

# CITY of ALBUQUERQUE

## TWENTIETH COUNCIL

COUNCIL BILL NO. C/S R-12-87 ENACTMENT NO. \_\_\_\_\_

SPONSORED BY: Isaac Benton

1 RESOLUTION  
2 AMENDING R-07-193 (ENACTMENT NO. R-2007-082) REGARDING THE  
3 MASTER DEVELOPMENT AGREEMENT FOR IMPLEMENTATION OF THE  
4 MESA DEL SOL TAX INCREMENT DEVELOPMENT DISTRICTS 1 THROUGH 5  
5 TO THE LIMITED EXTENT OF AMENDING THE WORKFORCE HOUSING PLAN  
6 ATTACHED AS EXHIBIT 3 TO THE APPROVED MASTER DEVELOPMENT  
7 AGREEMENT.

8 WHEREAS, as part of the City's approval in 2007 of the Master  
9 Development Agreement for Mesa del Sol, the City and Mesa del Sol LLC ("the  
10 developer") agreed to a Workforce Housing Plan ("2007 Plan") to ensure that  
11 the developer would create a certain number of "safe, quality Workforce  
12 Housing units" at Mesa del Sol that would be architecturally similar to market  
13 rate units and be integrated into the development to provide access to public  
14 transportation, shopping, schools, recreation, retail and employment "on a par  
15 with market rate housing at the Project;" and

16 WHEREAS, the 2007 Plan, among other provisions, set forth a timeline,  
17 requirements for percentages of total affordable housing units and  
18 percentages based on income eligibility, and a process for record keeping;  
19 and

20 WHEREAS, though the development of Mesa del Sol has been affected by  
21 the economic downturn since the 2007 Plan was initially drafted, the developer  
22 continues to be committed to providing Workforce Housing, but has requested  
23 that the 2007 Plan be amended to adjust to the current and projected market  
24 conditions; and

25 WHEREAS, the developer has proposed changes to the 2007 Plan as  
26 shown on the attached "Amended and Restated Workforce Housing Plan for

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1 Mesa del Sol” that, among other changes, extend the time during which Mesa  
2 del Sol must commence to provide Workforce Housing, and eliminate the  
3 requirement of “for sale” units.

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

6 Section 1. R-07-193 (Enactment R-2007-082) is amended as follows:  
7 The Workforce Housing Plan that was attached as Exhibit 3 to the approved  
8 Master Development Agreement is replaced with the Amended and Restated  
9 Housing Plan for Mesa del Sol that is attached to this resolution.

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**EXHIBIT 3**  
**AMENDED AND RESTATED**  
**WORKFORCE HOUSING PLAN**  
**FOR MESA DEL SOL**

**THIS AMENDED AND RESTATED WORKFORCE HOUSING PLAN AMENDS AND COMPLETELY RESTATES THAT CERTAIN WORKFORCE HOUSING PLAN FOR MESA DEL SOL ATTACHED AS EXHIBIT 3 TO THE MASTER DEVELOPMENT AGREEMENT FOR MESA DEL SOL TAX INCREMENT DISTRICTS 1 THROUGH 5 ENTERED INTO ON DECEMBER 18, 2006, BY AND AMONG THE CITY OF ALBUQUERQUE (THE “CITY”), MESA DEL SOL TAX INCREMENT DEVELOPMENT DISTRICTS 1 THROUGH 5 (THE “DISTRICTS”) AND MESA DEL SOL, LLC (“MESA DEL SOL”), FILED IN THE BERNALILLO COUNTY, NEW MEXICO REAL ESTATE RECORDS ON JUNE 19, 2008, AS DOCUMENT NO. 2008070059, AS AMENDED BY AMENDMENT FILED IN THE BERNALILLO COUNTY, NEW MEXICO REAL ESTATE RECORDS ON MARCH 20, 2010, AS DOCUMENT NO. 2010626776 AND BY AMENDMENT FILED ON AUGUST 22, 2011, AS DOCUMENT NO. 2011075938.**

