

**EXHIBIT E**

**Form of REAL ESTATE PURCHASE AGREEMENT**

## REAL ESTATE PURCHASE AGREEMENT

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

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

**ESCROW AGENT:** Commonwealth Land Title Insurance Company,  
Attn: Becky Nisbet

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

**ESCROW NUMBER/ESCROW:** 22001578

### RECITALS

- A. Seller 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 (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 set forth 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 an Amended and Restated Development Agreement dated May 16, 2023 (the “**Development Agreement**”), for development on the Property, and on that certain land owned by the City and referred to in the Development Agreement as the “**City Tract,**” 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 Public Infrastructure (as defined in the Development Agreement). The Property and the City Tract are sometimes referred to collectively herein as the “**Project Property.**”
- F. The Parties agree that the timely 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 Project and Buyer's commitment to develop the Project upon the Project 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 and the City Tract within fifteen (15) months following the Close of Escrow (as defined 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, and (ii) Buyer shall have deposited the Earnest Money with Escrow Agent on or before the 2<sup>nd</sup> 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 365<sup>th</sup> day following Opening of Escrow (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 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 executed contracts for construction of at least one (1) of the Project buildings through core and shell (e.g. excluding interior tenant improvement work) and for

the Placemaking Amenities (as defined in the Development Agreement); and (5) an executed tenant lease for at least one (1) top tier Quality Restaurant, as provided in Subsection 11(b).

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 commit to 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; Purchase Price. The Seller has caused an appraisal of the Property to be prepared by an appraiser selected by the Seller (the "**Appraisal**"). The Purchase Price for the Property shall be based on the appraised value, which, as reflected in the Appraisal, shall be \$6.45 per square foot, multiplied by the square footage of the Property (the "**Purchase Price**").

7. Payment of Purchase Price. The Purchase Price for the Property shall be paid by Buyer at Close of Escrow.

8. Earnest Money. To secure Buyer's performance under this Agreement, Buyer shall deposit with Escrow Agent the sum of \$25,000 (the "**Earnest Money**"). If requested by Buyer, Escrow Agent shall deposit the Earnest Money 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, at Buyer's election, be applied by Escrow Agent toward the payment of the Purchase Price or returned to Buyer. 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.

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(a) At Close of Escrow, a Standard ALTA Owner's Policy of title insurance shall be issued by Escrow Agent through its authorized underwriter(s) insuring Buyer's fee simple title to the Property and leasehold interest in the City Tract, 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**"). The Premium for the Title Policy will in the amount of the Purchase Price or such other amount as determined by Buyer. The cost of a standard Title Policy in the amount of the Purchase Price shall be borne by Seller. In the event Buyer desires an ALTA Extended Policy and/or any endorsement to the Title Policy, or to increase the liability amount of the Title 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 other documents to be recorded at Close of Escrow (but excluding documents related to the Buyer's financing), 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 charges against the Project 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, the Parking License Agreement in the form attached hereto as Exhibit C (the "**Parking License**"), the Lease Agreement in the form attached hereto as Exhibit D (the "**City Tract Lease**"), 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, the Affidavit of Property Value, the Parking License, the City Tract Lease, 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 Close of Escrow.

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 Project 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 Project 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 Project 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 Project 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 Project 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 Opening of Escrow (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 Project Property is suitable for development and Buyer's purposes. Upon prior reasonable notice to Seller, Seller shall permit access to the Project 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 Project Property, which consent shall not unreasonably be withheld. Buyer shall conduct all such inspections, investigations, and tests and be responsible for returning the Project 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 Project Property or any part thereof is not suitable for its purposes,

then Buyer shall be deemed to have accepted the Project 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, and as a condition to the Close of Escrow, Seller shall have caused the Project Property to be re-platted in a configuration reasonably acceptable to Buyer. Each of the Property and the City Tract shall be designated as a separate legal lot. If such re-platting has not been completed by the Closing Deadline, Buyer may extend the Closing Deadline until the re-platting is complete.

