



NOTICE OF MEETING OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION

Notice is hereby given that a **Regular Meeting** will be held by the Burnet Economic Development Corporation (BEDC) on the **15th day of March, 2022** at **3:00 p.m.** in the City of Burnet Council Chambers, 2402 Water Street (S. Hwy. 281 Burnet Municipal Airport), Burnet, TX. at which time, the following subjects will be discussed, to-wit:

This notice is posted pursuant to the Texas Government Code, Chapter §551-Open Meetings.

1. CALL TO ORDER:

2. CONSENT AGENDA:

2.1) Approval of the February 15, 2021 BEDC Regular Meeting minutes

3. ACTION ITEMS:

3.1) Discuss and consider action: Draw request for Fromberg Construction, LLC for the Crossings at 281 South Commercial Park.

3.2) Discuss and consider action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS TO BE PLACED ON THE REPLAT OF LOT NO. 7-C EASTSIDE COMMERCIAL PARK.

3.3) Discuss and consider action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS TO BE PLACED ON 13.51 ACRES OF LAND TO BE SUBDIVIDED AS THE CROSSING AT 281.

3.4) Discuss and consider action: Related to the sale of all or portions of the Eastside Commercial Park located on Highway 29 East.

3.5) Discuss and consider action: Related to the potential sale of all or portions of the Crossings at 281 South Commercial Park.

3.6) Discuss and consider action: 2022 Summer Series.

3.7) Discuss and consider action: Commercial Drivers License (CDL) Program.

4. EXECUTIVE SESSION:

4.1) Executive Session: The Board of Directors shall convene in executive session pursuant to Texas Government Code Sec. 551.072 to deliberate on the value of real property the purchase, exchange, lease, or value of real property as follows:

- (a) Eastside Commercial Park;
- (b) The Crossings at 281 South Commercial Park; and
- (c) Acquisition of real property to enhance Eastside Commercial Park; and

4.2) Executive Session: The Board of Directors shall convene in executive session pursuant to Texas Government Code Sec. 551.087 to deliberate regarding commercial or financial information the board has received from a business prospect that the board seeks to have locate, stay, or expand within the corporate limits of the City of Burnet and with which the board is conducting economic development negotiations.

5. REQUESTS FROM BEDC FOR FUTURE REPORTS:

6. ADJOURN:

Dated this 11th day, of March, 2022

I, the undersigned authority, do hereby certify that the above NOTICE OF MEETING of the Burnet Economic Development Corporation, is a true and correct copy of said NOTICE and that I posted a true and correct copy of said NOTICE on the bulletin board, in the City Hall of said City, BURNET, TEXAS, a place convenient and readily accessible to the general public at all times, and said NOTICE was posted on March 11, 2022, at or before 3 o'clock p.m. and remained posted continuously for at least 72 hours preceding the scheduled time of said Meeting.

Kelly Dix, City Secretary

NOTICE OF ASSISTANCE AT THE PUBLIC MEETINGS:

The City Council Chamber is wheelchair accessible. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, or large print, are requested to contact the City Secretary's office (512.756.6093) at least two working days prior to the meeting. Requests for information may be faxed to the City Secretary at 512.756.8560.

RIGHT TO ENTER INTO EXECUTIVE SESSION:

The Board of Directors for the Burnet Economic Development Corporation reserves the right to adjourn into executive session at any time during the course of this meeting to discuss any of the matters listed above, as authorized by Texas Government Code Sections 551.071 (Consultation with Attorney), 551.072 (Deliberations about Real Property), 551.073 (Deliberations about Gifts and Donations), 551.074 (Personnel Matters), 551.076 (Deliberations about Security Devices) and 551.087 (Economic Development)

Kelly Dix, City Secretary



ITEM 3.1

Agenda Item Brief

Meeting Date:	March 15, 2021
Agenda Item:	Discuss and consider action: Draw request for Fromberg Construction, LLC for the Crossings at 281 South Commercial Park.
Background:	Fromberg Construction, LLC. submitted a draw request for the South Highway 281 Construction Project.
Information:	Hugo Elizondo, Cuatro Consultants, LTD. has reviewed Draw No. 5 dated February 24, 2022 from Fromberg Construction, LLC. and recommends pay request and approved it as presented.
Fiscal Impact:	Draw #5 \$120,916.77
Recommendation:	Approval of the requested pay application for Fromberg Construction, LLC.



March 11, 2022

Cary Johnson
City of Burnet EDC
1001 Buchanan Drive #4
Burnet, TX 78611

**RE: 281 SOUTH COMMERCIAL PARK: SUBDIVISION IMPROVEMENTS
S. WATER STREET (U.S. HIGHWAY 281)
CITY OF BURNET
BURNET COUNTY, TEXAS**

Subject: PAYMENT REQUEST: DRAW NO. 5-RET

Dear Mr. Johnson:

Please find Draw No. 5-RE dated February 24, 2022, from Fromberg Construction, LLC.

We have reviewed construction progress through the end of November and recommend payment of the amount listed below.

• Fromberg Construction, LLC.: Payment Request No. 5-RET	\$120,916.77
Draw No. 5-RET Total:	\$120,916.77

Let us know if you have questions on this matter.

Sincerely,



Hugo Elizondo, Jr., P.E.
Manager

Attachments

cc: David Vaughn, City of Burnet
Kelly Dix, City of Burnet
Chase Fromberg, Fromberg Construction, LLC
Kenny Warr, Gage and Cade Construction

APPLICATION AND CERTIFICATION FOR PAYMENT

AIA DOCUMENT G702

PAGE 1 OF 2 PAGES

TO OWNER:
CITY OF BURNET EDC
1001 BUCHANAN DR. #4
BURNET, TX 78611

FROM CONTRACTOR:
FROMBERG CONSTRUCTION, LLC
119 AVE. G
MARBLE FALLS, TX 78654

PROJECT:
281 SOUTH COMMERCIAL PARK
SUBDIVISION IMPROVEMENTS
S. WATER STREET (U.S. HWY 281)
BURNET, TEXAS 78611

APPLICATION NO: 05-RET
APPLICATION DATE: 2/24/2022
PERIOD TO: 2/24/2022
PROJECT NUMBER: 2115
CONTRACT DATE: 8/11/2021

CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract.
Continuation Sheet, AIA Document G703, is attached.

1. ORIGINAL CONTRACT SUM \$ 1,191,980.16
2. Net change by Change Orders \$ 17,187.50
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 1,209,167.66
4. TOTAL COMPLETED & STORED TO DATE (Column G on G703) \$ 1,209,167.66

5. RETAINAGE:
a. 0% of Completed Work \$ -
(Column D + E on G703)
b. 0% of Stored Material \$ -
(Column F on G703)
Total Retainage (Lines 5a + 5b or

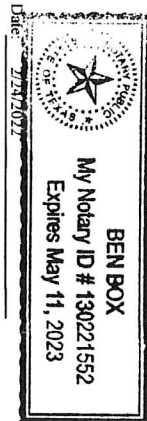
Total in Column I of G703) \$ -
6. TOTAL EARNED LESS RETAINAGE \$ 1,209,167.66
(Line 4 Less Line 5 Total)
7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 1,088,250.89
8. CURRENT PAYMENT DUE \$ 120,916.77
9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ -

CHANGE ORDER SUMMARY	ADDITIONS	DEDUCTIONS
Total changes approved in previous months by Owner	\$ 17,187.50	\$ -
Total approved this Month	\$ -	\$ -
TOTALS	\$ 17,187.50	\$ -
NET CHANGES by Change Order	\$	17,187.50

CONTRACTOR:

By:

State of TX
Subscribed and sworn to before me this 24 day of February 2022
Notary Public: Ben Box
My Commission expires: 05/11/23



ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising the application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

AMOUNT CERTIFIED: \$ 120,916.77

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform to the amount certified.)

By: Ben Box

Date: 3/11/22

This Certificate is not negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

CONTINUATION SHEET

AIA DOCUMENT G703

PAGE 2 OF 2 PAGES

AIA Document G702, APPLICATION AND CERTIFICATION FOR PAYMENT, containing Contractor's signed

certification is attached.

In tabulations below, amounts are stated to the nearest dollar.

Use Column I on Contracts where variable retainage for line items may apply.

APPLICATION NO: 05-RET
APPLICATION DATE: 2/24/2022
PERIOD TO: 2/24/2022

ARCHITECTS PROJECT NO: 2115

A	B	C	D		E	F	G			H		I
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		THIS PERIOD	MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	%	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)		
			FROM PREVIOUS APPLICATION (D + E)									
A. EROSION / SEDIMENTATION CONTROL:												
1	STABILIZED CONSTRUCTION ENTRANCE	1,200.00	-	1,200.00	-	-	-	1,200.00	100.00%	-	-	
2	SILT FENCE	2,662.00	-	2,662.00	-	-	-	2,662.00	100.00%	-	-	
3	ROCK BERM	1,820.00	-	1,820.00	-	-	-	1,820.00	100.00%	-	-	
4	INLET PROTECTION	200.00	-	200.00	-	-	-	200.00	100.00%	-	-	
5	CONCRETE WASHOUT STATION	600.00	-	600.00	-	-	-	600.00	100.00%	-	-	
6	REVEGETATION OF DISTURBED AREAS	3,015.00	-	3,015.00	-	-	-	3,015.00	100.00%	-	-	
7A	DEMOLITION	11,000.00	-	11,000.00	-	-	-	11,000.00	100.00%	-	-	
B. STREET AND DRAINAGE IMPROVEMENTS:												
7	MOBILIZATION	44,079.56	-	44,079.56	-	-	-	44,079.56	100.00%	-	-	
8	PERFORMANCE AND PAYMENT BONDS	15,700.00	-	15,700.00	-	-	-	15,700.00	100.00%	-	-	
9	CLEAR AND GRUB AND ROUGH CUT STREET	3,990.00	-	3,990.00	-	-	-	3,990.00	100.00%	-	-	
10	SUBGRADE PREPARATION (3' BEHIND CURB)	4,690.00	-	4,690.00	-	-	-	4,690.00	100.00%	-	-	
11	12" CRUSHED STONE FLEXIBLE BASE (3' BEHIND CURB)	60,970.00	-	60,970.00	-	-	-	60,970.00	100.00%	-	-	
12	2" HMAC	47,500.60	-	47,500.60	-	-	-	47,500.60	100.00%	-	-	
13	REINFORCED CONCRETE CURB AND GUTTER	27,180.00	-	27,180.00	-	-	-	27,180.00	100.00%	-	-	
14	REINFORCED CONCRETE RIBBON CURB	1,940.00	-	1,940.00	-	-	-	1,940.00	100.00%	-	-	
15	COMMERCIAL DRIVEWAY APRON, TYPE II	7,800.00	-	7,800.00	-	-	-	7,800.00	100.00%	-	-	
16	STREET SIGNS	1,700.00	-	1,700.00	-	-	-	1,700.00	100.00%	-	-	
17	STANDARD 10' CURB INLETS	8,000.00	-	8,000.00	-	-	-	8,000.00	100.00%	-	-	
18	2 EA - 5' x 5' MULTIPLE BOX CULVERTS (ALL DEPTHS)	183,920.00	-	183,920.00	-	-	-	183,920.00	100.00%	-	-	
19	30" RCP, CLASS III (ALL DEPTHS)	7,200.00	-	7,200.00	-	-	-	7,200.00	100.00%	-	-	
20	24" RCP, CLASS III (ALL DEPTHS)	27,800.00	-	27,800.00	-	-	-	27,800.00	100.00%	-	-	
21	18" RCP, CLASS III (ALL DEPTHS)	910.00	-	910.00	-	-	-	910.00	100.00%	-	-	
21A	2 EA 18" RCP, CLASS III (ALL DEPTHS)	16,240.00	-	16,240.00	-	-	-	16,240.00	100.00%	-	-	
22	STANDARD HEADWALL FOR 2 - 5' X 5' BOX CULVERTS	16,500.00	-	16,500.00	-	-	-	16,500.00	100.00%	-	-	
23	DUPLICATE ITEM HAS BEEN DELETED	-	-	-	-	-	-	-	-	-	-	
24	PARALLEL HEADWALL FOR 2 EA - 5' x 5' BOX CULVERTS	21,500.00	-	21,500.00	-	-	-	21,500.00	100.00%	-	-	
25	SLOPED HEADWALL FOR 30" RCP	6,000.00	-	6,000.00	-	-	-	6,000.00	100.00%	-	-	
26	SLOPED HEADWALL FOR 24" RCP	10,000.00	-	10,000.00	-	-	-	10,000.00	100.00%	-	-	
27	SLOPED HEADWALL FOR 2 - 18" RCP	5,000.00	-	5,000.00	-	-	-	5,000.00	100.00%	-	-	
0%												

