

**DEVELOPMENT AGREEMENT
BETWEEN
THE CITY OF PEORIA AND CALDWELL COUNTY BBQ AT PEORIA, LLC**

THIS DEVELOPMENT AGREEMENT (“**Agreement**” as defined below) is entered into to be effective as of the ____ day of ____, 2024 (the “**Effective Date**”), by and between Caldwell County BBQ at Peoria, LLC an Arizona limited liability company (“**Caldwell**”), and the **CITY OF PEORIA**, an Arizona municipal corporation (“**City**”). Caldwell and City are collectively referred to herein as the “**Parties**,” or individually as a “**Party**.”

RECITALS:

- A. The City owns certain unimproved real property in Peoria, Arizona, that is located at 8315 W Washington St., Peoria, Arizona 85345 (Assessor Parcel Numbers: APN 142-41-025A, 142-41-026A, 142-41-027), the legal description of which is attached hereto as Exhibit “A” (the “**Property**”); together with all rights, privileges, easements, and appurtenances thereto benefitting the Property (whether recorded or not recorded).
- B. The City acquired the Property as part of its plan to redevelop and revitalize the downtown area of the City.
- C. As more fully described in this Agreement, the Parties intend that City will cause construction of **Improvements** (defined below) upon the Property (the Improvements and Property collectively referred to herein as the “**Project**”). The City desires to lease the completed Project to Caldwell for the purpose of operating a bar-b-que restaurant with related bar, an event rental space, and no other use on the Property.
- D. Caldwell has preliminarily determined to its satisfaction: (i) the suitability of the Property and the Project for Caldwell’s intended use; and (ii) the Project’s viability (including, but not limited to, market demand, site utilization, estimated development costs, and operating pro formas). Parties acknowledge the City would not agree to proceed with this Project but for Caldwell’s expertise in restaurant operation, Caldwell’s commitment to be the end user of the Project, and Caldwell’s commitment to the timely commencement of the Project.
- E. The Improvements are preliminarily depicted on a Preliminary Site Plan attached hereto as Exhibit “C” (the “**Preliminary Site Plan**”) and establish the basic components of the Project. Caldwell and the City shall cooperate in the design aspects of the Project. The final construction will be based on a final site plan yet to be developed by the Parties (the “**Final Site Plan**”); however, the City shall have final authority on all design and construction decisions, in the City’s sole discretion.
- F. The Parties intend that upon completion of the Project, Caldwell will lease the Project from the City by way of a separate Lease Agreement (the “**Lease**”) the form of which is attached as Exhibit “B” to be executed concurrently with this Agreement, and operate

the Project as a bar-b-que restaurant with related bar, an event sub-rental space, and no other use (the “**Permitted Use**”). The Permitted Use may only be changed in writing at the City’s sole discretion. Said Lease will be contingent upon Caldwell agreeing to use the Property and the Project consistent with the terms of this Agreement. In the event of any conflict between the language in the body of this Agreement and the Lease, the body of this Agreement will govern. In the event any term is not defined in the body of this Agreement but is defined in the Lease, the term should have the meaning as defined in the Lease.

- G. City and Caldwell are entering into this Agreement pursuant to Arizona Revised Statutes §9-500.05, which authorizes the City to enter into a development agreement related to real property located inside the incorporated area of the City with a landowner or other person having an interest in the real property. The Parties acknowledge Caldwell’s interest in the Project, which exists by virtue of this Agreement, and accordingly, desire to enter into this Agreement to facilitate development of the Project consistent with the Site Plan, the City’s General Plan, other Applicable Laws and the City’s Zoning Ordinance. The Parties acknowledge that the activities described in this Agreement and related to the Project, are economic development activities within the meaning of the State of Arizona’s laws concerning such matters, including but not limited to Arizona Revised Statutes §9-500.11, and that all “expenditures” (as defined therein) by the City pursuant to this Agreement constitute the appropriation and expenditure of public monies for and in connection with economic development activities as defined therein.
- H. The City and Caldwell hereby acknowledge and agree that development of the Project will result in significant direct and indirect benefits accruing to the City and the public, including, without limitation, increased value of the Property, increased tax revenues, expansion of the employment base within the City, and furthering the development of the City’s downtown. The City finds that the benefits conferred upon Caldwell are proportionate to the direct benefits being received by the City, and authorizes the execution and performance of this Agreement.

