

7/29/07

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

This MASTER DEVELOPMENT AGREEMENT FOR TAX INCREMENT DEVELOPMENT DISTRICTS 1 THROUGH 5 (the "Agreement") is entered into as of the Effective Date (as defined below) by and among the CITY OF ALBUQUERQUE, NEW MEXICO, a municipal corporation (the "City"), MESA DEL SOL, LLC, a New Mexico limited liability company ("Mesa del Sol"), and MESA DEL SOL TAX INCREMENT DEVELOPMENT DISTRICTS 1 THROUGH 5, each a political subdivision of the State as provided in Section 5-15-9(C), separate and apart from the City and Bernalillo County, New Mexico (the "Districts") in connection with the facts and circumstances recited below.

RECITALS

A. Mesa del Sol owns or controls, through the consent of the record owners, approximately 3,082 acres of land (the "Property") constituting a portion of certain real property known as Mesa del Sol, which real property is subject to an annexation agreement with the City approved by the City Council on January 4, 1993, a Level A Community Master Plan approved by the City Council on January 14, 2006 (the "Level A Plan") and Level A Development Agreement recorded in the real property records of Bernalillo County, New Mexico on March 21, 2006 in Book A113, Page 9604 (the "Level A Development Agreement"), pursuant to the Planned Communities Criteria of the Albuquerque/Bernalillo County Comprehensive Plan (the "Planned Communities Criteria"), which is a policy element of the Albuquerque/Bernalillo County Comprehensive Plan.

B. The Level A Plan applies to (i) approximately 8,792 acres which, at the time the Level A Plan was approved, were owned by the State of New Mexico, in trust, and administered by the New Mexico Commissioner of Public Lands, subject to a development lease (the "Development Lease") by and between the State Land Office (the "SLO") as lessor and Forest City Covington NM, LLC a New Mexico limited liability company ("Forest City Covington") as lessee, as described in the Level A Development Agreement (the "SLO Lease Property"); (ii) approximately 240 acres of property within the Project area which were owned by third parties (the "Third Parties Property"); and (iii) 480 acres which were owned by the University of New Mexico (the "UNM Property" and, together with the SLO Lease Property and the Third Parties Property, the "Level A Property").

C. Since adoption of the Level A Plan, Mesa del Sol has, pursuant to the Development Lease, purchased 3,082 acres of the Level A Property (the "Phase 1 Property"),

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including the UNM Property and 2,522 acres from the SLO Lease Property, and an additional 40 acre parcel acquired by Mesa del Sol from the SLO (collectively, the "Property").

D. Pursuant to the Planned Communities Criteria, Mesa del Sol has submitted for the approval by the Environmental Planning Commission of the City a proposed Level B Plan and proposed Level B Development Agreement for the Property, addressing, among other matters, responsibilities for the financing, operation and maintenance of infrastructure serving the Property, village master plan phasing, specific measures for mitigating negative consequences of development of the Property, provisions for affordable housing, and provisions for the protection and maintenance of open space.

E. Pursuant to Sections 5-15-1 through 5-15-28 NMSA 1978, City Ordinance Bill No. F/S O-06-44 Enactment No. O-36-2006 (the "TIDD Ordinance"), City Council Bill F/S R-06-146, Enactment No. R-2006-126, and City Council Enactment R-2007-0001, the City has formed five tax increment development districts for the financing of public infrastructure to serve the Property and established the tax increment available in each financing.

F. The Districts are formed, and proceeds of the bond financings for each District shall be used, for the purpose of financing the design, construction and purchase of all, or portions to the extent financially feasible, of the following (collectively, the "District Infrastructure"):

(1) District 1: Trunk infrastructure (consisting of Phase I University Boulevard from the northern property line to the community center and Phase I Mesa del Sol Boulevard from the community center to central park and neighborhood connector roads) and portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, proportional City off-sites, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, school facilities, community centers, libraries, and other public facilities (the "District 1 Infrastructure");

(2) District 2: Trunk infrastructure (consisting of University Boulevard from the community center to the southern boundary of the first 3,082 acres of development and Mesa del Sol Boulevard from central park to I-25 and from the community center to the northern boundary of property and neighborhood connector roads) and portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, proportional City off-sites, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, school facilities, community centers, libraries, and other public facilities (the "District 2 Infrastructure");

(3) District 3: Trunk infrastructure (consisting of Phase II of University Boulevard from the northern property line to the southern boundary of the first 3,082 acres of development and residential neighborhood connector roads) and portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks,

proportional City off-sites, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, school facilities, community centers, libraries, and other public facilities (the "District 3 Infrastructure");

(4) District 4: Trunk infrastructure (Phase II of Mesa del Sol Boulevard from the northern boundary of the property to central park and residential connector roads) and portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, proportional City off-sites, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, school facilities, community centers, libraries, and other public facilities (the "District 4 Infrastructure"); and

(5) District 5: Trunk infrastructure (Phase II of Mesa del Sol Boulevard from central park to I-25 and residential neighborhood connector roads) and portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, proportional City off-sites, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, school facilities, community centers, libraries, and other public facilities (the "District 5 Infrastructure").

All District Infrastructure will be constructed in conformity with all relevant plans, specifications, requirements and standards of the City, including, and as modified by, specifically, the Level A Plan and Level A Development Agreement, the Level B Plan and Level B Development Agreement for development of the Property and, when applicable, Level C Plans and Level C Development Agreements for portions of the Property to be developed as residential neighborhoods, mixed use areas, commercial and other nonresidential uses (collectively, the "Level A-C Development Agreements").

G. Mesa del Sol or its designee will construct additional public infrastructure improvements to serve the Mesa del Sol Project, which will be funded by Mesa del Sol and from sources other than tax increment revenues or proceeds of Bonds issued by the Districts, including the following: alleys, pocket parks, portions of in-tract infrastructure and community facilities (the "Additional Infrastructure" which, together with the District Infrastructure, are referred to in this Agreement as the "Public Infrastructure").

H. This Agreement is entered into pursuant to the TIDD Ordinance, which provides in pertinent part that the respective responsibilities of the City and Mesa del Sol for implementing the Districts, including responsibilities for financing, constructing, dedicating, accepting and operating public infrastructure, and other matters relating to the development, improvement and use of real property within the Districts, are to be addressed in a development agreement or agreements for the Districts.

I. Mesa del Sol has submitted to the City a petition and application for the formation of the Districts (together, the "Application"), which includes, without limitation, a Tax Increment Development Plan for the Districts (the "Tax Increment Development Plan") and a map

depicting the boundaries of the Districts (the "Boundary Map"), attached as Exhibit A to the Tax Increment Development Plan and as Exhibit 1 to this Agreement.

J. 100% of the Property is owned, collectively, by Mesa del Sol, Pacifica Mesa Studios, LLC, and Mdels, LLC, each of which has provided written consent to Mesa del Sol to submit the Application, and to request that Districts 1-5 be formed without an election of property owners. Mesa del Sol has certified on behalf of the owners of the Property that no qualified electors reside on the Property located within Districts 1-5 and that, consequently, no formation election is required pursuant to Section 5-15-8, NMSA 1978.

K. The City and Mesa del Sol intend that Mesa del Sol or its designee, as agent for the Districts, will construct the District Infrastructure. Each phase of District Infrastructure will be initially described in a preliminary list of District Infrastructure submitted to the City's Development Review Board (the "DRB"), and will be superseded by the final infrastructure list approved by DRB pursuant to subdivision plat approval for that portion of the Property.

L. The City and Mesa del Sol intend that all District Infrastructure to be constructed by or on behalf of the Districts shall be pursuant to the Level A-C Development Agreements and, to the extent consistent with the Level A-C Development Agreements, a work order or work orders issued by the City in accordance with the City's Development Process Manual ("DPM") Vol. 1, Chapter 5, the Subdivision Improvements Agreement Procedures.

M. The City and Mesa del Sol intend that the District Infrastructure (other than certain water and wastewater improvements that will be dedicated to the Albuquerque Bernalillo County Water Utility Authority, and certain road improvements that will be dedicated to the State), and certain Additional Infrastructure to be financed and constructed by Mesa del Sol, shall be designed and constructed using the City's standard form Subdivision Improvements Agreement Procedures according to all applicable City standards and requirements, shall be suitable for dedication to the City upon completion, and shall be dedicated to the City and otherwise be owned and operated by the City as provided in this Agreement, and as provided and modified in the Level A-C Development Agreements and Level A-C Development Plans.

N. The City and Mesa del Sol anticipate that the District Infrastructure will be financed in part through the issuance by each of the Districts of separate series of gross receipts tax increment revenue bonds and property tax increment revenue bonds ("Tax Increment Bonds") as provided in the Act ("District Bonds"), payable from dedicated gross receipts tax increment revenue and property tax increment revenue (collectively, "Tax Increment Revenue") generated within each of the Districts. The City and Mesa del Sol anticipate that the Tax Increment Bonds issued by each District will be secured and administered pursuant to indentures of trust ("Indentures") to be entered into by the Districts for the benefit of the owners of the Tax Increment Bonds, which Indentures will provide for the collection, deposit, administration, investment and payment of debt service on Tax Increment Bonds with Tax Increment Revenue.

O. The City and Mesa del Sol intend that this Agreement be effective as of the formation by the City of the proposed Districts pursuant to a formation resolution (the "Formation Resolution"), that this Agreement shall govern the conduct and operation of the

Districts with respect to the matters addressed by this Agreement, and that one or more supplemental tax increment district development agreements (each a "Supplemental District Development Agreement") may be entered into by the City, Mesa del Sol and each District individually, with respect to bond issuance, financing, construction, dedication, operation and maintenance of particular portions of District Infrastructure by that District.

