THIS SUB-DEVELOPMENT AGREEMENT (the “Agreement”) is made this day _____ of ____________, 2019, (the “Effective Date”) by and between the TOWN OF SILVER CITY, NEW MEXICO, a political subdivision of the State of New Mexico (hereinafter the "Town" or the “Developer”), and GRAND SILVER CITY, a New Mexico limited liability company (hereinafter the "Sub-Developer").

RECITALS

WHEREAS, the Town owns approximately 18.736 acres of land (the “Property”) as such is shown and described on that certain “Plat of Survey of Town of Silver City VISTA DE PLATA SUBDIVISION PHASE OVERVIEW; Part of the Frasier Addition to the Town of Silver City (Vacated) Situate in Section 2, T.18 S., R. 14 W., N.M.P.M.; Grant County New Mexico, recorded in the records of said county on April 4, 2011, as P20110976” as such is attached hereto as Exhibit A. The Property is divided into sixty (60) lots (the “Lots”), as such are shown and described on Exhibit A.

WHEREAS, the Town approved the final plat of the Property by that certain Resolution No. 2011-02 (the “Resolution”), passed, approved, and adopted on January 25, 2011, and recorded in the real property records of Grant County, New Mexico on April 4, 2011, as 201101492. All requirements and recommendations, as such is recited in Sections 1(B) and 1(C)(1) through (6) of the Resolution, and any other requirements and recommendations ancillary thereto, have been completed.

WHEREAS, the Resolution incorporates by reference the Declaration of Protective Covenants and Restrictions (the “Declaration”) (referenced in the Resolution as Exhibit A, but separately recorded) dated January 31, 2011, and recorded in the real property records of Grant County, New Mexico on March 27, 2012, as Doc#201201220, and re-recorded on April 2, 2012, as Doc#201201341.
WHEREAS, the Resolution further incorporates by reference the Development Agreement (the “Development Agreement”) (referenced in the Resolution as Exhibit B, but separately recorded) dated January 31, 2011, and recorded in the real property records of Grant County, New Mexico, on April 4, 2011 as Doc#201101494.

WHEREAS, the Resolution, Declaration, and Development Agreement incorrectly recites the acreage and lots for the Property as being a 27.5-acre tract with 56 lots. The correct acreage and lots for the Property is a 18.736-acre tract with 60 lots. (See Exhibit A.)

WHEREAS, on or about January 11, 2011, the Town adopted Ordinance No. 1169 (the “Ordinance”), which established an affordable housing program. Sub-Developer has applied for the Housing Assistance Grant, Affordable Housing Funds, and/or to participate in an Affordable Housing Program offered by the Town. Pursuant to Section 4(c)(1)(o) of the Ordinance, and for good and valuable consideration, the Town has elected to waive all the requirements in Section 4(c)(1)(a) through (o) as such requirements may apply to Sub-Developer. The Town has received and reviewed the remaining application requirements of Sub-Developer required by the Ordinance and the Town finds that this Sub-Development Agreement is proper and in compliance with the Ordinance and all other laws, rules, regulations and ordinances that may be applicable.

WHEREAS, the Town/Developer and Sub-Developer intend that the Developer has constructed all necessary infrastructure improvements for the Property, including but not limited to on-site and off-site roads, sanitary sewer, water, drainage improvements, on-site grading, park and trail improvements, and various soft costs related thereto (collectively, the “Developer Improvements”). The Sub-Developer will provide for improvements to each individual Lot, including trenching utility lines from the curb to the foundation, laying foundation, performing curb-cuts, laying the driveway, installing/building Affordable Housing as defined by the Ordinance, and front landscaping (collectively, the “Sub-Developer Improvements”).

NOW THEREFORE, in consideration of the mutual promises and covenants set forth herein, the Town/Developer and Sub-Developer agrees as follows:

AGREEMENT

1. Term of Agreement. The term of this Agreement shall initially be two (2) years. If Sub-Developer obtains Proof of Concept (as hereinafter defined) during the initial two (2) year term, then this Agreement shall be automatically extended for a period of five (5) years (the
“Additional Term”). If Sub-Developer causes not less than ten (10) additional Lots to be
improved, conveyed to, and purchased by a Person or Household of Very Low, Low, Moderate,
or Middle Income earning up to 120% of Area Median Income (as such terms are defined in the
Ordinance) (a “Qualifying End-User”) during the Additional Term, then this Agreement shall be
automatically extended for another Additional Term. For each Additional Term in which Sub-
Developer causes not less than ten (10) of the Lots to be improved, conveyed to, and purchased
by a Qualifying End-User, then the term shall be automatically extended for another Additional
Term until such time as all of the Lots are improved, conveyed to, and purchased by a Qualifying
End-User. Following the expiration of the term, this Agreement shall be deemed terminated
and of no further force and effect.

