

RESOLUTION 2022-039

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; AUTHORIZING THE MAYOR TO EXECUTE A PRE-ANNEXATION AND DEVELOPMENT AGREEMENT BETWEEN THE CITY OF SIERRA VISTA AND AREC 15, LLC, A NEVADA LIMITED LIABILITY COMPANY, CONCERNING PROPERTY LOCATED AT APN # 107-56-002L AND 107-56-002S, AND AUTHORIZING DIRECTION TO THE CITY MANAGER, CITY CLERK, CITY ATTORNEY, OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, the City of Sierra Vista and AREC 15 LLC, owner of the parcels numbered 107-56-002L and 107-56-002S, have reached a Pre-Annexation Agreement attached as Exhibit "A" to this Resolution and incorporated by reference, for the properties whose locations and boundaries are shown on the map attached as Exhibit "A" to the Pre-Annexation Agreement; and

WHEREAS, the execution of this Pre-Annexation 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, COCHISE COUNTY, ARIZONA, AS FOLLOWS:

SECTION 1

The Pre-Annexation Agreement between the City of Sierra Vista and AREC 15 LLC attached as Exhibit A to this Resolution, is authorized and approved.

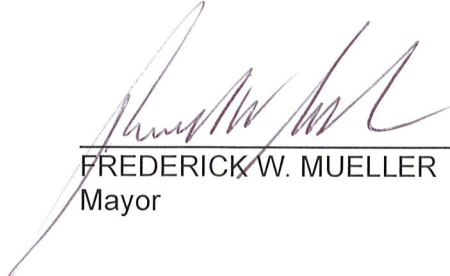
SECTION 2

The Mayor is authorized and directed to execute the Pre-Annexation Agreement for and on behalf of the City of Sierra Vista and the City Clerk is authorized and directed to attest the same.

SECTION 3

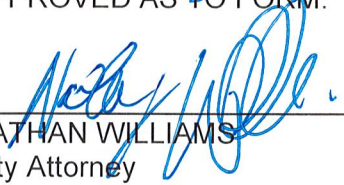
The City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this Resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA THIS 23RD DAY OF JUNE, 2022.



FREDERICK W. MUELLER
Mayor

APPROVED AS TO FORM:



NATHAN WILLIAMS
City Attorney

ATTEST:



JILL ADAMS
City Clerk

PREPARED BY:

Blake Fisher
Planner I

**PRE-ANNEXATION AGREEMENT BETWEEN
THE CITY OF SIERRA VISTA AND AREC 15, LLC**

This Pre-Annexation Agreement (hereinafter, the "Agreement") is made and entered into as of January 5th, 2022, by and between the City of Sierra Vista, Arizona, a municipal corporation organized under the laws of the State of Arizona (hereinafter, the "City") and AREC 15, LLC, a Nevada limited liability company (hereinafter, the "Owner") of the property specifically described below pursuant to the authority of A.R.S. § 9-500.05.

RECITALS:

- A. 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 providing for the annexation and development of such property and establishing certain development rights therein.
- B. Owner beneficially owns certain real property located in portions of Section 19, Township 22 South, Range 21 East, of the Gila River and Salt River Base and Meridian, and more particularly described in Exhibit A attached hereto and made part hereof (hereinafter, the "Properties").
- C. The Properties are currently located in an unincorporated area of Cochise County and is contiguous to the exterior boundary of the City.
- D. The Properties are currently zoned GB under the Cochise County zoning ordinance.
- E. City and Owner desire that the Properties be annexed into the corporate limits of the City and be developed as an integral part of the City and in accordance with VISTA 2030, the existing comprehensive plan for the City.
- F. City and Owner have determined that entering into this Agreement will be in the best interest of the City, the public, and the Owner; will be proper and legal exercise of City power; will promote orderly development of the Properties and the surrounding area; will promote the health, safety and welfare and economy of the community in general; and meets the economic development goals of the City.
- G. The City and the Owner are entering into this Agreement pursuant to the provisions of A.R.S. §9-500.05 in order to facilitate the annexation and development of the Properties by providing for, among other things:
 - 1. Establishment of the terms for annexation of the Properties into the City.

