

MASTER DEVELOPMENT AGREEMENT
MESA DEL SOL
PUBLIC IMPROVEMENT 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

This MASTER DEVELOPMENT AGREEMENT FOR PUBLIC IMPROVEMENT 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 charter municipality (the "City"), MESA DEL SOL, LLC, a New Mexico limited liability company ("Mesa del Sol"), and MESA DEL SOL PUBLIC IMPROVEMENT DISTRICTS 1 THROUGH 5, each a political subdivision of the State, separate and apart from the City and Bernalillo County, New Mexico, as provided by Section 5-11-8(B) NMSA 1978 (the "PIDs" or "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. Pursuant to the Planned Communities Criteria, the Environmental Planning Commission of the City has approved Mesa del Sol's 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, 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.

C. 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 "TIDD Legislation"), the City has formed five tax increment development districts ("TIDDs 1-5") for the financing of public infrastructure to serve the Property and established the tax increment revenue available in each financing, and has entered into a Master Tax Increment

Development Agreement with Mesa del Sol and TIDDs 1-5 for the implementation of TIDDs 1-5 (the "Master TIDD Development Agreement").

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-2008-045 (the "Formation Resolution"), the City has formed five public improvement districts (each a "PID") 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, including the requirements that the value to lien ratio for the bonds of each PID (other than subordinate lien bonds purchased by Mesa del Sol, its parent company or affiliates and subject to appropriate secondary sale restrictions) be not less than 3 to 1, that the overlapping property tax and assessment burden on the land within each PID, including the special levies imposed on such land, not exceed 1.95% of the estimated fair market value of the fully improved lots or parcels, and that the sale of the bonds shall be restricted to Qualified Investors as defined in Rule 144A of the Securities and Exchange Commission, except as otherwise provided by the provisions of the PID Ordinance in effect at the time of the sale.

E. Each PID will be assigned individual parcels from the geographic area comprising the Employment Center/Commercial/Retail areas of the Property ("Nonresidential Parcels") prior to the development and occupancy of individual Nonresidential Parcels, provided that the owner of each Nonresidential Parcel has consented to the inclusion of that Nonresidential Parcel within the PID, as contemplated by the Act. The PID to which a specific Nonresidential Parcel is assigned will impose special levies on those parcels in accordance with the Rate and Method of Apportionment for that PID, as adjusted to assure that the value to lien ratio and overlapping tax and assessment burden are within the limitations imposed by the PID Ordinance. Special Levies imposed on both residential and nonresidential property within each PID will secure bonds issued by that PID only, and will not cross-collateralize bonds of any other PID.

F. Proceeds of the bonds of each PID and special levy revenue, if applicable, shall be used for the purpose of purchasing, financing the design and construction of the allocable portions of all, or portions to the extent financially feasible, of the following (collectively, the "PID Infrastructure"):

(1) PID 1: public infrastructure (consisting of streets, drainage, landscaping, streetscaping, water and wastewater improvements and related improvements serving PID 1), portions of trunk infrastructure (consisting of Phases I and II of University Boulevard and Phases I and II of Mesa del Sol Boulevard, water and wastewater improvements and drainage, all as defined in the Level B Plan), portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, community centers, and other public facilities serving PID 1;

(2) PID 2: public infrastructure (consisting of streets, drainage, landscaping, streetscaping, water and wastewater improvements and related improvements serving PID 2), portions of trunk infrastructure (consisting of Phases I and II of University

PID 2), portions of trunk infrastructure (consisting of Phases I and II of University Boulevard and Phases I and II of Mesa del Sol Boulevard, water and wastewater improvements and drainage, all as defined in the Level B Plan), portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, community centers, and other public facilities serving PID 2;

(3) PID 3: public infrastructure (consisting of streets, drainage, landscaping, streetscaping, water and wastewater improvements and related improvements serving PID 3), portions of trunk infrastructure (consisting of Phases I and II of University Boulevard and Phases I and II of Mesa del Sol Boulevard, water and wastewater improvements and drainage, all as defined in the Level B Plan), portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, community centers, and other public facilities serving PID 3;

(4) PID 4: public infrastructure (consisting of streets, drainage, landscaping, streetscaping, water and wastewater improvements and related improvements serving PID 4), portions of trunk infrastructure (consisting of Phases I and II of University Boulevard and Phases I and II of Mesa del Sol Boulevard, water and wastewater improvements and drainage, all as defined in the Level B Plan), portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, community centers, and other public facilities serving PID 4;

(5) PID 5: public infrastructure (consisting of streets, drainage, landscaping, streetscaping, water and wastewater improvements and related improvements serving PID 5), portions of trunk infrastructure (consisting of Phases I and II of University Boulevard and Phases I and II of Mesa del Sol Boulevard, water and wastewater improvements and drainage, all as defined in the Level B Plan), portions of other trunk infrastructure (water supply facilities, elevated storage, underground storage, water pump station, sanitary sewer pump station, reservoir, storm detention ponds, parks, and infrastructure improvements related to the foregoing), police, fire and public safety facilities, community centers, and other public facilities serving PID 5.

All PID 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"). The specific PID Infrastructure to be financed by each PID, and the applicable features of such financings, shall be more fully provided in a

Supplemental PID Development Agreement for each PID, as described in Section 4(B) of this Agreement, which shall be approved in accordance with the provisions of the PID Ordinance in effect at the time of such approval.

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 bonds, PID revenues or proceeds of PID Bonds, as provided in the Level B Plan (the "Additional Infrastructure," which shall be further described in the estimated construction schedules attached to each Supplemental District Development Agreement, and which, together with the PID Infrastructure, are referred to in this Agreement as the "Public Infrastructure").

H. This Agreement is entered into pursuant to the PID Ordinance, which provides in pertinent part that the respective responsibilities of the City and Mesa del Sol for implementing the PIDs, 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 PIDs, are to be addressed in a development agreement or agreements for the PIDs.

I. 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 to the City a petition and application for the formation of the PIDs (together, the "Application"), and to request that PIDs 1 through 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 PIDs 1 through 5 and that, consequently, no formation election is required pursuant to Section 5-11-7 NMSA 1978.

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

K. The City and Mesa del Sol intend that all PID Infrastructure to be constructed by or on behalf of the PIDs 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.

L. The City and Mesa del Sol intend that the PID Infrastructure (other than certain water and wastewater improvements that will be dedicated to the Albuquerque Bernalillo County Water Utility Authority, certain road and related improvements that will be dedicated to the State and the County and certain drainage improvements that will be dedicated to the Albuquerque Metropolitan Arroyo Flood Control Authority), 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, shall be acquired by the PIDs and then 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.

