

WHEN RECORDED RETURN TO:

Gust Rosenfeld P.L.C.
Attn: James T. Giel
One E. Washington Street, Suite 1600
Phoenix, Arizona 85004-2553

**EASTMARK COMMUNITY FACILITIES DISTRICT NO.
1 (CITY OF MESA, ARIZONA)
WAIVER AND DEVELOPMENT AGREEMENT PERTAINING TO
THE TO BE FORMED ASSESSMENT DISTRICT NO. 5**

This Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) Waiver and Development Agreement Pertaining to the To Be Formed Assessment District No. 5, dated November 12, 2015 (this "*Agreement*") by and among the undersigned owner of the land within the District (the "*Landowner*") and DMB Mesa Proving Grounds, LLC, a Delaware limited liability company (the "*Developer*"), and, if applicable, other owners executing this Agreement prior to formation of Assessment District No. 5.

WHEREAS, the City of Mesa, Arizona, an Arizona municipal corporation (the "*City*") and the Developer are parties to that certain Pre-Annexation Development Agreement recorded November 13, 2008 as Instrument No. 2008-974928 in the Official Records of Maricopa County, as amended by that certain First Amendment to Pre-Annexation Development Agreement, recorded May 31, 2011 as Instrument No. 2011-0456472 and rerecorded June 16, 2011 as Instrument No. 2011-0504366 in the Official Records of Maricopa County, as further amended by that certain Second Amendment to Pre-Annexation Development Agreement recorded November 21, 2013 as Instrument No. 2013-1005620 in the Official Records of Maricopa County, as the same may be further amended from time to time (collectively, the "*Development Agreement*") in connection with the planned community development project on the land subject thereto known as "Eastmark" (the "*Project*"); and

WHEREAS, pursuant to the Development, Financing Participation and Intergovernmental Agreement No. 1 for Eastmark Community Facilities District No. 1, dated as of April 26, 2012 and recorded May 11, 2012 at Instrument No. 2012-0401237 in the Official Records of Maricopa County Records (the "*District Agreement*"), 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, the Developer intends to request the District to form assessment district number 5 (the "*Assessment District No. 5*") comprised of the property described and shown on Exhibit A attached hereto (the "*Property*") for the purpose of providing certain public infrastructure purposes (as defined in Title 48, Chapter 4,

Article 6, Arizona Revised Statutes, as amended (the “Act”) such public infrastructure purposes to be located on or off the Property; and

WHEREAS, the Developer, the Landowner and (if applicable) other owners executing this Agreement, and all persons hereafter taking an interest in the Property, or any portion thereof, shall be bound by the terms, waivers and agreements set forth in this Agreement and bound by the Assessments (as defined hereafter) recorded against the Property; and

WHEREAS, subject to the terms of the District Agreement, the proposed public infrastructure purposes to be provided by the Assessment District No. 5 shall consist of:

A. Acquisition, installation and/or construction of the public infrastructure (as such term is defined in the Act) described in Exhibit B attached hereto and all incidental improvements related thereto;

B. All engineering, legal, financial and incidental costs and expenses incurred in completing the acquisition, installation and construction of the public infrastructure (as such term is defined in the Act) described in paragraph A above and the costs and expenses incurred in connection with the levy of the Assessments and the issuance and sale of the Assessment District No. 5 bonds;

C. Capitalized interest on such Assessment District No. 5 bonds, if any, for a period not to exceed the aggregate time for completion of all construction and acquisition of the public infrastructure described herein, plus six months thereafter; and

D. A debt service reserve fund created for such Assessment District No. 5 bonds.

Collectively, the public infrastructure purposes described in paragraphs A through D above and the costs and expenses thereof shall hereinafter be referred to as the “Work”.

WHEREAS, persons having or hereafter acquiring only a lienholder’s interest or other security interest in the Property (“*Lienholder*” or “*Lienholders*”, as applicable) consent to these terms and provisions of the District Agreement and this Agreement and the recording thereof and acknowledge the levying of the Assessments against the Property; and

NOW, THEREFORE, the District, the Developer, the Landowner and all future owners or holders of any interest in any portion of the Property, hereby agree as follows:

1. **Development Agreement and Agreement Allocating Assessments.** This Agreement is a “development agreement” within the meaning of Arizona Revised Statutes §9-500.05 (“A.R.S.”) and the written agreement allocating the Assessments is authorized pursuant to A.R.S. §48-721, as amended.

