

When recorded, return to:

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**FIRST AMENDMENT TO
DEVELOPMENT, FINANCING PARTICIPATION
AND INTERGOVERNMENTAL AGREEMENT
FOR
EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1
(CITY OF MESA, ARIZONA)**

by and among

CITY OF MESA, ARIZONA

and

EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1

and

DMB MESA PROVING GROUNDS, LLC

Dated October __, 2015

**FIRST AMENDMENT TO
DEVELOPMENT, FINANCING PARTICIPATION
AND INTERGOVERNMENTAL AGREEMENT
EASTMARK COMMUNITY FACILITIES DISTRICT NO.1
(CITY OF MESA, ARIZONA)**

THIS FIRST AMENDMENT TO DEVELOPMENT, FINANCING PARTICIPATION AND INTERGOVERNMENTAL AGREEMENT EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1 (CITY OF MESA, ARIZONA) is dated October __, 2015 (hereinafter referred to as the "**Amendment**"), by and among the City of Mesa, Arizona, a municipal corporation organized and existing under the laws of the State of Arizona (hereinafter referred to as the "**Municipality**"), Eastmark Community Facilities District No. 1 (City of Mesa, Arizona), a community facilities district formed by the Municipality, and duly organized and validly existing, pursuant to the laws of the State of Arizona (the "**District**"), and DMB Mesa Proving Grounds, LLC, a Delaware limited liability company duly authorized to do business in the State of Arizona (hereinafter referred to as the "**Developer/Owner**").

RECITALS

A. Municipality, District and Developer/Owner entered into that certain Development, Financing Participation and Intergovernmental Agreement for Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) dated April 26, 2012 and recorded May 11, 2012 in the Official Records of Maricopa County, Arizona Recorder at Document No. 2012-0401237 (hereinafter referred to as the "**CFD Development Agreement**").

B. Proposition 117 amended the Arizona Constitution, Article IX, section 18, to require, beginning in tax year 2015, the value of real property and improvements used for all *ad valorem* taxes to be based on the limited property value whereas, prior to tax year 2015, the value of real property and improvements used for *ad valorem* taxes in special purpose districts, including community facilities districts, was based upon secondary net assessed valuation. The CFD Development Agreement provides for a target *ad valorem* tax rate based upon secondary net assessed valuation and, accordingly, needs to be amended.

C. The Municipality, the District, and the Developer/Owner now desire to amend the CFD Development Agreement as hereinafter provided.

AGREEMENT

1. The definition of "O/M Tax" within the CFD Development Agreement is herewith superceded and replaced by the following definition:

"O/M Tax" means an *ad valorem* tax levied at the rate of \$0.30 per \$100.00 of net assessed limited property value of property within the District.

2. Section 6.2(b) of the CFD Development Agreement is herewith superceded and replaced by Section 6.2(b) below, as follows:

Section 6.2 (b) Beginning in fiscal year 2016-17, if in the exercise of its sole and

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unfettered discretion of the District and the District Board, the District Board decides to issue a series of the General Obligation Bonds, such General Obligation Bonds shall only be issued if the debt service therefor is reasonably projected to be amortized from amounts generated by a tax rate of not in excess of \$3.85 per \$100.00 on net assessed limited property value of property within the boundaries of the District as indicated on the certified tax roll for the then current tax year. Notwithstanding the foregoing, General Obligation Bonds may be issued if authorized by the District Board, in its sole and unfettered discretion, where a tax rate greater than \$3.85 per \$100.00 on net assessed limited property value would be necessary to pay the combined debt service of a proposed and any outstanding General Obligation Bonds if other sources of revenue and security acceptable to the District Board, in its sole and unfettered discretion, is provided to pay and secure that portion of the debt service on the General Obligation Bonds that would not be paid from the *ad valorem* tax levy if levied at \$3.85 per \$100.00 on net assessed limited property value. Nothing in this section is intended to or shall act as a limitation on the District's issuance of General Obligation Bonds through fiscal year 2015-16 or the levy or tax rate established by the District to pay debt service on its General Obligation Bonds through such fiscal year or in the future.

3. Exhibit E to the CFD Development Agreement is herewith superceded and replaced by Exhibit E attached to this Amendment. Upon the full execution and recordation of this Amendment, Exhibit E to the CFD Development Agreement shall be of no further force or effect.

4. Effect of Amendment. Notwithstanding the provisions of this Amendment, the CFD Development Agreement, as amended and supplemented hereby, is hereby ratified and reaffirmed, constitutes the binding obligations of the parties, and remains in full force and effect, including, particularly, the indemnification of the City and the District pursuant to Section 8.1 of the CFD Development Agreement and all provisions relating to the District Board's sole and absolute discretion in deciding to approve any Report, the issuance of bonds or the levy of any tax or assessment, including but not limited to the provisions of Section 1.7(c) of the CFD Development Agreement.

