

**ASSIGNMENT AND AMENDMENT TO AGREEMENT TO  
CONSTRUCT INFRASTRUCTURE IMPROVEMENTS**

NAME OF PROJECT: Tract 12-B Mesa del Sol

ORIGINAL DEVELOPER/ASSIGNOR: Mesa del Sol, LLC

NEW DEVELOPER/ASSIGNEE: MDS Funding, LLC

CITY PROJECT # 775477

THIS ASSIGNMENT AND AMENDMENT is made this 3<sup>rd</sup> day of June, 20 19, by the City of Albuquerque, New Mexico ("City") and (the original Developer) Mesa del Sol, LLC ("Assignor") and (the new Developer), MDS Funding, LLC ("Assignee") a, (state type of business entity, for instance "corporation," "general partnership", "joint venture", "individual," etc.): a New Mexico limited liability company whose address is 4020 Vassar Dr. NE, Albuquerque, NM, 87107 and whose telephone number is (505) 884-3405, is made in Albuquerque, New Mexico and is effective as of the date of final execution on this Agreement.

WHEREAS, the parties agree that the word "Subdivider" used in any previous Agreements is replaced with the word "Developer" for this Agreement. This change has no substantive effect on any other provision of the agreement.

WHEREAS, the Assignor was the Developer of the (Name of Project:) Tract 12-B Mesa del Sol, City Project No: 775477; and

WHEREAS, the City and the Assignor entered into an Agreement ("Original Agreement") on June 30, 2009, which was recorded on July 02 2009, pages 1 through 10 as Document No. 2009074577, in the records of the Bernalillo County Clerk, State of New Mexico, wherein Assignor agreed to construct certain public and/or private improvements described in Exhibit A, to the Original Agreement; and

WHEREAS, the Original Agreement was amended by a 1<sup>st</sup> Extension Agreement dated February 18, 2010 recorded on February 19, 2010, pages 1 through 4, as Document No. 2010014367 in the records of Bernalillo County Clerk, State of New Mexico, extending the construction deadline to February 11, 2011; and

WHEREAS, the Original Agreement was amended by a 2<sup>nd</sup> Extension Agreement dated March 29, 2011 recorded on March 31, 2011, pages 1 through 5 as Document No. 2011030950 in the records of Bernalillo County Clerk, State of New Mexico, extending the construction deadline to June 30, 2013; and

WHEREAS, the Original Agreement provides that if the Developer's Property or any part thereof is sold, conveyed or assigned the City will not release the Assignor from its obligations, nor will the City release Assignor's financial guaranty until a successor in

Doc# 2019045463

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ASSN R \$25.00 Linda Stover, Bernalillo County



interest to the Assignor has entered into a Infrastructure Improvements Agreement with the City and posted a substitute financial guaranty satisfactory to the City; and

WHEREAS, MDS Investments, LLC is the new owner of Tract 12-B Mesa del Sol, having acquired its interest by a Warranty Deed, which was recorded on May 25, 2018, as Document No. 2018046034, Pages 1 through 18 in the records of the Bernalillo County Clerk, State of New Mexico; and

THEREFORE, the Assignor, Assignee and the City agree:

1. Assignment: Assignor hereby assigns to Assignee all of Assignor's right, title and interest in and to the Original Agreement as amended. Assignee hereby accepts said assignment, and assumes the Original Agreement as amended, and all of the duties and obligations of Assignor hereunder. All references in the Original Agreement as amended to the Assignor as "Developer" are deleted and the Assignee is substituted hereafter. Assignee agrees that the terms and conditions of the Original Agreement as amended which previously applied to Assignor are hereby ratified and confirmed by, and made applicable to Assignee.

2. Amend Exhibit A, DRB # 1006000 Infrastructure List dated June 30, 2009 of the Original Agreement to include Exhibit A-1, DRB # 1006000 Infrastructure List dated February 11, 2008.