THEREFORE, in consideration of the mutual covenants of the parties set forth in this Agreement, and for other valuable consideration, the City, Mesa del Sol and Mesa del Sol Tax Increment Development Districts 1 through 5 each agree as follows:

AGREEMENT

1. Effective Date of Agreement; District Formation is Condition Precedent to this Agreement.

A. Effective Date. This Agreement shall become effective as of the City's formation of Districts 1 through 5 on December 18, 2006 pursuant to the Act, irrespective of the date of execution of this Agreement by the parties hereto.

B. Districts are Parties to this Agreement. Pursuant to the Formation Resolution, Districts 1 through 5 shall become a party to this Agreement and shall be bound to the obligations set forth herein as of the later of the date of formation of the Districts or the date of this Agreement.

C. No Formation Costs to City. All costs and expenses incurred by the City pursuant to this Agreement in connection with the application, formation and administration of Districts 1 through 5 shall be paid by Mesa del Sol or its designee through advance payments pursuant to the TIDD Ordinance; provided, that nothing in this Agreement shall be construed as prohibiting the reimbursement of Mesa del Sol or its designee for all or a portion of such expenses from the proceeds of bonds issued by the Districts, to the extent allowable by applicable state and federal law.

2. Boundaries of Districts. The boundaries of Districts 1 through 5 shall be as described in the Boundary Map attached as Exhibit 1 to this Agreement. The boundaries of Districts 1 through 5 or any portion thereof may be amended as follows:

A. If, at the time amendment is requested, the record owners of the land within the Districts affected by the proposed amendment have provided written consent to the boundary amendment and either (i) no bonds of the affected Districts are then outstanding or (ii) in the determination of the trustee for the bonds as provided in the related Indenture or Indentures, holders of bonds of the affected Districts which are then outstanding will not be adversely affected, the amendment shall be approved by the Chief Administrative Officer of the City, which approval authority is hereby delegated.

B. If, at the time amendment is requested, the record owners of less than 100% of the land within the Districts affected by the proposed amendment have provided written

consent to the boundary amendment, the proposed amendment shall be subject to the provisions of Section 5-15-25 NMSA 1978.

3. District Infrastructure to be Constructed by Mesa del Sol. District Infrastructure shall be constructed by Mesa del Sol or its designee as provided in the Level A-C Development Agreements and Supplemental District Development Agreements. To the extent consistent with the Level A-C Development Agreements or Supplemental District Development Agreements (as described in Section 4(C) of this Agreement), construction of District Infrastructure shall be subject to the provisions set forth in subsections A through J of this Section 3.

A. City Development Requirements. To the extent required by the City development process policies (including the Level A-C Development Plans and the Level A-C Development Agreements), Mesa del Sol or its designee shall request a bulk land plat variance and obtain a preliminary plat approval, a final plat approval, a District Infrastructure list and an Additional Infrastructure List (collectively the "DRB Infrastructure List") from the DRB prior to construction of Infrastructure (except to the extent that Public Infrastructure has already been constructed pursuant to the Level A Development Plan. All District Infrastructure and Additional Infrastructure shall be designed and constructed, as more fully described and in the approximate locations depicted in DRB Infrastructure list, in accordance with City Development Process Manual ("DPM") Vol. 1, Chapter 5, Improvement Agreement Procedures, as modified by the Level A-C Development Agreements and Level A-C Development Plans; provided, that a financial guarantee for the satisfactory completion of the Infrastructure shall not be required if the conditions set forth in Subsection B(i) and (ii) of this Section 3 are satisfied.

B. Satisfaction of Conditions in which Surety or Completion Guaranty Not Required. A surety bond or other guaranty for the completion of the District Infrastructure shall not be required if the following conditions are satisfied as to each work order in connection with the related District for which the District Infrastructure is being constructed:

(i) The Indenture for the related District provides that a specified amount of the proceeds of the District Bonds shall be used for construction of the District Infrastructure; and

(ii) the amount of available proceeds of District Bonds specified in Subsection (i) above, together with other dedicated moneys the payment of which is guaranteed or otherwise assured to the satisfaction of the City, is equal to or greater than the estimated cost of the District Infrastructure to be constructed for the related District.

C. Completion Guarantee Required. To the extent required by the Level A-C Development Agreements or Supplemental District Development Agreements, or subsection 3(B) Mesa del Sol or its designee shall be required to provide a surety bond or other completion guarantee acceptable to and in favor of the City for the satisfactory completion of the Additional Infrastructure.

D. Responsibility for Public Infrastructure Costs. Mesa del Sol shall be responsible for completing the Additional Infrastructure and for the costs thereof. To the extent that available proceeds of the bonds issued by the Districts are insufficient to pay the costs of District Infrastructure, Mesa del Sol shall be responsible for the costs of completing such District Infrastructure.

E. Start of Construction. Before commencing construction of the District Infrastructure or Additional Infrastructure within public rights of way, Mesa del Sol or its designee shall obtain from the City a Work Order pursuant to and in compliance with DPM Vol 1, Chapter 5, as also provided and modified in the Level A-C Development Agreements and Level A-C Development Plans.

F. Indemnification Regarding Public Infrastructure. Until the Public Infrastructure is accepted by the City, Mesa del Sol or its designee shall be solely responsible for maintaining the premises upon which the Public Infrastructure is being constructed in a safe condition. Mesa del Sol agrees to defend, indemnify and hold harmless the City and its officials, agents and employees from any claims, actions, suits or other proceedings arising from or out of the negligent acts or omissions of Mesa del Sol, its agents, representatives, contractors or subcontractors or arising from the failure of Mesa del Sol, its agents, representatives, contractors or subcontractors to perform any act or duty required of Mesa del Sol in this Agreement. The indemnification required hereunder shall not be limited as a result of the specifications of any applicable insurance coverage. Nothing herein is intended to impair any right or immunity under the laws of the State of New Mexico. To the extent prohibited by applicable law, Mesa del Sol's indemnity obligations shall not extend to claims, actions, suits or other proceedings arising from the negative or wrongful conduct of the City or its agents, officers or employees. The obligations of Mesa del Sol pursuant to this Section shall terminate following dedication and acceptance by the City of Public Infrastructure.

G. Completion, Acceptance and Termination. No portion of the Property, including any bulk land parcel as shown on the DRB approved final plat, shall be further platted or subdivided until the Public Infrastructure necessary for the subdivision, as determined by the DRB, has been completed and accepted by the City, financially guaranteed, or further bulk land plat waivers are procured. Notwithstanding anything in this Agreement to the contrary, Mesa del Sol or its designee shall be permitted to provide a surety bond or other completion guaranty acceptable to and in favor of the City prior to completion of the Public Infrastructure necessary for subdivision approval. Upon completion of the Public Infrastructure, Mesa del Sol or its designee shall submit to the City a final acceptance package (the "Final Acceptance Package"). The City shall review the Final Acceptance Package for completeness and accuracy, as provided in DPM Volume 1, Chapter 5, Work Order process, as also provided and modified in the Level A-C Development Agreements and Level A-C Development Plans. Upon approval of the Final Acceptance Package by the City, the City shall issue a Certificate of Completion and Acceptance of the Public Infrastructure.

H. Construction Services. Mesa del Sol or its designee shall obtain engineering, design and construction services for the Public Infrastructure. All contractors and subcontractors shall agree to comply with the DPM Vol. 1, Ch. 5 requirements, as also provided

and modified in the Level A-C Development Agreements and Level A-C Development Plans. Mesa del Sol or its designee shall be entitled to a construction management fee not to exceed 5% of the contract price for the District Infrastructure, which may be included in the cost of such District Infrastructure and which may be payable from proceeds of the bonds issued by the Districts, to the extent permitted by applicable state and federal law.

I. Projected Costs of Construction. The estimated initial costs of the Public Infrastructure, including design and engineering, to be financed by Districts 1 through 5, are \$635,000,000.

J. Indemnity Regarding Application. Pursuant to the TIDD Ordinance, Mesa del Sol or its designee shall indemnify the City, the Districts, and the respective agents and employees of the City and the Districts, and shall hold the City, the Districts, and the respective agents, officers and employees of each harmless from and against any and all liabilities, claims, costs and expenses, including attorneys' fees ("Claims"), incurred in any challenge or proceeding relevant to the formation, operation, and administration of the Districts, the offer and sale of bonds of the Districts and each of the Districts, and the operation and maintenance of the Public Infrastructure financed by each of the Districts or Mesa del Sol, other than the infrastructure dedicated to and accepted by the City for operation and maintenance. To the extent prohibited by applicable law, the indemnity obligations of Mesa del Sol or its designee shall not extend to claims arising from the negligence or wrongful conduct of the City and the Districts, or the respective agents, officers or employees of the City and the Districts.

4. Financing of District Infrastructure. The Districts shall issue Tax Increment Bonds payable from Tax Increment Revenues in accordance with the Tax Increment Development Plan. Tax Increment Revenue shall be collected and remitted to the Districts at the first possible time that remittance can be accomplished following the formation of the Districts, as provided in the Act. The Districts may, in the future, issue Tax Increment Bonds as provided by the Act, the TIDD Ordinance, the Tax Increment Development Plan and this Development Agreement. Under no circumstances will the City be responsible for the construction of the District Infrastructure, the payment of bonds or any other financial obligations of the Districts. All bonds issued by any of the Districts shall state that the Owners of the Bonds shall have no recourse to the taxing power of the City or to any City property, funds or resources, other than Tax Increment Revenue dedicated to the related District.

