

**EXHIBIT G**

**Form of City Tract Lease**

**LEASE between CITY OF PEORIA, a municipal corporation, as Landlord AND CBDG PEORIA, LLC, an Arizona limited liability company, as Tenant.**

**LEASE**

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

**RECITALS:**

- A. Landlord is the owner of certain real property located on the south side of W. Paradise Lane, east of 83<sup>rd</sup> Avenue and west of 79<sup>th</sup> Avenue, in Peoria, Arizona and legally described on Exhibit A attached hereto, and the owner of the improvements now existing or hereafter constructed thereon (collectively, the “**Premises**”).
- B. Landlord desires to lease the Premises to Tenant and Tenant desires to lease the Premises from Landlord on the terms set forth herein.
- C. Concurrently with the execution of this Lease, Tenant completed its purchase from Landlord of certain land adjacent to the Premises and depicted on Exhibit B attached hereto as the “**Developer Tract**.” The Developer Tract and the Premises are sometimes referred to herein as the “**Project Property**.”
- D. Concurrently with the execution of this Lease, Tenant and Landlord entered into that certain Parking License Agreement addressing Tenant’s use of the Parking Lot shown on Exhibit B attached hereto.
- E. Landlord and Tenant are parties to that certain Amended and Restated Development Agreement dated May 16, 2023 (the “**Development Agreement**”), for development on the Project Property of three (3) top tier Quality Restaurants along with certain Public Infrastructure (as defined in the Development Agreement) (the “**Project**”).
- F. Tenant acknowledges that Landlord would not agree to lease the Premises to Tenant but for Tenant’s expertise in restaurant concept development, Tenant’s commitment to be the developer of the Project, and Tenant’s commitment to develop the Project upon the Project Property.
- G. Landlord, in accordance with Article I, Section 3(1) of the Peoria City Charter, is authorized to lease real property, and Landlord’s City Council has considered the lease terms authorized by this Lease, and the direct consideration Landlord will receive.

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

**1. BASIC LEASE TERMS.**

(a)	<b>Premises</b>	Approximately 60,000 sq. ft. City: Peoria County: Maricopa State: Arizona (See <u>Section 2</u> )
(b)	<b>Term</b>	10 years, with 4 successive 10-year renewal terms (See <u>Section 3</u> )
(c)	<b>Rent</b>	(See <u>Section 4</u> )
(d)	<b>Landlord’s Notice Address</b> Rent Payments:	City of Peoria 8401 West Monroe Street Peoria, Arizona 85345 Attn: City Manager
	Correspondence:	(same as above)
(e)	<b>Tenant’s Notice Address</b>	4300 East Camelback Road, Suite 150 Phoenix, Arizona 85018 Attn: Brian Frakes Tel: 602-429-8015

**2. PREMISES.** Landlord leases to Tenant and Tenant leases from Landlord the Premises.

**3. TERM.** The term of this Lease (“**Term**”) shall commence on the date the first Quality Restaurant is open and operating from the Project (the “**Commencement Date**”) and shall continue until the 10<sup>th</sup> anniversary of the Commencement Date (the “**Expiration Date**”); provided, however, the Term of this Lease shall automatically renew for up to four (4) successive ten (10) 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 Landlord has informed Tenant in writing that this Lease shall not be so renewed, or (b) Landlord and Tenant agree in writing to terminate the Lease, or (c) there is then an uncured default under Section 22.1 of this Lease, and Landlord has exercised its right under Section 22.2 to terminate this Lease.

**4. RENT.** From and after the Commencement Date, Tenant shall pay Landlord annual rent (“**Base Rent**”) and the applicable Arizona rent tax as follows:

The annual Base Rent shall be based on \$0.27 per square foot, per year, at a total amount of \$16,000.00 per year, payable upon the Commencement Date. The Base Rent will be escalated at three percent (3%) per year, assessed every five (5) years.

