RESOLUTION NO. 52


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) provides in part that an owner of real property may file a petition and application with the governing body of the municipality or county in which the real property is located for the formation of a public improvement district for the purpose of financing public infrastructure improvements; that the governing body shall hold a hearing to determine whether a public improvement district should be formed; and, upon determination that formation of a district is in the interest of the property owners and the citizens of the governing body’s municipal or county jurisdiction, shall order that the public improvement district be formed, and that the district shall be formed if the petition and application was submitted by the owner(s) of 100% of the property proposed to be included within the district; and

WHEREAS: the Act authorizes owners, public improvement districts, municipalities and counties to enter into development agreements to establish the obligations of the owner or developer, the county or municipality and the public improvement district 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 City of Rio Rancho, New Mexico (the "City") has enacted policy guidelines and application procedures for the establishment of public improvement districts within the City (the "PID Policy"); and

WHEREAS: the Petitioner has presented a Petition and Application for Approval of the Formation of Stonegate Public Improvement District (the "District" or the "PIO") and the following documents in support of the Petition:

(i) a description of the proposed PIO, a legal description of its boundaries, the identity and addresses of all persons or entities with any interest in the property, the names and addresses of any qualified electors (as defined in Section 3-1-2(K) NMSA 1978) certified by the Clerk of Sandoval County, located within the proposed boundaries;

(ii) a current title report for the real property;

(iii) a general development plan including the following information, which establishes financial parameters for the operation and financing of the District;

(iv) an estimated project schedule for the commencement of construction and the completion of (a) the public development improvements, and (b) the private development;

(v) a financing plan for the public District improvements;

(vi) a financial feasibility study;

(vii) a current appraisal of the fair market value of the property within the District;

(viii) a market demand study for private development in the District;

(ix) a description of the Petitioner’s professional experience and evidence demonstrating its financial capacity to undertake the development associated with the District Improvements;

(x) a proposed form of special levy disclosure to home buyers;

(xi) operating plan for the District describing the operation and maintenance of the infrastructure and all other services in the District;

(xii) a certificate that the District will comply with the City’s current zoning requirements;

(xiii) an environmental assessment of the District;

(xiv) a Development Agreement to be entered into by and between the City, the District, and the Petitioner; and

(xv) a proposed form of Formation Resolution; and

WHEREAS: pursuant to the Development Agreement, the Infrastructure Improvements have been or will be designed and constructed according to all applicable City rules, regulations and standards, are to be suitable for dedication to the
WHEREAS: pursuant to the Development Agreement, the District will use proceeds of District Bonds to acquire, or reimburse the Developer for the cost of, the PID Funded Infrastructure Improvements dedicated to the City, as provided in the Act, which District Bonds will be payable by the District Special Levy upon the Land and with any District Special Levy amounts in excess of the amounts needed to pay debt service on the District Bonds; and

WHEREAS: pursuant to the Petition, the District will be responsible for imposing the District Special Levy as provided in the Act, will adopt procedures for the foreclosure of delinquent District Special Levy liens on the Land, and that the cost of administering the District Special Levy, including any required reimbursements to the Sandoval County Assessor and Sandoval County Treasurer, as an operating cost of the District which may be eligible for reimbursement through the District Special Levy or the proceeds of District Bonds; and

WHEREAS: pursuant to the Petition and proposed Development Agreement, the purpose of the District is to finance the PID Funded Infrastructure Improvements to serve approximately 150 developable, acres of land, located wholly within the corporate boundaries of the City consisting of eight hundred twenty-three (823) residential units, which is an authorized purpose and appropriate use of a PID as set forth in the PID Policy; and

WHEREAS: the Governing Body of the City (the “Governing Body”) has considered the Petition and related submittals by Petitioner and has determined that proceeding further with the formation of the District is consistent with the PID Policy and promotes the interests, convenience or necessity of the owners, residents of the District and citizens of the City of Rio Rancho.

NOW THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF THE CITY OF RIO RANCHO THAT:

Section 1. Defined Terms. 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 collectively NMSA 1978, §§ 5-11-1 to -27 (2001, as amended), the home rule powers and all enactments of the Governing Body, including this Formation Resolution.

