

When Recorded Return To:
City Clerk
City of Maricopa
39700 West Civic Center Plaza
Maricopa, Arizona 85138

DEVELOPMENT INCENTIVE AGREEMENT
(Stonegate in the City of Maricopa)

THIS DEVELOPMENT INCENTIVE AGREEMENT (this “Agreement”) is made and entered into as of the 3rd day of October, 2023 (the “Effective Date”), by and between the CITY OF MARICOPA, an Arizona municipal corporation (“City”), Home Depot U.S.A., Inc., a Delaware corporation (“Home Depot”) and STONEGATE BFC LLC, an Arizona limited liability company (“Developer”). City, Home Depot and Developer are sometimes referred to herein individually as a “Party” and collectively as the “Parties”.

RECITALS

A. Developer owns certain real property in the City of Maricopa, with an area of approximately 54 +/- gross acres in the Stonegate Planned Area Development, generally located between Alan Stephens Parkway and Maricopa Casa Grande Highway (“MCG”) on the north and south respectively and west of Stonegate Road, as legally described in Exhibit “A”, attached hereto and incorporated herein by reference (the “Property”).

B. Developer intends to develop on the Property a mixed-use development, including approximately 17.649 acres of retail/commercial, and approximately 28.531 acres of for-rent residential, to be known as Stonegate (the “Project”), which may be constructed in one (1) or more phases.

C. Home Depot intends to purchase and construct a home improvement store on the portion of the Project consisting of the retail/commercial shopping center in general conformance with Case No. PAD23-05, which portion is depicted on Exhibit “D” attached hereto and incorporated herein (the “HD Property”). The portion of the Property not including the HD Property is hereinafter referred to as the “Developer Property”.

D. The Parties hereby acknowledge and agree that Developer’s and Home Depot’s development of the Project will result in significant benefits accruing to the City and the general public including, without limitation, expansion of the employment base within the City, increased property values, increased tax revenues, and incentivizing the development of adjacent properties and will improve or enhance the economic welfare of the citizens of Maricopa.

E. In recognition of the considerable value the Project will bring to the City, City will design and construct the Offsite Improvements (as defined in Section 2.6), reimburse development

impact fees that are required for development of the Project and reimburse construction sales tax incurred by Developer and Home Depot related to development of the Project, subject to certain limitations and performance requirements as set forth in this Agreement.

F. The Parties acknowledge that the incentives provided to Developer and Home Depot by City pursuant to this Agreement are the sole and exclusive incentives provided by City for development of the Property and that City will not provide additional incentives to Developer, Home Depot or their successor(s)-in-interest for development of the Property.

G. The Project shall be constructed pursuant to the applicable construction permits for the Project and in compliance with all City rules and regulations.

H. The Parties acknowledge that this Agreement constitutes a “Development Agreement” within the meaning of Arizona Revised Statutes (“A.R.S.”) § 9-500.05, and that, accordingly, it shall be recorded against the interest of the Developer and Home Depot in the Property in the Office of the Pinal County Recorder to give notice to all persons of its existence and of the Parties’ intent that the burdens and benefits contained herein be binding on and inure to the benefit of the Parties and all their successors in interest and assigns.

I. City has determined that the Project is in accordance with the City’s General Plan designation of Commercial in place on the date of this Agreement.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Recitals.** The recitals set forth above are acknowledged by the Parties to be true and correct and are incorporated into this Agreement by this reference.

2. **Agreements.**

2.1. Vested Rights. The Property is zoned PAD under the City’s Zoning Ordinance and the City agrees that the Property may be developed in accordance with Case No. PAD23-05. Further, Developer and Home Depot shall have a vested right to develop the Property in accordance with this Agreement for the Term (as defined in Section 4). In no event shall City require Developer or Home Depot to waive a development right, as set forth in the City’s rules and regulations or this Agreement, as a condition of development approval or issuance of a permit. The City agrees to support any necessary rezoning requests to support the Home Depot and other retail uses on the HD Property.

2.2. Development of the Property. To be eligible for the incentives under this Agreement, development of the Project must occur in accordance with the timeframes for the Construction Commencement Date and the Home Depot Opening Date (as each are defined below) as set forth in Section 2.2(a) and Section 2.2(b) below. The City Manager may approve reasonable extensions to the Construction Commencement Date and the Home Depot Opening Date, which approval shall not be unreasonably withheld, conditioned or delayed, for reasons related to City’s review and approval time frames. The Construction Commencement Date and the Home Depot

Opening Date will also be extended for delays caused by Force Majeure Events (as defined in Section 7.8). Developer or Home Depot must notify City of the occurrence of a Force Majeure Event affecting the Construction Commencement Date and the Home Depot Opening Date and the adjusted timeframes for the Construction Commencement Date and the Home Depot Opening Date. The Construction Commencement Date and the Home Depot Opening Date will be extended day for day during the continuance of any Force Majeure Event or during any delay caused by the City.

(a) Construction Commencement Date. For the purposes of this Agreement, the term “Construction Commencement Date” means the date that the City has approved a building permit for Home Depot for the construction of a home improvement store on the HD Property.

(b) Home Depot Opening Date. For purposes of this Agreement, the term “Home Depot Opening Date” means no later than October 1, 2025. The Home Depot Opening Date will be deemed satisfied upon issuance of a final Certificate of Occupancy and the Home Depot is open to the public (“Home Depot Opening”).

(c) Development Plan Approvals and Expedited Review. City shall grant and issue all approvals necessary to facilitate development of the Property in accordance with this Agreement, subject to City’s reasonable and customary review and approvals of plats, site plans and specifications, permits, and other similar items in accordance with all Applicable Laws (as defined in Section 3). City agrees to use good faith efforts to expedite all plat, site plan, and building applications in a timely manner and to complete the initial review of all future applications within ten (10) business days¹ after submittal of a complete application and any subsequent review within five (5) business days. The Parties further agree that the criteria for major or minor development review permits provided in Chapter 18.155 (Development Review Permit) of the City’s Zoning Ordinance or any provision of a Site Plan approval, including any application to amend or modify the Site Plan during the Term of this Agreement shall be processed according to the City Code.

