CITY of ALBUQUERQUE
TWENTY THIRD COUNCIL

COUNCIL BILL NO.   <u>F/S R-18-110</u>   ENACTMENT NO.   _____

SPONSORED BY: Patrick Davis

<div style="text-align:left;">

1   **RESOLUTION**

2   CONSENTING TO THE ASSIGNMENT OF THE MASTER DEVELOPMENT

3   AGREEMENT FOR THE MESA DEL SOL TAX INCREMENT DEVELOPMENT

4   DISTRICTS 1 THROUGH 5, BY AND AMONG THE CITY OF ALBUQUERQUE,

5   NEW MEXICO, MESA DEL SOL, LLC AND THE DISTRICTS RECORDED IN THE

6   BERNALILLO COUNTY, NEW MEXICO REAL ESTATE RECORDS ON JUNE 19,

7   2008, AS AMENDED AND SUPPLEMENTED, AND CERTAIN OTHER RELATED

8   AGREEMENTS, IN CONNECTION WITH THE PURCHASE OF THE PROPERTY

9   UNDERLYING THE DISTRICTS BY MDS INVESTMENTS, LLC, FOR THE

10   PURPOSE OF FINANCING PUBLIC INFRASTRUCTURE IMPROVEMENTS

11   WITHIN THE DISTRICTS

12   WHEREAS, the Boards of Directors of the Mesa Del Sol Tax Increment

13   Development Districts 1 through 5 (the "Districts"), being tax increment

14   development districts established and existing pursuant to NMSA Sections 5-

15   15-1 et seq., previously have approved, executed and delivered the Master

16   Development Agreement by and among the Districts, the City of Albuquerque,

17   New Mexico (the "City") and Mesa del Sol, LLC (the "Original Developer"),

18   recorded in the Bernalillo County, New Mexico Real Estate Records on June

19   19, 2008, as amended and supplemented (the "TIDD Master Development

20   Agreement"; capitalized terms used in this Resolution and not otherwise

21   defined herein shall have the meanings provided in the TIDD Development

22   Agreement); and

23   WHEREAS, the Original Developer (and/or its successors in interest

24   with respect to the real property underlying the Districts, referred to herein as

25   the "Seller") was named as the Defendant in a certain court proceeding in the

26   Second Judicial District Court of New Mexico known as Case No. D-202-CV-

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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 TIDD Master Development Agreement Mesa del Sol Tax Increment Development Districts 1 Through 5, by and among the City of Albuquerque, New Mexico, Mesa del Sol, LLC and Mesa del Sol Tax Increment Development Districts 1 through 5, recorded in the Bernalillo County, New Mexico real estate records on June 19, 2008, as Document No. 2008-070059, as amended by First Amendment to the Master Development Agreement Mesa del Sol Tax Increment Development Districts 1 Through 5, by and among the City of Albuquerque, New Mexico, Mesa del Sol, LLC and Mesa del Sol Tax Increment Development Districts 1 through 5 dated September 17, 2009, and recorded in the Bernalillo County, New Mexico real estate records on March 30, 2010, as Document No. 2010-026776, as further amended by First Amendment to the Master Development Agreement Mesa del Sol Tax Increment Development Districts 1 Through 5, by and among the City of Albuquerque, New Mexico, Mesa del Sol, LLC and Mesa del Sol Tax Increment Development Districts 1 through 5 dated September 17, 2009, and recorded in the Bernalillo County, New Mexico real estate records on August 22, 2011, as Document No. 2011- 075938, as further amended by First Amendment" together with the Bond Anticipation Reimbursement Agreement by and between Mesa del Sol, LLC and Mesa del Sol Tax Increment Development Districts 1-5 dated December 23rd 2008[.] (collectively the "TIDD Development Agreements" attached hereto as <u>Exhibit A</u>) (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 TIDD Development Agreements were conveyed from Seller to MDS Investments, LLC (the "Purchaser"); and

WHEREAS, Section 12.G of the June 19, 2008 TIDD Master Development Agreement provides that the TIDD Master Development Agreement shall not be assigned without the written consent of the City; and

WHEREAS, the Purchaser has presented a form of a Consent to Assignment of the TIDD Development Agreements acceptable to the City (the

form of Consent to Assignment of the TIDD Development Agreements is attached hereto as <u>Exhibit B</u>); and

WHEREAS, the Purchaser has provided satisfactory evidence to the City that each entity comprising the Seller has disclaimed any interest in the real property underlying the Districts and any rights under the TIDD Development Agreements—and other due diligence materials and related studies (collectively the "Due Diligence Documents" attached hereto as <u>Exhibit C</u>).

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

<u>Section 1</u>.   <u>Consent to Assignment of the TIDD Development Agreements</u>. Pursuant to the promises and the acceptance of the obligations referenced in the Consent to Assignment of the TIDD Development Agreements, the City consents to the assignment of the TIDD Development Agreements to the Purchaser and the Chief Administrative Officer of the City will execute the Consent to Assignment of the TIDD Development Agreements.

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

<u>Section 3</u>. <u>Severability</u>. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall in no manner affect any remaining provisions of this Resolution.

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EXHIBIT A

TIDD MASTER DEVELOPMENT AGREEMENT,

FIRST AMENDMENTS TO THE TIDD MASTER DEVELOPMENT AGREEMENT, AND

BOND ANTICIPATION REIMBURSEMENT AGREEMENT

EXHIBIT B

CONSENT TO ASSIGNMENT AGREEMENT

EXHIBIT C

30 THREE SIXTY PUBLIC FINANCE STUDY, AND

PRO FORMA