In consideration of the mutual promises and representations set forth in this Agreement, the above Recitals, and for other good and valuable consideration, the receipt and sufficiency of which the Parties acknowledge, the City and Caldwell agree as follows:

AGREEMENT:

- 1. **Incorporation of Recitals.** The Parties acknowledge that the Recital Paragraphs A through H inclusive (the “**Recitals**”) set forth above are true and correct in all material respects and are incorporated into this Agreement as though fully set forth herein.
- 2. **Definitions.** In the Agreements, unless a different meaning clearly appears from the context:

“**Agreement**” means this Agreement, as amended and restated or supplemented in

writing from time to time, and includes all exhibits and schedules hereto, including without limitation the Lease. Unless otherwise stated, references to recitals refer to Recitals as defined in Section 1, references to sections are references to numbered sections in the body of this Agreement, and references to exhibits are references to Exhibits attached to this Agreement.

“**Applicable Laws**” means the federal, state, county, and local laws (statutory and common law), ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City, as they may be adopted, implemented, or amended from time to time, which apply to the development of the Project as of the date of any application or submission.

“**City**” means the Party designated as the City on the first page of this Agreement.

“**City Undertakings**” means as defined in Section 4 of this Agreement.

“**Claims**” means as defined in Section 8 of this Agreement.

“**Completion Date**” means the date on which the Project is completed and ready for occupancy.

“**Default**” means as defined in Section 9 of this Agreement.

“**Default by Caldwell**” means as defined in Section 9.1 of this Agreement.

“**Default by City**” means as defined in Section 9.2 of this Agreement.

“**Caldwell Undertakings**” means as defined in Section 3 of this Agreement.

“**Effective Date**” means as defined on Page 1 of this Agreement.

“**Enforceability Challenge**” means as defined in Section 12 of this Agreement.

“**Fit Out**” means to the process of making the interior space of the improvements ready for occupation and suitable for the Permitted Use.

“**Force Majeure**” means as defined in Section 5 of this Agreement.

“**Indemnity**” means as defined in Section 8 of this Agreement.

“**Improvements**” means all buildings, structures, and related betterments to be constructed on the Property.

“**Lease**” means as described in Recital F and the form of which is attached as Exhibit “B”.

“**Notice**” means as defined in Section 13.6 of this Agreement.

“**Party and Parties**” means the City and Caldwell as designated on the first page of this Agreement.

“**Permitted Use**” means as defined in Recital F of this Agreement.

“**Project**” means as defined in Recital B of this Agreement.

“**Property**” means as defined in Recital A.

“**Recital**” means as defined in Section 1 of this Agreement.

“**Site Plan**” means as defined in Recital E of this Agreement.

“**Term**” means as defined in Section 6 of this Agreement.

“**Transfer**” means as defined in Section 11 of this Agreement.

“**Working Day**” means Monday, Tuesday, Wednesday, and Thursday, except for Federal holidays as defined in 5 U.S.C. 6103 that are observed on a Monday, Tuesday, Wednesday, or Thursday.

3. Caldwell Undertakings. Caldwell agrees to cooperate with the City in the development of the Project in compliance with this Agreement including without limitation the following: (the “**Caldwell Undertakings**”):

- 3.1 Concurrent with this Agreement, Caldwell will execute the Lease consistent with the form attached as Exhibit “B”.
- 3.2 From the Effective Date through the completion of the Project, the respective designated representatives of Caldwell shall meet as often as required by the City to coordinate and to otherwise facilitate the orderly development of the Project. This Section 3.2 may be waived upon mutual agreement of the Parties.
- 3.3 Caldwell shall participate with the City in designing Improvements upon the Property such that the Project will be suitable for Caldwell to use as a bar-b-que restaurant with related bar, an event rental space, and no other use.
- 3.4 Unless explicitly stated otherwise herein or in the Lease, Caldwell shall be solely responsible to furnish and maintaining all unattached Fit Out including without limitation unattached furniture, fixtures, and equipment which shall include without limitation the following when unattached: themed/branded signage, non-affixed food preparation, bar equipment, and wares identified as Tenant Furnished in the drawings for Maricopa County Environmental Health

permitting, , seating, dining tables, all branded interior fit out, point of sale system, cooking equipment, BBQ smokers, and audio/visual equipment.

- 3.5 Caldwell agrees that the design and development of the Project shall be consistent with certain common architectural, aesthetic, and thematic features shown in the Preliminary Site Plan, and will ultimately be in the City's sole discretion.
 - 3.6 Caldwell will have no right to use any interest in the Project or Property to secure financing, and the City will not subordinate its interest in the Project for any such purpose.
 - 3.7 Upon completion of construction of the Project, Caldwell agrees to use the Project for the Permitted Use as defined in Recital F herein.
 - 3.8 Caldwell, at its sole cost and expense, agrees to keep up, maintain, repair, and if necessary replace each and every part of the Project including without limitation all attached furniture, fixtures, and equipment, in good condition to a standard consistent with the Permitted Use of the Project and all Applicable Laws
 - 3.9 Caldwell agrees to comply with all provisions of ARS §42-6201, *et al.*, related to the leasing of government property.
 - 3.10 Caldwell agrees to abide by all Applicable Laws throughout the duration of this Agreement.
4. City Undertakings. City will undertake and manage the construction and development of the Project in its sole discretion in accordance with the approved Final Site Plan, making reasonable efforts to incorporate Caldwell's input in the design of the Project (the "**City Undertakings**"). The City Undertakings shall include construction of all items defined in the in the shell, site, and tenant improvement construction drawings including without limitation all interior finishing (e.g. flooring, wall finishings, etc.), building systems, and affixed kitchen equipment. Items described in Section 3.4, even if designed by the City, are excluded from City Undertakings.

Upon completion of the Project, the City will retain ownership of the Project including any and all attached improvements, and will lease the Project to Caldwell pursuant to the Lease. As required under A.R.S. §42- 6206, Caldwell is hereby notified of its potential tax liability under the GPLET provisions of A.R.S. §§42-6201 through 42-6209, as now or hereafter amended. Caldwell must pay the relevant GPLET. Failure by Caldwell to pay the tax after Notice and an opportunity to cure is a Default that could result in the termination of Caldwell's interest in this Agreement, the Lease including without limitation the Purchase Option, and Caldwell's right to occupy and use the Project.

5. Force Majeure: The time for performance of any obligations, or deadlines in this Agreement shall be extended by a period of time equal to any period of time that is delayed due to any strike, riot, act of war, act of violence, intemperate weather, material

and/or labor shortage, delay in the delivery of materials, act of God, national emergency, pandemic, interference or delay by the City and/or any other governing authorities having jurisdiction over the Project, (including but not limited to, any delay to grant necessary approvals or issue necessary permits) or any other similar act, occurrence or non-occurrence (being hereby excluded) (“**Force Majeure**”). In no event will Force Majeure include any delay resulting from general economic or market conditions, financial inability, delays to secure financing, unavailability for any reason of tenants, delays caused by an event that commenced or occurred prior to the Effective Date, even if such event continues to occur after the Effective Date, or delay in acquisition or unavailability of materials or equipment, it being agreed that Caldwell will bear all risks of delay that are not caused by a Force Majeure event. In the event of the occurrence of any such Force Majeure, the time for performance of the obligations, or deadlines of the Party claiming delay will be extended for a period of the Force Majeure; provided that, as a condition to availing itself to the extensions described above, based on an event of Force Majeure, the Party shall give written Notice promptly to the other Party.