A. Issuance of Bonds. Pursuant to and in compliance with the Act, the TIDD Ordinance and the Tax Increment Development Plan, each of the Districts shall be authorized to issue one or more series of Tax Increment Bonds sufficient to generate net proceeds which shall be used for construction of Public Infrastructure in an amount not to exceed \$500,000,000, plus the amount determined as the increase in the cost of constructing public infrastructure improvements by applying the Construction Cost Index applicable to the Albuquerque region published in ENR.com by the McGraw-Hill Companies (or, in the event such index is no longer published at the applicable time, such other index of construction costs as the Districts and the Chief Administrative Officer of the City mutually determine is acceptable for purposes of this Development Agreement and the Formation Resolution) to the initial public infrastructure costs

of \$635,000,000 at the time each of Districts 1 through 5 issues District Bonds, payable from Tax Increment Revenues generated within and dedicated to each of the Districts.

(i) As required by the Act and the TIDD Ordinance, prior to the issuance of District Bonds by each District, Mesa del Sol or its designee shall have contributed at least 20% of the initial cost of Public Infrastructure to be financed with proceeds of the District Bonds to be issued by that District, which contribution may be reimbursed from the proceeds of District Bonds, as permitted by the Act.

(ii) The maximum aggregate principal amount of Tax Increment Bonds issued by Districts 1 through 5 shall not exceed the initial costs of the Public Infrastructure serving Districts 1 through 5 plus amounts to be used to fund debt service reserves, capitalized interest, credit enhancement, costs of issuance, and other costs normally associated with the issuance of bonds.

(iii) The initial costs of the Public Infrastructure shall be determined or estimated at the time each District issues a series of District Bonds.

(iv) Proceeds of Tax Increment Bonds shall be used to defray the cost of construction of the District Infrastructure and for such other purposes as allowed by the Act.

(v) Prior to issuance of District Bonds by each District (apart from the issuance by District 1 of District Bonds, which shall not be subject to the provisions of this Subsection), Mesa del Sol shall demonstrate that the construction, operation and maintenance of the District Infrastructure financed with District Bonds shall be at "No Net Expense" to the City, consistent with the definition of "No Net Expense" as described in Exhibit 2 hereto, as determined in writing by the chief budget officer of the City in consultation with City Council Staff (the "No Net Expense Determination"). The "No Net Expense" Determination (shall be made within sixty (60) days following the submittal by Mesa del Sol to the City of a request for the determination and information supporting the request. Upon receipt of the No Net Expense Determination the requested District Bonds shall be issued by the applicable District.

(vi) Consistent with Sections 4(B) and 5 of this Development Agreement, in order to assure the construction, operation and maintenance of the District Infrastructure financed with District Bonds at No Net Expense to the City, the documents relating to the issuance of District Bonds shall contain appropriate representations, warranties and covenants relating to the issuance of any additional District Bonds and the method by which Tax Increment Revenues not needed to pay debt service on outstanding District Bonds (including any required replenishment of debt service reserve funds) may be used to pay any shortfall relating to the No Net Expense calculation. These covenants shall provide for the calculation of No Net Expense annually, and also as a condition to the issuance of each series of District Bonds (other than District Bonds issued by District 1) based on the definition contained herein. The documents shall further provide for the remittance to the City of Tax Increment Revenues (whether administered by a trustee pursuant to an indenture or otherwise) not needed to pay debt service on District Bonds, (including any required replenishment of debt service reserve funds), in the amount of any No Net Expense shortfall.

(vii) The Districts shall, at the written request of Mesa del Sol, issue, to the extent permitted by the documents relating to the issuance of the District Bonds, the District Bonds contemplated by and in accordance with this Development Agreement as further provided in this Section 4, if: (a) the No Net Expense requirement for issuance of additional District Bonds is satisfied, as determined in writing by the chief budget officer of the City in accordance with subsection (v) of this Section 4(A), (b) Mesa del Sol certifies that, as of the date of the written request for the issuance of a series of District Bonds, to the best of its knowledge, it is not in default under this Development Agreement, the Supplemental District Development Agreements, or the Level "A", "B" or "C" Development Agreements (the "City/Mesa Agreements"), except for defaults under Level "C" Agreements shall be limited to Mesa del Sol's failure to timely construct infrastructure (in the event that Mesa del Sol has failed to timely construct infrastructure as a result of matters outside of its control, the City shall not unreasonably withhold its consent to extensions of time to complete the infrastructure) (a "Non-Default Certification"), and (c) as of the date of the Non-Default Certification or within fifteen (15) days thereafter, Mesa del Sol has not received notice of default from the City which has not been cured within any applicable cure period in connection with any of the City/Mesa Agreements. A written request for the issuance of one or more series of District Bonds shall include the Non-Default Certification and a true and correct copy of the No Net Expense Determination.

B. Bond Financing Requirements. The issuance of District Bonds by the Districts (other than short-term District Bonds maturing not later than 30 days after issuance) shall be subject to the following requirements and limitations:

(i) Each series of bonds shall include a reasonably required debt service reserve funded from bond proceeds or other legally available sources; provided, that a master reserve may be established by each District for all series of bonds issued by that District;

(ii) The Tax Increment Revenue dedicated to each District shall be projected to be in amounts equal to or greater than 125% of the maximum annual debt service requirements of bonds issued by any District and then outstanding and the bonds proposed to be issued by that District subject to the provisions of Sections 4A(vi) and 5 hereof;

(iii) To the extent required for effective marketing and acceptance of District Bonds by bond investors, and in accordance with the requirements of the TIDD Ordinance, the District Bonds shall be supported by irrevocable letters of credit, contribution agreements or other financial guaranty arrangements sufficient to assure the payment of debt service on the bonds prior to the completion of construction of the District Infrastructure improvements while Mesa del Sol or its designee is the owner of more than 50 percent of the Property, all as determined by each District in consultation with the City, provided that, notwithstanding the foregoing, no Contribution Agreement shall be required if the governing body of the District enacting a Bond Resolution determines that such additional credit support is not necessary for the protection of bond investors, based on the marketing plan for the particular series of Bonds, the sophistication or request of the intended purchaser of the Bonds, and recommendations made by a financial advisor acceptable to the governing body of that District;

(iv) Tax Increment Bonds issued by the Districts shall have no direct or indirect negative impact on the debt or financing capabilities of the City and shall be subject to the payment of outstanding City gross receipts tax obligations as provided in the Act; and

(v) Such other provisions required by law and as shall be mutually agreed upon by the City, the related District and Mesa del Sol or its designee.

C. Supplemental District Development Agreements; Authority of CAO and City Engineer. Prior to issuing a series of District Bonds, a District shall enter into a Supplemental District Development Agreement. The Chief Administrative Officer of the City and the City Engineer are authorized to enter into Supplemental District Development Agreements on behalf of the City. Each Supplemental District Development Agreement shall:

(i) Identify the District Infrastructure and the estimated costs thereof to be financed with proceeds of the District Bonds to be issued by that District;

(ii) Identify the estimated cost of the Public Infrastructure and the contribution made by Mesa del Sol or its designee toward the payment of such costs;

(iii) Provide an estimated construction schedule for the completion of the District Infrastructure and Additional Infrastructure;

(iv) Describe the proposed maximum principal amount, maximum interest rates, final maturity date, provisions for debt service reserves, credit enhancement, minimum denominations and other features of the Tax Increment Bonds to be issued by that District required by the Act, the TIDD Ordinance (including, without limitation, the provisions of Section 7(c) thereof), the Formation Resolution and this Agreement;

(v) Provide proposed forms of the bond resolution, indenture and other documentation material to the proposed bond transaction as provided in Section 7(C)(6) of the TIDD Ordinance; and

(vi) Address any other matters concerning the dedication of District Infrastructure to be financed by the District that, in the reasonable determination of the CAO or City Engineer, should be addressed in additional detail not provided in this Agreement.

5. Tax Increment Revenues. Tax Increment Revenues (excluding non-recurring gross receipts tax increment revenues attributable to construction within the Districts), dedicated to the Districts in excess of the amounts needed to pay debt service on District Bonds and to fund debt service reserves consistent with applicable federal law ("Excess Increment Revenues") shall be accumulated on an annual basis. The chief budget officer of the City in consultation with City Council Staff shall annually determine the amount of Excess Increment Revenues, if any, needed to meet the "No Net Expense" definition in Exhibit 2 hereto, which determination shall be made within sixty (60) days following the submittal by Mesa del Sol to the City of a request for the determination and information supporting the request. The amount of Excess Increment Revenues not needed to meet the "No Net Expense" definition may be used as follows:

A. Security for Short-term District Bonds. Non-recurring gross receipts tax increment revenues attributable to construction within the District and the amount of Excess Increment Revenues not needed to meet the "No Net Expense" definition shall (except as otherwise utilized pursuant to Subsection B of this Section 5) each be pledged to secure District Bonds maturing not later than 30 days after issuance, which shall be issued by the applicable District, the proceeds of which shall be used to defray a portion of the additional costs of Public Infrastructure not paid with proceeds of longer term District Bonds, which costs include, without limitation, reimbursement of amounts paid by Mesa del Sol or its designee for design, engineering and construction of Public Infrastructure, to the extent permitted by the Act.

B. Payment of District Operation and Maintenance Costs. If permitted by law in the opinion of bond counsel to the City, non-recurring gross receipts tax increment revenues attributable to construction within the District and the amount of Excess Increment Revenues not needed to meet the "No Net Expense" definition may each be used to pay costs of operation and maintenance for the District Infrastructure.