3. Financial Guarantee: With this Assignment and Amendment, Assignee has provided the City with the following Financial Guarantee:

Type of Financial Guaranty: Infrastructure Bond No. 21166267

Amount: \$357,363.03

Name of Financial Institution or Surety providing Guaranty: \_\_\_\_\_

The Guarantee Company of North America USA

Date City first able to call Guaranty (Construction Completion Deadline):

June 30, 2020

If Guaranty is a Letter of Credit or Loan Reserve, then last day City able to call

Guaranty is: August 30, 2020

Additional information:

\_\_\_\_\_  
\_\_\_\_\_

4. Other Terms Unchanged: Except as amended herein, the terms and conditions of the Original Agreement will remain unchanged and will continue in full force and effect unless there is a conflict between the terms and conditions of this Assignment and Amendment and the terms and conditions of the Original Agreement, in which case the terms and conditions of this Assignment to Original Agreement will control.

County Clerk's Recording Label

5. Entire Agreement: This Assignment and Amendment contains the entire agreement of the parties and supersedes any and all other agreements or understandings, oral or written, whether previous to the execution hereof or contemporaneous herewith.
6. Changes to Agreement: Changes to this Assignment and Amendment are not binding unless made in writing, signed by all parties.
7. Form not Changed: Assignor and Assignee agree that changes to this form are not binding unless initialed by both on this form.
8. Authority to Execute: If the Assignor signing below was not the prior owner of the Developer's Property, or the Assignee is not the present owner of the Developer's Property, the true past and/or present owner(s) must execute and deliver to the City a Power of Attorney or other evidence of authority which is acceptable to the City, establishing the authority of the Assignor and/or Assignee to sign this Amendment.

Executed on the date stated in the first paragraph of this Amendment.

**ASSIGNOR: Mesa del Sol, LLC**

By (signature): [Signature]  
FC COVINGTON MANAGER, LLC, a New Mexico limited liability by:  
Forest City TRS, LLC, a Delaware limited liability company, its Co-Manager  
By: Christopher M. Mellis, Treasurer  
Date: May 20, 2019

ASSIGNOR'S NOTARY

STATE OF )  
 )ss.  
COUNTY OF )

This instrument was acknowledged before me on this 20 day of May, 2019, by [name of person:], [title or capacity, for instance, "President" or "Owner":]  
Authorized Signatory of [Developer:] Mesa del Sol, LLC.

[Signature]

Notary Public


My Commission Expires:



RHONDA LEWIS  
NOTARY PUBLIC  
STATE OF OHIO  
RECORDED IN CUYAHOGA COUNTY  
MY COMMISSION EXPIRES  
AUGUST 15, 2021

ASSIGNEE: MDS Funding, LLC

By: **SC3 International, LLC**  
Its: **Manager**

By (signature):   
Name (printed): Steve Chavez  
Title: Manager  
Date: 5/23/19

ASSIGNEE'S NOTARY

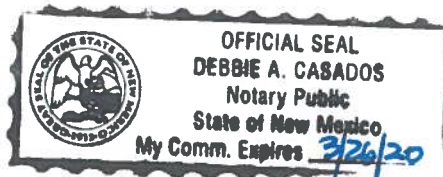
STATE OF NEW MEXICO                    )  
  )ss.  
COUNTY OF BERNALILLO            )

This instrument was acknowledged before me on this 23 day of May,  
2019, by [name of person:] Steve Chavez, [title or capacity, for instance, "President" or  
"Owner":] Manager of [Developer:] MDS Funding, LLC/ By: SC3 International, LLC.



Notary Public

My Commission Expires: 3/26/20



**CITY OF ALBUQUERQUE:**

By:    
Shahab Biazar, P.E., City Engineer

Date: 6/3/19

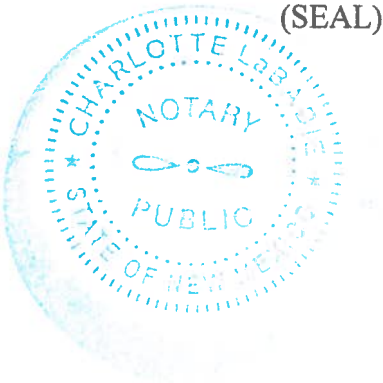
**CITY'S NOTARY**

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

This instrument was acknowledged before me on this 3<sup>rd</sup> day of June, 2019,  
by Shahab Biazar, P.E., City Engineer of the City of Albuquerque, a municipal corporation, on  
behalf of the municipal corporation.

  
Notary Public

My Commission Expires: March 15, 2021



Current DRC  
Project No. 775477

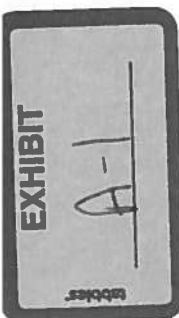


Figure 12

INFRASTRUCTURE LIST

Date Submitted: 1-23-09  
Date Site Plan for Bldg Permit App: 1-23-09  
Date Site Plan for Sub. Approved: 1-23-09  
Date Preliminary Plat Approved: 1-23-09  
Date Preliminary Plat Expires: 1-23-09

EXHIBIT "A"  
TO SUBDIVISION IMPROVEMENTS AGREEMENT  
DEVELOPMENT REVIEW BOARD (D.R.B.) REQUIRED INFRASTRUCTURE LIST

Tract 12A and 12B  
(Mesa del Sol, Innovation Park)

DRC Project No. 5-20-08  
1006000

05/06/09

Following is a summary of PUBLIC/PRIVATE infrastructure required to be constructed or financially guaranteed for the above development. This Listing is not necessarily a complete listing. During the SIA process and/or in the review of the construction drawings, if the DRC Chair determines that important items and/or unforeseen items have not been included in the infrastructure listing, the DRC Chair may include those items in the listing and related financial guarantee. Likewise, if the DRC Chair determines that important or non-essential items can be deleted from the listing, those items may be deleted as well as the related portions of the financial guarantees. All such revisions require approval by the DRC Chair, the User Department and signatory. If such approvals are obtained, these revisions to the listing will be incorporated administratively. In addition, any unforeseen items which arise during construction which are necessary to complete the project and which normally are the Subdivider's responsibility will be required as a condition of project acceptance and close out by the City.

Private Inspector City Inspector City Cnat Engineer

PUBLIC ROADWAY IMPROVEMENTS

|     |        |  |
|-----|--------|--|
| B-1 | 775487 |  |
| B-1 | 775487 |  |
| B-1 | 775478 |  |
| B-1 | 775477 |  |

24' FC-EOP  
PAVED ROADWAY, STRIPING, CURB AND GUTTER, STREET LIGHTS (APPROX. 390 LF)  
24' FC-EOP  
PAVED ROADWAY, STRIPING, CURB AND GUTTER, STREET LIGHTS (APPROX. 550 LF)  
24' FC-EOP  
PAVED ROADWAY, STRIPING, CURB AND GUTTER, STREET LIGHTS (APPROX. 390 LF)  
24' FC-EOP  
PAVED ROADWAY, STRIPING, CURB AND GUTTER, STREET LIGHTS (APPROX. 550 LF)

TURING DR.

SOLAR MESA AVE.  
(SOUTH SIDE OF ROW).

EAST TERMINUS OF CITY PROJECT #775481

SOLAR MESA AVE.  
TURING DR.  
SAGAN AVE.  
TURING DR.

SAGAN AVE.  
South PL of Tract 12A  
South PL of Tract 12A  
Sagan Ave  
WESTERN BOUNDARY OF TRACT OS-2

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| / | / | / | / | / | / |
| / | / | / | / | / | / |
| / | / | / | / | / | / |
| / | / | / | / | / | / |

PUBLIC SANITARY SEWER IMPROVEMENTS

|     |        |  |
|-----|--------|--|
| B-1 | 775487 |  |
| B-1 | 775487 |  |

12" DIA  
SANITARY SEWER LINE, AS REQ'D (APPROX 370LF)  
8" DIA  
SANITARY SEWER LINE, AS REQ'D (APPROX 960LF)

TURING DR.

