

WHEN RECORDED RETURN TO:

**City of Mesa
Attn: Real Estate Services
20 E. Main Street
Mesa, Arizona 85201**

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DEVELOPMENT AGREEMENT

“MEDINA STATION”

=====

**CITY OF MESA, ARIZONA,
an Arizona municipal corporation**

AND

**SIMONCRE BUDDY, LLC,
an Arizona limited liability company**

AND

**TARGET CORPORATION
a Minnesota corporation**

=====

_____, 2025

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DEVELOPMENT AGREEMENT

This Development Agreement (this “Agreement”) is made as of the ____ day of _____, 2025 (the “**Effective Date**”), by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the “**City**”); SIMONCRE BUDDY, LLC, an Arizona limited liability company (“**Developer**”); and TARGET CORPORATION, a Minnesota corporation (“**Target Corp.**”).

RECITALS

A. Developer owns that certain unimproved real property located within the jurisdiction of Mesa, AZ consisting of approximately 30 +/- gross acres of land, the legal description and depiction of which are attached as Exhibit A-1 (the “**Developer Property**”) identified as Maricopa County APN(s) 220-82-018E and 220-82-018G. Target Corp. is the owner of the adjacent unimproved real property consisting of approximately 10 +/- gross acres of land in the jurisdictional limits of Mesa, AZ that is legally described and depicted in Exhibit A-2 (“**Target Property**”) identified as Maricopa County APN 220-82-018F. The Developer Property and Target Property are collectively hereafter referred to as the “**Property**”).

B. The Property is a part of the project known as “**Medina Station**” a mixed-use development on approximately 64.5 +/- acres located at the southeast corner of Signal Butte Road and Southern Avenue consisting of retail, commercial, restaurant, and multifamily residential. Medina Station is proposed to bring communities together by creating space that allows for more sit-down restaurants and space-making, as well as adding national retailers to the City of Mesa, aiming to attract patrons from Mesa and the surrounding areas. Medina Station is designed to increase the quality of life for the residents, attract visitors from outside the City of Mesa, and offer a unique dining experience that is not currently in the trade area or neighborhood. The portion of the Medina Station development on the Property will consist of the retail, commercial, and restaurant locations and that is hereafter referred to as the “**Project**”. The multi-family residential component of Medina Station will be developed by a third-party developer on land adjacent to, but not on, the Property, therefore the residential component of Medina Station is not the subject of this Agreement and is not a part of the defined “**Project**” herein.

C. As a part of the Project’s estimated 337,340 +/- square feet of retail, commercial, and restaurant space, Developer intends to include: (a) five (5) upscale, mid-class, high-quality, or contemporary casual full-service restaurants, with, as of the Effective Date, each restaurant having fewer than 100 locations nationally operating under its respective trade name, and the location at the Project will be the first of that restaurant trade name located in Mesa, AZ as of the Effective Date within a ten (10) mile radius of the Property except for a location that may already exist in the Mesa Gateway Airport (each a “**Restaurant**” and all five Restaurants collectively, “**Restaurant Row**”); and (b) three (3) large retail anchor stores totaling an estimated 245,300 +/- square feet (“**Retail Anchors**”), including an estimated 80,000 +/- square foot, two-story Dick’s Sporting Goods (“**Dick’s Sporting Goods**”). The location of Restaurant Row, which will total an estimated 39,000 +/- square feet of the Project, and the Retail Anchors are identified on the Project’s site plan attached as Exhibit B.

D. The City believes that development of the Project as described in this Agreement will serve an area need for the type of destination restaurants and retail provided by Restaurant Row and Dick's Sporting Goods, and will generate substantial transaction privilege tax revenues for the City, that would not otherwise be generated without Restaurant Row and the Retail Anchors, and which will exceed revenues that would be generated by alternative uses of the Property. For example, the higher-caliber, sit-down Restaurants are estimated, on average, to generate 73% more in sales annually than large national chains and, as they are anticipated to be restaurants that are more unique to the southeast region of the Phoenix Metroplex, they will draw customers from further away as destination locations.

E. The land uses contemplated by this Agreement are consistent with the City's zoning and land use ordinances (as amended from time to time, collectively, "**Zoning**"), the City's General Plan, as it may be amended from time to time (the "**General Plan**"), and this Agreement. The City and Developer previously entered into a development agreement approved by City Council Resolution No. (No. DA24-00054) limiting the uses at the Property, which was recorded as Instrument No. 2025-0072798 in the Official Records of Maricopa County.

F. The City Council finds and determines that, development of the Project will result in significant planning, economic and other public benefits to the City and its residents by, among other things: (a) providing for the construction of extensive public improvements and infrastructure in and around the Property; (b) providing for planned and orderly development of the Property consistent with and advancing the goals of the City's General Plan and the Zoning; (c) as noted previously, increasing tax revenues to the City arising from or relating to the improvements to be constructed on the Property; (d) creating a substantial number of new jobs and otherwise enhancing the economic welfare of the residents of the City; and (e) enhancing quality of life for the City's residents by providing local opportunities for high-quality restaurants and retail.

G. Developer and the City desire to enter into this Agreement related to the development of the Project to provide for certain tax reimbursement incentives. This Agreement constitutes a "Development Agreement" within the meaning of A.R.S. § 9-500.05 and a "Retail Development Tax Incentive Agreement" within the meaning of A.R.S. § 9-500.11, that will be recorded against the interest of Developer and Target Corp., respectively, in the Property. The Agreement will be recorded in the Office of the Maricopa County Recorder to give notice to all persons of its existence and of the intent that the burdens and benefits contained herein be binding on and inure to the benefit of Developer and Target Corp., respectively and as applicable, and the City and their respective successors in interest and assigns.

H. The Target Property is a part of the overall development of Medina Station and is a key element of the retail development activity for the Project; however, the obligations and responsibilities of Target Corp. under the Agreement are limited as set forth in section 14.4.3.

I. Pursuant to A.R.S. § 9-500.11(D)(2), Developer represents that, in the absence of the tax reimbursement incentives offered to Developer under this Agreement, Developer would not locate the Project in Mesa, AZ in the same time, place or manner.

J. As required by A.R.S. § 9-500.11(K), the City Council adopted a Notice of Intent to enter into this Agreement on June 16, 2025, a copy of which is on file with the City Clerk's Office as Resolution No. _____.

K. As required by A.R.S. § 9-500.11(D), the City Council finds that: (i) the tax incentive contemplated by this Agreement is anticipated to raise more revenue than the amount of the incentive during the duration of this Agreement, which was verified by an independent third party not financed or selected by the Developer; and (ii) in the absence of the tax incentives offered to Developer, neither the Project nor a similar development would locate in Mesa, Arizona in the same time, place or manner as contemplated by the Project.

AGREEMENTS

1. **Definitions; Index of Defined Terms.** In this Agreement, the below words and phrases are to be construed as defined in this section unless a different meaning clearly appears from the context. Words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The use of the term "shall" means a duty or obligation. The use of the term "including" is not a limitation, and refers to "including, but not limited to" and "including, by way of example and not limitation." Section references refer to sections in this Agreement and any subsections under such section. For an index of all defined terms in this Agreement, including those set forth in this section, see the ***Index of Defined Terms*** following the signature pages.

"Agreement" means this Agreement, as amended and restated or supplemented in writing from time to time and includes the Recitals and attached Exhibits which are incorporated by reference and form a part of this Agreement.

"Applicable Laws" means, collectively, the federal, State, county and local laws (statutory and common law), ordinances, rules, regulations, standards, permit requirements, and other requirements and official policies of the City, as they may be amended or hereafter enacted from time to time, which apply to the development of the Property or Project including the City Code, the General Plan & Zoning, City Building Regulations (Title 4, Mesa City Code), City Subdivision Regulations, and all related approvals or requirements by City Council or City boards.

"A.R.S." means Arizona Revised Statutes as now or later enacted or amended.

"Business Day" is Monday through Friday excluding any legal holidays in which the City's offices are closed.

"City Code" means the Code of the City of Mesa, Arizona, as amended from time to time.

"City Council" means the City Council for the City of Mesa, Arizona.

"Non-Performance" means one or more of the events described in sections 10.1 or 10.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods, and periods of Enforced Delay provided for in this Agreement.

“Party” means Developer and the City, and their permitted successors and assigns, “Parties” referring to Developer and the City collectively. The term “Party” or “Parties” specifically does not include Target Corp.

“Public Improvements” means those public improvements described and depicted in Exhibit C that Developer constructs or causes to be constructed for the Project that are directly related to the construction, development, or operation of the Project in accordance with the requirements of the Agreement.

“State” means the State of Arizona.

“Tax Code” means title 5, chapter 10 of the City Code.

2. Scope and Regulation of the Project.

2.1 Compliance with Applicable Laws. Developer agrees that the design and development of the Property, including the Project and Public Improvements, will comply with the terms of this Agreement and Applicable Laws. All Applicable Laws in effect at the time of development of any portion of the Property will apply to the development of the Project. Developer shall pay all applicable fees related to the development and construction of the Project.

2.2 City Review and Approval of Plans. The development and construction of the Project, including the Public Improvements, is subject to the City’s normal and customary planning, engineering, and building plan submittal, review, approval, and inspection processes and related fees. The City will use reasonable efforts to facilitate its regulatory processes, including use permits, variances, design review, building permits, and inspection processes, within the time normally associated with the City’s regulatory processes then in effect.

2.3 City Services. The City will make available City utility services to the Property through the City’s regular systems in the manner provided to other similarly situated customers within the City, without special rights or remedies. Service availability is subject to extension of the water and wastewater systems to and across all frontages of the Property by Developer at Developer’s sole cost and expense (gas extensions may also require Developer contribution). For the avoidance of doubt, any City service is subject to, and conditioned on compliance with, the City Code (including the Water Shortage Management Plan and measures taken thereunder), the City’s Terms and Conditions for the Sale of Utilities, all other Applicable Laws, and the timely payment of applicable rates, fees, and charges, all of the foregoing as are in effect or amended at any given time. Additionally, and notwithstanding the provisions of any other section of this Agreement, any obligations the City may have under this section 2.3: (i) are limited to those demands estimated for the Property in the applicable master plan(s) on file with the City as of the Effective Date; (ii) are contingent on the Arizona Department of Water Resources continuing the City’s designation of Assured Water Supply under A.R.S. § 45-576 and no moratorium having been declared under A.R.S. § 9-463.06; and (iii) in all events expire and terminate on the tenth (10th) anniversary of the Effective Date. Nothing herein constitutes the waiver of or any limitation on the City’s ability to enforce or adopt additional wastewater pretreatment requirements, nor the acceptance or approval by the City of Developer or any other occupant of the Property as an “MLM Customer” under title 8, chapter 10 of the City Code.

3. **Design Elements.** The Project will be developed in accordance with comprehensive design guidelines and standards demonstrating high-quality architectural and site design for the Project. Developer submitted comprehensive design guidelines and standards to the City that were required prior to the approval of any site plan. To ensure the high-quality architectural and site design for the Project, any modifications to the comprehensive design guidelines and standards will be subject to review and a recommendation of approval by the design review board, and final review and approval by the Planning Director.

4. **Public Improvements.** Developer shall plan, design, construct and dedicate to the City, subject to the terms and conditions of this Agreement, the Public Improvements described and depicted in Exhibit C. Any improvements identified in Exhibit C that may be constructed by the City, improvement districts, community facilities districts, utility companies, neighboring property owners, Arizona Department of Transportation, or other agencies or divisions of the State or Maricopa County, will not be a part of the Public Improvements in this Agreement; as of the Effective Date no such third party or the City has committed to constructing the Public Improvements and the Developer has the duty to construct the Public Improvements. City and Developer may modify the Public Improvements in Exhibit C eligible for reimbursement by mutual written consent, each at its own sole and absolute discretion, and subject to Applicable Law. The Public Improvements identified in Exhibit C as being on the Arizona Department of Transportation (ADOT) property that is located between E. Southern Avenue and the U.S. 60 adjacent to Maricopa County APNs 220-82-018H and 220-82-018J (“ADOT Property”) are not eligible for full reimbursement of Public Improvement Costs under this Agreement, see section 4.2 for more information.

4.1 **Design, Bidding, Construction and Dedication.**

4.1.1 **Qualification.** In order for Developer to qualify for the Construction Tax Rebate and Sales Tax Rebate as a reimbursement for eligible costs of the Public Improvements (see section 6), in addition to any other requirements herein, the Public Improvements must be:

(a) planned, designed, bid, constructed and dedicated in compliance with Applicable Laws, including Title 34 of A.R.S. and the City’s procurement and public bidding procedures; and

(b) directly related to the construction, development, or operation of the Project (i.e., the retail development activity) on the Property in order to meet the requirements of A.R.S. § 9-500.11. Any improvements that are not directly related to the construction, development, or operation of the Project are ineligible for reimbursement. For the purpose of clarity, improvements directly related to the construction, development, or operation of the multi-family residential component of Medina Station are not a part of the “Project” under this Agreement and thus are ineligible for reimbursement under this Agreement.

