Municipal Infrastructure GRT Ordinances, no portions of
49 such gross receipts taxes have been dedicated to particular uses; and
50

1 **WHEREAS:** no portions of the State Shared GRT have been dedicated to particular uses;
2 and
3

4 **WHEREAS:** the Applicant certifies that it owns, controls or has a consent in relation to the
5 formation of the District as to 100% of the property located within the District
6 and not located within City right of way, and that no qualified electors reside
7 on the property located within the District and that, consequently, no
8 formation election is required pursuant to Section 5-15-8 of the TIDD Act;
9 and
10

11 **WHEREAS:** on September 9, 2009, the City adopted Resolution No. 97-007 declaring its
12 intent to form the District; and
13

14 **WHEREAS:** the City Council has considered the Petition and Application and related
15 submittals by the Applicant, has conducted a public hearing as provided by
16 Sections 5-15-6 and 5-15-7 of the TIDD Act, and has determined that,
17 subject to the execution and delivery of the Development Agreement as
18 presented in connection with this Resolution and a subdivision improvement
19 agreement with appropriate security guarantying the completion of specific
20 infrastructure determined to be satisfactory by the City Manager, as
21 described in Section 5(l) of this Resolution, the formation of the District is
22 consistent with the TIDD Resolution and promotes the interests, convenience
23 or necessity of the owners and residents of the District and citizens of the
24 City.
25

26 **NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF**
27 **RIO RANCHO:**
28

29 **Section 1. Defined Terms.** As used in this Formation Resolution and the recitals
30 above, the following terms shall have the meanings specified, unless the context clearly
31 requires otherwise (such meanings to be equally applicable to both the singular and the
32 plural forms of the terms defined):
33

34 "Act" or "TIDD Act" means Sections 5-15-1 through 5-15-28, NMSA 1978, as
35 supplemented and amended, the Home Rule Powers and all enactments of the City's
36 Governing Body, including the TIDD Resolution and this Resolution.
37

38 "Applicant" means Sandia View, LLC.
39

40 "Application" means the documents submitted in support of the Petition for formation
41 of The Village at Rio Rancho Tax Increment Development District and documentation
42 incorporated by reference in the Application and submitted to the City pursuant to the Act
43 and the TIDD Resolution.
44

45 "Bond Resolution" means a resolution authorizing issuance of District Bonds in an
46 aggregate principal amount not to exceed the costs of Public Infrastructure serving the
47 District, for the purpose of financing the TIDD Infrastructure and containing certain
48 provisions set forth in Section 6 of this Formation Resolution.
49

50 "Bonds" or "TIDD Bonds" means tax increment bonds issued by the District,

1 collectively or individually in accordance with the Act and secured by up to seventy percent
2 (70%) of the revenues of the Gross Receipts Tax Increment attributable to the (a) general
3 purposes municipal gross receipts taxes referenced in Section 5-15-15(B)(1) of the Act as
4 enacted by the City General Purposes GRT Ordinances, (b) municipal infrastructure gross
5 receipts taxes referenced in Section 5-15-15(B)(3) of the Act, as enacted by the City
6 Municipal Infrastructure GRT Ordinances; (c) state shared gross receipts taxes distributed
7 to the City pursuant to Section 7-1-6.4 NMSA 1978, as provided in Section 5-15-15(B)(6) of
8 the Act.

9
10 "City" means the City of Rio Rancho, New Mexico.

11
12 "Clerk" means the City Clerk.

13
14 "Date of Formation" shall have the meaning assigned in Section 5(I) of this
15 Formation Resolution.

16
17 "Developer Improvements" means the infrastructure improvements to be
18 constructed by the Applicant, through financing or resources other than the proceeds of
19 District Bonds or Tax Increment Revenue, as described in and according to the
20 construction schedule provided in the Application and as described, and in the approximate
21 locations shown, in the Tax Increment Development Plan.

22
23 "Development Agreement" means the development agreement by and between the
24 Applicant and the City in accordance with Section 4.6 of the TIDD Resolution, which
25 Development Agreement shall be ratified by the District.

26
27 "District Boundary Map" means the map attached as Exhibit A to the Tax Increment
28 Development Plan.

29
30 "District" means The Village at Rio Rancho Tax Increment Development District.

31
32 "Expenses" means the City's costs of reviewing the Petition and Application and
33 other documentation related to the Application, including legal fees.

34
35 "Financial Feasibility Study" means the study of the estimated costs and financing
36 methods of the TIDD Infrastructure Improvements submitted by the Applicant in connection
37 with its Petition for formation of The Village at Rio Rancho Tax Increment for Development
38 District.