2. **Reliance on Agreement.** This Agreement does not create a binding commitment on the part of the District to actually form the Assessment District No. 5, or, if formed, of the District or Assessment District No. 5 to sell or deliver such Assessment District No. 5 bonds or construct, install or acquire any or all of the Work, or if it does construct, install or acquire any of the Work, to construct, install or acquire it pursuant to any existing proposals. However, the District, and if formed, the Assessment District No. 5, and the Developer, in going forward with the Work, are doing so in reliance upon this Agreement to have the Property included within the to-be-formed Assessment District No. 5 and assessed for the costs thereof.

3. **Review and Approval of the Boundaries, and Scope of Work: Acknowledgement of Assessment.**

a. The Developer and the Landowner, as the sole owner of all the Property, have reviewed or have had the opportunity and right to review the boundaries of the Assessment District No. 5, the preliminary plans and specifications detailing the Work and the current estimate of the costs of the Work (the “*Cost Estimate*”). The undersigned Landowner agrees the costs of the Work shall be spread among the parcels comprising the Property within the proposed Assessment District No. 5 utilizing a methodology determined by the Assessment District No. 5 Engineer (the “*Engineer*”) based on the expected benefit to the residential lots to be developed on the Property, provided the Engineer’s estimate of the costs of Work (the “*Engineer’s Estimate*”) will not exceed \$1,060,000 and such Assessment amount shall be allocated and levied to each developable parcel (residential lot) within the Assessment District No. 5 in an amount not to exceed \$3,500.00 per parcel (residential lot).

b. The Developer and the undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, expressly consent to the following: (a) the District may take all required actions as necessary to form the Assessment District No. 5 in accordance with the provisions of the District Agreement and the Act; and (b) the District and, if formed, the Assessment District No. 5, may incur costs and expenses necessary to complete or acquire the Work.

c. Furthermore, the Developer and the undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, acknowledge that the District or, if formed, the Assessment District No. 5, shall levy and collect an assessment on the Property sufficient to pay all costs and expenses of the Work (including Work benefitting the Property in the proposed Assessment District No. 5, which Work may be constructed, installed or performed prior to or after the execution hereof) and the costs of levying the assessment and the issuance of the Assessment District No. 5 bonds, but not in excess of the Engineer’s Estimate prepared in accordance with the applicable requirements of the District and the Act (the “*Assessments*”).

4. **No Protest, Objection or Request for Hearings.** The Developer and the undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, agree to allow the formation of the proposed Assessment District No. 5 and to

acknowledge that the Assessment District No. 5, if formed, shall take all steps necessary to levy, confirm and record Assessments against the Property and to issue such Assessment District No. 5 bonds supported by the Assessments. The undersigned Landowner, and all future owners of any portion of the Property, acknowledge and agree, to the fullest extent permitted by applicable law, that pursuant to A.R.S. §9-500.05, the provisions of A.R.S. §32-2181 do not apply and that pursuant to this Agreement the parties waive their right to appear before the Board of Directors of the District on any hearing required at or prior to the confirmation of the Assessments and waive their right to: (a) protest and object to the extent of the Assessment District No. 5 pursuant to A.R.S. §§48-579 and 48-580; (b) protest the award of contract pursuant to A.R.S. §48-584; and (c) object to the Assessments on procedural grounds, or as to the legality of the Assessments, pursuant to A.R.S. §48-590.

5. **Waiver of Procedural Deficiencies and Irregularities.** The Developer and the undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, with full knowledge of the provisions of Title 48, Chapter 4, Articles 2 and 6, of the Arizona Revised Statutes and their rights thereunder (or having obtained counsel to advise them of the provisions and their rights), expressly waive any and all irregularities, illegalities or deficiencies which may now or hereafter exist in the acts or proceedings resulting in the formation of the District, the formation of the Assessment District No. 5, the adoption of the resolution of intention and the resolution ordering the Work, the levying of the Assessments against the Property and the issuance of Assessment District No. 5 bonds secured by the Assessments levied against the Property.