M. The City and Mesa del Sol anticipate that the PID Infrastructure will be financed in part through the issuance by each of the PIDs of separate series of special levy revenue bonds ("Special Levy Bonds") as provided in the Act ("PID Bonds"), payable from the revenues of a special levy imposed on levyable property within each PID. The City and Mesa del Sol anticipate that the PID Bonds issued by each PID will be secured and administered pursuant to indentures of trust ("Indentures") to be entered into by the PIDs for the benefit of the owners of the PID Bonds, which Indentures will provide for the collection, deposit, administration, investment and payment of debt service on PID Bonds with special levy revenue.

N. The PID Infrastructure Improvements in the aggregate are substantially the same public infrastructure improvements that have been authorized by the City as eligible for financing with tax increment revenue bonds issued by Mesa del Sol Tax Increment Development Districts 1 through 5. The City and Mesa del Sol intend that PIDs 1 through 5 will finance public infrastructure costs up to the actual financing capacity of the PIDs authorized by the City in forming the PIDs. Costs of public infrastructure financed by the PIDs will offset the amount of tax increment revenue bond financing needed to pay such costs, and that the combined maximum amount of financing authorized by the City to be provided through PIDs 1 through 5 and Mesa del Sol Tax Increment Development Districts 1 through 5 shall not exceed an amount that results in net proceeds available to fund the estimated cost of Public Infrastructure of \$528,849,646 (in 2007 dollars).

O. The City and Mesa del Sol intend that this Agreement be effective as of the formation by the City of the proposed PIDs pursuant to the Formation Resolution; that this Agreement shall govern the conduct and operation of the PIDs with respect to the matters addressed by this Agreement; that one or more supplemental PID development agreements (each a "Supplemental PID Development Agreement") may be entered into by the City, Mesa del Sol and each PID individually, with respect to bond issuance, financing, construction, dedication, operation and maintenance of particular portions of PID Infrastructure by that PID; and that nothing in this Agreement shall be construed to diminish the rights or obligations of Mesa del Sol or the City in connection with the TIDD Legislation or the TIDD Master Development Agreement, including, without limitation, rights and obligations concerning workforce housing, transportation and school facilities in connection with TIDDs 1-5.

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 Public Improvement Districts 1 through 5 each agree as follows:

AGREEMENT

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

A. Effective Date. This Agreement shall become effective, with respect to the City and Mesa del Sol, upon the City's formation of PIDs 1 through 5 pursuant to the Act, irrespective of the date of execution of this Agreement by the parties hereto.

B. PIDs are shall be Parties to this Agreement. Pursuant to the Formation Resolution, PIDs 1 through 5 shall be made parties to this Agreement and shall be bound to the obligations set forth herein as of the date of formation of the PIDs.

C. No Cost to City. All costs and expenses incurred by the City pursuant to this Agreement in connection with the application, formation, operation and administration of PIDs 1 through 5 shall be paid by Mesa del Sol or its designee through advance payments; 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 PIDs, to the extent allowable by applicable state and federal law. The City shall consult and coordinate with Mesa del Sol on expenses incurred by the City related to the application, formation and administration of PIDs 1 through 5, and the City shall provide Mesa del Sol with an accounting of expenses for Mesa del Sol's review and comment at Mesa del Sol's request.

D. Condition Precedent. This Agreement is conditioned upon the formation of PIDs 1 through 5, as provided in the Act. In the event that PIDs 1 through 5 are not formed, this Agreement shall not take effect, and no party shall have any obligation hereunder.

2. Boundaries of PIDs. The boundaries of PIDs shall be as described in a map depicting the boundaries of the PIDs (the "Boundary Map") attached as Exhibit A to this Agreement. The boundaries of PIDs 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 PID or PIDs affected by the proposed amendment, or proposed to be included in a PID, have provided written consent to the boundary amendment and either (i) no bonds of the affected PIDs 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 PIDs which are then outstanding will not be adversely affected, the amendment shall be approved by the Chief Administrative Officer of the City (the "CAO"), 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 PIDs affected by the proposed amendment have provided written consent to the boundary amendment, the proposed amendment shall be subject to the provisions of Section 5-11-13 NMSA 1978.

3. PID Infrastructure to be Constructed by Mesa del Sol. PID Infrastructure shall be constructed by Mesa del Sol or its designee as provided in the Level A-C Development Agreements and Supplemental PID Development Agreements. To the extent consistent with the Level A-C Development Agreements or Supplemental PID Development Agreements (as

described in Section 4(C) of this Agreement), construction of PID Infrastructure shall be subject to the provisions set forth in subsections A through I of this Section 3. PID Infrastructure shall be acquired by the applicable PID with proceeds of PID Bonds issued by that PID or with special levy revenues, as applicable, either through the purchase of the infrastructure improvements from Mesa del Sol or its designee or, in the event that Mesa del Sol or its designee has constructed PID Infrastructure as agent for the PID, through progress payments to subcontractors or reimbursements of payments made by Mesa del Sol or its designee to subcontractors. Following acquisition by the applicable PID, PID Infrastructure shall be dedicated to the City (other than certain water and wastewater improvements that will be dedicated to the Albuquerque Bernalillo County Water Utility Authority, certain road and related improvements that will be dedicated to the State and the County, certain drainage improvements that will be dedicated to the Albuquerque Metropolitan Arroyo Flood Control Authority, and other public infrastructure not identified at this time which may be dedicated to other governmental entities with appropriate jurisdiction to accept, own or operate such infrastructure), as provided in this Section 3, and within the limitations provided in Section 4(A)(iv) of this Agreement.

A. City Development Requirements. To the extent required by the City development process policies, Mesa del Sol or its designee shall request a bulk land plat variance and obtain a preliminary plat approval, a final plat approval, a PID Infrastructure list and an Additional Infrastructure list (collectively the "DRB Infrastructure List") from the DRB prior to construction of Public Infrastructure (except to the extent that Public Infrastructure has already been constructed pursuant to the Level A Development Plan). All PID 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 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 Public 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 PID Infrastructure shall not be required if the following conditions are satisfied as to each work order in connection with the related PID for which the PID Infrastructure is being constructed:

(i) The Indenture for the related PID provides that a specified amount of the proceeds of the PID Bonds on deposit with the trustee for the Bonds shall be used for construction of the PID Infrastructure; and

(ii) the amount of available proceeds of PID Bonds on deposit with the trustee for the 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 PID Infrastructure to be constructed for the related PID.

The City shall be entitled to inspect the records of the trustee and any of PIDs 1 through 5 related to such funds.

C. Completion Guarantee Required. To the extent required by the Level A-C Development Agreements or Supplemental PID Development Agreements, 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 PIDs or special levy revenues are insufficient to pay the costs of PID Infrastructure, Mesa del Sol shall be responsible for the costs of completing such PID Infrastructure.

E. Start of Construction. Before commencing construction of the PID 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 negligent 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. To the extent practicable, Mesa del Sol shall (i) obtain 2-year construction warranties in connection with PID Infrastructure, and (ii) cause the City to be included as an additional insured or beneficiary of such warranties.