B. “City” means the City of Rio Rancho, New Mexico.

C. “Clerk” means the City Clerk.

D. “Development Agreement” means the development agreement dated on or about the date of this Formation Resolution by and between the City, the District, and the
Petitioner, in accordance with Section 4.5 of the PIO Policy, in the form attached as Tab 19 to the Petition, which Development Agreement shall be joined and ratified by the District.

E. “District” or “PID” means Stonegate Public Improvement District.

F. “District Bonds” means one or more series of bonds proposed to be issued by the District pursuant to the Act.

G. “District Boundary Map” means the map attached as Exhibit A to the General Plan.

H. “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 (2001).

I. “Feasibility Study” means the study of the estimated costs and financing methods of the Infrastructure Improvements submitted by the Petitioner in connection with the Petition, in the form attached as Tab 11 to the Petition.

J. “Formation Documents” means the Petition, the General Plan, the Development Agreement, the Formation Resolution and such other documents as are required by the Act and the PIO Policy to be approved by the City in connection with the formation, implementation and governance of the District.

K. “Formation Resolution” means this resolution adopted by the City in connection with its approval of the formation of the District, as supplemented or amended from time to time.

L. “General Plan” means the General Plan submitted by the Petitioner in the form attached as Tab 8 to the Petition, which is on file with the Clerk and includes 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 special levies.

M. “Infrastructure Improvements” means the PID Funded Infrastructure Improvements and such other improvements, which are collectively all of the improvements on the Land, whether funded directly by the Petitioner or with the proceeds of the District Bonds, described and in the approximate locations shown on Exhibit B to the Feasibility Study.

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

O. “MAI Appraisal” means the valuation of the Land as of December 17, 2012, as prepared by David Pearson, MAI.

P. “Petition” means the Petition and Application filed with the City for the formation of Stonegate Public Improvement District and all documentation incorporated by reference in the Petition, submitted to the City pursuant to the Act and the PID Policy.

Q. “Petitioner” means Coal Bank Holdings, Ltd., a New Mexico subchapter S corporation.
R. "PID Funded Infrastructure Improvements" means the portion of the Infrastructure Improvements financed with the proceeds of the District Bonds, as identified in Table 1 in Section IV of the General Plan.

S. "PID Policy" means the City of Rio Rancho, New Mexico Public Improvement District Guidelines and Application Procedures.

T. "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 Petitioner in the form attached as Exhibit C to the General Plan.

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

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

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

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

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

D. Words importing any gender include the other gender.

E. "Herein," "hereby," "hereunder," "thereof," "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 will be local time in the City unless otherwise designated in this Formation Resolution.

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

A. The Petitioner, together with those parties consenting to the Petition, own 100% of the Land and no resident qualified electors or any other persons are located on the Land.

B. As planned and proposed by the Petitioner, the Infrastructure Improvements have been or will be constructed to City specifications and will be subject to inspection, approval and acceptance by the City prior to dedication to the City, as provided in the Development Agreement.

C. The District Bonds will be obligations solely of the District, and will not be backed by the credit, general funds or resources of the City in any manner. Owners of the District Bonds will have no right to require the City or the District to impose ad valorem property taxes to pay District Bonds.
D. The District will serve the interests, convenience and necessity of Petitioner, future owners of the Land and the citizens of the City:

(i) The cost of constructing the PIO Funded Infrastructure Improvements will be allocated to the owners of Land within the District who will utilize the PIO Funded Infrastructure Improvements, in a fair and equitable manner, and will not be passed on to the citizens of the City, other than the Petitioner and the other owners of the Land, or the City itself; and

(ii) The City will receive the benefit of the Infrastructure Improvements through dedication of the Infrastructure Improvements.

E. The financing of the PIO Funded Infrastructure Improvements is feasible and, based upon the Feasibility Study, will not impose an undue burden on the future owners of the Land or served by the PIO Funded Infrastructure Improvements.

F. The financing of the PIO Funded Infrastructure Improvements will enable the District to construct or acquire those improvements in a cost-effective manner.

G. The District is planned and will be implemented in a manner which provides for the expenses to be paid by the Petitioner and the District, as applicable.