6. Mesa del Sol agrees to incorporate into its currently approved Level "A" Plan the following:

A. Public School Facilities. Subject to approval of the school district the location and characteristics of public school facilities expected to be created, improved, rehabilitated or constructed within the Project, shall meet the following criteria:

Public schools are important centers of community life. Nearly all schools will be located near open space corridors, providing opportunities for environmental education, multi-purpose fields (park and school), as well as convenient and pleasant off-street pedestrian and bicycle access routes to schools. The anticipated school needs for the first Level "B" Plan Area (\pm 3,082 acres) are three elementary schools, one middle school, and one high school, which may be a combined middle school/high school. Mesa del Sol will dedicate the land for these public school facilities improved with infrastructure as would typically be provided for by a developer delivering a developed "pad site", and additionally contribute \$3,000 per residential home or \$1,800 per multi-family dwelling unit dedicated to capital improvements for schools within the Project.

B. Transit Objectives. Mesa del Sol is planned as a community where people can meet their daily needs in one location. Housing is located close to jobs and services and a "park once" strategy is pursued. This strategy involves locating retail uses, higher-density housing, transit, and public facilities in walkable, mixed-use centers that are easy to reach by car, transit, and bicycle, and easy to walk around in once there.

The transportation systems planned for Mesa del Sol consist of facilities for vehicles, mass transit, pedestrians and bicycles. All of these modes of travel are considered to be integral to the truly multi-modal transportation system proposed within the Level B planning area of the greater Mesa del Sol.

Mesa del Sol is planned as a transit-oriented development, with sufficient right of way on major boulevards as identified in the first Level "B" Plan and to be further identified in future Level "B" Plans, to include dedicated transit ways that will provide the framework of a future mass transit system. Sufficient rights of way will be dedicated for managed lanes to facilitate higher than SOV traffic, including HOV/bus lanes, queue jumpers, or fixed-guideway transit systems.

Mesa del Sol transit service is likely to begin with bus service extensions from adjacent areas of the City's ABQ Ride system, and from the Bernalillo County/International Sunport Rail Runner Station.

It is anticipated that initially, transit service to Mesa del Sol shall include low intensity scheduled route service, such as extending the current ABQ Ride Route 50 down University into Mesa del Sol. As Mesa del Sol development continues, additional scheduled route services will be added. Initial transit services shall also include a shuttle service to the Rail Runner station at Rio Bravo Boulevard. As employment and population increase, transit service will increase in intensity to include commuter bus service during the AM and PM peaks, culminating in full day service with appropriate headways.

Transit service will include either direct service to or service to the most direct transfer points for transit connections to other locations in the metropolitan area. The City and Mesa del Sol will work with the Mid Region Transit District regarding regional transit services to Mesa del Sol. Transit operations shall be provided by the City, at its expense, subject to the cost of such service being included within the No Net Expense analysis as provided herein.

7. Workforce Housing. This Agreement is conditioned upon Mesa del Sol complying with the provisions of the Workforce Housing Plan which is attached hereto as Exhibit 3.

8. Operating Tax Levy. Each District is authorized to impose an operating tax levy not to exceed \$5.00 per \$1,000 of the assessed value of the taxable property within its boundaries, as provided in Section 5-15-13 of the Act.

9. District Governance. The governing body of each District shall be initially composed of the following appointees: Debbie O'Malley, Sally Mayer, Isaac Benton, Bruce Perlman and Jon Zaman. Within six years following the date of formation of the Districts, governance of the Districts shall revert to the City Council as provided in the Act.

10. Dedication and Operation of Public Infrastructure. All Public Infrastructure (other than certain water and wastewater improvements that will be dedicated to the Albuquerque Bernalillo County Water Utility Authority, and certain other improvements that may be dedicated to other political subdivisions of the State or the State) shall be dedicated to by the City by Mesa del Sol or its designee and operated as provided in the Level A-C Development Agreements and Supplemental District Development Agreements. Except as otherwise provided in the Level A-C Development Agreements or Supplemental District Development Agreements,

the following general provisions shall govern the dedication and operation of Public Infrastructure;

A. Mesa del Sol or its designee shall dedicate to the City all real and personal property which the City deems reasonably necessary free and clear of all liens, claims and encumbrances as a condition of the City's acceptance of the Public Infrastructure. Conveyance of the real and personal property shall be made by dedication on the Final Plat of each portion of the Property on which the dedicated Public Infrastructure is located, or if approved by the City Engineer by a "paper" conveyance.

B. Upon the issuance of a certificate of completion and acceptance the City shall accept, own, operate and maintain the Public Infrastructure which is identified for dedication to the City on the DRB Infrastructure List.

C. Any other improvements shall be owned, operated and maintained by Mesa del Sol, its designee or the assigns of Mesa del Sol or designees of such assigns.

11. Default; Termination; Annual Review.

A. Defaults. Any failure by any party to perform any material term or 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 such time period, and the diligent prosecution to completion of the cure thereafter, shall be deemed to be a cure within such thirty (30) day period. 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.

B. Termination. If the City elects to consider terminating this Agreement due to a material default of Mesa del Sol, then the City shall give a notice of intent to terminate this Agreement and the matter shall be scheduled for consideration and review by the City Council at a duly noticed and conducted public hearing. Mesa del Sol shall have the right to offer written and oral evidence prior to or at the time of said public hearings. If the City Council determines that a material default has occurred and is continuing and elects to terminate this Agreement, the City shall send written notice of termination of this Agreement to Mesa del Sol by certified mail and this Agreement shall thereby be terminated thirty (30) days thereafter; provided, however, that if Mesa del Sol files an action to challenge the City's termination of this Agreement within such thirty (30) day period, then this Agreement shall remain in full force and effect until a trial court has affirmed the City's termination of this Agreement and all appeals have been exhausted (or the time for requesting any and all appellate review has expired).

C. Term of Agreement. The term of this Agreement shall commence upon the execution of this Agreement by all parties and shall extend for a period the greater of twenty-five (25) years hereafter, and the date on which all District Bonds have been paid and one no longer outstanding unless said term is terminated, modified or extended by circumstances set forth in this Agreement or by mutual consent of the parties. Following the expiration of the term, this Agreement shall be deemed terminated and of no further force and effect.

12. 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. Notice. Notices concerning the District shall be provided to the Parties at the following addresses:

If to the City:

City of Albuquerque, New Mexico
One Civic Plaza, NW, Eleventh Floor (87102)
Post Office Box 1293 (87103)
Albuquerque, New Mexico
Attention: Anna Lamberson, Director of Budget
Telephone: (505) 768-3005

With a copy to:

Laura Mason
Director, City Council
One Civic Plaza, NW Ninth Floor
P.O. Box 1293 (87103)
Albuquerque, New Mexico
Telephone: (505) 768-3100

If to Districts 1 through 5 or any of them:

Mesa del Sol Tax Increment Development District No. ____
c/o Chairperson, District Board
One Civic Plaza, NW Ninth Floor
P.O. Box 1293 (87103)
Albuquerque, New Mexico
Telephone: (505) 768-3100

If to Mesa del Sol:

Mesa del Sol, LLC
801 University SE, Suite 200
Albuquerque, New Mexico 87106
Attention: Michael Daly
Telephone: (505) 400-3021

For purposes of giving formal written notice, including notice of change of address, the addresses are as set forth in this paragraph unless changed by written notice. Notice may be given either in person or by certified U.S. mail, postage paid. Notice will be considered to have been given within three (3) days after the notice is mailed if there is no actual existence of receipt.

C. Entire Agreement. Except as specifically incorporated by reference herein, this Agreement contains the entire agreement of the parties and supersedes all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.

D. Changes to Agreement. Changes to this Agreement are not binding unless made in writing and signed by both parties.

E. Construction and Severability. If any part of this Agreement is held to be invalid or unenforceable, the remainder of the Agreement will remain valid and enforceable if the remainder is capable of completion.

F. Approval. This Agreement is subject to the approval of the City Council and the Chief Administrative Officer of the City and will not become effective until approval by both the Council and the Chief Administrative Officer of the City, whichever occurs last.

G. Assignment. This Agreement will not be assigned without the prior written consent of the parties, and the express written concurrence of any surety which has undertaken to guarantee the completion of the Infrastructure or the payment of the District Bonds.

H. Recitals. The recitals set forth above are a material part of this Agreement and are incorporated by reference.

I. Recording. This Agreement shall be filed for record in the Bernalillo County Clerks Office, Bernalillo County, New Mexico.

J. Conflicts. To the extent that any provisions of the City's Development Process Manual conflict with, or are amended by the terms of the Level "A" or Level "B" Plans or Development Agreements then the terms of the Level "A" or "B" Plans or Level "A" or "B" Development Agreements shall control. To the extent that the terms of any Level "A" or "B" Plans or Development Agreements, any Supplemental Development

Agreements or the Tax Increment Development Plan shall conflict with the terms of this Development Agreement, the terms of this Development Agreement shall control.

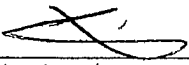
[Signature page follows]

IN WITNESS WHEREOF, Mesa del Sol, LLC, has executed this Agreement in its corporate name and attested by its duly authorized officers; and the City has caused this Agreement to be executed in its corporate name and the seal of the City affixed and attested by its duly authorized officers. All of the above are effective as of the date first above written.

