

RESOLUTION NO. CFD EM1 RES ____

RESOLUTION OF THE BOARD OF DIRECTORS OF THE EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1 (CITY OF MESA, ARIZONA) APPROVING THE FEASIBILITY REPORT RELATING TO THE ACQUISITION AND FINANCING OF CERTAIN IMPROVEMENTS BENEFITTING THE DISTRICT; DECLARING ITS INTENTION TO ACQUIRE CERTAIN IMPROVEMENTS DESCRIBED IN THE FEASIBILITY REPORT; FORMING A SPECIAL ASSESSMENT DISTRICT; DETERMINING THAT SPECIAL ASSESSMENT REVENUE BONDS MAY BE ISSUED TO FINANCE THE COSTS AND EXPENSES THEREOF UNDER THE PROVISIONS OF TITLE 48, CHAPTER 4, ARTICLE 6, ARIZONA REVISED STATUTES, AND ALL AMENDMENTS THERETO; DECLARING THE IMPROVEMENTS TO BE OF MORE THAN LOCAL OR ORDINARY PUBLIC BENEFIT AND THAT THE COSTS OF SAID IMPROVEMENTS WILL BE ASSESSED UPON THE ASSESSMENT DISTRICT; AND ORDERING THE PUBLIC INFRASTRUCTURE PROJECTS PERFORMED.

WHEREAS, pursuant to Arizona Revised Statutes ("A.R.S.") § 48-715, as amended, the Board of Directors of the Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) has caused the Report (as such term and all other initially capitalized terms are defined hereinafter) to be prepared, relating to certain public infrastructure provided for in the General Plan of the District and to be financed with the proceeds of the sale of special assessment revenue bonds of the District, which Report includes, among other things, a description of certain public infrastructure to be acquired and all other information useful to understand the Project, an estimate of the cost to acquire, operate and maintain the Project, an estimated schedule for completion of the Project, a map or description of the area to be benefited by the Project and a plan for financing the Project, a copy of which is on file with the Clerk; and

WHEREAS, pursuant to A.R.S. § 48-715, as amended, the Clerk has, not less than ten (10) days in advance of the date of public hearing of the Report, (i) published notice of public hearing (the "*Publication*") on the Report and (ii) provided the Report and notice of public hearing on the Report to the City Council of the City of Mesa, Arizona. A public hearing on the Report was held on the date hereof, after provision for publication of notice thereof as provided by law; and

WHEREAS, the owners and lienholders of the property within the Assessment District No. 5 have heretofore executed and delivered to the District the Waiver wherein the parties thereto have: (i) waived any and all requirements for notice and time for protests and objections relating to, among other things, the Project and the extent of the Assessment District No. 5; (ii) acknowledged that the District shall levy an Assessment pursuant to the Act; and (iii) waived certain procedural requirements;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE EASTMARK COMMUNITY FACILITIES DISTRICT NO. 1 (CITY OF MESA, ARIZONA) that:

Section 1. Definitions. In this resolution, the following terms shall have the following meanings:

"Act" shall mean Title 48, Chapter 4, Article 6, Arizona Revised Statutes, as amended.

"Assessment District No. 5" shall mean the real property contained within the boundaries described in Exhibit A attached hereto. For a more general description, reference is hereby made to the Assessment District Map attached to this resolution as Exhibit B, which map is on file with the Superintendent of Streets and the Clerk.

"Assessment District Map" shall mean the map showing the Assessment District No. 5 and attached hereto as Exhibit B.

"Board" shall mean this Board of Directors of the District.

"Bond Counsel" shall mean Gust Rosenfeld P.L.C. and any successor thereto.

"Bonds" shall mean the District's Assessment District No. 5 Special Assessment Revenue Bonds, Series 2016.

"Clerk" shall mean the Clerk of the District.

"Debt Service Reserve" shall mean the debt service reserve fund funded with the proceeds from the sale of the Bonds, authorized pursuant to the Act.