All amounts that Tenant is required to pay or discharge pursuant to this Lease in addition to the Base Rent, including, but not limited to the cost of utilities, insurance, operating expenses, maintenance and repairs, and all other sums owed by Tenant to Landlord or to any third parties by Tenant or Landlord on behalf of Tenant, together with every fine, penalty, interest and cost which may be added for non-payment or late payment, shall constitute “**Additional Charges.**” Base Rent and Additional Charges shall collectively be referred to herein as “**Rent.**” All payments of Rent due to Landlord shall be paid without notice, demand, deduction or offset and at the address set forth in the Basic Lease Terms, Section 1(d). Acceptance of any Rent by Landlord shall not be deemed a waiver of any default by Tenant of any term or condition of this Lease nor of any right or remedy available to Landlord under this Lease, at law or in equity.

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

**6. TAXES.** Landlord shall pay all real estate taxes due and owing on the Premises, if any. Tenant shall pay all taxes and assessments due on Tenant’s personal property used or kept on the Premises, and Tenant shall pay any taxes imposed by the governmental authority on rental payments.

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

**8. USE, NUISANCE AND RESTRICTIONS.**

**8.1 Use and Possession of Premises.** During the Term of this Lease, Tenant shall continuously use and maintain the Premises in good condition, free and clear of liens, subject to the terms and conditions of this Lease. Tenant’s use of the Premises shall be limited to

development, maintenance, repair, and replacement of the Placemaking Amenities on the Premises and for use in connection with operation of up to three (3) Quality Restaurants on the Developer Tract.

**8.2 Restricted Uses.** Without enlarging or modifying the permitted use as set forth in Section 8.1, Tenant shall not commit, suffer nor allow any of the following to be done or conditions to exist on the Premises, without the prior written consent of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion: (i) any waste, loss, or damage to the Premises; (ii) any public or private nuisance; (iii) placement of any debris, refuse or trash on the Premises; or (iv) any conduct or condition which, in Landlord's reasonable opinion, is illegal, obscene, or morally offensive but not otherwise expressly mentioned above.

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

**10. INTENTIONALLY DELETED.**

**11. COMPLIANCE WITH LAWS.** Tenant shall comply with any and all Laws. "Laws" means all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, including, without limitation, Environmental Laws and ADA (as defined below), which now or at any time hereafter may be applicable to the Premises or any part thereof. Tenant shall promptly submit to Landlord copies of all documents and correspondence made by Tenant to any governmental authority, or given by any governmental authority or person to Tenant pursuant to any Laws. "ADA" means the Americans with Disabilities Act of 1990, regulations issued thereunder, the Accessibility Guidelines for Buildings and Facilities issued pursuant thereto, and any applicable requirements under comparable or related state law.

**12. CONDITION OF THE PREMISES.** Tenant represents to Landlord that Tenant has inspected the Premises prior to the execution and delivery of this Lease and has found the same to be satisfactory for all purposes hereunder and **TENANT ACCEPTS THEM IN THEIR "AS IS," "WHERE IS" CONDITION AND "WITH ALL FAULTS."** **TENANT HEREBY WAIVES ALL WARRANTIES, EXPRESS OR IMPLIED, REGARDING THE CONDITION, USE, QUALITY, FITNESS OR ADEQUACY OF THE PREMISES AND THE PERSONAL PROPERTY, INCLUDING, BUT NOT LIMITED TO ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

### 13. HAZARDOUS MATERIALS.

**13.1 Tenant Covenant.** Tenant covenants that Tenant and anyone acting by, through, or under Tenant, will not, through its acts or omissions, cause or permit any Hazardous Materials (as defined below) to be placed, held, located, Released or disposed of on, under or at the Premises in violation of Environmental Laws (as defined below). Tenant shall indemnify, defend and hold Landlord harmless for, from and against any and all claims, judgments, damages, penalties, fines, liabilities, losses, obligations, suits, costs, taxes, charges and disbursements which arise during or after the term of this Lease as a result of the presence, generation, Release (as defined below), use, storage or discharge of any Hazardous Materials on the Premises in violation of this Section. This indemnification of Landlord by Tenant includes, without limitation, costs incurred in connection with any investigation of site conditions or any cleanup, remedial, removal or restoration work required by any federal, State or local governmental agency or political subdivision because of Hazardous Materials caused or permitted by Tenant to be present in the soil or groundwater on, in or under the Premises. The indemnity, hold harmless and other obligations of Tenant under this Section shall survive the termination or expiration of this Lease. The term “**Hazardous Materials**” shall mean any substance or material which is defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” “extremely hazardous waste,” “acutely hazardous wastes,” “restricted hazardous waste,” “toxic substances,” or “known to cause cancer or reproductive toxicity” (or words of similar import), petroleum products (including crude oil or any fraction thereof) or any other chemical, substance or material which is prohibited, limited or regulated under any federal, State or local law, ordinance, regulation, order, permit, license, decree, common law or treaty now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous to health and safety, the environment or natural resources, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“**CERCLA**”) and the Resource Conservation and Recovery Act of 1987, as amended (“**RCRA**”) (collectively, the “**Environmental Laws**”). “**Release**” means any actual or threatened spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, presence, dumping, migrating on or from the Premises or adjacent property, or disposing of Hazardous Materials or Poisons into the environment.