39
40 "Formation Documents" means the Petition and Application and such other
41 documents as are required by the Act and the TIDD Resolution to be submitted by an
42 Applicant in connection with a petition for the formation, implementation and governance of
43 the District.

44
45 "Formation Resolution" means this resolution adopted by the City in connection with
46 its approval of the formation of the District.

47
48 "Gross Receipts Tax Increment" means the gross receipts taxes collected within the
49 District in excess of the base gross receipts taxes collected for the duration of the
50 existence of that District and distributed to that District in the same manner as distributions

1 are made under the provisions of the State Tax Administration Act.

2
3 "Home Rule Powers" means the powers of the City as a home rule city to exercise
4 legislative powers given pursuant to the City Charter adopted by the City pursuant to Article
5 X, Section 6 of the State Constitution and all enactments of the Council relating to the
6 formation of the District(s) and the issuance of the TIDD Bonds.

7
8 "Petition" means the petition for formation of the District submitted pursuant to
9 the Act and the TIDD Resolution.

10
11 "Real Property" means the real property described in the District Boundary Map.

12
13 "State" means the State of New Mexico.

14
15 "Tax Increment Development Plan" means the tax increment development plan for
16 the District, including a map depicting the boundaries of the District, as required by the
17 TIDD Resolution and Section 5-15-5 of the Act.

18
19 "TIDD Infrastructure Improvements" or "TIDD Infrastructure" means the public
20 infrastructure improvements to be financed with the proceeds of District Bonds as
21 described and in the approximate locations shown in the Tax Increment Development Plan.

22
23 "TIDD Resolution" means City Council Resolution No. 09-005.

24
25 **Section 2. Construction of Formation Resolution.** Except as otherwise expressly
26 provided in this Formation Resolution, or unless the context otherwise requires:

27
28 A. The singular includes the plural and the plural includes the singular.

29
30 B. All accounting terms not otherwise defined in this Formation Resolution have
31 the meanings assigned to them in accordance with generally accepted accounting
32 principles in the United States.

33
34 C. All references to sections shall refer to sections of this Formation Resolution,
35 unless otherwise stated.

36
37 D. Words importing any gender include the other gender.

38
39 E. "Herein," "hereby," "hereunder," "hereof," "hereinbefore" and "hereafter" refer
40 to this Formation Resolution and not solely to the particular portion of this Formation
41 Resolution in which such word is used.

42
43 F. All times will be local time in the City unless otherwise designated in this
44 Formation Resolution.

45
46 **Section 3. Findings.** The City hereby declares that it has considered the Application,
47 including the Petition and all other relevant information and data, and hereby makes the
48 following findings:

49
50 A. The Applicant owns or has a consent in relation to the formation of the District

1 as to 100% of the real property located within the District and that is not within a City right
2 of way.

3
4 B. As planned and proposed by the Applicant, the TIDD Infrastructure
5 Improvements will be constructed to City specifications, and will be subject to inspection,
6 approval and acceptance by the City prior to dedication to the City.

7
8 C. District Bonds proposed to be issued by the District will be the obligations
9 solely of the District issuing the Bonds, and will not be backed by the faith, credit, general
10 funds or resources of the City in any manner, and will not impair any outstanding
11 obligations of the City.

12
13 D. The Tax Increment Development Plan reasonably protects the interests of the
14 City in meeting its goals to support: (i) job creation, and (ii) economic development.

15
16 E. The Tax Increment Development Plan demonstrates elements of innovative
17 planning techniques, including mixed-use, transit-oriented development, traditional
18 neighborhood design or sustainable development techniques that are deemed by the City
19 Council to benefit community development.

20
21 F. The Tax Increment Development Plan incorporates sustainable development
22 considerations.

23
24 G. The Tax Increment Development Plan conforms to the general or long-term
25 planning of the City.

26
27 H. The financing of the TIDD Infrastructure Improvements is feasible and, based
28 upon the Financial Feasibility Study, will not impose an undue burden on the future owners
29 of property located within the District or served by the TIDD Infrastructure Improvements.

30
31 I. The financing of the TIDD Infrastructure Improvements will enable the District
32 to construct those improvements in a cost-effective manner.

33
34 J. The District is planned and will be implemented in a manner which provides
35 for the Expenses to be paid by the District.

36
37 K. The formation of the District and the issuance of District Bonds subject to the
38 requirements and limitations specified in this Formation Resolution are consistent with the
39 requirements of the TIDD Resolution.