2.3. Reimbursement of Fees and Construction Sales Tax.

(a) As used in this Section 2.3, the term “Development Impact Fees” means any Development Impact Fees charged to the development on the Property under A.R.S. § 9-463.05.

(b) As used in this Section 2.3, the term “Related Fees” means any City fees other than Development Impact Fees related to the Property, including, but not limited to, application fees, plan review fees, and inspection fees.

(c) As used in this Section 2.3, the term “Construction Sales Tax” means the City’s transaction privilege tax rate for construction contracting of three and one-half percent (3.5%) pursuant to Section 8-415 of the City of Maricopa Tax Code, which rate may be amended from time to time.

¹ For purposes of this Agreement, business days shall be defined as Monday through Thursday excluding any City recognized holidays.

(d) As used in this Section 2.3, the term “Home Depot Maximum Reimbursement Amount” means \$1,000,000.00 and the term “Developer Maximum Reimbursement Amount” means \$700,000.00.

(e) Provided the Home Depot Opening has occurred on or prior to the Home Depot Opening Date, then within thirty (30) days after the Home Depot Opening, City shall first pay to Home Depot the amount of Development Impact Fees, Related Fees and fifty percent (50%) of the Construction Sales Tax received by the City with respect to any portion of the Project or waive such fees and taxes (collectively, the “HD Reimbursement”), not to exceed the Home Depot Maximum Reimbursement Amount. The City, in its sole and absolute discretion, shall determine which fees and taxes to reimburse or waive. By way of example only, in the event Home Depot paid the fees outlined on the Permit Estimate, attached hereto as Exhibit “E”, the City could reimburse any combination of Development Impact Fees and Related Fees as shown on the Permit Estimate up to the Home Depot Maximum Reimbursement Amount and collect the remaining amount or the City could choose to reimburse Construction Sales Tax received by the City prior to the Home Depot Opening or the City could waive Development Impact Fees or Related Fees not yet received by the City.

(f) Provided the Home Depot Opening has occurred on or prior to the Home Depot Opening Date, and if Home Depot has received the Home Depot Maximum Reimbursement Amount, then within thirty (30) days after the Home Depot Opening, City shall pay to Developer the amount of Development Impact Fees, Related Fees and fifty percent (50%) of Construction Sales Tax received by the City in excess of the Home Depot Maximum Reimbursement Amount, with respect to any portion of the Project (collectively, the “Developer Reimbursement”), not to exceed the Developer Maximum Reimbursement Amount. The City, in its sole and absolute discretion, shall determine which fees and taxes to reimburse or waive. By way of example only, in the event Home Depot paid the fees outlined on the Permit Estimate, attached here to as Exhibit “E”, and the City paid Home Depot the Home Depot Maximum Reimbursement Amount, the City could reimburse Developer with any combination of Development Impact Fees and Related Fees as shown on the estimate up to the Developer Maximum Reimbursement Amount and collect the remaining amount or the City could choose to reimburse Construction Sales Tax received by the City prior to the Home Depot Opening or the City could waive Development Impact Fees or Related Fees not yet received by the City.

(g) If all of the HD Reimbursement (up to the Home Depot Maximum Reimbursement Amount) is not paid to Home Depot within thirty (30) days after the Home Depot Opening Date as required in subsection (e) of this Section 2.3 because Development Impact Fees, Related Fees and Construction Sales Tax have not been received by the City with respect to any portion of the Project in the amount of \$1,000,000 by the time of the Home Depot Opening, the remainder of the HD Reimbursement (up to the Home Depot Maximum Reimbursement Amount) shall be thereafter first paid to Home Depot within thirty (30) days after each fiscal quarter in the amount of the Development Impact Fees, Related Fees and Construction Sales Tax received by the City related to the Project prior to the end of such fiscal quarter and not previously reimbursed by City until the Home Depot Maximum Reimbursement Agreement is satisfied or until the expiration of the Term, whichever is earlier. In the alternative, the City, in its sole and absolute discretion, may waive Development Impact Fees or Related Fees not yet received by the City.

(h) If all of the Developer Reimbursement (up to the Developer Maximum Reimbursement Amount) is not paid to Developer within thirty (30) days after the Home Depot Opening Date as required in subsection (f) of this Section 2.3 because the City has not received from Developer or Home Depot sufficient Development Impact Fees, Related Fees and Construction Sales Tax with respect to any portion of the Project in the amount of \$700,000 by the time of the Home Depot Opening, then after paying first the Home Depot Maximum Reimbursement Amount, the remainder of the Developer Reimbursement (up to the Developer Maximum Reimbursement Amount) shall be paid to Developer within thirty (30) days after any fiscal quarter in the amount of the Development Impact Fees, Related Fees and Construction Sales Tax received by the City prior to the end of such fiscal quarter and not previously reimbursed by City until the Developer Maximum Reimbursement Agreement is satisfied or until the expiration of the Term, whichever is earlier. In the alternative, the City, in its sole and absolute discretion, may waive Development Impact Fees or Related Fees not yet received by the City.

(i) In the event Home Depot Opening has not occurred by the Home Depot Opening Date (as may be extended by a Force Majeure Event or delays caused by the City), then Developer and Home Depot shall not be eligible for reimbursement of any portion of the Development Impact Fees, Related Fees and Construction Sales Tax.

(j) The obligation of the City to reimburse or waive Development Impact Fees, Related Fees and Construction Sales Tax as provided for in this Section 2.3 shall terminate at the earlier of: (i) the expiration of the Term (as defined in Section 4), or (ii) when City has paid all of the amounts as required in subsections (e) and (f) of this Section 2.3.