H. As planned, the Infrastructure Improvements are consistent with the City's development goals, growth management policies, and conservation policies.

I. The formation of the District and the issuance of District Bonds, subject to the requirements and limitations specified in this Formation Resolution, are consistent with the requirements of the PIO Policy.

Section 4. Approval of the Formation Documents; Formation of District; Approval of District Foreclosure Procedures for Delinquent Special Levies.

A. Stonegate Improvement District is hereby ordered approved and formed to carry out the purposes set forth in, and according to the provisions of, this Formation Resolution.

B. The Petition is hereby accepted and approved.

C. The General Plan is hereby accepted and approved. 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 descriptions attached as Tab 4 to the Petition.

D. The Development Agreement is hereby accepted and approved, and shall be an agreement or condition pertaining to the District, as contemplated by Section 4.5 of the PID Policy, so that any existing agreements with the Petitioner or other developers and landowners regarding the provision of Infrastructure Improvements proposed to be furnished to the City shall be deemed amended to reflect the terms of the Development Agreement.

E. 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.

F. The Notice of District Special Levy substantially in the form attached as Tab 15 to the Petition is hereby approved.

G. The District shall have the powers necessary and convenient to finance and acquire the PID Funded Infrastructure Improvements as provided in the General Plan, Feasibility Study, Rate and Method of Special Levy Apportionment and Development Agreement, as those documents may be amended or modified with the approval of the City. The Developer, the District and the City shall be bound by the terms thereof.

H. The purpose of the District shall be to provide financing of the PID Funded Infrastructure Improvements set forth in the Petition.

I. The District Bonds shall not exceed the maximum principal amount set forth in the Petition and shall be within the value to lien ratio described in the Petition, except as otherwise approved in a supplemental resolution by the District’s governing body and the City Council.

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

K. The District shall be self-supporting, as provided in Section 1.4 of the PID Policy.

L. The District shall comply with existing City policies for development, growth management and conservation, as provided in Sections 1.1 and 3.11 of the PID Policy.

M. The PID financing proposed in the Petition and other Formation Documents meet the applicable requirements of Sections 4.8, 5.4, 5.6 and 5.7 of the PID Policy.

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

O. The District’s governing body shall hold a public meeting within 45 days following the date of adoption of this Formation Resolution. At that meeting, the District’s governing body shall adopt an open meeting policy and by-laws for the District, approve and execute the Development Agreement, and shall take such other action toward or in connection with the issuance of the District Bonds, as authorized by this Formation Resolution.

P. Pursuant to the authority granted in §§ 5-11-20(G) and 5-11-23(F) of the Act, 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 -30 (1965, as amended), and as set forth for the District in the Development Agreement approved by this Formation Resolution.
Q. The District shall comply with the additional reporting requirements, disclosure obligations and all other obligations set forth in the Act as amended by House Bill 371 (Chapter 45 Laws 2013), which was signed by the Governor on March 27, 2013 and shall become effective on July 1, 2013.

Section 5. Authorization of District Bonds. The District may issue District Bonds pursuant to a resolution of the District Board (as defined in Section 6 of this Formation Resolution) authorizing issuance of one or more series of District Bonds in an estimated maximum aggregate principal amount of $11,000,000 for the purpose of financing the PID Funded Infrastructure Improvements subject to the requirements set forth in this Formation Resolution (the “Bond Resolution”).

A. The District Bonds shall be approved by the City’s PID Review Staff prior to the adoption of a Bond Resolution by the District and, as part of the review and approval process, the City’s PID Review Staff shall determine that the Petitioner is in compliance with its outstanding agreements with the City, including all subdivision improvement agreements and that the Bond Resolution is consistent with the provisions of Section 5 of this Formation Resolution.

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

(i) The Bond Resolution shall provide for the establishment of a debt service reserve fund in an amount shall provide for the establishment of a debt service reserve fund in an amount, on the date of issuance of the District Bonds, equal to the least of (a) the maximum annual debt service requirements on all outstanding District Bonds; (b) 125% of the average annual debt service requirements of the District Bonds of the related District; or (c) 10% of the aggregate principal amount of the District Bonds of the related District.