MESA DEL SOL, LLC, a New Mexico
limited liability company

By: FC Covington Manager, LLC, a New
Mexico limited liability company, Member

By: FC Mesa, Inc. a New Mexico
Corporation, Member

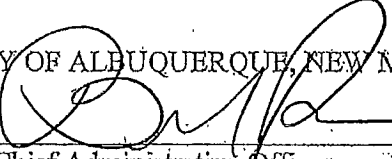
By: 
Michael Daly,
Chief Operating Officer

ATTEST:

By: _____
Corporate Officer

[SEAL]

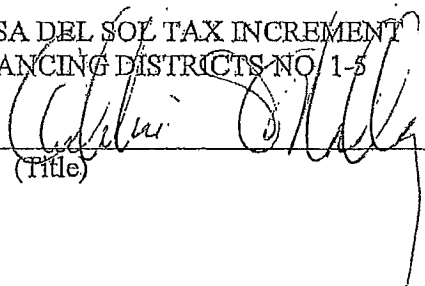
CITY OF ALBUQUERQUE, NEW MEXICO

By: 
Chief Administrative Officer

ATTEST:

By: _____

MESA DEL SOL TAX INCREMENT
FINANCING DISTRICTS NO. 1-5

By: 
(Title)

ATTEST:

By: _____
Clerk

MESA DEL SOL, LLC
NOTARY

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 30th day of July, 2007 by Michael D. Daly, Chief Operating Officer of FC Mesa, Inc., a New Mexico corporation Member, of FC Covington Manager, LLC, a New Mexico limited liability company, Member of Mesa del Sol, LLC, a New Mexico limited liability company.

Karen C. Hoffman
Notary Public

11-18-2009
My Commission Expires:

MESA DEL SOL TAX INCREMENT
FINANCING DISTRICT NO. 1-5
NOTARY

STATE OF NEW MEXICO)
) ss.
COUNTY OF BERNALILLO)

The foregoing instrument was acknowledged before me this 22nd day of May, 2008 by Bruce J. Perlman Chief Admin. Officer.

Felicia Liron
Notary Public

1-27-2010
My Commission Expires:

CITY OF ALBUQUERQUE
STATE OF NEW MEXICO

COUNTY OF BERNALILLO

)
) ss.
)

The foregoing instrument was acknowledged before me this 22 day of May,
2008 by Debbie O'Malley, Council Vice President.

Luzdelcarmen Carreón
Notary Public

Feb. 8, 2010
My Commission Expires:

LIST OF EXHIBITS

- EXHIBIT 1 BOUNDARY MAP (DISTRICTS 1 THROUGH 5)
- EXHIBIT 2 NO NET EXPENSE DEFINITION
- EXHIBIT 3 WORKFORCE HOUSING PLAN

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EXHIBIT 1

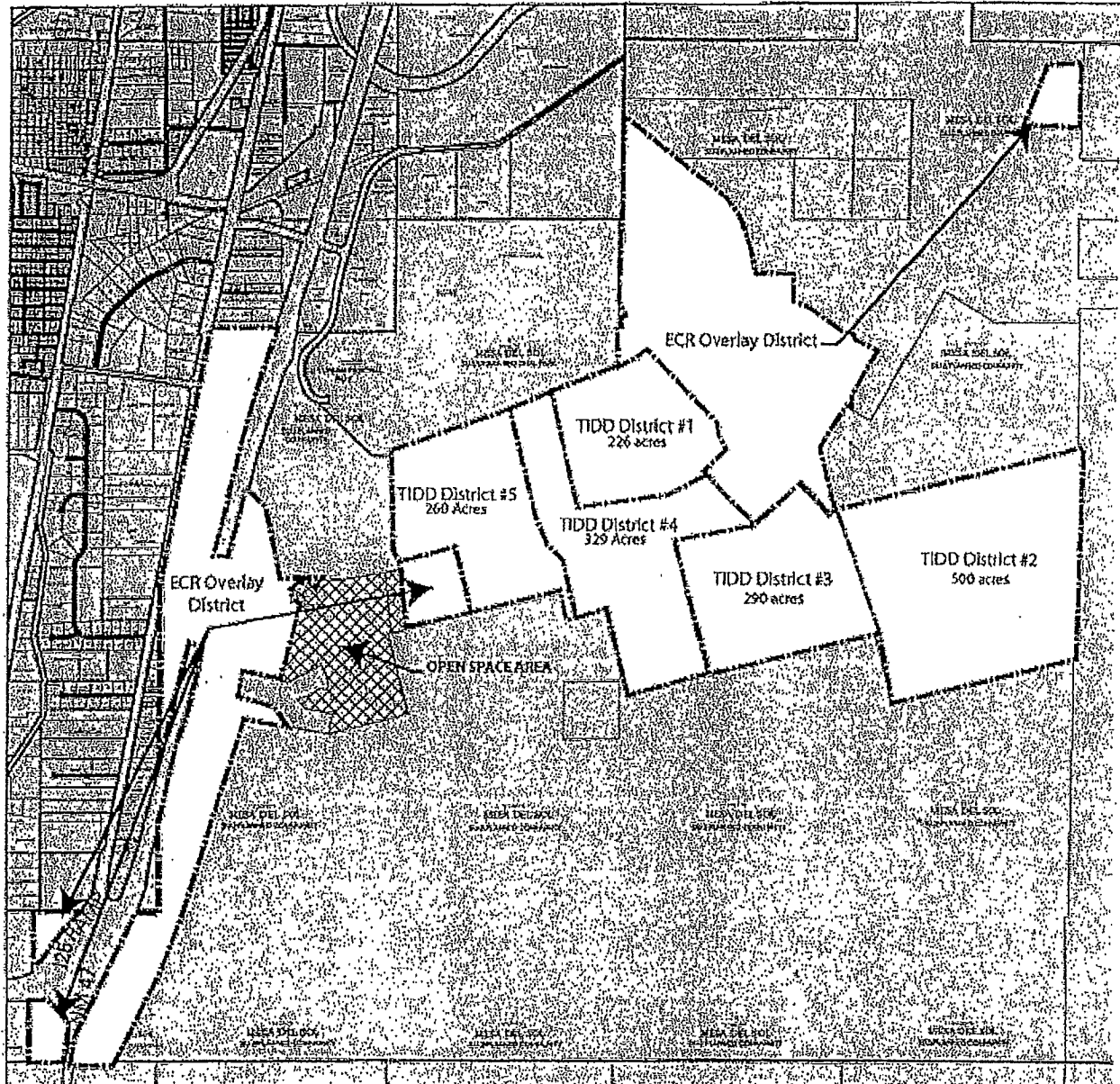


EXHIBIT 2**NO NET EXPENSE DEFINITION**

The No Net Expense test will be calculated annually on a cumulative basis. It is satisfied when Revenues to the City, as defined herein, equal or exceed Expenses of the City, as defined herein, attributable to the project (the "Project") of the developer (the "Developer").

I. Revenues are the sum of the following:

- a. The City's Share of Employment Based Gross Receipts Tax, computed as follows.

The product of: (a) the number of Net New Economic Base Jobs at the Project multiplied by (b) the average salary for the Net New Economic Base Jobs equals the Net New Economic Base Jobs Payroll. It will be assumed that for each Net New Economic Base Job created at the Project there will be one¹ Indirect Job created within the City of Albuquerque. The product of: (a) the number of Indirect Jobs multiplied by (b) the average salary of the Indirect Jobs equals the Indirect Jobs Payroll. The Indirect Job average salary shall be assumed to be equal to the average salary of employed persons within Bernalillo County. The Total Payroll shall be the sum of: (a) the Net New Economic Base Jobs Payroll, and (b) the Indirect Jobs Payroll. The product of: (a) the Total Payroll multiplied by (b) the percentage of income expended on goods and services upon which Gross Receipt Tax are assessed (currently estimated at 52%) multiplied by (c) the City's Gross

¹ May be adjusted based upon makeup of job base at the Project.

Receipts Tax rate, which is currently 2.3919% (2.4125% less 3% State collection fee for some portions) equals the Employment Based Gross Receipts Tax. The City's Share shall mean that portion of Employment Based Gross Receipts Tax not dedicated to the TIDDs. The Developer shall be responsible for providing information not otherwise publicly available. See Attachment 1 for information to be provided by the Developer.

- b. The City's Share of Project Gross Receipts Tax and Property Tax (real or personal property) from activities which occur within the Tax Increment Development Districts ("TIDDs") excluding retail gross receipts tax. The City's share of Project Gross Receipts Tax and Property Tax shall mean the share of these taxes not allocated to the TIDDs.
- c. The Project's Share, determined on a per-capita-basis or directly estimated when possible, of building permits, franchise fees, licenses, inter-governmental charges for services, internal services, indirect overhead, City's share of gas tax distributed to the General Fund, interest earnings, PILOT payments, fines and inter-fund transfers.
- d. Any other reasonable City revenues attributable to the Project, including any future new taxes and fees that may be levied by the City.

II. Expenses:

- 1. Calculation of incremental expenses to the City for a particular fiscal year is calculated following the methodology outlined in Attachment 2.

Notwithstanding the calculations set out in Attachment 2, Expenses includes any expenses uniquely and directly attributable to the Project, which may

result in substitutions or additions to the expense items set out in Attachment

2.

III. Definitions:

- a. "Population" shall mean the actual number of persons residing within the applicable areas based upon the best available information, and, if no better information is available, population shall be determined by multiplying: (i) the number of dwelling units for which certificates of occupancy have been issued by: (ii) the average number of residents per dwelling unit as shown on the most recent census.
- b. "Case Study" shall mean the allocation of expenses based upon a reasonable determination of unit cost of providing service determined by dividing the total budget by the number of units provided. The result will then be multiplied by the appropriate Project unit to determine incremental expenses attributable to the Project. Initially, the following budget line items are deemed appropriate for case study expense allocations: (a) Neighborhood policing, (b) Emergency response and paramedics (c) Maintenance of parks and open space (d) Street maintenance. Please see the sample case study attached as Attachment 3.
- c. "Per Capita" shall mean the allocation of revenues or expenses based upon a factor estimated by dividing the City budget by the City's residential population (persons who live within the municipal boundary of the City of Albuquerque) to derive an average per capita factor.

