

RESOLUTION 2020-054

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, COCHISE COUNTY, ARIZONA; REAFFIRMING SETTLED POLICY GRANTING APPROVAL OF A DEVELOPMENT AGREEMENT WITH CDS TWO LP AND MTGW, LLC; AND AUTHORIZING AND DIRECTING THE CITY MANAGER, CITY CLERK, CITY ATTORNEY OR THEIR DULY AUTHORIZED OFFICERS AND AGENTS TO TAKE ALL STEPS NECESSARY TO CARRY OUT THE PURPOSES AND INTENT OF THIS RESOLUTION.

WHEREAS, pursuant to various policies and laws of the City of Sierra Vista an agreement was negotiated which assured the mutual benefit of the Owners and the City of Sierra Vista; and

WHEREAS, it will be in the best interest of the public and Developer to permit Developer to develop the Casa Del Sol Apartments, Phases 2 and 3, in accordance with standards as specified in the attached agreement; and

WHEREAS, by reason thereof, the parties hereto desire to approve said Development Agreement to permit the Developer to develop the Casa Del Sol Apartments, Phases 2 and 3, in accordance with the standards as specified in the attached agreement.

WHEREAS, approval of the development agreement promotes low-income elderly housing and investment in the West End of Sierra Vista;

WHEREAS, the development agreement is reflective of the goals of the Infill Incentive District and General Plan Goal 12-1, *Promote Quality Affordable Rental Housing* and Goal 12-8, *Increase Housing Choices that Serve All Age Groups and Needs*.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, AS FOLLOWS:

SECTION 1

The policy of the City of Sierra Vista relating to development agreements, be, and hereby is, reaffirmed.

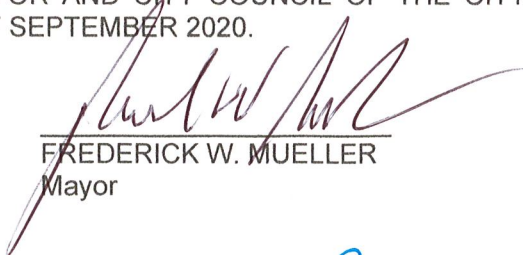
SECTION 2

The Mayor and City Clerk are hereby authorized and directed to execute the Development Agreement attached hereto and made a part hereof by this reference.

SECTION 3

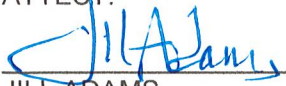
That the City Manager, City Clerk, City Attorney, or their duly authorized officers and agents are hereby authorized and directed to take all steps necessary to carry out the purposes and intent of this resolution.

PASSED AND ADOPTED BY THE MAYOR AND CITY COUNCIL OF THE CITY OF SIERRA VISTA, ARIZONA, THIS 10TH DAY OF SEPTEMBER 2020.



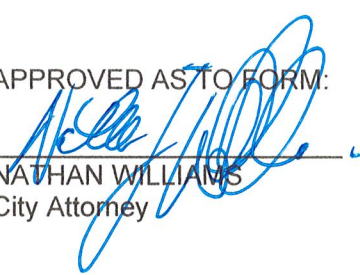
FREDERICK W. MUELLER
Mayor

ATTEST:



JILL ADAMS
City Clerk

APPROVED AS TO FORM:



NATHAN WILLIAMS
City Attorney

PREPARED BY: Jeff Pregler, AICP
Senior Planner

EXHIBIT A

DEVELOPMENT AGREEMENT WITH CDS TWO LP, An Arizona Limited Partnership and MTGW LLC

This Development Agreement (hereinafter referred to as Agreement) is made and entered into this ___ day of _____, by and between the CITY OF SIERRA VISTA, a municipal corporation organized under the laws of the State of Arizona (hereinafter referred to as City) and CDS TWO LP, AN ARIZONA LIMITED PARTNERSHIP and MTGW LLC (hereinafter referred to as the Owners) owners of Phase 2 and Phase 3 of the Casa Del Sol apartments located on Parcel Number 105-08-007E, as shown on Exhibit B.

PART I. WITNESSETH AND SPECIAL CONDITIONS

WHEREAS, Owners own certain real property contemplated for development within the corporate limits of the City described in Exhibit B attached hereto; and

WHEREAS, City is desirous of further guiding and coordinating its development consistent with the Goals and Policies set forth in City's adopted General Development Plan, VISTA 2030, and subsequent land use plans or amendments; and

WHEREAS, City and Owners desire to clearly and specifically set forth respective obligations of the City and Owners pertaining to the future development of the Owner's site and other matters; and

WHEREAS, City, after due and careful consideration, has concluded that the development of the Owners' site, under the terms and conditions hereinafter set forth, all as provided by law, would further enable the City to benefit from the development, ensure orderly development, and would best serve the interests of the City.