**13.2 Release of Hazardous Materials.** In the event a Release of Hazardous Materials in violation of any Environmental Laws, **Tenant shall immediately notify Landlord of any such discovery.** If a Release of Hazardous Materials results from the actions or omissions of Tenant, Tenant shall, at its sole cost and expense, comply with all Environmental Laws to remedy the situation, including, without limitation, promptly conducting a site assessment, taking immediate action required for containment of the Release, and preparing and implementing a plan for the clean-up of the Release. Tenant shall properly dispose of any Hazardous Materials by licensed haulers to licensed facilities in accordance with Environmental Laws. Tenant’s obligations under this Section 13 shall survive the expiration or termination of this Lease.

**14. ALTERATIONS.** Other than the Placemaking Amenities, Tenant shall not make any additions, alterations or improvements, or erect any structures, buildings, fences, or other improvements, permanent or temporary, to the Premises without obtaining the prior written

approval of Landlord, which may be granted or withheld in Landlord's sole and absolute discretion.

**15. LIENS.** Except as otherwise provided in Section 21 hereof, Tenant shall not do any act or make any contract so as to encumber or affect in any manner the title or rights of Landlord in the Premises. Tenant shall keep the Premises free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for Tenant. Tenant hereby indemnifies, holds harmless and agrees to defend Landlord for, from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for Tenant or persons claiming under Tenant. If Tenant shall be in default in paying any charge for which a bond or other lien claim has been filed and shall not have given Landlord security to protect the Premises and Landlord, then Landlord may, but shall not be obligated to, pay the claim. The total amount of the claim together with any costs and attorneys' fees incurred by Landlord in connection therewith, shall be immediately due and owing from Tenant to Landlord, as Additional Charges.

**16. SURRENDER.** Tenant shall, upon the Expiration Date or earlier termination of this Lease, peacefully surrender the Premises to Landlord. Tenant agrees that any improvements remaining on the Premises after the expiration of the Term or the earlier termination of this Lease shall be the property of Landlord. Tenant shall promptly execute and acknowledge a quit claim deed, bill of sale, or other instrument reasonably requested by Landlord to confirm ownership in and possession of the improvements by Landlord.

**17. INDEMNIFICATION.**

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

**17.2 Release.** Tenant hereby assumes all risk of damage or injury to any person or property in, on or about the Premises from any cause whatsoever, and hereby releases, remises, acquits and discharges Landlord from any such damage or injury on behalf of Tenant, and Tenant's agents and contractors. Tenant waives and releases all claims against Landlord for

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

**18. TENANT INSURANCE.** Tenant shall carry, at Tenant's sole cost and expense, the following types of insurance, in the minimum amounts specified below:

**18.1** Commercial general liability insurance for personal injury, bodily injury (including wrongful death) and damage to property with a combined single limit of not less than Two Million and No/100 Dollars (\$2,000,000.00), per occurrence, Two Million and No/100 Dollars (\$2,000,000.00) annual aggregate insuring against any and all liability of the insured with respect to the Premises, or arising out of the maintenance, use or occupancy thereof. Such coverage shall also contain endorsements: (a) deleting any employee exclusion on personal injury coverage; and (b) deleting any liquor liability exclusion.

**18.2** Business Auto Coverage for owned, hired and non-owned vehicles with a combined single limit of not less than One Million and No/100 Dollars (\$1,000,000.00), per occurrence, One Million and No/100 Dollars (\$1,000,000.00) annual aggregate.

