When Recorded Return to:

City of Peoria
City Clerk's Office
8401 W. Monroe Street
Peoria, Arizona 85345

**DEVELOPMENT AGREEMENT**
**BETWEEN**
**THE CITY OF PEORIA AND**
**CBDG PEORIA LLC**

THIS DEVELOPMENT AGREEMENT ("**Agreement**") is entered into as of the _____ day of June, 2022, by and between **CBDG Peoria LLC**, an Arizona limited liability company ("**Developer**"), and the **CITY OF PEORIA**, an Arizona municipal corporation ("**City**"). Developer and City are collectively referred to herein as the "**Parties**," or individually as a "**Party**."

RECITALS:

A. The City owns certain real property in Peoria, Arizona, that is located on the south side of W. Paradise Lane, east of 83rd Avenue and west of 79th Avenue (the "**Property**"). The Property currently comprises approximately 2.66 gross acres, a preliminary legal description of which is attached hereto as Exhibit A (the "**Property**").

B. The Property currently is used to provide public surface parking during events held at the nearby spring training stadium and related facilities. Accordingly, the City has adopted, among other things, the Peoria Sports Complex Area Urban Design Plan (the "**Plan**"). The Plan acknowledges that the Property is adjacent to the Spring Training Facilities, but also notes that the public parking needs for the Spring Training Facilities can be better met with other parking arrangements.

C. Based on the Plan, the City released a Request for Proposals entitled the "Development of P83 Central Business District" (P22-0004) dated October 4, 2021 (the "**RFP**"). The RFP invited proposals for the opportunity to privately develop, finance, construct, and manage a mixed-use development or redevelopment project on city-owned or private property within the P83 Central Business District.

D. Developer specializes in the identification, development and management of retail, hotel, office and top-tier restaurant properties across the southwest United States with a strategy to enhance the economic profile of communities in which it develops. City selected Developer as the successful respondent to the RFP to develop top tier restaurants and related amenities on the Property.

E. The Parties intend that Developer will purchase the Property from the City by way of a separate Real Estate Purchase Agreement, which said purchase would be contingent upon Developer agreeing to develop the Property pursuant to the terms of this Agreement and the Real Estate Purchase Agreement.

F. As more fully described in this Agreement, the Parties intend that Developer will cause the construction upon the Property, of three (3) top tier Quality Restaurants along with the Placemaking Amenities (defined below) and other accompanying features, infrastructure, and improvements and the Reimbursable Infrastructure (defined below), all as generally depicted on the site plan attached hereto as Exhibit B (the "**Project**"). As provided in the Real Estate Purchase Agreement, City will have the right to repurchase the Property from Developer in the event Developer fails to develop the Project.

G. The City has determined that future improvements to Paradise Lane and the City's parking lot are necessary to facilitate redevelopment in the area. As part of the Project, the City may request that Developer cause the construction of the following public improvements: Paradise Lane improvements and landscaping including the extension of utility stubs to the property, new driveway onto Paradise Lane, and pedestrian/trail connection adjacent to the Property, all as described in Exhibit C attached hereto (collectively, the "**Reimbursable Infrastructure**"). The Parties acknowledge that the Reimbursable Infrastructure will provide a direct public benefit to the City and its residents. The Parties agree that, in connection with Developer's development of the Project, the City may request that the Developer undertake all or a portion of the Reimbursable Infrastructure and, in doing so, Developer will be reimbursed for Reimbursable Costs (as defined below) in accordance with Section 9 of this Agreement. The City has determined that contracting with Developer to provide the Reimbursable Infrastructure as part of the Project will allow the Reimbursable Infrastructure to be developed at a lower overall cost to the City and also provide the City with the specific public benefits of the Reimbursable Infrastructure for use by its residents, visitors, and the general public. Accordingly, in consideration of Developer's delivery of the Project, the City intends to reimburse Developer for the Reimbursable Costs.

H. Developer has preliminarily determined to its satisfaction, but subject to Developer's right to conduct its due diligence investigation pursuant to the Real Estate Purchase Agreement: (i) the suitability of the Property for the Project; and (ii) the Project's viability (including, but not limited to, market demand, site utilization, anticipated tenant and owner mix, estimated development costs and operating pro formas).

I. City and Developer 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 Developer's interest in the Property, which exists by virtue of this Agreement, and accordingly, desire to enter into this Agreement and the Real Estate Purchase Agreement to facilitate development of the Project consistent with the Plan and the City's General Plan as applicable to the Property on the date of this Agreement, 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.

J. The City, in the exercise of its legislative functions, and finding in such legislative capacity that the benefits conferred upon Developer are proportionate to the direct benefits being received by the City, has authorized 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 Developer agree as follows:

AGREEMENT

1. Incorporation of Recitals. The Parties acknowledge that the Recital Paragraphs A through J inclusive set forth above are true and correct in all material respects and are incorporated into this Agreement by this reference.

2. Definitions. In this Agreement, 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. References to Sections or Exhibits are references 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 Approval Process**" means the City's formal approval process for obtaining City Approvals on the Project.

"**City Approvals**" means approval by the appropriate City department, administrator, or body for each project related activity.

"**Closing**" means the consummation of the purchase of the Property in accordance with the Real Estate Purchase Agreement.

"**Commence Construction**" and "**Commencement of Construction**" mean both (i) the City has notified Developer that permits required to begin the construction of vertical improvements for the Project are approved and (ii) Developer has commenced grading of the land or the construction of vertical elements of the Project.

"**Completed Construction**" and "**Completion of Construction**" means the point which final certificates of occupancy have been issued by the City for improvements constructed by Developer, in accordance with the Regulatory Approvals, Applicable Laws, and this Agreement.

"**Default**" means as defined in Sections 15.1.and 15.2.

"**Developer**" means the party designated as Developer on the first page of this Agreement.

"**Drainage Facilities**" means as defined in Section 6.

"**Due Diligence Indemnity Obligations**" means as defined in Section 12.

"**Effective Date**" means as defined in Section 9.

"**Enforceability Challenge**" means as defined in Section 20.18.

"**Force Majeure**" means as defined in Section 11.

"**Improvements**" means as defined in Section 14.1.

"**Maximum Reimbursement**" means an amount equal to the Purchase Price under the Real Estate Purchase Agreement.

"**Indemnity**" means as defined in Section 14.1.

"**Notices**" means as defined in Section 18.5.

"**Parking License**" means the Parking License Agreement to be executed by City and Developer upon Closing under the Real Estate Purchase Agreement in the

form set forth in Exhibit D attached hereto.

"**Placemaking Amenities**" means as defined in Section 3.3.

"**Plan**" means as defined in Recital B.

"**Plat**" means the final Plat of the Property to be processed by the City prior to Closing under the Real Estate Purchase Agreement.

"**Project**" means as defined in Recital F.

"**Property**" means as defined in Recital A.

"**Quality Restaurants**" means as defined in Section 3.4.

"**Real Estate Purchase Agreement**" means that certain Real Estate Purchase Agreement between City and Developer, which shall be substantially in the form of Exhibit E attached hereto. Upon execution by City and Developer, the provisions of the Real Estate Purchase Agreement shall be incorporated as part of this Agreement by this reference.

"**Regulatory Approvals**" means as defined in Section 4.5.

"**Reimbursable Costs**" means all costs incurred by Developer to design and construct the Reimbursable Infrastructure including design costs, "hard" costs of construction, bonding fees, permit fees, construction management fees, and similar fees and costs.

"**Reimbursable Infrastructure**" means as set forth in Exhibit C and as defined in Recital G.

"**Reimbursement Provisions**" means the provisions of Section 9 of this Agreement.

"**RFP**" means as defined in Recital C.

"**Term**" means as defined in Section 10 of this Agreement.

"**Transfer**" means as defined in Section 19 of this Agreement.

3. Developer Undertakings. Developer agrees to undertake the following:

3.1 Land Acquisition. Developer agrees to purchase the Property pursuant to and subject to the terms and conditions of the Real Estate Purchase Agreement. The Parties acknowledge and agree that the legal description of the Property shall be subject to modification to conform the Plat prior to Developer's acquisition.

3.2 Reimbursable Infrastructure.

3.2.1 If, upon City's request, Developer agrees to build portions, or all, of the Reimbursable Infrastructure, Developer shall comply with the following:

3.2.1.1 Developer shall design, construct and install the Reimbursable Infrastructure within the City right-of-way or public easement.

3.2.1.2 Developer shall obtain City approval for the design plans for the Reimbursable Infrastructure prior to beginning the public bidding process for the construction contracts.

3.2.1.3 Developer shall publicly bid the contracts for construction and installation of the Reimbursable Infrastructure. All contractors and subcontractors must be selected in accordance with all applicable federal, state and municipal requirements, including without limitation the requirements of Arizona Revised Statutes Title 34 and Peoria City Code Chapter 29.

3.2.1.4 Developer or its affiliate will manage the construction and installation of the Reimbursable Infrastructure.

3.2.1.5 Upon completion and official acceptance of the Reimbursable Infrastructure, City shall assume responsibility for operation and maintenance of the Reimbursable Infrastructure.

3.3 Placemaking Amenities. Developer shall include as part of the Project upscale Placemaking Amenities ("**Placemaking Amenities**"). Placemaking Amenities will be constructed and installed at Developer's sole cost and expense and Developer shall maintain, repair and replace the Placemaking Amenities at the same level of quality as initially installed. Developer agrees that the design and development of the Placemaking Amenities shall be consistent with certain common architectural, aesthetic and thematic features approved by the City in the Plan.

3.4 Project Tenants. Developer will ensure that the Project is initially developed and leased to include three (3) "**Quality Restaurants**" as more fully described below, one (1) of which is anticipated to be Postinos and the remaining two (2) must be full service Quality Restaurants.

4. "**Quality Restaurants**" means dining establishments that offer a unique/boutique culinary destination experience and contribute toward establishing the City as a dining destination that will draw customers from within Peoria as well as visitors from the Phoenix Metropolitan area and beyond. The Parties agree to work in good faith to evaluate restaurants proposed for the Project believed by Developer and City to be Quality Restaurants. Proof that Developer has provided a Quality Restaurant shall be demonstrated by a certificate of occupancy issued by the City for the space to be operated by such Quality Restaurant and a proof of lease with the Quality Restaurant as demonstrated by either a recorded memorandum of lease reflecting a base lease term of

at least ten (10) years or other proof of an executed lease, as approved by the City Attorney's office.

5. City Undertakings:

5.1 Review and approve the design plans and construction permits for the Project and the Reimbursable Infrastructure based on the following priority review schedule:

a. First review by the City – 20 working days (M-Th) (5 weeks).

b. Subsequent reviews by the City – 12 working days (M-Th) (3 weeks).

c. Maximum time for Developer to respond to City comments and make corrections to the site plans(s), permits or construction documents submittals - 30 working days (M-F) (6 weeks).

d. Timeframes may be adjusted accordingly pursuant to Section 11 of this Agreement pertaining to performance extensions. Such schedule shall be subject to the City's review and approval, which approval shall not be unreasonably withheld, and shall include allowances for periods of time required for City's review and approval of submissions, and for approvals of authorities having jurisdiction over Project approval and funding. The schedule shall not be exceeded by Developer without the prior written approval of City or extension pursuant to Section 11 herein.