(e) Placemaking Amenities. Prior to expiration of the Investigation Period, Buyer and Seller shall have approved a cost budget for design and construction of the Placemaking Amenities on the City Tract, and for design and construction of the Off-Site Infrastructure (as defined in the Development Agreement).

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 but subject to the provisions of Section 37 of this Agreement, Buyer shall develop the Property to include three (3) top tier Quality Restaurants along with the Off-Site Infrastructure and the Placemaking Amenities within fifteen (15) months following the Close of Escrow. 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), and such failure is not cured within the 90-day period provided in Section 21(b) of this Agreement, 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 Opening of Escrow. 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 Project 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 Property; and (2) City of Peoria approved construction permits for at least two (2) buildings within the Project Property through core and shell (e.g. excluding interior tenant improvement work); (3) proof of establishing full project construction financing commitment on the part of a viable construction lender for the Project; (4) proof of executed contracts for construction of at least one (1) of the Project buildings through core and shell (e.g. excluding interior tenant improvement work) and the Placemaking Amenities; and (5) proof of an executed tenant lease for at least one (1) top tier Quality Restaurant. 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 Project Property or to develop and operate the Project on the Project Property.

(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 Project Property or otherwise affecting any portion thereof, or which will become a cloud on the title to the Project 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 Project 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 Project Property. Except as otherwise agreed in Section 10 above, Buyer agrees to accept the Project Property in its present condition "as is," subject to the warranties, covenants and agreements set forth in this Agreement.

(c) Buyer acknowledges that the Project Property is an improved parking lot, and represents and warrants to Seller that Buyer has inspected the Project 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 Project 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 Project 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 Project 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 Project 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 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 this 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:

To Seller: Henry Darwin, City Manager  
City of Peoria  
8401 West Monroe Street  
Peoria, Arizona 85345

With a copy to: Emily Jurmu, City Attorney  
Seller’s counsel: City of Peoria  
8401 West Monroe Street  
Peoria, Arizona 85345

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

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: Commonwealth Land Title Insurance Company  
2390 E. Camelback Road, Suite 230  
Phoenix, Arizona 85016  
Attn: Becky Nisbet

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

37. Seller Infrastructure. Seller will be responsible, at its sole cost, to construct the public improvements described on Exhibit E attached hereto. Completion of this work by Seller shall be a condition to Buyer’s obligation to complete development of the Project in accordance with Section 11(a) above.

38. Arizona Law Provisions.

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

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

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

(d) To the extent applicable under A.R.S. § 35-394, Buyer 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 Buyer becomes aware during the duration of this Agreement that it is not in compliance with such certification, Buyer shall take such actions as provided by law, including providing the required notice to the City. If the City determines that the Buyer 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.

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

**ATTEST:**

By: \_\_\_\_\_  
Lori Dyckman, City Clerk

**APPROVED AS TO FORM:**

**OFFICE OF THE CITY ATTORNEY**

By: \_\_\_\_\_  
Emily Jurmu, 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 \_\_\_\_\_, 2023, 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 MARICOPA 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 \_\_\_\_\_, 2023.

[Signature Page Follows]

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

**GRANTOR:**

CITY OF PEORIA,  
an Arizona municipal corporation

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

ATTEST:

\_\_\_\_\_  
Lori Dyckman, City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Emily Jurmu, City Attorney

STATE OF ARIZONA        )  
  ) ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by Henry Darwin, City Manager, City of Peoria.

\_\_\_\_\_  
Notary Public

[SEAL]

**EXHIBIT A**  
**TO SPECIAL WARRANTY DEED**

Legal Description of the Property

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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;

**EXHIBIT C**

**Form of Parking License**

**SEE EXHIBIT D OF AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

**EXHIBIT D**

**Form of City Tract Lease**

**SEE EXHIBIT G OF AMENDED AND RESTATED DEVELOPMENT AGREEMENT**

**EXHIBIT E**

**Scope of City Improvements**

1. Paradise Lane roadway and landscape improvements.
2. New driveway access into the Peoria Sports Complex parking lot.