



## RESOLUTION

Making Findings In Connection With The Resolution Of Winrock Town Center Tax Increment Development District 1 Authorizing The Issuance And Sale Of Subordinate Lien Tax Increment Bonds; Ratifying And Approving The Issuance And Sale Of The Winrock Town Center Tax Increment Development District 1 Subordinate Lien Gross Receipts Tax Increment Bonds, Series 2020; Authorizing Amendments To The Operation Agreement And The Construction Agreement Previously Entered Into By The City With Respect To Such District; And Repealing City Council Enactment No. R-2020-013 (Gibson)

MAKING FINDINGS IN CONNECTION WITH THE RESOLUTION OF WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICT 1 AUTHORIZING THE ISSUANCE AND SALE OF SUBORDINATE LIEN TAX INCREMENT BONDS; RATIFYING AND APPROVING THE ISSUANCE AND SALE OF THE WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICT 1 SUBORDINATE LIEN GROSS RECEIPTS TAX INCREMENT BONDS, SERIES 2020, AS SUBSTANTIALLY CONSISTENT WITH THE REQUIREMENTS OF CITY ORDINANCE ENACTMENT NO. O-2006-036 AND CITY COUNCIL RESOLUTION NO. R-2008-126, ENACTMENT NO. R-2008-120; AUTHORIZING AMENDMENTS TO THE OPERATION AGREEMENT AND THE CONSTRUCTION AGREEMENT PREVIOUSLY ENTERED INTO BY THE CITY WITH RESPECT TO SUCH DISTRICT; AND REPEALING CITY COUNCIL RESOLUTION NO. R-20-7, ENACTMENT NO. R-2020-013.

Capitalized terms in the following preambles shall have the meanings assigned in City Council Resolution No. R-2008-126, Enactment No. R-2008-120 (the "Formation Resolution") except as otherwise defined in this Resolution, or unless the context clearly requires otherwise.

WHEREAS, pursuant to the Act and Ordinance Enactment No. O-2006-036 (the "TIDD Ordinance"), the Council enacted the Formation Resolution, in which the Council approved the formation of the Winrock Town Center Tax Increment Development District 1 ("District 1") and District 2 ("District 2" and together with District 1, the "Districts") for the purpose of financing public infrastructure improvements; and

WHEREAS, pursuant to City Council Resolution No. R-08-177, Enactment No. R-2008-117, the Council approved the Development Agreement between Winrock Partners LLC (the "Developer"), the City and the Districts, and further amended the Development Agreement pursuant to City Council Resolution No. R-15-170, Enactment No. R-2015-027, by which the

Developer will construct the TIDD Infrastructure Improvements to serve approximately 83 acres of land, located wholly within the corporate boundaries of the City; and

WHEREAS, Chapter 58, Laws of New Mexico 2009 authorizes the Districts to issue TIDD Bonds in an aggregate maximum principal amount for the Districts of \$137,000,000 in net proceeds, as adjusted for inflation after January 1, 2009, which shall be payable from Gross Receipts Tax Increment and Property Tax Increment, for the purpose of financing the TIDD Infrastructure Improvements, subject to certain requirements set forth in the Formation Resolution and the Development Agreement, as amended; and

WHEREAS, pursuant to the Development Agreement, as amended, the TIDD Infrastructure Improvements will be financed by the Districts' issuance of multiple series of TIDD Bonds as provided in the Act; and

WHEREAS, pursuant to the Development Agreement, as amended, all TIDD Infrastructure Improvements to be acquired by the Districts will be designed and constructed according to all applicable City standards, will be suitable for dedication to the City upon completion, and will be acquired by the Districts and then, as applicable, reconveyed to, owned and operated by the City; and

WHEREAS, at the time of adoption of the Formation Resolution and the appointment of the Governing Body of the Districts, there were no qualified resident electors residing in the Districts; and

WHEREAS, the Developer constructed the following dedicated infrastructure projects within the Districts:

An approximately 930 space two-level subterranean parking garage located in District 1, including access ramps, pedestrian circulation (stairs and elevators), fire system, mechanical systems, electrical system, security system and plumbing system;