- d. "Percent Variable" adjusts calculation to take into consideration fixed vs. variable expenses for a particular category.
- e. "Net New Economic Base Jobs" shall mean jobs in businesses that draw the majority of their gross revenues from outside the City of Albuquerque and are reported as average full time equivalent (FTE) positions which jobs: (1) were created or attracted from outside the municipal boundary of the City of Albuquerque; (2) were retained from otherwise departing the City of Albuquerque; or (3) newly created within the Project.
- f. "Average FTE Employee" shall be calculated on a quarterly basis using the following formula: number of full-time equivalent employees on the 15th of each month in that quarter divided by three.

Example: for the first quarter of the year:

$$\frac{(\# \text{ emp. Jan. 15}) + (\# \text{ emp. Feb. 15}) + (\# \text{ emp. Mar. 15})}{3}$$

7/30/07

Attachment 1

Information to be Provided by Master Developer

Payroll of Net New Economic Base Jobs.

1. For each employer
 - a. Description of type of business by firm (NAICS).
 - b. Average payroll information on an annual basis.
 - c. Number of FTE jobs.
 - d. Description of jobs sufficient to determine that jobs are "Net New" to City of Albuquerque.

Attachment 2

Methodology for Expense Calculation

Description	Methodology	Factors % Variable
Chief Administrative Office	Per Capita	50%
City Support	Per Capita	50%
Council Services	Per Capita	50%
Cultural Services	Per Capita	50%
Economic Development	Per Capita	50%
Environmental Health	Per Capita	75%
Family and Community Services	Per Capita	75%
Finance and Administrative Services	Per Capita	50%
Fire		
Administration/General Operations	Per Capita	50%
Emergency Response Operations	Case Study	100%
Human Resources	Per Capita	50%
Internal Audit and Investigations	Per Capita	50%
Legal	Per Capita	50%
Mayor	Per Capita	50%
Municipal Development		
Streets Maintenance	Case Study	75%
Other Administrative/Operations	Per Capita	75%
Parks and Recreation		
Maintenance Parks & Open Space	Case Study	100%
Other Administrative/Operations	Per Capita	50%
Planning	Per Capita	75%
Police		
General Administration/Investigation	Per Capita	50%
Neighborhood Patrol/Overtime	Case Study	100%
Senior Affairs	Per Capita	75%
Transit (Operating Subsidy)	Per Capita	75%

Attachment 2 (Cont.)

Sample Calculation

For purposes of this example, assume that the general fund budget for the Chief Administrative Officer during the current fiscal year is \$485,000, the population of Albuquerque is 485,000, and that the population at a Project is 10,000.

To calculate the per capita expense for the CAO's office to be allocated to the Project, you would work through the following calculations:

$$(\$485,000)/(485,000) = \$1 \text{ per person.}$$

$$(\$1 \text{ per person}) \times (10,000 \text{ people}) \times (0.50 \text{ variable factor}) = \$5,000$$

Therefore, \$5,000 of the CAO's budget would be attributable to the Project.

EXHIBIT 3

WORKFORCE HOUSING PLAN
FOR MESA DEL SOL**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) Mesa del Sol 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.

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 first certificate of occupancy for a (non-model) home within the Project (the "Effective Date"). For the third (3rd) through the seventh (7th) 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 (8th) through the twelfth (12th) 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 (12th) 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 a list of qualified purchasers and/or renters of Mid-Range Workforce Housing within the Project (the "Eligible Households List"). The Developer shall have the right to supplement the Eligible Households List. At least sixty (60) days, but not more than ninety (90) days, prior to offering units within a development at the Project containing Mid-Range Workforce Housing (a "Mid-Range 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 List (the "Mid-Range Workforce Housing Notice"): To the extent that the Mid-Range Workforce Housing units within the Mid-Range Workforce Housing Project are not contracted for sale or lease to Eligible Households, whether or not on the Eligible Households List, within one hundred and eighty (180) days of the Mid-Range Workforce Housing Notice, the Developer shall have the right to sell or lease the untaken Mid-Range Workforce Housing units to purchasers or renters not meeting the Mid-Range 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 percentage. For example, if a Mid-Range Workforce Housing Project has ten (10) units offered for 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 a list of qualified purchasers and/or renters of Affordable Workforce Housing within the Project (the "Eligible Households List"). The Developer shall have the right to supplement the Eligible Households List. 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 List (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.

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Separator Sheet

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

The Master Development Agreement for Mesa Del Sol Tax Increment Development Districts 1 through 5 (the "Agreement"), entered into on December 18, 2006 by and among the City of Albuquerque, New Mexico (the "City"), Mesa Del Sol Tax Increment Development Districts 1 through 5 (the "Districts"), and Mesa del Sol, LLC, a New Mexico limited liability company ("Mesa del Sol") (collectively, the "Parties"), is hereby amended as stated below.

RECITALS

A. The Agreement contains a plan (the "Workforce Housing Plan"), attached to the Agreement as Exhibit 3, by which eligible households are given notice and the opportunity to purchase or lease housing within the Districts.

B. The Workforce Housing Plan establishes a list of qualified purchasers and/or renters of Mid-Range Affordable Housing (the "Eligible Households List"), as defined in the Workforce Housing Plan. The Parties wish to amend the Workforce Housing Plan to include qualified purchasers and/or renters of Affordable Housing, as defined in the Workforce Housing Plan, as a second form of housing made available through the Eligible Households' List.

C. The Parties wish to further amend the Workforce Housing Plan to provide a system by which qualified households with a member that works within the Districts will be given priority access to Workforce Housing, with priority established by the date such households were added to the list.

AGREEMENT

1. Amendment to the Workforce Housing Plan. Section C(6) of the Workforce Housing Plan, attached as Exhibit 3 to the Agreement, is hereby deltered and replaced in its entirety with the following:

The City shall maintain two lists of qualified purchasers and/or renters of Mid-Range Workforce Housing and Affordable Housing (together, "Work Force 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 be first offered to those on the Employee List, prioritized based upon the date which they were placed upon the Employee List. Upon exhaustion of the Employee List, and until others are added

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AMND R:\$19.00 M. Toulouse Oliver, Bernalillo County



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 Work Force Housing (a "Work Force 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 Work Force 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 Households List, 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 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 Transaction"), 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 (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.

2. Effective Date. This amendment shall be effective the date on which the last Party executes this amendment.

[Signature page follows]

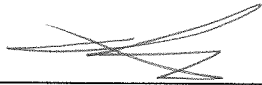
IN WITNESS WHEREOF, Mesa Del Sol, LLC, has executed this Amendment in its corporate name and attested by its duly authorized officers; and the City has caused this Amendment to be executed in its corporate name and the seal of the City affixed and attested by its duly authorized officers; and the Districts have executed this Amendment in its corporate name and attested by its duly authorized officer. All of the above are effective as of September 17, 2009.

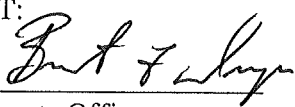
MESA DEL SOL, LLC, a New Mexico
limited liability company

By: FC Covington Manager, LLC, a New
Mexico LLC, its Sole Member

By: Forest City NM, LLC, a New Mexico LLC,
a Member

By: Forest City Commercial Group, Inc., an
Ohio corporation, its Sole Member

By: 
Its: _____

ATTEST:
By: 
Corporate Officer

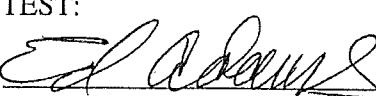
CITY OF ALBUQUERQUE, NEW MEXICO

By: 
Chief Administrative Officer

ATTEST:
By: _____

MESA DEL SOL TAX INCREMENT
FINANCING DISTRICTS NO. 1-5

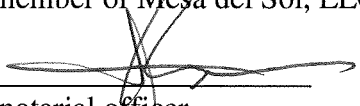
By: 
Its: _____

ATTEST:
By: 
Clerk

State of New Mexico
County of Bernalillo

This instrument was acknowledged before me on September 17, 2009 by Michael Daly as an officer of Forest City Commercial Group, Inc. as sole member of Forest City NM, LLC, a member of FC Covington Manger, LLC, the sole member of Mesa del Sol, LLC.

(Seal, if any)



Signature of notarial officer

My commission expires:

2/11/13

Separator Sheet

FIRST AMENDMENT TO
MASTER DEVELOPMENT AGREEMENT
for
MESA DEL SOL
TAX INCREMENT 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

THIS FIRST AMENDMENT TO MASTER DEVELOPMENT AGREEMENT for Mesa del Sol Tax Increment 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 ("**Amendment**") is made as of the 19th day of July, 2011, by and among the CITY OF ALBUQUERQUE, a New Mexico municipal corporation (the "**City**"), MESA DEL SOL, LLC, a New Mexico limited liability company ("**Mesa**"), and MESA DEL SOL TAX INCREMENT DISTRICTS 1 THROUGH 5 (the "**Districts**") and amends the Master Development Agreement for Mesa Del Sol Tax Increment 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 December 18, 2006, and filed in the Bernalillo County, New Mexico real estate records on June 19, 2008, as Document No. 2008070059 (the "**Development Agreement**").

RECITALS:

A. The Development Agreement creates certain financial obligations of Mesa, including, but not limited to, TIDD formation costs, construction of District Infrastructure, maintenance of Public Infrastructure until acceptance by the City, dedication of land and cash contributions for public schools, and the Workforce Housing Plan (the "**Mesa Financial Obligations**").

B. Section 12A of the Development Agreement provides that the provisions of the Development Agreement constitute "covenants running with the Property and are binding upon and inure to the benefit of the parties hereto, their successors and assigns", which has caused concern by purchasers of property, or real estate lenders on property, within the Mesa del Sol Project that they will be held responsible for the Mesa Financial Obligations.