**18.3** A policy or policies of workers' compensation insurance with an insurance carrier and in amounts required by applicable law and a policy of employer's liability insurance with limits of liability not less than Five Hundred Thousand and No/100 Dollars (\$500,000.00), each accident; Five Hundred Thousand and No/100 Dollars (\$500,000.00), disease policy limit; and Five Hundred Thousand and No/100 Dollars (\$500,000.00) disease each employee.

**18.4** All policies of insurance will be subject to such increases in amount as Landlord may reasonably require from time to time. All policies of insurance to be procured by Tenant shall contain waivers of subrogation in favor of Landlord and be issued by insurance companies having a general policy holders rating of not less than A:/VIII in the most current available "Best's Key Rating Guide," qualified to do business in the State. All property policies shall be issued in the name of Tenant, and shall name Landlord as an additional insured. All liability policies obtained by Tenant shall name Landlord as an additional insured. Evidence of insurance meeting the requirements of this Section shall be available to Landlord upon request. All liability policies shall contain a provision that Landlord, although named as an additional insured, shall nevertheless be entitled to recovery under the policy for any loss occasioned to Landlord by reason of the negligence of Tenant or Tenant's agents. As often as any such policy shall expire or terminate, renewal or additional policies shall be procured and maintained by Tenant in like manner and to like extent. All policies of insurance delivered to Landlord must contain a provision that the company writing the policy shall give Landlord ten (10) days' notice in writing in advance of any cancellation or lapse or the effective date of any material change in the policy, including any reduction in the amounts of insurance. All liability, property and other casualty policies shall be written as primary policies and shall provide that any insurance which

Landlord may carry is strictly excess, secondary and non-contributing with any insurance carried by Tenant.

**19. EARLY TERMINATION.** This Lease shall terminate on the first to occur of (a) the Expiration Date; (b) completion of Tenant's purchase of the Premises in accordance with Section 28.14 and Exhibit B; (c) completion of Landlord's repurchase of the Developer Tract in accordance with the provisions of the Development Agreement; (d) termination of Tenant's purchase right of the Premises under Section 28.14 and Exhibit B; or (e) termination of the Parking License Agreement.

**20. ASSIGNMENT AND SUBLETTING.**

(a) Tenant shall not, either voluntarily or by operation of law, sell or transfer this Lease, in whole or in part, or sublet the Premises or any part thereof, or permit the Premises or any part thereof to be occupied by anyone other than Tenant or Tenant's employees, agents or invitees (including tenants of the Project and their customers and invitees), without the prior written consent of Landlord in each instance, which consent may be withheld in Landlord's sole and absolute discretion. Any sale, assignment, transfer or subletting of this Lease which is not in compliance with the provisions of this Section shall be void and shall, at the option of Landlord, terminate this Lease. The consent by Landlord to any assignment or subletting shall not be construed as relieving Tenant from obtaining the express written consent of Landlord to any further assignment or subletting or as releasing Tenant from any liability or obligation hereunder whether or not then accrued. An assignment of less than 100% of Tenant's interest in the Demised Premises shall not be permitted.

(b) Notwithstanding the foregoing, Tenant shall be permitted to assign this Lease to any person or entity who acquires from Tenant fee simple title to the Developer Tract, provided that, if the Term of the Development Agreement has not expired, Tenant has obtained Landlord's written consent to Tenant's transfer of fee simple title to the Developer Tract in accordance with the terms of the Development Agreement.

(c) No assignment or subletting shall be effective unless it is evidenced by a written instrument executed by the assignor or sublessor and the assignee or sublessee, and, in the case of an assignment, by which the assignee shall agree in writing for the benefit of Landlord to assume, to be bound by, and to perform the terms, covenants and conditions of this Lease to be done, kept and performed by Tenant. One executed copy of such written instrument shall be delivered to Landlord.

(d) Upon any permitted assignment, Tenant shall be released from all obligations under this Lease that arise from and after the effective date of such assignment.