A portion of Ring Road located in District 1, and associated infrastructure, including, without limitation, sidewalks, landscaping features, landscape buffer and street lighting;

A main entrance drive north of the existing BJ's restaurant and another entrance drive south of the existing Macaroni Grill restaurant that continues east, both located in District 2; a portion of Ring Road located in District 2 that borders District 2's southwestern and southern boundaries and a north/south road adjacent to the west side of District 2; improvements to the Indian School Road right-in/right-out access and its adjoining road headed south into the property, the installation of a new access point and associated drive off of America's Parkway headed east into

the site, all of which are located in District 2, including sidewalks, landscaping features, landscape buffer, street lighting and other public utilities associated with such entrance drives and roads; and other public infrastructure improvements located in District 2 that serve District 2, consisting of water lines, sewer lines and storm drains; and

Various public infrastructure improvements previously paid by the Developer including, without limitation, storm drains located in District 1, a portion of Ring Road located in District 1 (east of the portion of Ring Road listed above) and an access point and associated drive to Indian School Road, including sidewalks, landscaping features, landscape buffer and street lighting located in District 2 (collectively, the "Series 2015 Project"); and

WHEREAS, the Council, pursuant to City Council Resolution No. R-2015-195, Enactment No. R-2015-051, approved the issuance of the first series of TIDD Bonds, which were issued to finance the Series 2015 Project, and the transaction documents related thereto; and

WHEREAS, District 1 has heretofore issued its Winrock Town Center Tax Increment Development District 1 Senior Lien Gross Receipts Tax Increment Bonds, Series 2015 in the aggregate principal amount of \$43,325,000 (the "Series 2015 Bonds") to finance the Series 2015 Project; and

WHEREAS, the Developer has commenced or will commence the construction of the following dedicated infrastructure projects within the Districts, in addition to Series 2015 Project:

Various public infrastructure improvements including, without limitation, architectural, legal, engineering, planning, consulting and design costs, most of which being previously paid by the Developer, including a portion of Road B located in District 1, and associated infrastructure, including, without limitation, paving, sidewalks, storm drains, sewer, water, fire lines, reuse water lines and infrastructure, landscaping features, irrigation facilities, landscape buffer, street lighting, streetscape, canopy renovation and pedestrian walkway associated with the parking garage financed with proceeds of the Series 2015 Bonds and other pedestrian walkways (estimated cost \$6,000,000);

The community park situated in District 1 at the core of the site including without limitation, architectural, legal, engineering, planning, consulting and design costs, water feature and infrastructure, gazebo, children's play area, outdoor performance space, walking paths, bridges, landscaping, irrigation facilities, benches, trash cans, other pedestrian and hardscape amenities, that portion of green energy sources allocable to the park, and public restrooms (estimated cost \$8,000,000);

Various public infrastructure improvements including, without limitation, architectural, legal, engineering, planning, consulting and design costs for roads serving the community park located in Districts 1 and 2, and associated infrastructure, including, without limitation, paving, sidewalks, storm drains, sewer, water, fire lines, reuse water lines and infrastructure, landscaping features, irrigation facilities, landscape buffer, street lighting, streetscape and other pedestrian walkways (estimated cost \$1,000,000); and

To the extent of any monies remaining after payment of the foregoing TIDD Infrastructure Improvements, a water treatment plant to serve Districts 1 and 2, water reuse lines throughout Districts 1 and 2, and additional portions of the internal public roads including utilities, landscape, streetscape and lighting;

(collectively, the “Series 2020 Project”); and

WHEREAS, the financing of the Series 2020 Project is an authorized purpose and appropriate use of a tax increment development district as set forth in the Act and the TIDD Ordinance; and

WHEREAS, the Governing Body of District 1 has adopted Resolution No. 2020-17 (the “Bond Resolution”) authorizing the issuance of the “Winrock Town Center Tax Increment Development District 1 Subordinate Lien Gross Receipts Tax Increment Bonds, Series 2020” (the “Series 2020 Bonds”) to pay, or to reimburse the Developer amounts previously paid by it for, a portion of the costs of the Series 2020 Project, all subject to the ratification and approval of the Series 2020 Bonds by the Council; and

WHEREAS, the Governing Body of District 1 has adopted Resolution No. 2020-18 (“Resolution No. 2020-18”) approving the execution and delivery of certain transaction documents related to the issuance of the Series 2020 Bonds; and

WHEREAS, the Council has considered the Bond Resolution and Resolution No. 2020-18 in connection with the requirements for the issuance by District 1 of the Series 2020 Bonds set forth in the TIDD Ordinance and the Formation Resolution.