5.2 In consideration of and in exchange for Developer's obligation to design and construct the Project, City agrees to reimburse Developer the actual design and construction costs incurred by Developer for the Reimbursable Infrastructure in accordance with Section 9 herein. However, the total amount of Reimbursable Costs shall not exceed the Maximum Reimbursement.

5.3 Upon completion and official acceptance of the Reimbursable Infrastructure, City will accept ownership of the Reimbursable Infrastructure and assume all operation and maintenance obligations thereof and reimburse Developer the Reimbursable Costs.

5.4 The Parties intend that development of the Project will include three (3) retail buildings to be operated as Quality Restaurants. To accommodate the Quality Restaurants, the City intends to replat the Property to achieve the configuration depicted on Exhibit B. The Parties acknowledge that the final Project will be reflected on the new Plat, which is subject to revision during the City Approval Process.

5.5 Developer has proposed a preliminary site plan attached as Exhibit B (the "**Preliminary Site Plan**"). The Preliminary Site Plan establishes the basic

components of the Project. Development of the Project will be in accordance with the Regulatory Approvals and Applicable Laws. Any amendment to the Regulatory Approvals, will be undertaken by the City in accordance with its regular and customary procedures. Developer may request amendments to the Regulatory Approvals from time to time, and any such amendments will be reviewed and processed by the City in its discretion, pursuant to this Agreement and in accordance with Applicable Laws.

6. Project Schedule.

6.1 Developer, shall at its sole cost and expense, submit final construction plans to the City within 180 days after the Opening of Escrow under the Real Estate Purchase Agreement. City and Developer will execute the Real Estate Purchase Agreement within 30 days following the Effective Date of this Agreement.

6.2 Upon City's approval of final construction plans, and issuance of all permits necessary to construct the Project, Developer shall undertake and complete construction of the Project including tenant improvements and all Reimbursable Infrastructure within fifteen (15) months following Closing of the Real Estate Purchase Contract.

6.3 These deadlines may be revised by mutual written agreement of the Parties.

6.4 City will use best efforts to make land in the vicinity of the Property available to Developer for construction staging upon request of the Developer in accordance with separate staging licenses and/or temporary construction easements. Developer acknowledges use of the land made available by the City for construction staging shall be limited in duration and subject to terms, conditions and of limited duration as determined by the City. Developer acknowledges that the availability of the land to be utilized for construction staging, subject to this section, and the related staging licenses and/or easements, will be contingent upon, and subordinate to, the need for public parking due to spring training events at the Peoria Sports Complex.

7. Drainage. Certain public drainage improvements exist on the Property to convey storm water drainage to public off-site drainage facilities (collectively, the "**Drainage Facilities**"). The City makes no representations or warranties to Developer regarding the Drainage Facilities, but Developer is entitled to incorporate utilization of the Drainage Facilities in its drainage analysis for the Project. If Developer's drainage analysis is approved by the City, Developer may utilize the Drainage Facilities as part of the drainage for the Project. Issuance of building permits for the Project shall constitute City's approval of Developer's use of the Drainage Facilities.

8. Parking. In connection with the Closing under the Real Estate Purchase Agreement, City shall grant to Developer the Parking License.

9. Reimbursable Infrastructure. Developer agrees that, in connection with the development of the Project, Developer shall provide the Reimbursable Infrastructure when and as required in Section 3.2 of this Agreement. Unless the City otherwise establishes a later deadline for completion, Developer shall cause the Reimbursable Infrastructure to be completed prior to City's issuance of a certificate of occupancy for the Project or any component thereof.

9.1 Reimbursement Provisions.

9.1.1 Costs. Upon completion and City acceptance of the Reimbursable Infrastructure, the City shall reimburse Developer for all Reimbursable Costs up to the Maximum Reimbursement ("**Reimbursement Amount**"). The Maximum Reimbursement does not include impact fee credits, if any, which shall be considered separately. Notwithstanding anything herein to the contrary, Developer shall not be eligible for reimbursement of the Reimbursable Costs unless Developer complies with the provisions of Title 34, Chapter 2, Article 1, Arizona Revised Statutes and the requirements for construction projects and plans and specifications, respectively, of the City as specified in Chapter 26 *et seq.* of the Peoria Code and any procurement guidelines promulgated in connection therewith for design and construction of Reimbursable Infrastructure. The City shall provide reasonable cooperation and assistance to Developer in its compliance with applicable public building requirements.

9.1.2 Prior to the Closing under the Real Estate Purchase Agreement, City and Developer will agree on a preliminary budget of the anticipated Reimbursable Costs. At Closing under the Real Estate Purchase Agreement, the agreed upon budgeted Reimbursable Costs shall be retained in escrow. Following completion of the Reimbursable Infrastructure and acceptance of same by City, Developer shall submit to City its final amount of actual Reimbursable Costs together with applications for payment and other documentation supporting Developer's determination of Reimbursable Costs. If the actual amount of Reimbursable Costs exceeds the escrowed amount, then the escrowed funds shall be released to Developer and City will pay the difference directly to Developer. If the actual amounts of Reimbursable Costs is less than the escrowed funds, then escrowed funds shall be released to Developer equal to the actual Reimbursable Costs and the balance of the escrowed funds shall be released to City. City and Developer shall confirm the provisions of this Section 9.1.2 in a separate escrow agreement among City, Developer and the escrow agent identified in the Real Estate Purchase Agreement.

9.1.3 Dispute. If Developer is entitled to reimbursement, the source of such funds shall be at sole discretion of the City. If the City agrees with the amounts reflected in Developer's documentation, the City will pay Developer said reimbursement upon final completion of the Reimbursable Infrastructure and City's official acceptance thereof as provided in Section 9.1.2 above.

If the City disputes the amounts, then the Parties shall submit the dispute to arbitration, and the City shall pay the amount awarded by the arbitrator within thirty (30) days of such award.

10. Term. The term of this Agreement is that period of time: (1) commencing on the date this Agreement is approved by the City's City Council, has been signed by both Parties and has been recorded in the office of the Maricopa County Recorder following expiration of all applicable appeal and referendum periods (the "**Effective Date**"), and (2) terminating on the earlier of (a) the date on which Developer has completed construction of the Project and provided evidence that it has entered into leases with three (3) Quality Restaurants that are open for business to the public, (b) the date this Agreement has been terminated earlier pursuant to any section of this Agreement and (c) the date that is ten (10) years from the Effective Date (the "**Term**"), as it may be extended by the application of extensions otherwise set forth in this Agreement. Notwithstanding the foregoing, all reimbursement obligations and indemnity provisions of the Parties will survive any such expiration or termination in accordance with the terms of this Agreement.

11. Performance Extensions. From time to time following the Effective Date, Developer and City may, by mutual written agreement, refine and revise any date, milestone, or deadline herein as may be necessary to accommodate any factors, events or occurrences that the City and Developer determine may necessitate such refinement or revision.

12. Force Majeure Event. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement or to be in Default in the event of force majeure ("**Force Majeure**") due to causes beyond its control and without its fault, negligence, or failure to comply with Applicable Laws, including, but not restricted to, acts of God, acts of public enemy, litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum), fires, floods, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes, act of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism), nuclear radiation, pandemic, declaration of national or state emergency or national or state alert, blockade, insurrection, riot, labor strike or interruption, extortion, sabotage, or similar occurrence or any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity, or declaration of moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public, or private entity. In no event will Force Majeure include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants, it being agreed that Developer will bear all risks of delay that are not Force Majeure. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations 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. If, however, notice by a Party claiming such extension is sent to the other Party more than thirty (30)

calendar days after the commencement of the event of Force Majeure, the period shall commence to run only thirty (30) calendar days prior to the giving of such notice. Under no circumstances shall Force Majeure include any event that commenced or occurred prior to the Effective Date, even if such event continues to occur after the Effective Date.

13. Insurance Requirement. Developer 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 Property. 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) days prior written Notice to City. Developer shall indemnify, protect, defend and hold City harmless from all claims, costs, fees or liability of any kind to the extent arising out of the acts of Developer or Developer's agents pursuant to this Section, except that Developer shall have no liability related to the discovery or release of pre-existing conditions (unless Developer's, or Developer's agents', acts exacerbate a pre-existing condition) or for any claims or liabilities resulting or arising from the acts or negligence of City or its agents (the "**Due Diligence Indemnity Obligations**").

14. Representations of the Parties.

14.1 Representations and Warranties of City. City acknowledges, represents, warrants, and covenants to Developer that the following are true as of the Effective Date, and will be true as of Closing:

14.1.1 To City's actual knowledge, there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission, agency, department or office arising from or relating to this Agreement or the Property.

14.1.2 Except as contemplated by the Real Estate Purchase Agreement, City has not granted any options or rights of first refusal to purchase all or any part of the Property.

14.1.3 All consents and approvals necessary to the execution, delivery, and performance of this Agreement, the Parking License Agreement and the Real Estate Purchase Agreement have been obtained, and no further City Council action needs to be taken in connection with such execution, delivery, and performance.

14.1.4 To the City's actual knowledge, City has received no written notice of any noncompliance with any federal, state or local laws, regulations and orders relating to environmental matters with respect to the Property or to the Parking Lot (as defined in the Parking License).

14.1.5 Following the Effective Date of this Agreement, City shall not materially alter or change the physical condition of the Property or the Parking Lot, and, except as expressly contemplated by this Agreement, the Parking License and the Real Estate Purchase Agreement, shall not record any easement, encumbrance, instrument or other agreement against the Property or the Parking Lot that would survive the Closing without first obtaining Developer's prior written consent thereto.

14.1.6 This Agreement, the Parking License and the Real Estate Purchase Agreement (and each undertaking of the City contained in this Agreement, the Parking License and the Real Estate Purchase Agreement) constitute valid, binding and enforceable obligations of the City, enforceable according to their terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity.

14.1.7 If a matter represented by City under this Agreement was true as of the date of this Agreement, but subsequently is rendered inaccurate because of the occurrence of events or circumstances arising other than due to City's intentional action or violation of Applicable Laws, then such inaccuracy shall not constitute a Default by City under this Agreement, but will constitute a failure of a condition to Closing if such inaccuracy materially increases Developer's good faith estimate of the cost or time to develop the Property or the ability of Developer to obtain financing. Failure of such a condition to Closing shall entitle Developer to terminate this Agreement and all of Developer's obligations, whereupon both Parties shall be released from further liability under this Agreement, except as expressly provided in this Agreement to survive. If Developer does not elect to so terminate, Developer timely shall proceed to Closing and the failure of such condition to Closing shall be deemed waived.

14.2 Actual Knowledge of City. When used in this Agreement, the term "**actual knowledge of City**" (or words of similar import) shall mean and be limited to the actual (and not imparted, implied or constructive) current knowledge of the City's Director of Economic Development, the City's City Attorney, and the City's Manager, without any duty or obligation of inquiry or investigation. Notwithstanding anything herein to the contrary, no such person is a party to this Agreement and shall not have any personal liability or liability whatsoever with respect to any matters set forth in this Agreement or City's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

14.3 Representations and Warranties of Developer. Developer acknowledges, represents, warrants and covenants to City that the following are true as of the Effective Date and will be true as of Closing:

14.3.1 The person or persons executing this Agreement, the Parking License and the Real Estate Purchase Agreement on behalf of Developer are duly authorized to do so and thereby bind Developer hereto without the signature of any other person.