40
41 **Section 4. Waiver of Additional Hearing and Election.** Based on the information
42 provided by the Applicant in the Application, the Petition has been signed by or consented
43 to and signed on behalf of the owners of 100% of the Real Property to be included in the
44 proposed District and not located within City right of way, and on that basis the City waives
45 the requirements for mailing and owner election, as authorized by Section 5-15-8 of the
46 TIDD Act.

47
48 **Section 5. Approval of Application and Formation Documents; Conditional**
49 **Formation of District.**

1 A. Approval of Petition. The Petition is hereby accepted and approved.

2

3 B. Approval of the District pursuant to the Tax Increment Development Plan and
4 Development Agreement. The Village at Rio Rancho Tax Increment Development District
5 is hereby ordered, approved and formed to carry out the purposes set forth in, and
6 according to the provisions of, this Formation Resolution.

7

8 (i) The Tax Increment Development Plan, previously approved for purposes of
9 Section 5-15-4(C) of the TIDD Act and subject to further proceedings of and necessary
10 approvals by the City, is hereby ratified. The District shall include the Real Property as
11 shown in the District Boundary Map attached as Exhibit A to the Tax Increment
12 Development Plan and incorporated by reference in this Formation Resolution.

13

14 (ii) The Financial Feasibility Study is hereby accepted and approved.

15

16 (iii) The Development Agreement is hereby accepted and approved. The City
17 Manager is authorized and directed to execute the Development Agreement on behalf of
18 the City, with such changes as are consistent with the provisions of this Formation
19 Resolution.

20

21 (iv) The District shall have the powers necessary and convenient to finance,
22 construct and/or purchase the TIDD Infrastructure Improvements as provided in the Tax
23 Increment Development Plan, Financial Feasibility Study and Development Agreement, as
24 those documents may be amended or modified with the approval of the City. The
25 Applicant, District and the City shall be bound by the terms thereof.

26

27 C. Purpose of District. The purpose of the District shall be to provide financing
28 of the TIDD Infrastructure Improvements set forth in the Tax Increment Development Plan
29 and the Development Agreement.

30

31 D. Maximum Authorized Amount and Interest Rates of Bond Financing.

32

33 (i) The maximum aggregate principal amount of TIDD Bonds issued by the
34 District shall not exceed the lesser of (a) the actual eligible costs (as defined in the
35 Development Agreement), plus amounts to be used to fund debt service reserves,
36 capitalized interest, credit enhancement, costs of issuance and sale, and other costs
37 normally associated with the issuance of TIDD Bonds as permitted by the Act, or (b)
38 \$15,000,000, plus the amount determined as the increase in the cost of constructing public
39 infrastructure improvements by applying the Construction Cost Index applicable to the
40 Albuquerque region published in ENR.com by the McGraw-Hill Companies (or, in the event
41 such index is no longer published at the applicable time, such other index of construction
42 costs as the District and the City Manager mutually determine is acceptable for purposes of
43 this Agreement and this Formation Resolution).

44

45 (ii) Bonds shall bear interest at rates not to exceed 12% percent per annum.

46

47 (iii) As required by the Act and the TIDD Resolution, prior to the issuance of
48 District Bonds by the District, the Applicant or its designee shall have contributed at least
49 20% of the initial estimated cost of the public infrastructure serving the District, which
50 contribution may be reimbursed from the proceeds of District Bonds, as permitted by the

1 Act.

2

3 E. District to be Self-supporting. The District shall be self-supporting, as
4 provided in Section 1.6 of the TIDD Resolution.

5

6 F. Compliance with City Policies. The District shall comply with existing City
7 policies for development, growth management and conservation, as provided in Section
8 3(K) of the TIDD Resolution.

9

10 G. Tax Increment Financing Requirements. The proposed financing of TIDD
11 Infrastructure Improvements described in the Tax Increment Development Plan and
12 Financial Feasibility Study meets the applicable requirements of Section 1.3 of the TIDD
13 Resolution.

14

15 H. Additional Documents. The officers, agents and employees of the City are
16 hereby authorized and empowered to take all actions necessary and to execute and deliver
17 all documents relating to or requested by the District to carry out and comply with the
18 provisions of the Formation Documents.