"Development Agreement" shall mean the Development, Financing Participation, Waiver and Intergovernmental Agreement No. 1 (Eastmark Community Facilities District No. 1) dated as of April 26, 2012, by and among the City of Mesa, Arizona, the District and DMB Mesa Proving Grounds, LLC; recorded May 1, 2012 at docket number 2012-0401237 in the office of the Maricopa County Recorder, as thereafter amended by that certain First Amendment to Development, Financing Participation and Intergovernmental Agreement for Eastmark Community Facilities District No. 1 (City of Mesa, Arizona), dated October 19, 2015, by and among the City of Mesa, Arizona, the District and DMB Mesa Proving Grounds, LLC; recorded October 28, 2015 at docket number 2015-0774986 in the office of the Maricopa County Recorder.

"District" shall mean the Eastmark Community Facilities District No. 1 (City of Mesa, Arizona).

"District Engineer" shall mean initially, the City Engineer of the City of Mesa, Arizona, and, thereafter, such engineer or firm of engineers as appointed by the District Manager.

"Estimate" shall mean the estimate of costs and expenses of the Project described in the Report and this resolution, showing the estimated costs and expenses of acquisition of the Project to be not less than \$839,557.00, together with estimated Incidental Expenses

(\$178,500.00) and a Debt Service Reserve (\$81,343.00), less a developer contribution (\$39,400.00) for a total cost not to exceed \$1,060,000.00, all as described on Exhibit C.

"*Final Plans*" shall include all final plans, specifications and contract documents relating to the design of the Project, as have been approved by the City of Mesa, Arizona, and on file with the Clerk.

"*Incidental Expenses*" shall mean compensation paid to the Superintendent of Streets, District Engineer, costs of printing, advertising, posting, the expenses of making, administrating and collecting the assessments, appraiser's fees, any underwriter's discount on the Bonds, any paying agent's fees, all legal and financial fees, all expenses and costs incurred in establishing the District, the Assessment District No. 5 and incurred in connection with the drafting of the proceedings and in connection with the sale of the Bonds, and all capitalized interest, if any, on the Bonds.

"*Project*" shall mean, collectively, the acquisition of public infrastructure (as such term is defined in the Act) described in the Report including particularly, the acquisition by the District of the public infrastructure described on Exhibit D hereto.

"*Report*" shall mean the Feasibility Report dated November 12, 2015 and on file with the Clerk, prior to the date and time hereof, discussing the matters required by A.R.S. § 48-715, as amended, as such matters relate to the Project.

"*Streets*" or "*streets to be improved*" shall mean the streets listed on Exhibit D and such other streets and public rights-of-way as are shown on the Final Plans.

"*Superintendent of Streets*" shall mean the City Engineer of the City of Mesa, Arizona, or such person or firm appointed as Superintendent of Streets by the District Manager.

"*Waiver*" shall mean the Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) Waiver and Development Agreement Pertaining to the To-Be-Formed Assessment District No. 5, by and among the District, AVH EM LLC, and DMB Mesa Proving Grounds, LLC, dated November 12, 2015 and to be recorded in the office of the Maricopa County Recorder.

Section 2. Approval of the Feasibility Report. Publication and the notice to the City of the Report and related public hearing are hereby ratified and approved. Based on the review by this Board and the presentation of the Report and testimony presented at the public hearing on November 12, 2015, the Report is hereby adopted and approved in the form submitted to this Board.

Section 3. Resolution of Intent. This Board hereby identifies the public infrastructure of the Project, the areas benefited (all located within the District), the expected method of financing and the system of providing revenues to operate and maintain the Project, all as identified and provided for in the Report, for any and all purposes of the Act. This Board hereby declares its intent to proceed with the financing of the acquisition of the Project in

substantially the manner presented in the Report and pursuant to the terms of the Development Agreement.

