

RESOLUTION 2020-007

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE MAYOR TO EXECUTE A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SIERRA VISTA AND GL MOUNTAIN VISTA, LLC, CONCERNING PROPERTY LOCATED AT 700 SOUTH CARMICHAEL AVENUE, SIERRA VISTA, ARIZONA, AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista and GL Mountain Vista, LLC, owner of Parcel No. 105-08-007B, have reached a Development Agreement provided in Exhibit 1 to this Resolution and incorporated by reference, for the property whose location and boundaries are shown on the map attached as Exhibit "A" to the Development Agreement; and

WHEREAS, the subject property is in the West Sierra Vista Planning Area Infill Incentive District established by Resolution 2005-079 pursuant to the requirements of A.R.S. § 9-499-10 which provides for certain relief from development standards by Development Agreement approved by the City Council; and

WHEREAS, the City's General Plan, VISTA 2030, calls upon the City to "maintain, improve, and revitalize older areas of the community" [Goal 13-1] and to "promote the Infill Incentive District Policy" [Goal 13-2]; and

WHEREAS, the execution of this Development Agreement is in the best interest of the City of Sierra Vista;

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

The Development Agreement between the City of Sierra Vista and GL Mountain Vista, LLC, (with its Exhibit A"), attached as Exhibit 1 to this Resolution, is authorized and approved.

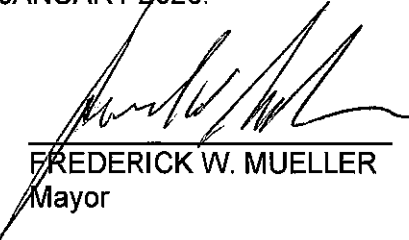
SECTION 2

The Mayor is authorized and directed to execute the Development Agreement for and on behalf of the City and the City Clerk is authorized and directed to attest the same.

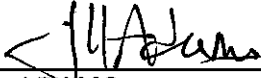
SECTION 3

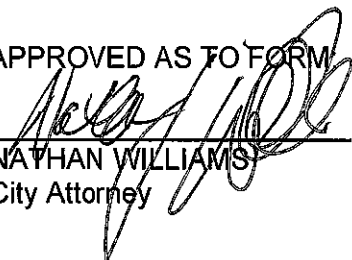
That the City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 23RD DAY OF JANUARY 2020.

  
FREDERICK W. MUELLER  
Mayor

ATTEST:

  
\_\_\_\_\_  
JILL ADAMS  
City Clerk

APPROVED AS TO FORM  
  
\_\_\_\_\_  
NATHAN WILLIAMS  
City Attorney

PREPARED BY: Matt McLachlan, AICP  
Director of Community Development

## **Exhibit 1**

### **DEVELOPMENT AGREEMENT WITH GL MOUNTAIN VISTA LLC**

This Development Agreement (hereinafter referred to as Agreement) is made and entered into this 23<sup>RD</sup> day of January 2020, by and between the CITY OF SIERRA VISTA, a municipal corporation organized under the laws of the State of Arizona (hereinafter referred to as City) and GL Mountain Vista LLC, (hereinafter referred to as the Owner) owner of Parcel Number 105-08-007B.

#### **PART I. WITNESSETH AND SPECIAL CONDITIONS**

WHEREAS, A.R.S. § 9-500.05 authorizes the City to enter into an agreement with any person or entity having an interest in real property for development of such property and establishing certain development rights therein.

WHEREAS, Owner beneficially owns certain real property contemplated for redevelopment within the corporate limits of the City described in Exhibit "A" attached hereto; and

WHEREAS, the City's General Plan, VISTA 2030, designates the property for high density residential use; and

WHEREAS, the property is zoned Manufactured Home Residence (MHR) under the City's Development Code; and

WHEREAS, City is desirous of further guiding and coordinating its development consistent with the Goals and Policies set forth in City's adopted General Development Plan, VISTA 2030, and subsequent land use plans or amendments; and

WHEREAS, City encourages new development and redevelopment within the Infill Incentive District area;

WHEREAS, the Infill Incentive District Policy allows relief from Development Code provisions by Development Agreement;

WHEREAS, City and Owner desire to clearly and specifically set forth respective obligations of the City and Owner pertaining to the future redevelopment of the Owner's site and other matters; and

WHEREAS, City, after due and careful consideration, has concluded that the redevelopment of the Owner's site, under the terms and conditions hereinafter set forth, all as provided by law, would further enable the City to benefit from the redevelopment, ensure orderly development, and would best serve the interests of the City.

NOW, THEREFORE, for and in consideration of the promises, mutual covenants, conditions, terms, and agreements hereinafter set forth, the parties do hereby agree as follows:

- A. City Obligation. To help expedite the redevelopment and improvement of the West End, the City agrees to reduce the minimum required front and rear yard setback for the subject property as stipulated under Section 151.22.011(E)(2)(e) of the City of Sierra Vista Development Code from ten feet from the space line to five feet from the space line.
- B. Owner Obligation. To provide for safe pedestrian access along South Carmichael Avenue, the Owner hereby agrees to grant the City a public sidewalk easement for full extent of the eastern seven feet of the subject property in a form and manner determined to be acceptable by the City Attorney.

## **PART II. MISCELLANEOUS PROVISIONS**

1. This Agreement sets forth the entire understanding between the parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings.
2. There are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the parties relating to the subject matter of this Agreement other than those set forth herein. No modification or amendment of this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
3. The Owner shall indemnify, protect, defend, and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, directly or indirectly, in whole or in part, arising out of this Agreement except for negligent acts of the City.
4. Notwithstanding the provisions of Part I above, in the event the City is required to enact, take action, apply, or bind any future land use ordinances, rules, regulations, permit requirements and other requirements, and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state, or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law, such affected provision of this Agreement shall be modified as may be necessary to achieve minimum permissible compliance with such mandatory requirements.
5. The laws of the State of Arizona shall govern this Agreement and, in the event of litigation, venue shall be in Cochise County, Arizona.

6. In the event a party initiates action to enforce its rights hereunder, the substantially prevailing party shall recover from the non-prevailing party its expenses, court and/or arbitration costs, including taxed and untaxed costs, and reasonable attorneys' fees.
7. Time shall be of the essence for all performance required hereunder.
8. Notwithstanding the foregoing, if a dispute arises out of or relates to the Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree to first try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Cochise County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

### **PART III. SUCCESSORS AND ASSIGNS**

All the provisions hereof shall inure to the benefit of and be binding upon the parties hereto as applied to Parcel Number 105-08-007B and its respective successors and assigns unless otherwise specified in this Agreement.

### **PART IV. NOTICES**

Any notice required pursuant to the provisions of this Agreement shall be in writing and be sent by certified mail to the following addresses until notice of change of address is given and shall be deemed received on the fifth business day following deposit in the United States Mail.

City Clerk  
City of Sierra Vista  
1011 N. Coronado Drive  
Sierra Vista, AZ 85635

GL Mountain Vista LLC  
24040 Camino Del Avion Ste A227  
Monarch Beach, CA 92629

### **PART V. NON-COLLUSION AND NO JOINT VENTURE**

1. Owner warrants that to its knowledge no other person or entity has been an employee or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingency and that no member of the Council or employee of the City has any interest, financially or otherwise, in Owner or its subcontractors. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability.
2. This Agreement is not intended to be, and shall not be construed as, a joint venture, partnership, or other business entity created by and between the parties, and neither party is an agent for the other for any purpose nor has the power to bind the other for any purpose.
3. No member, official, employee or agent of the City shall be personally liable to Owner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Owner or its successor

or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

**PART VI. SEVERABILITY**

1. Nothing in this Agreement shall be deemed to be a promise or representation by Owner to construct, open, or operate the project; provided however, that in the event that Owner fails to complete the construction of the project, that this Agreement shall automatically terminate and the parties shall have no further obligation or liability to one another.
2. Should any section, clause or provision of this Agreement be declared by the courts to be invalid, it shall not invalidate the other provisions of this Agreement.

IN WITNESS WHEREOF, THE City and Owners caused this instrument to be executed by their respective proper officials duly authorized to execute the same on the day and year first above written. DATED this 23<sup>rd</sup> day of January, 2020.

**CITY OF SIERRA VISTA**

By: [Signature]  
FREDERICK MUELLER, MAYOR

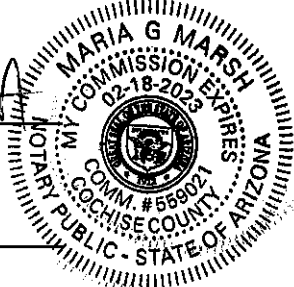
By: [Signature]  
BEN BRABAND, OWNER  
GL MOUNTAIN VISTA LLC


STATE OF ARIZONA )  
County of Cochise ) ss

STATE OF ARIZONA )  
County of Cochise ) ss

This instrument was acknowledged before me  
me this 23<sup>rd</sup> day of Jan., 2020,

This instrument was acknowledged before  
this 23<sup>rd</sup> day of Jan., 2020,

by: [Signature]  
Notary Public  
My commission expires: 02-18-23  


by: [Signature]  
Notary Public  
My commission expires: 02-18-23  


**APPROVAL AS TO FORM:**

[Signature]  
NATHAN J. WILLIAMS  
City Attorney

[Signature]  
JILL ADAMS  
City Clerk

## EXHIBIT A

### LOCATION MAP MOUNTAIN VISTA MOBILE HOME PARK 700 SOUTH CARMICHAEL AVENUE



#### LEGAL DESCRIPTION:

POR OF LOT 6 BY M&B: BEG AT SWCOR LOT 7; THN N89DEG 58MIN E86.20' NODEG 03MIN E1822.35' TO TPOB; THN S89DEG 57MIN W694.47' N21DEG 24MIN W889.12' N89DEG 57MIN E1019.66' SODEG 03MIN W828.06' TO TPOB SEC 3 22 20

## SIDEWALK EASEMENT

THIS SIDEWALK EASEMENT is made and entered into this 23<sup>rd</sup> day of JANUARY, 2020, by and between GL Mountain Vista, LLC whose address is 24040 Camino Del Avion Ste A227, Monarch Beach, California 92629 ("Grantor"), and the City of Sierra Vista, Arizona, a municipal corporation, whose address is 1011 N. Coronado Drive, Sierra Vista, Arizona 85635 ("Grantee").

WHEREAS, Grantor is the owner of certain real property situated in the City of Sierra Vista, Cochise County, Arizona, and more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference ("Grantor's Property"); and

WHEREAS, Grantor is willing to grant to Grantee a perpetual, non-exclusive easement over, under, through, and across that portion of Grantor's Property described on Exhibit "B" ("Easement Area") for the purposes and upon the terms and conditions more fully set forth herein.

NOW, THEREFORE, in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

1. Recitals; Exhibits. The above recitals and all exhibits attached hereto are true and correct and are incorporated herein by reference.
2. Grant of Easement. Grantor hereby grants to Grantee, its successors and assigns, for the use and benefit of the public, a perpetual, non-exclusive easement ("Easement") over, upon, under, through, and across the Easement Area for the purposes of construction, maintenance, repair, reconstruction, relocation, replacement and/or removal of a public sidewalk, curb, gutter, street lighting, including accessories and appurtenances thereto, within said Easement Area, and for such other purposes as are incidental and related thereto.
3. Grantors' Representations and Warranties. Grantor hereby represents and warranties to Grantee as follows:
  - (a) Ownership. Grantor is the owner in fee simple of Grantor's Property.
  - (b) Right to Convey Easement. Grantor warrants and represents that Grantor has the right to convey the Easement conveyed herein and will defend the same against all claims of all persons whomsoever.
4. Binding Effect. The foregoing grants of easement and rights appurtenant thereto, shall be and constitute covenants running with the land, benefiting the City and the public at large, and burdening the Grantor's Property, and all parts thereof, and shall be binding upon the heirs, successors, and assigns of Grantor's Property, including a mortgagee that becomes a successor in title to the Grantor's Property through foreclosure, or otherwise, or any portion thereof.
5. Entire Agreement. This document embodies and constitutes the entire understanding between the parties with respect to the Easement and the matters set forth herein. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are hereby merged into this recorded document.

IN WITNESS WHEREOF, Grantor has executed this instrument on the day and year first above and written.



GRANTOR:

By: 

GL Mountain Vista, LLC

BEN BRABAND  
Printed Name

Address:

24040 Camino Del Avion Ste A227, Monarch Beach, California 92629

STATE OF ARIZONA  
COUNTY OF COCHISE

The forgoing instrument was acknowledged before me on this 23rd day of  
January, 2020 by Ben Braband, who is personally known to me or has  
produced Drivers license as identification.