14.3.2 Developer has all requisite power and authority to enter into and perform this Agreement, the Parking License and the Real Estate Purchase Agreement and to incur the obligations provided for herein and in the Parking License and the Real Estate Purchase Agreement has taken all action necessary to authorize the execution, delivery and performance of this Agreement, subject to the express terms and limitations in this Agreement.

14.3.3 The execution, delivery and performance of this Agreement, the Parking License and the Real Estate Purchase Agreement by Developer does not result in any violation of, and does not conflict with or constitute a default under, any present agreement, mortgage, deed of trust, indenture, credit extension agreement, license, security agreement or other instrument to which Developer is a party, or any judgment, decree, order, statute, rule or governmental regulation.

14.3.4 No approvals or consents by third parties or governmental authorities are required for Developer to consummate the transactions contemplated hereby.

14.3.5 Developer covenants and agrees that it, except as expressly allowed in this Agreement, has not, and shall not, encumber any portion of the Property prior to the Closing.

14.3.6 There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Developer or filed by Developer, or to Developer's knowledge, pending in any current judicial or administrative proceeding against Developer.

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

15. Indemnity. Developer 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, Developer's design, construction, and structural engineering acts or omissions related in any way to, of, or in connection with, any element of the Project (including, but not limited to, land used for construction staging pursuant to temporary construction easements), and all subsequent design, construction, engineering, and other work by or on behalf of Developer in connection with Project (collectively, "**Indemnity**"). Such Indemnity shall survive the expiration or earlier termination of this Agreement. The indemnification set forth in this Section 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 and 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, Developer 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 Developer and reasonably approved by the City; and (ii) if any such action, suit or proceeding results in a final judgment against the indemnified party, Developer promptly shall satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

16. Risk of Loss.

16.1 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Reimbursable Infrastructure unless and until title to any Reimbursable Infrastructure passes to the City. At the time title to the Reimbursable Infrastructure passes to the City by dedication deed, plat recordation, or as otherwise required by the City, Developer will, to the extent allowed by law and pursuant to this Agreement, assign to City any unexpired warranties relating to the design, construction and/or composition of such Reimbursable Infrastructure.

16.2 Insurance. During any period of construction on the Property and with respect to any construction activities related to the same, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, policies of insurance in amounts reasonably required by City. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written Notice of cancellation to City, and will name City as an additional insured on such policies.

17. Breach & Remedies.

17.1 Default by Developer. "**Default**" by Developer under this Agreement will mean the breach, default or failure by Developer to satisfy any obligation or agreement herein, including without limitation, one or more of the following:

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

17.1.2 Developer fails to comply with any performance deadline in this Agreement;

17.1.3 Foreclosure (or deed in lieu of foreclosure) upon any mechanics', materialmen's or other lien on the Property prior to completion of construction or upon any Improvements on the Property, but such lien will not constitute a Default if Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such lien in a customary fashion;

17.1.4 Developer transfers or attempts to transfer or assign this Agreement in violation of Agreement;

17.1.5 Following any applicable required Notice and opportunity to cure a default granted by the applicable document, a breach or default by Developer of a lease or license; or

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

17.2 Default by City. "**Default**" by City under this Agreement will mean one or more of the following:

17.2.1 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;

17.2.2 City fails to comply with any deadline in this Agreement; or

17.2.3 City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

17.3 Grace Periods; Notice; Cure. Upon the occurrence of an event of Default by any Party, such Party will, upon written Notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, (1) such Default will be cured within thirty (30) days after receipt of such Notice; or (2) if such Default is of a nature is not capable of being cured within thirty (30) days such cure or remedy will be commenced within such period and diligently pursued to completion, but in no event exceeding ninety (90) days in total.

17.4 Remedies for Default. Whenever any event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with this Agreement, the other Party may take any of one or more of the following actions:

17.4.1 Remedies of City. City's remedies for an uncured event of Default by Developer shall be all remedies available at law or in equity, including, without limitation, any of the following:

17.4.1.1 If an uncured event of Default by Developer occurs prior to completion of construction as required by the terms of this Agreement, City may terminate this Agreement

17.4.1.2 In the event Developer fails to develop the Project and all Reimbursable Infrastructure prior to the deadline for doing so as provided in Section 6.2 of the Project Schedule set forth in this Agreement (as such deadline may be extended due to Force Majeure pursuant to Section 12 herein) and such default is not cured within any applicable cure period, then, upon written demand from the City, Developer shall re-convey the Property to the City, free and clear of all liens and other encumbrances not acceptable to the City. The City shall pay to Developer the Purchase Price for the Property set forth in the Real Estate Purchase Agreement. Close of escrow for the Property so re-conveyed shall occur no later than sixty (60) days from end of the cure period set forth in Section 17.3 herein. Any liens created against the Property by Developer shall be the responsibility of Developer and shall be paid by Developer out of the proceeds of the sale to the City or out of other funds of Developer at close of escrow of the sale to the City. Nothing herein shall prevent the City at its option from seeking declaratory, injunctive, special action or other similar relief, requiring Developer to undertake and to fully and timely perform its obligations under this Agreement, including, but not limited to, injunctive relief to address a public safety concern or to enjoin any construction or activity undertaken by Developer which is not in accordance with the terms of this Agreement.

17.4.1.3 Notwithstanding the foregoing, at any time City may seek special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and fully and timely to address or to enjoin any construction or activity undertaken by Developer that is not in accordance with the terms of this Agreement.

17.4.1.4 Notwithstanding the foregoing, Developer shall be liable, and City may recover from Developer, its actual damages for any unrepaired damage to the City's facilities or real property caused by Developer's actions taken pursuant to this Agreement.

17.4.1.5 Notwithstanding the foregoing, City at any time may seek indemnity (including but not limited to an action for damages) arising under Developer's obligations of Indemnity.

17.4.1.6 Notwithstanding the foregoing, City at any time may enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Developer pursuant to this Agreement.

17.4.2 Remedies of Developer. Developer's exclusive remedies for an uncured event of Default by City 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 and the right to seek and recover actual damages as provided in Section 17.5.

17.5 Waiver of Certain Damages. Notwithstanding anything in this Agreement to the contrary, each of City and Developer 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.

17.6 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 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 involved.

18. Compliance with Law. Developer and City shall comply with all Applicable Laws that affect the Property as are now in effect or as may hereafter be adopted or amended.

19. Assignability, Restriction on Transfers. The rights established under this Agreement and the Development Plan are not personal rights but attach to and run with the Property. All the provisions here of 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 Developer's interest in the Property or this Agreement, or in the current management, ownership or control of Developer (each, a "**Transfer**") may occur without the City's written consent, which may be withheld in City's sole discretion. Developer shall provide to City a true and correct copy of any such assignment, together with a copy of the document or instrument pursuant to which such assignee fully assumes all of Developer's covenants and obligations under this Agreement and agrees to be bound by the terms and conditions of this Agreement. Except as otherwise expressly provided in this Agreement, the assignment by Developer of its rights under this Agreement shall not relieve Developer 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 shall be void, and not voidable. Developer shall have the right collaterally to assign its rights under this Agreement as security for one or more lenders in conjunction with Project financing, which will be contingent upon obtaining the City's prior consent thereto. No voluntary or involuntary successor in interest to Developer 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.

20. Miscellaneous. The following additional provisions apply to this Agreement:

20.1 Amendments and Interpretation. This Agreement may not be amended except by a formal writing executed by both Parties. The City's City Manager may exercise his or her administrative authority to correct scrivener's errors in this Agreement, interpret and administer this Agreement, and to approve amendments to this Agreement.

20.2 Severability. Upon mutual 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.

20.3 Conflicts of interest. No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, that is prohibited by law. This Agreement is subject to the cancellation provisions of A.R.S. §38-511.

20.4 No Partnership. This Agreement and the transactions and performances contemplated hereby shall not create any sort of partnership, joint venture, or similar relationship between the Parties.

20.5 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:

If to City: City of Peoria
Attn: City Manager
8401 West Monroe Street
Peoria, AZ 85345

| | |
|---|---|
| Copy to: | City of Peoria<br>Attn: City Attorney<br>8401 West Monroe Street<br>Peoria, AZ 85345 |
| Copy to: | City of Peoria<br>Attn: Economic Development Services Director<br>9875 North 85th Avenue<br>Peoria, Arizona 85345 |
| If to Developer: | CBDG Peoria LLC<br>c/o Common Bond Development LLC<br>4455 East Camelback Road, Suite D-255<br>Phoenix, Arizona 85018<br>Attn: Brian Frakes |
| Copy to: | Ballard Spahr LLP<br>One East Washington Street, Suite 2300<br>Phoenix, Arizona 85004-2555<br>Attn: Derek Sorenson |

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) days (excluding 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.

20.6 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 20.4.

20.7 Integration. This Agreement, together with the Parking License and the Real Estate Purchase Agreement, 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 Property.

20.8 Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. 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 Developer or City.

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

20.10 No Third-Party Beneficiaries. No person or entity shall be a third-party beneficiary to this Agreement or shall have any right or cause of action hereunder, except with respect to a Mortgagee as specifically set forth in Section 17. City shall have no liability to third parties for any approval of plans, Developer's construction of Improvements, Developer's negligence, Developer's failure to comply with the provisions of this Agreement, or otherwise as a result of the existence of this Agreement.

20.11 Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

20.12 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 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 Saturday, Sunday or legal holiday.

20.13 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.

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

20.15 Venue & Jurisdiction. Except where Arbitration is required under this Agreement, legal actions regarding 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 other requirements of City's claims procedures from time to time.

20.16 No Liability of City Officials. No City Council Member, official, representative, agent, attorney or employee of the City shall be personally liable to Developer, or to any successor in interest to Developer, in the event of Default by the City or for any amount that may be come due to Developer or its successors, or with respect to any obligation of the City under the terms of this Agreement.

20.17 Binding Effect. The benefits and burdens of this Agreement shall run with the Property and be binding upon and shall inure to the benefit of the Parties hereto and their respective permitted successors in interest and assigns.

20.18 Counterparts. 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.

20.19 Enforceability of this Agreement. The City will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation by a third party arising from its terms that names the City or Developer as a party or that challenges the authority of the City to enter into or perform any of its obligations hereunder (an "**Enforceability Challenge**"). In the event of an Enforceability Challenge, if named as a party Developer shall, and if not named as a party Developer may elect to intervene and/or join such action to, but in all cases at its sole cost and expense, defend against any such Enforceability Challenge. If such a defense of this Agreement is undertaken under this Section, the City and Developer shall cooperate in defending the Enforceability Challenge and may, by mutual agreement, select joint legal counsel and enter into a joint defense agreement with respect to the Enforceability Challenge. Further, Developer will cooperate with City and comply with any court order affecting the enforceability of this Agreement and hereby acknowledges that Developer shall not have any claim against the City if one or more provisions of this Agreement are deemed, as a result of an Enforceability Challenge and pursuant to such court order, to be void and legally unenforceable. In the event of an Enforceability Challenge, the Closing shall be extended until the 10th day following final resolution of such Enforceability Challenge.

**[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:_____
Cathy Carlat, Mayor

ATTEST:

_____
Lori Dyckman, City Clerk

APPROVED AS TO FORM:

_____
Vanessa P. Hickman, City Attorney

STATE OF ARIZONA
County of Maricopa

On this _____ day of _____, 2022, before me personally appeared, Cathy Carlat, the Mayor of the City of Peoria, an Arizona municipal corporation, 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 she signed the above/attached document.

[Affix notary seal here]

_____
Notary Public

**DEVELOPER**:

**CBDG PEORIA LLC**, an Arizona limited liability company

By: Common Bond Development LLC, an Arizona limited liability company, its Manager

By:_____
Name: Brian Frakes
Title: Manager

STATE OF ARIZONA
County of Maricopa

On this _____ day of _____, 2022, before me personally appeared Brian Frakes, Manager of Common Bond Development LLC, an Arizona limited liability company, the Manager of CBDG 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.

[Affix notary seal here]

_____
Notary Public

EXHIBIT A

Legal Description for the Property

THAT PORTION OF LOT 4 AND LOT 5, PEORIA SPORTS COMPLEX, RECORDED IN BOOK 1625, PAGE 10, ACCORDING TO MARCICOPA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 5;

THENCE NORTH 87 DEGREES 24 MINUTES 28 SECONDS EAST, ON THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 337.00 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES SOUTH 56 DEGREES 9 MINUTES 33 SECONDS WEST, A RADIAL DISTANCE OF 20.00 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 91 DEGREES 38 MINUTES 39 SECONDS, A DISTANCE OF 31.99 FEET;

THENCE SOUTH 57 DEGREES 48 MINUTES 12 SECONDS WEST, A DISTANCE OF 20.00 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 46.00 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 86 DEGREES 33 MINUTES 42 SECONDS, A DISTANCE OF 69.50 FEET;

THENCE SOUTH 49 DEGREES 55 MINUTES 54 SECONDS WEST, A DISTANCE OF 429.14 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES SOUTH 44 DEGREES 8 MINUTES 41 SECOND WEST, A RADIAL DISTANCE OF 448.60 FEET AND THE WESTERLY LINE OF LOT 5;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, ON THE WESTERLY LINE OF SAID LOT 5, THROUGH A CENTRAL ANGLE OF 12 DEGREES 35 MINUTES 00 SECOND, A DISTANCE OF 98.52 FEET TO THE CORNER BETWEEN SAID LOT 4 AND LOT 5.

THENCE CONTINUING NORTHWESTERLY ALONG SAID CURVE, ON THE SOUTHERLY LINE OF SAID LOT 4, THROUGH A CENTRAL ANGLE OF 12 DEGREES 14 MINUTES 11 SECONDS, A DISTANCE OF 95.81 FEET;

THENCE NORTH 16 DEGREES 0 MINUTES 31 SECONDS EAST, A DISTANCE OF 179.64 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 198.80 FEET;

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 18 DEGREES 23 MINUTES 33 SECONDS, A DISTANCE OF 63.82 FEET;

THENCE NORTH 44 DEGREES 8 MINUTES 27 SECONDS EAST, A DISTANCE OF 25.32 FEET TO THE NORTHERLY LINE OF SAID LOT 4;

THENCE NORTH 87 DEGREES 24 MINUTES 28 SECONDS EAST, ON THE NORTHERLY LINE OF SAID LOT 4, A DISTANCE OF 119.85 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 116,239 SQUARE FEET OR 2.668 ACRES, MORE OR LESS.

EXHIBIT B

Site Plan for the Project

EXHIBIT C

Reimbursable Infrastructure

The following off-site public improvements have been referred to herein collectively as the "**Reimbursable Infrastructure**."

1. Paradise Lane Roadway and Landscaping Improvements
2. Extension of Utilities within the City Right of Way
3. New driveway access into the Sports Complex Parking Lot
4. Trail/pedestrian connection adjacent to site

EXHIBIT D

Form of Parking License Agreement

(see attached)

When Recorded Return to:

City of Peoria
Attn: City Clerk
8401 W. Monroe Street
Peoria, AZ 85345

## PARKING LICENSE AGREEMENT

This Parking License Agreement (this "**Agreement**") is entered into this ___ day of _____, 2022, by and between the **CITY OF PEORIA**, an Arizona municipal corporation ("**City**" or "**Licensor**") and **CBDG PEORIA LLC**, an Arizona limited liability company ("**Licensee**"). City and Licensee each may be referred to as a "**Party**," and collectively may be referred to as the "**Parties**."

## RECITALS

A. City owns certain real property located on the east side of N. 83rd Avenue, the north side of W. Mariners, and the west side of W. Stadium Way (the "**License Property**"). The License Property is more fully and legally described in Exhibit A to this Agreement and depicted on Exhibit B to this Agreement.

B. The License Property includes a parking lot developed to include approximately 389 parking spaces (the "**Parking Lot**").

C. Concurrently with the execution of this Agreement, Licensee purchased land adjacent to the License Property pursuant to that certain Real Estate Purchase Agreement (the "**Purchase Agreement**") between Licensee and the City, dated _____, 2022 (LCON ____). Such land (the "**Project Property**") is legally described on Exhibit C attached hereto and is depicted on Exhibit B attached hereto.

D. Licensee is developing the Project Property pursuant to a Development Agreement dated June _____, 2022, approved by the City's Council by Resolution No. 2022-71 (the "**Development Agreement**"), such development being defined in the Development Agreement as the "**Project**."

E. The Project Property does not have sufficient parking to accommodate the parking requirements of the Project.

F. Pursuant to the Purchase Agreement and the Development Agreement, City agreed to grant to Licensee a parking license for the use of 90 parking spaces within the Parking Lot and to protect the use of an additional 299 parking spaces in the Parking Lot.

G. The Parties desire to execute this Agreement to set forth their rights, obligations and liabilities relating to Licensee's use of the License Property.

In consideration of the above premises, the promises contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties agree as follows:

**AGREEMENT**

1. Grant of License. The City hereby grants to Licensee a license (the "**License**") to use the Parking Lot as follows:

a. Licensee's Exclusive Right to use Parking Spaces. Licensee shall have the exclusive right during the term of this Agreement to use 90 parking spaces within the Parking Lot (the "**Parking Spaces**") for the exclusive use of employees and patrons of the Project between the hours of _____ a.m. and _____ p.m., seven days per week. The Parking Spaces shall be labeled by Licensor to notify the public of Licensee's exclusive rights, such labeling to include signage bearing the name of the Project or tradenames of Licensee's tenants, and indicating the hours of exclusivity set forth herein. Licensee shall bear all costs associated with any Project branding that Licensee or Licensee's tenants desire to include on such signage, subject to Licensor's reasonable approval rights. Licensor and Licensee may agree in writing to a greater number of parking spaces that may be used exclusively by Licensee pursuant to this License. Licensor agrees that individual users of the Parking Spaces will not be separately charged for such use during the term of this License.

b. Valet Management. Licensee shall be responsible for management of the valet operations, subject to the provisions of this Agreement. Any physical changes (including, without limitation, portable barriers) to the Parking Lot as part of Licensee's exercise of its rights under this Agreement shall be subject to the prior written approval of Licensor.

c. Operation and Maintenance of Parking Lot. During the term of this Agreement, Licensor shall maintain the Parking Lot.

d. Licensee shall also have the non-exclusive right to use the remaining 299 parking spaces in the Parking Lot (the "**Non-Exclusive Spaces**") for employees and patrons of the Project during the term of this Agreement.

e. The License, and by inference, the License Property, is subject to all existing matters of record, including easements and licenses to which the License Property is subject as of the date hereof.

f. The Parking Spaces will be located within the South Blue Lot portion of the Parking Lot as depicted in Exhibit C.

g. The Non-Exclusive Spaces shall be used by Licensee on a non-exclusive basis in common with Licensor, the public, and other parties to whom the right to use the Parking Lot has been or hereafter granted. Neither Licensee nor Licensee's employees, agents, guests or invitees shall park in any parking spaces that are marked reserved or otherwise designated for the exclusive use of Licensor or third parties.

h. Licensee and Licensee's employees', agents', guests' or invitees' License to use the Parking Spaces shall terminate upon the expiration or earlier termination of this Agreement as provided in [Sections 1 and 2] herein.

i. Licensee its agents, employees, guests, and invitees, shall leave the Parking Spaces and Parking Lot in the condition it was provided and shall not permit any waste or damage to be done to the Parking Spaces and Parking Lot and shall keep said area in good condition free of any litter and other waste.

j. Licensee shall be responsible for towing any vehicles which are parked in the Parking Spaces without Licensee's consent or authorization.

k. Licensee shall comply with, and require its agents, employees, guests, and invitees to comply with, any and all City rules, regulations, and guidelines applicable to use of the Parking Lot and the Parking Spaces.

l. Licensee shall comply with, and require its agents, employees, guests, and invitees to comply with, all reasonable requests made by the City.

m. Licensee shall not make any alterations, additions, or improvements to the Parking Lot or the Parking Spaces without the prior written approval of the City.

n. City shall notify Licensee prior to making any alterations, additions, or improvements to the Parking Lot or the Parking Spaces.

o. Licensor reserves the right at all times to the Parking Lot and shall have exclusive control and management thereof. Licensor shall have the right to close all or a portion of the Parking Lot from time to time for maintenance or public safety concerns for periods that do not exceed thirty (30) consecutive days and not affecting more than twenty percent (20%) of the Parking Spaces at one time.

p. Following at least one (1) prior written notice of violation, Licensor or Licensor's designated agent shall have the right to bill Licensee a fee of Fifty (50)and 00/100 Dollars ($ 50.00) per day per vehicle parked in violation of this Agreement. In addition, Licensor or its designated agent shall have the right to cause such cars parked in violation of this Agreement to be towed from the Parking Lot at the sole cost and expense of Licensee.

2. Term. The initial term of the License shall be ten (10) years, unless: (1) City exercises its right to acquire the Project Property as provided in the Development Agreement and the Purchase Agreement; or (2) Licensee provides Licensor with thirty (30) days' prior written notice of Licensee's election to terminate this License (which also shall apply during any Renewal Term). The term of this License automatically shall renew for up to four (4) successive ten-year terms (each, a "**Renewal Term**") unless prior to the end of the initial 10-year term or the end of each Renewal Term (a) the Project no longer includes three (3) Quality Restaurants as defined in the Development Agreement, or (b) Licensee and Licensor agree in writing to terminate the

License, or (c) as a result of an uncured Default under Section 14 of this Agreement.

3. License Fee. Licensee will pay a fee (the "**License Fee**") of $ 244.68 per Parking Space/year, to be escalated at 3% per year, assessed every five (5) years.] No Licensee Fee shall be charged for Licensee's use of the Non-Exclusive Spaces.

4. Licensee's Rights and Obligations. The rights of the Licensee hereunder shall be to park the vehicles of its agents, employees, guests, and invitees, only, in the Parking Spaces and the Non-Exclusive Spaces and to have non-exclusive right of access over and across the License Property for ingress and egress. Licensee's License is conditioned upon Licensee's discharge of its Development Obligations as defined in the Development Agreement and the Purchase Agreement. Licensee acknowledges that its License is subject to the rights of Licensor and the general public to use the Parking Lot. The right of Licensee to use and benefit from the License is also subject to (1) Licensee's obligation to develop the Project upon the Project Property pursuant to the terms of the Development Agreement, subject to the City's applicable review processes; and (2) Licensor's right to enter, use, repair and maintain the Parking Lot.