BE IT RESOLVED BY THE COUNCIL, THE GOVERNING BODY OF THE CITY OF ALBUQUERQUE:

Section 1. Findings. The City hereby declares that it has considered the Bond Resolution, Resolution No. 2020-18 and all other relevant information and finds as follows:

A. The Bond Resolution authorizes the issuance of the Series 2020 Bonds in an aggregate principal amount not to exceed \$30,000,000, at a maximum net effective interest rate not to exceed 10% per annum and provides that no Series 2020 Bond shall bear interest at a rate

exceeding 10% per annum, which rates and other details of the Series 2020 Bonds will be specifically determined and approved by the Chairperson or the Vice Chairperson (the “Designated Officer”) of District 1 as set forth in certificate (the “Sale Certificate”) executed by such person, all as authorized by the Bond Resolution.

B. The Series 2020 Bonds will be issued for the purpose of financing of a portion of the Series 2020 Project which is an authorized purpose and appropriate use of a tax increment development district as set forth in the Act, the TIDD Ordinance, the Formation Resolution, the Development Agreement, as amended, the Bond Resolution and Resolution No. 2020-18.

C. The Bond Resolution provides that the Series 2020 Bonds will be the obligations solely of the Districts, and will not be backed by the faith, credit, general funds or resources of the City, the County or the State in any manner. Owners of the Series 2020 Bonds will have no right to require that the City, the County or the Districts impose ad valorem property taxes to pay TIDD Bonds, including but not limited to, the Series 2020 Bonds.

D. The City’s Debt Committee has reviewed and approved the Series 2020 Bond transaction.

E. The City hereby waives Section 6(B)(ii) of the Formation Resolution requiring a contribution or other credit facility to be provided by the Developer, based upon the marketing plan for the Series 2020 Bonds, the sophistication of the intended purchasers of the Series 2020 Bonds and recommendations made by the underwriter of the Series 2020 Bonds and the financial advisor to the City.

F. The Bond Resolution, the master indenture and supplemental indenture provide for the following terms and parameters for the Series 2020 Bonds:

- (i) The maximum principal amount of the Series 2020 Bonds shall not exceed \$30,000,000;
- (ii) The Series 2020 Bonds shall be sold pursuant to a limited public offering;
- (iii) the purchase price of the Series 2020 Bonds (including underwriting discount, original issue premium and original issue discount) shall be not less than 85% of the aggregate principal amount of the Series 2020 Bonds and the underwriting discount will not exceed 2.50% of the aggregate principal amount of the Series 2020 Bonds;
- (iv) The maximum annual net effective interest rate on the Series 2020 Bonds shall not exceed 10% per annum;
- (v) The Series 2020 Bonds shall be dated as of the date of delivery of the Series 2020

Bonds;

(vi) the Series 2020 Bonds shall be issued only as fully registered bonds in a book entry only system in minimum denominations of \$500,000, and any integral multiple of \$1,000 in excess thereof;

(vii) The Series 2020 Bonds shall each be numbered consecutively from one upwards;

(viii) The Series 2020 Bonds may mature in serial or term maturities with the last such maturity no later than 25 years from the date of initial delivery or issuance of the Series 2015 Bonds;

(ix) the Series 2020 Bonds shall be subject to optional redemption not later than May 1, 2030 and at a redemption price not exceeding 103% of the principal amount thereof plus accrued interest to the redemption date;

(x) The amount of principal of the Series 2020 Bonds maturing, or subject to mandatory sinking fund redemption, in any particular year shall not exceed \$4,000,000;

(xi) District 1 shall establish, on the date of issuance of the Series 2020 Bonds, a debt service reserve fund to secure the Series 2020 Bonds in an amount equal to the least of (a) the maximum annual debt service requirements on the Series 2020 Bonds, calculated as of the date of issuance of the Series 2020 Bonds, deducting the amount deposited in the debt service reserve fund from the principal due on the final maturity date of the Series 2020 Bonds, based on the assumption that such amount will be used to pay a portion of the principal of the Series 2020 Bonds on such final maturity date of the Series 2020 Bonds; (b) 125% of the average annual debt service requirements on the Series 2020 Bonds, calculated as of the date of issuance of the Series 2020 Bonds; or (c) 10% of the aggregate principal amount of the Series 2020 Bonds; and

(xii) The Designated Officer of District 1 shall approve and execute the Sale Certificate for the Series 2020 Bonds.

G. District 1 has designated BOKF, NA to serve as trustee (the "Trustee") pursuant to an indenture of trust. The Trustee may exercise the rights and remedies of District 1 for the protection of bondholders and the appointment of a receiver or other agent to protect and enforce the rights of any holder of the Series 2020 Bonds in the event of a default in the payment of debt service on the Series 2020 Bonds, which default cannot be cured by drawing on the debt service reserve funds established for the Series 2020 Bonds or drawing on available funds deposited in the bond funds established for the Series 2020 Bonds.

H. District 1 has designated, and the City hereby designates, D.A. Davidson & Co. to act as underwriter for the sale of the Series 2020 Bonds.

I. District 1 has designated, and the City hereby designates, Sherman & Howard L.L.C. to act as bond and disclosure counsel and to prepare bond and disclosure documents necessary to effectuate the sale of the Series 2020 Bonds to the public.

J. District 2 has pledged and assigned to the Trustee, all Gross Receipts Tax Increment generated in District 2 in order to secure the payment of the principal of, premium, if any, and interest on the Series 2020 Bonds and such pledge and assignment satisfies Section 7(D) of the TIDD Ordinance which provides that “Gross Receipts Tax Increment Bonds shall be payable from the gross receipts taxes generated from taxable activities located in the TIDD” and the tenth Whereas Clause of the Formation Resolution which provides “pursuant to the Application and as provided for in the TIDD Act, the Applicant anticipates that the TIDD Infrastructure Improvements will be financed, in part through the issuance by each of the Districts of separate series of Bonds secured by the portion of gross receipts tax increment revenues and property tax increment revenues generated within each of the Districts and dedicated to the City, and the City will have no responsibility for construction of the TIDD Infrastructure Improvements, payment of the Tax Increment Bonds, or other financial obligations of the Districts.”

K. The sale of the Series 2020 Bonds in minimum denominations of \$500,000 satisfies the second paragraph of Section 7(D)(4) of the TIDD Ordinance which provides: “Privately placed bonds need not be rated; however, the purchasers of such bonds must be ‘qualified institutional buyers’ (as such term is defined in Rule 144A of the Securities Exchange Commission) and must agree not to resell the bonds except to ‘qualified institutional buyers’ or ‘accredited investors’, as such terms are defined by the SEC, in a private placement. If appropriate, the Applicant shall enter into a ‘Continuing Disclosure Undertaking’ (as required by Rule 15c2-12 of the Securities Exchange Commission) relating to the issuance of the bonds.”

L. Section 4(A)(ii) of the Development Agreement, as amended, provides that “The maximum aggregate principal amount of TIDD Bonds issued by any District shall not exceed the actual costs of the TIDD Infrastructure serving the District plus amounts to be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance, and other costs normally associated with the issuance of TIDD Bonds pursuant to statute;” which supersedes Section 5(D)(ii) of the Formation Resolution which provides “The maximum aggregate principal amount of Increment Bonds issued by each TIDD shall not exceed 100% of the initial cost of the

public improvements serving that TIDD, as determined at the time that TIDD issues a series of Bonds.”

M. The Developer has represented to District 1 and the City that prior to the date hereof it has paid not less than 20% of the costs of the sum of (i) the Series 2015 Project and (ii) the Series 2020 Project in satisfaction of the requirements of Section 5-15-20B NMSA 1978, as amended and Section 5(D)(iii) of the Formation Resolution. The City hereby waives compliance with Section 4(A)(i) of the Development Agreement, as amended, based on compliance with the requirements of Section 5-15-20B NMSA 1978, as amended, and Section 5(D)(iii) of the Formation Resolution.

