

LEASE

between

CITY OF PEORIA,  
a municipal corporation,

as Landlord

AND

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

as Tenant

Date: \_\_\_\_\_, 20\_\_\_\_

**LEASE**

THIS LEASE (the “Lease”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”), by and between CITY OF PEORIA, a municipal corporation (“Landlord”), and Caldwell County BBQ at Peoria, LLC, an Arizona limited liability company (“Tenant”), collectively referred to as the “Parties” and individually as “Party.” The Parties agree as follows:

**RECITALS:**

- A. Landlord is the owner of certain real property located at 8315 W Washington St., Peoria, Arizona 85345 (Assessor Parcel Numbers: 142-41-025A, 142-41-026A, 142-41-027), in Peoria, Arizona; and legally described on Exhibit A attached hereto, upon which are located certain improvements, (the “Demised Premises”).
- B. Landlord desires to lease the Demised Premises to Tenant and Tenant desires to lease the Demised Premises from Landlord on the terms set forth herein.
- C. Concurrently with the execution of this Lease, Tenant and Landlord entered into that certain Development Agreement dated \_\_\_\_\_, 2024 (the “Development Agreement”), for the construction and operation of a bar-b-que restaurant with related bar, an event rental space, and no other use on the Demised Premises (the “Project”).
- D. Tenant acknowledges that Landlord would not agree to lease the Demised Premises to Tenant but for Tenant’s expertise in restaurant concept development and Tenant’s commitment to be the end user of the Project pursuant to the terms of the Development Agreement and this Lease.
- E. Landlord, in accordance with Article I, Section 3(1) of the Peoria City Charter, is authorized to lease real property, and Landlord’s City Council has considered the lease terms authorized by this Lease, and the direct consideration Landlord will receive.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises and representations contained herein, Landlord and Tenant agree as follows:

**1. BASIC LEASE TERMS.**

(a)	<b>Demised Premises</b>	Building: Approximately <u>6,600</u> sq. ft. City: Peoria County: Maricopa State: Arizona (See <u>Section 3</u> )
(b)	<b>Lease Term</b>	10 years (See <u>Section 4</u> )

(c)	<b>Rent</b>	(See <u>Section 5</u> )
(d)	<b>Landlord's Notice Address</b> Rent Payments:  Correspondence:	See <u>Section 23</u> <u>City of Peoria</u> <u>8401 West Monroe Street</u> <u>Peoria, AZ 85345</u> Attn: <u>City Manager</u>  See <u>Section 23</u>
(e)	<b>Tenant's Notice Address</b>	See <u>Section 23</u>

**2. DEFINITIONS.** All terms capitalized herein and defined in the Development Agreement shall have the meaning ascribed thereto in the Development Agreement. In the event of any conflict between the language in the body of this Lease and the Development Agreement, the Development Agreement will govern. In the event any term is not defined in the Development Agreement but is defined in this Lease, the term should have the meaning as defined in this Lease.

Permitted Use: The sole Permitted Use is as described in the Development Agreement.

Building: The structure currently existing on the Demised Premises or such future building as may constructed on the Demised Premises.

Improvements: The Building and all other improvements and structures at any time hereafter erected or situated upon the Demised Premises during the Lease Term, and any and all renewals, replacements, additions and substitutions thereto.

Development Agreement: That certain Development Agreement executed by and between the Landlord and Tenant governing the Project, together with any modifications, amendments, restatements, and supplements thereto.

**3. DEMISED PREMISES.** Landlord leases to Tenant and Tenant leases from Landlord the land composed of the approximate square footage described in Section 1(a), located in the City of Peoria, Arizona and legally described in Exhibit A attached hereto and incorporated herein by this reference, together with all Improvements now existing or hereafter constructed thereon (collectively, the “**Demised Premises**”).

**4. LEASE TERM.** This Lease (the “**Lease Term**”) shall commence on the date of the issuance of a certificate of occupancy for a restaurant on the Demised Premises (the “**Commencement Date**”) and shall continue until the 5<sup>th</sup> anniversary of the Commencement Date (the “**Expiration Date**”). Unless otherwise terminated as provided in this Lease and so long as upon (90) days prior to the Expiration Date neither Party has yet provided (a) Notice of default, or

(b) Tenant has not provided a Notice of Tenant's intent not to renew this Lease, this Lease shall automatically renew for a second period of ten (10) years (the "**Second Term**"). The Second Term shall be on and subject to all of the same terms, covenants and conditions as herein contained unless modified accordingly; provided however, "**Base Rent**" (as defined below) payable during the Second Term shall be as set forth in Section 5.1 (below). This Lease may be extended beyond the Second Term upon mutual written agreement of the parties subject to the provisions of Section 5.1 (below).

## 5. RENT.

**5.1 Base Rent.** From and after the Commencement Date, Tenant shall pay Landlord monthly rent ("**Base Rent**") and the applicable taxes as follows:

- (a) Year 1: \$2,500.00 per month
- (b) Year 2: \$2,750.00 per month
- (c) Year 3: \$3,250.00 per month
- (d) Year 4: \$4,000.00 per month
- (e) Year 5: \$5,000.00 per month
- (f) Years 6 – 10: \$6,000.00 per month
- (g) Years 11-15: Monthly Base Rent shall equal the fair market rate, as of approximately sixty (60) days before the Expiration Date of the Second Term, for comparable rental buildings with a similar usage within a four mile radius of the Demised Premises, as mutually agreed upon Landlord and Tenant. If, despite mutual diligent good faith efforts, Landlord and Tenant are unable to agree on the fair market rate no later than thirty (30) days prior to the Expiration Date of the Second Term, Landlord and Tenant may mutually agree to a process substantially similar to that process described in Section 27.2 to determine the monthly Base Rent for this period.

**5.2 Additional Charges.** This is a full net lease, accordingly, all costs associated with the Demised Premises will pass to the Tenant including, but not limited to the cost of utilities, insurance, operating expenses, GPLET (defined below), maintenance and repairs, and all other sums owed by Tenant to Landlord or to any third parties by Tenant or Landlord on behalf of Tenant, together with every fine, penalty, interest and cost which may be added, and amounts that Tenant is required to pay or discharge pursuant to this Lease (the "**Additional Charges.**") All Additional Charges are in addition to the Base Rent, Base Rent and all Additional Charges shall collectively be referred to herein as "**Rent**". All Rent due to Landlord shall be paid at the address set forth in the Basic Lease Terms, Section 1(d). Acceptance of any Rent by Landlord shall not be deemed a waiver of any default by Tenant of any term or condition of this Lease nor of any right or remedy available to Landlord under this Lease, at law or in equity.