0%

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PAGE 2 OF 2 PAGES

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 PERIOD TO: 2/24/2022
 ARCHITECTS PROJECT NO: 2115

A ITEM NO.	B DESCRIPTION OF WORK	C SCHEDULED VALUE	D		E THIS PERIOD	F MATERIALS PRESENTLY STORED (NOT IN D OR E)	G			H		I RETAINAGE (IF VARIABLE RATE)
			WORK COMPLETED FROM PREVIOUS APPLICATION (D + E)	-			TOTAL COMPLETED AND STORED TO DATE (D+E+F)	%	BALANCE TO FINISH (C - G)			
28	CONCRETE CHANNEL STRUCTURE "A" AT DOWNSTREAM END OF 5' X 5' BOX	7,500.00	7,500.00	-	-	-	7,500.00	100.00%	-	-	0%	
29	CONCRETE DROP STRUCTURE "B" AT UPSTREAM END OF 5'x 5' BOX	5,500.00	5,500.00	-	-	-	5,500.00	100.00%	-	-	-	
30	CONCRETE DROP STRUCTURE "C" AT UPSTREAM END	5,000.00	5,000.00	-	-	-	5,000.00	100.00%	-	-	-	
31	CHANNEL "A", 18' WIDE BOTTOM	60,003.00	60,003.00	-	-	-	60,003.00	100.00%	-	-	-	
32	CHANNEL "A", 15' WIDE EARTHEN BOTTOM	5,560.00	5,560.00	-	-	-	5,560.00	100.00%	-	-	-	
33	CHANNEL "B", 3' WIDE EARTHEN BOTTOM	8,980.00	8,980.00	-	-	-	8,980.00	100.00%	-	-	-	
34	REMOVE EXISTING HEADWALL AT 5' X 5' BOX CULVERTS AND CON	7,500.00	7,500.00	-	-	-	7,500.00	100.00%	-	-	-	
35	PAVEMENT STRIPING	650.00	650.00	-	-	-	650.00	100.00%	-	-	-	
36	GRADING FOR DRAINAGE PURPOSES	22,505.00	22,505.00	-	-	-	22,505.00	100.00%	-	-	-	
37	SAW CUT EXISTING ASPHALT AT HOUSTON CLINTON DRIVE	910.00	910.00	-	-	-	910.00	100.00%	-	-	-	
38	CONCRETE SIDEWALK	37,800.00	37,800.00	-	-	-	37,800.00	100.00%	-	-	-	
39	TRENCH SAFETY SYSTEM	1,552.00	1,552.00	-	-	-	1,552.00	100.00%	-	-	-	
40	C. TxDOT DECELERATION LANE:											
41	REINFORCED CONCRETE CURB AND GUTTER	980.00	980.00	-	-	-	980.00	100.00%	-	-	-	
42	2" HMAC	2,955.00	2,955.00	-	-	-	2,955.00	100.00%	-	-	-	
43	SUBGRADE PREPARATION	8,500.00	8,500.00	-	-	-	8,500.00	100.00%	-	-	-	
44	12" CRUSHED STONE FLEXIBLE BASE (3' BEHIND CURB)	1,014.00	1,014.00	-	-	-	1,014.00	100.00%	-	-	-	
45	SAW CUT CURB AT EXISTING PAVEMENT	8,619.00	8,619.00	-	-	-	8,619.00	100.00%	-	-	-	
46	REMOVE GUARDRAIL	1,100.00	1,100.00	-	-	-	1,100.00	100.00%	-	-	-	
47	TRAFFIC CONTROL	1,750.00	1,750.00	-	-	-	1,750.00	100.00%	-	-	-	
48	TxDOT PAVEMENT MARKINGS AND SIGNS	3,500.00	3,500.00	-	-	-	3,500.00	100.00%	-	-	-	
49	5' CONCRETE SIDEWALK	1,000.00	1,000.00	-	-	-	1,000.00	100.00%	-	-	-	
50	9,625.00	9,625.00	9,625.00	-	-	-	9,625.00	100.00%	-	-	-	
51	D. WATER IMPROVEMENTS:											
51	12" PVC MAIN, DR 14, ALL DEPTHS	170,640.00	170,640.00	-	-	-	170,640.00	100.00%	-	-	-	
52	NEW FIRE HYDRANT, ASSEMBLY - 6" VALVE AND DI LEADPIPE	31,250.00	31,250.00	-	-	-	31,250.00	100.00%	-	-	-	
53	TWO-INCH METER SETTING	36,000.00	36,000.00	-	-	-	36,000.00	100.00%	-	-	-	
54	NEW 2" METER AT EXISTING CARWASH	7,500.00	7,500.00	-	-	-	7,500.00	100.00%	-	-	-	
55	NEW 2" METER SETTING	7,500.00	7,500.00	-	-	-	7,500.00	100.00%	-	-	-	
56	RAISE VALVE CASTINGS	13,000.00	13,000.00	-	-	-	13,000.00	100.00%	-	-	-	
56	12" GATE VALVE WITH BOX	20,000.00	20,000.00	-	-	-	20,000.00	100.00%	-	-	-	

CONTINUATION SHEET

AIA DOCUMENT G703

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Use Column I on Contracts where variable retainage for line items may apply.