6. **Waiver.** The Developer and the undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, with full knowledge of the provisions and their rights under the provisions of law hereafter referenced, expressly waive the following:

a. any defect in the proceedings establishing the District, as required by A.R.S. § 48-702 through § 48-708, inclusive, and agree that, to the extent of any defect, this Agreement shall constitute the petitions required by law to form and establish the District without conducting an election;

b. the providing of any and all notices and response time periods related to such notices provided by A.R.S. §48-576 *et seq.*, as amended, including but not limited to the following:

i. mailing, posting and publication, as applicable, of any notice required in connection with: (A) the adoption of the resolution of intention, (B) the notice of proposed improvements, (C) the adoption of the resolution ordering the Work, (D) notice of passage of the resolution ordering the Work, (E) notice of award of contract and (F) any other steps necessary in connection with the Assessment District No. 5 or the Work; and

ii. any and all notices pertaining to the levying of the Assessments, including notice of any hearing on the Assessments;

c. any and all objections and protests to the extent of the Assessment District No. 5;

d. any and all objections to the adoption and approval by the District or the Assessment District No. 5 of the plans and specifications, the Engineer's Estimate of the costs of the Work and the assessment diagram, all of which provide for and effectuate the completion of the Work;

e. any and all protest rights against the Work and objections to the awarding of one or more acquisition or construction contracts for the Work;

f. any and all claims or defenses, known or unknown, they may now or subsequently have against the Assessments or the Assessment District No. 5 bonds; and

g. all demands for cash payment of the Assessments.

Nothing contained in this Agreement shall be construed as a waiver by any party to this Agreement of any notice required by A.R.S. §§48-600 or 48-601 of delinquent assessment installments.

7. **Work as More Than Local and Ordinary Benefit.** The Developer and the undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, agree that the Work is of more than local or ordinary public benefit and that the Work constitutes a public infrastructure purpose and that the Property which is subject to the Assessments receives the primary benefit from the Work in an amount not less than the Engineer's Estimate of the costs thereof, and not less than the portion of the Assessment levied against each parcel or lot comprising the Property.

8. **Public Bidding.** The public bidding requirements set forth in A.R.S. §§48-581 and 584 have been or will be complied with by the Developer or the Landowner, as applicable, on behalf of the District with respect to each contract comprising the Work.

9. **Performance of the Work.** The District or the Assessment District No. 5 may immediately upon issuance of such Assessment District No. 5 bonds acquire all or part of the Work.

10. **Landowner Acknowledgement of Assessment.** The undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, acknowledge the District shall levy the Assessments in an amount not greater than the Engineer's Estimate against all developable parcels located within the boundaries of Assessment District No. 5, as provided in Section 3.a not in excess of \$3,500.00 per developable parcel (residential lot); and that such Assessments shall be collected and foreclosed in accordance with A.R.S. §48-601 *et seq.*, as amended and in accordance with any other documents executed and delivered in connection with the delivery of the Assessment District No. 5 bonds.

11. **Recording and Validity of Assessments.** The undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, acknowledge the District shall record the Assessments against the Property and acknowledge such recording of the Assessments shall constitute valid and enforceable first liens against the respective parcels comprising the Property as shown and the amounts set forth in the Assessments, subject only to the lien for ad valorem taxes.

12. **Assessments to go to Bond.** Except as the undersigned Landowner, or any future owner or holder of any interest in any portion of the Property, otherwise notifies the Assessment District No. 5 in writing prior to the recording of the Assessments of their intent to pay all or part of their Assessment in cash, Assessments will not be paid in cash. With respect to Assessments not paid in cash, the undersigned Landowner requests, and all future owners or holders of any interest in any portion of the Property agree, that a certified list of unpaid Assessments be filed as soon as possible after the recording of the Assessments and that Assessment District No. 5 bonds amortizing the payment of the Assessments over not less than fifteen (15) years be issued and sold as soon as possible.

13. **No Reduction of Landowner Obligation.** The inability of the District or the Assessment District No. 5 to assess all or any portion of the costs of the Work shall not reduce the obligation of the Landowner, and all future owners or holders of any interest in any portion of the Property, so long as the Landowner or future owner or holder of any interest in any portion of the Property owns all or part of any parcel comprising the Property, to pay the costs of the Work.

14. **Waiver of Collateral Document Provisions.** The undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, expressly waive any and all provisions of any collateral security instruments relating to the Property which prohibits the formation of the Assessment District No. 5, completion of the Work and levying and recording of the Assessments against the Property.

15. **Dedication of Property Needed to Perform the Work.** The undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, consent to the dedication, without cost, of the rights-of-way and easements and other property, as required pursuant to the Map of Dedication and those certain final approved infrastructure improvement plans for the Work, described in Exhibit C and attached hereto. The undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, agree to cooperate in effectuating any required dedication, including execution of any required document.