4.1.2 **Professional Services from Technical Registrants.** Pursuant to A.R.S. § 34-103, costs for professional services from technical registrants are reimbursable up to a total of five hundred thousand dollars (\$500,000) as allowed by A.R.S. Title 34, and only to the extent that those Public Improvement Costs are incurred on Public Improvements eligible for reimbursement under this Agreement. The documentation required under section 4.5 must clearly

demonstrate that such professional service costs were incurred for the Public Improvements, and not as part of the professional service procured for the non-Public Improvement portions of the Project. For the purposes of clarity, the five hundred thousand dollar (\$500,000) cap on professional services from technical registrants is a cap on payment for those particular types of services for eligible Public Improvement Costs to be included as a part of the Construction Tax Rebate, and not an additional five hundred thousand dollars (\$500,000) on top of the Maximum Reimbursement Cap (see section 6.2.1 for more information regarding the Maximum Reimbursement Cap).

4.2 Public Improvement Costs. **“Public Improvement Costs”** means all reasonable costs, expenses, fees and charges actually incurred by Developer and paid to third party contractors, construction managers, architects, engineers, surveyors, consultants, and other third parties for studies, reports, tests, inspections, reviews, materials, labor, design, engineering, surveying, site excavation and preparation, grading, drainage, removal, relocation and replacement of utility facilities and improvements, governmental permits and fees (excluding, impact fees), payment, performance and other bonds, and other similar costs and expenses reasonably necessary for the design, permitting, construction, installation, or provision of the Public Improvements. Developer must pay all Public Improvement Costs as the same become due. Public Improvement Costs shall not include: (i) recording costs; (ii) environmental remediation costs; (iii) archeological studies; or (iv) legal fees related to planning, permitting, easements, right-of-way dedications, or any other legal fees associated with the design and construction of the Public Improvements. In order for any Public Improvement Costs to be eligible for reimbursement through the Construction Tax Rebate and Sales Tax Rebate set forth in section 6, the Public Improvement Costs must be in compliance with the requirements of this Agreement, including section 4.1 (**“Reimbursable Public Improvement Costs”**). The Public Improvements identified in Exhibit C as being on the ADOT Property are not eligible for full reimbursement of Public Improvement Costs under this Agreement. The Reimbursable Public Improvement Costs for the Public Improvements on the ADOT Property are limited to a maximum amount of sixty percent (60%) of the Public Improvement Costs eligible for reimbursement under this Agreement; the other forty percent (40%) of the Public Improvement Costs on the ADOT Property are ineligible for reimbursement under this Agreement and are specifically excluded from the definition of Reimbursable Public Improvement Costs.

4.3 Public Improvements: Dedication, Acceptance, and Maintenance; Risk of Loss.

4.3.1 Dedication, Acceptance, and Maintenance. When the Public Improvements are Completed in accordance with the requirements of this Agreement and Applicable Law, Developer shall dedicate and the City will accept and control the Public Improvements; however, the City’s acceptance of the Public Improvements will be conditioned upon such reasonable and customary conditions as the City may impose including a two-year workmanship and materials contractor’s warranty. Upon acceptance of the Public Improvements by the City: (i) the Public Improvements will become public facilities and property of the City; and (ii) all subsequent maintenance, replacement, or repairs of the Public Improvements will be the responsibility of the City to complete except for landscaping which will remain the responsibility of the Developer to maintain, replace, and repair in accordance with the City Code, but the City does not waive any rights at law or in equity it may have related to maintenance,

replacement, or repair. Notwithstanding the foregoing, the Public Improvements on the ADOT Property will not be dedicated to the City, but must be dedicated, accepted and controlled by the State through the Arizona Department of Transportation, or such other State agency as the State deems appropriate, and may be conditioned upon such reasonable and customary conditions as the State may require. Failure of Developer to dedicate, and the State to accept and control, the Public Improvements on the ADOT Property will disqualify the eligible costs for the ADOT Property Public Improvements from being a Reimbursable Public Improvement Cost (see section 4.2 for additional limitations on the Reimbursable Public Improvement Costs related to the ADOT Property).

4.3.2 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Public Improvements unless and until title to the Public Improvements is accepted by and transferred to the City (as to all the Public Improvements not located on the ADOT Property) and the State (as to the ADOT Property Public Improvements only). At the time title to the Public Improvements (except for those on the ADOT Property) is accepted by and transferred to the City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to the City any unexpired warranties relating to the design, construction, or composition of such Public Improvements. Acceptance of any Public Improvements by the City will be conditioned on the City's receipt of a two (2) year warranty of workmanship, materials and equipment; provided, however, any such warranty may be provided by Developer's contractor or contractors directly to the City and are not required from Developer, and will extend from the date of completion of any Public Improvement, any component thereof, or the work of any specific trade or contractor, as applicable.

4.4 Required Dedications. As an element of the Conditions Precedent (as defined in section 6.1.1) to any obligation of City to make any tax reimbursement payment to Developer, Developer will dedicate and construct in accordance with City requirements (see City of Mesa Standard Detail M-19.01), and City will accept the dedication, of the rights-of-way as further described in Exhibit D to this Agreement ("**Required Dedications**").

4.5 Public Improvement Costs Compliance. Within ninety (90) days of the acceptance of the Public Improvements by the City (as to all the Public Improvements not located on the ADOT Property) and the State (as to the ADOT Property Public Improvements only), respectively, Developer shall submit to the City documentation showing the Public Improvement Costs Developer believes in good faith are Reimbursable Public Improvement Costs that meet the requirements of this Agreement. Documentation to support the Public Improvement Costs include evidence of paid itemized receipts or invoices, lien releases, proof of payment, and contracts with contractors and subcontractors. City staff will review the submitted Public Improvement Costs for compliance with this Agreement, including compliance with A.R.S. Title 34. Developer agrees that it will work with City staff in the provision of information and documentation necessary for the determination of the Reimbursable Public Improvement Costs. Any Public Improvement Costs claimed by Developer that are deemed by the City to not be Reimbursable Public Improvement Costs will be deemed disallowed and ineligible for reimbursement from the Construction Tax Rebate and Sales Tax Rebate set forth in section 6 or from any tax or other financial incentive that may be provided under this Agreement. Any decision related to the disallowance of Public Improvement Costs as Reimbursable Public Improvement Costs may be appealed by Developer as set forth in section 11.2 if there is an impasse as to the allowability of costs.

5. **Completion of Construction; Dick's Sporting Goods.** “**Completion of Construction**” or “**Completed**” means the date on which both of the following have occurred: (i) the temporary or, if a temporary is not issued, final certificate of occupancy for the applicable location and portion of the Project is issued by the City; and (ii) with regard to the Public Improvements, prior to the issuance of a certificate of occupancy, work in public rights of way must be completed, and acceptance and approval obtained for warranty and maintenance requirements, in accordance with the policies, standards, and specifications contained in Applicable Law. A temporary certificate of occupancy may be issued by the City in accordance with City Code section 4-1-6.

6. **Economic Incentives.** Based on the findings of the City Council set forth in Recitals F and K, in consideration of Developer's constructing or causing to be constructed the Public Improvements and otherwise satisfying the conditions of this Agreement, the City will rebate and pay to Developer certain portions of the Eligible Construction Tax and Eligible Sales Tax collected by the City related to the Project. The rebate will be a reimbursement for the Reimbursable Public Improvement Costs up to a set dollar maximum (the Maximum Reimbursement Cap defined in section 6.2.1 below). Eligibility to receive any portion of the tax rebate is contingent upon Developer meeting the Conditions Precedent in section 6.1.1 and Developer not having an uncured event of Non-Performance (see section 10). The exact portions of the Eligible Construction Tax and Eligible Sales Tax that are reimbursable to Developer are set forth in this section 6 and as further limited by section 14.4.3(b). Payment of the rebate is subject to the limitations on payment and eligibility to receive payment set forth herein.

6.1 **Completion of Conditions Precedent for Receipt of Tax Rebates.**

6.1.1 **Tax Rebates; Conditions Precedent.** The Construction Tax Rebate and Sales Tax Rebate (both defined below) are a refund to Developer for the Reimbursable Public Improvement Costs as permitted under Applicable Law, including A.R.S. § 9-500.11 and A.R.S. § 42-6010, for the Public Improvements that are constructed by Developer in accordance with the requirements of this Agreement, including Title 34 of A.R.S. As a condition to any right of Developer to receive any portion of the Construction Tax Rebate or Sales Tax Rebate, all of the following must take place on or before the dates listed subject to Enforced Delay (collectively, the “**Conditions Precedent**”): (i) obtain all the necessary permits to begin construction of the Public Improvements by the day that is the six (6) month anniversary of the Effective Date (“**Permit Deadline**”); (ii) Completion of Construction and acceptance by the City of all the Public Improvements not located on the ADOT Property and acceptance by the State of the Public Improvements located on the ADOT Property, both within one (1) year of the Permit Deadline (subject to Enforced Delay); (iii) the Required Dedications must be made to the City prior to the acceptance of the Public Improvements by the City and the State, respectively; and (iv) Completion of Construction of Dick's Sporting Goods, and the Dick's Sporting Goods being in operation as a retailer open to the public, within forty-eight (48) months of the Effective Date of this Agreement.

6.1.2 **Failure to Meet Conditions Precedent.** Failure of Developer to meet any of the Conditions Precedent by the required date(s) will result in: (a) Developer not receiving any portion of the Construction Tax Rebate and Sales Tax Rebate, or any other financial or tax related incentives that may be granted under this Agreement related to the development of the Property; and (b) this Agreement automatically terminating without further act or notice required

except for any obligations of Indemnity and any other obligations that expressly survive the termination of this Agreement.

6.1.3 Confirmation of Completion of Conditions Precedent. Developer will send Notice to the City of the completion of each of the Conditions Precedent, and City will provide Developer return Notice confirming completion or, if the City does not agree that the Condition(s) Precedent are complete, information regarding any remaining issues with the Condition(s) Precedent that Developer must resolve in order for the City to issue confirmation of completion. Completion of each Condition Precedent will be dated as of the date the City provides confirmation to Developer of the completion of the applicable Condition Precedent.

6.2 Tax Rebates. Following completion of all the Conditions Precedent, Developer will be eligible to receive a portion of the Construction Tax Rebate and all of the Sales Tax Rebate as provided in this section 6.2; Developer will be eligible to receive the remaining portion of the Construction Tax Rebate if the Completion of Construction of all Restaurants on Restaurant Row occurs and the five (5) Restaurants are open to the public as provided in section 6.2.2(b). The Construction Tax rebate and Sales Tax Rebate will be provided to Developer up to the collective, Maximum Reimbursement Cap subject to the requirements in this Agreement.

6.2.1 Maximum Reimbursement Cap. The City will pay to Developer the Construction Tax Rebate and Sales Tax Rebate in an amount not to collectively exceed the lesser of the following (the “**Maximum Reimbursement Cap**”): (i) the Reimbursable Public Improvement Costs that meet the requirements of this Agreement, or (ii) \$6,360,696 (six million, three hundred sixty thousand, six hundred ninety-six dollars) . For the avoidance of doubt, the total amount of any obligation the City has in this Agreement to pay the Construction Tax Rebate and/or Sales Tax Rebate (outlined below) is limited to the Maximum Reimbursement Cap.

6.2.2 Construction Tax Rebate. The “**Construction Tax Rebate**” consists of one hundred percent (100%) of the Eligible Construction Tax for the Project collected and actually received by the City as limited by this section 6.2.2. “**Eligible Construction Tax**” means the portion of the City’s transaction privilege taxes received by the City from taxable activities for the development of the Project pursuant to section 5-10-415 of the Tax Code titled “Construction Contracting; Construction Contractors,” as the same may change from time-to-time, that is made part of the City’s general fund, and that has not otherwise been dedicated or assigned to specific purposes (i.e. non-dedicated). As of the Effective Date, of the City’s total 2.0% transaction privilege tax rate for taxable activities, 1.20% of the tax rate is considered non-dedicated and would qualify for Eligible Construction Tax; the remaining .80% is dedicated or assigned to a specific purpose (.30% for the street maintenance fund, .25% for the quality-of-life fund, and .25% for public safety) and is therefore not Eligible Construction Tax for the purposes of this Agreement. For the avoidance of doubt, the Eligible Construction Tax represents a 1.20% tax rate on taxable activities of which one hundred percent (100%) may be used for the Construction Tax Rebate. The amount of Eligible Construction Tax Developer may receive as a reimbursement under this Agreement is further limited by section 14.4.3(b). In addition to other requirements herein, payment of the Construction Tax Rebate will be made in phases as follows subject to eligibility limitations:

(a) Dick's Sporting Goods: Construction Tax. Upon the completion of the Conditions Precedent, Developer will be eligible to receive, as a one-time payment, the Eligible Construction Tax collected by the City for the Project from the Effective Date of this Agreement through the date that is sixty (60) days after the Completion of Construction of the Dick's Sporting Goods (see section 6.5 for payment information).