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APPLICATION DATE: 2/24/2022
PERIOD TO: 2/24/2022
ARCHITECT'S PROJECT NO: 2115

A	B	C	D	E	F	G	H	I	
ITEM NO.	DESCRIPTION OF WORK	SCHEDULED VALUE	WORK COMPLETED		MATERIALS PRESENTLY STORED (NOT IN D OR E)	TOTAL COMPLETED AND STORED TO DATE (D+E+F)	% (G ÷ C)	BALANCE TO FINISH (C - G)	RETAINAGE (IF VARIABLE RATE)
			FROM PREVIOUS APPLICATION (D + E)	THIS PERIOD					
57	WET CONNECTIONS TO EXISTING MAINS	-	-	-	-	-	-	-	
58	Proposed 12 to Existing 12	15,000.00	15,000.00	-	-	15,000.00	100.00%	-	-
	Proposed 8 to Existing 8	3,000.00	3,000.00	-	-	3,000.00	100.00%	-	-
	CUT AND PLUG EXISTING 8" BRANCH	1,000.00	1,000.00	-	-	1,000.00	100.00%	-	-
	TRENCH SAFETY SYSTEM	4,266.00	4,266.00	-	-	4,266.00	100.00%	-	-
	E. WASTEWATER IMPROVEMENTS:	-	-	-	-	-	-	-	-
60	12" WASTEWATER LINE PVC, SDR 26 (0-8' DEEP)	1,950.00	1,950.00	-	-	1,950.00	100.00%	-	-
61	12" WASTEWATER LINE PVC, SDR 26 (8-10' DEEP)	11,760.00	11,760.00	-	-	11,760.00	100.00%	-	-
62	8" WASTEWATER LINE PVC, SDR 26 (0'-8' DEEP)	2,970.00	2,970.00	-	-	2,970.00	100.00%	-	-
63	8" WASTEWATER LINE PVC, SDR 26 (8'-10' DEEP)	33,030.00	33,030.00	-	-	33,030.00	100.00%	-	-
64	WASTEWATER MANHOLE	24,000.00	24,000.00	-	-	24,000.00	100.00%	-	-
65	MANHOLE ON EXISTING LINE	24,000.00	24,000.00	-	-	24,000.00	100.00%	-	-
66	MANHOLE EXTRA DEPTH	7,000.00	7,000.00	-	-	7,000.00	100.00%	-	-
67	RAISE EXISTING MANHOLE TO FINISHED GRADE	6,000.00	6,000.00	-	-	6,000.00	100.00%	-	-
68	SINGLE WASTEWATER SERVICE	20,000.00	20,000.00	-	-	20,000.00	100.00%	-	-
69	DOUBLE WASTEWATER SERVICE	7,000.00	7,000.00	-	-	7,000.00	100.00%	-	-
70	CONNECT TO EXISTING MAIN	2,500.00	2,500.00	-	-	2,500.00	100.00%	-	-
71	TRENCH SAFETY SYSTEM	994.00	994.00	-	-	994.00	100.00%	-	-
72	CHANGE ORDER #1 - WATERLINE TIE IN	17,187.50	17,187.50	-	-	17,187.50	100.00%	-	-
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Users may obtain validation of this document by requesting of the license a completed AIA Document D401 - Certification of Document's Authenticity

CONDITIONAL WAIVER AND RELEASE ON FINAL PAYMENT

Project 281 SOUTH COMMERCIAL PARK SUBDIVISION IMPROVEMENTS

Job No. 2115 - PAY APP #05 - RET

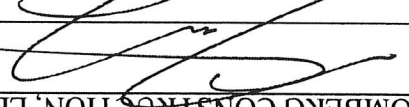
On receipt by the signer of this document of a check from CITY OF BURNET EDC (maker of check) in the sum of \$120,916.77 payable to FROMBERG CONSTRUCTION, LLC (payee or payees of check) and when the check has been properly endorsed and has been paid by the bank on which it is drawn, this document becomes effective to release any mechanic's lien right, any right arising from a payment bond that complies with a state or federal statute, any common law payment bond right, any claim for payment, and any rights under any similar ordinance, rule, or statute related to claim or payment rights for persons in the signer's position that the signer has on the property of CITY OF BURNET EDC (owner) located at US HWY 281 BURNET, TX 78611 (location) to the following extent: GENERAL CONTRACTING (job description).

This release covers the final payment to the signer for all labor, services, equipment, or materials furnished to the property or to CITY OF BURNET EDC (person with whom signer contracted).

Before any recipient of this document relies on this document, the recipient should verify evidence of payment to the signer.

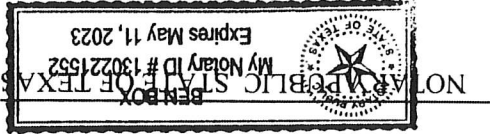
The signer warrants that the signer has already paid or will use the funds received from this final payment to promptly pay in full all of the signer's laborers, subcontractors, materialmen, and suppliers for all work, materials, equipment, or services provided for or to the above referenced project up to the date of this waiver and release.

Date 02/24/22

FROMBERG CONSTRUCTION, LLC (Company name)
By 
(Signature)
PRESIDENT (Title)

STATE OF TEXAS
COUNTY OF BURNET
§
§
§

This instrument was acknowledged before me on this 24 day of February, 2022, by Christ H. Fromberg (name), FROMBERG CONSTRUCTION, LLC (company name).