19

20 I. District Formation Conditioned and Effective Upon Delivery of Development
21 Agreement and Subdivision Improvement Agreement for Certain Infrastructure. The
22 formation of the District is subject to and conditioned upon the execution and delivery, by
23 January 13, 2010, of the Development Agreement in the form approved by the Governing
24 Body pursuant to this Formation Resolution, and a subdivision improvement agreement
25 and related completion guaranty (together, the "SIA") in form and substance satisfactory to
26 the City Manager, providing for the construction of the following TIDD Infrastructure: West
27 Branch Channel improvements, including Wellspring RCP storm drain, Wellspring water
28 lines, West Branch channel construction, traffic signal for Wellspring and Unser, and traffic
29 signal for Westside and Wellspring (the "Formation Conditions"). The effective date of
30 formation of the District (the "Date of Formation") shall be the date on which both the
31 Developer and the City Manager have executed the Development Agreement and SIA,
32 prior to which the District shall not be deemed formed. If, on January 13, 2010, the
33 Formation Conditions have not been satisfied, this Resolution shall expire and be of no
34 force or effect, without further action of the Governing Body of the City.

35

36 J. District Governing Body Initial Meeting. The governing body of the District
37 shall hold a public meeting within 60 days following the Date of Formation, as provided in
38 the immediately preceding subsection (I). At that meeting, the governing body shall adopt
39 an open meetings policy and by-laws for that District and shall take such other action,
40 toward or in connection with the issuance of Bonds by that District, as authorized by this
41 Formation Resolution.

42

43 **Section 6. Authorization of District Bonds.** Following the Date of Formation, the
44 District may issue Bonds pursuant to Bond Resolutions in the amounts and subject to the
45 requirements and limitations set forth in this Formation Resolution.

46

47 A. Each Bond Resolution shall be approved by the City's TIDD Review Staff
48 prior to its enactment by a District.

49

50 B. Each Bond Resolution shall include, at minimum, the following provisions

1 stated below for the protection of owners of the Bonds:
2

3 (i) Reasonably Required Reserve Fund. Each Bond Resolution shall provide for
4 the establishment of a debt service reserve fund in an amount, on the date of issuance of
5 the TIDD Bonds, equal to the least of (a) the maximum annual debt service requirements
6 on all outstanding TIDD Bonds; (b) 125% of the average annual debt service requirements
7 of the TIDD Bonds of the related District; or (c) 10% of the aggregate principal amount of
8 the TIDD Bonds of the related District.
9

10 (ii) As provided in the Financing Plan and Tax Increment Development Plan,
11 each indenture of trust relating to any TIDD Bonds shall include provisions for remittance to
12 the City on an annual basis of a portion of the tax increment revenue pledged as security
13 for TIDD Bonds that exceeds (1) 200% of the scheduled payments of the principal of and
14 interest on outstanding TIDD Bonds, plus (2) applicable reserve requirements ("Excess
15 Annual Increment Revenue"), equal to seventy-five percent (75%) of the Excess Annual
16 Increment Revenue, and for the District to retain the remaining twenty-five percent (25%) of
17 such Excess Annual Increment Revenue, which shall be utilized to by the District to
18 establish a sinking fund for the retirement or early redemption of TIDD Bonds, to reimburse
19 eligible costs of TIDD Infrastructure Improvements or for other lawful purposes. Following
20 the issuance of TIDD Bonds other than short-term TIDD Bonds, excess tax increment
21 revenue shall not be pledged to secure short-term TIDD Bonds without the consent of the
22 Governing Body of the City.
23

24 (iii) Limited Offering; Minimum Denomination. Each Bond Resolution shall
25 provide that the Bonds issued by the District shall be sold pursuant to a limited public
26 offering and issued in minimum denominations of at least \$100,000 or such other, lesser
27 amount as is approved by City's TIDD Review Staff.
28

29 (iv) Minimum and Maximum Maturity. The minimum maturity of TIDD Bonds shall
30 be at least one day. The final maturity date for TIDD Bonds issued by the District shall not
31 be more than 25 years after the date of issuance of the first series of Bonds by the District.
32

33 (v) Appointment of Trustee. Each Bond Resolution shall include provisions for
34 appointment of a trustee pursuant to an indenture of trust or other similar instrument.
35

36 (vi) Exercise of District Rights and Remedies by Trustee. Each Bond Resolution
37 shall provide that the trustee may exercise the rights and remedies of the District for the
38 protection of bondholders, including, without limitation, the trustee's appointment of a
39 receiver or other agent to complete the construction of the TIDD Infrastructure
40 Improvements in the event of a default in the payment of debt service on the Bonds issued
41 by the District, which default cannot be cured by (x) drawing on the debt service reserve
42 fund established for the Bonds issued by the District, (y) through payment pursuant to a
43 letter of credit or other guaranty provided by or on behalf of the Applicant or (z) through
44 direct payment by the Applicant or its designee of the amount necessary to pay the debt
45 service on the TIDD Bonds then due.
46