(b) Restaurant Row: Construction Tax. In addition to completing the Conditions Precedent, if within forty-eight (48) months of the Effective Date of this Agreement, all five (5) Restaurants on Restaurant Row are Completed and each location is operating as an eating establishment open to the public, then Developer will be eligible to receive two (2) additional payments of Eligible Construction Tax: (i) the first additional payment will be a one-time payment of the Eligible Construction Tax collected by the City for the Project beginning on the date that is sixty-one (61) days following Completion of Construction of Dick's Sporting Goods through the date of the Completion of Construction of the fifth (5th) Restaurant on Restaurant Row; and (ii) the second additional payment will be a one-time payment of the Eligible Construction Tax collected by the City for the Project during the twelve (12) month period beginning on the date following the date of Completion of Construction of the fifth (5th) Restaurant. For the avoidance of doubt: (1) an eating establishment on Restaurant Row must be a mid-class, high-quality, or contemporary casual full-service restaurant, that, as of the Effective Date, has fewer than 100 locations operating under that trade name and the location at the Project will be the first of that restaurant trade name located in Mesa, AZ as of the Effective Date within a ten (10) mile radius of the Property except for a location that may already exist in the Mesa Gateway Airport in order to meet the definition of a "Restaurant" under this Agreement that would be counted towards the five (5) Restaurants needed to receive the portion of the Construction Tax Rebate outlined in this section 6.2.2(b); (2) all five (5) Restaurants must have Completed construction and be open to the general public; and (3) if Completion of Construction of all five (5) Restaurants on Restaurant Row does not occur within the required forty-eight (48) month period, Developer will have no right to, and will be ineligible to receive, any portion of the second phase of the Construction Tax Rebate described in this section 6.2.2(b).

6.2.3 Project Sales Tax Rebate; Economic Incentive Period. The "**Sales Tax Rebate**" consists of fifty percent (50%) of the Eligible Sales Tax collected by the City for taxable activities for any Restaurants on Restaurant Row and the Retail Anchors during the Economic Incentive Period. For the avoidance of doubt, the Sales Tax Rebate is specifically limited to fifty percent (50%) of the Eligible Sales Tax collected by the City for the Restaurants on Restaurant Row and the Retail Anchors, and does not include any other portions of the Project such as other eating establishments or other retailers.

(a) Sales Tax. "**Eligible Sales Tax**" means that portion of the City's transaction privilege taxes collected and actually received by the City pursuant to the Tax Code of the City, as the same may change from time-to-time, that is made part of the City's general fund, that has not otherwise been dedicated or assigned to specific purposes, and specifically does not include Construction Tax, and that is collected from taxable activities for any Restaurants on Restaurant Row and the Retail Anchors. As of the Effective Date, of the City's total 2.0% transaction privilege tax rate for taxable activities, 1.20% of the tax rate is considered non-dedicated and would qualify for Eligible Sales Tax; the remaining .80% is dedicated or assigned to a specific purpose (.30% for the street maintenance fund, .25% for the quality-of-life fund, and

.25% for public safety) and is therefore not Eligible Sales Tax for the purposes of this Agreement. For the avoidance of doubt, the Eligible Sales Tax for the Sales Tax Rebate is fifty percent (50%) of the 1.20% tax rate on the taxable activities.

(b) Economic Incentive Period. The “**Economic Incentive Period**” begins on the date of Completion of Construction of Dick’s Sporting Goods and ends ten (10) years later.

6.3 Modifications to Tax Code or Applicable Laws. This Agreement in no way binds the City Council or any taxing authority to prevent future modifications to Applicable Laws related to taxation, including the Tax Code. Changes in the Tax Code (including changes to the Eligible Construction Tax or Eligible Sales Tax structure, the dedication or assignment of any portion of tax to a specific purpose, the tax rate, or taxable activities) may result in changes to the amount of the Construction Tax Rebate and/or Sales Tax Rebate received by Developer. If prior to or during the Economic Incentive Period the Arizona Legislature eliminates or reduces the City’s ability to collect the Eligible Construction Tax or Eligible Sales Tax, then the City will pay the Construction Tax Rebate and Sales Tax Rebate from the collected Eligible Construction Tax or Eligible Sales Tax (as applicable) that the City receives prior to the elimination of the tax or, in the case of a reduction, the collected reduced amount. If the Eligible Construction Tax or Eligible Sales Tax is reduced or eliminated, the City’s obligation to pay the Construction Tax Rebate and Sales Tax Rebate will remain limited to the collected amounts of Eligible Construction Tax or Eligible Sales Tax, and the City will not be obligated to pay the Construction Tax Rebate or Sales Tax Rebate from any other sources of City revenue.

6.4 Accounting.

6.4.1 Bookkeeping. The portions of the Eligible Construction Tax and Eligible Sales Tax that will be used for payment of the Construction Tax Rebate and Sales Tax Rebate will be accounted for by the City separately from the tax revenues credited to the City’s general fund in a special bookkeeping record of the City; the City is not required to deposit the funds in a separate account at a bank or other financial institution. Although the City has no obligation to deposit Eligible Construction Tax or Eligible Sales Tax in an interest-bearing account, any interest that may accrue on the account in which the Eligible Construction Tax or Eligible Sales Tax are held will be the property of the City and will not increase the Maximum Reimbursement Cap or accrue for the benefit of Developer.

6.4.2 Conditions Precedent. Notwithstanding the accumulation of or credit of funds for the Construction Tax Rebate or Sales Tax Rebate, Developer will have no rights in the Construction Tax Rebate or Sales Tax Rebate, and no payment of any portion of the tax rebates will be made to Developer, unless and until Developer meets all the Conditions Precedent and, thereafter, Developer’s rights to payments of the Construction Tax Rebate and Sales Tax Rebate are subject to the conditions set forth in this Agreement. If the Conditions Precedent are not met in accordance with the requirements of this Agreement, all funds and interest accrued thereon (if any) for Eligible Construction Tax or Eligible Sales Tax activities will be retained by the City free and clear of any claims by Developer.

6.5 Rebate Payments. Developer's eligible payments of the Construction Tax Rebate and Sales Tax Rebate will be made by City to Developer as provided below.

6.5.1 Construction Tax Rebate Payments.

(a) Initial Request for Reimbursement. Within sixty (60) days of Developer receiving confirmation that all the requirements of the Conditions Precedent are met (see section 6.1.3) and so long as Developer does not have an uncured event of Non-Performance (see section 10), Developer will submit an initial request for reimbursement to the City's Tax Audit & Collections Administrator or their designee ("**Request for Reimbursement**"). The initial Request for Reimbursement will cover from the Effective Date through the date of the completion of all the Conditions Precedent ("**Initial Construction Payment Period**"). To determine the Eligible Construction Tax received by the City from taxable activities during the Initial Construction Payment Period, and to calculate the reimbursement payments for the Construction Tax Rebate, Developer will provide to the City's Tax Audit & Collections Administrator or their designee the necessary authorizations, summaries, and any other documentation reasonably requested by City to track the Eligible Construction Tax generated from and received by the City for taxable activities (the "**Tax Calculation Documents**") that occurred during the Initial Payment Period. The City will review the initial Request for Reimbursement and accompanying Tax Calculation Documents, then the City will generate an initial Reimbursement Report (see section 6.7) and make a reimbursement payment to Developer for the Initial Construction Payment Period within thirty (30) days of City's confirmation of the amount owed to Developer.

(b) Second Request for Reimbursement. Within sixty (60) days following the issuance of the final certificate of occupancy for the fifth (5th) Restaurant on Restaurant Row and the Restaurant being open to the public as an eating establishment, Developer will submit a second Request for Reimbursement and Tax Calculation Documents for the Eligible Construction Tax to cover the period beginning on the day after the Initial Construction Payment Period ends through the date of the issuance of the final certificate of occupancy for the fifth (5th) Restaurant on Restaurant Row ("**Second Construction Payment Period**"). The City will review the second Request for Reimbursement and accompanying Tax Calculation Documents for the Second Construction Payment Period to determine the Eligible Construction Tax received by the City from taxable activities during the Second Construction Payment Period, and to calculate the second Construction Tax Rebate payment owed to Developer for the Reimbursable Public Improvement Costs, then the City will generate a Reimbursement Report and make a reimbursement payment to Developer for the Second Construction Payment Period within thirty (30) days of confirmation of the amount owed. Notwithstanding anything in this section 6.5.1(b), if Developer fails to meet the timeframe requirements for the Completion of Construction of the fifth (5th) Restaurant on Restaurant Row and the Restaurant being open to the public as set forth in section 6.2.2(b), Developer will be ineligible to receive the Construction Tax Rebate payment for the Second Construction Payment Period.

(c) Final Request for Reimbursement. Within sixty (60) days following the one (1) year anniversary of the issuance of the final certificate of occupancy for the fifth (5th) Restaurant on Restaurant Row, Developer will submit a third and final Request for Reimbursement and Tax Calculation Documents for the Eligible Construction Tax to cover the period beginning on the day after the Second Construction Payment Period ends and continuing

for a period of twelve (12) months (“**Final Construction Payment Period**”). The City will review the final Request for Reimbursement and accompanying Tax Calculation Documents for the Final Construction Payment Period to determine the Eligible Construction Tax received by the City from taxable activities during the Final Construction Payment Period, and to calculate the final Construction Tax Rebate payment owed to Developer for the Reimbursable Public Improvement Costs, then the City will generate a Reimbursement Report and make a reimbursement payment to Developer for the Final Construction Payment Period within sixty (60) days of confirmation by the City of the amount owed. Notwithstanding anything in this section 6.5.1(c), if Developer fails to meet the timeframe requirements for the Completion of Construction of the fifth (5th) Restaurant on Restaurant Row and the Restaurant being open to the public as set forth in section 6.2.2(b), Developer will be ineligible to receive the Construction Tax Rebate payment for the Final Construction Payment Period.

(d) Maximum Reimbursement Cap. The City’s obligation to make Construction Tax Rebate payments will terminate upon the earlier of: (a) the City having issued Construction Tax Rebate and/or Sales Tax Rebate payments up to the Maximum Reimbursement Cap, (b) expiration of the Economic Incentive Period, or (c) termination of this Agreement.

6.5.2 Sales Tax Rebate Payments. After completion of the Conditions Precedent, the first bookkeeping credit for Eligible Sales Tax will be made within thirty (30) days following the City’s receipt of a monthly transaction privilege tax report (“**Monthly Tax Report**”) that includes Eligible Sales Tax; thereafter, subsequent credits will be made within thirty (30) days following the City’s receipt of a Monthly Tax Report that includes Eligible Sales Tax until the earlier of: (i) the City paying the Maximum Reimbursement Cap to the Developer, (ii) the expiration of the Economic Incentive Period, or (iii) the termination of this Agreement. To ensure confidentiality of taxpayers is maintained, payment of the Sales Tax Rebate following completion of the Conditions Precedent will not be made until at least three (3) of the Restaurants and/or Retail Anchors have submitted Monthly Tax Reports for a period of at least six (6) months. Once the six (6) month period has lapsed, the Sales Tax Rebate will be paid twice per year by the City to Developer by the 31st day of the month in January and July for each successive six (6) month period until the earlier of (a) the City having issued Construction Tax Rebate and/or Sales Tax Rebate payments up to the Maximum Reimbursement Cap, (b) expiration of the Economic Incentive Period, or (c) termination of this Agreement. The first Sales Tax Rebate payment will cover the period of time from the first bookkeeping credit for the Economic Incentive Period through the month preceding the issuance of the payment. For example, if the first payment is issued January 31, 2030, the first payment will be for fifty percent (50%) of the Eligible Sales Tax received from the beginning of the Economic Incentive Period through December 31, 2029. Notwithstanding the foregoing in this section 6.5.2, if Developer meets the requirements in this Agreement to receive the Sales Tax Rebate, but three (3) Restaurants and/or Retail Anchors do not have six (6) months of submitted Monthly Tax Reports within two (2) years of the start of the Economic Incentive Period, Developer will be entitled to receive Sales Tax Rebate payments every six (6) months as set forth above if the Restaurants and Retail Anchors submitting Monthly Tax Reports sign confidentiality waivers in a form allowed by the City; provided, however if the Restaurant and Retail Anchor taxpayers do not agree to sign waivers, Developer will be entitled to a one-time, lump sum payment of the Sales Tax Rebate (as allowed herein) within sixty (60) days following the completion of the Economic Incentive Period.

6.5.3 Bank Account Information. Prior to the issuance of any Construction Tax Rebate or Sales Tax Rebate payment, Developer will provide the City's Tax Audit & Collections Administrator or their designee with bank account information for the issuance of payments. It is the responsibility of the Developer to ensure that the bank account information provided, including any routing or electronic fund transfer information, is up to date and correct throughout the term of this Agreement.

6.6 Determination of Amount of Tax Revenues Received by the City. The City, in its sole and absolute discretion and in accordance with its normal processes and procedures related to tax calculations, will determine the amount of the Eligible Construction Tax and Eligible Sales Tax for each month (or partial month if applicable) in which Developer is eligible for the Construction Tax Rebate and Sales Tax Rebate.

6.7 Computation and Report of Sales Tax Revenues; Confidentiality. In conjunction with the payment of any portion of the Construction Tax Rebate or Sales Tax Rebate, the City will deliver to Developer a report of the related Eligible Construction Tax and Eligible Sales Tax revenues, as applicable, collected by the City ("**Reimbursement Report**"). Any Reimbursement Report will be subject to Applicable Laws that may prohibit or limit the dissemination or use of tax information, including confidentiality requirements of the Arizona Department of Revenue. If necessary to meet confidentiality requirements, the City's obligation to issue confidential information in a Reimbursement Report is conditioned upon the completion of a consent to release tax information by the applicable taxpayer, including the Restaurants and Retail Anchors.

6.8 Tax Licensing; Multiple Business Locations. The Arizona Department of Revenue requires each business with multiple locations in the State to have a separate location code in order to separately report the transaction privilege tax for each location. Developer will ensure that Developer's contractors and subcontractors for construction of the Project, as well as the Restaurants and Retail Anchors, are properly licensed with the Arizona Department of Revenue, and that the Restaurants and Retail Anchors have a unique location code used for the purposes of reporting tax. Except as may be required by any Applicable Laws and in accordance with the City's normal processes and procedures, the City is not responsible for ensuring that any tax licenses related to the Project are filed or the tax reported in a manner that ensures payment of the Construction Tax Rebate or Sales Tax Rebate to Developer.

6.9 Requests for Refund or Amended Return. Should the Developer, contractors, subcontractors, Restaurants, Retail Anchors, or any other Project related taxpayer amend its tax returns or request a refund for taxes paid that impacts the Construction Tax Rebate or Sales Tax Rebate to where such taxpayer is entitled to a refund, the Developer will return to the City within thirty (30) days of demand the portion of the Construction Tax Rebate and/or Sales Tax Rebate that was paid in error (i.e. refunded) as a result of the incorrect tax return filings.

6.10 City's Prepayment Right. Prepayment by the City of the Construction Tax Rebate and Sales Tax Rebate up to the Maximum Reimbursement Cap, in whole or in part, is permitted at any time, and from time to time, without penalty. The City may authorize such prepayment through any means available to the City; however, the City will have no obligation to do so.

7. **Indemnity; Insurance.**

7.1 **Indemnity.** Developer will pay, defend, indemnify and hold harmless (collectively, “**Indemnify**”) the City and its City Council members, officers, officials, agents, volunteers and employees (collectively, including the City, the “**City Indemnified Parties**”) for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys’ fees, experts’ fees and court costs associated) which may be imposed upon, incurred by or asserted against the City Indemnified Parties by third parties (“**Claims**”) which arise from or relate in any way, whether in whole or in part, to: (i) any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer’s obligations under this Agreement, including the development and construction of the Project; or (ii) any loss of or reduction in State shared monies arising in connection with a claim brought or maintained under A.R.S. § 41-194.01 or A.R.S. § 42-6010 as a result of this Agreement. The obligation of Developer to Indemnify will extend to and encompass all costs incurred by the City Indemnified Parties in defending against the Claims, including attorney, witness and expert fees, and any other litigation-related expenses. The provisions of this section 7.1, however, will not apply to Claims to the extent such Claims are solely and directly caused by the acts or omissions of the City Indemnified Parties. The obligations of Developer under this section will survive the expiration or termination of this Agreement.

7.2 **Indemnity: Devaluation Claims.** The duty of Developer to Indemnify the City Indemnified Parties includes any Claims by adjacent landowners to the Property that their parcels were devalued as a result of City’s agreements, acts and undertakings set forth in this Agreement or the development of the Project.

7.3 **Insurance.** During the applicable period of time set forth in Exhibit E, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, policies of insurance in amounts and coverages set forth on Exhibit E. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written Notice of cancellation to City, and will name City as an additional insured on such policies.

8. **City Representations.** The City represents and warrants to Developer that as of the Effective Date:

8.1 All consents and approvals necessary to the execution, delivery and performance of this Agreement were obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

8.2 The City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence, and enforce this Agreement.

8.3 The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

8.4 This Agreement (and each undertaking of the City contained herein), constitutes a valid, binding and enforceable obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other Applicable Laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

8.5 The execution, delivery and performance of this Agreement by the City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which the City is a party or is otherwise subject.

8.6 The City was assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **Developer Representations.** Developer represents and warrants to the City that as of the Effective Date:

9.1 It is a duly formed and legally valid existing entity under the laws of the State of Arizona.

9.2 All consents and approvals necessary to the execution, delivery, and performance of this Agreement were obtained, and no further action needs to be taken in connection with such execution, delivery and performance.

9.3 Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer contesting the validity or enforceability of this Agreement or Developer's performance under this Agreement.

9.4 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence, and enforce this Agreement.

9.5 This Agreement (and each undertaking of Developer contained herein) constitutes a valid, binding and enforceable agreement of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other Applicable Laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

9.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments, or decrees to which Developer is a party or to which Developer is otherwise subject.

9.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers and attorneys.

9.8 Developer was assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

10. **Non-Performance; Remedies.** An event of Non-Performance under this Agreement does not constitute a legal breach or default. It is the intent of the Parties that, in the case of such an event (whether or not it might otherwise be characterized as a breach or default), the other Party to this Agreement will have only the rights and remedies set forth in this section 10.

10.1 **Events of Non-Performance by Developer.** Non-Performance by Developer under this Agreement means one (1) or more of the following:

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made;

(b) Developer fails to comply with the dates established in this Agreement for the Completion of Construction of the Public Improvements or Dick's Sporting Goods, for any reason other than an Enforced Delay, or to timely make the Required Dedications;

(c) Developer transfers or attempts to transfer or assign this Agreement in violation of the terms herein, including section 14.4, provided however that Developer may sell Pad Sites to third parties without violating this section 10.1(c); or

(d) Developer fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

10.2 **Events of Non-Performance by the City.** Non-Performance by the City under this Agreement means one or more of the following:

(a) Any representation or warranty made in this Agreement by the City was materially inaccurate when made or shall prove to be materially inaccurate during the term of the Agreement;

(b) Subject to the provisions herein, including completion of the Conditions Precedent by Developer, the City fails to make Construction Tax Rebate and Sales Tax Rebate payments to Developer as provided in this Agreement; or

(c) The City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

10.3 **Grace Periods; Notice and Cure.** Upon the occurrence of an event of Non-Performance by either Party, such Party shall, upon written Notice from the other, performing Party, proceed immediately to cure or remedy such Non-Performance within thirty (30) days (or twenty (20) days in the event of a monetary non-performance or ninety (90) days if the Non-Performance relates to the date for Completion of Construction of the Public Improvements) after the effective date of such Notice.

10.4 Remedies on Non-Performance. Whenever any event of Non-Performance by a Party occurs and is not cured (or cure undertaken), the other, performing Party may take any or one or more of the following actions allowed for the Party:

10.4.1 Remedies of the City. The City's exclusive remedies for an event of Non-Performance by Developer consist of, and are limited to, the following:

(a) The City may suspend any of its obligations under this Agreement, other than maintaining the bookkeeping records of the Eligible Construction Tax and Eligible Sales Tax during the period of the Non-Performance. If the Non-Performance is not cured within the grace period provided in section 10.3, the City may terminate this Agreement by written Notice to Developer, in which event Developer will have no further rights to the Construction Tax Rebate or Sales Tax Rebate.

(b) If an event of Non-Performance by Developer occurs at any time relating to public health or safety or to unlawful construction or other activity which is not in accordance with the terms of this Agreement, the City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to address the public health or safety concern or to enjoin the unlawful construction or other activity undertaken by Developer which is not in accordance with the terms of this Agreement.

(c) The remedies provided in this section 10.4.1 do not limit the City's right to seek damages related to Developer's duty to Indemnify under the provisions of this Agreement, or under any right the City has as the municipal government unit in which the Property is located.

10.4.2 Remedies of Developer. Developer's exclusive remedy for an event of Non-Performance by the City will consist of and be limited to seeking specific performance by the City of its obligations under this Agreement. Developer waives any right to seek consequential, punitive, multiple, exemplary or any other damages from the City for an event of Non-Performance.

11. Cooperation and Alternative Dispute Resolution.

11.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, the City and Developer each will designate and appoint a representative to act as a liaison between the City and its various departments and Developer which may be changed from time-to-time (each a "**Representative**"). The City Representative and Developer Representative will be reasonably available to discuss and review the performance of the Parties to this Agreement and the development of the Project and Property.

11.2 Impasse. It is the intent of the Parties for Developer to proceed rapidly with the implementation of this Agreement and the development of the Project. Accordingly, the Parties agree that if at any time Developer believes an impasse has been reached with City staff on any issue affecting the Property which is not an event of Non-Performance, Developer will have the right to immediately appeal to the City Representative for an expedited decision. If the Developer and City Representative cannot resolve the impasse within ninety (90) days, the Developer has the right to meet with the City Manager or his designee.

11.3 Mediation. If there is a dispute hereunder which is not an event of Non-Performance by a Party and which the Parties cannot reasonably resolve between themselves, the Parties agree that there will be a ninety (90) day moratorium on litigation during which time the Parties agree to attempt to settle the dispute by non-binding mediation before commencement of litigation. The mediator will be agreed upon by the Parties and all administrative fees will be divided evenly between the City and Developer.

12. Defense of Agreement & Claims.

12.1 Indemnity. Developer will Indemnify the City and defend the validity and enforceability of this Agreement, at its sole cost and expense, in the event of any third party challenge to the validity and enforceability of this Agreement or any proceeding or litigation arising from its terms that names the City or Developer as a party or which challenges the authority of the Parties to enter into or perform any of its obligations hereunder. Developer will cooperate with the City and will otherwise meet its obligation to Indemnify the City set forth herein in connection with any other action by a third party in which the City is a party and the benefits of this Agreement to the City are challenged. The severability provisions of section 14.5 will apply in the event of any successful challenge to this Agreement.

12.2 Fees and Costs.

12.2.1 Between the Parties. In the event of litigation for Non-Performance by any Party and commencement of a subsequent legal action by a Party in the appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorneys' fees and court costs, including its reasonable costs of expert witnesses, transportation, lodging and meal costs of out-of-town parties and witnesses, costs of transcript preparation, and other reasonable and necessary direct and incidental costs of such dispute.

12.2.2 Third-Party Claim Naming Developer. Developer at its sole cost and expense, and by counsel of its own choosing, and subject to its reasonable business judgment, will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder or the enforceability of any term or condition of this Agreement. The City will cooperate with Developer in connection with any action by a third party in which Developer (but not the City) is a party in such action and the benefits of this Agreement to the City are challenged.

12.2.3 Third-Party Claim Naming City. The City will defend, by counsel of its own choosing, the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names the City as a party to such proceeding or litigation and which challenges: (i) the authority of the City to enter into this Agreement or perform any of its obligations under this Agreement, (ii) the enforceability of any term or condition of this Agreement, or (iii) the compliance of this Agreement with any Applicable Laws (including a claim or determination arising under A.R.S. § 41-194.01); provided, however, that Developer, within thirty (30) days of written demand from the City, must reimburse the City all of the City's actual, out-of-pocket attorneys' fees and costs incurred under this section 12.2.3. The City may settle any such proceeding or litigation on such terms and conditions as the City may elect in its sole and

absolute discretion, but at no additional expense or liability to Developer (beyond the reimbursement of the attorneys' fees and costs) without Developer's approval; however the term "expense or liability to Developer" does not include the loss of any benefit anticipated by Developer to be obtained by Developer under this Agreement, including the Construction Tax Rebate and Sales Tax Rebate. The language of this section 12.2.3 does not modify Developer's obligations to Indemnify the City set forth in this Agreement.