**5.3 Taxes, Demised Premises Subject to GPLET.** Tenant shall pay all taxes and assessments due on Tenant's personal property used or kept on the Demised Premises, and Tenant shall pay any taxes imposed by the governmental authority on rental payments. As required under A.R.S. §42- 6206, Tenant is hereby notified of its potential tax liability under the Government Property Lease Excise Tax ("GPLET") provisions of A.R.S. §§42-6201 through 42-6209, as now or hereafter amended. Tenant shall pay the GPLET pursuant to the rates set in A.R.S. §§42-6203. Pursuant to A.R.S. §§42-6203 the GPLET rate increases annually. Failure of Tenant to pay the GPLET after Notice and an opportunity to cure is a default that could result in the termination of Tenant's interest in this Lease, the Purchase Option (defined below), and its right to occupy the Demised Premises. The Landlord will execute and record a memorandum of GPLET Lease for the Demised Premises in a form substantially similar to Exhibit C, and execute all other related responsibilities required by statute.

**5.4 Interest and Late Charges.** If any payment of Rent is not received by Landlord by the tenth (10th) calendar day after the due date, or if any check from Tenant is dishonored, Tenant shall pay Landlord a late charge equal to 5% of the past due amount. Acceptance of any late charge shall not constitute a waiver of Tenant's default with respect to such nonpayment by Tenant nor prevent Landlord from exercising any other rights or remedies available to Landlord under this Lease, at law or in equity.

**5.5 Utilities.** Tenant shall pay before delinquency all charges and assessments for utility services provided to the Demised Premises, including, without limitation, electricity, gas, water, telephone, fiber, and television/cable/satellite service. If Landlord pays the cost of any utility service to the Demised Premises, Tenant shall reimburse Landlord such amount within thirty (30) days after the date of a notice or invoice from Landlord demanding the same. Landlord shall not be liable in damages or otherwise for any failure or interruption of any utility service being provided to the Demised Premises and Tenant waives any and all claims Tenant may otherwise have against Landlord as a result of such failure or interruption. No such failure or interruption shall be deemed an eviction of Tenant, nor entitle Tenant to terminate this Lease, or discontinue or abate the payment of any Rent due hereunder.

## **6. USE, NUISANCE AND RESTRICTIONS.**

**6.1 Use and Possession of Demised Premises.** During the Lease Term, Tenant shall continuously use and maintain the Demised Premises in good condition, free and clear of liens, subject to the terms and conditions of this Lease. Tenant's use of the Demised Premises shall be limited to the Permitted Use. Under no circumstances shall Tenant be permitted to develop any improvement including a building or similar structure on the Demised Premises without the prior written approval of Landlord.

**6.2 Restricted Uses.** Without enlarging or modifying the permitted use as set forth in Section 6.1, Tenant shall not commit, suffer nor allow any of the following to be done or conditions to exist on the Demised Premises, without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion: (i) any waste, loss, or damage to the Demised Premises; (ii) any public or private nuisance; (iii) placement of any debris, refuse, or trash on the Demised Premises; (iv) any subletting; or (v) any conduct or condition which, in

Landlord's reasonable opinion, is illegal, obscene, or morally offensive but not otherwise expressly mentioned above.

**7. OPERATING COVENANT.** Tenant covenants and agrees that during the term of this lease agreement, it will continuously and without interruption, operate and conduct within the Demised Premises, the business which it is permitted to operate and conduct under the provisions of this Lease and the Development Agreement except on holidays, or while the Demised Premises are untenable by reason of fire or other casualty, other Force Majeure Event, or by any act of Landlord (the "**Operating Covenant**"). Tenant shall fully utilize the Demised Premises for its business and shall at all times during normal business hours keep and maintain upon the Demised Premises competent personnel and trade fixtures to service and supply the ordinary demands and requirements of its customers. If Tenant fails to comply with the Operating Covenant for more than thirty (30) continuous days, or any sixty (60) days total, within any period of twelve (12) consecutive months, such failure within said period shall be deemed to be a non-curable default and Landlord shall be entitled to immediate possession of the Demised Premises and the Purchase Option (defined below) shall terminate.

**8. MAINTENANCE AND REPAIRS.** Tenant shall, at its sole cost and expense, keep, maintain, repair, and replace the Demised Premises, and every part thereof, in good condition to a standard consistent with similar upscale restaurant developments in the City of Peoria. Tenant shall be liable for all loss, damage, or injury to the Demised Premises and any property located on the Demised Premises resulting from Tenant's acts or omissions, including Tenant's negligence in making, or failure to make, any repairs or replacements required to be made by Tenant. Tenant expressly waives the right to make repairs at the expense of Landlord provided for in any Laws now in effect or hereafter enacted.

**9. CAPITAL IMPROVEMENTS.** Should any improvement on the Demised Premises be damaged to such an extent that it cannot be repaired and therefore must be replaced, such replacement will be deemed a "**Capital Improvement**." In the event that Tenant fails to make any Capital Improvement as required under this Lease, Landlord may but shall not be obligated to make said replacement and the cost of same shall be amortized over the useful life of such Capital Improvement. The annual amortized amount applicable to each remaining year of the Lease Term shall be charged to Tenant as Additional Charges and paid together with annual Base Rent.

**10. COMPLIANCE WITH LAWS.** Tenant shall comply with any and all Laws. "**Laws**" means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including, without limitation, Environmental Laws (as defined below), which now or at any time hereafter may be applicable to the Demised Premises or any part thereof. Tenant shall promptly submit to Landlord copies of all documents and correspondence made by Tenant to any governmental authority, or given by any governmental authority or person to Tenant pursuant to any Laws.

**11. CONDITION OF THE PREMISES.** Tenant represents to Landlord that Tenant has inspected the Demised Premises prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereunder and **TENANT ACCEPTS THEM IN**

**THEIR “AS IS,” “WHERE IS” CONDITION AND “WITH ALL FAULTS.” TENANT HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITION, USE, QUALITY, FITNESS, OR ADEQUACY OF THE PREMISES AND THE PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

## **12. HAZARDOUS MATERIALS.**

**12.1 Tenant Covenant.** Tenant covenants that Tenant and anyone acting by, through, or under Tenant, will not, through its acts or omissions, cause or permit any Hazardous Materials (as defined below) to be placed, held, located, Released (as defined below), or disposed of on, under or at the Demised Premises in violation of Environmental Laws (as defined below). Tenant shall indemnify, defend and hold Landlord harmless for, from, and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, obligations, suits, costs, taxes, charges, and disbursements which arise during or after the Lease Term as a result of the presence, generation, Release (as defined below), use, storage, or discharge of any Hazardous Materials on the Demised Premises in violation of this Section. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal, or restoration work required by any federal, State, or local governmental agency or political subdivision because of Hazardous Materials caused or permitted by Tenant to be present in the soil or groundwater on, in, or under the Demised Premises. The indemnity, hold harmless and other obligations of Tenant under this Section shall survive the termination or expiration of this Lease and the Development Agreement. The term “**Hazardous Materials**” shall mean any substance or material that is defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “acutely hazardous wastes,” “restricted hazardous waste,” “toxic substances,” or “known to cause cancer or reproductive toxicity” (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, State or local law, ordinance, regulation, order, permit, license, decree, common law, or treaty now or hereafter in force regulating, relating to, or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources (“**Environmental Laws**”). “**Release**” means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, presence, dumping, migrating on or from the Demised Premises or adjacent property, or disposing of Hazardous Materials or Poisons into the environment.