5. Miscellaneous. This Amendment may be executed in counterparts and the signature pages combined to constitute one document. Facsimile signatures shall be deemed to have the same force and effect as original signatures. This Amendment shall govern in the event of conflict with the CFD Development Agreement.

[THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the officers of the Municipality and of the District have duly affixed their signatures and attestations, and the officers of the Developer/Owner their signatures, all as of the day and year first written above.

CITY OF MESA, ARIZONA

By: _____
Mayor

ATTEST:

City Clerk

Pursuant to A.R.S. Section 11-952(D), this Amendment has been reviewed by the undersigned attorney for the Municipality who has determined that this Amendment is in proper form and is within the powers and authority granted pursuant to the laws of this State to the Municipality.

Special Counsel

State of Arizona)
).ss
County of Maricopa)

On this ____ day of _____, 2015, before me personally appeared John Giles, Mayor of the City of Mesa, Arizona, a municipal corporation under the laws of the State of Arizona whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he/she signed the above/attached document on behalf of the City of Mesa.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

Notary Public in and for the State of Arizona

My commission expires:

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EASTMARK COMMUNITY FACILITIES DISTRICT
NO. 1 (CITY OF MESA, ARIZONA)

By: _____
Chairman, District Board

ATTEST:

District Clerk

Pursuant to A.R.S. Section 11-952(D), this Amendment has been reviewed by the undersigned attorney for the District, who has determined that this Amendment is in proper form and is within the powers and authority granted pursuant to the laws of this State to the District.

District Counsel

State of Arizona)
).ss
County of Maricopa)

On this ____ day of _____, 2015, before me personally appeared John Giles, Chairman of the District Board of Eastmark Community Facilities District No. 1 (City of Mesa, Arizona), an Arizona community facilities district whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he/she signed the above/attached document on behalf of the Eastmark Community Facilities District No. 1 (City of Mesa, Arizona).

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

Notary Public in and for the State of Arizona

My commission expires:

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DMB MESA PROVING GROUNDS LLC, a Delaware
limited liability company

By: DMB Associates, Inc., an Arizona
corporation, its Project Manager

By: _____
Its: _____

State of Arizona)
).ss
County of Maricopa)

On this ____ day of _____, 2015, before me personally appeared _____, the _____ of DMB Associates, Inc., an Arizona corporation, the Project Manager of DMB Mesa Proving Grounds LLC, a Delaware limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledge that he/she signed the above/attached document on behalf of DMB Mesa Proving Grounds LLC.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

Notary Public in and for the State of Arizona

My commission expires:

CONSENT AND AGREEMENT

Reference is made to that certain First Amendment to Development Financing Participation and Intergovernmental Agreement Eastmark Community Facilities District No. 1 (City of Mesa, Arizona), dated October __, 2015, by and among the City of Mesa, Arizona, the Eastmark Community Facilities District No. 1 (City of Mesa, Arizona), and DMB Mesa Proving Grounds, LLC, to which this Consent and Agreement is attached (the "**Amendment**"). All capitalized terms used and not otherwise defined in this Consent and Agreement shall have the meanings set forth in first, the Amendment and second, the CFD Development Agreement. The undersigned U.S. Bank National Association, as the "Lender" having an interest in real property within the District, hereby consents to the Amendment, acknowledges that the Amendment shall bind all real property in which the undersigned has an interest within the District, and authorizes the recordation of the Amendment with respect to all such real property. In no event, however, shall anything in this Consent and Agreement constitute a personal assumption by the undersigned of the obligations of the Developer/Owner under the CFD Development Agreement.

DATED: _____, 2015

U.S. BANK NATIONAL ASSOCIATION, a national
banking association

By: _____
Its: _____

State of Arizona)
).ss
County of Maricopa)

On this ____ day of _____, 2015, before me personally appeared _____, the _____ of U.S. Bank National Association, a national banking association, whose identity was proven to me on the basis of satisfactory evidence to be the person who he or she claims to be, and acknowledged that he/she signed the above/attached document on behalf of U.S. Bank National Association.

I certify under PENALTY OF PERJURY under the laws of the State of Arizona that the foregoing paragraph is true and correct.

Notary Public in and for the State of Arizona

My commission expires:

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EXHIBIT E
FORM OF DISCLOSURE STATEMENT
EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1
(CITY OF MESA, ARIZONA)

DMB Mesa Proving Grounds LLC, a Delaware limited liability company ("DMB"), in conjunction with the City of Mesa, Arizona (the "City"), have established a community facilities district (the "CFD") within the planned community development known as Eastmark®. The CFD has financed and, in the future, will finance certain public infrastructure improvements, which will result in a property tax liability and a separate special assessment lien liability for each residential property owner in Eastmark.