16. **Indemnification Under Securities Act.** The Developer hereby agrees to indemnify and hold the District and the City and each director, council member, officer, agent, legal counsel, independent contractor or employee thereof and each person, if any, who controls the District and the City, its officers, employees and agents, within the meaning of the Securities Act of 1933, as amended (the "*Securities Act*") (collectively the "*Indemnified Persons*") harmless for, from and against any and all losses, claims, damages or liabilities,

including reasonable attorney's fees arising from any challenge to the formation, activities or administration of the District, or any losses, claims, damages or liabilities, including reasonable attorney's fees related to which any of the Indemnified Persons may become subject, under any statute or regulation at law or in equity or otherwise, insofar as such losses, claims, damages or liabilities, including attorney's fees (or actions in respect thereof) arise out of or are based upon any untrue statement or any alleged untrue statement or material fact set forth in any official statement applicable to the Assessment District No. 5 bonds or any amendment or supplement thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or which is necessary to make the statements therein, in light of the circumstances in which they were made, not misleading in any material respect. This Section 16 shall survive the termination hereof.

17. **General Indemnification of District and Directors.** The Developer hereby agrees to indemnify the District and each director, officer, agent, legal counsel, employee, independent contractor, and the City, its officers, employees, agents, independent contractors and council members (collectively, the "*Indemnified Parties*") and shall hold the Indemnified Parties harmless from, for and against any and all losses, damages, liabilities, claims and reasonable costs incurred, including but not limited to reasonable attorneys' fees and other administrative or out of pocket costs actually and directly incurred by the Indemnified Parties in connection with or as the result of acts of the District or the District Board which are (i) within the scope of the District or District Board's authority under the Securities Act, or (ii) undertaken by the District or District Board in a properly advertised public meeting. This Section 17 shall survive the termination hereof.

18. **Disclosure Document.** The undersigned Landowner, and all future owners or holders of any interest in any portion of the Property, hereby agree that any potential purchaser of any real property subject hereto, including each potential purchaser of a residential lot within the District, shall receive a concise disclosure document that discloses the existence, the estimated payment amount and the payment terms of any portion of the Assessment applicable to the real property to be purchased. Each potential purchaser shall acknowledge in writing that the purchaser received and understood the concise disclosure document and has agreed to the terms, waivers and agreements contained in this Agreement. The District agrees to maintain records of the written acknowledgments. The provisions of this Agreement shall not apply to the sale, transfer or other conveyance of any real property which is not subject to the Assessment.

19. **Encumbrance of the Property.** The provisions, terms and restrictions of this Agreement shall run with and bind the Property as equitable servitudes and also as covenants running with the land. Without limitation of the foregoing, in the event of any sale, transfer or other conveyance by the undersigned Landowner, and all future owners or holders of any interest in any portion thereof, the Property or such portion thereof shall continue to be bound by all of the terms, conditions and provisions hereof. Prior to the completion of the Work, the levy of the Assessments pertaining to the Work and the issuance of Assessment District No. 5 bonds secured by the Assessments, any purchaser, transferee or other subsequent owner shall execute and deliver to the District Exhibit D attached hereto, and shall take such property subject to all of the terms, conditions and provisions hereof and any purchaser, transferee or

other subsequent owner shall take such property entitled to all of the rights, benefits and protections afforded the predecessor in interest thereof by the terms hereof.

20. **Recording.** This Agreement may be recorded in the office of the County Recorder of Maricopa County, Arizona.

21. **Continuing Disclosure.** So long as the undersigned Landowner, or any future owner or holder of any interest in any portion of the Property, is liable for 20% or more of the debt service on any Assessment District No. 5 bonds, the undersigned Landowner, or any future owner of any portion of the Property, solely with respect to its assessed property, will provide any and all information needed, as may be reasonably requested by the District, or required to comply with the information reporting requirements contemplated by Rule 240.15c2-12, General Rules and Regulations, Securities Exchange Act of 1934, as amended.

22. **Successors and Assigns.** This Agreement, when executed by each such party, shall inure to the benefit of and (except as otherwise expressly provided herein) be binding upon the Developer and the undersigned Landowner, and their respective future grantees, successors and assigns, and any future owner or holder of any interest in any portion of the Property. There shall be no third party beneficiaries of this Agreement, except that solely for the purposes of receiving the benefits of the provisions of Sections 16 and 17 of this Agreement, the Developer and the undersigned Landowner hereby agree that the City shall be a third party beneficiary of the terms and provisions of Sections 16 and 17 of this Agreement.