ITEM 3.2

Habib Erkan Jr.
Assistant City Manager
512-715-3201
herkan@cityofburnet.com

Agenda Item Brief

Meeting Date:	March 15, 2022
Agenda Item:	Discuss and consider action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS TO BE PLACED ON THE REPLAT OF LOT NO. 7-C EASTSIDE COMMERCIAL PARK.
Background:	The EDC owns the 21.347-acre subdivision known as the Eastside Commercial Park described as the Replat of Lot 7-C East Side Commercial Park Subdivision according to the Map or Plat Record as Document No. 201902804 and commonly known as Eastside Commercial Park. The Board of Directors authorized the construction and dedication of the Richard Sanders Parkway to provide ingress and egress from Lots Nos. 7-B, 7-D, 7-E and 7-F. Additionally, the Board of Directors authorized the construction and dedication of a storm-water detention facility on Lot No. 7-F to address storm-water runoff from that lot and from Richard Sanders Parkway.
Information:	This resolution approves a Declaration of Covenants, Conditions and Restrictions which requires the owner(s) of Lot Owner to comply with specified construction, use and maintenance standards and requires the Owner of 7(F) to maintain the aforementioned stormwater detention facility.
Fiscal Impact:	The financial impact is de minimis. The Corporation will incur the costs for recording the Declaration in the public records of the County Clerk.
Recommendation:	Approve the resolution as presented.

RESOLUTION NO. BEDC R2022-01

A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS TO BE PLACED ON THE REPLAT OF LOT NO. 7-C EASTSIDE COMMERCIAL PARK

Whereas, the Burnet Economic Development Corporation owns and possess that certain 19.81-acre subdivision located at the intersection of State Highway 29 and Richard Sanders Parkway known as A Replat of Lot No. 7-C East Side Commercial Park; and

Whereas, the subdivision consists of Lots Nos. 7-B, 7-D, 7-E and 7-F; and

Whereas, the Board of Directors has caused to be constructed and dedicated to the City of Burnet, a public road designated the Richard Sanders Parkway; and

Whereas, the Board of Directors has caused to be constructed on Lot No. 7-F a storm-water detention facility serving both Lot No. 7-F and Richard Sanders Parkway.

Whereas, the Board of Directors deem it appropriate to have placed on Lot No. 7-F a declaration of covenants, conditions and restrictions to assure the storm-water detention facility is properly maintained and to assure the subdivision in general is properly developed and maintained.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR THE BURNET ECONOMIC DEVELOPMENT CORPORATION:

Section one. That the Declaration of Covenants, Conditions, and Restrictions attached hereby is approved.

Section two. That the Board of Directors President is hereby authorized to execute the Declaration of Covenants, Conditions, and Restrictions in substantial form as the attachment and execute such other documents and take such other actions reasonably necessary to facilitate the purpose of this Resolution.

Section three. That the Board of Directors Secretary is hereby authorized and directed to record the fully executed Declaration of Covenants, Conditions, and Restrictions in the public records of the County Clerk of Burnet County, Texas.

Passed and Approved by the Board of Directors of the Burnet Economic Development Corporation this the 15th day of March 2022.

**THE BURNET ECONOMIC
DEVELOPMENT CORPORATION**

Cary Johnson, President

ATTEST:

Kelly Dix, City Secretary

IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR DRIVER'S LICENSE NUMBER.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
East Side Commercial Park Subdivision

THE STATE OF TEXAS	§	
	§	KNOW ALL PERSON BY THESE PRESENTS
<i>COUNTY OF BURNET</i>	§	

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, is made on the date hereafter set forth by, the Burnet Economic Development Corporation, a Texas 4b municipal development corporation (hereinafter referred to as "Declarant") as follows:

Recitals:

WHEREAS, Declarant is a Type B Economic Development Corporation, established by the City Council of Burnet, Texas, pursuant to the Development Corporation Act of 1979; and

WHEREAS, pursuant to the Act Declarant is charged with promoting sustainable economic development within the City of Burnet for the benefit of the community; and

WHEREAS, Declarant is the owner of certain property in Burnet County, Texas, which is 21.374- acres of land consisting of three lots in Burnet County, Texas as more particularly described as **the Replat of Lot 7-C East Side Commercial Park Subdivision** according to the Map or Plat Record as Document No. 201902804 in the Public Records of Burnet County, Texas; a copy of which is attached hereto as **Exhibit "A"** and incorporated herein by this reference for all purposes; and

WHEREAS, Declarant has expended significant funds in the construction of Richard Sanders Parkway, bisecting the subdivision and for site work necessary for the preparation of the Lots for development; and

WHEREAS, Declarant has invested in the aforementioned subdivision improvements and adopts this Declaration to insure that improvements to the subdivision shall enhance the commercial building stock, and become an incubator for economic development, within the City of Burnet, Texas.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in **Exhibit “A”** shall be held, sold and conveyed, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property, and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS

Architectural Control Committee (“ACC”) shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of improvements upon the property, and to enforce these Restrictions.

Association shall mean the East Side Commercial Park Property Owners Association.

City Code shall mean the City of Burnet’s Code of Ordinances as same may amended from time to time.

Declarant shall mean and refer to the Burnet Economic Development Corporation, and in the event the Burnet Economic Development Corporation is ever dissolved Declarant shall mean the City of Burnet or such successor corporation established by the City of Burnet to fulfill the duties of the Burnet Economic Development Corporation.

Declaration shall mean this instrument.

Design Guidelines shall mean and refer to those certain Development Design Guidelines for the Subdivision adopted by the Architectural Control Committee, as the same may be amended by the Architectural Control Committee from time to time, and any additional criteria and guidelines established by the Architectural Control Committee which set forth those particular standards, restrictions, guideline, recommendations and specification applicable to architecture design, construction, placement, location, alteration and maintenance of improvements, landscaping and vegetation on Lots within the Subdivision. The Design Guidelines shall be consistent with terms, provisions and restrictions set forth in the Declaration.

Development Period shall mean that period that begins with the recordation of this Declaration in the Public Records of Burnet County, Texas, and that shall conclude upon both: (i) the Declarant’s sale of all Property within the Subdivision; and, (ii) the completion of development on the Lots sold by Declarant as evidenced by the issuance of certificates of occupancy for all buildings to be developed on said Lots; and (iii) Declarant files a Recorded Instrument stating “*Conclusion of the Development Period*” has occurred.