13. **Preservation of State Shared Revenue.** Notwithstanding any other provision of or limitation in this Agreement to the contrary, if the City's state shared revenue is withheld or is subject to being withheld under either A.R.S. § 41-194.01 or A.R.S. § 42-6010 related to this Agreement, the below provisions will apply, as applicable:

13.1 A.R.S. § 41-194.01. Notwithstanding any other provision of or limitation in this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona, then the City and Developer, in good faith, will attempt to modify this Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1). If, by the twenty-ninth (29th) day after the date of the notice from the Attorney General, the Parties, after good faith efforts, are not successful in modifying this Agreement to the satisfaction of the Attorney General, this Agreement will automatically terminate at midnight on the thirtieth (30th) day after the date of receiving such notice from the Attorney General, and upon such termination the Parties will have no further obligations under this Agreement. Additionally, if, under A.R.S. § 41-194.01(B)(2), the Attorney General determines that this Agreement may violate a provision of state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), the City will be entitled to terminate this Agreement, except if Developer posts such bond; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, the City may terminate this Agreement and the Parties will have no further obligations hereunder.

13.2 A.R.S. § 42-6010. If a court of competent jurisdiction determines that this Agreement or the Construction Tax Rebate or Sales Tax Rebate is a violation of A.R.S. § 42-6010 that would result in a withholding by the Arizona Department of Revenue of the City's state shared revenue as a penalty under A.R.S. § 42-6010(B), this Agreement will automatically terminate at midnight on the day after receiving notice of the court's ruling, and upon such termination the Parties will have no further obligations under this Agreement. Additionally, if the Attorney General or any state agency determines that this Agreement may violate A.R.S. § 42-6010, the City will be entitled to terminate this Agreement and the Parties will have no further obligations hereunder.

14. **General Provisions.**

14.1 Term. The term of this Agreement means the period of time commencing on the Effective Date and ending upon the earlier of: (i) the date of the Construction Tax Rebate and Sales Tax Rebate, up to the Maximum Reimbursement Cap as allowed herein, is paid to

Developer in accordance with the terms of the Agreement; or (ii) the termination of this Agreement as allowed herein.

14.2 Governing Law; Choice of Forum. This Agreement is made under and will be construed in accordance with and governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). The Parties wish to confer jurisdiction, to the extent possible, upon the Superior Court of Maricopa County for the purpose of coordinating and centralizing any required judicial administration of this Agreement. Accordingly, any action brought to interpret, enforce or construe any provision of this Agreement must be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa 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 the exclusive jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this section.

14.3 E-Verify. To the extent applicable under A.R.S. § 41-4401 and A.R.S. § 23-214, Developer represents and warrants that it will comply with all federal immigration laws and regulations that relate to its employees and their compliance with the E-Verify requirements of A.R.S. § 23-214(A), and Developer will contractually require its contractors and subcontractors to comply with same. Breach of the above-mentioned warranty will be deemed a material breach of the Agreement and may result in the termination of the Agreement by the City. The City retains the legal right to randomly inspect the papers and records of any employee of Developer who works under this Agreement to ensure compliance with the above-mentioned laws.

14.4 Assignment and Transfer; Sale of Certain Portions of the Developer Property.

14.4.1 Restrictions on Assignment and Transfer. This Agreement may not be assigned, either in whole or in part, by either Party without first receiving the written consent of the other Party. Any attempted assignment, either in whole or in part, without such consent will be null and void. The provisions of this Agreement are binding upon and will inure to the benefit and burden of the Parties, and their heirs, successors, executors, administrators, and assigns.

14.4.2 Sale of Pad Sites. Developer may have the Developer Property further subdivided to sell various parcels (“**Pad Site(s)**”) to third-parties in accordance with Applicable Laws. This Agreement is a retail development tax incentive agreement pursuant to A.R.S. § 9-500.11 to provide Developer a reimbursement of the Reimbursable Public Improvement Costs incurred by Developer in accordance with the terms herein. To that end, for any Pad Site purchased by a third-party: (i) this Agreement will not impose any obligations upon the third-party purchaser of a Pad Side and all obligations, including the development of the Public Infrastructure, will remain with and be personal to the Developer; and (ii) the third-party purchaser of a Pad Site will not be entitled to any of the benefits of this Agreement and all benefits will remain with and be personal to the Developer, including the right of Developer to receive any portion of the Sales Tax Rebate or Construction Tax Rebate. Accordingly, any third-party purchaser of a Pad Site will not be (a) considered the “Developer” for the purpose of this Agreement, or (b) a successor in interest or assignee of Developer; and, although the Agreement

will continue to run with the Property (including any third-party owned Pad Site), the obligations and benefits in this Agreement relating to Developer will remain personal to the Developer and will be retained by the Developer unless and until the City consents to an assignment in accordance with section 14.4.1.

14.4.3 Target Corp. Obligations and Benefits; Reporting of Construction Tax.

(a) Target Corp. Obligations and Benefits. This Agreement is a retail development tax incentive agreement pursuant to A.R.S. § 9-500.11 to provide Developer a reimbursement of the Reimbursable Public Improvement Costs incurred by Developer in accordance with the terms herein. Although this Agreement has certain terms and conditions pertinent to the Target Property and is recorded against the Target Property: (i) this Agreement does not impose any obligations upon Target Corp. or the Target Property, and all obligations, including the development of the Public Infrastructure, are personal to the Developer; and (ii) neither Target Corp. nor any other owner of the Target Property is entitled to any of the benefits of this Agreement as all benefits are personal to the Developer, including the right to receive any portion of the Sales Tax Rebate or Construction Tax Rebate. Accordingly, Target Corp. is not (a) the “Developer” for the purpose of this Agreement, or (b) a successor in interest or assignee of Developer; and, although the Agreement runs with the Property (including the Target Property), the obligations and benefits in this Agreement relating to Developer (as opposed to the City) will remain personal to the Developer and will be retained by the Developer unless and until the City consents to an assignment in accordance with section 14.4.1.

(b) Reporting of Target Property Eligible Construction Tax. Notwithstanding the foregoing, for the purposes of computing the Eligible Construction Tax attributable to construction on the Target Property, Target Corp. or its general contractor(s) will identify and submit its/their transaction privilege tax returns specific to the Target Property separate from any other construction projects within the jurisdiction of the City of Mesa for the term of this Agreement (see section 14.1). Should Target Corp. or its general contractor(s) fail to submit its/their transaction privilege tax returns in such a manner as to allow the City to determine the Eligible Construction Tax attributable to the Target Property, then, as the City’s sole remedy under this Agreement for such failure, any Eligible Construction Tax for the Target Property that is not reported in accordance with the requirements of this subsection (b) will not be included or counted towards the Construction Tax Rebate, and Developer will not be entitled to the reimbursement of such Target Property Eligible Construction Tax for the Construction Tax Rebate. For the purpose of clarity, this Agreement does not modify or alter any tax obligations of Target Corp. under Applicable Law, including any obligation for the payment of transaction privilege tax to the City.

14.5 Severability. The City and Developer each believes that the execution, delivery, and performance of this Agreement is in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring the City to do any act in violation of any Applicable Laws), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements

effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

14.6 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which was or had the opportunity to be represented by counsel of its own choosing, and none of which acted under any duress or compulsion, whether legal, economic or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

14.7 Notices.

14.7.1 Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a “**Notice**”) must be in writing and given by one of the following methods, with the delivery/posted charges prepaid, at the respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this section: (i) personal delivery; (ii) deposit in the United States certified, registered or express mail, return receipt requested; or (iii) any nationally recognized express or overnight delivery service (e.g. Federal Express or UPS), delivery charges prepaid, for next Business Day delivery.

<u>If to the City:</u>	City of Mesa 20 East Main Street, Suite 750 Mesa, Arizona 85211 Attn: City Manager
------------------------	---

With a required copy to:	Mesa City Attorney’s Office 20 East Main Street, Suite 850 Mesa, Arizona 85211 Attn: City Attorney
--------------------------	---

<u>If to Developer:</u>	SimonCRE Buddy LLC Attn: Joshua Simon 6900 E. 2 nd Street Scottsdale, AZ 85251
-------------------------	--

With a required copy to:	SimonCRE Buddy LLC Attn: Joe Acker 6900 E. 2 nd Street Scottsdale, AZ 85251
--------------------------	---

14.7.2 Effective Date of Notices. Any Notice sent by United States Postal Service certified, registered or express mail will be deemed effective the earlier of the actual

delivery, or three (3) calendar days after deposit in a post office operated by the United States Postal Service. Any Notice sent by a recognized national overnight delivery service will be deemed effective the next Business Day. Any Notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt or refusal to accept receipt by the addressee. Notices transmitted digitally or electronically may be offered as a courtesy, but do not constitute "Notice" for the purposes of section 14.7.

14.7.3 Payments. Unless otherwise agreed to by the Parties, payments will be made and delivered by wire transfer; provided, however, that payments will be deemed made only upon actual receipt by the intended recipient or, if made by wire transfer, transferred to the account number provided to the paying Party by the receiving Party.

14.8 Enforced Delay in Performance for Causes Beyond Control of Party. Whether stated or not, all periods of time in this Agreement are subject to this section 14.8. Neither the City nor Developer, as the case may be, will be considered in Non-Performance of its obligations under this Agreement in the event of enforced delay (an "**Enforced Delay**") directly due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including acts of God, 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. In no event will an Enforced Delay include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants or purchasers of portions of the Project or Property, nor from the unavailability for any reason of a particular contractor, subcontractor, vendor, investor or lender desired by Developer in connection with the Project, it being agreed that Developer will bear all risks of delay which are not an Enforced Delay. In the event of the occurrence of any such Enforced Delay, the time or times for performance of the obligations of the Party claiming delay will be extended for the period of the Enforced Delay; provided that the Party seeking the benefit of the provisions of this section must, within thirty (30) days after such Party knows (or reasonably should have known) of any such Enforced Delay, first notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Enforced Delay; provided, however, that either Party's failure to notify the other of an event constituting an Enforced Delay will not alter, detract from or negate its character as an Enforced Delay if such event of Enforced Delay were not known or reasonably discoverable by such Party; and provided further, that no period of Enforced Delay may exceed ninety (90) calendar days.

14.9 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

14.10 Section Headings. The section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

14.11 Waiver. The Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any

waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver is effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

14.12 Third-Party Beneficiaries. There are no third-party beneficiaries to this Agreement, except for successors and assigns of a Party, and except that the City Indemnified Parties are third-party beneficiaries of such indemnification provisions.

14.13 Exhibits. The Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

14.14 Entire Agreement. Except as expressly provided herein, this Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matter covered by this Agreement. For the purpose of clarity, this Agreement does not supersede development agreement No. DA24-00054 (Maricopa County Recorder No. 2025-0072798) related to the Property.

14.15 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as the other Party may reasonably require (subject to negotiation and agreement of the terms by the Parties) to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of: (a) this Agreement as in full force and effect; and (b) the performance of the obligations hereunder at any time during its term.

14.16 Computation of Time. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a day that is not a Business Day, then the duration of such time period or the date of performance, as applicable, will be extended so that it ends on the next succeeding day Business Day. The time for performance of any obligation or the taking of any action under this Agreement will expire at 5:00 p.m. (Phoenix, Arizona time) on the last day of the applicable time period.

14.17 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval will be given or denied by such Party in its reasonable discretion unless this Agreement expressly provides otherwise, and except that any decision related to this Agreement that must be made by the City Council will be at the City Council's sole and absolute discretion.

14.18 Covenants Running With Land; Inurement. Subject to section 14.4, the covenants, conditions, terms and provisions of this Agreement run with the Property and are binding upon, and inure to the benefit of the Parties and their respective permitted successors and assigns with respect to such Property. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term includes any such Party's permitted successors and assigns.

14.19 Recordation. Within ten (10) days after this Agreement is executed by the Parties, the City will record this Agreement in the Official Records of Maricopa County, Arizona.

14.20 Amendment. Except as otherwise expressly provided for or permitted in this Agreement, no change or addition is to be made to this Agreement except by written amendment executed by the City and Developer. In addition, no change or addition to section 14.4.3 is permitted without a written amendment executed by the City, Developer and the owner of the Target Property. Within ten (10) days after the full execution of any amendment to this Agreement, such amendment shall be recorded in the Official Records of Maricopa County, Arizona. Upon amendment of this Agreement as established herein, references to the “Agreement” will mean the Agreement as amended. The effective date of any duly processed amendment will be the date on which the last representative for the Parties executes the amendment. If, after the effective date of any amendment, the Parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the “Original Development Agreement.” When the Parties mean to refer to any specific amendment to the Agreement, which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

14.21 Good Faith of Parties. Except where any matter is expressly stated to be in the sole and/or absolute discretion of a Party, in the performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously and will not unreasonably withhold, delay, or condition any requested approval, acknowledgment or consent. Any decision related to this Agreement that must be made by the City Council will be at the City Council’s sole and absolute discretion.

14.22 Survival. The provisions related to a requirement to Indemnify, the waiver of claims in section 14.28, and any terms expressly stating they survive will survive the execution and delivery of this Agreement, the closing of any transaction contemplated herein, and the rescission, cancellation, expiration, or termination of this Agreement.