Section 4. Declaration of Intention to Order the Project. The public interest and convenience require and it is the intention of this Board to order the Project to be acquired and performed as stated herein and contemplated by the Report and in conformance with the Final Plans. By virtue of the authority vested in the Act, and all amendments thereto, this Board hereby orders the acquisition and performance of the Project at a cost not to exceed the Estimate. When applicable, the District Engineer is authorized to modify the Final Plans to show the as-built condition of the Project. The acquisition of any portion of the Project may be performed upon the sale and delivery of the Bonds in an amount sufficient to pay the costs of acquisition.

Section 5. Determination of Need; Formation of Assessment District No. 5. The Assessment District No. 5 is hereby formed, consisting of the property described on Exhibit A attached hereto. In the opinion of the Board, the Project is of more than local or ordinary public benefit, the Project principally benefits the land within the Assessment District No. 5, and the Board hereby orders that amounts due or to become due with respect to financing the costs and expenses of the Project, together with the Debt Service Reserve and all Incidental Expenses (the "Assessment"), shall be chargeable upon the respective lots, pieces and parcels of land within the Assessment District No. 5. The amount of the total Assessment shall not be greater than the sum of \$3,500.00 times the number of developable lots located within the Assessment District No. 5.

Section 6. Exclusion of Certain Property. Any public or private street or alley within the boundaries of the Assessment District No. 5 is hereby omitted from the Assessment District No. 5. Any lot, the legal owner of which on this date is the United States, the state, a county, city, school district or any political subdivision or institution of the state or county, which is included within the Assessment District No. 5 shall be omitted from the assessments hereafter made except as otherwise agreed between the District and such owner. Any acquisition of an assessed parcel by the United States, the state or other political subdivision of this state or charter school after the date hereof shall not be extinguished and shall continue in full force and effect until payment in full.

Section 7. Determination and Notice of Necessity to Issue Bonds. This Board finds that the public convenience requires that the Bonds shall be issued to finance the costs and expenses of the Project, the Debt Service Reserve and Incidental Expenses. This Board hereby determines that the Bonds shall be issued in the name of the District payable, however, solely and only out of a special fund collectible from special assessments levied and assessed upon the lots, pieces and parcels of land within the Assessment District No. 5 in not to exceed twenty-five (25) annual principal installments from the assessments of \$25.00 or over.

The Bonds shall be issued in fully registered form as to principal and interest in the principal amounts of \$100 or any integral multiples of \$100 in excess thereof. The Bonds shall mature on the first day of July in the years and in amounts to be set by the Board prior to their issuance; provided, however, the Bonds shall mature not later than July 1, 2040.

The Bonds shall bear interest at rate or rates of not to exceed ten percent (10%) per annum, payable on the first day of January and July of each year, commencing on such date as set

forth in the resolution authorizing the Bonds. The yield (as determined pursuant to the regulations of the Internal Revenue Code of 1986, as amended) on all of the Bonds shall not exceed seven percent (7.0%). The Board reserves the right to call the Bonds for prior redemption, in whole or in part, on such terms as may hereafter be established by this Board.

Principal installments of each Assessment shall be due on the first day of June immediately preceding the maturity date of any Bonds and installments of interest of each Assessment shall be due on the first day of June and December.

Section 8. Establishment of Grade. The grades and elevations for the Streets are hereby officially changed to correspond with the grades and elevations shown on the Final Plans.

Section 9. Statutory Authority. The Project and all proceedings pertaining thereto shall be acquired and performed under the provisions of the Act.

Section 10. Delegation of Authority. The District Engineer and the Superintendent of Streets are hereby authorized to complete the Final Plans, specifications and any contract documents.

Section 11. Right to Reduce Scope of Work. If, because of pending or threatened litigation concerning any one or more parcels subject to the Assessment, (i) the District receives a written opinion of Bond Counsel stating that the Bonds cannot be issued against such parcel or parcels or (ii) the Assessment District No. 5 is unable to obtain any right-of-way necessary for the acquisition of the Project, the District may then cause the acquisition or construction contract to be modified to exclude from the applicable contract some or all of the Project which will benefit the parcel or parcels in question, or which was located in the right-of-way which was not obtained. The filing of a certificate and request that no Bonds be issued against any parcel pursuant to A.R.S. § 48-540 and § 48-597, as amended, may be deemed to be threatened litigation.