NOW, THEREFORE, for and in consideration of the promises, mutual covenants, conditions, terms, and agreements hereinafter set forth, the parties do hereby agree as follows:

Due to the need for senior low to moderate income multi-family development housing within Sierra Vista, City agrees to permit future development of the Owners' site (Phase 2 and Phase 3 only, as shown in Exhibit B), in accordance with the City codes, and according to the following special conditions:

1. The minimum required off-street parking provided under Section 151.09.005(A) of the Sierra Vista Development Code is modified to permit a minimum of 1.05 parking spaces per apartment unit in Phase 2 and 1.31 parking spaces per apartment unit in Phase 3 boundary areas.
2. The maximum building height provided by Section 151.22.010(E) of the Sierra Vista Development Code is modified to allow a maximum building height of 49 feet in the Phase 2 and 3 boundary areas.
3. The minimum building separation required by Section 151.22.010(E) of the Sierra Vista Development Code is modified to allow a minimum building separation of 20 feet provided all building and fire safety codes are met.

4. The public improvement standards provided under Article 151.08 of the Sierra Vista Development Code are modified to allow a private street with a minimum pavement width of 26 feet to be constructed subject to required permits being obtained and a maintenance agreement being executed in a manner deemed acceptable to the City Attorney.
5. The minimum lot area per dwelling unit required by Section 151.22.010(E) of the Sierra Vista Development Code is modified to allow a minimum lot area of 1,279 square feet per unit for Phase 2 and 1,676 square feet per unit for Phase 3 boundary areas.
6. The City agrees to allow Developer's required sewer connection fee to be paid over a period of 10 years, commencing with the issuance of the first building permit for each Phase, in accordance with the provisions of Exhibit C.

PART II. MISCELLANEOUS PROVISIONS

1. This Agreement sets forth the entire understanding between the parties concerning the subject matter of this Agreement and incorporates all prior negotiations and understandings.
2. There are no covenants, promises, agreements, conditions, or understandings, either oral or written, between the parties relating to the subject matter of this Agreement other than those set forth herein. No modification or amendment of this Agreement shall be binding upon the parties unless the same is in writing and signed by the respective parties hereto.
3. The Owners shall indemnify, protect, defend, and hold harmless the City, its Council members, officers, employees, and agents from any and all claims, demands, losses, damages, liabilities, fines, charges, penalties, administrative and judicial proceedings and orders, judgments, remedial actions of any kind, all costs and cleanup actions of any kind, and all costs and expenses incurred in connection therewith, including, without limitation, reasonable attorneys' fees and costs of defense, directly or indirectly, in whole or in part, arising out of this Agreement except for negligent acts of the City.
4. Notwithstanding the provisions of Part I above, in the event the City is required to enact, take action, apply, or bind any future land use ordinances, rules, regulations, permit requirements and other requirements, and official policies of the City enacted as necessary to comply with mandatory requirements imposed on the City by county, state, or federal laws and regulations, court decisions, and other similar superior external authorities beyond the control of the City, provided that in the event any such mandatory requirement prevents or precludes compliance with this Agreement, if permitted by law, such affected provision of this Agreement shall be modified as may be necessary to achieve minimum permissible compliance with such mandatory requirements.
5. The laws of the State of Arizona shall govern this Agreement and, in the event of litigation, venue shall be in Cochise County, Arizona.
6. In the event a party initiates action to enforce its rights hereunder, the substantially prevailing party shall recover from the non-prevailing party its expenses, court and/or arbitration costs, including taxed and untaxed costs, and reasonable attorneys' fees.

7. Time shall be of the essence for all performance required hereunder.
8. Notwithstanding the foregoing, if a dispute arises out of or relates to the Agreement, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree to first try to settle the dispute through mediation before resorting to arbitration, litigation, or some other dispute resolution procedure. In the event that the parties cannot agree upon the selection of a mediator within seven (7) days, either party may request the presiding judge of the Superior Court of Cochise County to assign a mediator from a list of mediators maintained by the Arizona Municipal Risk Retention Pool.

PART III. SUCCESSORS AND ASSIGNS

All the provisions hereof shall inure to the benefit of and be binding upon the parties hereto as applied to Phase 2 and Phase 3 of Casa Del Sol apartments, located on Parcel Number 105-08-007E, as shown on Exhibit B, and its respective successors and assigns unless otherwise specified in this Agreement.

PART IV. NOTICES

Any notice required pursuant to the provisions of this Agreement shall be in writing and be sent by certified mail to the following addresses until notice of change of address is given and shall be deemed received on the fifth business day following deposit in the United States Mail.