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 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 PID Infrastructure and which may be payable from proceeds of the bonds issued by the PIDs, to the extent permitted by applicable state and federal law. Any construction management fee payable from proceeds of PID Bonds shall be disclosed by Mesa del Sol or its designee in connection with a requisition of Bond proceeds to be used to pay such fees.

I. Projected Costs of Construction. The estimated cost of the Public Infrastructure in 2007 dollars, including design and engineering, eligible for financing by PIDs 1 through 5, is \$528,849,646; provided, that the maximum amount of financing of improvements that will be dedicated to governmental entities other than the City, including, without limitation, water and/or wastewater improvements that are to be dedicated to the Albuquerque Bernalillo County Water Utility Authority, shall not exceed the greater of \$80,000,000 or 25% of the aggregate costs of Public Infrastructure eligible for financing by PIDs 1 through 5, as adjusted by 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 PIDs and the Chief Administrative Officer of the City mutually determine is acceptable for purposes of this Development Agreement and the Formation Resolution) (the "Construction Cost Index").

J. Indemnity Regarding Application. Pursuant to the PID Ordinance, Mesa del Sol or its designee shall indemnify the City, the PIDs, and the respective agents and employees of the City and the PIDs, and shall hold the City, the PIDs, 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 PIDs, the offer and sale of bonds of the PIDs and each of the PIDs, and the operation and maintenance of the Public Infrastructure and any private infrastructure financed by the PIDs, each of the PIDs and 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 PIDs, or the respective agents, officers or employees of the City and the PIDs.

K. Indemnity Regarding Dedicated Real Property. Pursuant to the PID Ordinance, in connection with real property underlying PID Infrastructure dedicated to the City by Mesa del Sol or its designee, Mesa del Sol or its designee shall indemnify the City for liability under any federal, state or local laws, ordinances or regulations arising out of any release or

existence of hazardous or toxic substances present in or on the real property as of the date of its conveyance to the City by Mesa del Sol or its designee.

4. Financing of PID Infrastructure. Special Levy Revenue Bonds issued by any of PIDs 1 through 5 shall be payable from and secured by Special Levy Revenues as provided in the Rate and Method of Special Levy Apportionment for each District (attached as Exhibit 11 to the Petition for Formation of Mesa Del Sol Public Improvement Districts 1 through 5). Special Levy Revenue shall be collected and remitted to the PIDs in accordance with the Act. The PIDs may, in the future, issue additional Special Levy Revenue Bonds as provided by the Act, the PID Ordinance, the Formation Resolution and this Agreement. Under no circumstances will the City be responsible for the construction of the PID Infrastructure, the payment of PID Bonds or any other financial obligations of the PIDs. All bonds issued by any of the PIDs 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.

A. Issuance of Bonds. Pursuant to and in compliance with the Act, the PID Ordinance and the Formation Resolution, each of the PIDs shall be authorized to issue one or more series of PID Bonds, proceeds of which shall be used for construction of PID Infrastructure, sufficient to generate net proceeds in an amount not to exceed \$528,849,646, plus the amount determined as the increase in the cost of constructing public infrastructure improvements by applying the Construction Cost Index to the PID Infrastructure costs at the time each of PIDs 1 through 5 issues PID Bonds, payable from Special Levy revenue generated within each of the PIDs.

(i) The specific PID Infrastructure Improvements and estimated costs thereof to be financed by a series of PID Bonds shall be determined or estimated at the time each PID issues a series of PID Bonds and shall be described in the Supplemental PID Development Agreement and Supplemental General Plan for that PID, as provided in Section 4(B) of this Agreement.

(ii) The maximum aggregate principal amount of Special Levy Revenue Bonds issued by PIDs 1 through 5 shall not exceed the costs of the PID Infrastructure serving PIDs 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) As required by the PID Ordinance, Mesa del Sol or its designee shall contribute at least \$0.25 in community facilities or public improvements for each \$1.00 of PID Bonds to be issued by the PIDs ("Developer Contributions"), which shall be determined at the time that a series of PID Bonds is proposed to be issued, and which may include all amounts contributed by Mesa del Sol or its designee within PIDs 1 through 5; provided, that Developer Contributions shall, in the aggregate, equal or exceed 20 percent of the aggregate principal amount of PID Bonds that have been issued, and shall include community facilities or public improvements (including in-tract infrastructure, trunk infrastructure or both) that provide benefit to the PID issuing bonds for which the 20 percent calculation is being made.

(iv) Proceeds of Special Levy Revenue Bonds shall be used to defray the cost of construction of the PID Infrastructure, the refunding of short-term PID obligations issued in anticipation of PID Bonds in order to effectuate timely dedication of Public Infrastructure, and for such other purposes as allowed by the Act ; provided, that the maximum amount of financing of water and/or wastewater improvements that are to be dedicated to the Albuquerque Bernalillo County Water Utility Authority shall not exceed the greater of \$80,000,000 or 25% of the aggregate costs of Public Infrastructure eligible for financing by PIDs 1 through 5.

B. Supplemental PID Development Agreements; Authority of CAO and City Engineer. Prior to issuing a series of PID Bonds, a PID shall enter into a Supplemental PID Development Agreement with the City and Mesa del Sol, LLC and shall record a Supplemental PID General Plan which, together, shall address the enumerated matters described in parts (i) through (viii) of this Section 4(B). The CAO is hereby authorized to enter into Supplemental PID Development Agreements on behalf of the City; provided, that Supplemental Development Agreements related to PIDs 2 through 5 shall be approved by the City Council and the CAO unless otherwise provided in the City PID Ordinance in effect at the time such agreements are to be entered into. An Authorized Officer of each District is authorized to record supplemental PID General Plans on behalf of each District. Together, each Supplemental PID Development Agreement and Supplemental PID General Plan shall:

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

(ii) Identify the contribution made or to be 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 PID 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 PID Bonds to be issued by that PID required by the Act, the PID Ordinance (including, without limitation, the provisions of Section 5(E) thereof), the Formation Resolution and this Agreement;

(v) Provide for the imposition of a Special Levy on the taxable property within that PID, the revenues of which Special Levy shall be pledged as security to pay debt service on PID Bonds, as provided in the Act;

(vi) Describe the maximum Special Levy amount or method of calculating such maximum amount on taxable property within the PID, including any permitted adjustments;

(vii) Describe the rate and method of apportionment of the Special Levy to each tract or lot within the PID; and

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

C. District Procedures for Foreclosure in Connection with Delinquent Special Levies. Pursuant to Sections 5-11-23(F) and 5-11-20(G) NMSA 1978 and Section (5)(L) of the Formation Resolution, each PID shall include in the recorded Notice of Special Levy procedures for the foreclosure and redemption of delinquent special levies, substantially as follows:

(i) Each PID may institute foreclosure proceedings against a delinquent special levy related to taxable property within its boundaries after six months following written notice of the delinquency to the owner of the real property to which the delinquency applies.

(ii) Any delinquent special levy shall be foreclosed in the manner provided by law for the foreclosure of mortgages on real estate.

(iii) In any action seeking the foreclosure of a special levy lien after special levy bonds have been issued, if there is no other purchaser for the tract of land having a delinquent special levy, the PID or other trustee of the funds from which the special levy bonds are to be paid, may:

a. Purchase the tract or parcel sold at the foreclosure sale.

b. Bid, in lieu of cash, the amount of the special assessment, interest, penalties, attorneys' fees, and costs found by the court to be due and payable under the ordinance creating the lien and any cost taxed by the court in the foreclosure proceedings against the property ordered sold.

c. Upon the purchase of the tract or parcel, title to the tract or parcel of land, subject to the right of redemption provided by paragraph (vi) of this section, vests in the trustee of the fund from which the special levy bonds are payable.

(iv) No real property shall be sold to satisfy a delinquent assessment until at least fifteen days after the date of the order, judgment or decree of the court, within which time the owner of the tract or parcel of land may pay off the decree and avoid the sale.

(v) After the expiration of the fifteen-day period, the property may be sold at a public or private sale subject to the right of redemption.

(vi) Any property sold under any order, judgment, or decree of court to satisfy the special levy lien may be redeemed at any time within one year of the date of sale by the owner or mortgage holder or other person having an interest, or their assigns, by repaying to the purchaser or his assign the amount paid plus interest from the date of purchase at a rate of twelve percent per year.

(vii) The proceeds of the sale of the foreclosed tract or parcel of land at either a public or private sale shall be applied as follows:

- a. First, to the payment of costs in giving notice of the sale and of conducting the sale;
- b. Second, to costs and fees taxed against the tract or parcel of land in the foreclosure proceedings;
- c. Third, on a pro rata basis, to the indebtedness claimed under the special levy lien and any other lien on the property that has a priority coequal to the special levy lien; and
- d. Fourth, after all costs, liens, assessments, and taxes are paid, to the former owner, mortgage holder or other parties having an interest in the tract or parcel, upon the foregoing person's providing satisfactory proof to the court of the interest and upon approval of the court.

(viii) Receipts for the satisfaction of the indebtedness claimed under the special levy lien shall be paid into the proper fund of the applicable PID for payment of the interest and principal due on the special levy bonds.

(ix) No public rights of way or public property shall be subject to foreclosure pursuant to this Agreement.

D. PID Bond Financing Requirements. The issuance of PID Bonds shall be subject to the following requirements and limitations (provided, that subordinate lien bonds privately placed with a parent company or affiliate of Mesa del Sol shall be subject to such requirements and limitations as are agreed by the applicable PID and the purchaser of the subordinate lien PID Bonds, to the extent permitted by the PID Ordinance in effect at the time of issuance):

(i) Each transaction shall include a reasonably required debt service reserve funded from bond proceeds or other legally available sources;

(ii) The special levies imposed on levyable property within the all PIDs shall be in amounts equal to or greater than 110% of the annual debt service requirements of all PID Bonds then outstanding and the PID Bonds proposed to be issued;

(iii) The value to lien ratio (i.e. the value of the Property, including the PID Infrastructure Improvements and the Additional Improvements, compared to the aggregate principal amount of the PID Bonds) shall be at least 3 to 1, so that the aggregate principal amount of the bonds shall constitute no more than 33% of the total appraised value of land within the District following the completion of the PID Infrastructure Improvements and the Additional Improvements;

(iv) To the extent required for effective marketing and acceptance of PID Bonds by bond investors, and in accordance with the requirements of the PID Ordinance, PID Bonds shall be supported by financial guaranty arrangements sufficient to assure the payment of debt service on the PID Bonds prior to the completion of construction of the PID Infrastructure Improvements while Mesa del Sol is the owner of more than 50 percent of the Property, all as determined by each PID;

(v) PID Bonds shall be initially sold in minimum denominations of at least \$100,000; provided, that this requirement shall not apply to PID Bonds which have, at the time of issuance or thereafter, received an investment rating by Moody's Investor Services, Standard & Poor's or Fitch Ratings;

(vi) PID financing shall have no direct or indirect negative impact on the debt or financing capabilities of the City; and

(vii) Such other provisions as shall be mutually agreed upon by the CAO, the PIDs and Mesa del Sol.

E. Plan of Finance. Each PID shall implement a specific plan of finance within the parameters of the general Plan of Finance attached to this Agreement as Exhibit B and in accordance with the Formation Resolution, which specific plan of finance shall be incorporated in the Supplemental Development Agreement for that PID.

5. PID Operating Levy. Each Supplemental PID Development Agreement shall include provisions for payment of annual administrative costs of that PID in the annual special levy for that PID, including: (i) A Bernalillo County billing and collection fee of one percent (1%) of the annual special levy amount; and (ii) the estimated costs of PID administration and trustee fees, as identified in Section ____ of the Feasibility Study.

6. PID Governance. The governing body of each PID shall be initially composed of the following persons: Isaac Benton, Jon Zaman, Cilia Aglialoro, Jacques Blair and Sheila Duffy. On the sixth anniversary date of the formation of each PID, either the City Council of the City of Albuquerque shall act as the governing body of each PID, or members of the governing body shall be selected by an election, as provided in Section 5-11-9(C) of the Act.

7. Dedication and Operation of Public Infrastructure. All PID Infrastructure (other than certain water and wastewater improvements that will be dedicated to the Albuquerque Bernalillo County Water Utility Authority, certain other improvements that may be dedicated to other political subdivisions of the State or the State and certain drainage improvements that will be dedicated to the Albuquerque Metropolitan Arroyo Flood Control Authority) shall be dedicated to the City by the PID financing such PID Infrastructure and operated as provided in the Level A-C Development Agreements and Supplemental PID Development Agreements. Except as otherwise provided in the Level A-C Development Agreements or Supplemental PID Development Agreements, the following general provisions shall govern the dedication and operation of Public Infrastructure:

A. Each PID 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, at no net expense to the City, 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.

8. Default; Termination.

A. Defaults. Any failure by any party to perform any material term or provision of this Agreement, or under any Supplemental PID Development 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 Governing Body 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 Governing Body 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 thirty (30) years hereafter, and the date on which all PID 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.

9. Other General Provisions.

A. Audit. The City shall have the right to audit all expenditures of the PIDs and expenditures of Mesa del Sol in connection with community facilities or public improvements to be dedicated to the City or treated as Mesa del Sol's 20 percent contribution pursuant to Section 4(A)(iii) of this Agreement, at no cost to the City, through an accounting firm approved by the City Treasurer.