2.4. Prior Development Agreement. That certain Development Agreement between Shea Maricopa, LLC and City of Maricopa recorded in the official records of Pinal County Arizona on April 27, 2007 as Fee Number 2007-051053, as amended by that certain First Amendment to Development Agreement recorded in the official records of Pinal County, Arizona on February 25, 2010 as Fee Number 2010-017696, by that certain Second Amendment to Development Agreement recorded in the official records of Pinal County, Arizona on March 2, 2010 as Fee Number 2010-0230704, by that certain Amendment and Consent to Assignment of Development Agreement with Estoppel recorded in the official records of Pinal County, Arizona on December 31, 2014 as Fee Number 2014-075061, and by that certain Fourth Amendment to Development Agreement recorded in the official records of Pinal County, Arizona on April 26, 2018 as Fee Number 2018-030894 shall not apply with respect to the Project.

2.5. Assignability. This Agreement binds, benefits, and may be enforced by the Parties and their respective heirs, successors, and permitted assigns. Provided, however, that the reimbursement of Development Impact Fees, Related Fees and Construction Sales Tax provided by the City to the Developer and Home Depot pursuant to this Agreement are personal to the Developer and Home Depot, will be retained by the Developer and Home Depot, not assigned to any other party, including any successor owner of the Property, or any portion thereof, without all Parties' express written approval, which approval shall be in each Party's sole and absolute discretion. Notwithstanding the foregoing, Developer or Home Depot may assign its other interests in this Agreement without the prior written consent of the City to a successor or special purpose entity controlled by or under common control with the originally named Developer or Home Depot pursuant to an Assignment and Assumption Agreement whereby the assignee

expressly assumes all of the obligations of the originally named Developer or Home Depot. The Developer or Home Depot shall provide the City notice as provided in Section 7.1 of any such proposed assignment and the identity of the successor, together with information regarding the successor, including such successor's experience in developing, leasing, operating, and maintaining commercial retail projects. The City's rights and obligations under this Agreement may not be assigned.

2.6. Offsite Improvements. City shall design, construct and complete the Offsite Improvements as set forth in this Agreement and the cost of such shall be the sole responsibility of City unless otherwise specifically set forth herein. City agrees to communicate and coordinate with Developer and Home Depot on the intended final design of the Offsite Improvements and the estimated timing of construction of the Offsite Improvements prior to final construction document preparation. City further agrees that neither Developer or Home Depot shall be required by the City of Maricopa, now or in the future, to design, construct or complete the Offsite Improvements described herein in connection with the development of the Project as presently constituted and authorized under PAD23-05. Developer and Home Depot shall be required to complete any and all requisite improvements related to the Property not specifically provided for herein.

(a) The phrase "Offsite Improvements" in this Agreement is further defined as the following on or adjacent to MCG and Stonegate Road:

(i) two (2) vehicular, above grade (bridge or culvert) crossings of the stormwater conveyance channel along the north side of the MCG, of sufficient size and strength to accommodate the anticipated traffic to the Project, which means at least a two-lane width bridge for the eastern bridge and a three-lane width bridge for the western bridge (collectively, the "Bridges");

(ii) any deceleration lanes, shoulder lanes, medians, and additional travel lanes required by the Project (the "Lanes");

(iii) any re-rocking and beautification of the median and/or stormwater channel deemed necessary by the City from Stonegate Road to the western bridge referenced in Section 2.6(a)(i);

(iv) any streetlights and/or traffic signals deemed necessary by the City from Stonegate Road to the western bridge referenced in Section 2.6(a)(i);

(v) any other improvements required by the City, except those improvements as shown on City approved improvement plans (which shall be installed and maintained by Home Depot, Developer or the applicable utility company), within the public rights-of-way in connection with the development of the Project as presently constituted and authorized under PAD23-05, including, without limitation, the property to be dedicated to the City by the Developer or Home Depot as required by Section 2.6(d);

(vi) any other ancillary improvements related to the foregoing items described in Section 2.6(a)(i) through Section 2.6(a)(v) deemed necessary by the City.

(b) City shall:

(i) commence construction of the Bridges and Lanes (as defined in Section 2.6(a)) no later than the earlier of: (A) six (6) months after the Effective Date of this Agreement, or (B) thirty (30) days after the Construction Commencement Date;

(ii) complete the Bridges and Lanes no later than two hundred and ten (210) days after the City starts work on the Bridges and Lanes, and

(iii) complete the remainder of the Offsite Improvements within five (5) years after all retail pads adjacent to the Offsite Improvements are open and operating. The fact that some or all of the Offsite Improvements are not complete shall not be a reason used by the City to withhold a permit or a certificate of occupancy to any part of the Project.

(c) If City fails to either commence or complete the Offsite Improvements within the time parameters set forth in this Section 2.6, then Developer or Home Depot shall have the right to design and construct or cause to be designed, constructed and installed, all unfinished portions of the Offsite Improvements, and the City shall reimburse Developer or Home Depot, as the case may be, for all actual costs associated therewith incurred by Developer and/or Home Depot, within thirty (30) days after Developer or Home Depot provides a written invoice with reasonable back up documentation; provided, however, City shall not be required to reimburse Developer or Home Depot for any amount the City expended for the construction of the Offsite Improvements prior to Developer or Home Depot electing to take over the construction of the Offsite Improvements. In such case, Developer or Home Depot shall cause the Offsite Improvements to be constructed and installed in a good and workmanlike manner, in accordance with the City's approved plans and in compliance with the Applicable Laws, including but not limited to, any applicable bidding requirements set forth in Title 34 of the Arizona Revised Statutes. Further, in the event City fails to either commence or complete the Offsite Improvements as required by this Agreement, the City agrees to issue permits and certificates of occupancy for development on the Property prior to the completion of the Offsite Improvements provided that fire access to the Project is maintained through the completion of the Offsite Improvements. Notwithstanding the foregoing, if the City is in the process of constructing the Offsite Improvements and is making good faith efforts to complete the construction of such, and such delay does not materially affect vehicular access to Property, that Developer or Home Depot will not exercise its forgoing rights to complete the construction of the Offsite Improvements.

