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1 convey the real property underlying the Districts together with all rights and
2 interests in the “Master Development Agreement Mesa del Sol Public
3 Improvements Districts 1 through 5 By and Among the City of Albuquerque,
4 New Mexico, Mesa del Sol, LLC, and Mesa del Sol Public Improvement
5 Districts 1 Through 5, with an Effective Date of March 3, 2008, pursuant to the
6 Mesa del Sol Public Improvement Districts 1-5 Notice of Formation Resolution,
7 recorded in the Bernalillo County, New Mexico real estate records on April 13,
8 2009, as Document No. 2009038714 and all rights and interests in that certain
9 related Bond Anticipation Reimbursement Agreement by and between Mesa
10 del Sol, LLC and Mesa del Sol Public Improvement Districts 1-5 (see Third
11 Amendment to Emergency Order Appointing Receiver filed 2/19/2018); and

12 WHEREAS through the Foreclosure and a series of transactions (the
13 “Transaction”) the underlying real property and the rights under the District
14 Agreements were conveyed from Seller to MDS Investments, LLC (the
15 “Purchaser”); and

16 WHEREAS, Section 9.H of the March 3, 2008, Development Agreement
17 provides that the Development Agreement shall not be assigned without the
18 written consent of the City; and

19 WHEREAS, the Purchaser has presented a form of a Consent to
20 Assignment of the Development Agreements acceptable to the City (the form
21 of Consent to Assignment is attached hereto as Exhibit B); and

22 WHEREAS, the Purchaser has provided satisfactory evidence to the City
23 that each entity comprising the Seller has disclaimed any interest in the real
24 property underlying the District and any rights under the District
25 Agreements—and other due diligence materials and related studies
26 (collectively the “Due Diligence Documents” attached hereto as Exhibit C).

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

29 Section 1. Consent to Assignment of the District Agreements. Pursuant
30 to the promises and the acceptance of the obligations referenced in the
31 Consent to Assignment, the City consents to the assignment of the District
32 Agreements to the Purchaser and the Chief Administrative Officer of the City
33 will execute the Consent to Assignment.

1 **Section 2. Repealer.** All ordinances or resolutions, or parts thereof in
2 conflict with the provisions of this Resolution, are hereby repealed to the
3 extent only of such inconsistency. This repealer shall not be construed to
4 revive any ordinance or resolution, or part thereof, heretofore repealed.

5 **Section 3. Severability.** If any section, paragraph, clause or provision
6 of this Resolution shall for any reason be held to be invalid or unenforceable,
7 the invalidity or unenforceability of such section, paragraph, clause or
8 provision shall in no manner affect any remaining provisions of this
9 Resolution.

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CONSENT TO ASSIGNMENT
AND ASSUMPTION OF PID MASTER DEVELOPMENT AGREEMENT

THIS CONSENT TO ASSIGNMENT AND ASSUMPTION OF PID MASTER DEVELOPMENT AGREEMENT (the “Consent to Assignment”) is made as of this ___ day of December 2018 by and among the Mesa Del Sol Tax Increment Development Districts 1 through 5 (the “Districts”); the City of Albuquerque, New Mexico (the “City”); and, MDS Investments, LLC, a New Mexico limited liability company (“MDS”).

RECITALS:

WHEREAS, the Boards of Directors of the Districts, being public improvement districts established and existing pursuant to NMSA Sections 5-11-1 *et seq*, previously have approved, executed and delivered the Master Development Agreement by and among the Districts, the City of Albuquerque, New Mexico (the “City”) and Mesa del Sol, LLC (the “Original Developer”), recorded in the Bernalillo County, New Mexico Real Estate Records on March 3, 2008, as amended and supplemented (the “Development Agreement”; capitalized terms used in this Resolution and not otherwise defined herein shall have the meanings provided in the Development Agreement); and,

WHEREAS, the Original Developer (and/or its successors in interest with respect to the real property underlying the Districts, referred to herein as the “Seller”) was named as the Defendant in a certain court proceeding in the Second Judicial District Court of New Mexico known as Case No. D-202-CV-2015-05944 (the “Foreclosure”), in which the Court appointed a receiver to convey the real property underlying the Districts together with all rights and interests in the “Master Development Agreement Mesa del Sol Public Improvements Districts 1 through 5 By and Among the City of Albuquerque, New Mexico, Mesa del Sol, LLC, and Mesa del Sol Public Improvement Districts 1 Through 5, with an Effective Date of March 3, 2008, pursuant to the Mesa del Sol Public Improvement Districts 1-5 Notice of Formation Resolution, recorded in the Bernalillo County, New Mexico real estate records on April 13, 2009, as Document No. 2009038714 together with that certain related Bond Anticipation Reimbursement Agreement by and between Mesa del Sol, LLC and Mesa del Sol Public Improvement Districts 1-5 (collectively, the “District Agreements”) (*see* Third Amendment to Emergency Order Appointing Receiver filed 2/19/2018); and,