N. Except as otherwise provided herein, the Bond Resolution is in compliance with the provisions of Section 5 of the Formation Resolution.

O. Except as otherwise provided herein, the Bond Resolution and the issuance and sale of the Series 2020 Bonds satisfies in all respects the requirements provided in the Formation Resolution, the TIDD Ordinance and the Act for the issuance of the Series 2020 Bonds.

Section 2. Approval of Issuance and Sale of Series 2020 Bonds Pursuant to the Bond Resolution and Resolution No. 2020-18. Based upon the findings set forth in Section 1 of this Resolution, the issuance and sale of the Series 2020 Bonds as set forth in the Bond Resolution and Resolution No. 2020-18 are hereby approved.

Section 3. Amendments to Operation Agreement and Construction Agreement. The Chief Administrative Officer of the City, or his designee, is hereby authorized to prepare, negotiate, execute and deliver any amendments to the Operation, Maintenance and License Agreement executed on June 3, 2015 between the City and the Developer and the Construction Management Agreement dated as of July 9, 2015 among the City, the Developer and District 1, and other agreements or instruments to which the City is a party relating to the formation of the Districts and the issuance of the Series 2020 Bonds as may be necessary or appropriate to carry out the issuance of the Series 2020 Bonds and the related plan of finance and the construction, maintenance and conveyance of the Series 2020 Project.

Section 4. Ratification. All actions which have previously been taken by the Council and the officers of the City, or their designees, in connection with the transactions contemplated by any of the foregoing resolutions be, and they hereby are, approved, ratified and confirmed in all respects.

Section 5. Repealer. All ordinances or resolutions, or parts thereof in conflict with the

provisions of this 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. Resolution No. R-20-7, Enactment No. R-2020-013 is hereby repealed.

Section 6. Waiver. All documents, including, without limitation, the Development Agreement, as amended, resolutions and ordinances, or parts thereof, pertaining to the issuance and sale of bonds by District 1 and the financing of TIDD Infrastructure Improvements by District 1 inconsistent herewith are hereby waived to the extent only of such inconsistency.

Section 7. Severability. If any section, paragraph, clause or provision of this 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 Resolution.

Section 8. Publication of Notice of Adoption of Resolution. The Clerk is hereby directed to publish a notice of this Resolution, in substantially the following form:

(Form of Summary of Resolution for Publication)

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 Albuquerque, New Mexico relating to ratification and approval of the issuance and sale of the Winrock Town Center Tax Increment Development District 1 Subordinate Lien Gross Receipts Tax Increment Bonds, Series 2020. Complete copies of the resolution are available for public inspection during the regular business hours of the City Clerk, City of Albuquerque, New Mexico.

The title of the Resolution is as follows:

#### RESOLUTION

MAKING FINDINGS IN CONNECTION WITH THE RESOLUTION OF WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICT 1 AUTHORIZING THE ISSUANCE AND SALE OF SUBORDINATE LIEN TAX INCREMENT BONDS; RATIFYING AND APPROVING THE ISSUANCE AND SALE OF THE WINROCK TOWN CENTER TAX INCREMENT DEVELOPMENT DISTRICT 1 SUBORDINATE LIEN GROSS RECEIPTS TAX INCREMENT BONDS, SERIES 2020, AS SUBSTANTIALLY CONSISTENT WITH THE REQUIREMENTS OF CITY ORDINANCE ENACTMENT NO. O-2006-036 AND CITY COUNCIL RESOLUTION NO. R-2008-126, ENACTMENT NO. R-2008-120; AUTHORIZING AMENDMENTS TO THE OPERATION AGREEMENT AND THE CONSTRUCTION AGREEMENT PREVIOUSLY ENTERED INTO BY THE CITY WITH RESPECT TO SUCH DISTRICT; AND REPEALING CITY COUNCIL

RESOLUTION NO. R-20-7, ENACTMENT NO. R-2020-013.

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

(End of Form of Summary of Resolution for Publication)

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