**12.2 Release of Hazardous Materials.** In the event of a Release of Hazardous Materials in violation of any Environmental Law, **Tenant must immediately Notify Landlord of any such discovery.** If a Release of Hazardous Materials results from the actions or omissions of Tenant, Tenant shall, at its sole cost and expense, comply with all Environmental Laws to remedy the situation, including, without limitation, promptly conducting a site assessment, taking immediate action required for containment of the Release, and preparing and implementing a plan for the clean-up of the Release. Tenant shall properly dispose of any Hazardous Materials by licensed haulers to licensed facilities in accordance with Environmental Laws. Tenant’s

obligations under Section 12 shall survive the expiration or termination of this Lease and the Development Agreement.

**13. ALTERATIONS.** Tenant shall not make any additions, alterations, or improvements, or erect any structures, buildings, fences, or other improvements, permanent or temporary, to the Demised Premises without first obtaining the prior written approval of Landlord.

**14. LIENS.** Tenant shall not do any act or make any contract so as to encumber or affect in any manner the title or rights of Landlord in the Demised Premises. Tenant shall have no authority to do any act or make any contract which may create or be the basis for any lien, mortgage, or other encumbrance upon any interest of Landlord in the Demised Premises. Should Tenant cause any construction, alterations, rebuilding, restorations, replacements, changes, additions, improvements, or repairs to be made on the Demised Premises, or cause any labor to be performed or material to be furnished thereon, therein or thereto, neither Landlord nor the real property included within the Demised Premises shall under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished to the Demised Premises, and Tenant shall be solely and wholly responsible to contractors, laborers, and materialmen performing such labor and furnishing such material.

Tenant shall keep the Demised Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Tenant. If, because of any error, act, or omission (or alleged error, act, or omission) of either Tenant or Landlord, any mechanics', materialmen's, or other liens, charge, or order for the payment of money shall be filed or recorded against the real property included within the Demised Premises or against Landlord (whether or not such lien, charge, or order is valid or enforceable as such), Tenant shall, at its own expense, either cause the same to be discharged of record pursuant to A.R.S. § 33-1004, or otherwise cause such discharge, within thirty (30) days after Notice requesting such discharge. Tenant hereby indemnifies, holds harmless and agrees to defend Landlord for, from, and against any and all liability, loss, damage, costs, attorneys' fees, and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. If Tenant shall be in default in paying any charge for which a bond or other lien claim has been filed and shall not have given Landlord security to protect the Demised Premises and Landlord, then Landlord may, but shall not be obligated to, pay the claim. The total amount of the claim together with any costs and attorneys' fees incurred by Landlord in connection therewith, shall be immediately due and owing from Tenant to Landlord, as Additional Charges.

**15. SURRENDER.** Tenant shall, upon the Expiration Date or earlier termination of this Lease, peacefully surrender the Demised Premises to Landlord. Tenant agrees that any improvements remaining on the Demised Premises after the expiration of the Lease Term or the earlier termination of this Lease shall be the property of Landlord.

**16. INDEMNIFICATION.**

**16.1 Indemnification.** Tenant hereby releases, indemnifies, holds harmless, and agrees to defend Landlord for, from, and against any and all claims, causes of action, damages (including, without limitation, all foreseeable and unforeseeable consequential damages, injunction and other

relief), fines, judgments, penalties, costs, liabilities, losses, or expenses (including, without limitation, engineers' and consultants' costs, attorneys' fees and reasonable investigative and discovery costs) arising prior to, during, or after the Lease Term on account of or in connection with, or directly or indirectly related to: (i) the acts or omissions of Tenant or Tenant's licensees, invitees, agents or contractors; (ii) Tenant's use and occupancy of the Demised Premises, or any work or activity allowed or permitted by Tenant to be done in, on or about the Demised Premises; (iii) the violation of any Laws by Tenant or Tenant's agents, licensees, invitees, or contractors; and (iv) any breach of the representations, warranties and obligations of Tenant contained in this Lease. Tenant's obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or earlier termination of this Lease, as to events occurring or claims arising or accruing prior to the expiration or earlier termination of this Lease. Tenant does not indemnify Landlord against any injury, loss of life, or damage which is caused by the sole gross negligence or willful misconduct of Landlord, its agents, servants, employees, or contractors.

**16.2 Release.** Tenant hereby assumes all risk of damage or injury to any person or property in, on or about the Demised Premises from any cause whatsoever, and hereby releases, remises, acquits, and discharges Landlord from any such damage or injury on behalf of Tenant, and Tenant's agents and contractors. Tenant waives and releases all claims against Landlord for which Landlord has disclaimed liability or responsibility pursuant to the provisions of this Lease. In addition, Landlord shall not be liable for any loss, injury, death, or damage (including any consequential damage) to persons, property, or Tenant's business resulting from any theft, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, requisition, order of governmental body or authority, fire, explosion, collapse of a structure, falling object, steam, water, rain, snow, ice, breakage, leakage, obstruction, or other defects in, on or about the Demised Premises excepting any injury, loss of life, or damage which is caused by the gross negligence or willful misconduct of Landlord, its agents, servants or employees.

**17. TENANT INSURANCE.** Tenant shall at all times, throughout the Lease Term Agreement, keep the Demised Premises insured against perils. Tenant shall ensure that all insurance policies in effect for the Demised Premises name the City of Peoria as an additional insured.

**17.1** The insurance policies required by this Section shall be written by insurance companies with an A.M. Best's Key Rating Guide of A- [minus] or better, authorized to do business in the State of Arizona, and shall be written on an occurrence basis or in a form satisfactory to Landlord. As often as any such policy shall expire or otherwise terminate, renewal or additional policies must be procured and maintained by Tenant and its contractors so as to provide uninterrupted coverage. Tenant agrees and shall cause its contractors to agree to provide Landlord with certified copies of all insurance policies providing coverage for the Demised Premises upon Landlord's request.