Improvements shall mean every structure and all appurtenances thereto of every type and kind located on the Property, including but not limited to buildings, outbuildings, parking lots garages, storage buildings, fences, trash enclosures, animal enclosures, screening walls, retaining walls, dams, stairs, decks, landscaping, all exterior lighting, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, wells, tanks reservoirs, pipers, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

Lot shall mean and refer to any plot of land shown upon the recorded subdivision, or re-subdivision, map or plat of the Properties.

Lot 7-F shall mean the lot designated on the Map as Lot 7-F.

Map shall mean the Subdivision Plat establishing the **the Replat of Lot 7-C East Side Commercial Park Subdivision** according to the Map or Plat Recorded as Document No. 201902804, in the Public Records of Burnet County, Texas.

Owner shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, but excluding those having such interest merely as security for the performance of an obligation.

Plans and Specification shall mean any and all documents designed to guide or control the construction or erection of any improvements, including but not limited to those, indicating location size, building height, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, clearing plans, utility plans (including pole location), landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specification on all building products and construction techniques, samples or exterior colors, plans for utility services, and all other documentation or information relevant to such improvements.

Plat shall have the same meaning as Map.

Property or **Subdivision** means and refer to all of the Property shown on **Exhibit "A"** as currently subdivided or as may be re-subdivided in the future.

Recorded Instrument shall mean a writing recorded in the Public Records of Burnet County, Texas.

II. PROPERTY OWNERS' ASSOCIATION.

2.1 **Creation of Association.** To maintain standards and requirements for the Subdivision set forth herein, Declarant hereby establishes the **East Side Commercial Park Property Owner's Association** as an unincorporated nonprofit organization authorized to enforce these covenants pursuant to the authority

prescribed in the constitution and statutes of this state, including but not limited to Texas Property Code Section 202.004.

2.2 **Membership and Voting Rights; Board of Directors.**

- (a) **Membership.** Every Owner shall be a member of the Association. The foregoing does not include persons or entities who hold an interest merely as a security for the performance of an obligation. No Owner or Lot shall have more than one (1) membership in the Association ("Membership"). Membership in the Association shall not be assignable except to a successor in interest of the Owner, and every Membership of an Owner in the Association shall be appurtenant to, and may not be separated from, fee ownership of its Lot.
- (b) **Voting Rights.** Prior to the Conclusion of the Development Period Declarant shall retain all of the voting rights and the Members, other than Declarant, shall have no voting rights. Upon the Conclusion of the Development Period, all Members shall be entitled to one (1) vote for each acre owned by such member. In the event a Member's Lot does not equal a whole acre or an integral multiple thereof, then such additional portion of an acre shall be entitled to a fractional vote (measured in tenths) equal to the portion of acreage so owned which is not a whole acre. Notwithstanding the foregoing, all Members shall be entitled to attend any meeting of the Association or the Board of Directors thereof. Any lawful action permitted in this Declaration taken by the Association in accordance with the voting percentages set forth in this Declaration shall be deemed binding on all Owners, their successors, and assigns. Prior to the Conclusion of the Development Period, Declarant shall have sole authority to approval all matters to be approved by the Association. After the Conclusion of the Development Period, all matters to be approved by the the Association must be so approved by a minimum of greater than fifty percent (50%) of the votes present in person or by proxy at a meeting at which a quorum shall have been attained.
- (c) **Board of Directors:** Prior to the Conclusion of the Development Period Declarant may appoint one or more persons to govern the Association who shall not be required to be a Member. After the Conclusion of the Development Period, the Association shall be governed by the Board of Directors of at least three members (the "Board") which shall be elected, by the Members for two-year terms. A board member may serve concurrent terms and does not have to be a member. The Board of Directors may adopt bi-laws and other instruments of governance; provided that same does not include terms or conditions contrary to this Declaration.
- (d) **Association's Duties and Powers.** Without limiting any other powers granted to it elsewhere in this Declaration, the Association, acting through the Board, shall have the powers and duties which may be necessary or

proper for or incidental to the exercise of any of the express powers and duties granted to it by this Declaration; including the power to enforce the terms and conditions of Articles IV, V, VI, VII and VIII herein.

III. ARCHITECTURAL CONTROL COMMITTEE

Declarant, as an economic development corporation duly established by election of the citizens of Burnet has a substantial interest in ensuring that Improvements within the Property: (i) enhances the commercial building stock, and creates an incubator for economic development, within the City of Burnet; and, (ii) do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in Section 3.02(a) below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association.

3.01 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC.

3.02 Architectural Control Committee.

(a) **Composition.** The ACC will be composed of not more than three (3) appointees, as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. At the Conclusion of the Development Period Declarant shall assign its right to appoint all Members of the ACC to the Owners and the Association by Recorded Instrument, and thereafter, the Owners acting through its Association shall have the right to appoint and remove (with or without cause) all members of the ACC. The ACC will have the right to employ consultants and advisors as it deems necessary or appropriate.

(b) **Submission and Approval of Plans and Specifications.** Construction plans and Specifications, or when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with Section 3.02(c) to the ACC at the offices of Declarant, at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits or environmental impact statements that may be required by the ACC or any other entity. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to site work on any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for

proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

- (c) **Design Guidelines.** Declarant may adopt the initial Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines, if any. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.
- (d) **Actions of the Architectural Control Committee.** The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, except the granting of variances. In the absence of such designation, the vote of a Majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.
- (e) **Failure to Act.** In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans and specifications for a period of sixty (60) days following such submission, rejection of such plans and specifications by the ACC will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the ACC to act upon a request for a variance will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.
- (f) **Variances.** The ACC may grant variances from compliance with any of the provisions of the Design Guidelines, if any, or this Declaration, when, in the opinion of the ACC, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and must be signed by at least a Majority of the members of the ACC. Each variance must also be Recorded; provided however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the ACC, including the Declarant or its designee, the Association, or the Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines, if any, will be deemed to have occurred with respect to the matter for

which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines, if any, for any purpose except as to the particular Lot.