**21. HYPOTHECATION OF LEASEHOLD ESTATE.**

(a) Tenant is hereby given the right, at any time and from time to time, to mortgage its leasehold estate in the Premises (but in no event Landlord's fee simple title) fee, provided that any leasehold mortgage shall be subject and subordinate to the rights of Landlord hereunder. As used in this Section and throughout this Lease, the noun "**mortgage**" shall include a deed of trust, the verb "**mortgage**" shall include the creation of a deed of trust, the word "**mortgagee**"

shall include the beneficiary under a mortgage or deed of trust encumbering Tenant's leasehold estate in the Premises, and the terms "**foreclose**" or "**foreclosure**" shall include a trustee's sale under a deed of trust as well as a foreclosure by judicial process.

(b) If a mortgagee shall have given Landlord, a written notice specifying the name and mailing address of the mortgagee, then Landlord shall not terminate this Lease by reason of the occurrence of any default hereunder unless Landlord shall have given the mortgagee a copy of its notice to Tenant as required under Section 22.1 below addressed to the mailing address last furnished by the mortgagee, and the breach of this Lease described in such notice shall not have been cured by said mortgagee as provided in Subsections (c) or (d) below.

(c) Tenant irrevocably directs that Landlord accept, and Landlord agrees to accept, performance by any such mortgagee of any term, covenant, agreement, provision, condition or limitation on Tenant's part to be performed or observed as though performed or observed by Tenant, provided such performance by said mortgagee shall occur within the time prescribed therefor in this Lease, plus an additional grace period of thirty (30) days thereafter or, if Tenant's breach is curable but not within said 30-day period, then within such additional time as may be reasonably necessary to cure the same provided the mortgagee commences the curing thereof within such 30-day period and thereafter prosecutes the curing of such breach to completion with all due diligence; provided, however, with respect to any breach of this Lease which cannot be cured by said mortgagee until it obtains possession of the Demised Premises, the provisions of Subsection (d) below shall apply.

(d) In the event of a default by Tenant under this Lease arising from a breach of this Lease which cannot be cured by a mortgagee without first obtaining possession of the Premises, then, and notwithstanding any other provision contained in this Lease, Landlord shall not terminate this Lease by reason of such default if (i) said mortgagee, within the thirty (30) day grace period set forth in Subsection (c) above, shall have commenced, and thereafter diligently proceeds with, an appropriate proceeding to foreclose such mortgage or otherwise obtains possession of the Premises, and (ii) said mortgagee shall have cured such default within thirty (30) days following its obtaining possession of the Premises (or, if said default is curable but not within said 30-day period, then within such additional time as may be necessary to cure the same provided the mortgagee commences the curing thereof within such 30-day period and thereafter prosecutes the curing of such default to completion with all due diligence). Notwithstanding anything to the contrary contained in this Lease, Landlord shall not require a mortgagee to cure any default which is not capable of being cured by a third party.

(e) During the pendency of any foreclosure proceedings, mortgagee shall fully perform all the obligations of Tenant under this Lease that can be performed by such mortgagee without possession of the Premises (including, but not limited to, payment of Rent, and any and all other monies due and payable by Tenant hereunder); provided, however, that if such mortgagee is able to obtain possession of the Premises during the time that it is enforcing its foreclosure remedy or as a result thereof, then such mortgagee shall perform fully all of Tenant's obligations under this Lease. In the event such mortgagee acquires title to the leasehold estate of Tenant through such a foreclosure proceeding, or otherwise, it shall thereupon become subrogated to all the rights of the Tenant under this Lease whereupon:

(1) Tenant shall have no further right hereunder; and

(2) Such mortgagee shall forthwith be obligated to assume and perform each and all of Tenant's obligations and covenants hereunder.

(f) In the event of a rejection of the Lease by Tenant in a bankruptcy, Landlord will notify the mortgagee of such termination and the amount of the sums then due to Landlord under the Lease, and the mortgagee, for a period of thirty (30) days following receipt of notification of such termination, shall have the right to have Landlord enter into a new lease with the mortgagee in accordance with the provisions set forth in Subsection (g) below, but provided that the mortgagee shall have paid all sums then due to Landlord prior to or upon execution of such new lease.

(g) In the event such mortgagee acquires title to the leasehold estate of Tenant, then, at any time thereafter when said mortgagee is not then in default under this Lease, Landlord shall, upon written request of mortgagee, deliver a new lease of the Premises to mortgagee or its nominee. The new lease (whether it be granted to the mortgagee or its nominee) shall have a term equal to the remainder of the Term of this Lease and shall be at the Base Rent and upon the terms and conditions herein contained, except for requirements which are no longer applicable or have already been performed. Mortgagee shall have the right to a new lease as set forth above provided that mortgagee shall reimburse Landlord for all of Landlord's expenses, including reasonable attorneys' fees, incident to such efforts.

## **22. DEFAULT BY TENANT.**

**22.1 Tenant's Default.** The occurrence of any one or more of the following events shall constitute a default and breach of this Lease by Tenant: (a) failing to pay any Rent or any other charges when due and such failure continues for ten (10) days following receipt of written notice of such failure from Landlord to Tenant; (b) failing to abide by the use restrictions set forth in Section 8.2; (c) failing to promptly and fully perform any other covenant, condition or agreement contained in this Lease should such failure continue for thirty (30) days after written notice thereof from Landlord to Tenant; provided, however, Tenant shall have an additional sixty (60) days to cure if the failure to perform is such that it cannot reasonably be cured within thirty (30) days and Tenant commences to cure within said 30-day period and diligently pursues such cure to completion; (d) permitting Tenant's assets to be placed in the hands of a receiver or trustee for a period in excess of thirty (30) days; making an assignment for the benefit of creditors; instituting any proceedings under any bankruptcy act wherein Tenant seeks to be adjudicated a bankrupt, to be discharged of its debts, or to effect a plan of liquidation, extension or reorganization; failing to have dismissed within sixty (60) days any involuntary proceeding filed against Tenant under any bankruptcy act; becoming insolvent; or failing to have dismissed within thirty (30) days any proceedings seeking to execute or levy against or attach fifty percent (50%) or more of Tenant's assets; (e) causing or permitting to be caused a violation of any Laws; or (f) an event of default occurs by Tenant under the Development Agreement or the Parking License Agreement, beyond the applicable notice and cure periods set forth therein. Any notice provided above shall be in lieu of and not in addition to any notice required by any Laws, except as otherwise not permitted by the Laws of the State.

**22.2 Remedies.** In the event of Tenant's default hereunder, Landlord may: (i) perform such obligations on behalf of Tenant, whereupon Tenant shall reimburse Landlord for the costs incurred as Additional Charges, plus a 20% for special handling, supervision, and overhead, within ten (10) days after demand; (ii) terminate this Lease by written notice to Tenant and terminate Tenant's right to possession of the Premises by legal process or otherwise; and/or (iii) pursue any and all remedies available at law or in equity, including injunctive relief.

**23. WAIVER OF NOTICE.** Notwithstanding any other provision contained in this Lease relating to notice: (i) if Tenant is required to comply with any governmental regulation or order within a period less than that to which Tenant would otherwise be entitled to notice hereunder, Tenant shall not be entitled to notice from Landlord beyond the period within which such compliance may be required by such regulation or order; or (ii) if the Premises requires emergency repairs which Tenant would otherwise be obligated to make under this Lease, but which Tenant is then unable or unwilling to make, Landlord may, without notice, elect to make such repairs for the account and at the expense of Tenant. Any amount so paid shall be subject to reimbursement by Tenant as Additional Charges.

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

**25. NOTICES. ALL NOTICES, REQUESTS, DEMANDS, AND OTHER COMMUNICATIONS HEREUNDER SHALL BE IN WRITING AND SHALL BE GIVEN BY: (I) ESTABLISHED EXPRESS DELIVERY SERVICE WHICH MAINTAINS DELIVERY RECORDS, (II) HAND DELIVERY, OR (III) CERTIFIED OR REGISTERED MAIL, POSTAGE PREPAID, RETURN RECEIPT REQUESTED, TO THE PARTIES AT THE ADDRESSES SET FORTH IN THE BASIC LEASE TERMS, OR AT SUCH OTHER ADDRESS AS THE PARTIES MAY DESIGNATE BY WRITTEN NOTICE IN THE ABOVE MANNER.** Communications may also be given by fax, provided the communication is concurrently given by one of the above methods. Notices are effective upon receipt, or upon attempted delivery if delivery is refused or if delivery is impossible because of failure to provide a reasonable means for accomplishing delivery.