**17.2** Tenant, during the entire Lease Term, shall provide, secure, pay for and maintain the following insurance coverage, indemnification and waivers as set forth in subsections "a" through "f" (inclusive) immediately below:

- (a) At all times during the Lease Term, "all-risk" property insurance, for damage or other loss caused by fire or other casualty or cause including, but not limited to,

vandalism and malicious mischief, theft, water damage of any type, including sprinkler leakage, bursting of pipes, explosion, in an amount not less than one hundred percent (100%) of the replacement cost covering (a) all buildings and improvements, including tenant improvements on the property; and (b) any trade fixtures, equipment, and other personal property from time to time situated in or on the Premises. The proceeds of such insurance shall be used for the repair or replacement of the property so insured, except that if not so applied or if this Lease is terminated following a casualty, the proceeds applicable to the leasehold improvements shall be paid to Landlord and the proceeds applicable to Tenant's personal property shall be paid to Tenant.

- (b) Statutory workers' compensation insurance, in an amount required by the State of Arizona and any and all applicable insurance required by any employee benefit acts or other statutes as will protect Tenant's employees from any and all liability under the aforementioned acts and statutes for work performed at the Demised Premises.
- (c) Commercial general liability insurance in an amount not less than \$2,000,000.00 combined single limit per occurrence and not less than \$5,000,000.00 general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Landlord as an additional insured on a primary non-contributory basis with respect to any other insurance available to Landlord. If the permitted use permits the sale of alcoholic beverages on the Demised Premises, then during any period that Tenant offers alcoholic beverages for sale on the Demised Premises, Tenant shall obtain a liquor liability endorsement to said commercial general liability policy in an amount not less than \$2,000,000.00 combined single limit per occurrence and not less than \$5,000,000.00 general aggregate.
- (d) Tenant (including also anyone holding under Tenant and any and all subtenants and other occupants of the Demised Premises), as the case may be, shall: (i) provide waivers of liability in favor of Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing the same from any and all liability for any and all bodily injury, personal injury and loss of or damage to property (including also any and all loss of use resulting therefrom); (ii) require any and all insurers for the Demised Premises to name the Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees as Additional Insureds in all insurance policies required under this Section 17.2.; and, (iii) require that Tenant (including also anyone holding under Tenant and any and all sub-tenants and other occupants of the Demised Premises) and all insurers providing policies of insurance under this Section 17.2 waive their rights of subrogation against Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees.

The above-referenced waivers of liability and subrogation shall not apply to Landlord's grossly negligent or intentional acts but said waivers of liability and subrogation shall be applicable to any negligence imputed to Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees

by operation of law as a result of the action or non-action of Tenant (including anyone holding under Tenant and any and all sub-tenants and other occupants of the Demised Premises) and their respective insurers for work performed on, or services provided to, the Demised Premises).

- (e) To the extent available at reasonable commercial cost, Tenant shall maintain Errors & Omissions coverage for the managers of Tenant in an amount not less than \$2,000,000.00 combined single limit per occurrence and not less than \$5,000,000.00 general aggregate.
- (f) Should Tenant utilize any steam or pressure boilers, or other similar apparatus on the Demised Premises, Tenant shall maintain boiler and machinery coverage, to include explosion insurance, with respect to any steam or pressure boilers and similar apparatus located on the Demised Premises in an amount not less than \$2,000,000.00 combined single limit per occurrence and not less than \$5,000,000.00 general aggregate and insurance against such other hazards and in such amounts as Landlord may reasonably require for its protection.

**17.3** During the entire Lease Term of this Lease Agreement, Tenant shall require any and all contractors performing work or services to or on the Demised Premises with Tenant's consent or approval, to provide, secure, pay for, and maintain the following insurance coverage, indemnification, and waivers as set forth in subsections "a" through "g" (inclusive) immediately below.

- (a) Statutory workers' compensation insurance, with limits of not less than \$100,000.00 on an occurrence basis, employer's liability coverage in an amount of not less than \$1,000,000, and any and all insurance required by any employee benefit act or other statutes applicable where the work is to be performed as will protect Tenant's employees, contractors and subcontractors from any and all liability under the aforementioned acts and statutes.
- (b) Commercial general liability insurance in an amount not less than \$3,000,000.00 combined single limit per occurrence and not less than \$5,000,000.00 general aggregate, including but not limited to coverage for explosion, collapse, and underground work as well as contractual liability coverage and including Landlord as an additional insured on a primary non-contributory basis with respect to any other insurance available to Landlord.
- (c) Builder's risk property insurance policy covering all risks in completed value form for all sites upon which construction is occurring. Such policy shall cover the total value of the work performed, as well as the value of any equipment, supplies, and/or material for the project that may be in storage (on or off the site) or in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance, or regulation, and for loss or damage to any owned, borrowed, leased, or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and

property of the City held in their care, custody and/or control. Such policy shall name the City as additional insureds.

- (d) Comprehensive automobile liability insurance, including coverage for the ownership, maintenance, and operation of any automobile equipment owned, hired, or non-owned, which is assigned to or used by the contractors in the performance of work on, or services provided to, the Demised Premises, in an amount not less than \$1,000,000.00 combined single limit per accident.
- (e) Either of the following: (i) owner's and contractor's protective liability insurance with limits of not less than \$1,000,000.00 combined single limit per occurrence and not less than \$5,000,000.00 general aggregate as will insure Landlord as named insured against any and all claims for bodily injury, including death resulting therefrom, personal injury or damage to the property of others, arising from or in any way connected to Tenant's contractors' performance of work on, or services provided to, the Demised Premises or (ii) in lieu of the foregoing owner's and contractor's protective liability insurance specified in this Subsection 17.3 (e), an endorsement to the commercial general liability insurance specified in Subsection b above of this paragraph providing for a separate general aggregate limit of insurance of not less than \$5,000,000.00 on an occurrence basis.
- (f) Tenant shall cause the above-referenced contractors and sub-contractors (and their respective insurers) to: (i) provide waivers of liability in favor of Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death resulting therefrom, personal injury, and loss of or damage to property (including also any and all loss of use resulting therefrom); (ii) require the above-referenced contractors and sub-contractors to name the Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees as additional insureds in all insurance policies required under this Section 17.3; and (iii) require that the contractors, sub-contractors and all insurers providing policies of insurance under this Section 17.3 waive their rights of subrogation against Landlord, its agents, representatives, officers, directors, elected and appointed officials, and employees.

The above-referenced waivers of liability and subrogation shall not apply to Landlord's grossly negligent or intentional acts but shall be applicable to any negligence imputed to Landlord, its agents, representatives, officers, directors, elected officials and employees by operation of law as a result of the action or non-action of Tenant's contractors or sub-contractors and their respective insurers for work performed on, or services provided to, the Demised Premises.

- (g) Tenant's contractors and sub-contractors performing work on, or providing services to, the Demised Premises shall maintain Errors & Omissions coverage in an amount not less than \$2,000,000.00 combined single limit per occurrence and not less than \$5,000,000.00 general aggregate.

**17.4** At Tenant's election, the insurance required by Section 17 may be provided under a blanket policy subject to Landlord's written approval.