- (g) **Duration of Approval.** The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion within either:
 - (i) one year after issuance of approval of such plans and specifications; or
 - (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion.

In the event such Approval expires the Owner shall be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this Article and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

- (h) **No Waiver of Future Approvals.** The approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.
- (i) **Non Liability of Committee Members.** NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION.

IV. ARCHITECTURAL STANDARDS

- 4.1 **Objective.** Declarant purpose in establishing the Subdivision is to provide a first class commercial development with "Hill Country" architectural style and materials (such as native stone, plaster or stucco and standing seam metal roofs). It is the objective of the Architectural Control Committee to protect and preserve Declarant's vision for the Subdivision to the maximum extent feasible in furtherance of promoting the economic development of the community.
- 4.2 **Site Plan.** Such protection requires careful site planning.

- (a) **Site Plan Approval.** The Architectural Control Committee must approve building site locations and building heights before construction authorization, under Article III, will be given. Each building should maintain a reasonable set back from roadways and property lines, as determined by the Architectural Control Committee.
- (b) **Additional site planning approval.** Site grading, surface drainage, erosion control and landscaping shall be a part of the architectural review process. The Architectural Control Committee may require detailed plans on each of the above.

- 4.3 **Facades and external faces of buildings.** This Section applies to all buildings proposed to be constructed or placed on a Lot. That portion of the exterior of each wall which faces State Highway No. 29 or Richard Sanders Parkway shall be one-hundred percent (100%) by area, composed of masonry or masonry veneer, said percentage to apply to the aggregate area of each wall, excluding door, window and similar openings. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock, and all other materials commonly referred to in the Burnet, Texas, area as masonry; but shall not include HardiePlank or similar fiber cement siding, products. Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the Subdivision. Such waiver must be in writing and signed by a majority of the ACC.
- 4.4 **Fencing.** In order to ensure a general uniformity of appearance of those fence sections that can be viewed from a street, any and all fences erected on areas readily apparent and visible from streets and on all corner Lots along that portion of side or rear yards fronting on side streets, fences shall be six foot (6') vertical privacy fences composed of masonry, cedar, spruce, or other such materials as may be approved from time to time by the Architectural Control Committee. In no event shall any fence extend any closer to the street fronting the main structure than the front outermost corners of such structure. Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive the aforesaid fence limitations in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the Subdivision.
- 4.5 **Storage buildings.** No storage building, or outbuilding of any kind, may be constructed or placed on a Lot without the Architectural Control Committee approval of the proposed building's design, materials, size, and location.
- 4.6 **Screening.**

- (a) **Refuge collection.** All rubbish, trash, garbage, debris, and other waste (including paper), all garbage collection facilities, and all incinerators, trash bins, trash compactors, storage tanks, and like equipment, which would otherwise be open or exposed to public view, shall be stored within fully enclosed dumpster enclosures which shall be of sufficient height and capacity to screen all contents from view.
 - (b) **Equipment.** Mechanical equipment, such as power transformers, air conditioning equipment, heating equipment, cooling towers, ventilating equipment, electrical equipment shall be reasonably screened from public view by parapet wall, fencing, or landscaping.
 - (c) **Loading docks.** All loading docks, service delivery and maintenance areas, which would otherwise be open or exposed to public view, shall be screened from public view.
- 4.7 **Signs.** All signs visible from a public street must be approved by the Architectural Control Committee before installation. The Architectural Control Committee shall not review sign content. Rather the Architectural Control Committee shall review the proposed design, materials, and location to insure the proposed sign is of professional quality and construction and of a type customarily used in first class commercial development. Signs must comply with all applicable laws, rules, regulations and building codes, including the City of Burnet's sign ordinance.
- 4.8 **Lighting.** All exterior lighting must be approved by the Architectural Control Committee and shall be installed, regulated and maintained by the Lot Owner in such a manner that the direct beam of any such light shall be oriented so that it will not glare upon any neighboring property and any illumination from direct or indirect lighting in, on, or over the ground at or beyond the boundary of the Lot will be minimized. In addition, all exterior lighting shall comply with the Airport Protection requirements of Section 5.3.
- 4.9 **Landscaping.** Each finished Lot shall be landscaped as required by the City of Burnet's Code of Ordinances and approved by the Architectural Control Committee. Owners are encourage to feature native trees, shrubs and plants in Lot landscapes.
- 4.10 **Driveways and parking areas.** All driveways and parking areas shall be surfaced with concrete or asphalt and spaces shall be striped in accordance with the requirement of the City Code of Ordinances. Parking lot design must be approved by the Architectural Control Committee, to assure safe and efficient traffic circulation.

- 4.11 **Antennae.** Antennae must be approved by the Architectural Control Committee before installation on a Lot. All permitted antennas or dishes shall be reasonably concealed from public view by parapet wall, fencing, or landscaping.

V. PERMITTED AND PROHIBITED USES.

- 5.1 **Zoning classification.** Each Lot shall be designated with a zoning classification as authorized by the City Code; and, except as provided in this Declaration, may be used for any use authorized by the City Code for such designated zoning classification.
- 5.2 **Prohibited uses or activities - generally.** The prohibitions described below shall apply to any and all Lots or any portion of such Lots.
- (a) No noxious or offensive activity shall be carried out on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any neighboring Lot.
 - (b) No owner shall do any work that will impair the structural soundness or integrity of a neighboring Lot or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their owners.
 - (c) No exterior speakers, horn, whistles, bells or other sound devices (except security alarms as authorized by the City Code) shall be placed or used upon any Lot.
 - (d) No hazardous material or inflammable liquids shall be stored on any Lot without compliance with all applicable laws, rules, regulations, statutes, ordinances, and codes, including without limitations the City Code.
 - (e) No trailer, motor home, tent, boat, recreational vehicle, travel trailer, house trailer, or any commercial truck, shall be kept, parked, stored, or maintained on any part of a Lot for more than 12 hours. No wrecked, junked, or inoperable vehicle shall ever be kept, parked, stored, or maintained on any part of a Lot.
 - (f) Business activities that are strictly prohibited by these Covenants, and which shall not be conducted on any Lot or any portion thereof, include the following:
 - (1) “*sexually oriented businesses*” (as the term is currently defined in Section 243.002 of the Texas Local Government Code); and
 - (2) outside storage or sale of junk or second hand materials.