**A. STATEMENT OF PURPOSE**

The purpose of this Workforce Housing Plan (the “Plan”) is to ensure that the Project developer, Mesa del Sol LLC (the “Developer”) will ensure the creation of a sufficient number of safe, quality Workforce Housing units at Mesa del Sol (the “Project”). These units shall have architecturally similar external appearances to market rate units and should be integrated into the development in such a way as to provide access to public transportation, shopping, schools, recreation, retail uses and employment opportunities on a par with market rate housing at the Project.

**B. DEFINITIONS**

*Affordable.* “Affordable” means that the monthly housing payment for “for sale” units, including principal, interest, taxes, insurance, utilities, special assessments, and neighborhood association fees, and for “for rent” units, including lease payments, utilities, special assessments and neighborhood association fees, shall not exceed thirty percent (30%) of the income limit

applicable to such unit, or 35% under special conditions to be defined in the City's Workforce Housing Plan.

*Affordable Workforce Housing.* Dwelling units that are offered for sale or lease at a price which is affordable by and that are, in fact, sold or leased to households whose annualized income is at or below eighty percent (80%) of the AMI.

*Area Median Income (AMI).* The most current Area Median Income for Albuquerque as adjusted for household size and determined by the U.S. Department of Housing and Urban Development.

*Dwelling Unit.* As defined in §14-16-1-5 ROA 1994.

*Market Rate Housing.* Dwelling units that are offered for sale or lease at a price which is affordable by households whose annualized income is greater than one hundred thirty percent (130%) of the AMI.

*Mid-Range Workforce Housing.* Dwelling units that are offered for sale or lease at a price which is affordable by and that are in fact sold or leased to households whose annualized income is between eighty percent (80%) and one hundred thirty percent (130%) of the AMI.

*Workforce Housing.* Dwelling units that are offered for sale or lease at a price which is affordable by and that are, in fact, sold or leased to households whose annualized income is at or below one hundred thirty percent (130%) of the AMI.

### **C. DEVELOPMENT OF WORKFORCE HOUSING**

1) The Developer will develop or cause to be developed Affordable Workforce Housing units in an amount equal to fifteen percent (15%) of all Mesa del Sol dwelling units built within the Property except as provided under Section K.

2) In addition to the Affordable Workforce Housing units, Mesa del Sol will develop or cause to be developed Mid-Range Housing units in an amount equal to five percent (5%) of all Mesa del Sol dwelling units built within the Property.

3) The Workforce Housing Units shall be at a density of 25 dwelling units per acre or greater, unless the Developer elects to provide housing at a lower density. Depending upon market conditions, the Workforce Housing may, or may not, require a subsidy from the Developer. If a subsidy from the Developer is required, the form of the subsidy shall be

determined by the Developer in its discretion. Examples of the form of the subsidy may be selling the land at a discounted price or buying down the interest rate for home loans.

4) Workforce Housing shall be developed according to the following table.

<i>Percent</i>	<i>Income Eligibility</i>
2.0%	Less than 50% of AMI
3.0%	50.1% to 60% of AMI
5.0%	60.1% to 70% of AMI
5.0%	70.1% to 80% of AMI
5.0%	80.1% to 130% of AMI

