

When Recorded Return To:

City Clerk
City of Maricopa
39700 West Civic Center Plaza
Maricopa, Arizona 85138

DEVELOPMENT INCENTIVE AGREEMENT
(Sonoran Creek Marketplace in the City of Maricopa)

THIS DEVELOPMENT INCENTIVE AGREEMENT ("Agreement") is made and entered into as of the 21st day of January, 2020 (the "Effective Date"), by and between the CITY OF MARICOPA, an Arizona municipal corporation ("City"), and THOMPSON THRIFT DEVELOPMENT, INC., an Indiana corporation ("Thompson Thrift" or "Developer") (collectively, the "Parties").

RECITALS

- A. Developer has an interest in certain real property in the City of Maricopa, with an area of 20.04 gross acres located at the southwest corner of John Wayne Parkway and Edison Road, as legally described in Exhibit A, attached hereto and incorporated herein by reference (the "Property"), by virtue of the fact that Developer has entered into a contract to purchase said real property and close of escrow on the purchase is contingent on approval of this Agreement.
- B. Developer intends to develop a shopping center to be known as Sonoran Creek Marketplace on the Property ("Project"), which will include approximately 84,500 square feet of mixed use retail uses (the "Shopping Center") with a nationally recognized primary tenant that is not already located in the City of Maricopa ("Primary Tenant") in general conformance with the approved site plan, dated August 6, 2019 ("Site Plan"), attached hereto as Exhibit B, and approved by the City Planning and Zoning Commission on August 26, 2019 under Case DRP19-11.
- C. The City and Developer hereby acknowledge and agree that Developer's obligation to develop 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.
- D. Developer has agreed to sell to the City adjacent property for future commercial development known as Lot 3 (the "Future Development Property"), an approximately 4.22 acre portion of the Property as legally described and depicted on Exhibit C, attached hereto. The City desires to acquire the Future Development Property to enable the City to complement the Project with future development for the benefit of the City and its

residents.

- E. As an incentive for Developer to develop the Project in the City, City will construct planned improvements to Edison Road adjacent to the Property, waive development impact and administrative review fees that would otherwise be required for development of the Project, and reimburse construction sales tax incurred by Developer related to development of the Project to offset additional development costs to bring water and sewer services to the Property, subject to certain performance requirements as outlined in this Agreement.
- F. City and Developer acknowledge that the incentives provided to Developer by City pursuant to this Agreement are the sole and exclusive incentives provided by City for development of the Property and that City does not intend to provide additional incentives to Developer or Developer's successor-in-interest for development of the Property.
- G. Developer will undertake all actions required by City in order to obtain construction permits for the Project and to construct the Project pursuant to the terms and conditions set forth in this Agreement and complying 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 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.**

- 1.1. 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 CB-2 Commercial under the City's Zoning Ordinance and the City agrees that the Property may be developed in accordance with the Site Plan. Further, Developer shall have a vested right to develop the Property in accordance with this Agreement for the Term. In no event shall City require Developer 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.
- 2.2. Development of the Property. To be eligible for the incentives under this Agreement, development of the Property must occur in accordance with the following schedule (the "Construction Schedule"). The City Manager may approve extensions to the Construction

Schedule which shall not be unreasonably withheld, for reasons related to City's review and approval time frames and Force Majeure Events, as defined in Section 7.8. Developer must notify City of the occurrence of a Force Majeure Event affecting the Construction Schedule and the time for Commencement of Improvements and Primary Tenant Opening, as applicable, will be extended day for day during the continuance of any Force Majeure Event or during a City-caused delay.

- (a) Commencement of Improvements. Developer must commence construction of the first 30,000 square feet (the "Primary Tenant Inline") by March 30, 2021. For the purposes of this Agreement, Developer shall be deemed to have commenced construction of the Primary Tenant Inline at commencement of grading under City permit for same.
- (b) Primary Tenant Opening. The opening date for the Primary Tenant must occur on or before November 30, 2021 ("Primary Tenant Opening Date"). For the purposes of this Agreement, the Tenant will be deemed to be open if a final Certificate of Occupancy has been issued and Tenant is open to the public and operating before 8:00 p.m. Mountain Standard Time on the Primary Tenant Opening Date.
- (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 the Applicable Laws. 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 City and Developer further agree that the criteria for major or minor development review permits provided in Article 505 (Development Review Permit) of the City's Zoning Ordinance or any provision of the Site Plan approval pursuant to Case DRP19-11, any application to amend or modify the Site Plan during the Term of this Agreement shall be processed administratively as a Minor Development Review Permit pursuant to Section 505.04 of the City's current Zoning if such application would (i) result in a net increase or decrease of more than twenty percent (20%) of the building area for the entire Site Plan.

