RESOLUTION NO. 80


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 has consent of 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 Broadmoor Heights Public Improvement District (the "District" or the "PID") and the following documents in support of the Petition:

(i) a description of the proposed PID, 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 resident qualified electors (as defined in Section 5-11-2(S) NMSA 1978), located within the proposed boundaries;

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

(iii) a general development plan establishing 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 confirmation that no market demand study is required;

(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 and Reimbursement Agreement (the "Development Agreement") to be entered into by and between the City, the District, and the Petitioner; 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 City upon completion, and will be acquired by the District and then dedicated to, owned and operated by the City, except where the homeowners association will take primary responsibility in the maintenance and operation of the trails and parkway landscaping of the District; and

WHEREAS: pursuant to the Development Agreement, the District will acquire the PID Funded Infrastructure Improvements concurrently with implementation of the Indebtedness in conformity with the Development Agreement, which will be payable by the imposition of the Annual Special Levy upon the Land; and

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

WHEREAS: pursuant to the Petition and Development Agreement, the purpose of the District is to finance the Infrastructure Improvements to serve approximately one hundred fifteen (115) developable acres of land, located wholly within the corporate boundaries of the City, which is an authorized purpose and appropriate use of a PID as set forth in the PID Policy; and

WHEREAS: the City Council 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:

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 through 27 (2001, as amended), the home rule powers and all enactments of the Governing Body, including this Formation Resolution.
B. "Annual Special Levy" or "Annual Special Levies" means the special levy or special levies to be imposed on the Land pursuant to NMSA 1978, § 5-11-20 (2001).

C. "City" means the City of Rio Rancho, New Mexico.

D. "City Council" means the City Council of the City.

E. "Clerk" means the City Clerk.

F. "Development Agreement" means the Development and Reimbursement Agreement, by and between the City, the District, and the Petitioner, in accordance with Section 2-10-6(E) of the PIO Policy, in the form attached as Tab 9 to the Petition, which Development Agreement shall be later joined and ratified by the District.

G. "District" or "PIO" means the Broadmoor Heights Public Improvement District.

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

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 5 to the Petition.

J. "Formation Documents" means the Petition, the General Plan, the Development Agreement, and such other documents as are required by the Act and the PIO Policy to be submitted by an applicant in connection with an application for 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 4 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. "Indebtedness" means one or more series of reimbursement certificates, bonds, or other obligations of the District to be issued by the District, pursuant to the Act and in conformity with the Development Agreement.

N. "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 Indebtedness, described and in the approximate locations shown on Exhibit B to the Feasibility Study.

O. "Land" means the real property described in the District Boundary Map; provided that, if any lot within the District Boundary Map is conveyed to a resident qualified elector or person other than the Petitioner or a consenting owner prior to the formation of the District, such lot shall be excluded from the District and the Land.

P. "MAI Appraisal" means the valuation of the Land as of April 1, 2018, in the appraisal prepared by David Pearson, MAI, and attached as Tab 6 to the Petition.

Q. "Petition" means the Petition and Application filed with the City for the formation of the Broadmoor Heights Public Improvement District and all documentation incorporated by reference in the Petition, submitted to the City pursuant to the Act and the PID Policy.

R. "Petitioner" means BGV RIO RANCHO I, LLC, an Arizona limited liability company.

S. "PID Funded Infrastructure Improvements" means the portion of the Infrastructure Improvements that are actually reimbursed or intended to be reimbursed by the District to the Developer, as generally identified in Table 1 in Section IV of the General Plan.

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

U. "Rate and Method of Special Levy Apportionment" means the rate, method of apportionment and manner of collection of the Annual Special Levy submitted by the Petitioner in the form attached as Exhibit C to the General Plan.

V. "Reimbursement Certificate" means each of the certificates affirming and memorializing the District’s obligation of reimbursement to the Petitioner, pursuant to the Development Agreement.