2. **Buildout of Phases 1B through 4.** Sub-Developer shall have two (2) years from the
Effective Date of this Agreement to cause any four (4) Lots within Phase 1B to be improved,
conveyed to, and purchased by a Qualifying End-User. If, and only if, the immediately
preceding sentence is accomplished within the time period specified (the “Proof of Concept”),
then Sub-Developer may notify the Town and the Town/Developer shall begin and complete
installation of the Developer Improvements for the Lots located within Phase 2 or 3 of the
Property. If, at any point after all of Phase 1b has been conveyed to a Qualifying End-User, Sub-
Developer has caused sufficient Lots within any Phase to be improved, conveyed to, and
purchased by a Qualifying End-User, such that only five (5) Lots remain in any “Phase” (as such
is shown on Exhibit A), then Sub-Developer may notify the Town and the Town/Developer shall
begin and complete installation of the Developer Improvements for the Lots located in the next
Phase, with the “next Phase” to be determined by Sub-Developer. By way of example and not
limitation, when Sub-Developer has only five (5) Lots remaining in Phase 3, then the Developer
shall begin and complete grading and other necessary Developer Improvements for Phase 2 or
the next Phase as determined by the Sub-Developer.

3. **Phase 1A.** The Town has sold Lots 1-6 and said Lots are specifically removed from the
terms, conditions, and obligations of this Agreement. Lot 7 shall be used as a parking area (the
“Parking Area”), except for as provided herein. Sub-Developer shall have the right to cause Lot
8 to be purchased by Sub-Developer or other third party (at fair market value of the Lot as
established by a Broker’s Price Opinion mutually agreed to by the parties, paid to the Town), so
long as Sub-Developer thereafter completes the Sub-Developer Improvements and Lot 8 is used
as a model home (the “Model Home”) for the duration of the term of this Agreement. Upon complete build out of Phases 1B through 4, or upon the earlier termination or expiration of this Agreement, the model home on Lot 8 may be used as Residential Housing. Notwithstanding the foregoing, Sub-Developer may relocate the Parking Area and/or Model Home Lots within the Property upon thirty-days’ notice to the Town. In the event that Sub-Developer relocates the Parking Area or Model Home, then the Model Home located on Lot 8 may be used as Residential Housing and may be sold to a non-Qualifying End-User.

4. Closing of Lot and Sub-Developer Improvements. At Closing, to occur upon completion of the Sub-Developer Improvements for a Lot, the Lot shall be donated by the Town to the Identified Qualifying End-User (hereinafter defined) concurrently with the purchase and conveyance of the Sub-Developer Improvements to the Identified Qualifying End-User (the “Closing”). Sub-Developer shall give the Town not less than ten (10) days’ notice of any Closing. If any Closing cannot be completed due to a failure of the Identified Qualifying End-User, then the Sub-Developer shall endeavor to find a replacement Identified Qualifying End-User; however, in the event that a replacement Identified Qualifying End-User cannot be obtained and the lot closed within six (6) weeks, Sub-Developer may sell the failed Lot to a non-Qualifying End-User, provided that any replacement non-Qualifying End-User pays fair market value of the Lot to the Town. The “fair market value” as defined in this section 4 shall be established by a Broker’s Price Opinion (“BPO”) conducted by mutually acceptable broker.

5. Sub-Developer’s Duty to Complete. Sub-Developer shall have no obligation to make any Sub-Developer Improvements to any Lot unless and until a Qualifying-End User is identified and approved for financing for the purchase of the Sub-Developer Improvements (the “Identified Qualifying End-User”). Notwithstanding anything herein to the contrary, if Sub-Developer begins any Sub-Developer Improvement on any Lot, then Sub-Developer shall be obligated to complete that portion of the Sub-Developer Improvement undertaken on the Lot.

6. Impact Fees. Developer shall assign any available Impact Fees to Sub-Developer. To the extent that the Impact Fees assigned to Sub-Developer are insufficient to pay all Impact Fees necessary for the Sub-Developer Improvements, then the Town agrees to waive excess Impact Fees.

7. Default; Remedies. Any failure by any party to perform any material term of provision of this Agreement, which failure continues uncured for a period of thirty (30) days following
written notice of such failure from the other party, unless such period is extended by written mutual consent, shall constitute a default under this Agreement. Any notice given pursuant to the preceding sentence shall specify the nature of the alleged failure and, where appropriate, the manner in which said failure may be cured. If the nature of the alleged failure is such that it cannot reasonably be cured within thirty (30) days following written notice, and the failing party diligently prosecutes the cure to completion, then the alleged failure shall be deemed to be cured within such thirty (30) days period and shall not constitute a default under this Agreement. Upon the occurrence of a default under this Agreement, the non-defaulting party may institute legal proceedings to enforce the terms of this Agreement or, in the event of a material default, terminate this Agreement. If the default is cured, then no default shall exist and the noticing party shall take no further action.

8. Future Property Development. The Town is the owner of certain property, located within the Property but designated on the Plat thereof as “Future Development Site”, and that certain contiguous property located outside the Plat of the Property totaling approximately 11.755 acres (located to the Southeast of the Property) and approximately 3.445 acres (located to the Northwest of the Property) (the Future Development Site and un-Platted properties collectively referred to as the “Future Development Sites” and are depicted on Exhibit B). Provided that Sub-Developer has completed Proof of Concept, then Sub-Developer and Town shall enter into a Development Agreement for the Future Development Sites, under similar terms and conditions contained herein, except that the Future Development Sites may be used for multi-family housing.