47 C. Each Bond Resolution shall provide that the issuance of District Bonds, and
48 the dedication of tax increment toward repayment of District Bonds, will not impair any
49 outstanding obligations of the City.
50

1 D. Before the issuance of TIDD Bonds, each Bond Resolution shall be
2 presented to the City Council for approval as being consistent with provisions of Section 6
3 of this Resolution. For short-term District obligations maturing not later than 30 days after
4 issuance the governing body of the District shall pass a Bond Resolution, which resolution
5 shall have been approved by the City's TIDD Review Staff, and such short-term bonds
6 shall not require an additional resolution to be adopted by the City Council. In addition,
7 prior to the issuance of TIDD Bonds, the City Council must be satisfied that all other
8 districts proposed to have boundaries overlapping the boundaries of the TIDD have been
9 formed.

10
11 **Section 7. Dedication of Gross Receipts Tax.** Following the Date of Formation,
12 pursuant to Section 5-15-15(E) of the TIDD Act, the City will dedicate seventy percent
13 (70%) of the revenues of the Gross Receipts Tax Increment attributable to the (a) general
14 purposes municipal gross receipts taxes referenced in Section 5-15-15(B)(1) of the Act, as
15 enacted by the City General Purposes GRT Ordinances, (b) municipal infrastructure gross
16 receipts taxes referenced in Section 5-15-15(B)(3) of the Act, as enacted by the City
17 Municipal Infrastructure GRT Ordinances; and (c) state shared gross receipts taxes
18 distributed to the City pursuant to Section 7-1-6.4 NMSA 1978, as provided in Section 5-
19 15-15(B)(6) of the Act. An allocable portion of Gross Receipts Tax Increment that is
20 restricted by the Quarter Percent General Purposes GRT Purpose shall be used for the
21 Quarter Percent General Purposes GRT Purpose.

22
23 **Section 8. District Governance.**

24
25 A. The District's governing body shall initially be composed of the following five
26 directors: (i) a representative of the Developer, who is currently Robert D. Geringer, (ii) the
27 City Manager, who is currently James Jimenez, (iii) the Director of the City Development
28 Services Department, who is currently John Castillo, (iv) the Director of the City
29 Department of Financial Services, who is currently Richard Kristof and (v) the Secretary of
30 Finance and Administration of the State of New Mexico or the Secretary's designee (the
31 "DFA Director").

32
33 B. James Jimenez and Robert D. Geringer shall serve 6-year terms.

34
35 C. John Castillo and Richard Kristof shall serve 4-year terms.

36
37 D. The DFA Director shall be a permanent director and in the event that any
38 specific person filling the DFA Director position shall die, resign or otherwise vacate the
39 board position, the District shall apply to the Secretary of Finance and Administration for
40 the designation of a new director to fill the DFA Director position. If a vacancy occurs on
41 the board because of the death, resignation or inability of the director to discharge the
42 duties of the director, the governing body shall appoint a director to fill the vacancy, and the
43 director shall hold office for the remainder of the unexpired term until a successor is
44 appointed or elected. At the end of the initial term of any director other than the DFA
45 Director, the District either shall hold an election of new directors by majority vote of owners
46 and qualified resident electors in accordance with the Act or governance of the District shall
47 revert to the City Council.

48
49 E. Pursuant to Section 5-15-11 of the Act, James Jimenez is appointed clerk of
50 the District and Richard Kristof is appointed treasurer of the District.

1
2 **Section 9. Amendments.** This Formation Resolution may be amended or supplemented
3 by ordinance or resolution adopted by the City Council in accordance with the laws of the
4 City and the State.

5
6 **Section 10. Repealer.** All ordinances or resolutions, or parts thereof in conflict with the
7 provisions of this Formation Resolution, are hereby repealed to the extent only of such
8 inconsistency. This repealer shall not be construed to revive any ordinance or resolution,
9 or part thereof, heretofore repealed.

10
11 **Section 11. Severability.** If any section, paragraph, clause or provision of this Formation
12 Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or
13 unenforceability of such section, paragraph, clause or provision shall in no manner affect
14 any remaining provisions of this Formation Resolution.