2.3. Waiver of Development Fees. The City agrees to defer payment of any Development Impact Fees charged to development on the Property under A.R.S. § 9-463.05 ("Development Impact Fees"), and any plan and design review fees associated with the replat, site plan approvals, and permits charged by the City related to the development of the Project (collectively referred to as "Review and Permit Fees"), until the Primary Tenant Opening Date ("Development Impact Fees and Review and Permit Fees are collectively referred to as "Fees"). If the Primary Tenant has opened pursuant to the Construction Schedule, thereafter, all deferred Fees will be waived and no additional Fees will be charged to the Developer in connection with the development of the Project. In the event Developer has not caused the Primary Tenant to open on or before the Primary Tenant Opening Date, except as caused by a Force Majeure Event, all deferred Fees shall be immediately due and payable by Developer, and all Fees owing thereafter related to the development of the Project shall be paid at the time of application (or comparable act) by Developer. In addition, after the Primary Tenant Opening Date, 25% of

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

the total gross leasable area of the Shopping Center must be open for business for two (2) consecutive years (“Minimum Occupancy Period”). If Developer fails to maintain occupancy during the Minimum Occupancy Period, subject to the applicable notice and cure period in Section 5.1 below, Developer shall reimburse the City all of the Fees waived or deferred. The waiver of fees provided for in this Section shall terminate at the expiration of the Term of the Agreement and shall only apply to the initial development of the Project and any additional or future redevelopment of the Property will be subject to the then-prevailing fees. In no event shall Developer receive a waiver or deferral of Development Impact Fees in excess of \$515,000.00, or in excess of \$125,000 for Review and Permit Fees.

- 2.4. Construction Sales Tax. In connection with construction of the Project and subject to the Primary Tenant opening on or before the Primary Tenant Opening Date, Developer shall pay or cause to be paid 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] (“Construction Sales Tax”). The City shall reimburse Developer one hundred percent (100%) of each and every payment of Construction Sales Tax related to the initial development of the Project within 30 days of the Primary Tenant Opening Date, and thereafter within 30 days of any fiscal quarter thereafter for additional Construction Sales Tax paid to the City related to additional construction on the Project until completion of development pursuant to the Site Plan (the “Construction Sales Tax Reimbursement”). The reimbursement of Construction Sales Tax provided for in this Section shall terminate at the expiration of the Term of the Agreement but shall only apply to the initial construction of the Project and any additional or future redevelopment of the Property will be subject to the then-prevailing Construction Sales Tax. Further, in no event shall Developer receive reimbursement in excess of \$500,000.
- 2.5. Assignability. The Construction Sales Tax Reimbursement provided by the City to the Developer pursuant to this Agreement may not be assigned by the Developer to any other party, including any successor owner of the Property or any portion thereof, without the City’s approval of such successor owner (and the manager or operator of the portion of the Project being sold if the successor owner will not manage or operate the portion of the Project being sold), which approval shall be in the City’s sole and absolute discretion. The Developer shall provide the City notice as provided in Section 7.1 of any such proposed assignment and the identity of the successor (and manager or operator, if applicable), together with information regarding the successor, including such successor’s experience in developing, leasing, operating, and maintaining commercial retail projects. Developer may assign its interest in this Agreement without the prior written consent of the City to a special purpose entity controlled by or under common control with the originally named Developer pursuant to an Assignment and Assumption Agreement whereby the assignee expressly assumes all of the obligations of the originally named Developer. City’s rights and obligations under this Agreement in whole or in part may be assigned to any legal entity; provided, however, City shall remain primarily liable for all obligations under this Agreement. This Agreement binds, benefits, and may be enforced by the parties and their respective heirs, successors, and permitted assigns. If the right of the Developer to receive the Construction Sales Tax Reimbursement will not be assigned by the Developer to a successor-in-interest, the City’s approval of the Developer’s successor (and manager or operator) shall not be required.
- 2.6. Purchase and Sale of Lot 3. The City agrees that the acquisition of Lot 3 will enable the City to complement the Project with future development for the benefit of the City and its residents. Developer agrees to sell and City agrees to acquire Lot 3 at a rate of \$4.00 per square foot,