HOW THE CFD WORKS

On April 2, 2012, the Mayor and Council of the City formed the CFD consisting of approximately 2,171 acres of land in Eastmark. An election was held on May 17, 2012, at which time the owners of the property within the CFD voted to authorize up to \$435,000,000 of *ad valorem* tax bonds to be issued over time by the CFD to finance the acquisition or construction of public infrastructure improvements benefitting principally land within the CFD. The proceeds of separate special assessment lien bonds will be used to finance acquisition or construction of public infrastructure improvements benefitting principally designated areas within the CFD. Such improvements have been or will be dedicated to the City upon acquisition or construction of such public infrastructure by the CFD. The City will operate and maintain such improvements.

WHAT WILL BE FINANCED?

The CFD has been established to finance, at the request of DMB, not more than \$350,000,000 in public infrastructure improvements within the CFD, including financing costs related to such improvements, through *ad valorem* tax bonds to be issued over the next 25 years to finance the acquisition and construction of public infrastructure benefitting principally land within the CFD. The CFD issued \$3,250,000 of its General Obligation Bond Series 2014 on June 10, 2014 and \$6,800,000 of its General Obligation Bond Series 2015 on September 10, 2015 and [as applicable].

DMB may be reimbursed from CFD bond proceeds for eligible public infrastructure improvements for up to ten (10) years after the date of acceptance of such infrastructure by the City.

PROPERTY OWNERS' TAX AND ASSESSMENT LIABILITY

The obligation to retire the *ad valorem* tax bonds will become the responsibility of all property owners in the CFD through the payment of *ad valorem* property taxes collected by the Maricopa County Treasurer in addition to all other property tax payments. The CFD has levied a \$___ per \$100.00 of net assessed limited property value tax rate for the District's current fiscal year 20__-20__ to provide for repayment of the *ad valorem* tax bonds. The CFD has also levied a \$0.30 per \$100.00 of net assessed limited property value tax rate to provide for the payment of certain administrative expenses and operation and maintenance of the public infrastructure improvements financed by the CFD ("O/M Tax").

Although the *ad valorem* tax rate levied by the CFD to retire the *ad valorem* tax bonds is not limited by law, beginning in fiscal year 2016-2017, the rate of the *ad valorem* tax is not expected to exceed a rate of \$3.85 per \$100.00 of net assessed limited property value for as long as any *ad valorem* tax bonds are outstanding. However, in the event of declining assessed values or significant delinquencies in the collection of *ad valorem* taxes, the *ad valorem* tax rate could increase above the rate that would generate the same levy as would have been generated under a rate of \$3.85 per \$100.00 of net assessed limited property value. **Accordingly, there can be no guarantee *ad valorem* tax rates will not be increased to provide for repayment of such *ad valorem* tax bonds in the future.**

The obligation to retire the special assessment bonds issued to finance the acquisition of the completed public infrastructure benefitting principally Assessment Area __ will be the responsibility of all property owners in Assessment Area __, through the collection of installments of assessment liens of \$_____ per lot levied by the CFD. It is anticipated that such assessment lien will be collected by the Maricopa County Treasurer through its standard *ad valorem* property tax collection process.

IMPACT OF ADDITIONAL CFD PROPERTY TAX AND ASSESSMENTS

The following illustrates the estimated additional annual *ad valorem* tax liability imposed by the CFD, based on a range of residential values within Eastmark and a combined \$_____ tax rate for the current fiscal year 20__-__ (the \$_____ tax rate to retire the *ad valorem* tax bonds plus the \$.30 O/M Tax rate):

Assumed Value of Residence	Estimated Annual Additional CFD Tax Liability*
\$200,000	
\$250,000	
\$300,000	
\$350,000	
\$400,000	
\$450,000	
\$500,000	

*Assumptions:

1. Improved residential property assessment ratio will remain at 10%
2. The estimated *ad valorem* tax amount is computed by multiplying the \$_____ per \$100 of assessed limited property value tax rate by the estimated limited property value times the improved residential property assessment ratio. The actual limited property value is determined by the Maricopa County Assessor.

The estimated annual assessment lien liability imposed by the CFD in the Assessment Area, in addition to the *ad valorem* tax liability described above, is \$_____.

Additional information regarding the description of public infrastructure improvements to be financed by the CFD, bond issue public disclosure documents and other documents and agreements (including a copy of this Disclosure Statement) are available for review in the City of Mesa City Clerk's office.

Your signature below acknowledges that you have read this Disclosure Statement at the time you made your decision to purchase property at Eastmark and signed your purchase contract and that you understand the property you are purchasing will be taxed and separately assessed to pay the CFD bonds described above and issued in the future and taxed to pay the CFD operation, administration and maintenance expenses.

Home Buyer Signature/Date

Home Buyer Printed Name

IF PURCHASING JOINTLY OR OTHERWISE WITH ANOTHER PARTY:

Home Buyer Signature/Date

Home Buyer Printed Name

Builder Name: _____

Parcel No. _____

Lot No. _____

**UPON EXECUTION, MAIL DIRECTLY TO:
CFD DISTRICT CLERK, CITY OF MESA
20 E. MAIN STREET
MESA, AZ 85201**