(i) Developer or Home Depot, their respective agents, and employees, shall have the right, upon receipt from the City of an appropriate encroachment permit, which City shall issue without cost to Developer or Home Depot within ten (10) days after either Developer or Home Depot elect to take over the construction of the Offsite Improvements, to enter and remain upon and cross over any City easements or rights-of-way to the extent reasonably necessary to facilitate such construction and installation of the Offsite Improvements. Developer or Home Depot's use of such easements and rights-of-way, pursuant to an encroachment permit shall not impede or adversely affect the City's use and enjoyment thereof.

(ii) If Developer or Home Depot elects to takeover construction of the Offsite Improvements, upon completion of such construction and installation by Developer or

Home Depot, Developer or Home Depot (as applicable) shall restore such City easements and rights-of-way (except for the other Offsite Improvements), used pursuant to the encroachment permit, to their condition prior to entry.

(d) Developer or Home Depot, at no cost to City, shall dedicate the necessary right-of-way and a significant portion of the drainage easement along the MCG and Stonegate Road lying east of the western bridge referenced in Section 2.6(a)(i) for the Offsite Improvements and City agrees to accept such dedication, which is illustrated in Exhibit “C”, attached hereto. Such dedication shall be made prior to the commencement of the work on the Offsite Improvements or, earlier, upon request from the City. Developer and Home Depot may, but are not obligated to, include their required landscaping within the dedicated rights-of-way. To the extent that a Party to this Agreement shows any required landscaping in an adjacent right-of-way on its improvement plans, then such landscaping will be the responsibility of the party showing such landscaping improvements to install and maintain. The Parties further agree that for that area lying west of the western bridge, that such area will be dedicated to the City at a later date on or before the development of the adjacent retail pad sites, and that the area of dedication shall follow a similar pattern as the area lying east of the western bridge, unless otherwise agreed to by the Parties.

(e) City shall obtain all necessary governmental permits needed to plan, permit and construct the Offsite Improvements, including those necessary to obtain approvals from the United States Bureau of Reclamation (“USBR”) to cross the drainage canal, for access to the MCG, if so required. The installation and construction of the Offsite Improvements shall be according to specifications, standards and engineering practices regularly applied by the City to such improvements within the City. City shall construct and install the Offsite Improvements in a good and workmanlike manner in conformity with specifications, standards and engineering regularly applied by the City.

3. **Applicable Laws.** The development of the Property shall be subject to all federal, state, and local laws and regulations in existence as of the Effective Date that are applicable to the Property (collectively, “Applicable Laws”). Except for the following exceptions, City shall not impose or enact any additional Applicable Laws that adversely impact the ability to develop the Property for the Project:

3.1. City ordinances and regulations specifically agreed to in writing by Developer and Home Depot;

3.2. Amended or new City ordinances or regulations necessary to comply with state and federal laws and regulations in effect at that time;

3.3. Changes to taxes, filing fees, review fees, inspection fees, or development impact fees that are imposed on or charged by City to all similarly situated persons and entities; and

3.4. Future updates of, and amendments to, existing building, construction, plumbing, mechanical, electrical, drainage, and similar construction and safety-related codes, such as the Uniform Building Code, which updates and amendments are generated by a nationally recognized construction safety organization or by the county, state, or federal government, or by the Maricopa

Association of Governments, provided that such building or safety code updates and amendments are not applied discriminatorily against any portion of the Property; and further provided that such future updates shall not apply to any improvements for which a permit already has been issued, unless retroactive application is mandated by the State of Arizona or by federal law.

Nothing herein shall be interpreted as relieving Developer or Home Depot from any obligations which it may have with respect to applicable regulations enacted by the federal government or the State of Arizona. Nothing in this Agreement shall alter or diminish City's authority to exercise its eminent domain powers.

4. Term.

4.1. This Agreement shall commence on the Effective Date and continue for a period of twenty (20) years (the "Term"). The Agreement shall terminate automatically at the end of the Term and neither party shall have any further obligations after the expiration of the Term, including, but not limited to, the payment of any amounts not previously owed for the reimbursement of development impact fees or construction sales tax or the completion of any Offsite Improvements. In the event that the Home Depot Opening does not occur by the Home Depot Opening Date, any Party may terminate this Agreement immediately by providing written notice of such election to the other Parties, subject to any notice and cure provision as set forth in Section 5.1.

5. Default and Remedies.

5.1. Events Constituting Default. A Party hereunder shall be deemed to be in default under this Agreement if such Party breaches any obligation required to be performed by the respective Party hereunder, and such breach or default continues for a period of thirty (30) days after written notice of the default, in the event of a monetary default, or ninety (90) days after written notice of the default, in the event of non-monetary default, from the non-defaulting Party (or, if a non-monetary default cannot reasonably be cured within ninety (90) days, then the Party shall be in default if it fails to commence the cure of such breach within the 90-day period and diligently pursue the same to completion).

5.2. Remedies. In the event that a Party is in default under this Agreement and fails to cure such default within the applicable period of cure set forth in Section 5.1 above, the Party or Parties not in default shall have all rights and remedies available at law or in equity as provided for in this Agreement.

6. Conflict of Interest; Representatives Not Individually Liable.

6.1. Conflict of Interest. Pursuant to Arizona law, rules and regulations, no member, official or employee of the City shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official or employee participate in any decision relating to this Agreement which affects his or her personal interest or the interest of any corporation, partnership or association in which he or she is, directly or indirectly, interested. This Agreement is subject to and may be terminated by the City in accordance with the provisions of A.R.S. § 38-511.