WHEREAS through the Foreclosure and a series of transactions (the “Transaction”) the underlying real property and the rights under the District Agreements were conveyed from Seller to MDS; and,

WHEREAS, Section 9.H of the March 3, 2008, Development Agreement provides that the Development Agreement shall not be assigned without the written consent of the City; and,

WHEREAS, MDS intends to accept both the benefits and burdens required under the District Agreements.

NOW, THEREFORE, for and in consideration of the mutual promises and covenants herein contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. The District and the City consent to the assignment of the District Agreements to MDS.

2. MDS assumes all of the benefits, obligations and burdens imposed by the District Agreements, makes all of the representations and warranties on the part of Mesa del Sol set forth therein, and agrees to each of the agreements and covenants on the part of Mesa del Sol set forth therein as if MDS was an original signatory to the District Agreements in the place and stead of Mesa del Sol.

3. Definitions and Incorporation of Recitals. Capitalized terms which appear and are not otherwise defined herein shall have the meanings ascribed to such terms in the Development Agreement. The definitions and recitals set forth hereinabove are incorporated herein by reference to the same extent and with the same force and effect as if fully hereinafter set forth.

4. Governing Law. This Assignment shall be governed by and enforced in accordance with the laws of the State of New Mexico.

5. Consent to Jurisdiction and Venue. Any controversy arising under or in relation to this Assignment shall be litigated exclusively in Albuquerque, New Mexico, and that the state and federal courts and authorities with jurisdiction in Albuquerque, New Mexico, shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Consent to Assignment. The parties irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise.

6. Successors and Assigns. This Consent to Assignment shall be binding upon the parties and their respective successors, successors-in-interest and assigns, and shall inure to the benefit of the parties and their respective successors, successors-in-interest and assigns. The terms used to designate any of the parties herein shall be deemed to include the successors, successors-in-interest and assigns of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities.

7. Severability. The invalidity, illegality or unenforceability of any provision of this Assignment shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

8. Expenses. Each party shall pay its own expenses of completing this Consent to Assignment.

9. Remedies Cumulative. In the event of a party's default under this Consent to Assignment, the other party may exercise all or any one or more of its rights and remedies available under this Consent to Assignment, at law or in equity. Such rights and remedies shall be cumulative and concurrent, and may be enforced separately, successively or together, and the exercise of any particular right or remedy shall not in any way prevent a party from exercising any other right or remedy available to it.

10. Entire Agreement; Amendment and Waiver. This Consent to Assignment contains the complete and entire understanding of the parties with respect to the matters covered herein. This Consent to Assignment may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against

whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument.

11. Further Assurances. A party shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that the other party may reasonably request, in order to protect any right or interest granted by this Consent to Assignment or to enable a party to exercise and enforce its rights and remedies under this Consent to Assignment.

12. Notices. All notices given under this Assignment shall be in writing and shall be sent to the respective addresses of the parties, as set forth below:

MDS:	Mr. Steve Chavez
Districts:	District Chair c/o City Council Services One Civic Plaza Room 9081 Albuquerque, New Mexico 87102
City:	Chief Administrative Officer

13. Captions. The captions of the sections of this Consent to Assignment are for convenience only and shall be disregarded in construing this Consent to Assignment.

14. Waiver of Trial by Jury. To the maximum extent permitted under applicable law, each party (a) covenants and agrees not to elect a trial by jury with respect to any issue arising out of this assignment or the relationship between the parties that is triable of right by a jury and (b) waives any right to trial by jury with respect to such issue to the extent that any such right exists now or in the future. This waiver of right to trial by jury is separately given by each party, knowingly and voluntarily with the benefit of competent legal counsel.

15. Time of the Essence. Time is of the essence with respect to this Assignment.

16. Attached Exhibit. MDS represents to the City that true, correct and complete copies of all of the District Agreements (including all amendments thereto, if any) are attached to this Assignment as Exhibit A and is incorporated by reference herein as if more fully set forth in the text hereof.

[Remainder of page intentionally left blank; signature page follows.]

IN WITNESS WHEREOF, the undersigned has caused this Assignment to be signed and delivered by its duly authorized representative as of the date first set forth above.

[CONSENT SIGNATURE PAGES TO BE ADDED]

EXHIBIT A
DEVELOPMENT AGREEMENT

[See Attached]