5) Each phase or subphase of the Project will include approximately the percentages of Affordable Workforce Housing and Mid-Range Housing as provided in Sections 1 and 2 above, over the life of the phase. The Developer shall be under no obligation to provide Affordable Workforce Housing during the first two (2) years following the date of the issuance of the 850<sup>th</sup> certificate of occupancy for a (non-model) home within the Project (the “Effective Date”). For the third (3<sup>rd</sup>) through the seventh (7<sup>th</sup>) years following the Effective Date, the Developer shall be obligated to provide no more than seventy-five percent (75%) of the Affordable Workforce Housing as required by this Plan for the units constructed during this period. For the eighth (8<sup>th</sup>) through the twelfth (12<sup>th</sup>) years following the Effective Date, the Developer shall provide approximately one hundred and twenty-five percent (125%) of the Affordable Workforce Housing as required by this Plan for the units constructed during this period, to “catch up” for the short fall for the prior five (5) years, if necessary. Following the twelfth (12<sup>th</sup>) year after the Effective Date, the Developer shall provide at least one hundred percent (100%) of the Affordable Workforce Housing as required by this Plan for the units constructed during this period. Please see the attached schedule entitled *Number of Workforce Housing Units Required Per Year* for additional details. In evaluating the Developer’s compliance with providing these percentages of Affordable Housing and Mid-Range Housing, the City shall consider compliance over two (2) consecutive year periods. That is, the Developers shall be in compliance notwithstanding that in any year the number of affordable

units falls below the mandated percentages so long as the mandated percentages are met over all consecutive two (2) year periods.

6) The City shall maintain two lists of qualified purchasers and/or renters of Mid-Range Workforce Housing and Affordable Housing (together “Workforce Housing”) within the Project (the “Eligible Households Lists”). The first list shall contain parties which have a household member employed at the Project (the “Employee List”) and the other list shall contain parties which do not have a household member employed at the Project (The “Non-Employee List”). The right to purchase/lease Workforce Housing shall first be offered to those on the Employee List, prioritized based upon the date which they were placed upon the Employee List. Upon exhausting of the Employee List, and until others are added to the Employee List, the right to purchase/lease Workforce Housing shall be offered to those on the Non-Employee List, prioritized based upon the date which they were placed upon the Non-Employee List. At least sixty (60) days, but not more than ninety (90) days, prior to offering units within a development at the Project containing Workforce Housing (a “Workforce Housing Project”), for sale or rent to the public, the Developer shall give written notice of the availability for sale or lease to those on the Employee List (the “Employee Workforce Housing Notice”) and upon exhaustion of the Employee List, or to the extent the Employee List has not exercised the right to purchase or lease such Workforce Housing units, the developer shall give written notice of the availability for sale or lease to those on the Non-Employee List (the “Non-Employee Workforce Housing Notice”). To the extent that Workforce Housing units within the Workforce Housing Project are not contracted for sale or lease to persons on either Eligible Household lists, within one hundred and eighty (180) days of the Non- Employee Workforce Housing Notice, the Developer shall have the right to sell or lease the untaken Workforce Housing units to purchasers or renters not meeting the Workforce Housing eligibility requirements, which sales or leases shall be for the same terms as offered to Eligible Households, in which event these sales or rentals of units shall apply towards the required Mid-Range Workforce Housing and affordable housing percentages. For example, if a Mid-Range Workforce Housing Project has ten (10) units offered for rent or sale at a price for which a household earning one hundred and twenty-nine percent (129%) of AMI would qualify, but there are only five (5) takers of these units from the Eligible Household List or other Eligible Households then the Developer could sell these other five (5) units to a household with an income greater than one hundred and thirty percent (130%) of AMI (the

"Non-Eligible Transactions"), at the same price and terms, and these five (5) sales would apply towards the five percent (5%) of units required to be sold or leased to those households having between eighty percent (80%) and one hundred and thirty percent (130%) of AMI. The Non-Eligible Transactions shall not be "deed restricted" or otherwise made permanently affordable, but at least eighty-five percent (85%) of the Non-Eligible Transactions which are sales must be to owner-occupied purchasers.

7) The TIDD Board, in consultation with the City, shall annually determine whether the agreed upon number of Workforce Housing Units in each income eligibility level have been built. Notwithstanding any other provision of the Master Development Agreement, no additional TIDD Bonds shall be approved, restructured, reissued or refinanced by the TIDD Board, until the Developer is in compliance with this Workforce Housing Plan.