5. Development of Parking Lot; Alternate Parking Spaces. If at any point the Parking Lot is developed, Licensor will provide Licensee exclusive use of a similar number of similarly situated exclusive parking spaces. Licensor will also provide Licensee non-exclusive use of a similar number of similarly situated non-exclusive parking spaces. Licensee agrees that parking spaces within three hundred feet (300) from the primary entrance of the License Property are similarly situated regardless of whether those spaces are located in a surface lot or elevated parking garage.

6. Ownership of Improvements. The Licensor is the owner of the License Property and shall be the sole owner of all work product (in whatever format) produced as part of, or improvements made to, the Parking Lot and the Parking Spaces.

7. Licensor's Right to Inspect. Licensor, through its employees or agents, shall have the right to enter upon the Parking Spaces area at all times during the Term of this Agreement for the purpose of inspecting the same and making such repairs as Licensor may deem desirable, upon providing Licensee with reasonable advance notice, whenever practicable.

8. Acceptance of Parking Spaces. Licensor makes no warranty or representation of any kind whatsoever regarding the condition or fitness of the Parking Spaces and Parking Lot for Licensee's use, or any use. Licensee accepts and agrees to use the Parking Spaces in their current "as-is" condition, without any obligation of Licensor to perform or pay for any improvement thereto.

9. No Interest in the License Property. Licensee understands and agrees that this is a license agreement, not a lease agreement. No tenancy is established by this Agreement and Licensee shall have no interest in the License Property as a result of this Agreement or Licensee's use of the Parking Spaces.

10. Indemnification. Licensee shall indemnify, defend, protect and hold Licensor, and

its officers, directors, agents, representatives, employees, and volunteers harmless for, from and against all liens and encumbrances of any nature whatsoever which may arise in the exercise of Licensee's rights hereunder, and from any and all claims, causes of action, liabilities, costs and expenses (including reasonable attorneys' fees), losses or damages arising from Licensee's use of the Parking Spaces, Parking Lot and/or the License Property, any breach of this License, or any act or failure to act of Licensee or Licensee's its agents, employees, guests, and invitees, except those arising out of the sole gross negligence or willful misconduct of the Licensor, its officers, agents, and employees.

11. Insurance. Licensee shall maintain in full force and effect during the term of this License, at Licensee's sole cost and expense, a policy of comprehensive general liability insurance in terms and amounts satisfactory to Licensor, but in any event no less than Two Million Dollars ($2,000,000.00) combined single limit per occurrence combined single limit bodily injury, personal injury, death and property damage, subject to such increases in amount as Licensor may reasonably require from time to time, covering any accident or incident arising in connection with the presence of Licensee or its agents, employees, guests, and invitees on the License Property. Such coverage shall also contain endorsements: (a) deleting any employee exclusion on personal injury coverage; (b) deleting any liquor liability exclusion; and (c) providing for coverage of employer's automobile non-ownership liability. Coverage shall include, but not be limited to, personal injury liability, the License Property and operation, blanket contractual, cross liability, severability of interest, broad form property damage, and independent contractors. Licensor shall be named as an additional insured under such insurance policy. Such insurance shall be primary and noncontributing, and shall not be cancelable or subject to reduction of coverage or other modification without thirty (30) days prior written notice to Licensor. Licensee shall concurrently with the execution of this License deliver to Licensor a copy of such insurance policy, or a certificate of insurance evidencing such coverage. In the event Licensee's insurance policy is renewed, replaced or modified, Licensee shall promptly furnish Licensor with a copy of such policy, or a certificate of insurance, as renewed, replaced or modified.

12. Compliance with Laws. The Licensee shall use its best efforts to comply with all laws, statutes, acts, ordinances, rules, regulations, codes, and standards of legally constituted authorities with jurisdiction, applicable to the Parking Spaces and the License Property and the conduct of its activities pursuant to this Agreement. The Licensee shall use its best efforts to not use or allow the use of the Parking Spaces for any purposes in violation of applicable zoning or other laws.

13. Damage or Loss. Licensee, as a material part of the consideration to Licensor, hereby assumes all risk of damage to its Project Property or injury to all persons and personal property in or upon the Parking Spaces and License Property, with the exception of representatives of the City of Peoria, Arizona. Licensee hereby releases and relieves Licensor, and waives its entire right of recovery against Licensor, for any loss or damage arising out of or incident to the Parking Spaces and/or the License Property, whether due to the negligence of the Licensor or Licensee or their respective agents, employees and/or contractors.

14. Default; Termination. If Licensee shall fail to observe or perform any other terms or condition of this Agreement (and such failure shall remain uncured for ten (10) business days

after written notice from Licensor to Licensee), Licensor shall have the right to terminate this Agreement, and/or pursue any other rights or remedies available at law or in equity; provided, however, that if the default, though curable, cannot be cured with reasonable diligence during such 10-business day period, Licensee shall be granted an additional reasonable period of time to cure the default, not to exceed ninety (90) days.

15. General Provisions.

a. Notices. All notices, filings, consents, approvals, and other communications provided for herein or given in connection herewith ("**Notices**") shall be validly given, filed, made, delivered, or served if in writing and delivered personally or sent by registered or certified United States Postal Service mail, return receipt requested, postage prepaid to:

| | |
|---|---|
| If to City: | City of Peoria<br>Attn: City Manager<br>8401 West Monroe Street<br>Peoria, AZ 85345 |
| Copy to: | City of Peoria<br>Attn: City Attorney<br>8401 West Monroe Street<br>Peoria, AZ 85345 |
| Copy to: | City of Peoria<br>Attn: Economic Development Services Director<br>9875 North 85th Avenue<br>Peoria, Arizona 85345 |
| If to Licensee: | CBDG Peoria LLC<br>c/o Common Bond Development, LLC<br>4455 E. Camelback Road, Suite D-255<br>Phoenix, Arizona 85018<br>Attn: Brian Frakes |
| Copy to: | Ballard Spahr LLP<br>One East Washington Street, Suite 2300<br>Phoenix, Arizona 85004-2555<br>Attn: Derek Sorenson |

Service of any Notice by mail in accordance with the foregoing shall be deemed to be complete three (3) days (excluding 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. By Notice from time to time in accordance herewith, either Party may designate any other street or e-mail address or addresses as its address or addresses for receiving Notice hereunder. Any designation by a Party of a new address for Notices shall not be binding or effective unless the Address Change Form is supplied

to the other Party and is recorded with the County Recorder of Maricopa County, Arizona.

b. Approvals. When a Party's consent is required pursuant to this Agreement, such Party shall not unreasonably withhold, delay or condition its approval.

c. Waiver. No delay in exercising any right or remedy shall constitute a waiver thereof and no waiver by a Party of the breach of any provision of this Agreement shall be construed as a waiver of any preceding or succeeding breach of the same or of any other provision of this Agreement.

d. No Liability of City Officials or Employees. No elected or appointed official, representative, employee or agent of the City shall be personally liable to Licensee in the event of any default or Event of Default by the City under this Agreement, or for any amount that may be due and owing by the City to Licensee under this Agreement, or with respect to any obligation of the City under this Agreement.

e. Headings. The descriptive headings of the sections of this Agreement are inserted for convenience only and shall not control or affect the meaning or construction of any of the provisions of this Agreement.

f. Authority. Each Party to this Agreement represents to the other that it has full power and authority to enter into this Agreement, and that all necessary actions have been taken to give full force and effect to this Agreement.

g. Severability. If any term, condition, covenant, stipulation, agreement or provision herein contained 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 herein contained.

h. Governing Law, Venue & Jurisdiction. The laws of the State of Arizona shall govern the interpretation and enforcement of this Agreement. The Parties agree that venue for any action commenced in connection with this Agreement shall be proper only in a court of competent jurisdiction located in Maricopa County, Arizona, and the Parties hereby waive any right to object to such venue.

i. Remedies. If any Party to this Agreement breaches any provision of the Agreement, the non-defaulting Party shall be entitled to all remedies available at both law and in equity, including specific performance.

j. Attorneys' Fees and Costs. If any Party brings a legal action either because of a breach of this Agreement or to enforce a provision of this Agreement, the prevailing Party will be entitled to reasonable attorneys' fees and court costs.

k. No Agency Created. Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the Parties.

l. Integration. This Agreement, including its Exhibits, constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior agreement, understanding, negotiation, draft documents, discussion outlines, correspondence, memoranda or representation regarding the Parking Spaces, except as contained in the Development Agreement.

m. Construction. Whenever the context of this Agreement requires, the singular shall include the plural, and the masculine shall include the feminine. This Agreement was negotiated on the basis that it shall be construed according to its plain meaning and neither for nor against any 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 Licensee or Licensor.

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

o. Exhibits. All exhibits attached hereto as specified herein are hereby incorporated into and made an integral part of this Agreement for all purposes.

p. Amendments. This Agreement may not be amended except by a formal writing executed by both Parties.

q. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall be deemed to be one and the same instrument.

r. Assignment. Licensee named herein and may not assign its rights, obligations and interest under this Agreement to any other party without prior consent of the Licensor.

s. Statutory Cancellation Right. In addition to its other rights hereunder, City shall have the rights specified in A.R.S § 38-511.

**LICENSOR**:

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

By: _____
Name: Jeff Tyne
Title: City Manager

ATTEST:

_____
Lori Dyckman, City Clerk

APPROVED AS TO FORM:

_____
Vanessa P. Hickman, City Attorney

**LICENSEE**:

**CBDG PEORIA LLC**, an Arizona limited liability company

By: COMMON BOND DEVELOPMENT LLC,
an Arizona limited liability company,
its Manager

By: _____
Name: Brian Frakes
Title: Manager

STATE OF ARIZONA
County of Maricopa

On this _____ day of _____, 2022, before me personally appeared Brian Frakes, Manager of Common Bond Development LLC, an Arizona limited liability company, the Manager of CBDG 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.

[Affix notary seal here] _____
Notary Public

**EXHIBIT A – Parking License**

Legal Description of the License Property

**EXHIBIT B – Parking License**

Depiction of the License Property and the Project Property

**EXHIBIT C – Parking License**

Legal Description of the Project Property

EXHIBIT E

Form of Real Estate Purchase Agreement

(see attached)

**REAL ESTATE PURCHASE AGREEMENT**

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

**BUYER:** CBDG PEORIA LLC, an Arizona limited liability company

**ESCROW AGENT:** _____ Title Agency

**LOCATION:** Northeast Corner of W. Stadium Way and Paradise Lane

**ESCROW NUMBER/ESCROW:** _____

## RECITALS

A. Seller is the owner of certain real property located on the south side of W. Paradise Lane, east of 83rd Avenue and west of 79th Avenue, in Peoria, Arizona (the "**Property**") and preliminarily described on Exhibit A hereto.

B. Seller desires to sell the Property and Buyer desires to purchase the Property from Seller for its appraised fair market value as determined in Section 6 herein (the "**Purchase Price**").

C. Buyer wishes to redevelop the Property with Arizona restaurant concepts not currently located within the City of Peoria, which are consistent with the existing zoning and Seller's general plan.

D. Buyer plans to cause the submittal of a Development Application and construction site plans to the City of Peoria for the Property.

E. Seller and Buyer have entered into a Development Agreement dated June 21, 2022 (the "**Development Agreement**"), for development on the Property of the Project (as defined in the Development Agreement) to include three (3) top tier Quality Restaurants along with accompanying features, infrastructure, and amenities and certain Reimbursable Infrastructure (as defined in the Development Agreement).