6.2. No Personal Liability. No member, official or employee of the City shall be personally liable to the Developer, Home Depot 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 Developer, Home Depot or their respective successors or assigns, or (c) pursuant to any obligation of the City under the terms of this Agreement. In addition, no member, agent, employee or regent of the Developer or Home Depot shall be personally liable to the City (i) in the event of any default or breach by the Developer, Home Depot or the City, (ii) for any amount which may become due to the City, or (iii) pursuant to any obligation of the Developer, Home Depot or the City.

7. General Provisions.

7.1. Notices. Any notice, request, approval, consent or document required or permitted in this Agreement (collectively, “Notices”, or individually a “Notice”) shall be in writing and delivered either personally or by private messenger service (including overnight courier) or by mail addressed as provided below or by email only. Any Notice shall be deemed to be given or received on the date received or refused. Any Notice to be given by any Party hereto may be given by legal counsel for such Party. Counsel for the Parties may give simultaneous Notice hereunder to the opposing Party and its counsel. Any copy noted below as mandatory shall be sent simultaneously with the Notice to the Party. Any notice provided to Developer shall include a courtesy email copy. Each address shall for all purposes be as set forth below unless otherwise changed by Notice to the other Party as provided herein:

To Developer: Stonegate BFC, LLC
c/o Bela Flor Communities
1635 N. Greenfield Road, Suite 115
Mesa, Arizona 85205
Attention: Karl Huish
Phone: (480) 209-8700
Email: karl.huish@belaflor.com

With a copies to: Bela Flor Communities, LLC
1635 N. Greenfield Road, Suite 115
Mesa, Arizona 85205
Attention: Hudd Hassell, President
Telephone: 602-525-0000
Email: hudd@belaflor.com

Pew & Lake, PLC
1744 South Val Vista, Suite 217
Mesa, Arizona 85204
Attention: Reese L. Anderson
Telephone: 480-461-4670
Fax: 480-461-4670
Email: reese.anderson@pewandlake.com

To Home Depot: Home Depot U.S.A., Inc.
2455 Paces Ferry Road
Building C-19
Atlanta, Georgia 30339
Attention: Jeff Hardman
Email: jeffrey_s_hardman@homedepot.com

With copies to: Home Depot U.S.A., Inc.
2455 Paces Ferry Road, C-20
Atlanta, Georgia 30339
Attention: Suzanne Russo and Nick Harper
Email: suzanne_russo@homedepot.com and
william_n_harper@homedepot.com

Troutman Pepper
11682 El Camino Real, Suite 400
San Diego, CA 92130
Attention: Randal Lejuwaan
Email: randal.lejuwaan@troutman.com

To City: City of Maricopa
Attn: Rick A. Horst, City Manager
39700 West Civic Center Plaza
Maricopa, Arizona 85138
Email: rick.horst@maricopa-az.gov

With a copy to: Denis M. Fitzgibbons, City Attorney
Fitzgibbons Law Offices, P.L.C.
1115 East Cottonwood Lane, Suite 150
P.O. Box 11208
Casa Grande, Arizona 85130-0148
Email: denis@fitzgibbonslaw.com

7.2. Construction. Time is of the essence with respect to each provision of this Agreement. The language in all parts of this Agreement shall in all cases be construed as a whole and simply according to its plain meaning and not strictly for nor against any of the Parties, and the construction of this Agreement and any of its various provisions shall be unaffected by any claims, whether or not justified, that it has been prepared, wholly or in substantial part, by or on behalf of any of the Parties. The Parties do not intend to become, and nothing contained in this Agreement shall be interpreted to deem that the Parties are partners or joint venturers in any way. The singular includes the plural, and the plural includes the singular. A provision of this Agreement which prohibits a Party from performing an action shall be construed so as to prohibit the Party from performing the action or from permitting others to perform the action. Except to the extent, if any, to which this Agreement specifies otherwise, each Party shall be deemed to be required to perform its obligations under this Agreement at its own expense, and each Party shall be permitted to exercise its rights and privileges only at its own expense. “Including” means “including but not limited to.” “Include” means “include but not limited to.” “Any” means “any

and all.” Except to the extent context requires otherwise, “may” means “may but shall not be obligated to.” “At any time” means “at any time and from time to time.” An expense incurred on behalf of a Party shall be deemed to have been incurred by the Party. An obligation performed on a Party’s behalf and pursuant to its request or consent shall be deemed to have been performed by the Party.

7.3. Indemnity; Risk of Loss.

(a) Developer shall protect, defend, indemnify, and hold harmless City and its City Council members, officers, and employees from and against all claims which arise from or relate in any way to any act or omission of Developer, or its employees, contractors, subcontractors, agents, or representatives in implementing the terms of this Agreement or undertaken in the fulfillment of Developer’s obligations under this Agreement, except to the extent any Claim arises from the acts or omissions of the City, its employees, agents, representatives, successors, or assigns. The foregoing indemnity obligations of Developer shall survive the expiration or termination of this Agreement for a period of two (2) years.

(b) Home Depot shall protect, defend, indemnify, and hold harmless City and its City Council members, officers, and employees from and against all claims which arise from or relate in any way to any act or omission of Home Depot, or its employees, contractors, subcontractors, agents, or representatives in implementing the terms of this Agreement or undertaken in the fulfillment of Home Depot’s obligations under this Agreement, except to the extent any Claim arises from the acts or omissions of the City, its employees, agents, representatives, successors, or assigns. The foregoing indemnity obligations of Home Depot shall survive the expiration or termination of this Agreement for a period of two (2) years.

(c) City shall protect, defend, indemnify, and hold harmless Developer, Home Depot, and their members, officers, and employees from and against all claims which arise from or relate in any way to any act or omission of City, or its employees, contractors, subcontractors, agents, or representatives in implementing the terms of this Agreement or undertaken in the fulfillment of City’s obligations under this Agreement, except to the extent any Claim arises from the acts or omissions of the Developer, Home Depot, their employees, agents, representatives, successors, or assigns. The foregoing indemnity obligations of City shall survive the expiration or termination of this Agreement for a period of two (2) years.