8) To ensure integration of Workforce Housing within the Project, all Workforce Housing units constructed at the Project shall be comparable to market rate homes in exterior architectural styles and shall, to the extent feasible, be in mixed-income developments, i.e. developments that are partially Workforce Housing and partially market housing. For purposes of this Plan, mixed-income neighborhoods shall provide at least fifteen percent (15%) market rate housing. To the extent that the Workforce Housing Projects are 100% Workforce Housing multifamily projects, then such an exclusive Workforce Housing project shall be permitted, but the Workforce Housing Project shall be integrated with market housing projects. The Developer shall make best efforts to integrate Workforce Housing units throughout the Project. However, the Workforce Housing should be located near public transportation and shopping areas, as well as other conveniences and consequently may be more concentrated in certain areas of the Project. Nothing in this Plan shall be construed to require the inclusion of a certain number or percentage of Workforce Housing units in any particular phase of the Project or in every individual neighborhood of the Project. It is reasonable to anticipate that some housing areas at the Project may contain no Workforce Housing units.

#### **D. WORKFORCE HOUSING PROJECTS**

Workforce Housing projects are subject to the following:

1) All units must meet all requirements of the Project plans, Project design guidelines, and Project builder requirements, including the environmental and sustainability

requirements, specifically the “Energy Star” program, provided in the approved Level B Plan for the Project.

2) All Workforce Housing shall be constructed of first quality material equal to or better than FHA standards and reasonably similar in character to surrounding market rate units.

3) The Developer shall, in its sole and absolute discretion, allocate Workforce Housing between "for sale" and "for rent" units except that at least thirty-four percent (34%) of the Workforce Housing units shall be offered for sale and at least nineteen percent (19%) of the Workforce Housing units shall be Affordable Workforce Housing units which are offered for sale.

#### **E. PROVISIONS FOR ENSURING PERMANENT AFFORDABILITY OF HOUSING**

1) Any Affordable Workforce Housing unit produced to fulfill the requirements of this Plan shall be subject to a deed restriction or other mechanism guaranteeing the permanent affordability of the unit. For Affordable Workforce Housing, “permanent affordability” means that the purchase and sale of the unit meets the requirements for affordability both upon the initial sale of the unit, and every other time the unit is sold. For Affordable Rental Housing, “permanent affordability” means that the rent charged to any tenant for occupancy of the unit shall always meet the requirements for affordability.

2) If any Affordable Workforce Housing unit becomes vacant, the unit shall continue to rent or to sell for a price that is affordable, as defined in this Plan. In the case of Workforce Housing that is owner-occupied, units must be offered for resale for a formula-determined price that is designed to allow sellers a fair return on their investment, while ensuring these homes remain affordable for subsequent homebuyers. This resale formula shall be contained in a deed covenant, ground lease, or other contractual mechanism approved by the City.

3) The City agrees to create and fund a program that will assist the Developer and developers of mixed-income and affordable developments at the Project in monitoring and managing the affordability requirements of this Plan. However, the Developer’s responsibility for monitoring and managing the affordability requirements of this Plan is not contingent on the creation of this program by the City.

#### **F. BUYER/RENTER QUALIFICATION**



1) Buyers and renters shall be qualified upon the initial purchase or leasing of an Affordable Workforce Housing unit using HOME standards for income qualification for homeownership units and HUD 231 Program standards for income qualification for rental units.

2) No re-certification shall be required for so long as the buyer or renter remains a resident of the Affordable Workforce Housing unit unless such re-certification is required according to the financing arrangements for the particular Affordable Workforce Housing unit.

3) There shall be no discrimination in the sale or rent of Workforce Housing on the basis of age (except in senior housing), race, creed, color, sex, sexual orientation, disability, religion, national origin, marital status or affiliation.

4) There shall be no discrimination against the use of Section 8 vouchers by any tenant who is otherwise qualified to rent and occupy such a unit according to the standards set forth in this Plan.