W. "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," "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 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 another consenting party, 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 Indebtedness will be the obligation of the District, only, and will not be backed by the credit, general funds or resources of the City in any manner. No holder or owner of the Indebtedness will have any right to require the City or the District to impose ad valorem property taxes to pay Indebtedness.

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 Infrastructure Improvements will be allocated to the owners of Land within the District who will utilize the PID Funded Infrastructure Improvements, in a fair and equitable manner, and will not be passed on to the City or citizens of the City, other than the Petitioner and the other owners of the Land; and

(ii) The City will receive the benefit of the Infrastructure Improvements through dedication of the Infrastructure Improvements.
E. The financing of the 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 PID Funded Infrastructure Improvements.

F. The financing of the 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, who will be reimbursed by the District.

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 Indebtedness, subject to the requirements and limitations specified in this Formation Resolution, are consistent with the requirements of the PID Policy.

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

A. The Broadmoor Heights Public 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 2 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 2-10-6(E) 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 Annual 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 Annual Special Levy, is hereby accepted and approved.

F. The Statement as to Draft Disclosure Regarding Annual Special Levy substantially in the form attached as Tab 8 to the Petition is hereby approved.

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

H. The purpose of the District shall be to provide for reimbursement to Petitioner for the Infrastructure Improvements set forth in the Petition.

I. The Indebtedness 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 Annual 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 2-10-3(D) of the PID Policy.

L. The District shall comply with existing City policies for development, growth management and conservation, as provided in Sections 2-10-3(A) and 2-10-5(K) of the PID Policy.

M. The PID financing proposed in the Petition and other Formation Documents meet the applicable requirements of Sections 2-10-6(H), 2-10-7(D), 2-10-7(F) and 2-10-7(G) 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 15 days following the date of adoption of this Formation Resolution. At that meeting, the District’s governing body shall adopt the open meeting policy and by-laws for the District submitted in the Application, approve and
execute the Development Agreement, and shall take such other action
toward or in connection with the issuance of the Indebtedness, 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
Annual 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.

Section 5. Authorization of Indebtedness. The District may issue Indebtedness
pursuant to a resolution of the District’s governing body authorizing issuance of one or
more Reimbursement Certificates for the purpose of financing the Infrastructure
Improvements subject to the requirements set forth in this Formation Resolution (the
"Financing Resolution").

A. The Financing Resolution shall be approved by the District.

B. The Financing Resolution shall include, at minimum, the following
provisions for the protection of the owner of the Indebtedness when
Reimbursement Certificates are issued:

(i) The District shall issue Reimbursement Certificates in
substantially the form set forth in Exhibit C to the
Development Agreement;

(ii) The Financing Resolution shall include provisions for the
issuance and delivery to Petitioner of Reimbursement
Certificates concurrently in accordance with the
Development Agreement;

(iii) Each Developed Platted Property within the District shall be
levied the maximum allowable Annual Special Levy for each
year beginning the first Fiscal Year after a home on said
Developed Platted Property receives a certificate of
occupancy from the City and the Developer has authorized
the Annual Special Levy be instituted and collected. The
Annual Special Levy in any given Fiscal Year will be the
same amount for each Developed Platted Property within
the District, which amount shall be equal to the Levy due on
the first Developed Platted Property levied in the District;
provided that, (1) the Annual Special Levy shall never
exceed the maximum amounts identified below in the
Rate and Method of Special Levy Apportionment attached to
(iv) The Financing Resolution shall include provisions for appointment by the District of a PID Administrator. The PID Administrator may exercise or assign to another the rights and remedies of the District to collect Annual Special Levies and foreclosure delinquent Annual Special Levies for the benefit of the District and Petitioner;

C. The District shall retain authority to issue notes or bonds, but such authority shall only be triggered upon the written approval of Petitioner, so long as the Maximum Annual Levy never exceed the maximum amounts identified below in the Rate and Method of Special Levy Apportionment attached to the General Plan as Exhibit C. The Financing Resolution shall include, at a minimum, the following provisions for the protection of the holders or owners of the Indebtedness in the event the District’s authority to issue notes or bonds is triggered:

(i) The financing structure and/or features of Indebtedness are suitable, and Developer is a suitable owner/holder of the Indebtedness as required by Section 2-10-7(F). The District may enter into a contribution agreement if required by the City pursuant to Section 2-10-7(G) of the PID Policy.