B. 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.

C. Notices. Notices concerning the PIDs shall be provided to the Parties at the following addresses:

If to the City:

City of Albuquerque, New Mexico, Mexico
One Civic Plaza, NW, First Floor (87102)
Post Office Box 1293 (87103)
Albuquerque, New Mexico
Attention: John Hartmann, Department of Municipal Development
Telephone: (505) 768-3830

If to PIDs 1 through 5:

Mesa del Sol Public Improvement District No. ____
[Address]
Albuquerque, New Mexico 87____
Attention: _____
Telephone: (505) _____

With copies to:

Mesa del Sol, LLC
801 University SE, Suite 200
Albuquerque, New Mexico 87106
Attention: Michael D. Daly, President
Telephone: (505) 452-2600

If to Mesa del Sol:

Mesa del Sol, LLC
801 University SE, Suite 200
Albuquerque, New Mexico 87106
Attention: Michael D. Daly, President
Telephone: (505) 452-2600

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.

D. Entire Agreement. 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.

E. Changes to Agreement. Changes to this Agreement are not binding unless made in writing and signed by all parties hereto. Changes to this Agreement that are within the scope of the Formation Resolution or this Agreement shall not require additional action by the City Council. Whether a change to this Agreement is within the scope of the Formation Resolution or this Agreement shall be determined by the City Council President in consultation with the City Attorney. Notice of proposed changes to this Agreement shall be given to the Director of Council Services and the City Attorney not less than 30 days prior to the effective date of the proposed change.

F. 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.

G. 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.

H. Assignment. This Agreement shall 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 PID Improvements or the payment of PID Bonds.

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

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

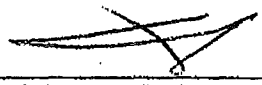
K. Conflicts. To the extent that any provisions of the City's Development Process Manual conflict with, or are amended by the terms of the Level "A" or Level "B" Plans or Development Agreements then the terms of the Level "A" or "B" Plans or Level "A" or "B" Development Agreements shall control. To the extent that the terms of this Master Development Agreement are expressly amended or supplemented by the provisions of a any Supplemental PID Development Agreement the terms of that Supplemental PID Development Agreement shall control; provided, that such amendment or supplementation shall be of the type contemplated by this Master Development Agreement.

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 D. Daly,
President

ATTEST:

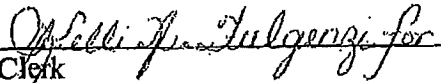
By: 
Corporate Officer

CITY OF ALBUQUERQUE, NEW MEXICO

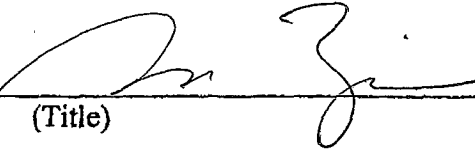
[SEAL]

By: 
Chief Administrative Officer

ATTEST:

By: 
Clerk

MESA DEL SOL PUBLIC IMPROVEMENT
DISTRICTS 1 THROUGH 5

By: 
(Title)

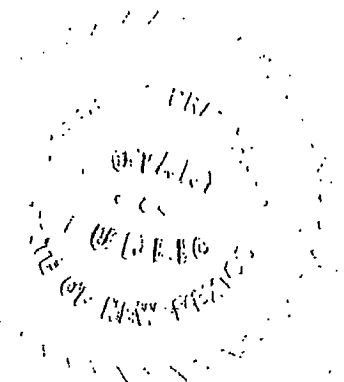
MESA DEL SOL, LLC
NOTARY

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

The foregoing instrument was acknowledged before me this 10th day of MARCH, 2008 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.

Mary E.ritchard
Notary Public

12/20/09
My Commission Expires:



MESA DEL SOL PUBLIC IMPROVEMENT DISTRICTS 1 THROUGH 5
NOTARY

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

The foregoing instrument was acknowledged before me this 8th day of April, 2009 by *Sandra M. Chavez*, Isaac Benton

Sandra M. Chavez
Notary Public

June 12, 2011
My Commission Expires:

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

The foregoing instrument was acknowledged before me this 14th day of March,
2008 by Bruce J. Pechman, Chief Administrative Officer.

Felicia Liron
Notary Public

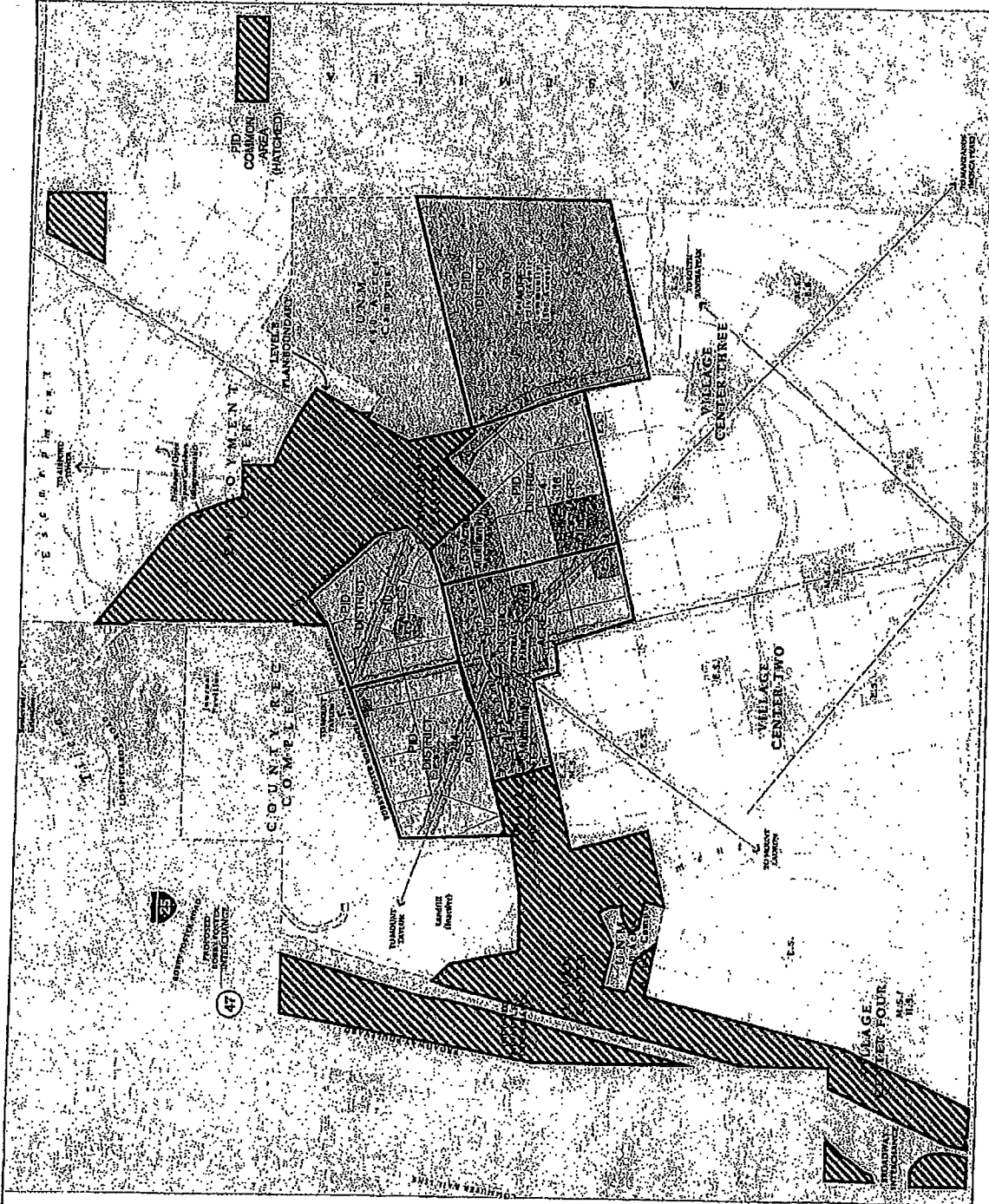
1-27-2010
My Commission Expires:

LIST OF EXHIBITS

EXHIBIT A BOUNDARY MAP (PUBLIC IMPROVEMENT DISTRICTS 1 THROUGH 5)

EXHIBIT B PLAN OF FINANCE FOR PUBLIC IMPROVEMENT DISTRICTS 1
THROUGH 5

EXHIBIT 1
BOUNDARY MAP
(PUBLIC IMPROVEMENT DISTRICTS 1 THROUGH 5)



MESA DEL SOL

TITLE

PID DISTRICTS
May 8, 2007

EXHIBIT 2

PLAN OF FINANCE FOR PUBLIC IMPROVEMENT DISTRICTS 1 THROUGH 5

MESA DEL SOL

PLAN OF FINANCE PUBLIC IMPROVEMENT DISTRICTS 1 THROUGH 5

I. Background

This Plan of Finance is provided pursuant to the Application for Formation of Mesa del Sol Public Improvement Districts 1 through 5 (the "PID Application") and the City of Albuquerque Policy Guidelines and Application Procedures for the Establishment of Public Improvement Districts (the "City Guidelines"). This Plan of Finance describes the proposed special levy bond financing of public infrastructure serving the Mesa del Sol master planned community (the "Project"). Finally, the Plan of Finance describes how the proposed financing program is consistent with the financing aspects of the City Guidelines.

II. PIDs 1 through 5 General Plan of Finance

Bond Program: Each PID will issue special levy revenue bonds for the purpose of financing certain trunk and in-tract public infrastructure as that infrastructure is needed, to serve the property within each of the PIDs. Each PID will issue bonds secured by special levy revenue from the residential property within its boundaries as well as special levy revenue derived from designated parcels within the Village Center One, the Employment Center, the Community Center, the Urban Center and Highway Commercial (collectively, the "Non-Residential Property"). Each PID's bonds will be secured by an exclusive lien on the special levies applicable to residential property within that PID and on the special levies applicable to Non-Residential parcels that have been designated as part of such PID through a Supplemental General Plan and an Adjusted Rate and Method of Apportionment that are prepared at the time such PID sells its first series of bonds. The Plan of Finance anticipates that the bonding capacity of the PIDs will increase as economic development projects are created in the Non-Residential area and the parcels on which those projects are located are designated as included within a particular PID.

As described below, each PID is expected to issue one or more series of senior lien bonds and one or more series of subordinate lien bonds.

Use of Bond Proceeds. Consistent with the City Guidelines, the proceeds of PID special levy revenue bonds will be deposited into the following bond funds:¹

- **Construction/Acquisition Fund:** Monies that are deposited with the bond trustee into the Construction/Acquisition Fund will be used to reimburse the Developer for the cost of eligible infrastructure.
- **Capitalized Interest Fund:** Bond proceeds are expected to be used to pay interest on each PID's senior lien bonds for up to 36 months from the date of issuance.
- **Reserve Fund:** The senior lien bonds' reserve fund will be funded by bond proceeds and/or from excess special levy revenue during the capitalized interest period. In general, the tax law restriction on the size of the bond reserve fund is the lesser of 10% of par, maximum annual debt service and

¹ Please note that Bond Counsel may choose to use other names to describe such funds in the Indenture.



125% of average annual debt service. Any bond that is sold to a Qualified Institutional Buyer (described further below) not related to the Developer would need to fund this reserve from bond proceeds in order for the bonds to be marketable.

- Cost of Issuance Fund: The Cost of Issuance Fund will pay or reimburse certain parties for legal, advisory and consultant services associated with the bonds; printing costs; bond trustee fees and expenses; internal City costs associated with the bonds and not already reimbursed from Developer deposits and other miscellaneous costs of issuance. The Developer is eligible for reimbursement of its out-of-pocket costs –including its counsel, consultants, appraisers and advisers– associated with formation of the PIDs and the issuance of PID bonds.

Initial Issuance of Bonds: The bullet points below describe the proposed structure for each PID's first issuance of bonds.

- Timing: Each PID is expected to issue its first series of PID special levy bonds within twelve months prior to recording the first final subdivision plat for residential property within that PID. Each PID's first series is currently expected to be issued as follows:

- i. PID 1 – Q2 2008
- ii. PID 2 – 2010
- iii. PID 3 – 2012
- iv. PID 4 – 2014
- v. PID 5 – 2016

- Debt Service Coverage: The senior lien bonds issued by each PID will be sized so that in aggregate there is a minimum debt service coverage in any particular year of at least 110%. Each PID may issue subordinate lien bonds with combined senior-subordinate debt service coverage of 100%, which will be privately placed with an entity related to the Developer or if the Developer does not qualify as an eligible investor, then to a Qualified Institutional Buyer who is extremely familiar with the Developer and the project. The bonding capacity of each PID will be based on the amount of special levy revenue derived from residential property within that PID and from Non-Residential Property that has been designated as part of such PID.
- Debt Service Escalation: The debt service for each PID bond will be structured to increase at 2% per year to mirror the 2% escalation in the annual special levy.
- Credit Enhancement: The Plan of Finance does not anticipate utilizing credit enhancement for the first issuance of bonds by any PID. Because the real property securing the bonds will primarily be undeveloped, a credit rating will not be sought. Instead, the bonds are proposed to be structured and sold through a limited private placement on a non-rated basis.
- Interest Rates: The legal maximum interest rate for the special levy bonds is 12%. In the current market, non-rated tax-exempt (New Mexico State and Federal) bonds issued without ratings or credit enhancement and with comparable underlying credits would sell at interest rates between 6.75% and 7.25%. Obviously, the municipal market is dynamic. Economic or political factors that drive interest rates higher in the Treasury Market and/or continued deterioration in the residential real estate market is likely to cause interest rates for these types of bonds to rise. The PID Application proposes that a Supplemental Development Agreement that will include an appropriate maximum interest rate reflecting the current bond market at that time will be entered into in connection with the issuance of bonds by each PID. The financing program anticipates that all bonds will be structured and sold with fixed (not variable) interest rates.