23. **Authority.** The Developer and the undersigned Landowner each warrant that it has the requisite authority to enter into this Agreement and bind the Property and, to the best of its knowledge, no other consents are required.

24. **Further Assurances.** Without limitation of the foregoing, the Developer and the undersigned Landowner, and all future owners and holders of any interest in any portion of the Property, shall execute and deliver to the Developer and the District, upon request but at no third-party cost, all further assurances and waivers as may be required by the District and the Act to give full effect to the provisions of this Agreement, each of which further assurances and waivers by this reference shall, upon such execution, delivery and recording, be deemed incorporated herein and have the same priority as this Agreement.

25. **Counterparts.** For convenience, this Agreement may be executed in one or more counterparts and each executed counterpart and all executed *Exhibit D's* shall for all purposes be deemed an original and shall have the same force and effect as an original, but all of which together shall constitute in the aggregate but one and the same instrument. This Agreement will constitute the entire agreement between the parties, and supersedes all previous written or oral agreements or understandings regarding the subject matter of this Agreement.

26. **Waiver of Claims by Developer.**

a. Except as to certain payments or reimbursements applied for by the Developer pursuant to the District Agreement, the Developer knowingly and voluntarily forever

releases and discharges the District and all of its past and present elected officials, officers, directors, agents, employees, successors, assigns, attorneys, and representatives from all legal and equitable claims, causes of action, debts, accounts and damages occurring and existing prior to the date of this Agreement whether known or unknown, asserted or unasserted, and of every nature and extent whatsoever, that the Developer has against the District in connection with the Project arising from actions, omissions, delays or other events that occurred prior to the date of this Agreement.

b. Except as to matters which are subject to the express terms of the Development Agreement and any other written agreement to which the City and the Developer are parties as of the date of this Agreement, the Developer knowingly and voluntarily forever releases and discharges the City and all of their past and present elected officials, officers, directors, agents, employees, successors, assigns, attorneys, and representatives from all legal and equitable claims, causes of action, debts, accounts and damages occurring prior to the date of this Agreement whether known or unknown, asserted or unasserted, and of every nature and extent whatsoever, that the Developer has against the City in connection with the Project arising from actions, omissions, delays or other events that occurred prior to the date of this Agreement.

c. None of the releases and discharges above are intended to, and do not negate or otherwise relieve the City of any executory contractual obligations under existing contracts or of any obligations under any applicable law, statute, or ordinance.

27. **Failure to Sell Bonds.** In the event the District fails or is otherwise unable to sell and/or deliver Assessment District No. 5 bonds in an amount sufficient to allow the District to pay the amounts needed to pay the costs of the Work and upon written request of the owner or owners of the real property within the Assessment District No. 5, the District agrees to adopt proceedings that dissolve and terminate any Assessment District No. 5 or the Assessments, established by the District, encumbering the Property.

28. **Future Landowner Consent.** The Landowner agrees that upon the sale of any portion of the Property, the Landowner will require the execution and delivery of Exhibit D by each purchaser, and upon request by the Assessment District No. 5 the undersigned Landowner will execute and deliver Exhibit D to Assessment District No. 5.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the undersigned have duly affixed their signatures,
all as of the day and year first written above.

EASTMARK COMMUNITY FACILITIES
DISTRICT NO. 1 (CITY OF MESA, ARIZONA),
an Arizona political subdivision

By: _____
District Chairman

ATTEST:

District Clerk

APPROVED AS TO FORM:

James T. Giel, Special District Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by John Giles, Chairman of the Eastmark Community Facilities District No. 1 (City of Mesa, Arizona), an Arizona political subdivision.

Notary Public

My commission expires:

Signature Page to Waiver and Development Agreement:

DEVELOPER:

DMB MESA PROVING GROUNDS, LLC, a
Delaware limited liability company

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

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____, the _____ of DMB Associates, Inc., an Arizona corporation and the Project Manager of DMB Mesa Proving Grounds, LLC, a Delaware limited liability company.