7.4. No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than Developer, Home Depot and/or the City and their respective successors and assigns to rely upon the covenants and agreements herein contained nor to give any such third party a cause of action (as a third party beneficiary or otherwise) on account of any nonperformance hereunder.

7.5. Cooperation. The Parties hereby acknowledge and agree that they shall cooperate in good faith with each other and use best efforts to pursue the economic development of the Property as contemplated by this Agreement.

7.6. Dispute Resolution. If there is a dispute hereunder which the Parties cannot resolve between themselves after any applicable cure period, the Parties agree that there shall be a ninety

(90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by nonbinding mediation before commencement of litigation. The mediation shall be held under the commercial mediation rules of the American Arbitration Association. The matter in dispute shall be submitted to a mediator mutually selected by the Parties to the dispute. In the event that the Parties cannot agree upon the selection of a mediator within ten (10) days, then within five (5) days thereafter, the Parties to the dispute shall request the presiding judge of the Superior Court in and for the County of Pinal, State of Arizona, to appoint an independent mediator. The mediator selected shall have at least five (5) years of experience in mediating or arbitrating disputes relating to commercial property development. The cost of any such mediation shall be divided equally between the Parties to the dispute, or in such other fashion as the mediator may order. The results of the mediation shall be nonbinding on the Parties, and any Party shall be free to initiate litigation or arbitration as set forth herein upon the conclusion of mediation or ninety (90) days after the date the Parties first reached an impasse on the subject matter of the dispute, whichever occurs later. Notwithstanding the foregoing, in the case of a good faith dispute and until the resolution thereof, the City, Home Depot and Developer shall continue to meet all obligations set forth in this Agreement, including providing incentives as set forth in Section 2, except to the extent such action is the subject of the dispute.

7.7. Captions. The captions used herein are for convenience only and not a part of this Agreement and do not in any way limit or amplify the terms and provisions hereof.

7.8. Force Majeure. The performance of either Party and the duration of this Agreement shall be extended by any causes that are extraordinary or beyond the control of the Party required to perform, such as, but not limited to, a significant weather or geological event or other act of God, civil, or military disturbance, labor or material shortage (excluding those caused by lack of funds), initiative or referendum, confiscation or seizure by any government or public authority, or acts of terrorism (“Force Majeure Event”).

7.9. Laws and Venue. This Agreement shall be governed by and construed in accordance with the Applicable Laws and laws of the State of Arizona without giving effect to conflicts of law principles. This Agreement has been made and entered into in Pinal County, Arizona. Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Pinal (or, as may be appropriate, in the Justice Courts of Pinal County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any court action.

7.10. Successors and Assigns. Except as set forth in Section 2.5 regarding assignability of the Construction Sales Tax Reimbursement, this Agreement shall run with the land and all of the covenants and conditions set forth herein shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto.

7.11. Waiver. No waiver by any Party of any breach of any of the terms, covenants, or conditions of this Agreement shall be construed or held to be a waiver of any succeeding or preceding breach of the same for any other term, covenant, or condition herein contained.

7.12. Severability. In the event that any phrase, clause, sentence, paragraph, section, article, or other portion of this Agreement shall become illegal, null or void, or against public policy, for any reason, or shall be held by any court of competent jurisdiction to be illegal, null or void, or against public policy, the remaining portions of this Agreement shall not be affected thereby and shall remain in full force and effect to the fullest extent permitted by law.

7.13. Exhibits. All exhibits attached hereto are incorporated herein by this reference as though fully set forth herein.

7.14. Entire Agreement. This Agreement constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations, negotiations, and understandings of the Parties hereto, oral or written are hereby superseded and merged herein.

7.15. Amendment. No change, addition or deletion is to be made to this Agreement, except by a written amendment approved by the City Council and executed by the Parties. Although the material terms of this Agreement shall not be changed without City Council approval, the Parties shall have the right (but not the obligation), upon their mutual agreement, to vary or modify minor, administrative, technical, or procedural terms of this Agreement.

7.16. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument. Signature and acknowledgement pages may be removed from one counterpart and inserted into another counterpart to form a single document.

7.17. Recordation of Agreement. This Agreement shall be recorded in the Official Records of Pinal County, Arizona, within ten (10) days after its approval and execution by the City.

7.18. Consents and Approvals. Except as may be otherwise set forth in this Agreement, the Parties hereto shall at all times act reasonably with respect to any and all matters which require any Party to review, consent, or approve of any act or matter hereunder except for a matter where a Party can act in its sole and absolute discretion. The City hereby acknowledges and agrees that any unnecessary delay hereunder would adversely affect the development of the Project, and hereby authorizes and empowers the City Manager to consent to any and all requests of Developer, such consent not to be unreasonably withheld, delayed, or conditioned, requiring the consent of the City hereunder without further action of the City Council, except for any actions requiring City Council approval as a matter of law, including, without limitation, any further amendment or modification of this Agreement pursuant to Section 7.15 above.

7.19. City's Representations. The City represents and warrants to the Developer and Home Depot as follows:

(a) The City has the power and authority to execute, deliver, and perform its obligations under this Agreement and has obtained all necessary consents, authorizations, and approvals required as a condition to the execution and delivery thereof.

(b) The execution of this Agreement will not violate or constitute a default on the part of the City under any agreement to which the City is a party or by which it is bound.

(c) The representatives of the City who have executed this Agreement have the power and the authority to have done so.

(d) To the extent any utilities are required to be extended within the Maricopa Casa Grande Highway, the City agrees to coordinate with Developer, Home Depot and all applicable utility companies regarding the extension of utilities prior to or in conjunction with the City's construction of the Offsite Improvements, so as to avoid any unnecessary pavement cuts in the newly installed improvements. Notwithstanding anything to the contrary set forth herein, the City shall not be obligated to incur costs associated with the required utilities for the Project.