- Maximum Par Amount: The financing program for PIDs 1 through 5 limits the maximum amount of PID bonds to no greater than the amount necessary to fund \$528 million of eligible public infrastructure costs, increased by the Construction Cost Index applicable to the Albuquerque region, less any infrastructure that has been financed through the issuance of bonds by the Mesa del Sol Tax Increment Development Districts 1 through 5.
- Value to Lien: The maximum par amount of bonds that a PID will sell at any one time will be limited by, among other things, the appraised value of the property that is subject to a special levy to pay debt service on such PID bonds. The current City Guidelines establish a minimum value to lien at 3:1, with no exception made for subordinate bonds purchased by the developer of the project.
- Term of the Bonds: Each series of bonds is expected to have a term of 30 years.
- Minimum Denominations: The bonds will be sold in minimum denominations of \$100,000, with increments of \$5,000 above that.
- Suitable Investors: In compliance with the City's Guidelines, the first issuance of any PID's bonds will be privately placed with either an entity related to the Developer or with third-party institutional investors that meet the definition of "Qualified Institutional Buyers" provided in Rule 144A of the Securities Act of 1933 (the "1933 Act"). The parent companies to the Developer do not qualify by themselves as Qualified Institutional Buyers pursuant to this definition. Therefore, if the Developer participates in the purchase of the bonds, it would partner with a Qualified Institutional Buyer. In any event, trading restrictions will apply.
- Bifurcated Issuance: In order to optimize the financing program, the senior lien issuance of bonds by a PID may be bifurcated into its own two lien-level structure. In this case, there would be a first lien series with debt service coverage greater than 110% most likely coverage in a range closer to 175% to 200%. A second bond issue with a lien on special levy revenue subordinate to this would be issued simultaneously. Together these two bond issues would absorb special levy revenue with a combined 110% debt service coverage. This bifurcated, senior lien structure creates a less risky portion of the bonds (the ones with 175% to 200% coverage) that could be sold to third party Qualified Institutional Buyers at meaningfully lower market interest rates such that the blended interest rate for the two series is lower than the interest rate for a single series of bonds with 110% coverage.

Additional Series of Bonds: It is expected that each PID will issue one or more a) series of subordinate lien new money bonds and b) series of refunding bonds if sufficient net present value savings can be achieved.

- Subordinate Lien Bonds: The debt capacity of the PIDs will support a subordinate lien series of bonds to utilize the special levy revenue not needed to pay a) on-going PID and County administrative expenses and b) the senior lien debt service.

Subordinate lien bonds represent the riskiest credit because those bonds will be issued with one times debt service coverage (net of PID and County administrative costs) and without a debt service reserve fund. The timing for selling the subordinate lien bonds will depend on many things, including the construction of PID-eligible infrastructure not already financed by the senior lien bonds and the City's policies on value-to-lien for bonds held by the developer of the PID project. In any event, ownership of subordinate lien PID bonds would be limited to an entity related to the Developer or a Qualified Institutional Buyer with who is familiar with the risk until certain agreed-upon development thresholds and/or revenue levels had been met.

- **Refunding Bonds:** As the Project builds out, diversification of ownership increases and the overall credit quality of the underlying security of a PID improves, it may be possible to refund outstanding bonds with favorable net present value savings. The Plan of Finance envisions that refunding bonds would be structured and publicly sold only if and to the extent such bonds qualify for an investment grade rating and/or municipal bond insurance and only if and to the extent that such investment grade interest rates are substantially lower than the initial bond rates. Reducing debt service through the issuance of refunding bonds will increase the capacity of the PIDs to finance eligible costs and/or to reduce the special levy on parcels within the PIDs.

Developer Contribution: As required by the City Guidelines, the Developer must contribute at least \$0.25 towards the cost of infrastructure for every \$1 of PID-financed infrastructure serving the real property within the PIDs. As noted above, all of the Affordable Workforce Housing will be exempt from the special levy. As part of its contribution, it is envisioned that the Developer will fund these properties' allocable infrastructure cost from some source other than PID bond proceeds.

III. Compliance with PID Policies

The Plan of Finance was developed in consideration to the City Guidelines pertaining to the financing of public infrastructure through public improvement district debt. The paragraphs below cite specific City Guidelines related to the financing elements. Certain elements of this Plan of Finance may be adjusted through a Supplemental Plan of Finance for any particular PID if modifications are made to the City Guidelines.

- **Guideline 1: PIDs should be utilized primarily in connection with the financing of infrastructure for development of residential projects, master planned communities or substantial commercial development and redevelopment.** As noted above, the majority of bond proceeds will be used to reimburse the Developer for in-tract improvements and trunk infrastructure, including roads, parks, and police/fire facilities, serving the Mesa del Sol mixed-used master planned community.
- **Guideline 2: No financing shall be undertaken in which any individual property owner shall be liable for more than its equitable individual portion of the cost of the improvements.** The initial Rate and Method of Apportionment for each PID is developed utilizing the Level B Development Plan (assuming the most intensive permitted land uses) and allocate the benefit and cost of each type of improvement to each type of property within the 5 residential phases and the Non-Residential area. The RMAs together establish the theoretical maximum special levy at the amount that would cover the full cost of the allocable benefit of the public infrastructure eligible for financing by each PID to each parcel in that PID. An Adjusted RMA will be established for each PID to reduce the theoretical maximum special levy amounts to conform with the City Guideline that the total overlapping tax and assessment burden within each PID be no greater than 1.95%.
- **Guideline 3: The maximum allowable rate of special levy for property, however, shall not cause the total tax and assessment obligation for such property, including projected ad valorem taxes and special assessments, to exceed one and ninety-five one hundredths percent (1.95%) of the anticipated market value of property as determined by an MAI Appraiser.** Prior to each PID issuing its first series of bonds, an Adjusted RMA will be prepared that reduces the special levy rates applicable to the properties within such PID to levels that are expected to result in a total tax and assessment burden of less than 1.95% of the property value. This adjustment will be based on the product mix, pricing and benefit derived from the public infrastructure financed by the bonds.