**17.5** Certificates of insurance evidencing all of the coverages required in this Section 17 shall be delivered to Landlord prior to the Commencement Date and renewal certificates of insurance shall be delivered to Landlord at least thirty (30) days prior to the expiration dates of the respective policies. Such certificates shall also provide that Landlord will receive written notice at least ten (10) days prior to any cancellation, non-renewal or reduction in coverage. Landlord reserves the right to require Tenant to furnish proof, satisfactory to Landlord, that any and all insurance policies for the Demised Premises remain in full force and effect.

**17.6** Tenant further covenants and agrees to increase the required insurance hereunder to such additional commercially reasonable and available amounts as Landlord may from time to time require.

**17.7** In the event of loss or destruction under any such policy or policies, Tenant shall promptly proceed with the repair and restoration of the damaged or destroyed Improvements in accordance with and subject to the provisions of this Lease Agreement. The insurance proceeds shall, be paid to Tenant and thereafter held in trust by a bank or title company designated by Landlord and approved by Tenant (the "Escrowee"), to be paid out upon architect's certificates and contractors', subcontractors' and materialmen's waivers of lien for the cost and expense of repairing or restoring the Improvements damaged or destroyed; provided, however, that in the event that such insurance proceeds shall be insufficient to pay fully the cost of completion of such repair or restoration, Tenant shall have deposited with the Escrowee the balance of such costs before any such repair and restoration are commenced so that it shall appear to the satisfaction of Landlord that the amount of insurance money in the hands of said Escrowee shall at all times be sufficient to pay for the completion of said repairs or restoration free and clear of liens. Upon the completion of said repair or restoration, free and clear of all liens, any surplus of insurance monies shall be paid to Tenant, provided that Tenant is not then in default under this Lease or the Development Agreement. In the event that this Lease shall have been terminated for any default of Tenant under any of the terms and provisions contained in this Lease, all insurance proceeds in the hands of said Escrowee, and all claims against insurers shall be and become the absolute property of Landlord.

**18. EARLY TERMINATION.** This Lease shall terminate on the first to occur of (a) the Expiration Date; or (b) completion of Tenant's purchase of the Demised Premises in accordance with Section 27.

**19. ASSIGNMENT AND SUBLETTING PROHIBITED.**

Tenant shall not, either voluntarily or by operation of law, sell or transfer this Lease, in whole or in part, or sublet the Demised Premises or any part thereof, or permit the Demised Premises or any part thereof to be occupied by anyone other than Tenant or Tenant's employees, agents, customers, or invitees, without the prior written consent of Landlord in each instance, which consent shall not be unreasonably withheld, delayed, or conditioned. Any sale, assignment, transfer, or subletting of this Lease which is not in compliance with the provisions of this Section 19 shall be void and shall, at the option of Landlord, terminate this Lease. The consent by Landlord

to any assignment or subletting shall not be construed as relieving Tenant from obtaining the express written consent of Landlord to any further assignment or subletting or as releasing Tenant from any liability or obligation hereunder whether or not then accrued. An Assignment of less than 100% of Tenant's interest in the Demised Premises shall not be permitted.

## **20. DEFAULT BY TENANT.**

**20.1 Tenant's Default.** The occurrence of any one or more of the following events shall constitute a default and material breach of this Lease by Tenant: (a) failing to pay any Rent or any other Additional Charges when due and such failure continues for ten (10) days following receipt of Notice of such failure from Landlord to Tenant; (b) failing to abide by the use restrictions set forth in Section 6.1; (c) failing to promptly and fully perform any other covenant, condition, or agreement contained in this Lease should such failure continue for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, Tenant shall have an additional sixty (60) days to cure if the failure to perform is such that it cannot reasonably be cured within thirty (30) days and Tenant commences to cure within said 30-day period and diligently pursues such cure to completion; (d) permitting Tenant's assets to be placed in the hands of a receiver or trustee for a period in excess of thirty (30) days; making an assignment for the benefit of creditors; instituting any proceedings under any bankruptcy act wherein Tenant seeks to be adjudicated a bankrupt, to be discharged of its debts, or to effect a plan of liquidation, extension or reorganization; failing to have dismissed within sixty (60) days any involuntary proceeding filed against Tenant under any bankruptcy act; becoming insolvent; or failing to have dismissed within thirty (30) days any proceedings seeking to execute or levy against or attach fifty percent (50%) or more of Tenant's assets; or (e) causing or permitting to be caused a violation of any Laws. Any notice provided above shall be in lieu of and not in addition to any notice required by any Laws, except as otherwise not permitted by the Laws of the State.

**20.2** If in any one period of twelve (12) consecutive months, Tenant shall have failed to timely pay Rent or any Additional Charges herein more than three (3) times and Landlord, because of such defaults, shall provide Tenant within said twelve (12) month period three (3) or more Notices, then the fourth such failure within said period shall be deemed to be a non-curable default and Landlord shall be entitled to immediate possession of the Demised Premises and the Purchase Option (defined below) shall terminate.

**20.3** In the event of Tenant's default hereunder, Landlord may: (i) perform such obligations on behalf of Tenant, whereupon Tenant shall reimburse Landlord for the costs incurred as Additional Charges within ten (10) days after demand except as otherwise provided with respect to Capital Improvements; (ii) terminate this Lease and any related options with Notice to Tenant; and/or (iii) pursue any and all remedies available at law or in equity, including injunctive relief.

**21. WAIVER OF NOTICE.** Notwithstanding any other provision contained in this Lease relating to notice: (i) if Tenant is required to comply with any governmental regulation or order within a period less than that to which Tenant would otherwise be entitled to Notice hereunder, Tenant shall not be entitled to Notice from Landlord beyond the period within which such compliance may be required by such regulation or order; or (ii) if the Demised Premises requires emergency repairs which Tenant would otherwise be obligated to make under this Lease, but which Tenant is then unable or unwilling to make, Landlord may, without Notice, elect to make such

repairs for the account and at the expense of Tenant. Any amount so paid shall be subject to reimbursement by Tenant as Additional Charges.

**22. COSTS AND ATTORNEYS' FEES.** In the event either Party brings or commences a Legal Proceeding to enforce any of the terms of this Lease, the Prevailing Party in such action shall have the right to recover reasonable attorneys' fees and all other associated costs from the other Party, to be fixed by the court in the same action. The term "**Legal Proceedings**" shall include appeals from a lower court judgment and bankruptcy proceedings. The "**Prevailing Party**" means the Party that substantially obtains the relief sought.

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

To Landlord: 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 Tenant: 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.