City Clerk
City of Sierra Vista
1011 N. Coronado Drive
Sierra Vista, AZ 85635

CDS Two LP, an Arizona Limited
Partnership
8540 E. McDowell Rd. #102
Mesa, AZ 85207

MTGW, LLC
8540 E. McDowell Rd. #102
Mesa, AZ 85207

PART V. NON-COLLUSION AND NO JOINT VENTURE

1. Owners warrant that to its knowledge no other person or entity has been an employee or retained to solicit or secure this Agreement upon agreement or understanding for a commission, percentage, brokerage, or contingency and that no member of the Council or employee of the City has any interest, financially or otherwise, in Owners or its subcontractors. For breach or violation of this warranty, the City shall have the right to annul this Agreement without liability.
2. This Agreement is not intended to be, and shall not be construed as, a joint venture, partnership, or other business entity created by and between the parties, and neither party is an agent for the other for any purpose nor has the power to bind the other for any purpose.

3. No member, official, employee or agent of the City shall be personally liable to Owner, or any successor or assignee, (a) in the event of any default or breach by the City, (b) for any amount which may become due to the Owners or its successor or assign, or (c) pursuant to any obligation of the City under the terms of this Agreement.

PART VI. SEVERABILITY

1. Nothing in this Agreement shall be deemed to be a promise or representation by Owners to construct, open, or operate the project; provided however, that in the event that Owners fails to complete the construction of the project, that this Agreement shall automatically terminate and the parties shall have no further obligation or liability to one another.
2. Should any section, clause or provision of this Agreement be declared by the courts to be invalid, it shall not invalidate the other provisions of this Agreement

IN WITNESS WHEREOF, THE City and Owners caused this instrument to be executed by their respective proper officials duly authorized to execute the same on the day and year first above written. DATED this 10th day of Sept.

CITY OF SIERRA VISTA

**CDS TWO L.P., AN ARIZONA LIMITED PARTNERSHIP
BY MBW DEL SOL TWO L.P., ITS GENERAL PARTNER
BY MBW DEVELOPMENT LLC, ITS GENERAL PARTNER**

By: *Frederick W. Mueller*
FREDERICK W. MUELLER, Mayor

By: *Glenn Walling*
GLENN WALLING, MANAGER

STATE OF ARIZONA)
) ss
County of Cochise)

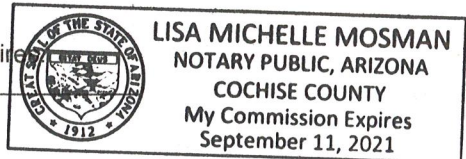
STATE OF ARIZONA)
) ss
County of Cochise)

This instrument was acknowledged before me
this 10th day of Sept, 2020,
by:
Lisa Michelle Mosman
Notary Public

This instrument was acknowledged before me
this 10th day of Sept, 2020,
by:
Lisa Michelle Mosman
Notary Public

My commission expires:
9.11.2020

My commission expires:
9.11.2021



APPROVAL AS TO FORM:
Nathan J. Williams
NATHAN J. WILLIAMS
City Attorney

MTGW, LLC
By: *Glenn Walling*
GLENN WALLING, MANAGER

ATTEST:
Jill Adams
JILL ADAMS
City Clerk

STATE OF ARIZONA)
) ss
County of Cochise)

This instrument was acknowledged before
this 10th day of Sept, 2020,
by:
Lisa Michelle Mosman
Notary Public

My commission expires:
9.11.2021

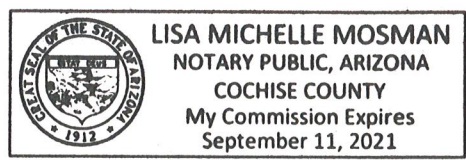


EXHIBIT B



EXHIBIT C

Payment Schedule

		<u>Terms</u>
Total Fee Amount	\$	38,860.00
Down Payment	\$	<u>3,886.00</u>
Finance Amount	\$	34,974.00
Annual Interest Rate		5.40%
Payments per Year		1
Number of Years		10
Annual Payment		\$4,617.69

Payment	<u>Payment</u>	<u>Principal</u>		<u>Interest</u>		<u>Remaining Principal</u>
1	\$4,617.69	\$2,729.09	\$	1,888.60	\$	32,244.91
2	\$4,617.69	\$2,876.47		1,741.22	\$	29,368.43
3	\$4,617.69	\$3,031.79		1,585.90	\$	26,336.64
4	\$4,617.69	\$3,195.51		1,422.18	\$	23,141.13
5	\$4,617.69	\$3,368.07		1,249.62	\$	19,773.06
6	\$4,617.69	\$3,549.94		1,067.75	\$	16,223.11
7	\$4,617.69	\$3,741.64		876.05	\$	12,481.47
8	\$4,617.69	\$3,943.69		674.00	\$	8,537.78
9	\$4,617.69	\$4,156.65		461.04	\$	4,381.13
10	\$4,617.70	\$4,381.12		236.58	\$	0.00

EXHIBIT D