AS-IS in accordance with the form of purchase and sale agreement and escrow instructions provided in Exhibit D, attached hereto and incorporated herein by reference. Developer's ability to complete the construction of the Project is contingent upon the City's completion of the Lot 3 Acquisition and as a result, the agreement shall be fully executed on or before March 1, 2020 and the City agrees to complete the purchase of Lot 3 on or before August 1, 2020, with any extension of time for completion to be agreed to in writing by Developer, which agreement shall not be unreasonably withheld. In addition to Lot 3, Developer agrees to convey to the City the adjacent real property as generally depicted on Exhibit C.2 (the "Common Drainage Property") attached hereto and incorporated herein by reference with the City's closing on Lot 3, at no separate cost to the City, which Common Drainage Property will be established in a replat of the Property. The City agrees that any future development of the Common Drainage Property will be restricted to drainage, open space and landscaping purposes.

- 2.7. Edison Road Improvements. City agrees to complete any necessary improvements to Edison Road adjacent to the Property to facilitate development in accordance with the Site Plan ("Edison Road Improvements") prior to December 31, 2020, which date may be extended in the City's sole and absolute extension for up to seven (7) months. City shall design and construct such improvements, the cost of which shall be the sole responsibility of City. City agrees to communicate with Developer on the intended final design of the Edison Road Improvements adjacent to the Property prior to final construction document preparation. City further agrees that except for the Edison Road Improvements and those improvements depicted on the Site Plan, no offsite improvements shall be required by the City of Maricopa now or in the future in connection with the development of the Property so long as the Property is developed consistent with the Site Plan and that neither Developer or successor owner will be required to contribute to the cost of any such other offsite improvements.
- (a) If City has not commenced construction of the Edison Road Improvements by February 1, 2021, or if commenced, has not completed the Edison Road Improvements prior to July 31, 2021, then Developer shall have the right to construct or cause to be constructed and installed, all unfinished portions of the Edison Road Improvements, and City shall reimburse Developer for all costs associated therewith, inclusive of interest accruing at a rate of the lesser of (i) 8.5% or (ii) the prime rate in effect from time to time (as set forth in the Wall Street Journal or Chase Bank if the Wall Street Journal no longer publishes) plus three percent (3%) on any of the money calculated and paid to the Developer under this Section. In such case, Developer shall cause the Edison Road 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 the bidding requirements set forth in Title 34 of the Arizona Revised Statutes. Further, the City agrees to issue certificates of occupancy for development on the Property prior to the completion of the Edison Road Improvements provided that fire access to the Project is maintained through the completion of the Edison Road Improvements.
- (i) Developer, its agents, and employees, shall have the right, upon receipt from the City of an appropriate encroachment permit, 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 Edison Road Improvements. Developer'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) Developer shall restore such City easements and rights-of-way, used pursuant to the encroachment permit, to their condition prior to Developer's entry upon completion of such construction and installation. Developer, its agents, and employees also shall have the right, upon receipt from the City of an appropriate encroachment permit, to enter and remain upon and cross over any City easements or rights-of-way to extent reasonably necessary to install and maintain landscaping material within the portion of the City right-of-way not used for vehicular travel.
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. 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;
 - 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 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. Term. Except as provided in Section 4.1(a), this Agreement shall commence on the Effective Date and continue for a period of ten (10) years. The Agreement shall terminate automatically on the tenth anniversary of the Effective Date.
 - (a) In the event that Developer does not close on the Property on or before July 1, 2020 ("Closing Date"), this Agreement shall terminate automatically.
 - (b) In the event that the Primary Tenant Opening Date of November 30, 2021, or the Minimum Occupancy Period has not been met, either party may terminate this Agreement immediately by providing written notice of such election to the other party, subject to any notice and cure provision as set forth in Section 5.1 below.

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 twenty (20) 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 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, 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 or its respective successor or assign, 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 shall be personally liable to the City (i) in the event of any default or breach by the Developer or the City, (ii) for any amount which may become due to the City, or (iii) pursuant to any obligation of the Developer 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. 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. 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: Casey Treadwell
Thompson Thrift Development, Inc.,
3131 East Camelback Road Suite 115
Phoenix, Arizona 85016

Copy to: Thompson Thrift Development, Inc.
Attn: Timothy E. Fears, Sr. VP – Legal
901 Wabash Avenue, Suite 300
Terre Haute, Indiana 47807
Phone: (812) 235-5959
Email: tfears@thompsonthrift.com

Carolyn Oberholtzer, Esq.
Bergin, Frakes, Smalley & Oberholtzer PLLC
4343 East Camelback Road, Suite 210
Phoenix, Arizona 85018

To City: City of Maricopa
Attn: Ricky A. Horst, City Manager
39700 West Civic Center Plaza
Maricopa, Arizona 85138

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

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. Developer shall protect, defend, indemnify, and hold harmless City and its City Council members, officers, and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorney's fees, expert fees and court costs) (collectively, "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.
- 7.4. No Third Party Rights. Nothing in this Agreement shall be construed to permit anyone other than Developer 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 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 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.
- 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. Proposition 207 Waiver. By executing this Agreement, Developer, 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 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 agrees 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 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.