AGREEMENT

In consideration of the foregoing premises, the mutual covenants and promises in this Agreement and the intent to legally bind City and Owner, the following is agreed:

- 1. **Annexation Consent.** Owner hereby consents to annexation of the Properties into the City of Sierra Vista pursuant to A.R.S. § 9-471. This consent to annex the Properties into

the City shall operate as a covenant and shall run with the land and bind each of Owner's heirs, executors, administrators, successors and assigns to the Properties.

2. **Unification of Property.** Owner hereby consents to effectuating the combination of the Properties with the adjoining tax parcel to the west (APN# 107-56-002B) within forty-five (45) days of the Properties being annexed into the city limits to create a unified site for the business use(s) in compliance with the City of Sierra Vista Development Code.
3. **Durable Special Power of Attorney.** To facilitate annexation of the Properties in a manner convenient to the City, Owner shall execute, simultaneously with the execution of this Agreement, a durable special power of attorney, attached and incorporated herein as Exhibit B, designating the City Clerk with the irrevocable power to sign and execute, on behalf of the Owner, any lawful annexation petition or other annexation document for the purpose of annexing the Properties into the City of Sierra Vista. Any successor(s) to Owner shall execute a similar annexation petition or documents necessary to accomplish the annexation.
4. **Applicable Zoning.** Pursuant to A.R.S. §9-471(L), upon annexation, the City shall adopt a City zoning classification for the Properties that permits densities and uses no greater than those permitted by the existing Cochise County zoning (the "Original City Zoning").
5. **Private Properties Rights Development Act.** By signing this Agreement, Owner agrees to waive claims for diminution in value under the Private Properties Rights Development Act in connection with annexation of the Properties as well as for any claim for diminution in value as a result of any subsequent rezoning of the Properties by the City.
6. **Entire Agreement.** This agreement sets forth the entire understanding between the parties concerning the subject matter of this agreement and incorporates all prior negotiations and understandings. 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.
7. **Negotiated Effort.** The parties agree that this Agreement represents the negotiated joint efforts of the parties. In the event a court of competent jurisdiction finds ambiguity, this Agreement shall not be construed against either party in favor of a non-drafting party.
8. **Authority.** All persons executing this document for City and Owner have all necessary and legal authority to enter into this Agreement for their respective corporations and the individual(s) executing this Agreement on behalf of their respective parties are authorized and empowered to bind the party on whose behalf such individual is signing.
9. **Covenants Running with the Land.** This Agreement is made as part of a common scheme or plan for the development of the properties and a "Development Agreement" as defined in A.R.S. §9-500.05 and all rights and obligations hereunder subject to the provisions of Paragraph 3 contained herein shall be considered to run with the land and benefit and burden all owners of all or any portion of the Properties, including owners who acquire title to any portion of the Properties subsequent to the execution and recording of this Agreement. Nothing in this Agreement shall be construed as creating a partnership between Owner and the City.

10. **Governing Venue.** The laws of the State of Arizona shall govern this agreement and, in the event of a dispute, venue shall be in Cochise County, Arizona.
11. **Attorneys' Fees.** Should litigation be necessary to enforce any term or provision of this Contract, or to collect any damages claimed or portion of the amount payable under this Agreement, then all litigation and collection expenses, witness fees, court costs, and attorneys' fees will be paid to the prevailing party.
12. **Mediation.** If a dispute arises out of or relates to the Agreement or this Amendment, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to 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.
13. **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	Owner: <u>AREC 15, LLC</u>
City of Sierra Vista	<u>Matthew F. Braccia, Manager</u>
1011 N. Coronado Drive	<u>2727 N Central Ave</u>
Sierra Vista, AZ 85635	<u>Phoenix, AZ 85004</u>

14. **Non-Severability.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court or competent jurisdiction, such holding shall not invalidate or render unenforceable all other provisions hereof.
15. **Amendments, Modifications and Waivers.** This Agreement may not be amended, none of its terms may be modified and none of the provisions or any of its terms may be waived without the written consent of the parties hereto.
16. **Applicable Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Arizona.
17. **Captions.** The captions or headings in this Agreement are for convenience only and in no way define, limit, or describe the scope or intent of any provisions or Section of this Agreement.
18. **Additional Documents and Acts.** The parties hereto shall execute, acknowledge, if applicable, and deliver such additional documents and do such other acts as may be reasonably required to fully implement the intent of this Agreement.