**26. RIGHT OF ENTRY.** In addition to its rights otherwise provided in this Lease, Landlord reserves and shall at any and all reasonable times have the right to enter the Premises to inspect the same, perform tests and studies, remediate Hazardous Materials, to submit the Premises to prospective partners, purchasers, lenders or Tenants, and to post notices of non-responsibility, all without abatement of Rent. Tenant, on behalf of itself and Tenant's Agents, hereby waives any claim for damages for any injury or inconvenience to or interference with Tenant's business, any loss of occupancy or quiet enjoyment of the Premises, and any other loss occasioned by Landlord's entry as provided in this Section. Tenant shall permit Landlord to place upon the Premises signs advertising the Premises for sale or lease together with such promotional signage as Landlord may desire.

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

**28. MISCELLANEOUS PROVISIONS.**

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

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

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

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

**28.5 Choice of Law.** This Lease shall be governed by the laws of the State of Arizona.

**28.6 Authority.** If Tenant is a corporation, limited liability company or partnership, each individual executing this Lease on behalf of Tenant hereby warrants and represents that he is duly authorized to execute this Lease on behalf of said corporation or partnership.

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

**28.8 Covenants and Conditions.** Each and every provision of this Lease to be performed by Tenant shall be deemed both a covenant and condition. The Parties agree that each provision set forth herein, pursuant to which Tenant is required to pay Rent shall be and is a covenant of Tenant independent of any other term, condition or covenant contained in this Lease.

Tenant shall not be entitled to offset the claimed amount of damages against any Rent or other payments due hereunder, it being expressly agreed that such covenant to pay such amount shall be independent of any obligation of Landlord hereunder. All payments to be made by Tenant hereunder shall, unless otherwise expressly provided, be paid to Landlord without notice or demand and without adjustment, deduction or setoff, in lawful money of the United States.

**28.9 Recording.** Neither this Lease nor a memorandum thereof shall be recorded by Tenant. Landlord, in its sole and absolute discretion, shall have the right to record a memorandum of this Lease.

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

**28.11 Waiver of Jury Trial.** The Parties expressly waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other, on any matter whatsoever arising out of or any way connected with this Lease or their relationship arising hereunder.

**28.12 Knowledge, Review and Interpretation.** The Parties, and each of them, acknowledge, declare, and agree, that: (i) they have consulted legal counsel about this Lease, including the meaning and effect of waiving any legal rights, or have had the opportunity to do so and have voluntarily chosen not to do so; (ii) they have had adequate time and opportunity to review the terms of this Lease and have carefully read it; (iii) they are sophisticated parties that have negotiated this Lease at arm's length, and accordingly, expressly waive any rule of law or any legal decision that would require interpretation of any ambiguities in this Lease against the Party that has drafted it; and (iv) they intend to be legally bound to the provisions of this Lease, which shall be interpreted in a reasonable manner to effect the purposes of this Lease and intent of the Parties as outlined herein.

**28.13 Counterparts.** This Lease may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

**28.14 Right to Purchase.** At any time following the fifth (5<sup>th</sup>) anniversary of the Effective Date and prior to the Expiration Date or earlier termination of this Lease, and provided that Tenant (i) has completed development of the Project in accordance with the terms of the Development Agreement, and (ii) is not in default under the terms of this Lease, Tenant shall have the right to purchase the Premises by giving notice to Landlord of Tenant's intention to purchase the Premises. The purchase price for the Premises will be based on the appraised value, as reflected in an appraisal of the Premises to be prepared by an appraiser selected by the Landlord (the "Purchase Price").

The remaining terms of such purchase and sale of the Premises are summarized on Exhibit B attached hereto.

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

**28.16 No Partnership.** This Lease and the transactions and performance contemplated hereby shall not create any sort of partnership, joint venture, or similar relationship between Landlord and Tenant.