F. The Parties agree that the prompt development of the Project is critical to this Agreement between the Parties.

G. Buyer acknowledges Seller would not agree to sell the Property but for Buyer's expertise in restaurant concept development, Buyer's commitment to be the developer of the Property and Buyer's commitment to develop the Project upon the Property.

H. Seller, in accordance with Article I, Section 3(1) of the Peoria City Charter, is authorized to sell real property, and Seller's City Council has considered the sale terms authorized by this Agreement and the direct consideration Seller will receive.

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

## TERMS OF AGREEMENT

1. Contingencies of Sale. Buyer and Seller acknowledge that their obligations to consummate the transaction contemplated by this Agreement are conditioned upon, among other things, Buyer obtaining final approval from the City of Peoria for the total development of the Project upon the Property within one (1) year from determination of the Final Valuation in accordance with Section 6 below (the "**Development Contingencies**"), as set forth in Section 11 herein.

2. Agreement. Upon execution of this Real Estate Purchase Agreement (this "**Agreement**") by Seller and Buyer, same shall constitute a binding contract between Seller and Buyer for the purchase and sale of the Property.

3. Opening of Escrow and Close of Escrow. Escrow shall be opened when (i) one fully executed or counterparts of this Agreement executed by Seller and Buyer, respectively, have been delivered to Escrow Agent on or before the 30th day after the recordation of the Development Agreement, and (ii) Buyer shall have deposited the Earnest Money with Escrow Agent on or before the 2nd business day following delivery of this Agreement to escrow Agent ("**Opening of Escrow**"). Escrow Agent shall advise Seller and Buyer, in writing, of the Opening of Escrow and the date thereof. Consummation of the purchase of the Property contemplated hereby (the "**Close of Escrow**" or "**Closing Date**") shall take place on or before the 365th day following determination of the Final Valuation in accordance with Section 6 below (the "**Closing Deadline**"), and shall automatically terminate without any further notices, three (3) business days following the Closing Deadline unless otherwise extended as provided in this Agreement or by mutual agreement of the parties. At or before Close of Escrow, each party shall execute and deliver such documents and perform such acts as are provided for herein. All monies and documents required to be delivered under this Agreement shall be deposited in Escrow on or before 5:00 p.m. Arizona Time on the Closing Date.

(a) Project Site Plan Approvals and Permits. As a contingency to the Close of Escrow, Buyer must provide evidence of: (1) a City of Peoria approved site plan for the Project; and (2) City of Peoria approved construction permits for the Project through core and shell (*e.g.* excluding interior tenant improvement work); and (3) proof of establishing full project construction financing commitment on the part of a viable construction lender for the Project; (4) proof of an executed contract for construction of the Project through core and shell (e.g. excluding interior tenant improvement work); and (5) proof of Tenant Leases.

4. Title Insurance; Conveyance of Title. The Property, including all rights and privileges appurtenant to or arising from the Property, shall be conveyed by Seller to Buyer upon Close of Escrow by Seller's special warranty deed ("**Deed**") in the form attached hereto as Exhibit B, warranting title to the Property to be conveyed thereby to be a fee simple absolute estate free and clear of all matters, claims, liens, and encumbrances except: (i) taxes not yet due and payable at Close of Escrow (subject to proration as hereinafter provided); (ii) reservations in

patents from the United States or the State of Arizona; and (iii) any other matters disclosed by the preliminary title report (or any amended report) which are deemed waived or approved by Buyer in accordance with Subsection 10(a). Escrow Agent shall issue or cause to be issued a standard coverage owner's policy of title insurance in the amount of the Purchase Price, for which Seller shall bear the cost.

5. Possession. Upon Close of Escrow, Seller shall vacate the Property and deliver possession to Buyer, and all risk of loss of, or damage to, the Property from any source shall, at that time, pass to and become the sole responsibility of Buyer.

6. Appraised Value. The City will cause an appraisal to be prepared by an appraiser selected by the City (the "**Appraisal**"). The Appraisal will set forth a valuation for the Property (the "**Initial Valuation**"). If Buyer disagrees with the Initial Valuation, Buyer must object in writing to the Initial Valuation within ten (10) days after its receipt of the Appraisal. Buyer shall engage another independent appraiser ("**Secondary Appraiser**") within fourteen (14) days from the date of its written objection to determine within thirty (30) days of such appointment the fair market value of the Property ("**Secondary Valuation**"). The Cost of the Secondary Appraiser shall be borne solely by Buyer. If the Secondary Valuation is at least eighty percent (80%) of the Initial Valuation and less than or equal to one hundred twenty percent (120%) of the Initial Valuation, then the Purchase Price shall be the average of the Initial Valuation and the Secondary Valuation. If the Secondary Valuation is less than eighty percent (80%) of the Initial Valuation or more than one hundred twenty percent (120%) of the Initial Valuation, then Seller and Buyer shall, within fourteen (14) days from the date of the Secondary Valuation, mutually agree on an appraiser (the "**Final Appraiser**"). The cost of the Final Appraiser shall be borne equally by Seller and Buyer. The Final Appraiser shall determine within fourteen (14) days after its appointment the Fair Market Value of the Property (the "**Final Valuation**"), but such Final Valuation shall be not less than the smaller of the Initial Valuation and the Secondary Valuation nor greater than the larger of the Initial Valuation and the Secondary Valuation. The Purchase Price will then be equal to the Final Valuation and shall be final and binding upon the parties to this Agreement. The parties will confirm the final Purchase Price pursuant to an amendment to this Agreement.

7. Payment of Purchase Price. The Purchase Price, as determined in Section 6 herein, for the Property shall be payable as follows:

(a) Three percent (3%)_____ and 00/100 Dollars ($_____) of the Purchase Price, as determined in Section 6 (in the form of cash or other good funds or cashier's or certified check) to be deposited with Escrow Agent within 2 Business Days following determination of the Final Valuation in accordance with Section 6 above (the "**Earnest Money**"); and

(b) The remaining balance to be paid by Buyer at Close of Escrow.

8. Earnest Money. If requested by Buyer, Escrow Agent shall deposit the Earnest Money referred to in Subsection 7(a) in an interest-bearing account of a federally-insured depository selected by Buyer. Subject to any provision of this Agreement requiring a different use, in the event the sale provided for in this Agreement is consummated, the Earnest Money (and all interest accrued thereon) shall be applied by Escrow Agent toward the payment of the Purchase

Price; in the event the sale is not consummated for failure of Seller to meet all of its obligations under this Agreement the Earnest Money (and all interest accrued thereon) shall be returned to Buyer. In the event the sale is not consummated as a result of the failure of Buyer to meet all of its obligations under this Agreement, the Earnest Money (and all interest accrued thereon) shall be paid to Seller as liquidated damages as Seller's only remedy, and both Buyer and Seller shall be relieved of all further liability to one another except for liabilities arising under Section 20 (Indemnity) and Section 10(c) (Investigation). Seller and Buyer agree that it would be impractical or extremely difficult to fix actual damages in case of a default by Buyer, and that the amount of the Earnest Money is a reasonable estimate of Seller's damages caused by Buyer's default.

9. Closing; Fees, Taxes, and Assessments; Costs.

(a) At Close of Escrow, a Standard ALTA Owner's Policy of title insurance in the amount of the Purchase Price insuring Buyer's title to the Property shall be issued by Escrow Agent through its authorized underwriter(s) and the title insurance premium shall be paid out of the Purchase Price proceeds, subject to the usual printed exceptions contained in such title insurance policies, those matters which appear as exceptions in Schedule B of the Commitment (as defined in Section 10 below) and which are not objected to or are waived in the manner described in said Section 10, and any other matters approved in writing by Buyer ("**Title Policy**"). In the event Buyer desires an ALTA Extended Policy the additional cost shall be borne by Buyer, including without limitation the cost for obtaining any necessary survey or updated survey.

(b) At Close of Escrow, the recording fees with respect to the Deed, the Affidavit of Value and any escrow fees and charges shall be paid equally by Buyer and Seller. All non-delinquent real property taxes and any other assessments to or against the Property shall be paid by Seller prorated to Close of Escrow based upon the most recent assessments.

(c) At Close of Escrow, Seller shall deliver the Deed, an Affidavit of Property Value, a Non-Foreign Person Affidavit, and each and every document, agreement, and/or instrument contemplated under the Development Agreement or reasonably required by the Escrow Agent in connection with the Closing.

(d) At Close of Escrow, Buyer shall deliver the Purchase Price and all other sums to be paid by Buyer hereunder, and each and every other document, agreement and/or instrument contemplated under the Development Agreement or reasonably required by Escrow Agent in connection with the Closing.

10. Buyer's Contingencies. Buyer's obligation to consummate the transactions contemplated by this Agreement is subject to satisfaction of all of the following conditions precedent (which may be waived by Buyer in a writing signed by Buyer or its duly authorized agent):

(a) Status of Title. Escrow Agent, as soon as is reasonably possible after execution of this Agreement, shall provide Buyer and Seller with a preliminary report of the title to the Property (the "**Commitment**"), disclosing all matters of record and Escrow Agent's requirements for both closing the Escrow created by this Agreement and issuing the Title Policy described in Section 9 of this Agreement (the Commitment also shall be suitable to serve as the

basis for issuance of an ALTA extended form coverage lender's title insurance policy). At such time as Buyer receives the Commitment (and any amended report adding additional title exceptions) and a current ALTA/NSPS Survey of the Property (the "**Survey**"), Buyer shall have ten (10) business days after receipt of the Commitment and the Survey to object in writing to any matter shown in the Commitment or the Survey. If Buyer fails to object within the ten (10) business days, the condition of title to the Property shall be deemed approved by Buyer. In the event Buyer does object in writing to any matter disclosed in the Commitment or the Survey, Seller may, but shall not be required to attempt to remove such objection before Close of Escrow. If Seller fails to notify Buyer within five (5) business days after receipt of such objections that Seller has elected to eliminate the objectionable matters prior to the Closing, such failure shall be deemed Seller's election not to eliminate any such matter. If Seller notified Buyer in writing of its election not to eliminate any such objectionable matter or is deemed to have elected not to eliminate any such matter, Buyer shall elect within five (5) business days after receipt of Seller's notice (or, if applicable, five (5) business days after the date on which Seller is deemed to have elected not to eliminate any such matter) to either: (i) cancel this Agreement and receive the return of all Earnest Money paid, together with any interest accrued thereon; or (ii) proceed with this Agreement waiving and taking title subject to such matters. Failure to give notice to Seller of Buyer's election shall constitute an election to waive the objection and proceed with this Agreement. If Seller timely elects to eliminate a disapproved exception from the Commitment prior to the Closing, Seller shall be obligated to do so by either causing such disapproved exception to be eliminated entirely from the Commitment or to be endorsed over in form and substance reasonably acceptable to Buyer.

(b) Environmental Contamination and Assessment of Property. Seller will disclose to Buyer, within five (5) days of Opening of Escrow, any actual knowledge or information it has with regard to any current or historical environmental contamination of the Property. Notwithstanding Seller's obligation to disclose, Buyer shall have until the expiration of the Investigation Period to obtain a Phase I Environmental Assessment (the "**Assessment**"). If the Assessment indicates that a Phase II Environmental Assessment ("Phase II") is warranted, Buyer will not be required to close the Escrow pending completion of the Phase II, and the Close of Escrow may be extended by sixty (60) days for Buyer to obtain the Phase II. If the Phase II concludes contamination exists, Buyer may elect to cancel this Agreement. Moreover, in no event shall an "as is" clause set forth within this Agreement affect the application of federal, state or local law regarding environmental contamination and Seller's responsibility for remediating same as required under applicable federal, state and local law, including remediation that may be required after Close of Escrow.