6. Effective Date and Term. This Agreement shall be recorded in the Official Records of Maricopa County, Arizona, in accordance with the requirement of A.R.S. § 9-500.05. The duration (the “**Term**”), of this Agreement is that period: (1) commencing on the Effective Date, and (2) terminating on the earlier of:

- 6.1 The date on which Caldwell has purchased the Project from the City; or
- 6.2 The date this Agreement has been terminated earlier pursuant to any section of this Agreement; or
- 6.3 The date that is ten (10) years from the Effective Date as it may be extended as set forth in this Agreement.

7. Insurance Requirement. Caldwell shall maintain in full force and effect policies of commercial general liability and workers’ compensation insurance in amounts reasonably acceptable to the City and approved by City’s Risk Manager prior to being granted access to the Project. All such commercial general liability policies shall name the City of Peoria, its employees, agents, and officers as additional insured and shall state that they may not be cancelled prior to expiration without thirty (30) calendar days prior written Notice to City.

8. Indemnity. Caldwell will pay, defend, indemnify and hold harmless City and its City Council members, officers, and employees from and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys’ fees, experts’ fees and court costs associated with such matters; all of the foregoing, collectively, “**Claims**”) that arise in whole or in part from, or relating to the acts of Caldwell or Caldwell’s agents including but not limited to the design, construction, and structural engineering acts or omissions related in any way to, of, or in connection with, any element of the Project and all subsequent design, construction, engineering, and other work by or on behalf of Caldwell in connection with the Project

(collectively, “**Indemnity**”). Such Indemnity shall survive the expiration or earlier termination of this Agreement. The indemnification set forth in this Section 8 shall not apply to the extent such Claims arise from or relate solely to the grossly negligent or intentional acts of the City and its City Council members, officers, and employees. If the City and its City Council members, officers, or employees are made defendant(s) in any action, suit or proceeding brought by a third party by reason of any of the occurrences described in this Section 8, Caldwell shall at its own expense: (i) resist and defend such action suit or proceeding or cause the same to be resisted and defended by counsel designated by Caldwell and reasonably approved by the City; and (ii) if any such action, suit or proceeding results in a final judgment against the indemnified party, Caldwell promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

9. Default Breach & Remedies. It shall be a default hereunder (“**Default**”) if either Party fails to perform any of its obligations hereunder or under the Lease, and such failure is not timely cured as described in Section 9.3 (below). The City Council authorizes its City Manager or the City Manager’s designee to exercise his or her administrative authority to act under this Section 9, without seeking additional approval from the City Council.

- 9.1 Default by Caldwell. Default by Caldwell under this Agreement includes without limitation, any failure by Caldwell to satisfy any obligation or agreement herein, including without limitation, one or more of the following:

- 9.1.1 Any representation or warranty made in this Agreement by Caldwell was materially inaccurate when made or will prove to be materially inaccurate during the Term;
- 9.1.2 Caldwell Transfers or attempts to Transfer or assign this Agreement in violation of said Agreement;
- 9.1.3 An uncured failure by Caldwell to observe or timely perform any other covenant, deadline, obligation, or agreement required of it under this Agreement;
- 9.1.4 After the Completion Date, failure to operate a bar-b-que restaurant with related bar, and an event rental space, upon the Property, or using the Property for any use other than a bar-b-que restaurant with related bar, and event rental space.

- 9.2 Default by City. Default by City under this Agreement will mean one or more of the following.

- 9.2.1 Any representation or warranty made in this Agreement by City was materially inaccurate when made or will prove to be materially inaccurate during the Term; or

9.2.2 An uncured failure by City to observe or timely perform any other covenant, deadline, obligation, or agreement required of it under this Agreement.