Section 12. Ratification of Prior Acts. All acts of the District Chairman, District Engineer, the Superintendent of Streets, and any person acting for such official, in furtherance of this Resolution are hereby ratified and confirmed, including the engagement by the District of Schnepf Ellsworth Appraisal Group, LLC, and the execution of the Waiver.

[SIGNATURE PAGE TO FOLLOW]

PASSED, ADOPTED AND APPROVED on November 12, 2015.

ATTEST:

Chairman

Clerk

APPROVED AS TO FORM:

Bond Counsel

Attachments: EXHIBIT A – Legal description of Assessment District No. 5
EXHIBIT B – Map of District
EXHIBIT C – Estimated Costs
EXHIBIT D – List of Projects

CERTIFICATE

I hereby certify that the above and foregoing resolution was duly passed by the Board of Directors of the Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) at a special meeting held on November 12, 2015, and that a quorum was present thereat and that the vote thereon was _____ ayes and _____ nays; _____ did not vote or were absent.

Clerk

EXHIBIT A

Legal Description

Eastmark Community Facilities District No. 1
Assessment District No. 5

LOTS 1 THROUGH 158 INCLUSIVE, ENCORE AT EASTMARK, PARCEL 9-4,
ACCORDING TO THE SUBDIVISION PLAT RECORDED IN BOOK 1241 OF MAPS, PAGE
22, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

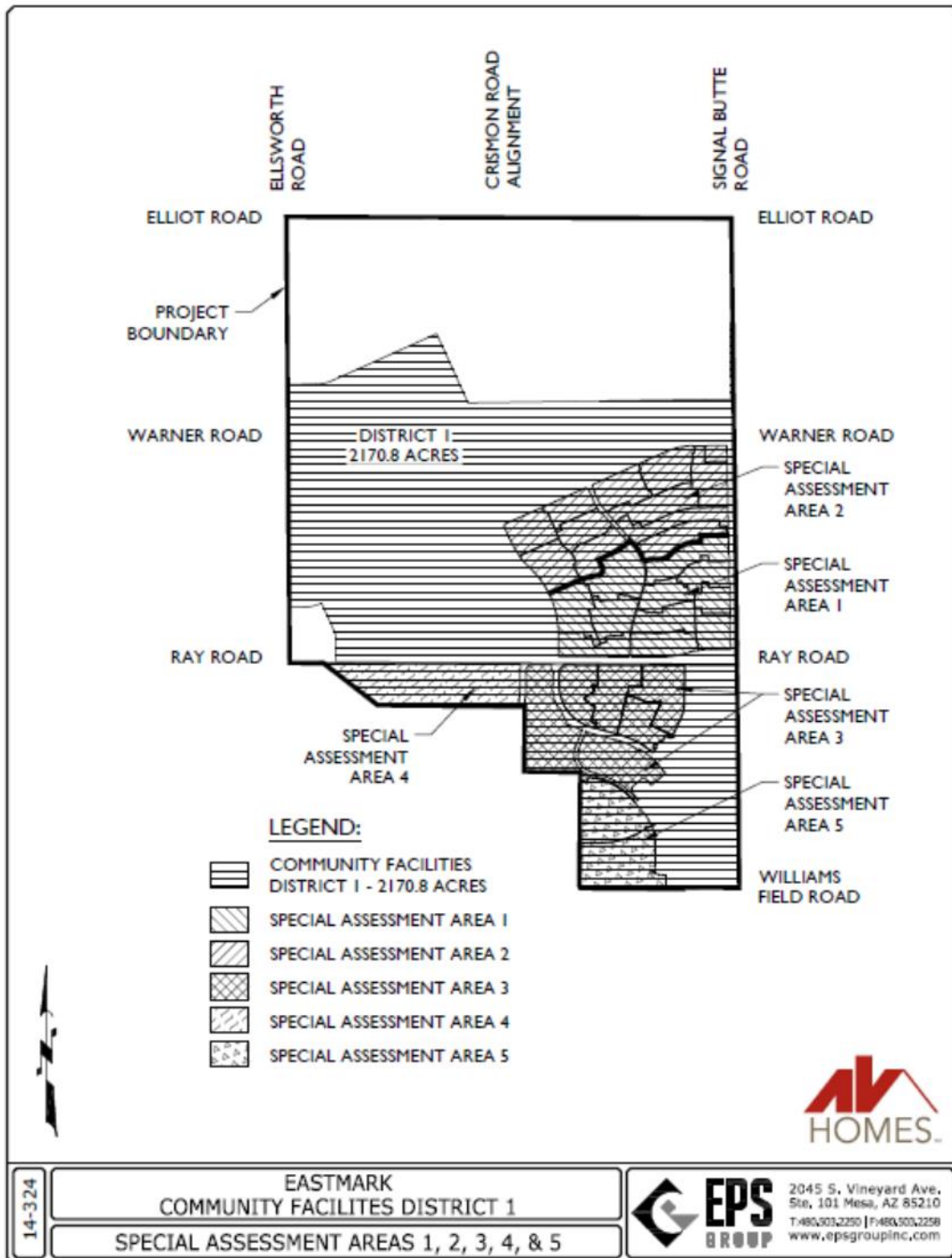
LOTS 1 THROUGH 145 INCLUSIVE, ENCORE AT EASTMARK, PARCEL 9-5,
ACCORDING TO THE SUBDIVISION PLAT RECORDED IN BOOK 1241 OF MAPS, PAGE
21, OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA.