9. Zoning. Any zoning changes, necessary and proper to re-zone the Lots and Future Development Sites to RB-2 shall be commenced by the Town such that the re-zoning is completed within six (6) months of the execution of this Agreement.

10. Additional Agreements. Sub-Developer agrees to be bound by the terms of the Town’s Affordable Housing Ordinance, codifies in Chapter 9 of the Municipal Code of Silver City, as well as all other applicable ordinances. It shall follow the mandates and procedures outlined therein with regard to the qualifications of end-users, and shall do no act which shall jeopardize the character of the development as primarily an affordable housing project. The terms of this Agreement are contingent upon sufficient appropriations and authorizations being made by the governing board of the Public Entity, the Legislature of New Mexico, or the Congress of the
United States if federal funds are involved, for performance of the Agreement. If sufficient appropriations and authorizations are not made by the Public Entity, Legislature, or the Congress of the United States if federal funds are involved, this Agreement shall terminate upon written notice being given. The Town is expressly not committed to expenditure of any funds until such time as they are programmed, budgeted, encumbered, and approved for expenditure.

11. Other General Provisions.

a. Covenants Running with the Land. The provisions of this Agreement constitute covenants running with the Property and are binding upon and inure to the benefit of the parties hereto, their successors and assigns.

b. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the parties at the following addresses:

If to the Town:
The Town of Silver City
c/o Alex C. Brown, Town Manager
101 W. Broadway
P.O. Box 1188
Silver City, NM 88062

If to the Sub-Developer:
GRAND Silver City, LLC
c/o David Silverman
201 Coal SW
Albuquerque, New Mexico 87102

With a copy to:
Amber G. Cash, Esq.,
The Cash Law Firm, LLC
PO Box 80761
Albuquerque, New Mexico 87194

c. Attorneys’ Fees. Except where expressly prohibited by ordinance or statute, if a suit, action, arbitration or other proceeding of any nature whatsoever is instituted in connection with
nay controversy arising out of this Agreement or to interpret or enforce any rights under this Agreement, if successful, the Sub-Developer is entitled to recover reasonable attorneys’ fees from the Developer, in addition to any other available remedy at law.
d. **Recitals.** The recitals set forth above are a material part of this Agreement and are incorporated by reference.
e. **Additional Amendments.** The Town and Sub-Developer agree that the Declaration, Development Agreement, and Resolution will be modified and amended to provide for the corrected lot count and acreage of the Property and to provide for an update of the Property’s plan of development. As such, this Agreement is not binding on any party unless and until it is executed by all parties hereto.
f. **Jurisdiction.** The jurisdiction and proper venue for any litigation brought for breach or enforcement of contract rights shall be the Sixth Judicial District, Grant County, New Mexico.
g. **Indemnification.** Sub-Developer hereby agrees to indemnify and hold the Town harmless from any claim, loss, liability or damages, including reasonable attorney fees and costs, if any, which Town may suffer or incur directly or indirectly as a consequence of Sub-Developer’s activities with regard to the fulfillment of this Agreement. Sub-Developer shall notify the Town of any claim made against it, whether real or anticipated within five (5) days of learning of such claim.
h. **No Agency or Employment Relationship.** This Sub-Development Agreement does not create an agency or employer-employee relationship, and shall not be construed as a partnership or joint venture for any purpose. Sub-Developer is an independent contractor, and shall gain no authorities or powers of the municipality of the Town of Silver City, nor shall it represent itself as an agency or affiliate of the government of the Town.
i. **Assignment.** This Agreement and the obligations therein shall not be assigned to any non-controlled third-party entity without the express written consent of the Town.
j. **Notice of Non-Responsibility.** Sub-Developer shall post “Notices of Non-Responsibility” on behalf of the Town on each property that is developed by Sub-Developer, and shall permit no liens or other encumbrances to be placed thereon.
k. **IPRA.** Recognizing recent New Mexico case law which broadly interprets governmental public acts, Sub-Developer acknowledges that its records regarding this project may be viewed as governmental records subject to the New Mexico Inspection of Public Records Act.
Accordingly, any request for records received by Sub-Developer in association with and limited to its sub-development shall be immediately transmitted to the Town Clerk, who will coordinate the presentation of qualifying records to the requester for inspection and/or copying.

IN WITNESS WHEREOF, the parties have set their hands and seals on the date first written above.

SUB-DEVELOPER: GRAND SILVER CITY,
a New Mexico limited liability company

By: ________________________________
    David Silverman, its Manager

TOWN/DEVELOPER: THE TOWN OF SILVER TOWN,
a political subdivision of the State of New Mexico,

By: ________________________________
    Ken Ladner, Mayor

Attest:

______________________________
Ann L. Mackie, Town Clerk

Approved as to form:

______________________________
Robert L. Scavron, Town Attorney
EXHIBIT B

FUTURE DEVELOPMENT SITES (highlighted)