9.3 Cure Period. Upon the occurrence of an event of Default subject to cure by any Party, such Party must, upon written Notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, (1) such Default must be cured within thirty (30) days after receipt of such Notice; or (2) if such Default is of a nature not capable of being cured within thirty (30) calendar days, such cure or remedy must be commenced within such period and diligently pursued to completion, but must be cured or remedied within ninety (90) days from the receipt of such Notice unless mutually agreed upon in writing by the Parties.

9.4 Remedies for Default. Whenever any event of Default occurs that is not timely cured by the defaulting Party in accordance with this Agreement, the other Party may avail themselves of the following remedies:

9.4.1 Remedies of City. Notwithstanding any other provision of this Agreement, the City's remedies for an uncured event of Default by Caldwell shall include, without limitation, all the following:

9.4.1.1 The right to cancel this Agreement and the Lease, thereafter, neither Party shall have any further obligations to the other under this Agreement except as explicitly stated herein to survive termination.

9.4.1.2 The right to institute a legal action to cure, correct, or remedy any default, to enforce any covenant or agreement herein, to terminate this Agreement and/or the Lease, or to enjoin any threatened or attempted violation, including without limitation suits for declaratory relief, specific performance, and actions for damages, provided, however, that claims for damages shall be limited to actual damages.

9.4.2 Remedies of Caldwell. In the event of an uncured Default by City under this Agreement, Caldwell has the following remedies:

9.4.2.1 If the uncured Default by City occurs prior to the Completion Date, Caldwell's sole remedy will be to cancel the Agreements by providing written Notice to City, in which case this Agreement and the Lease shall terminate, and Caldwell and City shall have no other rights or obligations thereunder except those that are explicitly stated to survive termination.

9.4.2.2 If the uncured Default by City occurs, Caldwell's exclusive remedies will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction, or otherwise) requiring City to undertake and fully and timely to perform its obligations under this Agreement.

- 9.5 Waiver of Certain Damages. Notwithstanding anything in this Agreement to the contrary, each of City and Caldwell waives its right to seek and recover consequential, exemplary, special, beneficial, numerical, punitive, or similar damages from the other, the only permitted claim for damages being actual damages reasonably incurred by the aggrieved Party.
- 9.6 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement, will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party must be made in writing and will not be considered as a waiver by the performing Party of rights with respect to any other Default or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches, or otherwise at a time when it may still hope to resolve the problems created by the Default. The rights and remedies of each Party are cumulative, and the exercise by either Party of any one or more of such rights shall not preclude the exercise by it, at the same or different times, of any other right or remedy for any other default by the other Party.
10. Compliance with Law. Caldwell and City shall comply with all Applicable Laws that affect the Project as are now in effect or as may hereafter be adopted or amended.
11. Assignability, Restriction on Transfers. The rights established under this Agreement are not personal rights but attach to and run with the Property. All the provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Parties hereto pursuant to A.R.S. 9-500.05(D). Notwithstanding the foregoing, no assignment or similar Transfer of Caldwell interest in the Project, the Project, or this Agreement, or in the current management, ownership, or control of Caldwell (each, a “**Transfer**”) may occur without the City’s written consent, which may be withheld in City’s sole discretion. Except as otherwise expressly provided in this Agreement, the assignment by Caldwell of its rights under this Agreement shall not relieve Caldwell personally of any obligations unless City expressly agrees to such relief in writing, and any assignment that does not comply in all respects with this Section 11 shall be void, and not voidable. No voluntary or involuntary successor in interest to Caldwell may acquire any rights or powers under this Agreement except as expressly set forth in this Agreement, and any Transfer in violation of this Agreement will be void, and not voidable.