C. The parties desire to clarify that the Mesa Financial Obligations do not "run with the land" except as provided herein.

NOW THEREFORE, for good and valuable consideration the parties agree to amend and clarify the Development Agreement as follows:

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AMND R:\$25.00 M. Toulouse Oliver, Bernalillo County



1. Recitals/Terms. The Recitals are incorporated herein. Capitalized terms used herein shall have the meanings as ascribed to them in the Development Agreement unless otherwise defined herein.

2. Running Obligations. Subject to the other terms of this Section 2, the City and the Districts agree that the Mesa Financial Obligations shall not become the obligations of future owners of the Property except: (i) for the successor to Mesa of all, or substantially all, of the Property, and (ii) as expressly delegated by Mesa to and expressly assumed by successor owners of portions of the Property, in a writing recorded with the Bernalillo County Clerk, provided, however, the City standard development process obligations, including land dedication and infrastructure construction and maintenance obligations shall continue to apply to future owners of the Property. Notwithstanding the foregoing and in order to clarify the provisions of the Development Agreement, the following provisions of the Development Agreement shall apply to all of the Property in any event: Sections 2, 3(G) (first sentence) and 8.

3. Rights of Mesa del Sol. The rights of Mesa under the Development Agreement may not be exercised and shall not run to the benefit of any other owner of the Property unless expressly assigned by Mesa to and expressly assumed by successor owners of portions of the Property, in a writing recorded with the Bernalillo County Clerk.

4. City's Consent Right. The City retains the right to approve any assignment of Mesa Financial Obligations or any rights of Mesa under the Development Agreement pursuant to Section 12(G) of the Development Agreement.

5. Remaining Terms. Except as modified/clarified herein, all remaining terms of the Development Agreement shall remain in full force and effect.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

Executed as of the day and year first set out above.

MESA DEL SOL, LLC,
a New Mexico limited liability company

By: FC Covington Manager, LLC, a New Mexico
limited liability company, Member

By: Forest City NM, LLC, a
New Mexico limited liability company, Member

By: Forest City Commercial Group, Inc., an
Ohio corporation, Sole Member

By: [Signature]
Its: Vice President

THE CITY OF ALBUQUERQUE, a
New Mexico a municipal corporation

By: [Signature]
Robert J. Perry, Chief Administrative Officer

MESA DEL SOL TAX INCREMENT
FINANCIAL DISTRICTS 1 THROUGH 5

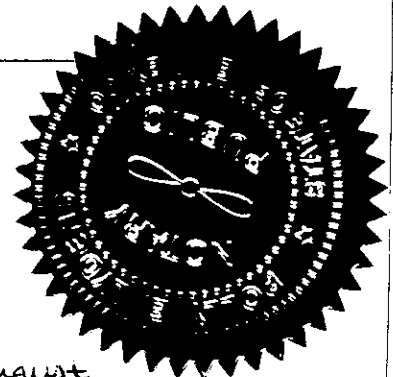
By: [Signature]
Its: Vice President

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was duly acknowledged before me this 20 day of July, 2011
by Brent F. Dupes, VP of Forest City
Commercial Group, Inc., an Ohio corporation, Sole Member, Forest City NM, LLC, a
New Mexico limited liability company, Member of FC Covington Manager, LLC, a New
Mexico limited liability company, Member of Mesa del Sol, LLC, a New Mexico limited
liability company.

Brent F. Dupes
Notary Public

My Commission Expires: October 11



STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was duly acknowledged before me this 1st day of August, 2011
by Robert J. Perry, Chief Administrative Officer of the City of Albuquerque, a New
Mexico municipal corporation.

Maic E. Chavez
Notary Public

My Commission Expires: 2/17/13

STATE OF NEW MEXICO)
)
COUNTY OF BERNALILLO)

This instrument was duly acknowledged before me this 17th day of August, 2011
by Ray Cardano, VP of Mesa Del Sol Tax
Increment Financial Districts 1 through 5.

Ray Cardano
Notary Public

My Commission Expires: April 16, 2013

Separator Sheet

BOND ANTICIPATION REIMBURSEMENT AGREEMENT

THIS BOND ANTICIPATION REIMBURSEMENT AGREEMENT (the "Agreement") is made and entered into as of the 23rd Day of December, 2008 by and between MESA DEL SOL, LLC, a New Mexico limited liability company ("Mesa del Sol"), and MESA DEL SOL TAX INCREMENT DEVELOPMENT DISTRICTS 1-5, each a political subdivision of the State as provided in Section 5-15-9(C) (collectively, the "Districts") in connection with the facts and circumstances recited below.

RECITALS

A. Mesa del Sol is the owner and developer of certain parcels of real property within the Districts, commonly known as Mesa del Sol (the "Property") in the City of Albuquerque (the "City") and County of Bernalillo, New Mexico (the "County").

B. Pursuant to Sections 5-15-1 through 5-15-28 NMSA 1978, City Ordinance Bill No. F/S O-06-44 Enactment No. O-36-2006 (the "TIDD Ordinance"), City Council Bill F/S R-06-146, Enactment No. R-2006-126, and City Council Enactment R-2007-0001 (collectively, the "Formation Legislation"), the City formed five tax increment development districts for the financing of public infrastructure to serve the Property and established the tax increment available in each financing.

C. In connection with the formation of Districts 1-5, the City approved a Tax Increment Development Plan (the "TIDD Plan"), and entered into a Master Development Agreement with Districts 1-5 (the "Master Development Agreement"), which TIDD Plan and Master Development Agreement anticipate that the Districts will finance, construct and complete certain public infrastructure improvements ("Public Infrastructure Improvements") and provide related services to properties within the boundaries of the Districts, which will directly benefit the Property, and that Mesa del Sol, on behalf of the Districts, may pay the costs of design, construction and completion of such infrastructure improvements and related capital management and operating expenses, until such time that the Districts can issue bonds for the purpose of repaying such costs.

D. Pursuant to Sections 5-11-1 through 5-11-27 NMSA 1978, City Ordinance O-2003-12 (the "PID Ordinance") and City Resolution Enactment No. R-2006-126 (the "Formation Resolution"), the City has formed five public improvement districts (each a "PID" and together, "PIDs 1-5") for the financing of public infrastructure to serve the Property and has established certain parameters for the issuance of public improvement district bonds by each PID.

E. Mesa del Sol has completed the design and construction of certain Public Infrastructure Improvements, including a water storage tank (the "Water Storage Tank"), portions of University Boulevard, Fritts and Stryker (the "Road Improvements"). Mesa del Sol intends to transfer title to the Water Storage Tank to District 1 for dedication to the Albuquerque Bernalillo County Water Utility Authority ("ABCWUA"). Mesa del Sol intends to transfer title to the Road Improvements to District 1 for dedication to the City of Albuquerque. The parties intend that the Water Storage Tank, Road Improvements and all other Public Infrastructure Improvements to be transferred to District 1 or any other District shall be designed, constructed, completed and shall otherwise comply with the applicable regulations and specifications of the governmental jurisdiction intended to accept any particular Public Infrastructure Improvements.

F. Mesa del Sol has expended the sum of approximately \$5,652,000 on the Water Storage Tank and approximately \$3,804,096 on the Road Improvements (collectively, "Prior Advances"). Mesa del Sol is currently engaged in the design and construction of additional Public Infrastructure Improvements, which costs ("Advances"), will be initially paid by Mesa del Sol.

G. The Districts do not currently have sufficient funds to pay the costs of design, construction and completion of the Public Infrastructure Improvements or related expenses.

H. In order to enable (1) District 1 to acquire and dedicate the Water Storage Tank and the Road Improvements, and (2) the Districts to acquire and dedicate the balance of the Public Infrastructure Improvements following the completion thereof, Mesa del Sol is willing to transfer title to such Public Infrastructure Improvements to the Districts in consideration of the Districts' agreement to repay the cost of the Public Infrastructure Improvements as provided in this Agreement, with the understanding that such repayment is conditional upon the District's receipt of funds, if and when District financing is available therefor, in accordance with the terms of this Agreement.

I. The Parties recognize that, based on revenue available, timing and other considerations, it may be most practicable for the costs of particular Public Infrastructure Improvements may be reimbursed in part by both one or more of the more of the Districts and one or more of the PIDs, but that in no event shall the combined reimbursement to Mesa del Sol for the Public Infrastructure Improvements, or any of them, exceed the actual cost of such improvements.

J. The Parties anticipate that Mesa del Sol may, in connection with the transfer of the Water Storage Tank and other water infrastructure to the TIDD, assign to the TIDD the right to receive utility expansion charge ("UEC") revenues from the ABCWUA, and that the TIDD may reimburse Mesa del Sol from such assigned revenues as contemplated by this Agreement. The Parties intend that the total reimbursement of Mesa del Sol, whether from UEC revenues, bond proceeds or any other source or

combination of sources, shall not exceed the actual cost of the Water Storage Tank and other water infrastructure dedicated to the ABCWUA to which the UEC revenues relate.

K. The Parties intend that neither the Districts together, nor any District individually, be liable for any patent or latent defect in the design, construction, operation, maintenance of, or title to Public Infrastructure Improvements pursuant to this Agreement.

NOW, THEREFORE, in consideration of the respective undertakings and agreements of the Parties as set forth herein, the Districts and Mesa del Sol agree as follows:

AGREEMENT

1. Transfer of Public Infrastructure Improvements to Districts; Advance of Costs.

A. Conveyance of Public Infrastructure Improvements to Districts for Dedication to City or ABCWUA.

(1) Water Storage Tank. At the time that Mesa del Sol has obtained written certification or other evidence satisfactory to District 1 that the ABCWUA is prepared to accept the dedication of the Water Storage Tank, Mesa del Sol shall convey the Water Storage Tank to District 1, which District 1 shall accept and then dedicate to the ABCWUA.