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

(iii) The Financing Resolution shall provide that the trustee may
exercise the rights and remedies of the District for the protection of noteholders or bondholders, including, without limitation, the following:

(a) the trustee's collection of Annual Special Levies; and
(b) the trustee's foreclosure of delinquent Annual Special Levies.

D. Prior to the issuance of Indebtedness, the District's Financing Resolution shall be presented to the City Council for approval and will be approved by the City Council if consistent with the provisions of this Section 5 of this Formation Resolution.

Section 6. District Governance.

A. The District's governing body (the "District Board") shall be composed of the following five directors: (i) two representatives of the Petitioner, who shall be David Beckham and Jeff Jesionowski; (ii) two representatives of the City, who shall be John Craig and Carole Jaramillo; and (iii) a representative chosen by the mutual agreement of the four preceding directors, who shall be Anthony Caravella. Each of the directors named shall serve 6-year terms.

B. Prior to the end of the initial six year period of the District, if any of the City nominees shall resign or otherwise cease to act as directors of the District, the City shall have the sole right to nominate their replacements for the remaining term. Prior to the end of the initial six year period of the District, if any of the Petitioner nominees shall resign or otherwise cease to act as directors of the District, the Petitioner shall have the sole right to nominate their replacements for the remaining term. Prior to the end of the initial six year period of the District, if the joint nominee of the four preceding directors shall resign or otherwise cease to act as a director of the District, the City and the Developer shall jointly nominate the replacement for the remaining term; provided that, the parties shall give preference for any replacement of the joint nominee to a representative of a builder who is constructing homes within the Property. In each case, such nominee shall be appointed to the District's board of directors by the remaining members of the District's board of directors.

C. Pursuant to § 5-11-6 of the Act, Anthony Caravella is appointed clerk of the District and Carole Jaramillo is appointed treasurer of the District.

D. Within six years following the date of formation of the District, the District shall hold an election of members of the District Board in conformance with Act and the PID Policy. In the event that a member of the District Board acting pursuant to an election resigns or is otherwise terminated as a member of the District Board, the City shall appoint a director of the District Board to serve until the next election.
Section 7. Waiver of Additional Hearing and Election. Based on the information provided by the Petitioner in the Petition, the Petition has been consented to 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(l) (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, and in compliance with the Development Agreement and Developer approval.

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 the Broadmoor Heights 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

APPROVING THE PETITION AND APPLICATION OF BGV RIO RANCHO I, LLC, LLC, AN ARIZONA LIMITED LIABILITY COMPANY, FOR FORMATION OF BROADMOOR HEIGHTS PUBLIC IMPROVEMENT DISTRICT PURSUANT TO THE PUBLIC IMPROVEMENT DISTRICT ACT, NMSA 1978, §§ 5-11-1 to 27 (2001, AS AMENDED) AND THE CITY OF RIO RANCHO NEW
MEXICO PUBLIC IMPROVEMENT DISTRICT GUIDELINES AND
APPLICATION PROCEDURE; MAKING FINDINGS IN
CONNECTION WITH THE PETITION AND APPLICATION 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, 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
AND REIMBURSEMENT AGREEMENT FOR IMPLEMENTATION
OF THE DISTRICT; PROVIDING FOR GOVERNANCE OF THE
DISTRICT; PROVIDING THAT OBLIGATIONS OF THE DISTRICT
SHALL NOT BE OBLIGATIONS OF THE CITY OF RIO RANCHO;
RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN; AND
REPEALING ALL ACTIONS INCONSISTENT WITH THIS
FORMATION 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 14TH DAY OF NOVEMBER, 2018

Greggory D. Hull, Mayor

ATTEST:

Stephen J. Ruger, City Clerk
(SEAL)