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

**28.18 No Liability of City Officials.** No City Council Member, official, representative, agent, attorney, or employee of Landlord shall be personally liable to Tenant, or to any successor-in-interest to Tenant, in the event of default by City, for any representation, warranty, covenant, undertaking or agreement contained in the Lease, or for any amount that may become due to Tenant or its successors, or with respect to any obligation of Landlord under the terms of this Lease.

**28.19 Arizona Law Provisions.**

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

(b) To the extent applicable under A.R.S. § 41-4401, Tenant 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 Tenant to comply with such warranty shall be deemed a material breach of this Lease and may result in the termination of this Lease by the Landlord.

(c) To the extent applicable under A.R.S. § 35-394, Tenant hereby certifies it does not currently, and for the duration of this Lease 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 Tenant becomes aware during the duration of this Lease that it is not in compliance with such certification, Tenant shall take such actions as provided by law, including providing the required notice to the Landlord. If the Landlord determines that the Tenant 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 Lease and may result in the termination of this Lease by the Landlord.

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

IN WITNESS WHEREOF, this Lease has been executed as of the date first above written.

**TENANT:**

**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

**LANDLORD:**

**CITY OF PEORIA,**  
a municipal corporation

By: \_\_\_\_\_  
Name: Jason Beck  
Title: Mayor

**ATTEST:**

By: \_\_\_\_\_  
Name: Lori Dyckman  
Title: City Clerk

**APPROVED AS TO FORM:**

By: \_\_\_\_\_  
Name: Emily Jurmu  
Title: City Attorney

**EXHIBIT A**

Legal Description

(TO BE DETERMINED PRIOR TO EXECUTION)

## EXHIBIT B

### Purchase Provisions

1. Subject to the provisions of Section 28.14 of this Lease, Tenant holds the exclusive right to purchase the Premises.
2. In the event Tenant exercises its right to purchase the Premises, such purchase shall be for the Purchase Price, and shall be free and clear of all liens and encumbrances except for those described on Schedule 1 attached hereto (“**Permitted Exceptions**”).
3. Promptly following Tenant’s delivery to Landlord of a Purchase Notice (as provided in Section 28.14 of this Lease, Landlord shall submit to Tenant an executed set of escrow instructions to effectuate Tenant’s purchase of the Premises. Such instructions shall provide, in addition to provisions common to customary escrow instructions: (1) for a closing date not later than ninety (90) days following delivery of a Purchase Notice; (2) for an allocation of escrow fees, recording fees and title insurance fees in the manner that is customary in Maricopa County, Arizona; (3) that no brokerage commissions shall be payable by Landlord or Tenant to anyone; (4) for conveyance of the Premises by special warranty deed; and (5) the execution by Landlord of an owner’s affidavit in a form and content sufficient for the issuance of extended coverage title insurance without exception for parties in possession or mechanics’, materialmen’s or professional service liens caused by or on behalf of Landlord. Landlord shall be charged in the escrow for a standard owner’s policy of title insurance insuring Tenant’s title to the Premises. Tenant shall be charged in the escrow for the cost of extended coverage and for the cost of any endorsements requested by Tenant. Landlord promptly shall execute the escrow instructions along with the special warranty deed and shall deliver them to the escrow agent identified in the escrow instructions pending close of escrow. At any time prior to delivery of the Purchase Notice, Tenant may request that a title company of its choosing prepare a commitment for title insurance for the Premises and Landlord expressly consents thereto.
4. If Tenant fails to close the escrow within the requisite ninety (90) days as provided in paragraph 3 above, then Landlord may issue a notice of such failure to Tenant, and if the failure is not cured within five (5) days, then, as the sole consequence to Tenant of such failure, Tenant’s purchase right under Section 28.14 of this Lease as to the Premises shall terminate in their entirety and thereafter shall have no further force or effect for any purpose.
5. Each party shall bear its own attorneys’ fees and costs incurred in connection with the purchase transaction.
6. Payment of the amount due at close of escrow to Seller shall be made through escrow by wire transfer of immediately available federal funds (United States dollars). Tenant may satisfy any monetary encumbrances that affect title to the Subject Parcel and that are not Permitted Exceptions out of the proceeds otherwise due Seller at the close of escrow.

SCHEDULE 1  
TO  
PURCHASE PROVISIONS

Permitted Exceptions

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