12. Enforceability of the Agreements. In the event of any proceeding or litigation by a third party arising from the terms of this Agreement, or the Lease that names the City or Caldwell as a party or that challenges the authority of the City to enter into or perform any of its obligations hereunder (an “**Enforceability Challenge**”), the Parties may individually elect in each Party’s sole discretion to defend the validity and enforceability of this Agreement. If such Enforceability Challenge is instituted prior to the Completion Date, neither Party shall have any obligation to defend an Enforceability Challenge, and in the event that such Enforceability Challenge shall occur prior to the Completion Date, either Party may unilaterally terminate this Agreement and the Lease in writing whereby neither Party shall have further rights or obligations under the Agreements except as otherwise provided. In the event that either Party elects to defend an Enforceability Challenge, the Parties may, in each Party’s sole discretion, join such action and defend itself and/or the Agreement. If such a defense is undertaken under this Section 12, the Parties may elect to cooperate in defending the Enforceability Challenge and may, by mutual written agreement, select joint legal counsel and enter into a joint defense agreement. Parties will comply with any court order affecting the enforceability of the Agreement and Caldwell hereby acknowledges that Caldwell shall not have any claim against the City if any provision of this Agreement is deemed, as a result of an Enforceability Challenge or a judicial or administrative decision, to be void and/or legally unenforceable.
13. Miscellaneous. The following additional provisions apply to this Agreement:
- 13.1 Amendments and Interpretation, No Oral Modification. This Agreement may not be changed, modified, or rescinded, except by a formal writing executed by both Parties. From time to time, Caldwell and City (acting through its City Manager or the City Manager’s designee) may, by mutual written agreement, refine, amend, revise, change, or correct any part of this Agreement as the City and Caldwell deem necessary or preferable.
- 13.2 Severability. Upon mutual written agreement of the Parties, if any term, condition, covenant, stipulation, agreement, or provision in this Agreement is held to be invalid or unenforceable for any reason, the invalidity of any such term, condition, covenant, stipulation, agreement, or provision shall in no way affect any other term, condition, covenant, stipulation, agreement, or provision of this Agreement.
- 13.3 No Partnership. This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between Caldwell and City.
- 13.4 Runs With the Land. This Agreement shall run with the land and be binding upon and inure to the benefit of the Parties hereto and their respective heirs, personal representatives, successors, and assigns.
- 13.5 Further Instruments and Documents. Each Party hereto shall, promptly upon the request of the other Party, acknowledge and deliver to the other Party any and

all further instruments reasonably requested or appropriate to evidence or give effect to the provisions and intent of this Agreement.

- 13.6 Notices. Notices hereunder (each, a “**Notice**”) shall be given in writing delivered to the other Party or other applicable person or entity, or mailed by registered or certified mail, return receipt requested, postage prepaid, or by FedEx or other reliable overnight courier service that confirms delivery. With respect to the Parties, a Notice shall be addressed to a Party as follows:

To City: Henry Darwin, City Manager
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

With a copy to: Emily Jurmu, City Attorney
City’s Counsel: City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

To Caldwell: Travis Taylor or Addison Taylor
18324 East Nunneley Road,
Gilbert, AZ, 85296

With a copy to: Davis, Miles, McGuire, Gardner
Alan Soelberg
999 Playa Del Norte Drive
Suite 510
Tempe, AZ 85288

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) Working Days (excluding Friday, Saturday, Sunday, and legal holidays) after the Notice is deposited in the United States mail. Service of any Notice by overnight courier in accordance with the foregoing shall be deemed to be complete upon receipt or refusal to receive.

- 13.7 Integration Clause. This Agreement including without limitation its exhibits and attachments, constitutes the entire agreement between the Parties with respect to the subject matter hereof, and supersedes all other written or verbal agreements between the Parties with respect to the Project.

- 13.8 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. Both Parties have participated in the drafting of this Agreement, and this Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against either Party, regardless of their respective roles in preparing this Agreement. The terms of this Agreement were established

in light of the plain meaning of this Agreement and this Agreement shall therefore be interpreted according to its plain meaning and without regard to rules of interpretation, if any, that might otherwise favor Caldwell or City.

- 13.9 Section Headings. The section headings contained herein are for convenience in reference and are not intended to define or limit the scope of any provision of the Agreement.
- 13.10 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to the Agreement nor have any right or cause of action hereunder. City shall have no liability to third parties for any approval of plans, Caldwell negligence, Caldwell failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement.
- 13.11 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.
- 13.12 Days. If the last day of any time period stated in this Agreement or the date on which any obligations to be performed under this Agreement falls on a Friday, Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, shall be extended so that it shall end on the next succeeding day which is not a Friday, Saturday, Sunday or legal holiday.
- 13.13 Attorneys' Fees. If legal action is brought by a Party because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party is entitled to reasonable attorney fees and costs as determined by the court or other decision maker.
- 13.14 Choice of Law. This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.
- 13.15 Venue & Jurisdiction. Legal actions regarding and related to this Agreement shall be instituted in the Superior Court of the County of Maricopa, State of Arizona, or the Federal District Court in the District of Arizona sitting in Maricopa County. City and Caldwell agree to the exclusive jurisdiction of such courts. Claims by Caldwell shall comply with time periods and all other requirements of City's claims procedures from time to time.
- 13.16 Waiver of Jury Trial. The Parties expressly waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other, on any matter whatsoever arising out of or any way connected with this Agreement or their relationship arising hereunder.
- 13.17 No Liability of City Officials. Notwithstanding any other language in this Agreement, no City Council Member, officer, director, trustee, partner, principal, member, employee, agent, affiliate, official, representative, agent,

attorney, or employee of the City shall be personally liable to Caldwell, or to any successor in interest to Caldwell, in any way whatsoever including without limitation in the event of Default by the City, for any amount that may become due to Caldwell or its successors, or with respect to any obligation of the City under the terms of the Agreements.

- 13.18 Counterparts; Termination. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument. In the event of any termination of this Agreement, the Lease shall be terminated concurrently, and the Parties shall have no obligations to each other except for any obligations that are stated to survive termination of this Agreement or the Lease.

- 13.19 Arizona Law Provisions. To the extent required by Arizona State law:

- 13.19.1 No member, official, or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to this Agreement, that is prohibited by law. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.
- 13.19.2 Caldwell certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in § 35-393, Arizona Revised Statutes, of Israel.
- 13.19.3 To the extent applicable under A.R.S. § 41-4401, Caldwell warrants compliance with all federal immigration laws and regulations that relate to their employees and contractors and their compliance with the e-verify requirements under A.R.S. § 23-214(A). The failure by Caldwell to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.
- 13.19.4 To the extent applicable under A.R.S. § 35-394, Caldwell hereby certifies it does not currently, and for the duration of this Agreement shall not use: (a) the forced labor of ethnic Uyghurs in the People’s Republic of China, (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China, and (c) 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.

**[REMAINDER OF PAGE INTENTIONALLY BLANK;
SIGNATURES FOLLOW ON NEXT PAGES]**

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date(s) written below.

CITY:

CITY OF PEORIA, an Arizona municipal corporation

By: _____
Jason Beck, Mayor

Date: _____

ATTEST:

Agnes Goodwine, City Clerk

Date: _____

APPROVED AS TO FORM:

Emily Jurmu, City Attorney

Date: _____

Caldwell County BBQ at Peoria, LLC
an Arizona limited liability company

By: _____
Travis Taylor,
an Arizona limited liability company, its
Managing Member

Date: _____

STATE OF ARIZONA
County of Maricopa

On this _____ day of _____, 2024, before me personally appeared _____ the Managing Member of Caldwell County BBQ at Peoria, LLC, an Arizona limited liability company, for and on behalf thereof, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be and acknowledged that he signed the above/attached document.

EXHIBIT A

Legal Description

Lot 10 and the West 9 feet of Lot 9, Block 24, Amended Plat of Peoria, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, Page 62.

Lot 8, Block 24, Amended Plat of Peoria, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 3 of Maps, Page 62.

EXHIBIT B

Form of Lease Agreement

EXHIBIT C

Preliminary Site Plan

Site Plan Pending