Notary Public

(Affix Notary Seal Here)

Signature Page to Waiver and Development Agreement:

LANDOWNER:

AVH EM, LLC, an Arizona limited liability company

By: JCH Group, LLC, a Delaware limited liability company

Its: Sole Member

By: Avatar Properties, Inc., a Florida corporation

Its: Sole Member

By: _____

Name: _____

Its: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this ____ day of November, 2015, by _____, the _____ of Avatar Properties, Inc., a Florida corporation, in its capacity as sole member of JCH Group, LLC, a Delaware limited liability company, in its capacity as sole member of AVH EM, LLC, an Arizona limited liability company, for and on behalf thereof.

Notary Public

(Affix Notary Seal Here)

LIENHOLDER CONSENT, WAIVER AND AGREEMENT

Reference is made to that certain Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) Waiver and Development Agreement, dated November 12, 2015, initially by and among the Eastmark Community Facilities District No. 1, the Developer (as defined therein) and the Landowner (as defined therein), to which this Lienholder Consent, Waiver and Agreement is attached (the "*Agreement*"). All capitalized terms used and not otherwise defined in this Lienholder Consent, Waiver and Agreement shall have the meanings set forth in the Agreement. The undersigned, as a lienholder having an interest in real property within the Assessment District No. 5, hereby consents to, and agrees to be bound by, the terms, waivers and agreements set forth in the Agreement, acknowledges that the Agreement shall bind all the Property in which the undersigned has an interest within the District, and authorizes the recordation of the Agreement with respect to all such Property. Without limitation of the foregoing, the undersigned Lienholder acknowledges that the proceedings and related actions contemplated by the Agreement will not violate the Deed of Trust or other collateral security instruments by the Landowner in favor of the undersigned Lienholder; provided, the preceding is not intended to, and shall not apply, to any provision of such Deed of Trust or other security instrument pertaining to the failure of the Landowner to pay any assessment levied on any parcel remaining subject to the Deed of Trust in favor of the Lienholder. Further, in no event shall anything in this Lienholder Consent, Waiver and Agreement constitute a personal assumption by the undersigned of the obligations of any party under the Agreement.

DATED: _____, 2015

LIENHOLDER:

JPMorgan Chase Bank, N.A.

By: _____
Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of _____, an _____.

Notary Public

(Affix Notary Seal Here)

EXHIBIT A

LEGAL DESCRIPTION

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

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 expected the Public Infrastructure to be constructed, which may differ from the date that it was accepted by the District/City.

EXHIBIT C

MAP OF DEDICATION/IMPROVEMENT PLANS (CFD INFRASTRUCTURE)

Map of Dedication:

Map of Dedication, Eastmark Parkway, EPS Group, recorded on March 11, 2014, in Book 1179, Page 8, as Instrument No. 2014-0155740, of the Official Records of Maricopa County, Arizona.

Improvement Plans (CFD Infrastructure):

Improvement Plans for Eastmark Parkway Phase 1 (Ray Road to Signal Butte) – Revision 1 March 2014, EPS Group Inc., CFD Project No. S849, Approved by the City of Mesa on April 21, 2014.

EXHIBIT D

WHEN RECORDED RETURN TO:

**[PROPERTY OWNER/LIENHOLDER]
CONSENT, WAIVER AND AGREEMENT**

[To be executed by Owners of property/lienholders within Assessment District No. 5]

Reference is made to that certain Eastmark Community Facilities District No. 1 (City of Mesa, Arizona) Waiver and Development Agreement Pertaining to the To Be Formed Assessment District No. 5, initially by and among the District, Developer and Landowners (as defined therein), dated _____, 2015 and recorded as Instrument No. 2015-_____ in the Official Records of Maricopa County (the “*Agreement*”), in respect of the Property, to which this [Property Owner/Lienholder] Consent, Waiver and Agreement now attaches to and becomes part of the Agreement. All capitalized terms used and not otherwise defined in this [Property Owner/Lienholder] Consent, Waiver and Agreement shall have the meanings set forth in the Agreement. The undersigned, as [an owner/lienholder in respect] of real property within the Assessment District No. 5, legally described on Exhibit 1 hereto, hereby consents to, and agrees to be bound by, the terms, waivers and agreements set forth in the Agreement, acknowledges that the Agreement shall run with and bind all the real property in which the undersigned holds an interest within Assessment District No. 5, and acknowledges the recordation of the Agreement with respect to all such real property.

DATED: _____, 20__.

[PROPERTY OWNER/LIENHOLDER]:

By: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 20__, by _____, the _____ of _____, an _____.

Notary Public

(Affix Notary Seal Here)