

**TRAFFIC SIGNAL IMPROVEMENTS REIMBURSEMENT AGREEMENT
BETWEEN
CITY OF GLENDALE AND RRB BEVERAGE OPERATIONS, INC**

This Traffic Signal Improvements Reimbursement Agreement ("Agreement") is effective as of the _____ day of _____, 2020 (the "Effective Date"), by and between the CITY OF GLENDALE, an Arizona municipal corporation ("City"), and RRB BEVERAGE OPERATIONS, INC., a Delaware corporation ("Project Applicant").

RECITALS

- A. The City and Project Applicant entered into a Development Agreement, on February 26, 2019, C19-0175, (the "Development Agreement") regarding Project Applicant's desire to acquire and develop certain real property generally located near 10501 N. Reems Road, Waddell, AZ 85355, within the City's boundaries.
- B. Pursuant to Section 4(a) of the Development Agreement, Project Applicant is required to design, construct, and dedicate certain Public Infrastructure, including half-street improvements and traffic signal improvements at the intersection of Peoria Avenue and Reems Road (the "Traffic Signal Improvements").
- C. Project Applicant desires to proceed with the Traffic Signal Improvements ahead of the originally planned construction date.

AGREEMENT

In consideration of the Recitals, which are confirmed as true and correct and incorporated by this reference, the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the City and Project Applicant agree as follows:

1. Traffic Signal Improvements.

1.1 Project Construction Costs. Project Applicant shall, at Project Applicant's sole cost and expense, design, construct or cause to be constructed, and dedicate to the City of Surprise the Traffic Signal Improvements listed and described in **Exhibit A** to this Agreement, subject to the terms and conditions of this Agreement. The construction costs of the Traffic Signal Improvements including previous developer contributions and existing traffic signal infrastructure (the "Project Construction Cost") are estimated to cost \$270,805.00. The Project Construction Cost does not include the cost of the design of the Traffic Signal Improvements.

1.2 Design, Plans, Bidding, Construction and Dedication. Project Applicant, at its sole cost and expense shall design, plan, bid, and construct the Traffic Signal Improvements and dedicate the Traffic Signal Improvements to the City of Surprise in accordance with applicable laws, including without limitation all laws, rules, ordinances and standards of the City. Project Applicant, at its sole cost, shall be responsible for the preparation of infrastructure plans detailing the Traffic Signal Improvements. Project Applicant shall comply with all applicable state laws governing the procurement of services related to the construction of public infrastructure for which reimbursement is sought, including the requirements of Title 34 of the Arizona Revised Statutes. All plans required by this Agreement shall be funded by Project Applicant but shall be prepared under the direction and approval of the City.

1.3 Dedication and Acceptance of the Traffic Signal Improvements. Upon substantial completion, i.e., completion of all major components of the Traffic Signal Improvements Project Applicant is required to construct ("Substantial Completion"), Project Applicant shall promptly dedicate and convey to the City of Surprise the Traffic Signal Improvements, free and clear of all

liens and encumbrances and at no cost to the City or the City of Surprise. The Surprise City Engineer or his/her designee shall inspect the completed Traffic Signal Improvements to determine whether it has been constructed substantially in accordance with the applicable standards and the approved plans. Upon completion of the inspection and review the City of Surprise shall either: (a) approve the construction of the Traffic Signal Improvements; or (b) provide a punch list of specific items that are not in accordance with applicable standards and/or the approved plans that are to be corrected by the Project Applicant. So long as the Traffic Signal Improvements are constructed in accordance with the applicable standards and approved plans, all punch lists items have been timely completed, the Traffic Signal Improvements are free and clear of all liens, and accurate "as built" drawings and plans of the Traffic Signal Improvements have been provided to the City of Surprise, the City of Surprise shall accept the Traffic Signal Improvements. Notwithstanding the foregoing, in the event the City of Surprise determines, in its sole discretion, that any aspect of the construction plans or construction of the Traffic Signal Improvements is unsafe or hazardous in any way, Project Applicant shall cure such hazard to the City of Surprise's satisfaction prior to the City of Surprise accepting maintenance responsibilities. Project Applicant shall bear all risk of, and shall indemnify the City and the City of Surprise and their officials, employees and City Council members, against any claim arising prior to the City of Surprise's acceptance of the Traffic Signal Improvements from any injury or property damage to any person, party or utility.

1.4 Warranty. From the date of acceptance of the Traffic Signal Improvements by the City of Surprise, Project Applicant shall provide a one-year warranty against defective workmanship and/or materials related to the Traffic Signal Improvements.

2. **Traffic Signal Improvements Reimbursement.** Notwithstanding Section 1.1 of this Agreement, within thirty (30) days after Substantial Completion and acceptance of the dedication of the Traffic Signal Improvements, the City shall reimburse Project Applicant Seventy-Five Percent (75%) of the Project Construction Cost up to and including \$300,000.00. Project Applicant is responsible for paying the remaining Twenty-Five Percent (25%) of the Project Construction Cost up to and including \$300,000.00. In the event that the Project Construction Cost exceeds \$300,000.00, the City shall reimburse Project Applicant Sixty-Two and One-Half Percent (62.5%) of the Project Construction Cost in excess of \$300,000.00. In the event that the Project Construction Cost exceeds \$300,000.00, Project Applicant shall be responsible for paying Thirty-Seven and One-Half Percent (37.5%) of the Project Construction Cost in excess of \$300,000.00. The costs of the Traffic Signal Improvements remain non-development impact fee eligible. Nothing in this Agreement shall prevent the City from seeking reimbursement from the City of Surprise and Maricopa County for its share of the Project Construction Cost.
3. **Incorporation of the Terms and Conditions of the Development Agreement.** All terms, conditions and provision of Sections 12 through 41 of the Development Agreement are hereby incorporated herein by this reference with the same force and effect as though fully set forth herein.

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

CITY OF GLENDALE,
an Arizona municipal corporation

Kevin R. Phelps, City Manager

ATTEST:

City Clerk (SEAL)

APPROVED AS TO FORM:

Michael D. Bailey, City Attorney

RRB Beverage Operations, Inc.
a Delaware corporation

By: _____

Printed Name: Jesse King

Its: