

EXHIBIT D

Form of PARKING LICENSE AGREEMENT

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 _____, 2023, 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 at least 389 parking spaces (the “**Parking Lot**”).

C. Concurrently with the execution of this Agreement, Licensee completed its purchase of land adjacent to the License Property pursuant to that certain Real Estate Purchase Agreement (the “**Purchase Agreement**”) between Licensee and the City, dated _____, 2023 (LCON ____). Such land (the “**Developer Tract**”) is legally described on Exhibit C attached hereto and is depicted on Exhibit B attached hereto.

D. Concurrently with the execution of this Agreement, Licensee and City entered into a lease agreement whereby City agreed to lease to licensee certain real property legally described on Exhibit D attached hereto (the “**City Tract**”).

E. Licensee is developing the Developer Tract and the City Tract pursuant to an Amended and Restated Development Agreement dated May 16, 2023, as approved by the City Council (the “**Development Agreement**”), such development being defined in the Development Agreement as the “**Project**.”

F. The Developer Tract does not have sufficient parking to accommodate the parking requirements of the Project.

G. 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.

H. 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 "**Project Parking Spaces**") for the exclusive use of employees and patrons of the Project between the hours of 6:00 a.m. and 11:00 p.m., seven days per week. The Project 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 and/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 Agreement. Licensor agrees that individual users of the Project Parking Spaces will not be separately charged for such use during the term of this Agreement.

b. Valet Management. Licensee shall be responsible for management of all valet operations for the Project, 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 at its sole expense.

d. Licensee's Right to Use Non-Exclusive Parking Spaces. 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. This Agreement, 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 Project Parking Spaces will be located within the South Blue Lot portion of the Parking Lot as depicted on Exhibit B.

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 a non-exclusive right to use the Parking Lot has been or is 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 Project Parking Spaces shall terminate upon the expiration or earlier termination of this Agreement as provided in Section 2 herein.

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

j. Licensee shall have the right to tow and shall be responsible for towing any vehicles which are parked in the Project 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 Project 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 Project 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 Project 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 so long as such closure does not exceed thirty (30) consecutive days in duration and does not affect more than 20 of the Project 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 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 this Agreement shall be ten (10) years, unless: (1) City exercises its right to acquire the Developer Tract 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 Agreement (which also shall apply during any Renewal Term). The term of this Agreement shall begin on the date the first Quality Restaurant (as defined in the Development Agreement) opens for business to the public at the Project and automatically shall renew for up to four (4) successive ten-year terms (each, a "**Renewal Term**") unless as of the end of the initial 10-year term or the end of any Renewal Term (a) the Project does not include at least one (1) Quality Restaurant that is open and operating and City has informed Licensee in writing that this Agreement shall not be so renewed, or (b) Licensee and Licensor agree in writing to terminate the License, or (c) there is then an uncured Default under Section 14 of this Agreement, and City has exercised its right under Section 14 to terminate this Agreement.

3. License Fee. Licensee will pay a fee (the "**License Fee**") of \$ 244.68 per Project Parking Space/year, to be escalated at 3% per year, assessed every five (5) years. No License 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 Project 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 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 and is no longer available for use by the Licensee as a parking lot, 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 Project 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 Project Parking Spaces.

7. Licensor's Right to Inspect. Licensor, through its employees or agents, shall have the right to enter upon the Project 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 Project Parking Spaces. Licensor makes no warranty or representation of any kind whatsoever regarding the condition or fitness of the Project Parking Spaces and Parking Lot for Licensee's use, or any use. Licensee accepts and agrees to use the Project 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 Project 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 Project Parking Spaces, Parking Lot and/or the License Property, any breach of this Agreement, 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 Agreement, 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 and 00/100 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 Agreement 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 Project 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 Project 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 the Project or injury to all persons and personal property in or upon the Project 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 Project 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. A “Default” by Licensee shall be considered to have occurred if Licensee shall fail to observe or perform the terms or conditions of this Agreement and such failure shall remain uncured for ten (10) business days after Notice from Licensor to Licensee; provided, however, that if such failure of Licensee, 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 such failure, not to exceed ninety (90) days. In the event of a Default by Licensee, Licensor shall have the right to terminate this Agreement effective thirty (30) days following Notice to Licensee and/or pursue any other rights or remedies available to Licensor at law or in equity.

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

Copy to: City of Peoria
 Attn: City Attorney
 8401 West Monroe Street
 Peoria, AZ 85345

Copy to: City of Peoria
 Attn: Economic Development Services Director
 9875 North 85th Avenue
 Peoria, Arizona 85345

Copy to: Fennemore Craig, P.C.
2394 East Camelback Road, Suite 600
Phoenix, Arizona 85016
Attn: Jay Kramer and Sabrina Bigelow

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

Copy to: Ballard Spahr LLP
One East Washington Street, Suite 2300
Phoenix, Arizona 85004-2555
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. Arizona Law Provisions.

15.s.1 No member, official or employee of City shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement, that is prohibited by law. In addition to its other rights hereunder, City shall have the rights specified in A.R.S § 38-511.

15.s.2 To the extent applicable, Licensee certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a “boycott,” as that term is defined in § 35-393, Arizona Revised Statutes, of Israel.

15.s.3 To the extent applicable under A.R.S. § 41-4401, Licensee warrants compliance with all federal immigration laws and regulations that relate to their employees and contractors and their compliance with the e-verify requirements under A.R.S. § 23-214(A). The failure by Licensee to comply with such warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

15.s.4 To the extent applicable under A.R.S. § 35-394, Licensee hereby certifies it does not currently, and for the duration of this Agreement shall not use: (a) the forced labor of ethnic Uyghurs in the People’s Republic of China, (b) any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China, and (c) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People’s Republic of China. If Licensee becomes aware during the duration of this Agreement that it is not in compliance with such certification, Licensee shall take such actions as provided by law, including providing the required notice to the City. If the City determines that the Licensee is not in compliance with the foregoing certification, such failure to comply with the certifications in this Section shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the City.

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

LICENSOR:

CITY OF PEORIA,
an Arizona municipal corporation

By: _____
Name: Henry Darwin
Title: City Manager

ATTEST:

Lori Dyckman, City Clerk

APPROVED AS TO FORM:

Emily Jurmu, 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 _____, 202____, 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 of the License Property

(TO BE DETERMINED PRIOR TO EXECUTION)

EXHIBIT B

Depiction of the License Property and the Project

(TO BE DETERMINED PRIOR TO EXECUTION)

EXHIBIT C

Legal Description of the Developer Tract

(TO BE DETERMINED PRIOR TO EXECUTION)

EXHIBIT D

Legal Description of the City Tract

(TO BE DETERMINED PRIOR TO EXECUTION)