EXHIBIT B

Map of the District

(attached hereto)

THE DISTRICT



ASSESSMENT DISTRICT NO. 5

SITE DATA - ENCORE

PHASE	ACRES	LOT AREA	LOT COUNT
PHASE 1	10.00	10,000	100
PHASE 2	10.00	10,000	100
PHASE 3	10.00	10,000	100
TOTAL	30.00	30,000	300

ENCORE AT EASTMARK
Phase 2

ENCORE GROUP

2000 S. 10th Street, Suite 100
Tulsa, OK 74106
www.encoregroup.com

EXHIBIT C

ESTIMATED COSTS

Cost of Public Infrastructure	\$839,557.00
Debt Service Reserve Fund	81,343.00
Incidental Expenses	<u>178,500.00</u>
Total	\$1,099,400.00
 (Less Developer Contribution)	 <u>(\$39,400.00)</u>
Net Cost	<u><u>\$1,060,000.00</u></u>

Net Cost shall not exceed the total Assessment of the sum of \$3,500.00 times the number of developable lots located within the Assessment District No. 5.

EXHIBIT D

DESCRIPTION OF PUBLIC INFRASTRUCTURE

The Assessment District No. 5 shall finance the acquisition of public infrastructure (as such term is defined in the Act) described in the Report, including particularly the acquisition by the District of the following:

The Public Infrastructure subject to this Feasibility Report has been publicly bid pursuant to state statute and District guidelines and will be financed by the Bonds and/or subsequent bond issues and other sources, if necessary. It is expected that the Public Infrastructure listed below will be acquired from the Developer with estimated cost and construction timing as noted.

Public Infrastructure Project	Estimated Acquisition Price *	Completion Date **	Funds Draw Date
Eastmark Parkway	\$3,734,497	December 2014	January 2016
Total	<u>\$3,734,497</u>		

* Based on contract bids by the District in May, 2014. A portion of the estimated acquisition price was financed with a prior special assessment bond issue.

** Completion represents the date by which the Developer expects the Public Infrastructure to be constructed, which may differ from the date that it is accepted by the District/City.