14.23 Nonliability of Officials, Employees, Members, Partners, Etc. No City Council member, official, representative, agent, attorney or employee of the City will be personally liable to the Developer, or to any successor in interest to the Developer, in the event of any uncured City Non-Performance or for any amount which may become due to the other Party or their successors, or with respect to any obligation of the City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will not extend to or be enforceable against: (a) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (b) the shareholders, members or managers or constituent partners of Developer; or (c) officers of Developer.

14.24 Conflict of Interest. Pursuant to A.R.S. § 38-503 and A.R.S. § 38-511, no member, official or employee of the City is permitted to have any personal interest, direct or indirect, in this Agreement, nor will 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 cancellation pursuant to the terms of A.R.S. § 38-511.

14.25 No Boycott of Israel. Developer certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the term of this Agreement will not engage in, a boycott of Israel.

14.26 Forced Ethnic Uyghur Labor Prohibition. As this Agreement relates to Developer's construction of the Public Improvements, in accordance with the requirements of A.R.S. § 35-394 and to the extent applicable, Developer certifies that it does not currently, and agrees for the duration of the Agreement that it will not, use: (i) the forced labor of ethnic Uyghurs in the People's Republic of China; (ii) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (iii) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If, after providing the certification described in this section, Developer becomes aware that it is not in compliance with the certification, it shall notify the City within five (5) Business Days of becoming aware of the noncompliance. Developer acknowledges that it must remedy the noncompliance and provide written certification of that within 180 days after notifying the City of its noncompliance. If Developer fails to remedy the noncompliance and provide the written certification within 180 days, the Agreement will terminate automatically.

14.27 City Council Action. The City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by the City which would, under any Applicable Laws require formal action, approval, or concurrence by the City Council, will be required to be done or performed by the City unless and until said formal City Council action is taken and is no longer subject to referendum. This Agreement does not bind the City Council or remove its independent authority to make determinations related to action of the City Council in any way.

14.28 Waiver of Claims Pursuant to A.R.S. § 12-1134 et seq. Developer hereby waives and releases City from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of City's approval of this Agreement, any and all restrictions and requirements imposed on Developer, the Project and the Property by this Agreement, the City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of the waiver in this section run with all land that is the subject of this Agreement and are binding upon all subsequent landowners, assignees, lessees and other successors, and will survive the expiration or earlier termination of this Agreement.

14.29 Consent. Wherever the City's consent is required to be given in this Agreement, such consent will be the consent of the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

DEVELOPER:

SIMONCRE BUDDY, LLC,
an Arizona limited liability company

By: _____

Printed name: _____

Title: _____

Date: _____

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On _____, 2025, before me, _____, a Notary Public in and for said State, personally appeared __ Joshua Simon, the _____ of SimonCRE Buddy, LLC, a Arizona limited liability company, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

[SEAL]

[SIGNATURE PAGE CONTINUES]

CITY:

CITY OF MESA,
an Arizona municipal corporation

By: _____
Scott Butler, City Manager

Date: _____

ATTEST:

By: _____
City Clerk

APPROVED AS TO FORM:

By: _____
City Attorney

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

On _____, 2025, before me, _____, a Notary Public in and for said State, personally appeared Scott Butler, the City Manager of the City of Mesa, an Arizona municipal corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

[SEAL]

[SIGNATURE PAGE CONTINUES]

SIGNED AND AGREED TO by Target Corporation as to those provisions of the Agreement applicable to Target Corporation with permission to record the Agreement on the Target Property.

TARGET CORPORATION:

Target Corporation,
a Minnesota corporation

By: _____
Printed Name: _____

Its: _____

Date: _____

STATE OF _____)
) ss
COUNTY OF _____)

On _____, 2025, before me, _____, a Notary Public in and for said State, personally appeared _____, the _____ of Target Corporation, a Minnesota corporation, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature _____

[SEAL]

INDEX OF DEFINED TERMS

- “ADOT Property” means as defined in section 4.
- “Agreement” is defined in section 1.
- “Applicable Laws” is defined in section 1.
- “A.R.S.” is defined in section 1.
- “Business Day” is defined in section 1.
- “City” is defined on the first page of this Agreement.
- “City Code” is defined in section 1.
- “City Council” is defined in section 1.
- “City Indemnified Parties” is defined in section 7.1.
- “Claims” is defined in section 7.1.
- “Completion of Construction” or “Completed” is defined in section 5.
- “Conditions Precedent” is defined in section 6.1.1.
- “Construction Tax Rebate” means as defined in section 6.2.2.
- “Developer” is defined on the first page of this Agreement.
- “Dick’s Sporting Goods” is defined in Recital C.
- “Economic Incentive Period” is defined in section 6.2.3(b).
- “Effective Date” is defined on Page 1.
- “Eligible Construction Tax” is defined in section 6.2.2.
- “Eligible Sales Tax” is defined in section 6.2.3(a).
- “Enforced Delay” is defined in section 14.8.
- “Final Construction Payment Period” is defined in section 6.5.1(c).
- “General Plan” is defined in Recital E.
- “Indemnify” is defined in section 7.1.
- “Initial Construction Payment Period” is defined in section 6.5.1(a).

“Maximum Reimbursement Cap” is defined in section 6.2.1.

“Medina Station” is defined in Recital B.

“Monthly Tax Report” is defined in section 6.5.2.

“Non-Performance” is defined in section 1.

“Notice” is defined in section 14.7.

“Pad Site(s)” is defined in section 14.4.2.

“Party” and “Parties” are defined in section 1.

“Permit Deadline” is defined in section 6.1.1.

“Project” is defined in Recital B.

“Property” is defined in Recital A and legally described and depicted in Exhibit A.

“Public Improvements” is defined in section 1.

“Public Improvement Costs” is defined in section 4.2.

“Reimbursable Public Improvement Costs” is defined in section 4.2.

“Reimbursement Report” is defined in section 6.7.

“Representative” is defined in section 11.1.

“Request for Reimbursement” is defined in section 6.5.1(a).

“Required Dedications” is defined in section 4.4 and described in Exhibit D.

“Restaurant” is defined in Recital C.

“Restaurant Row” is defined in Recital C.

“Retail Anchors” is defined in Recital C.

“Sales Tax Rebate” is defined in section 6.2.3.

“Second Construction Payment Period” is defined in section 6.5.1(b).

“Special Account” is defined in section 6.4.1.

“State” is defined in section 1.

“Target Corp.” is defined on the first page of this Agreement.

“Target Property” is defined in Recital A.

“Tax Calculation Documents” is defined in section 6.5.1(a).

“Tax Code” is defined in section 1.

“Zoning” is defined in Recital E.

LIST OF EXHIBITS

Exhibit A-1: Legal Description and Depiction of the Property

Exhibit A-2: Legal Description and Depiction of the Target Property

Exhibit B: Site Plan Identifying Restaurant Row and Retail Anchors

Exhibit C: Public Improvements Description & Depiction

Exhibit D: Property Required Dedications

Exhibit E: Insurance

EXHIBIT A-1
LEGAL DESCRIPTION AND DEPICTION OF THE PROPERTY

Parcel No. 1 (APN 220-82-018E):

Bowman

PAGE 1 OF 1

September 12, 2024
PROJECT # 051798-01

**LEGAL DESCRIPTION
PROPOSED LOT 1**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 36, FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 36 BEARS, NORTH 00°09'53" WEST (BASIS OF BEARINGS), A DISTANCE OF 2638.52 FEET;

THENCE NORTH 00°09'53" WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 850.00 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE, NORTH 00°09'53" WEST, A DISTANCE OF 446.45 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89°59'57" EAST, A DISTANCE OF 256.76 FEET;

THENCE SOUTH 00°00'03" EAST, A DISTANCE OF 424.72 FEET;

THENCE SOUTH 17°11'40" EAST A DISTANCE OF 223.17 FEET;

THENCE SOUTH 00°00'03" EAST A DISTANCE OF 57.80 FEET;

THENCE SOUTH 89°52'02" WEST A DISTANCE OF 240.65 FEET;

THENCE NORTH 05°53'39" WEST A DISTANCE OF 251.30 FEET;

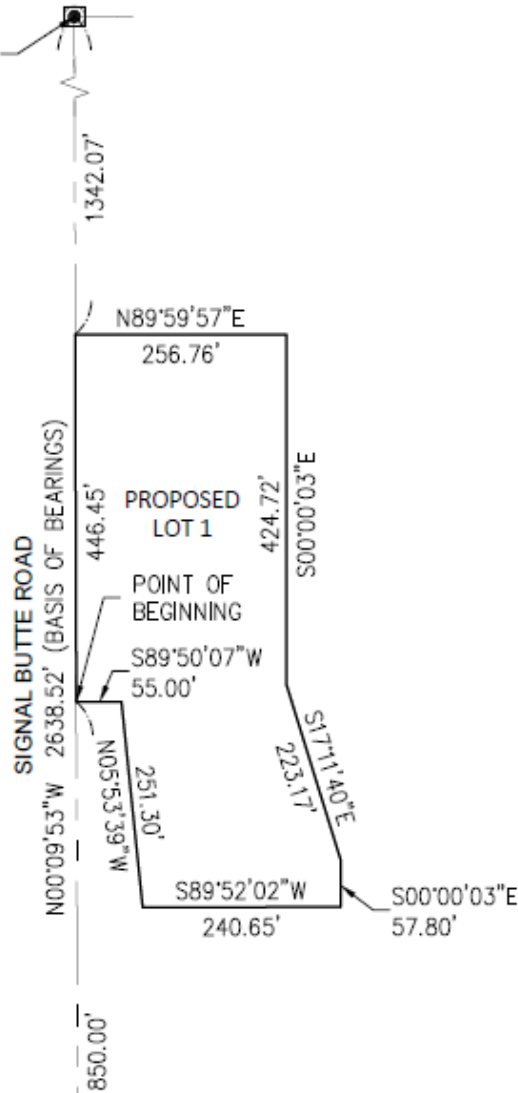
THENCE SOUTH 89°50'07" WEST A DISTANCE OF 55.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 172,014 SQ.FT. OR 3.9489 ACRES, MORE OR LESS.



Bowman • 1600 N Desert Drive, #210 • Tempe, Arizona 85288 • P: 480.629.8830

NORTHWEST CORNER
SECTION 36, T1N, R7E



WEST QUARTER CORNER
SECTION 36, T1N, R7E



D. Toney



SHEET 1 OF 1
DATE:
9/12/24

EXHIBIT PROPOSED LOT 1		
BY: TL	CHK: DT	QC:
BCG PROJECT NO: 051798-01 TASK: 001		
CLIENT REF NO:		

Bowman

1800 N Desert Drive, #210
Tempe, AZ 85281
Phone: (480) 829-8830
Fax: (480) 829-8841
www.bowman.com

Parcel No. 2 (APN 220-82-018G):

Bowman

PAGE 1 OF 1

September 12, 2024
PROJECT # 051798-01

**LEGAL DESCRIPTION
PROPOSED LOT 3**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 36, FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 36 BEARS, NORTH 00°09'53" WEST (BASIS OF BEARINGS), A DISTANCE OF 2638.52 FEET;

THENCE NORTH 00°09'53" WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 1331.95 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE, NORTH 00°09'53" WEST, A DISTANCE OF 1306.57 FEET TO THE NORTHWEST CORNER OF SAID SECTION 36;

THENCE ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, NORTH 89°52'04" EAST, A DISTANCE OF 806.80 FEET;

THENCE DEPARTING SAID NORTH LINE, SOUTH 00°00'03" EAST, A DISTANCE OF 1290.73 FEET;

THENCE NORTH 89°59'57" EAST, A DISTANCE OF 132.94 FEET;

THENCE SOUTH 00°00'03" EAST, A DISTANCE OF 81.82 FEET;

THENCE SOUTH 89°59'57" WEST, A DISTANCE OF 180.95 FEET;

THENCE SOUTH 00°00'03" EAST, A DISTANCE OF 15.00 FEET;

THENCE SOUTH 89°59'57" WEST, A DISTANCE OF 205.27 FEET;

THENCE NORTH 09°56'30" WEST, A DISTANCE OF 5.72 FEET;

THENCE SOUTH 89°59'57" WEST, A DISTANCE OF 277.93 FEET;

THENCE NORTH 00°00'03" WEST, A DISTANCE OF 73.50 FEET;

THENCE SOUTH 89°59'57" WEST, A DISTANCE OF 270.86 FEET TO THE POINT OF BEGINNING.

CONTAINING 1,103,146 SQ.FT. OR 25.3247 ACRES, MORE OR LESS.