**24. RIGHT OF ENTRY.** In addition to its rights otherwise provided in this Lease, Landlord reserves and shall at any and all reasonable times have the right to enter the Demised Premises to inspect the same, perform tests and studies, remediate Hazardous Materials, to submit the Demised Premises to prospective partners, purchasers, lenders, or Tenants, and to post notices of non-responsibility, all without abatement of Rent. Tenant, on behalf of itself and Tenant's Agents, hereby waives any claim for damages for any injury or inconvenience to or interference with

Tenant's business, any loss of occupancy or quiet enjoyment of the Demised Premises, and any other loss occasioned by Landlord's entry as provided in this Section 24. Tenant shall permit Landlord to place upon the Demised Premises signs advertising the Demised Premises for sale or lease together with such promotional signage as Landlord may desire.

**25. NO RECOURSE.** Notwithstanding anything herein to the contrary, Tenant agrees that any claim against Landlord shall be limited to the real property and improvements located within or on the Demised Premises. Tenant hereby waives its rights to make any claim or demand against any other property or assets of Landlord unrelated to the Demised Premises.

**26. NET LEASE.** As long as the City of Peoria shall remain the Landlord, it is the intention of the parties hereto that this Lease Agreement shall be a net lease and that Landlord shall receive the rents herein reserved and all sums which shall or may become payable hereunder by Tenant free from all taxes, charges, expenses, damages and deductions of every kind or sort whatsoever and that Tenant shall and will and hereby expressly agrees to pay all such sums which, except for the execution and delivery of this Lease Agreement, would have been chargeable against the Demised Premises and payable by Landlord. Nothing provided in this Section 26 shall be inconsistent with Tenant's obligations as otherwise provided in this Lease with regard to any increase in taxes from those that would be owed as long as the City of Peoria remains the Landlord to those which would otherwise be owed if the City of Peoria transfers ownership of the real property included within the Demised Premises.

**27. OPTION TO PURCHASE.** Provided Tenant is not then in default under the Development Agreement or this Lease, Landlord hereby grants to Tenant a non-transferable option to purchase the Demised Premises ("**Purchase Option**"), according to the terms and conditions hereinafter set forth.

**27.1 Option Period.** The Purchase Option granted herein shall become effective one (1) year after the Commencement Date, and Tenant shall have the right to exercise the Purchase Option hereunder by delivering Notice of exercise (the "**Option Notice**") to Landlord at any time prior to the expiration of the Lease Term or Renewal Term or any other termination of this Lease ("**Option Period**"). The Option Notice shall set forth a date for conveyance of the Premises pursuant to the Option (the "**Closing**"), which date shall be no later than the last day of the Term.

**27.2 Purchase Price.** The "**Purchase Price**" for the Premises shall be the then current fair market value as determined by an appraiser mutually agreed to by the Parties, at Tenant's expense (the "**Appraisal**"). Upon completion of the Appraisal, the Parties shall promptly review the Appraisal and advise within thirty (30) days whether the proposed Purchase Price is acceptable, with such approval not to be unreasonably withheld, conditioned, or delayed. If the Parties mutually agree, the appraised value shall be the Purchase Price. If either Party objects to the price determined by the Appraisal, by providing Notice within thirty (30) days, the Parties shall meet and confer within ten (10) days following said Notice in an effort to agree on the Purchase Price. If the Parties are unable to agree on the Purchase Price within thirty (30) days following said Notice, then the Purchase Price, shall be determined by a single appraiser who is a member of the American Institute of Real Estate Appraisers (or if it shall not then be in existence, a member of the most nearly comparable organization) who is licensed by the State of Arizona and has a minimum of five (5) years experience in the Phoenix Metropolitan Area, and who is not affiliated

with either Party. If the Parties are unable to agree on a single appraiser within forty-five (45) days following issuance of said Notice, either Party may request that the presiding judge of the Maricopa County Superior Court select an appraiser having the qualifications set forth above. The appraiser shall then have thirty (30) days following selection to notify the Parties in writing of its determination of the Purchase Price. Neither Party shall have any ex parte communication with the appraiser, but each Party may submit to the appraiser no later than ten (10) days following his/her selection a memorandum supporting such Party's opinion as to the fair market value of the Premises. This appraiser's determination of the Purchase Price shall then be binding on both Parties as the Purchase Price and each Party shall pay one-half (1/2) of this appraiser's fee. Once the Purchase Price has been determined, Parties will proceed to effect the transaction in a way that is consistent with the custom of local commercial real estate transactions, and upon forms mutually agreed to, such agreement is not to be unreasonably withheld, conditioned, or delayed, and in accordance with the purchase provisions described in Exhibit B.

**27.3 Conveyance of Title and Delivery of Possession.** Landlord and Tenant agree to perform all acts and execute all documents necessary for conveyance in sufficient time for the Demised Premises and Improvements thereon (including all of Landlord's interest in this Lease) to be conveyed to Tenant, within ninety (90) days after delivery of the Option Notice, but in no event later than the expiration of the Term. Landlord's entire interest in the shall be conveyed by special warranty deed, in the form attached hereto as Exhibit D (the "**Special Warranty Deed**"). Upon delivery of the Special Warranty Deed by Landlord to Tenant, this Lease shall terminate. The Parties shall thereafter execute and deliver one to the other any and all necessary documents to evidence the termination of the Lease. The Demised Premises shall be conveyed in an "as is" condition, with no warranty, express or implied, by Landlord as to the physical condition of the soil, its geology, the condition of the improvements, or the presence of faults, Hazardous Substances, or other substances known or unknown to Landlord. All expenses in connection with conveyance of the Demised Premises to Tenant, including, but not limited to, title insurance, recordation, notary fees and all other closing costs, shall be paid by Tenant. Possession shall be delivered to Tenant concurrently with the conveyance of title.

**27.4 Assignment.** Tenant may not sell, assign, convey, or transfer the Purchase Option. Any sale, assignment, conveyance, or transfer of this option made, attempted, or suffered, by operation of law or otherwise, without prior written consent of the Landlord, shall render the option rights of no further force or effect.