(ii) The Bond Resolution shall include provisions for the public offering or private placement of District Bonds in accordance with Section 5.6 of the PID Policy; and a contribution agreement if required by the City pursuant to Section 5.7 of the PID Policy.

(iii) The Bond Resolution shall provide that the District Bonds shall be issued in minimum denominations of at least $100,000 and sold to “Qualified Institutional Buyers” (as defined in the Securities and Exchange Commission Rule 144A promulgated under the Securities Act of 1933) or “accredited investors” (as defined in Regulation D promulgated by the Securities and Exchange Commission under the Securities Act of 1933), unless the District Bonds receive rating in one of the three highest rating categories from a nationally recognized bond-rating agency service.

(iv) The final maturity date for the District Bonds of a series shall not be more than 30 years after the date of issuance of such series.

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

(vi) The Bond Resolution shall provide that the trustee may exercise the rights and remedies of the District for the protection of bondholders, including, without limitation, the following:
(a) the trustee’s collection of District Special Levies;
(b) the trustee’s foreclosure of delinquent District Special Levies; and
(c) the trustee’s appointment of a receiver or other agent to complete the
construction of the Infrastructure Improvements in the event of a default in the
payment of debt service on the District Bonds, which default cannot be cured by (I)
drawing on the debt service reserve fund established for the District Bonds, (II)
through payment pursuant to a letter of credit or other guaranty that may be
provided by the Petitioner, if required, or (III) through the Petitioner’s direct payment
of the amount necessary to pay the debt service on the District Bonds then due,
which appointment may be made irrespective of whether foreclosure remedies are
exercised.

C. This Formation Resolution hereby approves the issuance and sale of the
District Bonds.

Section 6. District Governance.

A. The District’s governing body (the “District Board”) shall be composed of the
following five directors: (i) a representative of the Developer, who is currently C. Adam
Thornton, (ii) the City Manager, who is Keith J. Riesberg, (iii) the Director of the City’s
Development Services Department, who is currently Dolores Wood, (iv) the Director of the
City’s Department of Financial Services, who is currently Olivia Padilla Jackson and (v)
Scott Grady, as a member at-large and a member of the Developer.

B. Keith J. Riesberg, Scott Grady and C. Adam Thornton shall serve 6-year
terms.

C. Dolores Wood and Olivia Padilla Jackson shall serve 4-year terms.

D. Pursuant to § 5-11-6 of the Act, Dolores Wood is appointed clerk of the
District and Olivia Padilla Jackson is appointed treasurer of the District.

E. If a vacancy occurs because of death, resignation or inability of the director to
discharge the duties of director, the Governing Body shall appoint a director to fill the
vacancy who shall hold office for the remainder of the unexpired term until a successor is
appointed. At the end of the initial term of any director, the Governing Body shall appoint a
new director in conformance with Act and the PID Policy.

Section 7. Waiver of Additional Hearing and Election. Based on the information
provided by the Petitioner in the Petition, the Petition has been signed by and on behalf of
the owners of 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 the City
waives the requirements for posting, publication, mailing, notice, hearing and owner
election, as authorized by NMSA 1978, § 5-11-7(I) (2001).

Section 8. Amendments. This Formation Resolution may be amended or
supplemented by ordinance or resolution adopted by the City Council in accordance with
the laws of the City 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. Publication of Notice of Adoption of Formation Resolution. The Clerk is hereby directed to publish a notice of this Formation Resolution, in substantially the following form:

Notice is hereby given of the title and general summary of the subject matter contained in a resolution duly adopted and approved by the City Council of the City of Rio Rancho, New Mexico relating to the approval of Stonegate Public Improvement District. Complete copies of the resolution are available for public inspection during the regular business hours of the City Clerk, City of Rio Rancho, New Mexico.

The title of the Formation Resolution is as follows:

RESOLUTION


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

(End of Form of Summary of Resolution for Publication)
ADOPTED THIS 24TH DAY OF JULY, 2013

Thomas E. Swisstack, Mayor

ATTEST:

Stephen J. Ruger, City Clerk
(SEAL)