15
16 **Section 12. Publication of Notice of Adoption of Formation Resolution.**

17
18 A. The Clerk is hereby directed to publish a notice of this Formation Resolution,
19 in substantially the following form:

20
21 Notice is hereby given of the title and general summary of the subject matter contained in a
22 resolution duly adopted and approved by the City Council of the City of Rio Rancho, New
23 Mexico relating to the approval of The Village at Rio Rancho Tax Increment Development
24 District. Complete copies of the resolution are available for public inspection during the
25 regular business hours of the City Clerk, City of Rio Rancho, New Mexico.

26
27 The title of the Formation Resolution is as follows:

28
29 **RESOLUTION**

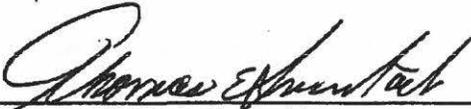
30
31 **CONDITIONALLY APPROVING THE PETITION AND APPLICATION OF SANDIA VIEW,**
32 **LLC, FOR FORMATION OF THE VILLAGE AT RIO RANCHO TAX INCREMENT**
33 **DEVELOPMENT DISTRICT (THE "DISTRICT" OR "TIDD") PURSUANT TO THE TAX**
34 **INCREMENT FOR DEVELOPMENT ACT, SECTIONS 5-15-1 THROUGH 5-15-28, NMSA**
35 **1978 AND CITY COUNCIL RESOLUTION NO. 09-005; MAKING FINDINGS IN**
36 **CONNECTION WITH THE PETITION AND SUPPORTING DOCUMENTATION**
37 **REQUESTING APPROVAL OF THE FORMATION OF THE DISTRICT; DETERMINING**
38 **THE REAL PROPERTY TO BE INCLUDED WITHIN THE DISTRICT AND THE**
39 **PURPOSES FOR WHICH THE DISTRICT IS BEING FORMED; APPROVING THE**
40 **APPLICATION, PETITION, FINANCIAL FEASIBILITY STUDY AND A FORM OF**
41 **DEVELOPMENT AGREEMENT FOR IMPLEMENTATION OF THE DISTRICT;**
42 **RATIFYING THE TAX INCREMENT DEVELOPMENT PLAN APPROVED FOR**
43 **CONSIDERATION IN CONNECTION WITH THE FORMATION OF THE DISTRICT;**
44 **PROVIDING THAT THE FORMATION OF THE DISTRICT IS SUBJECT TO THE**
45 **EXECUTION AND DELIVERY BY THE DEVELOPER OF THE DISTRICT DEVELOPMENT**
46 **AGREEMENT, A SUBDIVISION IMPROVEMENT AGREEMENT AND RELATED**
47 **GUARANTY OF THE COMPLETION OF CERTAIN INFRASTRUCTURE, AND THAT THIS**
48 **RESOLUTION SHALL EXPIRE UPON FAILURE TO MEET SUCH CONDITIONS;**
49 **CONDITIONALLY DEDICATING SEVENTY PERCENT (70%) OF THE GROSS**
50 **RECEIPTS TAX INCREMENT REVENUE FOR THE DISTRICT, AS PROVIDED IN THE**

1 DEVELOPMENT AGREEMENT; ESTABLISHING PARAMETERS FOR THE ISSUANCE
2 OF TAX INCREMENT BONDS BY THE DISTRICT; PROVIDING FOR GOVERNANCE OF
3 THE DISTRICT THROUGH THE APPOINTMENT OF MEMBERS OF THE GOVERNING
4 BODY OF THE DISTRICT; PROVIDING THAT TAX INCREMENT BONDS OF THE
5 DISTRICT AND OTHER OBLIGATIONS OF THE DISTRICT SHALL NOT BE
6 OBLIGATIONS OF THE CITY OF RIO RANCHO; RATIFYING CERTAIN ACTIONS
7 HERETOFORE TAKEN; REPEALING ALL ACTIONS INCONSISTENT WITH THIS
8 RESOLUTION OTHER THAN CITY COUNCIL RESOLUTION NO. 09-005.

9
10 A summary of the subject matter of the Formation Resolution is contained in its title.

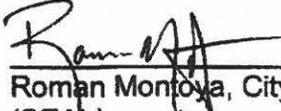
11
12 (End of Form of Summary of Resolution for Publication)

13
14 ADOPTED THIS 16TH DAY OF DECEMBER, 2009.

15
16
17 
18 _____
19 Thomas E. Swisstack, Mayor

20 _____
21 12 | 21 | 09
22 _____
23 Date

24 ATTEST:

25 
26 _____
27 Roman Montoya, City Clerk
(SEAL)