- 7.22. 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 Agreement has been executed as of the day and year first above written.

“City”

CITY OF MARICOPA, an Arizona
municipal corporation

By: _____
Christian Price, Mayor

Attest:

Approved as to form:

By: _____
Vanessa Bueras, MMC
City Clerk

By: _____
Denis M. Fitzgibbons
City Attorney

STATE OF ARIZONA)
) ss.
COUNTY OF PINAL)

On this ____ day of _____, 2020, before me, the undersigned officer,
personally appeared Christian price, who acknowledged himself to be the Mayor of the CITY OF
MARICOPA, an Arizona municipal corporation, and he, 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

"Thompson Thrift"

THOMPSON THRIFT DEVELOPMENT, INC., an Indian corporation

By: _____, the _____ of
THOMPSON THRIFT DEVELOPMENT, INC., an
Indiana corporation

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On _____, 2020, before me personally appeared
_____, the _____ of Thompson
Thrift Development, Inc., an Indiana 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

(Affix notary seal here)

EXHIBIT "A"

LEGAL DESCRIPTION OF PROPERTY

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

PARCEL NO. 1:

Lots 2 and 3, of RE-PLAT SONORAN CREEK LOTS 2 AND 3 as recorded in Document No. 2016-036622 Pinal County Records, located within the southeast quarter of Section 21, Township 4 South, Range 3 East of the Gila and Salt River Base Meridian, Pinal County, Arizona;

EXCEPT that part of Lot 2 of, Re-Plat Sonoran Creek - Lots 2 and 3, as recorded in Document No. 2016-036622, records of Pinal County, Arizona, located in the Southeast quarter of Section 21, Township 4 South, Range 3 East of the Gila and Salt River Base Meridian, Pinal County, Arizona, described as follows:

COMMENCING at the East quarter corner of said Section 21;

Thence South 00 degrees 17 minutes 00 seconds West along the East line of said Southeast quarter of Section 21, a distance of 792.51 feet, to a point;

Thence leaving said East line North 89 degrees 43 minutes 00 seconds West, 80.00 feet, to the West right-of-way line of John Wayne Parkway (S.R. 347) per Book 17 of Maps, page 40, records of Pinal County, Arizona, an angle point in said Lot 2, and marking the POINT OF BEGINNING;

Thence North 89 degrees 43 Minutes 00 seconds West along the boundary line of said Lot 2, a distance of 291.57 feet, to a point;

Thence leaving said boundary line of Lot 2, North 00 degrees 17 minutes 00 seconds East, a distance of 21.16 feet, to the beginning of a 35.00 foot radius curve concave Southwesterly;

Thence along said curve 27.65, through a central angle of 45 degrees 15 minutes 26 seconds, to a point;

Thence North 44 degrees 58 minutes 26 seconds West, a distance of 81.49 feet, to a point;

Thence North 45 degrees 00 minutes 00 seconds East, a distance of 44.09 feet, to the beginning of a 41.00 foot radius curve concave Southeasterly;

Thence along said curve 32.20, through a central angle of 45 degrees 00 minutes 00 seconds, to a point;

Thence North 90 degrees 00 minutes 00 seconds East, a distance of 156.31 feet, to a point;

Thence North 87 degrees 39 minutes 36 seconds East, a distance of 143.70 feet, to a point on said West right-of-way line and said East boundary line;

Thence South 00 degrees 17 minutes 00 seconds West along said West right-of-way line and said East boundary line, a distance of 154.21 feet, to the POINT OF BEGINNING.

PARCEL NO. 2:

The beneficial easements as set forth in Common Operation and Reciprocal Easement Agreement for Sonoran Creek Marketplace recorded June 7, 2012, recorded in Recording No. 2012-047848 and Amendment recorded August 22, 2016, recorded in Recording No. 2016-055516, records of Pinal County, Arizona.

EXHIBIT “B”

EXHIBIT "C"

EXHIBIT “D”