(e) The City shall own and maintain the Offsite Improvements following completion thereof, including the requirement to maintain such Offsite Improvements.

7.20. Developer's Representations. Developer represents and warrants to the City as follows:

(a) Developer has the power and authority to execute, deliver, and perform its obligations under this Agreement and has obtained all necessary consents, authorizations, and approvals required as a condition to the execution and delivery thereof.

(b) The execution of this Agreement will not violate or constitute a default on the part of Developer under any agreement to which Developer is a party or by which it is bound.

(c) The representatives of Developer who have executed this Agreement have the power and authority to have done so.

7.21. Home Depot's Representations. Home Depot represents and warrants to the City as follows:

(a) Home Depot has the power and authority to execute, deliver, and perform its obligations under this Agreement and has obtained all necessary consents, authorizations, and approvals required as a condition to the execution and delivery thereof.

(b) The execution of this Agreement will not violate or constitute a default on the part of Home Depot under any agreement to which Home Depot is a party or by which it is bound.

(c) The representatives of Home Depot who have executed this Agreement have the power and authority to have done so.

7.22. Proposition 207 Waiver. By executing this Agreement, Developer and Home Depot, on behalf of itself and any successors-in-interest to all or any portion of the Property hereby waives any right to claim diminution in value or claim for just compensation for diminution in value under A.R.S. § 12-1134, et seq. arising out of any City action permitted to be taken by the City pursuant to this Agreement. This waiver constitutes a complete release of any and all claims

and causes of action that may arise or may be asserted under A.R.S. § 12-1134, et seq. as it exists or may be enacted in the future or that may be amended from time to time with regard to the Property with regard to City actions permitted to be taken by the City pursuant to this Agreement. In connection therewith, upon the request of the City, Developer or Home Depot shall promptly execute and deliver to the City, any and all such reasonable waivers of rights under Proposition 207 which may be reasonably requested by the City consistent with this Agreement in order to more fully evidence the waiver set forth herein. Developer and Home Depot agree to indemnify, hold harmless, and defend City, its officers, employees, and agents, from any and all claims, causes of actions, demands, losses, and expenses, including attorney's fees, and litigation costs, that may be asserted by or may result from Developer or Home Depot seeking potential compensation, damages, attorney's fees or costs under A.R.S. § 12-1134, et seq. that they may have, solely as a result of this Agreement, now or in the future.

7.23. Estoppel Certificate. Any Party may request of the other Party, and the requested Party shall, within fifteen (15) business days, respond and certify by written instrument to the requesting Party that: (a) this Agreement is unmodified and in full force and effect, (b) the existence of any default under this Agreement and the scope and nature of the default, if applicable, (c) the existence of any counterclaims which the requested Party has against the other Party, and (d) any other matters that may reasonably be requested in connection with this agreement and the Project. In the event a Party has not received an estoppel certificate within fifteen (15) business days from the date of the request, then in such event, said Party shall be entitled to prepare an estoppel certificate and deliver the certificate to the other Party and such estoppel certificate shall be binding upon such Party.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Development Incentive Agreement has been executed as of the day and year first above written.

“City”

CITY OF MARICOPA,
an Arizona municipal corporation

By: _____
Nancy Smith, Mayor

Attest:

By: _____
Vanessa Bueras, MMC
City Clerk

Approved as to form:

By: _____
Denis M. Fitzgibbons
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

On this ____ day of _____, 2023, before me, the undersigned officer, personally appeared Nancy Smith, who acknowledged herself to be the Mayor of the CITY OF MARICOPA, an Arizona municipal corporation, and she, in such capacity, being authorized so to do, executed the foregoing instrument for the purposes therein contained on behalf of that entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

NOTARY SEAL:

Notary Public

“Developer”

STONEGATE BFC LLC,
an Arizona limited liability company

By: _____
Karl N. Huish, Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2023, before me personally appeared Karl N. Huish, the Manager of Stonegate BFC, LLC, an Arizona limited liability company, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document on behalf of the company.

Notary Public

My commission will expire:

“Home Depot”

HOME DEPOT U.S.A., INC.,
a Delaware Corporation

By: _____
Name: _____
Title: _____

STATE OF GEORGIA)
) ss.
COUNTY OF COBB)

On _____, 2023, before me personally appeared Suzanne Russo, the Assistant General Counsel of Home Depot U.S.A., Inc., a Delaware corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document on behalf of the company.

Notary Public

My commission will expire:

EXHIBIT "A"
(LEGAL DESCRIPTION OF PROPERTY)

[TO BE UPDATED IF FINAL PLAT HAS BEEN COMPLETED AND RECORDED]

Parcel No. 1

The Land referred to herein below is situated in the County of PINAL, State of Arizona, and is described as follows:

PARCEL A, OF RECORD OF SURVEY MINOR LAND DIVISION, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF PINAL COUNTY, ARIZONA, RECORDED IN FEE NO. 2021-009545 OF OFFICIAL RECORDS.

Parcel No. 2

The Land referred to herein below is situated in the County of PINAL, State of Arizona, and is described as follows:

Parcel C, Record of Survey Minor Land Division, recorded on December 27, 2021 at Fee No. 2021-163202 in the official records of Pinal County, Arizona.