{00565185.1}

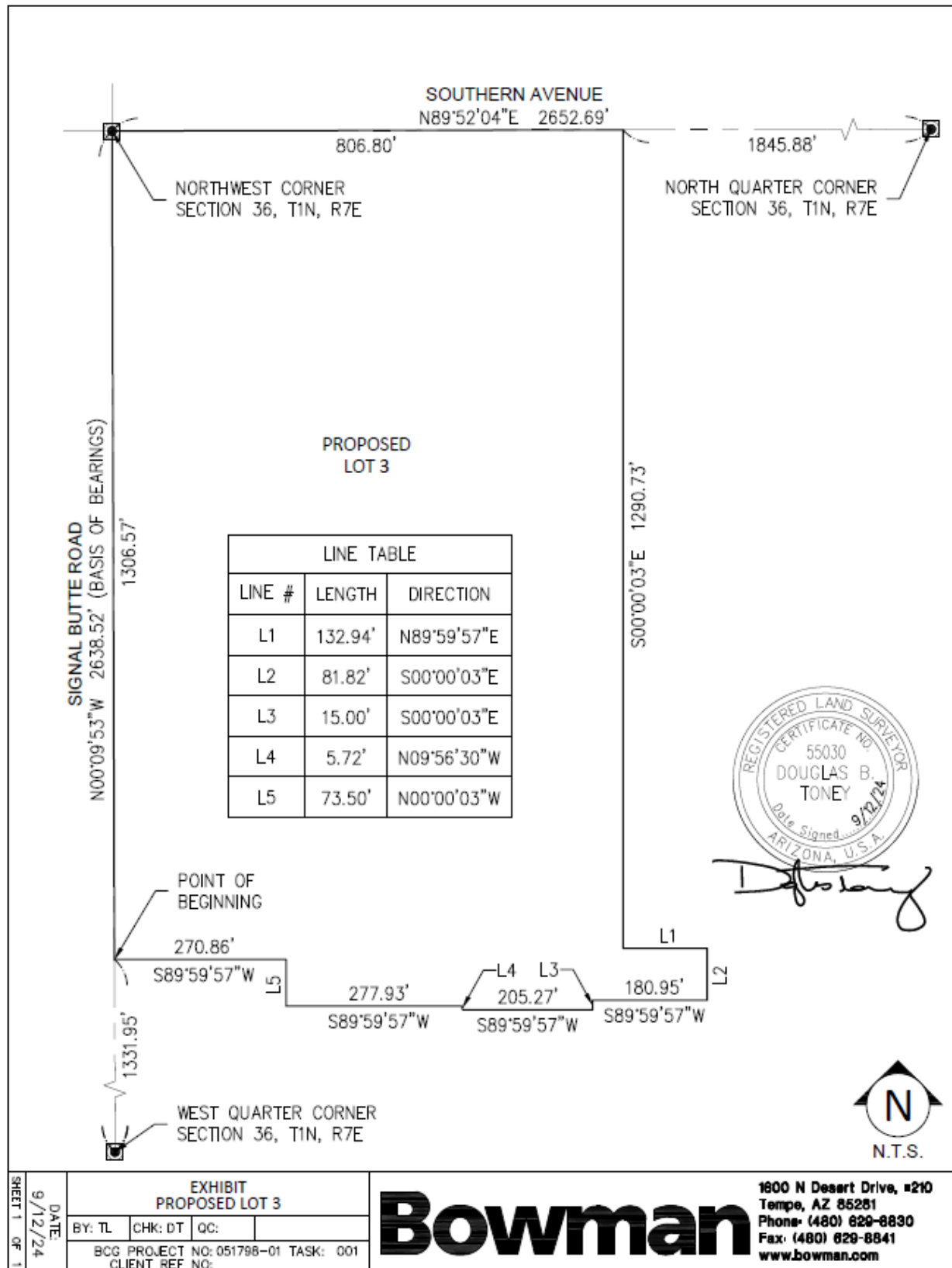


EXHIBIT A-2
LEGAL DESCRIPTION AND DEPICTION OF THE TARGET PROPERTY

APN 220-82-018F:

Bowman

PAGE 1 OF 2

September 12, 2024
PROJECT # 051798-01

**LEGAL DESCRIPTION
PROPOSED LOT 2**

THAT PORTION OF THE NORTHWEST QUARTER OF SECTION 36, TOWNSHIP 1 NORTH, RANGE 7 EAST, OF THE GILA AND SALT RIVER MERIDIAN, MARICOPA COUNTY, ARIZONA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST QUARTER CORNER OF SAID SECTION 36, FROM WHICH THE NORTHWEST CORNER OF SAID SECTION 36 BEARS, NORTH 00°09'53" WEST (BASIS OF BEARINGS), A DISTANCE OF 2638.52 FEET;

THENCE NORTH 00°09'53" WEST ALONG THE WEST LINE OF SAID NORTHWEST QUARTER, A DISTANCE OF 1296.45 FEET TO THE POINT OF BEGINNING;

THENCE CONTINUING ALONG SAID WEST LINE, NORTH 00°09'53" WEST, A DISTANCE OF 35.50 FEET;

THENCE DEPARTING SAID WEST LINE, NORTH 89°59'57" EAST, A DISTANCE OF 270.86 FEET;

THENCE SOUTH 00°00'03" EAST, A DISTANCE OF 73.50 FEET;

THENCE NORTH 89°59'57" EAST, A DISTANCE OF 277.93 FEET;

THENCE SOUTH 09°56'30" EAST, A DISTANCE OF 5.72 FEET;

THENCE NORTH 89°59'57" EAST, A DISTANCE OF 205.27 FEET;

THENCE NORTH 00°00'03" WEST, A DISTANCE OF 15.00 FEET;

THENCE NORTH 89°59'57" EAST, A DISTANCE OF 180.95 FEET;

THENCE SOUTH 00°00'03" EAST, A DISTANCE OF 416.75 FEET;

THENCE SOUTH 89°55'06" EAST, A DISTANCE OF 68.32 FEET;

THENCE SOUTH 00°00'03" EAST, A DISTANCE OF 248.66 FEET;

THENCE SOUTH 89°52'02" WEST, A DISTANCE OF 681.49 FEET;

{00565185.1}

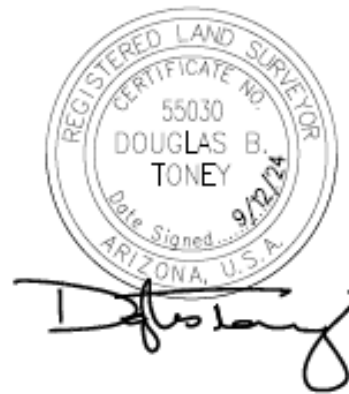
THENCE NORTH 00°00'03" WEST, A DISTANCE OF 57.80 FEET;

THENCE NORTH 17°11'40" WEST, A DISTANCE OF 223.17 FEET;

THENCE NORTH 00°00'03" WEST, A DISTANCE OF 424.72 FEET;

THENCE SOUTH 89°59'57" WEST, A DISTANCE OF 256.76 FEET TO THE POINT OF BEGINNING.

CONTAINING 463,075 SQ.FT. OR 10.6307 ACRES, MORE OR LESS.



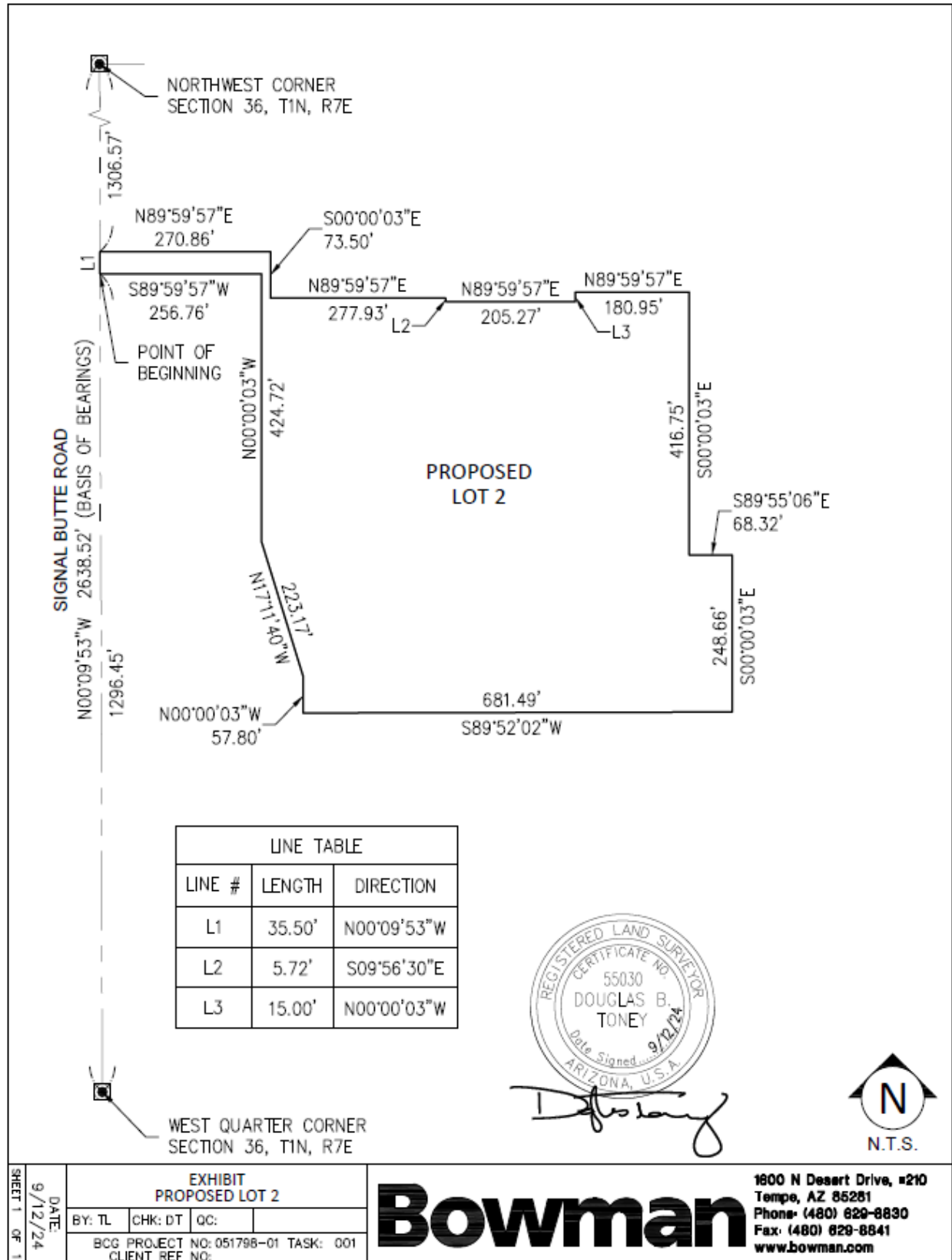


EXHIBIT B
SITE PLAN IDENTIFYING RESTAURANT ROW AND RETAIL ANCHORS

(SEE ATTACHED)