{NOTARY SEAL}

Notary Public, State of Arizona

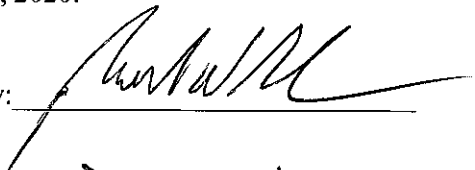
Notarial Serial Number 559021



GRANTEE:

THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA

Accepted this 23<sup>rd</sup> day of January, 2020, on behalf of the Mayor and City Council, City of Sierra Vista, Arizona, pursuant to a Resolution 2020-007 of the said Council duly adopted on January 23, 2020.

By: 

Name: Frederick W. Mueller

Title: Mayor, City of Sierra Vista

STATE OF ARIZONA  
COUNTY OF COCHISE

The forgoing instrument was acknowledged before me on this 23<sup>rd</sup> day of January, 2020 by Frederick W. Mueller, who is personally known to me or has produced \_\_\_\_\_ as identification.

{NOTARY SEAL}

Notary Public, State of Arizona

Notarial Serial Number 559021

**EXHIBIT "A" – SUBJECT PROPERTY DESCRIPTION**

A PORTION OF LOT 6, SECTION 3, TOWNSHIP 22 SOUTH, RANGE 20 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, COCHISE COUNTY, ARIZONA, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE BRASS CAP MARKING THE INTERSECTION OF THE SOUTH LINE OF SAID SECTION 3 AND THE EASTERLY BOUNDARY OF FORT HUACHUCA MILITARY RESERVATION, SAID POINT BEING THE SOUTHWEST CORNER OF LOT 7, SECTION 3;

THENCE NORTH 89 DEGREES 58 MINUTES 34 SECONDS EAST COINCIDENT WITH THE SOUTH LINE OF SAID LOT 7, A DISTANCE OF 86.20 FEET TO THE SOUTHEAST CORNER OF SAID LOT 7;

THENCE NORTH 00 DEGREES 03 MINUTES 00 SECONDS EAST COINCIDENT WITH THE EAST LINE OF SAID LOT 7 AND OF LOT 6, A DISTANCE OF 1822.35 RECORD (1822.25 MEASURED) FEET TO A POINT ON THE EAST LINE OF LOT 6, SAID POINT BEING THE POINT OF BEGINNING;

THENCE SOUTH 89 DEGREES 57 MINUTES 10 SECONDS WEST, A DISTANCE OF 694.47 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY OF BUFFALO SOLDIER TRAIL;

THENCE NORTH 21 DEGREES 24 MINUTES 13 SECONDS WEST COINCIDENT WITH THE SAID EASTERLY RIGHT OF WAY, BEING ALSO PARALLEL WITH AND 100.00 FEET DISTANT FROM THE EASTERLY BOUNDARY OF FORT HUACHUCA MILITARY RESERVATION, A DISTANCE OF 889.12 FEET TO ITS POINT OF INTERSECTION WITH THE NORTH LINE OF SAID LOT 6;

THENCE NORTH 89 DEGREES 57 MINUTES 10 SECONDS EAST COINCIDENT WITH SAID NORTH LINE, A DISTANCE OF 1019.66 FEET TO THE NORTHEAST CORNER OF SAID LOT 6;

THENCE SOUTH 00 DEGREES 03 MINUTES 00 SECONDS WEST COINCIDENT WITH THE EAST LINE OF SAID LOT 6, A DISTANCE OF 828.06 FEET TO THE POINT OF BEGINNING.

**EXHIBIT "B" - EASEMENT BOUNDARY DESCRIPTION**

COMMENCING AT THE NORTHEAST CORNER OF THE SUBJECT PROPERTY;

THENCE WEST ALONG THE NORTH PROPERTY BOUNDARY, A DISTANCE OF 1 FEET;

THENCE SOUTH PARALLEL TO THE EAST PROPERTY BOUNDARY COINCIDENT WITH THE SOUTH PROPERTY BOUNDARY;

THENCE EAST ALONG THE SOUTH PROPERTY BOUNDARY, A DISTANCE OF 1 FEET;

THENCE NORTH ALONG THE EAST PROPERTY BOUNDARY TO THE POINT OF BEGINNING.