

CITY of ALBUQUERQUE

TWENTY THIRD COUNCIL

COUNCIL BILL NO. F/S R-18-110 ENACTMENT NO. R-2018-098

SPONSORED BY: Patrick Davis

1 RESOLUTION

2 CONSENTING TO THE ASSIGNMENT OF THE MASTER DEVELOPMENT
3 AGREEMENT FOR THE MESA DEL SOL TAX INCREMENT DEVELOPMENT
4 DISTRICTS 1 THROUGH 5, BY AND AMONG THE CITY OF ALBUQUERQUE,
5 NEW MEXICO, MESA DEL SOL, LLC AND THE DISTRICTS RECORDED IN THE
6 BERNALILLO COUNTY, NEW MEXICO REAL ESTATE RECORDS ON JUNE 19,
7 2008, AS AMENDED AND SUPPLEMENTED, AND CERTAIN OTHER RELATED
8 AGREEMENTS, IN CONNECTION WITH THE PURCHASE OF THE PROPERTY
9 UNDERLYING THE DISTRICTS BY MDS INVESTMENTS, LLC, FOR THE
10 PURPOSE OF FINANCING PUBLIC INFRASTRUCTURE IMPROVEMENTS
11 WITHIN THE DISTRICTS.

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

23 WHEREAS, the Original Developer (and/or its successors in interest
24 with respect to the real property underlying the Districts, referred to herein as
25 the "Seller") was named as the Defendant in a certain court proceeding in the
26 Second Judicial District Court of New Mexico known as Case No. D-202-CV-

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1 2015-05944 (the “Foreclosure”), in which the Court appointed a receiver to
2 convey the real property underlying the Districts together with all rights and
3 interests in the TIDD Master Development Agreement Mesa del Sol Tax
4 Increment Development Districts 1 Through 5, by and among the City of
5 Albuquerque, New Mexico, Mesa del Sol, LLC and Mesa del Sol Tax Increment
6 Development Districts 1 through 5, recorded in the Bernalillo County, New
7 Mexico real estate records on June 19, 2008, as Document No. 2008-070059, as
8 amended by First Amendment to the Master Development Agreement Mesa del
9 Sol Tax Increment Development Districts 1 Through 5, by and among the City
10 of Albuquerque, New Mexico, Mesa del Sol, LLC and Mesa del Sol Tax
11 Increment Development Districts 1 through 5 dated September 17, 2009, and
12 recorded in the Bernalillo County, New Mexico real estate records on March
13 30, 2010, as Document No. 2010-026776, as further amended by First
14 Amendment to the Master Development Agreement Mesa del Sol Tax
15 Increment Development Districts 1 Through 5, by and among the City of
16 Albuquerque, New Mexico, Mesa del Sol, LLC and Mesa del Sol Tax Increment
17 Development Districts 1 through 5 dated September 17, 2009, and recorded in
18 the Bernalillo County, New Mexico real estate records on August 22, 2011, as
19 Document No. 2011-075938, as further amended by First Amendment together
20 with the Bond Anticipation Reimbursement Agreement by and between Mesa
21 del Sol, LLC and Mesa del Sol Tax Increment Development Districts 1-5 dated
22 December 23rd 2008. (collectively the “TIDD Development Agreements”
23 attached hereto as Exhibit A) (see Third Amendment to Emergency Order
24 Appointing Receiver filed 2/19/2018); and

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

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

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

1 form of Consent to Assignment of the TIDD Development Agreements is
2 attached hereto as Exhibit B); and

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

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

10 Section 1. Consent to Assignment of the TIDD Development
11 Agreements. Pursuant to the promises and the acceptance of the obligations
12 referenced in the Consent to Assignment of the TIDD Development
13 Agreements, the City consents to the assignment of the TIDD Development
14 Agreements to the Purchaser and the Chief Administrative Officer of the City
15 will execute the Consent to Assignment of the TIDD Development Agreements.

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

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

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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. Pena, President
10 City Council

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13 APPROVED THIS 27 DAY OF December, 2018

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17 Bill No. F/S R-18-110

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

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26 ATTEST:

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28 
29 Katy Duhigg, City Clerk