**RIGHT OF FIRST REFUSAL** - In the event that Landlord intends to list or market for sale, or otherwise intends to sell, convey, or dispose of the Demised Premises during the Lease Term, Landlord shall have the Demised Property appraised and provide Tenant Notice of such intent and the appraisal value ("**Notice of Sale**"). Tenant shall have first right to purchase the Demised Premises at the appraised value subject to any other terms and conditions the Landlord determines in its sole discretion. Should Tenant then elect to purchase the Demise Premises pursuant to this Section 28, Tenant must provide Notice to Landlord of Tenant's election (the "**Purchase Notice**") within ninety (90) days of the Notice of Sale (the "**Refusal Period**"). If after Landlord has delivered the Purchase Notice, Tenant Notifies Landlord during the Refuals Period that Tenant elects not to purchase the Demised Premises or Tenant fails to provide a Purchase Notice within the Refusal Period, then upon the expiration of the Refusal Period, any and all obligations for Landlord to offer the Demised Premises to Tenant under this Lease shall terminate and will no

longer be of any force or effect. Thereafter, Landlord may solicit and accept any offer to purchase or otherwise transfer, sell, convey, or dispose of the Demised Premises in any manner and upon any terms whatsoever and upon said transfer, sale, conveyance, or disposal, Landlord shall thereupon be released from all liabilities and obligations imposed upon Landlord under this Lease, except those specifically stated to survive such transfer, whereafter such liabilities and obligations shall be binding solely on the new owner of the Demised Premises (the “**Successor Owner**”) and the Successor Owner shall be deemed to have assumed all of Landlord's remaining obligations under this Lease. If Tenant does not proceed to purchase the Demised Premises pursuant to this Section 28, and Landlord proceeds to transfer, sell, convey, or dispose of the Demised Premises to a Successor Owner, Tenant may, within ninety (90) days after said transfer of ownership, provide written notice to the Successor Owner of Tenant's intent to terminate this Lease. In such event, Tenant shall have twelve (12) months from the date of said written notice to vacate the Demise Premises and terminate this Lease. During said twelve (12) month period, all other terms and conditions of this Lease shall remain in effect and be binding on the Successor Owner.

## **28. MISCELLANEOUS PROVISIONS.**

**28.1 Remedies Not Exclusive; No Waiver.** The various rights and remedies herein contained shall not be considered as exclusive of any other right or remedy of such Party but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity, or by statute. No delay or omission to exercise any right or remedy by either Party shall impair any such right, power, or remedy or be construed as a waiver of any default or nonperformance. Landlord shall not be deemed to have waived any term, covenant, or condition unless Landlord gives Tenant written notice of such waiver. The waiver by Landlord of a breach of any term, covenant, or condition contained in this Lease shall not be treated as a continuing waiver of such term, covenant, or condition, or as a waiver of any future breach of the same.

**28.2 Severability.** If any term or provision of the Lease or the application thereof to any person or circumstance shall, to any extent, be invalid and unenforceable, the remainder of this Lease, or the application of such term or provision or persons or circumstances other than those to which it is invalid and unenforceable, shall not be affected thereby, and such term or provision of this Lease shall be valid and shall be enforced to the extent permitted by law.

**28.3 Integration; Amendment in Writing.** This Lease is and shall be considered to be the only agreement or understanding between the Parties with respect to the subject matter hereof. All negotiations and oral agreements acceptable to both Parties have been incorporated herein. It may not be amended or modified by any act or conduct of the Parties or by oral agreement unless reduced to writing and executed by the Parties.

**28.4 Successors and Assigns.** Subject to the provisions hereof with respect to assignment, all of the rights and obligations of the Parties under this Lease shall be binding upon and inure to the benefit of the respective heirs, executors, and permitted successors and assigns of Landlord and Tenant.

**28.5 Choice of Law.** This Agreement shall be governed by the internal laws of the State of Arizona without regard to choice of law rules.

**28.6 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 in the Federal District Court in the District of Arizona sitting in Maricopa County. City and Developer agree to the exclusive jurisdiction of such courts. Claims by Developer shall comply with time periods and all other requirements of City's claims procedures from time to time.

**28.7 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 Lease or their relationship arising hereunder.

**28.8 Authority.** Each individual executing this Lease on behalf of Tenant hereby warrants and represents that he is duly authorized to execute this Lease on behalf of said corporation or partnership.

**28.9 Time of Essence.** Time is of the essence in the performance of each and every term, covenant, and condition of this Lease.

**28.10 Covenants and Conditions.** Each and every provision of this Lease to be performed by Tenant shall be deemed both a covenant and condition. The Parties agree that each provision set forth herein, pursuant to which Tenant is required to pay Rent shall be and is a covenant of Tenant independent of any other term, condition, or covenant contained in this Lease. Tenant shall not be entitled to offset the claimed amount of damages against any Rent or other payments due hereunder, it is expressly agreed that such covenant to pay such amount shall be independent of any obligation of Landlord hereunder. All payments to be made by Tenant hereunder shall, unless otherwise expressly provided, be paid to Landlord without Notice or demand and without adjustment, deduction, or setoff, in lawful money of the United States.

**28.11 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.

**28.12 Payments.** Payments shall be made and delivered in the same manner as Notices and shall be effective at the same time that a Notice would be deemed effective under Section 23.

**28.13 Relationship.** Nothing herein shall be deemed or construed by the Parties or by any third party as creating the relationship of principal and agent, employer and employee, master and servant, owner and contractor, sharecropper, partnership, or joint venture between the Parties, it is understood and agreed that no provision herein, nor any acts of the Parties, shall be deemed to create any relationship between the Parties other than the relationship of landlord and tenant.

**28.14 Knowledge, Review and Interpretation.** The Parties, and each of them, acknowledge, declare, and agree, that: (i) they have had the opportunity to consult with legal counsel about this Lease, including the meaning and effect of waiving any legal rights, or have had the opportunity to do so and have voluntarily chosen not to do so; (ii) they have had adequate time and opportunity to review the terms of this Lease and have carefully read it; (iii) they are sophisticated parties that have negotiated this Lease at arm's length, and accordingly, expressly

waive any rule of law or any legal decision that would require interpretation of any ambiguities in this Lease against the Party that has drafted it; and (iv) they intend to be legally bound to the provisions of this Lease, which shall be interpreted in a reasonable manner to effect the purposes of this Lease and intent of the Parties as outlined herein.

**28.15 Counterparts; Termination.** This Lease 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 the Development Agreement, this Lease Agreement shall be terminated concurrently, and the Parties shall have no obligations to each other except for any obligations that are stated to survive a termination of the Development Agreement or this Lease Agreement.

**28.16 No Third Party Beneficiaries.** No person or entity shall be a third-party beneficiary to this Lease or shall have any right or cause of action hereunder.

**28.17 No Liability of City Officials.** Notwithstanding any other language in the Lease, 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 Developer, or to any successor in interest to Developer, in any way whatsoever including without limitation in the event of default by the City, for any amount that may become due to Developer or its successors, or with respect to any obligation of the City under the terms of the Lease.

**28.18 Arizona Law Provisions.** To the extent required by Arizona State law:

(a) 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.

(b) Developer 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.

(c) To the extent applicable under A.R.S. § 41-4401, Developer 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 Developer 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.