(c) Investigation. Buyer shall have ninety (90) days after determination of the Final Valuation in accordance with Section 6 above (the "**Investigation Period**") to conduct such other tests and investigations, other than those described in Subsections (a) and (b) above, as Buyer deems at its discretion to be material to its determination whether the Property is suitable for development and Buyer's purposes. Upon prior reasonable notice to Seller, Seller shall permit access to the Property by Buyer to inspect and perform any such tests during the Investigation Period. Buyer must obtain Seller's written consent prior to conducting any invasive testing on the Property, which consent shall not unreasonably be withheld. Buyer shall conduct all such inspections, investigations, and tests and be responsible for returning the Property to substantially the condition in which it was prior to the time of any entry. In the event Buyer fails to notify Seller

by the conclusion of the Investigation Period that the Property or any part thereof is not suitable for its purposes, then Buyer shall be deemed to have accepted the Property and waived any objections relating to matters within the scope of this Subsection (c). In the event Buyer does so notify Seller, however, Seller shall have the option to either undertake to remediate such conditions to Buyer's reasonable satisfaction or to terminate this Agreement, whereupon Buyer and Seller shall have no further obligations hereunder, other than liabilities or obligations arising under the indemnity provisions of Section 20. Buyer agrees to indemnify, defend, and hold harmless Seller for, from, and against any and all claims caused by Buyer's exercise of the rights granted by this Section 10, including, without limitation, any claims relating to mechanics' or materialmen's liens as a result of Buyer's activities pursuant to this Agreement. Buyer shall have the right to cancel this Agreement prior to expiration of the Investigation Period and receive a return of its Earnest Money.

(d) Plat. Prior to the Close of Escrow, Seller shall have caused the Property to be re-platted in a configuration reasonably acceptable to Buyer. If such re-platting has not been completed by the Closing Deadline, Buyer may extend the Closing Deadline until the re-platting is complete.

11. Seller's Contingencies. Seller's obligation to consummate the transactions contemplated by this Agreement is subject to satisfaction of all of the following conditions precedent (which may be waived by Seller in a writing signed by Seller or its duly authorized agent):

(a) Development Contingencies. Pursuant to the terms of the Development Agreement, Buyer shall develop the Property to include three (3) top tier Quality Restaurants along with the Placemaking Amenities (as defined therein) and other accompanying features, infrastructure, and improvements and the Reimbursable Infrastructure (as defined therein) within fifteen (15) months following the Closing. Buyer may not assign its rights, duties obligations and liabilities under this Agreement and pertaining to the Development Contingencies without first obtaining the advance written approval of Seller, which approval may be granted or withheld in the sole and unfettered discretion of Seller. Seller agrees that, notwithstanding the foregoing, Buyer may assign without the prior written approval of the City, but with ten (10) business days prior written notice to the City, its respective rights, duties, obligations, and liabilities under this Agreement and as to the Development Contingencies to a limited liability company, corporation, trust, or partnership controlled by CBDG Peoria LLC, but any such assignment will not affect Buyer's requirements, duties and potential liabilities pursuant to the Development Contingencies; Buyer remaining solely responsible for compliance with the terms of the Development Contingencies. Should Buyer fail to develop the Property with Arizona high-quality restaurant concepts not currently located within the City, or any other requirement of this Section 11(a) Buyer shall be in breach of the Development Contingencies, and Seller shall be entitled to exercise its option under Section 21(b) of this Agreement.

(b) Closing Contingencies. Buyer, at its own cost and expense, shall cause the submission of a site plan and construction permits to the City of Peoria Planning and Community Development Department for approval within 180 days after determination of the Final Valuation in accordance with Section 6 above. Buyer shall make application for, and extend its best efforts to obtain any necessary approvals, zoning, permits, or authorizations required by the City of

Peoria, county, or state authorities, bureaus, or agencies having jurisdiction relating to the development of the Property for commercial uses, specifically as Arizona restaurant(s) concepts not currently located in the City. As a contingency to the Close of Escrow, the Buyer must provide evidence of: (1) a City of Peoria approved site plan for the Project; and (2) City of Peoria approved construction permits for at least two (2) buildings within the Project through core and shell (*e.g.* excluding interior tenant improvement work); and (3) proof of establishing full project construction financing commitment on the part of a viable construction lender for the Project; (4) proof of an executed contract for construction of the Project through core and shell (e.g. excluding interior tenant improvement work); and (5) proof of an executed tenant lease for at least one (1) of the Project buildings. The tenant leases referenced herein shall be subject to review and approval by the City, which will be limited to ensuring that the terms of the tenant leases meet the requirements of this Agreement. As of the Closing Deadline, if any of these contingencies have not been satisfied despite Buyer's diligent efforts, then Buyer will have the right to extend the Closing Deadline by thirty (30) days.

12. No Warranties. Except as otherwise set forth herein, Buyer agrees that the Property shall be purchased in an "as-is" condition. Seller makes no warranty as to the sufficiency of the Property for Buyer's purposes or any purpose whatsoever, the physical condition of the Property or any work or improvements which might be required for any reason whatsoever, the square footage or acreage contained within the Property, except as expressly set forth elsewhere in this Agreement or within the separate escrow instructions included as a part of this Agreement. Nothing herein abrogates Seller's duty to disclose actually known material conditions affecting the Property and the consideration to be paid by Buyer.

13. Seller's Warranties. Seller warrants and represents to its actual knowledge (with the understanding that Buyer is relying on said warranties and representations) that:

(a) Seller's Authority. Seller has full power and authority to enter into and perform under this Agreement in accordance with its terms. Upon execution of this Agreement this Agreement shall be binding and enforceable on Seller.

(b) Other Leases or Agreements. Seller warrants that it has not entered into any unrecorded leases or other agreements, which may affect Buyer's ability to take title to or possession of the Property or to develop the Project.

(c) No Lawsuits. To the actual knowledge of Seller, there are no actions, suits, proceedings or investigations pending or threatened with respect to or in any manner affecting Seller's ownership of the Property or otherwise affecting any portion thereof, or which will become a cloud on the title to the Property or question the validity or enforceability of the transaction contemplated herein, or which may adversely affect Seller's ability to perform hereunder.

(d) Bankruptcy or Insolvency. Seller warrants that it is not the subject of a bankruptcy or insolvency proceeding.

(e) Labor, Materials and Mechanics' Liens. Seller warrants that payment in full will be made prior to Close of Escrow for all labor, professional services, materials, machinery, fixtures, or tools furnished within the one hundred fifty (150) days immediately preceding the

Close of Escrow in connection with any construction, alteration or repair of any improvement to or on the Property.

14. Appurtenant Rights. At Close of Escrow, Seller shall, without further act, be deemed to have assigned, transferred, conveyed, and set over unto Buyer all grandfathered water rights, easement rights and other appurtenant rights, if any, with respect to the Property.

15. Buyer's Representations and Warranties. Buyer warrants and represents, (with the understanding that Seller is relying on said warranties, representations, and covenants) that:

(a) Buyer has full power and authority to enter into and perform this Agreement in accordance with its terms.

(b) Buyer acknowledges that consummation of this transaction shall constitute its acknowledgment that it has independently inspected and investigated the Property. Except as otherwise agreed in Section 10 above, Buyer agrees to accept the Property in its present condition "as is," subject to the warranties, covenants and agreements set forth in this Agreement.

(c) Buyer acknowledges that the Property is an improved parking lot, and represents and warrants to Seller that Buyer has inspected the Property and has entered into this Agreement based upon Buyer's inspection and that Seller made no representations or warranties regarding the condition of the Property for Buyer's specific purposes.

16. Brokerage. Seller and Buyer agree as follows:

(a) Mutual Warranties. Seller warrants and represents that it has not dealt with any party who is or may be legally entitled to a brokerage commission, finder's fee, or other like payment in connection with this Agreement. Buyer warrants and represents that it has not dealt with any party who is or may be legally entitled to a brokerage commission, finder's fee, or other like payment in connection with this Agreement. Each party, on demand, agrees to indemnify and hold the other harmless for, from, and against any and all loss, cost, damage, claim, liability, and expense (including but not limited to court costs and reasonable attorneys' fees) that may result if the indemnifying party's warranty and representation set forth above proves to be untrue, incomplete, or misleading.

(b) Survival. The provisions of this Section 16 shall survive Close of Escrow (but not the termination) of this Agreement. The provisions of Sections 10 and 21(b) shall also survive Close of Escrow, execution, delivery and recordation of the Deed.

17. Survival of Representations and Warranties. All representations and warranties contained in this Agreement are true on and as of the date so made, will be true in all material respects on and as of the Closing Date, and will survive Close of Escrow and execution, delivery, and recordation of the Deed. In the event that any representation or warranty by a party is untrue, the other party shall have all rights and remedies available at law, in equity, or as provided in this Agreement.

18. No Assumption of Seller's Liabilities. Buyer is acquiring only the Property from Seller and is not the successor of Seller. Buyer does not assume, agree to pay, or indemnify Seller

or any other person against any liability, obligation, or expense of Seller, or relating in any way to the Property.

19. Condemnation; Risk of Loss. In the event of the condemnation (or sale in lieu of condemnation) of any part of the Property prior to Close of Escrow, Buyer shall have the right either: (i) to cancel this Agreement by written notice to Seller and Escrow Agent in which event there shall be returned to Buyer the Earnest Money and all interest thereon, all documents shall be returned to the party who deposited them and thereafter this Agreement shall be of no further force or effect whatsoever, or (ii) to proceed with this transaction, in which event Buyer shall be entitled to receive all proceeds of the condemnation (or sale in lieu of condemnation).

20. Indemnification and Liabilities. Subject to the limitations and other provisions contained in this Agreement, Seller shall, and it hereby does, indemnify and agree to pay, defend, and hold harmless Buyer for, from and against any liability, obligation, action, suit, judgment, fine, award, loss, claim, demand, or expense (including attorneys' fees) arising from any act or omission or willful misconduct of Seller pertaining in any manner to the Property for the period of time prior to the Close of Escrow. Buyer does not agree to assume any liability, encumbrance, or obligation of any kind or character whatsoever relating in any manner to all or any part of the Property arising prior to the Close of Escrow: (i) except as specifically provided herein; and (ii) except that Buyer agrees to pay, defend, indemnify, and hold harmless Seller for, from and against any liability, obligation, action, suit, judgment, fine, award, loss, claim, demand, or expense (including attorneys' fees) arising from any act or omission of Buyer, Buyer's agents and employees.

21. Remedies.

(a) With the exception of a default of the provisions of the Development Contingencies in Section 11 herein, in the event of default by Buyer of any of the other provisions of this Agreement that is not cured during the Cure Period, Seller's sole remedy shall be to cancel this Agreement and to retain the Earnest Money (together with all accrued interest) as liquidated damages; Seller and Buyer agree that it would be impractical or extremely difficult to fix actual damages in case of Buyer's default; that the amount of the Earnest Money deposit paid by Buyer is a reasonable estimate of Seller's damages in case of Buyer's default; and that Seller shall retain said Earnest Money as its damages and, thereafter, neither party shall have any further obligations to the other under this Agreement.