(2) Road Improvements. At the time that Mesa del Sol has obtained written certification or other evidence satisfactory to District 1 that the City is prepared to accept the dedication of the Road Improvements, Mesa del Sol shall convey the Road Improvements to District 1, which District 1 shall accept and then dedicate to the City.

(3) Other Public Infrastructure Improvements. At the time that Mesa del Sol has obtained written certification or other evidence satisfactory to a particular District or Districts that the City, the ABCWUA or other government agency with jurisdiction to accept particular Public Infrastructure Improvements, is prepared to accept the dedication of the particular Public Infrastructure Improvements, Mesa del Sol may convey such particular Public Infrastructure Improvements to a particular District or Districts, which District or Districts shall accept and then dedicate to the City, the ABCWUA or such other government agency with jurisdiction to accept such Public Infrastructure Improvements.

(4) Districts Not Responsible. Nothing in this Agreement shall be construed as making the Districts, or any District, liable, either jointly or individually, for any patent or latent defect in the design, construction, operation, maintenance of, or

title to Public Infrastructure Improvements accepted and dedicated by the Districts, or any of them, pursuant to this Agreement.

B. Reimbursement of Mesa del Sol from Proceeds of District Bonds.

1. Availability of Funds is Condition Precedent to Reimbursement. If and to the extent that the District to which Public Infrastructure Improvements have been conveyed (AA) receives bond proceeds for the acquisition or completion of the Public Infrastructure Improvements or (BB) has other legally available revenue which is not otherwise appropriated, obligated or reserved for any current or future purpose in any fiscal year, that District will, from such available sources, reimburse Mesa del Sol for the cost of the conveyed Public Infrastructure Improvements and other amounts actually advanced hereunder (the "Repayment Amount"); provided, that the total reimbursement of Mesa del Sol for any completed Public Infrastructure Improvement, from all sources or combination of sources, shall not exceed the actual cost of that improvement.

2. Districts to Issue Bonds as Provided in Formation Legislation. The Districts will issue tax-exempt bonds as provided in the Master Development Agreement, at such times and in such amounts as sufficient to generate sufficient proceeds to repay to Mesa del Sol the Repayment Amount, subject to all conditions and limitations set forth herein and in the Formation Legislation, including, without limitation, the TIDD Plan, the Master Development Agreement, and any applicable Supplemental Development Agreement. Any decision by any of the Districts to appropriate the Repayment Amount, however, shall be as provided in the Master Development Agreement.

3. Obligations Subordinate to Bond Covenants. The Repayment Amount and any other obligation hereunder shall be (i) subordinate in all respects to all District bonds or other multiple-fiscal year debt and financial obligations of any nature (together, "Obligations") without limitation, (ii) subject to any and all limitations on the amount of financial obligations which the Districts may incur pursuant to the TIDD Plan or any bond indenture, and (iii) non-transferable, except to a person or entity (or its lender) which the Districts, or any of them, reasonably believe is engaged, either alone or with others, in the business of developing or improving property within the District for use, sale, lease or transfer to others. By entering into this Agreement, the Districts do not intend to create, and shall not be deemed to have created, an Obligation that would limit in any manner the Districts' legal ability to issue bonds or incur other multiple-fiscal year debt or financial obligations of any nature in accordance with the TIDD Plan.

2. Accounting. Within forty-five (45) days after the end of each fiscal year during the term of this Agreement, Mesa del Sol shall complete an accounting of the Repayment Amount to be reimbursed pursuant to this Agreement, which shall be classified by nature of use between capital or operating expenditures.

3. Warranties and Representations. Mesa del Sol hereby represents and warrants to and for the benefit of the Districts as follows:

A. Mesa del Sol has the full power and legal authority to enter into this Agreement. Neither the execution and delivery of this Agreement, nor compliance by Mesa del Sol with any of its terms, covenants or conditions, is or shall become a default under any other agreement or contract to which Mesa del Sol is a party or by which Mesa del Sol is or may be bound. Mesa del Sol has taken or performed all requisite acts or actions which may be required by its organizational or operational documents to confirm its authority to execute, deliver and perform each of its obligations under this Agreement.

B. The Prior Advances have been used and expended only to pay the costs and interest thereon of (1) the Public Infrastructure Improvements have been designed, installed and constructed in accordance with all requirements, standards and specifications of the City (as to the Road Improvements), and the ABCWUA (as to the Water Storage Tank), and (2) District organizational and operating expenses. The Water Storage Tank, the Road Improvements and all additional Public Infrastructure Improvements will be conveyed, transferred or dedicated to District 1 or the other Districts for public use, free of all liens, encumbrances and obligations not acceptable to the District accepting the particular Public Infrastructure Improvements, in accordance with the terms of the TIDD Plan, the Master Development Agreement, or as otherwise may be specified in writing by the applicable District. If so required, Mesa del Sol shall provide a special warranty deed or bill of sale for such Improvements in form acceptable to the applicable District. Before any payment of the Prior Advances is made hereunder, Mesa del Sol shall submit, and if requested by the applicable District, shall supplement, supporting invoices and other documentation substantiating the amount and use of the Prior Advances or Advances, as applicable.

C. The reimbursement requirement of the Districts hereunder shall be subordinate in all respects to all Obligations of the Districts.

D. The costs of particular Public Infrastructure Improvements may be reimbursed in part by both one or more of the more of the Districts and one or more of the PIDs, but that in no event shall the combined reimbursement to Mesa del Sol for the Public Infrastructure Improvements, or any of them, exceed the actual cost of such improvements.

E. The foregoing representations and warranties are made as of the date hereof and shall be deemed continuously made by Mesa del Sol to the Districts for the entire term of this Agreement.

4. Term of Agreement. The respective obligations of the Parties hereunder shall terminate upon the expiration or early termination of the Master Development Agreement, unless terminated earlier or extended beyond such date by mutual agreement

of the Parties in writing; provided, however, if in the event of termination, any portion of the Repayment Amount is outstanding on such date, all other provisions of this Agreement shall remain in full force and effect until (i) the Repayment Amount is paid in full, at which time all terms and provisions of this Agreement shall terminate completely and unconditionally for all purposes.

5. Notices. All notices, demands, requests or other communications to be sent by one Party to the other Party shall be in writing and shall be deemed to have been validly given or served if made by courier delivery of such notice in person to the addressee or nationally recognized overnight courier service, or by depositing such notice in the United States mail, postage prepaid, addressed as follows:

If to Districts 1 through 5 or any of them:

Mesa del Sol Tax Increment Development District No. ____
c/o Chairperson, District Board
One Civic Plaza, NW Ninth Floor
P.O. Box 1293 (87103)
Albuquerque, New Mexico
Telephone: (505) 768-3100

If to Mesa del Sol:

Mesa del Sol, LLC
801 University SE, Suite 200
Albuquerque, New Mexico 87106
Attention: Michael Daly
Telephone: (505) 400-3021

Any Party by written notice so provided may change the address to which future notices shall be sent. All notices shall be considered effective when mailed.

6. Assignment. The Parties shall not assign any of their rights or delegate any of their duties hereunder to any person or entity without having first obtained the prior written consent of the other Parties. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

7. Indemnification. Mesa del Sol will indemnify and hold harmless the Districts and each of their directors, employees and agents, from and against any and all claims, demands, losses, liabilities, actions, lawsuits, mechanic's liens and expenses (including reasonable attorneys' fees), to the extent that such claims arise out of any

wrongful or negligent act or omission of Mesa del Sol, or any of its agents or employees, in connection with the completion of, and the transfer to the District of the Public Infrastructure Improvements, and excluding from such indemnity any claims arising out of any wrongful or negligent act or omission of the Districts, their directors, employees and agents.

8. Default/Remedies. In the event of a breach or default of this Agreement by either Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, including actions for specific performance and/or monetary damages; provided, however, that absent bad faith or fraud by the Districts, no punitive award or damages shall be imposed upon the Districts because of their inability to repay the Repayment Amount in accordance with the terms hereof.

9. Governing Law. This Agreement shall be governed and construed under the laws of the State of New Mexico. All times stated herein are of the essence.

10. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions, negotiations and agreements regarding the subject matter hereof are merged herein.

11. Amendment. This Agreement may be amended from time to time by agreement between the Parties. No amendment, modification or alteration of the Agreement shall be binding upon the Districts or Mesa del Sol unless the same is in writing and duly executed by the Parties.

[Signature Page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first set forth above.


MESA DEL SOL, LLC, a
New Mexico limited liability company

Mesa del Sol, LLC, a New Mexico limited liability
company

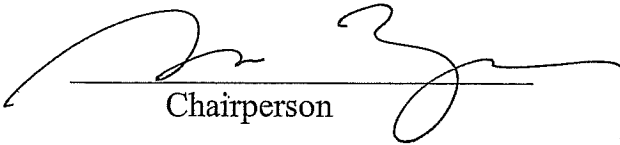
By: FC Covington Manager, LLC, a New
Mexico LLC, its Sole Member

By: Forest City NM, LLC, a New Mexico
LLC, a Member

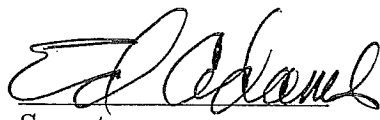
By: Forest City Commercial Group, Inc.,
an Ohio corporation, its Sole Member

By: 
Michael Daly, Vice President

MESA DEL SOL TAX INCREMENT
DEVELOPMENT DISTRICT NO. 1


Chairperson

Attest:


Secretary