(d) To the extent applicable under A.R.S. § 35-394, Developer 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 PAGE]**

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

**Landlord:**

**CITY OF PEORIA**, an Arizona municipal corporation

By: \_\_\_\_\_  
Henry Darwin, City Manager

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 Purchase Provisions

1. Subject to the provisions of Section 27 of the Lease, Tenant holds a non-transferable option to purchase the Demised Premises.
2. In the event Tenant exercises its non-transferable option to purchase the Demised Premises, such purchase shall be as described in Section 27 of the Lease, and shall be free and clear of all liens and encumbrances except for those described on Schedule 1 attached hereto (“**Permitted Exceptions**”).
3. Concurrent with its delivery to Landlord of an Option Notice (as provided in Section 27 of this Lease, Tenant shall submit to Landlord an executed set of escrow instructions to effect Tenant’s purchase of the Demised Premises. Such instructions shall provide, in addition to provisions common to customary escrow instructions: (1) for a closing date not later than ninety (90) days following delivery of a Purchase Notice; (2) for an allocation of escrow fees, recording fees, and title insurance fees in the manner that is customary in Maricopa County, Arizona; (3) that no brokerage commissions shall be payable by Landlord or Tenant to anyone; (4) for conveyance of the Demised Premises by special warranty deed; and (5) the execution by Landlord of an owner’s affidavit in a form and content sufficient for the issuance of extended coverage title insurance without exception for parties in possession or mechanics’, materialmen’s or professional service liens. Landlord shall be charged in the escrow for a standard owner’s policy of title insurance insuring Tenant’s title to the Demised Premises; Tenant shall be charged in the escrow for the cost of extended coverage and the cost of any endorsements requested by Landlord. Landlord promptly shall execute the escrow instructions along with the special warranty deed and shall deliver them to the escrow agent identified in the escrow instructions pending the close of escrow. At any time prior to delivery of the Option Notice, Tenant may request that a title company of its choosing prepare a commitment for title insurance for the Demised Premises and Landlord expressly consents thereto.
4. If Tenant fails to submit the escrow instructions or to close the escrow within the requisite ninety (90) days as provided in paragraph 3 above, then Landlord may issue a Notice of such failure to Tenant, and if the failure is not cured within five (5) days, then, as the sole consequence to Tenant of such failure, Tenant’s non-transferable option under Section 27 of this Lease shall terminate in its entirety and thereafter shall have no further force or effect for any purpose.
5. Each party shall bear its own attorneys’ fees and costs incurred in connection with the purchase transaction.
6. Payment of the amount due at close of escrow to Seller shall be made through escrow by wire transfer of immediately available federal funds (United States dollars). Tenant may satisfy any monetary encumbrances that affect title to the Demise Premises and that are not Permitted Exceptions out of the proceeds otherwise due Landlord at the close of escrow.

**SCHEDULE 1  
TO  
PURCHASE PROVISIONS**

Permitted Exceptions

1. Water rights, claims, or title to water, whether or not shown by the public record.
2. Non-delinquent real estate taxes.
3. All title exceptions and matters in effect as of the Effective Date of this Lease.
4. Any further title exceptions approved by Buyer in writing.
5. The printed exceptions and exclusions applicable to an ALTA 2006 extended coverage owner's policy of title insurance contained in the title policy issued at close of escrow.

**EXHIBIT C**  
**FORM OF MEMORANDUM OF LEASE**  
**MEMORANDUM OF LEASE**

THIS MEMORANDUM OF LEASE shall evidence that there is in existence a Lease as hereinafter described. It is executed by the parties hereto for recording purposes only as to the Lease hereinafter described, and it is not intended and shall not modify, amend, supersede, or otherwise affect the terms and provisions of said Lease.

1. Name of Document: LEASE AGREEMENT
2. Name of Landlord: THE CITY OF PEORIA, an Arizona municipal corporation
3. Name of Tenant: Caldwell County BBQ at Peoria, LLC
4. Address of Landlord: OFFICE OF THE CITY ATTORNEY  
8401 W. Monroe, Suite 340  
Peoria, Arizona 85345
5. Address of Tenant: Travis Taylor or Addison Taylor  
18324 East Nunneley Road,  
Gilbert, AZ, 85296
6. Effective Date of Lease: This Lease shall commence on the date of the issuance of a certificate of occupancy for a restaurant on the Demised Premises (the “**Commencement Date**”)
7. Initial Lease Term: Commencing on the Commencement Date and shall continue until the 5<sup>th</sup> anniversary of the Commencement Date.
8. Renewal Term: After the Initial Lease Term, Tenant shall have the option to renew for one additional five (5) year term afterwhich the Parties may agree on further extensions
9. Demised Premises: The real property located at 8315 W Washington St., Peoria, Arizona 85345 (Assessor Parcel Numbers: 142-41-025A, 142-41-026A, 142-41-027).
10. Use Restrictions: Landlord and Tenant have agreed that Tenant operate the Project as a bar-b-que restaurant with related bar, an event rental space, and no other use.
11. Purchase Option: Tenant has the option to purchase the Demised Premises and a right of first refusal during the Initial Lease Term or any Extension at the then fair market value pursuant to Sections 26 and 27 of the Lease Agreement.

A copy of the Lease is on file with Landlord and Tenant at their respective addresses set forth above.

[Signature Pages Follow]

**EXHIBIT D**

**Form of Special Warranty Deed**

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EXEMPT FROM AFFIDAVIT AND FEES PURSUANT TO A.R.S. § 11-1134, A.3.

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SPECIAL WARRANTY DEED

For the consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration received, CITY OF PEORIA, an Arizona municipal corporation (“**Grantor**”), does hereby grant and convey to Caldwell County BBQ at Peoria, LLC an Arizona limited liability company (“**Grantee**”), the following described real property (the “**Real Property**”) situated in Maricopa County, Arizona:

SEE EXHIBIT A ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF

TOGETHER WITH, all buildings, structures and improvements located on the Real Property, including, without limitation, to the extent owned by Grantor: (i) all irrigation ditches, gates, valves, pumps, tanks, and wells; (ii) all appurtenances, hereditaments, easements, rights-of-way, reversions, remainders, development rights, and air rights; (iii) all oil, gas, and mineral rights not previously reserved; (iv) any rights of Grantor to any adjoining strips or gores of property and any land lying within the bed of any adjoining street, alley, right-of-way, or waterway; and (v) any other rights or privileges appurtenant to such Real Property or used in connection therewith.

SUBJECT TO: current real property taxes and other assessments not yet due and payable; patent reservations; and all easements, rights of way, covenants, conditions, restrictions, declarations, and other matters as may appear of record, and all matters that an accurate survey of the Real Property would disclose, and the applicable zoning and use laws and regulations affecting the Real Property.

AND Grantor hereby binds itself to warrant and defend the title to the Real Property against all of the acts of Grantor and no other, subject to the matters above set forth.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[Signature Page Follows]



DATE: \_\_\_\_\_

GRANTOR:

CITY OF PEORIA,  
an Arizona municipal corporation

By: \_\_\_\_\_  
Henry Darwin, City Manager

ATTEST:

\_\_\_\_\_  
Agnes Goodwine, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_