- ***Guideline 4: The amount and structure of debt of a PID shall not have any direct or indirect negative impacts on the debt or financing capabilities of the City.*** The special levy bonds that will be issued by the PIDs are non-recourse to the City or any other public agency. The bonds are a limited obligation of the PIDs, secured only by the special levy on levyable property within the PIDs. The only recourse in the case of a default is foreclosure on the delinquent property(ies). The proposed Master Development Agreement for PIDs 1 through 5 and each Supplemental Development Agreement that gets approved will govern the construction, inspection, dedication and acceptance of the PID-financed public infrastructure, and will assure that all applicable City policies and requirements are satisfied with respect to those matters.
- ***Guideline 5: In connection with any request for debt financing the applicant shall provide a current appraisal (subject to update to remain current at the time of any debt financing) of the fair cash market value of the property within the proposed PID which shall be taxed, assessed or levied upon, prepared by an MAI Appraiser.*** At the time of issuance of each series of PID bonds, an appraisal will be prepared that establishes an opinion of value of the property contained within such PID according to certain assumptions to be developed by the financing team.
- ***Guideline 6: The purchasers of privately placed bonds must be "qualified institutional buyers" (as such term is defined in Rule 144A of the Securities Exchange Commission) and must agree not to resell the bonds except to "qualified institutional buyers" in a private placement.*** The first series of senior lien bonds is expected to be sold in a limited private placement to Qualified Institutional Buyers. The subordinate bonds would be sold to an entity related to the Developer or if the Developer is not eligible, then to a Qualified Institutional Buyer with extreme familiarity with the Developer and the project. Trading restrictions would apply.
- ***Guideline 7: The applicant shall independently provide at least \$0.25 in additional infrastructure or community improvements for each \$1.00 of debt to be issued by a PID to finance public infrastructure.*** The Developer has agreed to fund \$0.25 of public infrastructure from non-PID sources for every \$1 of infrastructure funded by the PIDs. As one example of this, because all of the "Affordable Workforce Housing" as defined in the Workforce Housing Plan for Mesa Del Sol will not be subject to the levy, the Developer will pay these properties' allocable share of the benefit of the public improvements from other sources.
- ***Guideline 8: If allowed by law (including any applicable federal laws relating to the tax free status of bonds), all bond issues shall include a debt service reserve fund in an amount acceptable to the PID Board.*** The proposed senior lien PID bonds will have a reserve fund that is funded from bond proceeds and/or funded from excess special levy revenue during the capitalized interest period.

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 PUBLIC IMPROVEMENT DISTRICTS 1-5, each a political subdivision of the State (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 5-11-1 through 5-11-27 NMSA 1978, City Ordinance O-2003-12 (the "PID Ordinance") and City Resolution Enactment No. R-2008-045 (the "Formation Resolution"), the City has formed five public improvement districts (each a "District" and together, "Districts 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, including the requirements that the value to lien ratio for the bonds of each PID (other than subordinate lien bonds purchased by Mesa del Sol, its parent company or affiliates and subject to appropriate secondary sale restrictions) be not less than 3 to 1, that the overlapping property tax and assessment burden on the land within each PID, including the special levies imposed on such land, not exceed 1.95% of the estimated fair market value of the fully improved lots or parcels, and that the sale of the bonds shall be restricted to Qualified Investors as defined in Rule 144A of the Securities and Exchange Commission, except as otherwise provided by the provisions of the PID Ordinance in effect at the time of the sale.

C. In connection with the formation of Districts 1-5, the City approved a General Plan (the "General Plan") and entered into a Master Development Agreement with Districts 1-5 (the "Master Development Agreement"), which General 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 5-15-1 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 formed five tax increment development districts (each a "TIDD" and together, "TIDDs 1-5") for the financing of public infrastructure to serve the Property and established the tax increment available in each financing.

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, Fritz, Stryker and Eastman (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, the 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, including interest thereon of which will initially be paid by Mesa del Sol ("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 Districts and one or more of the TIDDs, 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 other water infrastructure to the Districts, assign to one or more of the Districts the right to receive utility expansion charge ("UEC") revenues from the ABCWUA, and that such District or Districts 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 infrastructure improvements 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 (including Supplemental Development Agreements as contemplated by 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 General Plan, Supplemental General Plans, 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 Formation Legislation.

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 General Plan, Supplemental General Plans, Master Development Agreement, Supplemental District Development Agreements 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 Districts 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 General Plan, Supplemental General Plans, Master Development Agreement or Supplemental District Development Agreements.

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 General Plan, Supplemental District General Plans, the Master Development Agreement, Supplemental District Development Agreements, 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 or 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 TIDDs, 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 Public Improvement 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

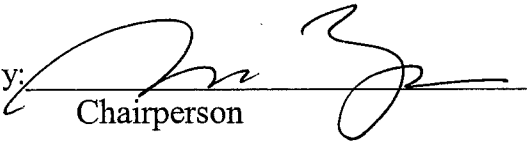
By: FC Covington Manager, LLC, a New
Mexico LLC, its Sole Member

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

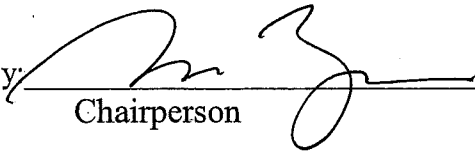
MESA DEL SOL PUBLIC IMPROVEMENT
DISTRICT NO. 1

By: 
Chairperson

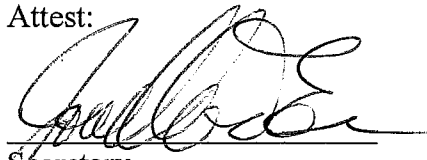
Attest:


Secretary

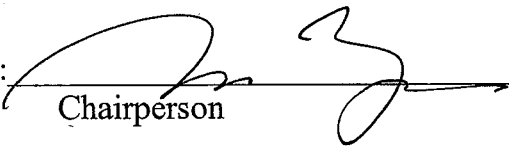
MESA DEL SOL PUBLIC IMPROVEMENT
DISTRICT NO. 2

By: 
Chairperson

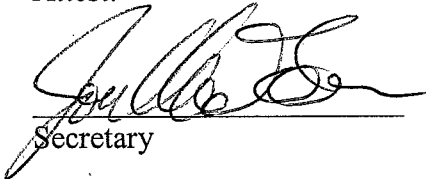
Attest:


Secretary

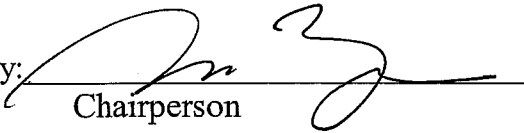
MESA DEL SOL PUBLIC IMPROVEMENT
DISTRICT NO. 3

By: 
Chairperson

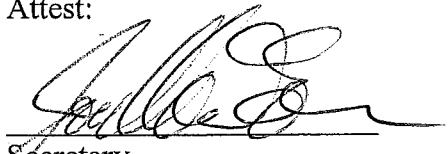
Attest:


Secretary

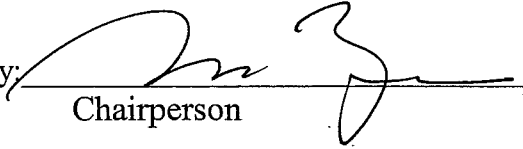
MESA DEL SOL PUBLIC IMPROVEMENT
DISTRICT NO. 4

By: 
Chairperson

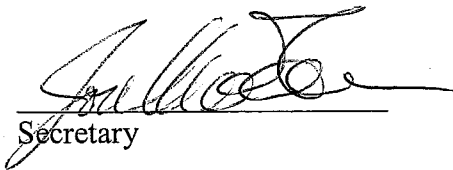
Attest:


Secretary

MESA DEL SOL PUBLIC IMPROVEMENT
DISTRICT NO. 5

By: 
Chairperson

Attest:


Secretary