

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. F/S R-18-111 ENACTMENT NO. R-2018-099

SPONSORED BY: Patrick Davis

RESOLUTION

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

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

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

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

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

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

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

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

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

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

Section 1. Consent to Assignment of the District Agreements.

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

Section 2. Repealer.

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

Section 3. Severability.

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

1 PASSED AND ADOPTED THIS 17th DAY OF December, 2018
2 BY A VOTE OF: 8 FOR 0 AGAINST.

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4 Excused: Winter

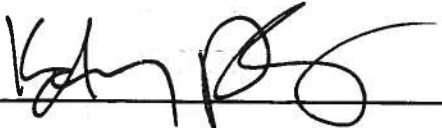
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9 Klarissa J. Peña, President
10 City Council

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13 APPROVED THIS 27 DAY OF December, 2018

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16 Bill No. F/S R-18-111

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19 
20 Timothy M. Keller, Mayor
21 City of Albuquerque

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25 ATTEST:

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27
28 Katy Duhigg, City Clerk