EAST TERMINUS OF CITY PROJECT #775481

SOLAR MESA AVE.

APPROX. 120 LF SOUTH OF SOUTHERN PROPERTY LINE OF PROPOSED TRACT 12A

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| / | / | / | / | / | / |
| / | / | / | / | / | / |
| / | / | / | / | / | / |
| / | / | / | / | / | / |

PUBLIC WATERLINE IMPROVEMENTS

|     |        |  |
|-----|--------|--|
| B-1 | 775487 |  |
| B-1 | 775487 |  |
| B-1 | 775477 |  |

12" DIA  
WATERLINE W/ NEC. VALVES, FHS, MJS & RJS (APPROX 390 LF)  
8" DIA  
WATERLINE W/ NEC. VALVES FHS, MJS & RJS, STUB OUTS TO PROJECT HAL SITE (APPROX 1,200)  
8" DIA  
WATERLINE W/ NEC. VALVES FHS, MJS & RJS, STUB OUTS TO BUILDING 2 SITE (APPROX. 550LF)

TURING DR.

EAST TERMINUS OF CITY PROJECT #775481

SOLAR MESA AVE.

TURING DR.

SOLAR MESA AVE.

12" DIA

|   |   |   |   |   |   |
|---|---|---|---|---|---|
| / | / | / | / | / | / |
| / | / | / | / | / | / |
| / | / | / | / | / | / |
| / | / | / | / | / | / |

Private Inspector City Inspector Engin

To From

Location

Type of Improvement

Size

COA DRC Project #

SIA Sequence #

|   |   |   |   |   |
|---|---|---|---|---|
| 1 | 1 | 1 | 1 | 1 |
|---|---|---|---|---|

PUBLIC/PRIVATE STORM DRAIN IMPROVEMENTS (NOT TO BE FINANCIALLY GUARANTEED)

DRAINAGE IMPROVEMENTS (RETENTION POND FOR SITE, ROAD, AND OFFSITE OUTFALL - APPROX 21 AC-FT) WITHIN TRACT OS-2 AND COVENANT (PRIVATELY OWNED AND MAINTAINED.)

|   |   |   |   |   |
|---|---|---|---|---|
| 1 | 1 | 1 | 1 | 1 |
| 1 | 1 | 1 | 1 | 1 |
| 1 | 1 | 1 | 1 | 1 |
| 1 | 1 | 1 | 1 | 1 |

25 1/2 FT NORTH OF SABAN  
20ND OS-2

|        |    |        |
|--------|----|--------|
| 775478 | NA | 775478 |
|--------|----|--------|

8-1

8-1

NOTE: Street lights not to be financially guaranteed. To be built prior to release of financial guarantee for CPN 775477

DEVELOPMENT REVIEW BOARD MEMBER APPROVALS

Christina Sandora 1/23/08  
PARKS & GENERAL SERVICES

1/23/08 DATE

AGENT/OWNER

JEFFERY L. MULBERRY  
PREPARED BY: PRINT NAME

1/23/2008 DATE

BOHANNAN HUSTON INC.

FIRM:

Signature

MAXIMUM TIME ALLOWED TO CONSTRUCT IMPROVEMENTS WITHOUT A DRB EXTENSION

1/23/08 DATE

DRB CHAIR

1-23-08 DATE

UTILITY DEVELOPMENT

1-23-08 DATE

TRANSPORTATION DEVELOPMENT

1-23-08 DATE

CITY ENGINEER

DATE

DESIGN REVIEW COMMITTEE REVISIONS

| REVISION | DATE     | DRC CHAIR | USER DEPARTMENT | AGENT/OWNER |
|----------|----------|-----------|-----------------|-------------|
| A        | 05/06/09 | APK       | Water & Sewer   | Signature   |
| A        | 5-20-08  | APK       | Water & Sewer   | Signature   |