RESTAURANT ROW AND RETAIL ANCHORS

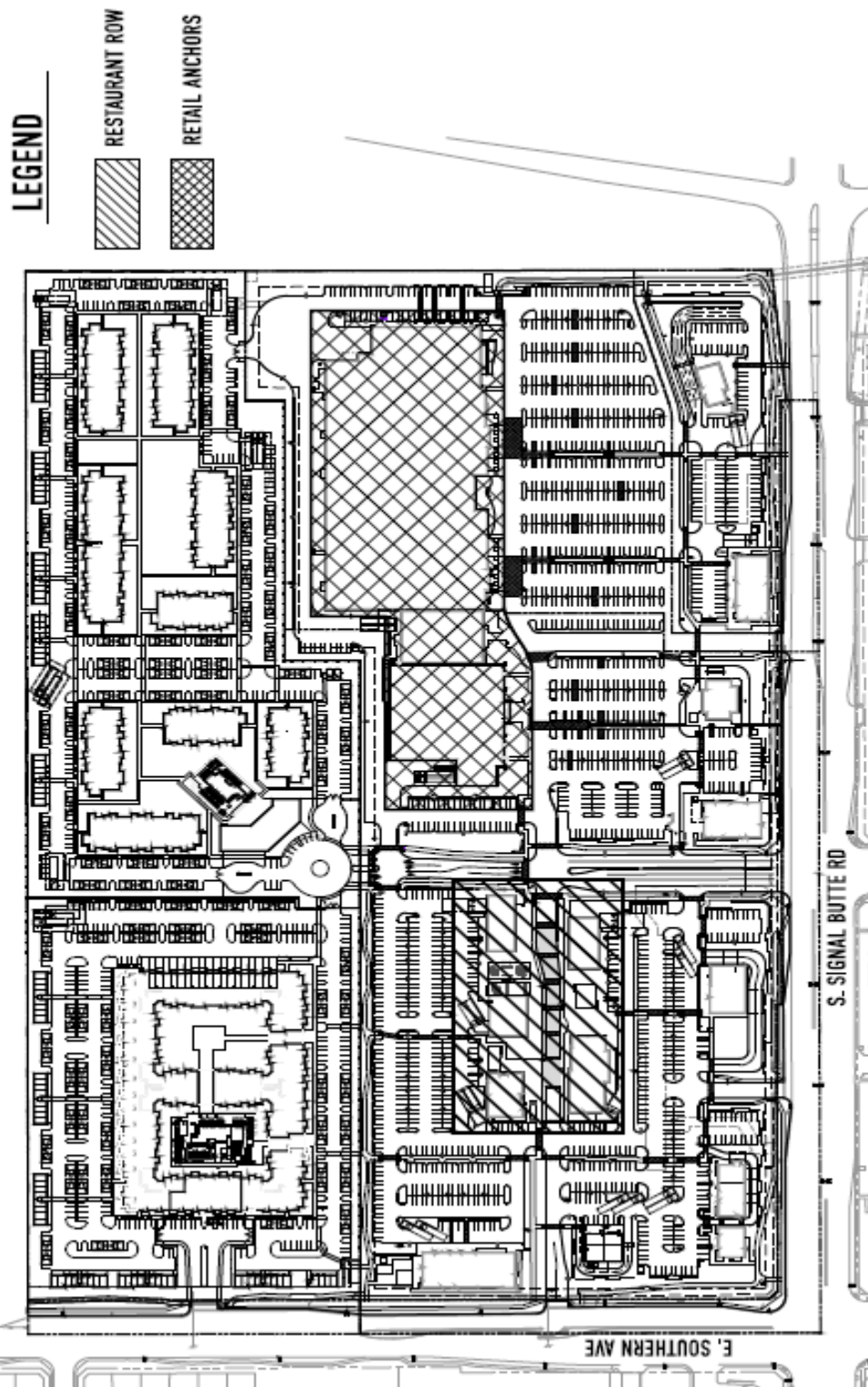
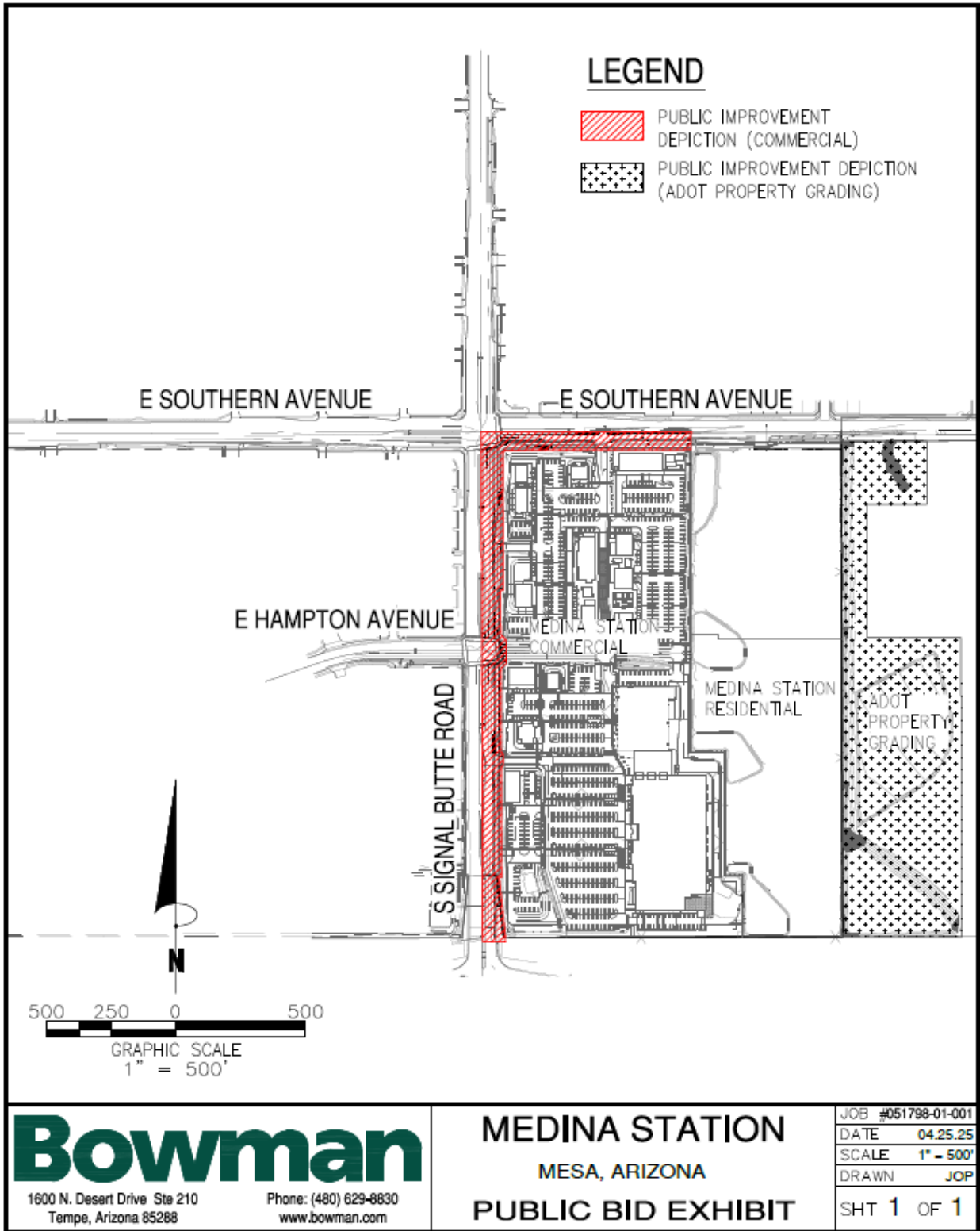


EXHIBIT C
PUBLIC IMPROVEMENTS DESCRIPTION & DEPICTION

(SEE BELOW AND ATTACHED)

Public Improvements means the improvements listed on the attached and constructed to City standards within the highlighted depicted areas, that meet the requirements of the Agreement. Public Improvements must be planned, designed, bid, constructed and dedicated in compliance with Applicable Laws, including Title 34 of A.R.S. and the City's procurement and public bidding procedures in order to be eligible for reimbursement. See section 4 of the Agreement for additional limitations on the reimbursement of the Public Improvements on the ADOT Property.

Public Improvements Depiction



Public Improvements Description

- A. East half of S. Signal Butte and PUFÉ (arterial street), US 60 to Southern Avenue.
 - 1. Pavement
 - 2. Curb & Gutter
 - 3. Sidewalk
 - 4. Driveways
 - 5. Streetlights
 - 6. Storm drain
 - 7. Water
 - 8. Sewer
 - 9. Staking and testing
- B. South half of E. Southern Avenue and PUFÉ (arterial street), S. Signal Butte to approximately 805' east of S. Signal Butte.
 - 1. Pavement
 - 2. Curb & Gutter
 - 3. Sidewalk
 - 4. Driveways
 - 5. Streetlights
 - 6. Staking and testing
- C. ADOT Area East of Property
 - 1. Grading of basins, per ADOT Standards, to accommodate off-site drainage flows

EXHIBIT D
PROPERTY REQUIRED DEDICATIONS

Dedicate Right of Way in accordance with City of Mesa Standard Detail M-19.01 and City Code, which shall at a minimum include the following:

- Dedication of required right-of-way on South Signal Butte Road
 - 65' (sixty-five feet) east of monument line
 - 75' (seventy-five feet) east of monument line in areas of right turn/decel lanes.
 - 8' (eight foot) Public Utility and Facility Easement adjacent to Right of Way

- Dedication of required right of way on East Southern Avenue.
 - 65' (sixty-five feet) south of monument line
 - 8' (eight foot) Public Utility and Facilities Easement adjacent to Right of Way

EXHIBIT E
INSURANCE

City of Mesa Insurance Requirements

Developer, at its sole cost and expense, will maintain insurance coverage as follows:

A. Property. During the period of any construction involving the Public Improvements and for a period of not less than three (3) years following completion of construction, and with respect to any construction activities relating to the same, builder's risk insurance on an all-risk, replacement cost basis for the Public Improvements.

B. Liability. During the Term of the Agreement, insurance covering the Developer and (endorsing as an additional insured) City against liability imposed by law or assumed in any written contract, and/or arising from personal injury, bodily injury or property damage, with a limit of liability of \$5,000,000.00 per occurrence with a \$5,000,000.00 products/completed operations limit and a \$10,000,000.00 general aggregate limit. Such policy must be primary and written to provide blanket contractual liability, broad form property damage, premises liability and products and completed operations.

C. Contractor. During the period of any construction involving the Public Improvements and for a period of not less than three (3) years following completion of construction, and with respect to any construction activities relating to the same, each of the general or other contractors with which the Developer contracts for any such construction will be required to carry liability insurance of the type and providing the minimum limits set forth below:

(1) Workman's Compensation insurance and Employer's Liability with limits of \$1,000,000.00 per accident, \$1,000,000.00 per disease and \$1,000,000.00 policy limit disease.

(2) Commercial general liability insurance on a \$5,000,000.00 per occurrence basis providing coverage for (and endorsing the City as additional insured for):

- Products and Completed Operations
- Blanket Contractual Liability
- Personal Injury Liability
- Broad Form Property Damage
- X.C.U.

(3) Business automobile liability including all owned, non-owned and hired autos with a limit of liability of not less than \$1,000,000.00 combined single limit for personal injury, including bodily injury or death, and property damage.

D. Architect. In connection with any construction involving the Public Improvements, and with respect to any construction activities relating to the same, the Developer's architect will be required to provide architect's or engineer's professional liability insurance with a limit of \$1,000,000.00 per occurrence. This policy, or other policies, will cover claims for a period of not

less than three (3) years after the completion of construction involving the Property and the Public Improvements.

E. Engineer. During the period of any construction involving the Public Improvements, and with respect to any construction activities relating to the same, the Developer's soils engineer or environmental contractor will be required to provide engineer's professional liability insurance with a limit of \$1,000,000.00 per occurrence. This policy, or other policies, will cover claims for a period of not less than three (3) years after the completion of the construction involving the Property and the Public Improvements.

F. Primary Coverage. Developer's insurance coverage will be primary insurance with respect to City, its officers, officials, agents, and employees. Any insurance or self-insurance maintained by City, its officers, officials, agents, and employees will be in excess of the coverage provided by Developer and will not contribute to it.

G. Indemnities. Coverage provided by the Developer will not be limited to the liability assumed under the indemnification provisions of the Agreement.

H. Waiver of Subrogation. All policies will contain a waiver of subrogation in favor of the City, its officers, officials, agents, and employees.

I. Notice of Cancellation. Each insurance policy will include provisions to the effect that it may not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written Notice has been given to City. Such Notice must be provided directly to City in accordance with the provisions of section 14.7.1 of the Agreement.

J. Acceptability of Insurers. Insurance is to be placed with insurers duly licensed of approved unlicensed companies in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. City in no way warrants that the above-required minimum insurer rating is sufficient to protect Developer from potential insurer insolvency.

K. Endorsements and Verification of Coverage. Developer will furnish City with endorsements naming the City, its officers, officials, agents, and employees as additional insureds. The endorsements will be original certificates of insurance on ACCORD forms approved by City. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage will be clearly noted on the certificate of insurance.

(1) All certificates are to be received and approved by City before the commencement of construction of the Public Improvements. Each insurance policy must be in effect at or prior to the commencement of construction (after obtaining required permits actual commencement of physical construction) and must remain in effect for the duration set forth in this Exhibit or, if no date is specified, the term of the Agreement. Failure to maintain the insurance policies as required by this Agreement or to provide timely evidence of renewal will be considered a material breach of the Agreement.

(2) All certificates required by this Agreement will be sent directly to City of Mesa, Attn: Lisa Lorts, Risk Manager, 20 E. Main Street, P.O. Box 1466, Mesa, Arizona 85211-

1466. City reserves the right to require complete, certified copies of all insurance policies and endorsements required by this Exhibit F at any time.

L. Approval. Any modification or variation from the insurance requirements in this Exhibit F must have prior approval from the City Manager (or designee), whose decision will be final. Such action will not require formal contract amendment, but may be made by administrative action.

M. Miscellaneous. References to “Developer” in this Exhibit will mean Developer and include its general contractor(s). References to “the Agreement” or “this Agreement” will mean the Development Agreement of which this Exhibit is a part. Capitalized terms not otherwise defined in this Exhibit will have the meanings set forth in the Agreement. City in no way warrants that the minimum limits contained herein are sufficient to protect Developer from liabilities that might arise, and Developer may purchase such additional insurance as Developer determines necessary.