

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. F/S R-18-111 ENACTMENT NO. _____

SPONSORED BY: Patrick Davis

1 RESOLUTION

2 CONSENTING TO THE ASSIGNMENT OF THE MASTER DEVELOPMENT
3 AGREEMENT FOR MESA DEL SOL PUBLIC IMPROVEMENT DISTRICTS 1
4 THROUGH 5, BY AND AMONG THE CITY OF ALBUQUERQUE, NEW
5 MEXICO, MESA DEL SOL, LLC, AND THE DISTRICTS RECORDED IN THE
6 BERNALILLO COUNTY, NEW MEXICO REAL ESTATE RECORDS ON
7 MARCH 3, 2008, AS AMENDED AND SUPPLEMENTED, AND CERTAIN
8 OTHER RELATED AGREEMENTS, IN CONNECTION WITH THE PURCHASE
9 OF THE PROPERTY UNDERLYING THE DISTRICTS BY MDS
10 INVESTMENTS, LLC, FOR THE PURPOSE OF FINANCING PUBLIC
11 INFRASTRUCTURE IMPROVEMENTS WITHIN THE DISTRICTS.

12 WHEREAS, the Boards of Directors of the Mesa Del Sol Public
13 Improvement Districts 1 through 5 (the "Districts"), being public
14 improvement districts established and existing pursuant to NMSA Sections
15 5-11-1 et seq., previously have approved, executed and delivered the
16 Master Development Agreement by and among the Districts, the City of
17 Albuquerque, New Mexico (the "City") and Mesa del Sol, LLC (the "Original
18 Developer"), recorded in the Bernalillo County, New Mexico Real Estate
19 Records on March 3, 2008, as amended and supplemented (the
20 "Development Agreement"; capitalized terms used in this Resolution and
21 not otherwise defined herein shall have the meanings provided in the
22 Development Agreement); and

23 WHEREAS, the Original Developer (and/or its successors in interest
24 with respect to the real property underlying the Districts, referred to herein

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as the “Seller”) was named as the Defendant in a certain court proceeding in the Second Judicial District Court of New Mexico known as Case No. D-202-CV-2015-05944 (the “Foreclosure”), in which the Court appointed a receiver to convey the real property underlying the Districts together with all rights and interests in the Master Development Agreement Mesa del Sol Public Improvements Districts 1 Through 5 By and Among the City of Albuquerque, New Mexico, Mesa del Sol, LLC, and Mesa del Sol Public Improvement Districts 1 through 5, with an Effective Date of March 3, 2008, pursuant to the Mesa del Sol Public Improvement Districts 1-5 Notice of Formation Resolution, recorded in the Bernalillo County, New Mexico real estate records on April 13, 2009, as Document No. 2009038714 (the “Master Development Agreement”) and all rights and interests in that certain related Bond Anticipation Reimbursement Agreement by and between Mesa del Sol, LLC and Mesa del Sol Public Improvement Districts 1-5 dated December 23, 2008 (collectively, the “Development Agreements” attached hereto as Exhibit A) (see Third Amendment to Emergency Order Appointing Receiver filed 2/19/2018); and

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

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

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

WHEREAS, the Purchaser has provided satisfactory evidence to the City that each entity comprising the Seller has disclaimed any interest in the real property underlying the District and any rights under the Development Agreements—and other due diligence materials and related

1 studies (collectively the “Due Diligence Documents” attached hereto as
2 Exhibit C).

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

5 Section 1. Consent to Assignment of the District Agreements.

6 Pursuant to the promises and the acceptance of the obligations referenced
7 in the Consent to Assignment, the City consents to the assignment of the
8 Development Agreements to the Purchaser and the Chief Administrative
9 Officer of the City will execute the Consent to Assignment.

10 Section 2. Repealer. All ordinances or resolutions, or parts thereof

11 in conflict with the provisions of this Resolution, are hereby repealed to the
12 extent only of such inconsistency. This repealer shall not be construed to
13 revive any ordinance or resolution, or part thereof, heretofore repealed.

14 Section 3. Severability. If any section, paragraph, clause or

15 provision of this Resolution shall for any reason be held to be invalid or
16 unenforceable, the invalidity or unenforceability of such section,
17 paragraph, clause or provision shall in no manner affect any remaining
18 provisions of this Resolution.

EXHIBIT A
MASTER DEVELOPMENT AGREEMENT,
AND BOND ANTICIPATION REIMBURSEMENT AGREEMENT

EXHIBIT B
CONSENT TO ASSIGNMENT AGREEMENT

EXHIBIT C
30 THREE SIXTY PUBLIC FINANCE STUDY, AND
PRO FORMA