19. **Execution in Counterparts.** This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same agreement.

20. **Term.** The term of this Agreement shall commence on the date of execution by both parties hereto.

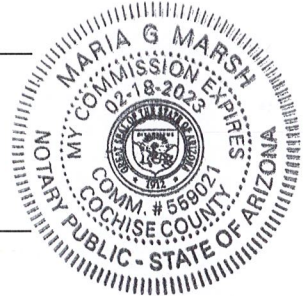
CITY OF SIERRA VISTA:

By: [Signature]
Frederick W. Mueller, Mayor

STATE OF ARIZONA)
) ss
County of Cochise)

This instrument was acknowledged before me
this 23rd day of June, 2022, by
[Signature]
Notary Public

My commission expires:
02-18-23



PROPERTY OWNER NAME:

AREC 15, LLC a Nevada limited liability
company

By: [Signature]
7003AF3AC66C43C
Signature

Matthew F. Braccia
Print Name

Manager
Title

APPROVAL AS TO FORM:

By: [Signature]
NATHAN WILLIAMS
City Attorney

ATTEST:

By: [Signature]
JILL ADAMS
City Clerk

STATE OF ARIZONA)
) ss.
County of Maricopa)

This instrument was acknowledged before me
by means of physical presence or online
notarization , this 5th day of January,
2022, by Matthew F. Braccia.

[Signature]
Notary Public

My commission expires: 05/25/2023

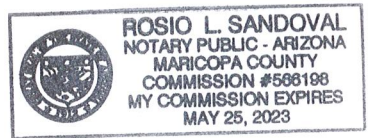


EXHIBIT "A" – SUBJECT PROPERTY



APN#	SITE ADDRESS	COUNTY ZONING	COMPATIBLE CITY ZONE	LEGAL DESCRIPTION
107-56-002L	4029 E Golden Acres Dr	GB	GC	POR OF GLO 3 IN SEC19 COM AT W4 COR THN S89DEG 47MIN E402.26' TO POB THN S89DEG 47MIN E362.50' S0DEG 02MIN W587.32' N89DEG 49MIN W512.50' N0DEG 2MIN E387.73' S89DEG 47MIN E150' N0DEG 2MIN E200' TO POB SEC19-22-21 6.224AC
107-56-002S	4095 E Golden Acres Dr	GB	GC	POR SW4 SEC 19 COM W4 COR SEC 19 THN S89DEG 47MIN E764.76' TO POB THN CONT S89DEG 47MIN E297' S0DEG 2MIN W587.08' N89DEG 49MIN W297 N0DEG 2MIN E587.32' TO POB SEC 19-22-21 4.00AC

EXHIBIT B

DURABLE SPECIAL POWER OF ATTORNEY

AREC 15, LLC is the owner of the following real properties:

Assessor's Parcel No: 107-56-002L and 107-56-002S

I hereby appoint the CITY CLERK of the City of Sierra Vista, Arizona as its true and lawful Attorney for it and in its name, place, and stead, with full authority and full powers of substitution, to do and execute any or all of the following acts, deeds and things, relating to or in any way connected with the following described matter AND NO OTHER:

To execute all ANNEXATION documents, including, but not limited to, petitions, waivers, notices, grant all approvals or consents, and to do every act or perform everything necessary to authorize and achieve the ANNEXATION of the above described property into the boundaries and limits of the City of Sierra Vista, County of Cochise, State of Arizona. It is the express intention and desire that said properties be annexed to the City of Sierra Vista.

I further certify that I have all necessary and legal authority to enter into this Durable Special Power of Attorney.

THIS SPECIAL POWER OF ATTORNEY SHALL NOT BE AFFECTED BY MY DISABILITY.

IN WITNESS WHEREOF, I have hereunto set my hand, this 5th day of January, 2022.

DocuSigned by: [Signature]
By: _____
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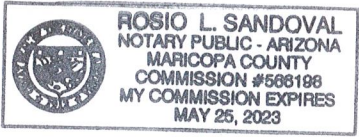
Print Name: Matthew F. Braccia

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me on January 5th, 2022 by means of physical presence or online notarization, by Matthew F. Braccia, who is, manager of AREC 15, LLC, to be the person whose name is subscribed to within this instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

[Signature]
NOTARY PUBLIC



My Commission Expires: 05/25/2023