Parcel No. 3

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF PINAL, STATE OF ARIZONA, AND IS DESCRIBED AS FOLLOWS:

Parcel D Record of Survey Minor Land Division, recorded on December 27, 2021 at Fee No. 2021-163202 in the official records of Pinal County, Arizona and more particularly described as follows:

A PORTION OF THE SOUTH HALF OF SECTION 26, AND A PORTION OF THE NORTH HALF OF SECTION 35, TOWNSHIP 4 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER MERIDIAN, PINAL COUNTY, ARIZONA MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTH QUARTER CORNER OF SAID SECTION 26, SAID POINT BEING A FOUND REBAR, FROM WHICH THE SOUTHEAST CORNER OF SAID SECTION 26, BEING A FOUND NAIL, BEARS NORTH 89 DEGREES 08 MINUTES 46 SECONDS EAST, FOR A DISTANCE OF 2635.30 FEET;

THENCE NORTH 89 DEGREES 08 MINUTES 46 SECONDS EAST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION 26 336.36 FEET TO THE POINT OF BEGINNING;

THENCE SOUTH 35 DEGREES 56 MINUTES 58 SECONDS WEST 260.58 FEET;

THENCE NORTH 54 DEGREES 00 MINUTES 15 SECONDS WEST 272.20 FEET;

THENCE SOUTH 36 DEGREES 00 MINUTES 04 SECONDS WEST 305.20 FEET TO THE BEGINNING OF A NON-TANGENT CURVE;

THENCE NORTHWESTERLY 231.89 FEET ALONG A 604.86 FOOT RADIUS CURVE, CONCAVE SOUTHWESTERLY AND HAVING A CHORD BEARING OF NORTH 58 DEGREES 23 MINUTES 42 SECONDS WEST AND CHORD LENGTH OF 230.47 FEET;

THENCE SOUTH 20 DEGREES 01 MINUTES 43 SECONDS WEST 29.00 FEET;

THENCE NORTH 69 DEGREES 35 MINUTES 39 SECONDS WEST 4.95 FEET TO A POINT OF CURVATURE;

THENCE WESTERLY 19.63 FEET ALONG AN 18.86 FOOT RADIUS CURVE, CONCAVE SOUTHERLY AND HAVING A CHORD BEARING OF SOUTH 80 DEGREES 34 MINUTES 57 SECONDS WEST AND CHORD LENGTH OF 18.76 FEET TO A POINT OF COMPOUND CURVATURE;

THENCE SOUTHWESTERLY 65.36 FEET ALONG A 65.48 FOOT RADIUS CURVE, CONCAVE NORTHERLY AND HAVING A CHORD BEARING OF SOUTH 79 DEGREES 21 MINUTES 19 SECONDS WEST AND CHORD LENGTH OF 62.68 FEET, TO THE BEGINNING OF A NON-TANGENT CURVE;

THENCE SOUTHWESTERLY 192.70 FEET ALONG A 734.52 FOOT RADIUS CURVE, CONCAVE NORTHWESTERLY AND HAVING A CHORD BEARING OF SOUTH 27 DEGREES 47 MINUTES 45 SECONDS WEST AND CHORD LENGTH OF 192.15 FEET TO A POINT OF TANGENCY;

THENCE SOUTH 36 DEGREES 11 MINUTES 05 SECONDS WEST 80.00 FEET;

THENCE NORTH 53 DEGREES 49 MINUTES 02 SECOND WEST 735.21 FEET TO THE SOUTHWEST CORNER OF TRACT Z OF GLENNWILDE-WEST PLAT, PER CABINET E, SLIDE 161, PINAL COUNTY RECORDER;

THENCE NORTH 00 DEGREES 07 MINUTES 09 SECONDS EAST 419.77 FEET TO THE SOUTHWEST CORNER OF PARCEL A PER FEE NUMBER 2021-009545 PINAL COUNTY RECORDER;

THENCE SOUTH 89 DEGREES 52 MINUTES 32 SECONDS EAST 686.33 FEET ALONG THE SOUTH LINE OF SAID PARCEL A;

THENCE NORTH 36 DEGREES 11 MINUTES 07 SECONDS EAST 5.84 FEET ALONG THE SOUTH LINE OF SAID PARCEL A;

THENCE SOUTH 53 DEGREES 48 MINUTES 53 SECONDS EAST 228.28 FEET ALONG THE SOUTH LINE OF SAID PARCEL A TO THE BEGINNING OF A NON-TANGENT CURVE;

THENCE NORTHEASTERLY 349.21 FEET ALONG AN 860.89 FOOT RADIUS CURVE CONCAVE SOUTHEASTERLY AND HAVING A CHORD BEARING OF NORTH 47 DEGREES 10 MINUTES 12 SECONDS EAST AND CHORD LENGTH OF 346.82 FEET TO A POINT OF TANGENCY;

THENCE NORTH 58 DEGREES 47 MINUTES 26 SECONDS EAST 121.31 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY LINE OF NORTH ALAN STEPHENS PARKWAY AS PRESENTLY LOCATED;

THENCE SOUTHEASTERLY 82.75 FEET ALONG A 1421.50 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY AND HAVING A CHORD BEARING OF SOUTH 30 DEGREES 22 MINUTES 02 SECONDS EAST AND CHORD LENGTH OF 82.73 FEET, AND ALONG SAID SOUTH RIGHT-OF-WAY LINE OF NORTH ALAN STEPHENS PARKWAY;

THENCE SOUTH 57 DEGREES 57 MINUTES 45 SECONDS WEST 19.00 FEET TO THE BEGINNING OF A NON-TANGENT CURVE;

THENCE SOUTHEASTERLY 554.87 FEET ALONG A 1440.50 FOOT RADIUS CURVE, CONCAVE NORTHEASTERLY AND HAVING A CHORD BEARING OF SOUTH 43 DEGREES 04 MINUTES 11 SECONDS EAST AND A CHORD LENGTH OF 551.44 FEET, AND ALONG SAID SOUTH RIGHT-OF-WAY LINE OF NORTH ALAN STEPHENS PARKWAY;

THENCE SOUTH 35 DEGREES 56 MINUTES 58 SECONDS WEST 104.72 FEET TO THE POINT OF BEGINNING.

EXHIBIT “B”
(RESERVED)

EXHIBIT "C"
(DEPICTION OF AREA TO BE DEDICATED TO THE CITY)

EXHIBIT "D"
DEPICTION OF HOME DEPOT PROPERTY

EXHIBIT "E"
PERMIT ESTIMATE