(b) In the event of default by Buyer of the Development Contingencies set forth in Section 11(a) of this Agreement, and such default is not cured within ninety (90) days (the "**Cure Period**"), then, upon written demand from Seller, Buyer shall re-convey the Property to Seller, free and clear of all liens and other encumbrances not acceptable to Seller. Seller shall pay to Buyer the Purchase Price for the Property set forth in the Real Estate Purchase Agreement. Close of escrow for the Property so re-conveyed shall occur no later than sixty (60) days from end of the Cure Period. Any liens created against the Property by Buyer shall be the responsibility of Buyer and shall be paid by Buyer out of the proceeds of the sale to Seller or out of other funds of Buyer at close of escrow of the sale to the City. Nothing herein shall prevent Seller, at its option, from seeking declaratory, injunctive, special action or other similar relief, requiring Buyer to undertake and to fully and timely perform its obligations under this Agreement, including, but not limited to, injunctive relief to address a public safety concern or to enjoin any construction or

activity undertaken by Buyer which is not in accordance with the terms of the Development Agreement. Furthermore, Seller, in its sole discretion, may also choose to initiate an action in any court of equitable jurisdiction of the State of Arizona to compel the return of the Property to Seller or to allow Seller to enter and take possession of and reacquire title to the Property.

(c) In the event of default by Seller under this Agreement or the Development Agreement, Buyer may elect (i) to cancel this Agreement by written notice to Seller and Escrow Agent, in which event Escrow Agent shall return to Buyer all Earnest Money (plus any accrued interest earned thereon), together with all other documents Buyer has deposited with Escrow Agent in connection with this Escrow, in which case Buyer and Seller shall have no other rights or obligations under this Agreement or (ii) proceed with whatever actions Buyer may deem necessary in order to enforce the rights available to Buyer under this Agreement, at law or in equity, including the right to seek specific performance of this Agreement or to recover its actual damages from Seller not to exceed the amount of the Earnest Money deposit.

22. Notices. Notices required or permitted hereunder shall be given in writing and (i) personally delivered (ii) sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent by any reputable overnight courier service, addressed as follows:

1. To Seller: Jeff Tyne, City Manager
City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

With a copy to: Vanessa P. Hickman, City Attorney
Seller's counsel: City of Peoria
8401 West Monroe Street
Peoria, Arizona 85345

To Buyer: CBDG Peoria LLC
c/o Common Bond Development, LLC
4455 E. Camelback Road, Suite D-255
Phoenix, Arizona 85018
Attn: Brian Frakes

With a copy to: Ballard Spahr LLC
One East Washington Street, Suite 2300
Phoenix, Arizona 85004-2555
Attn: Derek Sorenson

To Escrow Agent: _____
_____ Title Agency
_____
_____
Attn:

or at any other address designated by Buyer, Seller, or Escrow Agent, in writing. Any notice, demand or request sent pursuant to (i) hereof shall be deemed received upon such personal service, and if sent pursuant to (ii) hereof shall be deemed received five (5) business days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service, and if sent pursuant to (iii) hereof shall be deemed received one (1) business day following delivery to such courier service.

23. Attorneys' Fees. In the event suit is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to recover reimbursement for reasonable attorneys' fees and court costs.

24. Intended Agreement. This Agreement shall not be construed for or against either party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Agreement or any exhibits hereto.

25. Relationship. This Agreement shall not be construed as creating a joint venture, partnership, or any other joint arrangement between Buyer and Seller.

26. Further Instruments and Documents. Each party hereto shall, promptly upon the request of the other party or Escrow Agent, acknowledge and deliver to the other party or Escrow Agent any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement.

27. Integration Clause; No Oral Modification. This Agreement, together with the Development Agreement, represents the entire agreement of the parties with respect to its subject matter, and all agreements, oral or written, entered into prior to this Agreement are revoked and superseded by this Agreement. This Agreement may not be changed, modified, or rescinded, except in writing, signed by all parties hereto.

28. Governing Law; Choice of Forum. This Agreement shall be deemed to be made under, shall be construed in accordance with, and shall be governed by the laws of the State of Arizona. Any action brought to interpret, enforce, or construe any provision of this Agreement shall be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa or in the Federal District Court in and for the District of Arizona.

29. Severability. If any provision of this Agreement is declared void or unenforceable, such provision shall be deemed severed from this Agreement, and this Agreement shall otherwise remain in full force and effect.

30. Waiver. Failure of any party to exercise any right, remedy, or option arising out of a breach of this Agreement shall not be deemed a waiver of any right, remedy, or option with respect to any subsequent or different breach, or the continuance of any existing breach.

31. Counterparts. This Agreement may be executed in any number of counterparts, all the counterparts shall be deemed to constitute one instrument, and each counterpart shall be deemed an original.

32. Payment and Proration. (i) Seller shall pay, in full and at Closing, any existing improvement lien assessments on or relating to the Property unless otherwise agreed by the parties; and (ii) Escrow Agent shall pro-rate taxes on the basis of the latest available tax statement.

33. Effective Date of Agreement. The date of this Agreement shall for all purposes be the date of the signature of the last party to sign this Agreement.

34. Time is of the Essence. Time is hereby declared to be of the essence for the performance of all conditions and obligations under this Agreement.

35. Construction/Interpretation. The captions and section headings used in this Agreement are for convenience and reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement. The term "**person**" shall include an individual, corporation, partnership, trust, estate, or any other entity. If the last day of any time period stated herein shall fall on a Saturday, Sunday, or legal holiday in the State of Arizona, then the duration of such time period shall be extended so that it shall end on the next succeeding day which is not a Saturday, Sunday, or legal holiday in the State of Arizona.

36. Conflict of Interest. This Agreement shall be subject to cancellation pursuant to the provisions of A.R.S. § 38-511 relating to conflicts of interest.

37. Recitals. The Recitals set forth on page 1 of this Agreement are incorporated herein as though fully set forth herein.

[Signatures Appear on Following Pages]

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the dates set forth below.

**SELLER:**

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

Date: _____ By: _____
Jeff Tyne, City Manager

ATTEST:

By:_____
Lori Dyckman, City Clerk

APPROVED AS TO FORM:

OFFICE OF THE CITY ATTORNEY

By:_____
Vanessa P. Hickman, City Attorney

**BUYER:**

**CBDG PEORIA LLC**, an Arizona limited liability company

By: COMMON BOND DEVELOPMENT LLC, an Arizona limited liability company, its Manager

By: _____
Name: Brian Frakes
Title: Manager

Date: _____

**ACKNOWLEDGMENT**

STATE OF ARIZONA )
) ss.
County of Maricopa )

On this _____ day of _____, 2022, before me, a Notary Public, personally appeared Brian Frakes, Manager of Common Bond Development LLC, an Arizona limited liability company, the Manager of CBDG Peoria LLC, an Arizona limited liability company, known to me or satisfactorily proven to be the person whose name is subscribed to this instrument and acknowledged that they have executed the same. If this person's name is subscribed in a representative capacity, it is for the seller named and in the capacity indicated.

_____
Notary Public

[Seal]

# EXHIBIT A

## Legal Description of the Property

THAT PORTION OF LOT 4 AND LOT 5, PEORIA SPORTS COMPLEX, RECORDED IN BOOK 1625, PAGE 10, ACCORDING TO MARCICOPA COUNTY RECORDS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF SAID LOT 5;

THENCE NORTH 87 DEGREES 24 MINUTES 28 SECONDS EAST, ON THE NORTH LINE OF SAID LOT 5, A DISTANCE OF 337.00 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE RIGHT, OF WHICH THE RADIUS POINT LIES SOUTH 56 DEGREES 9 MINUTES 33 SECONDS WEST, A RADIAL DISTANCE OF 20.00 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 91 DEGREES 38 MINUTES 39 SECONDS, A DISTANCE OF 31.99 FEET;

THENCE SOUTH 57 DEGREES 48 MINUTES 12 SECONDS WEST, A DISTANCE OF 20.00 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 46.00 FEET;

THENCE SOUTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 86 DEGREES 33 MINUTES 42 SECONDS, A DISTANCE OF 69.50 FEET;

THENCE SOUTH 49 DEGREES 55 MINUTES 54 SECONDS WEST, A DISTANCE OF 429.14 FEET TO THE POINT OF CURVE OF A NON TANGENT CURVE TO THE LEFT, OF WHICH THE RADIUS POINT LIES SOUTH 44 DEGREES 8 MINUTES 41 SECOND WEST, A RADIAL DISTANCE OF 448.60 FEET AND THE WESTERLY LINE OF LOT 5;

THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, ON THE WESTERLY LINE OF SAID LOT 5, THROUGH A CENTRAL ANGLE OF 12 DEGREES 35 MINUTES 00 SECOND, A DISTANCE OF 98.52 FEET TO THE CORNER BETWEEN SAID LOT 4 AND LOT 5.

THENCE CONTINUING NORTHWESTERLY ALONG SAID CURVE, ON THE SOUTHERLY LINE OF SAID LOT 4, THROUGH A CENTRAL ANGLE OF 12 DEGREES 14 MINUTES 11 SECONDS, A DISTANCE OF 95.81 FEET;

THENCE NORTH 16 DEGREES 0 MINUTES 31 SECONDS EAST, A DISTANCE OF 179.64 FEET TO A POINT OF CURVE TO THE LEFT HAVING A RADIUS OF 198.80 FEET;

THENCE NORTHERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 18 DEGREES 23 MINUTES 33 SECONDS, A DISTANCE OF 63.82 FEET;

THENCE NORTH 44 DEGREES 8 MINUTES 27 SECONDS EAST, A DISTANCE OF 25.32 FEET TO THE NORTHERLY LINE OF SAID LOT 4;

THENCE NORTH 87 DEGREES 24 MINUTES 28 SECONDS EAST, ON THE NORTHERLY LINE OF SAID LOT 4, A DISTANCE OF 119.85 FEET TO THE POINT OF BEGINNING.

SAID PARCEL CONTAINS 116,239 SQUARE FEET OR 2.668 ACRES, MORE OR LESS.

**EXHIBIT B**

**Form of Special Warranty Deed**

**When recorded, return to:**

**Ballard Spahr LLP**
**One East Washington Street, Suite 2300**
**Phoenix, Arizona 85004-2555**
**Attn: Derek Sorenson**

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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 **CBDG PEORIA LLC**, an Arizona limited liability company ("**Grantee**"), the following described real property (the "**Real Property**") situated in Pinal 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 _____, 2022.

[Signature Page Follows]

DATE: _____

**GRANTOR**:

CITY OF PEORIA,
an Arizona municipal corporation

By: _____
Jeff Tyne, City Manager

ATTEST:

_____
Rhonda Geriminsky, City Clerk

APPROVED AS TO FORM:

_____
Vanessa P. Hickman, City Attorney

STATE OF ARIZONA )
) ss.
County of Maricopa )

The foregoing instrument was acknowledged before me this _____ day of _____, 2022, by Jeff Tyne, City Manager, City of Peoria.

_____
Notary Public

[SEAL]

**EXHIBIT A**

**TO SPECIAL WARRANTY DEED**

Legal Description of the Property