5) Residents of Affordable Workforce Housing units shall have the same access and under the same terms to common area amenities as residents of the market rate units of the Project.

#### **G. UTILIZATION OF LOCAL AFFORDABLE HOUSING RESOURCES**

The Developer is strongly encouraged to utilize the expertise of the affordable housing developers represented on the Albuquerque Affordable Housing Coalition to assist in the production of the Affordable Workforce Housing requirements of this Plan, however, the Developer shall be under no obligation to do so.

#### **H. AGREEMENT NOT DEPENDENT ON PUBLIC OR ADDITIONAL SUBSIDIES**

The Developer is responsible for meeting the requirements of this Plan. The Developer's responsibility for meeting the Plan's requirements is not contingent on obtaining or using public or private subsidies. The City supports Workforce Housing at the Project. If required pursuant to a tax credit application process, the City agrees to provide future letters of support, however, this section shall not be construed to require the City to provide monetary support or matching funds as part of such application process.

#### **I. DENSITY BONUS**

The City agrees that the Affordable Workforce Housing Units developed at the Project shall be in excess of the permitted number of dwelling units at the Project. The City agrees that the Developer shall receive a density bonus of one unit for each unit of Affordable Workforce Housing developed at the Project.

#### **J. DEFERRAL**

The City shall maintain the lists of qualified purchasers and/or renters of Affordable Workforce Housing within the Project (the "Eligible Households Lists"). The Developer shall have the right to supplement the Eligible Households Lists. At least sixty (60) days, but not more than ninety (90) days, prior to offering units within a development at the Project containing Affordable Workforce Housing (an "Affordable Workforce Housing Project"), for sale or rent to the public, the Developer shall give written notice of the availability for sale or lease to those on the Eligible Households Lists (the "Affordable Workforce Housing Notice").

In the event that twenty percent (20%) or more of the "for sale" Affordable Workforce Housing units constructed within the prior 12 month period are not contracted for sale within one hundred eighty (180) days of the Affordable Workforce Housing Notice, then the Developer's obligation to provide such "for sale" Affordable Workforce Housing shall be deferred until such time as no more than ten percent (10%) of the units constructed within the prior 12 month period are not under contract for sale. In the event that twenty percent (20%) or more of the "for rent" Affordable Workforce Housing units constructed within the prior 12 month period are not contracted for lease within one hundred eighty (180) days of the Affordable Workforce Housing Notice, then the Developer's obligation to provide such "for rent" Affordable Workforce Housing shall be deferred until such time as no more than ten percent (10%) of the units constructed within the prior 12 month period are not under contract for lease. Periods of time when the Developer's obligation to provide Affordable Workforce Housing is deferred shall be exempted from the obligation to provide those Affordable Workforce Housing Units scheduled to be constructed during the period per Subsection C(5) of this Workforce Housing Plan.

#### **K. "FOR SALE" WORKFORCE HOUSING**

Within sixty (60) days of: (a) the Effective Date, and (b) the issuance of the 1,700<sup>th</sup> certificate of occupancy for (non-model) single family homes at the project, the Developer will commission feasibility studies by an independent third party acceptable to the City ("Feasibility

Studies”) to be completed within ninety (90) days to determine the financial viability of constructing and marketing “for sale” Workforce Housing to purchasers meeting the Income Eligibility Requirement set out herein (a “Viable For Sale Market”). The Feasibility Studies will survey the Albuquerque Metropolitan area affordable housing market within the previous twelve (12) months, the availability of financing programs, appraisal requirements and other factors indicative to determine if there is a Viable For Sale Market. In the event the Feasibility Studies determines there is Viable For Sale Market, then the Developer shall implement the Workforce Housing Plan as set out herein. In the event that either of the Feasibility Studies determines there is not a Viable For Sale Market this Workforce Housing Plan may be amended to reduce or eliminate the requirement for single family for sale housing at the discretion of the parties.