- 5.3 **Prohibited uses or activities – Airport protection.** Uses and activities that create electrical interference with navigational signals or radio communications between the Airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create potential bird strike hazards, or otherwise in any way endanger or interfere with the landing, taking off, or maneuvering of aircraft intending to use the Airport are prohibited on any Lot or portion of any Lot.

VI. PROPERTY MAINTENANCE.

- 6.1 **Landscaping.** Grass, weeds and vegetation on each Lot shall be kept mowed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from a Lot and replacements of equal quality or value promptly installed. Landscaping must be properly maintained and fences must be repaired and maintained.
- 6.2 **Rubbish and Debris.** No rubbish or debris (which shall include dead vegetation and dead cedar or discarded furniture) of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise there from so as to render such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view.
- 6.3 **Noise.** No noise or other nuisance shall be permitted exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other portion of the Property or to its occupants.
- 6.4 **Unsightly Articles.** No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from any other portion of the Subdivision or public or private thoroughfares. No automobiles or other vehicles (including, but not limited to, farm equipment) may be parked overnight on any roadway within a Lot. Service area, storage area, loading area and compost piles shall be appropriately screened from view from public or private thoroughfares and other properties and no lumber, grass, plant waste, shrub or tree clippings, propane tank, metals, bulk materials or scrap or refuse or trash shall be kept, stored or permitted to accumulate on any portion of the Property except within enclosed structures of appropriately screened from view from public or private thoroughfares and adjacent properties.
- 6.5 **Repairs.** All improvements upon any Lot shall be at all times kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof; however, any construction, other than normal maintenance, which is any way alters the exterior appearance of any Improvement, or the removal of any

Improvement, shall be performed only with the prior written approval of the Architectural Control Committee.

- 6.6 **Drainage.** There shall be no interference with the established drainage patterns over any of the Property, unless adequate provision is made for proper drainage.
- 6.7 **Temporary Structures.** No temporary structures, including but not limited to tents shall be allowed. Notwithstanding the forgoing the AAC may approve the location of a Construction Office Trailer for a specific period of time not to exceed the time needed to complete construction of improvements authorized by the AAC.

VII. CONSTRUCTION ACTIVITIES.

- 7.1 **Generally.** Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonable interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Subdivision. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, porting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Control Committee, provided that such waiver shall be only for the reasonable period of such construction. The Architectural Control Committee is also empowered in the event of a dispute to set a reasonable schedule including days of the week and times for the performance of construction activities.
- 7.02 **Unfinished Structures.** No structure shall remain unfinished for more than twelve (12) months after the same has been commenced.

VIII. LOT 7-F

The terms and conditions of this Article shall apply specifically to Lot 7-F and the Owner of said Lot.

- 8.01 **Detention Pond.** Declarant has constructed the Detention Pond within he Drainage Easement designed to accept storm-water runoff from Lot 7-F and Richard Sanders Parkway.
- 8.02 **Maintenance and Repair of the Detention Pond.** Owner of Lot 7-F shall maintain, and make necessary repair to, the Detention Pond; including but not limited to the mowing of vegetation, removing obstructions, and making necessary repairs so that the Detention Pond operates in compliance with all applicable regulations of the City; and, functions as designed in the Construction Plans.

- 8.03 **Re-subdivision of Lot 7-F.** Owner of Lot 7-F shall not re-subdivide said Lot without the Association's approval of such Owner's provision for assuring the obligations of this Article continue to be fulfilled.

IX. TERM AND AMENDMENT

- 9.1 **Term.** This Declaration shall be binding upon the undersigned and all parties and persons claiming through and under it for an initial term of thirty (30) years from the date this Declaration is recorded in the Official Public Records of Burnet County, Texas. Thereafter this Declaration shall be automatically renewed for successive twenty (20) year terms; provided however after the expiration of the initial term this Declaration may be terminated by Recorded Instrument signed by the Owners of not less than seventy-five percent (75%) of the Property confirming their consent to such termination.
- 9.2 **Amendment.** This Declaration may be amended during the first thirty (30) year period by an instrument signed by both the Declarant (so long as Declarant owns any Lot within the Properties) and by the Owners of not less than fifty percent (50%) of the Property, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Property. Notwithstanding the foregoing, Declarant shall have the right to record an amendment to this Declaration, without the necessity of joinder by any other Owner, for the limited purposes of complying with a statutory requirement, correcting a clerical error, clarifying an ambiguity, inserting an unintentionally omitted portion or removing any contradiction in the terms hereof.

X. GENERAL PROVISIONS

- 10.1 **Notices.** All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, and (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient. For purposes hereof, until changed by written notice from Declarant to Owners, notice to Declarant, the Property Owners Association or the ACC shall be given to the address that follows:

Burnet Economic Development Corporation
P.O. Box 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

- 10.2 **Covenants Run with the Land.** The terms of this Declaration shall constitute covenants running with, and shall be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration, shall inure to the benefit of, and be binding upon the Owners and their respective assigns and successors in title.
- 10.3 **Negation of Partnership or Other Entity.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners, nor shall it cause them to be conserved joint venturers or members of any joint enterprise.
- 10.4 **Enforcement.** Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. To the fullest extent allowed by law the Association shall be entitled to an award of reasonable attorney's fees and other reasonable costs incurred in the enforcement of these Covenants.
- 10.5 **Gender.** The gender of the wording throughout this Agreement shall always be interpreted to mean either sex; and, where the context requires, the plural of any word shall include the singular.
- 10.6 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect. Further it is the intent of Declarant that should any one of these covenants or restrictions be held invalid, it be replaced by valid covenant or restriction that, to the extent reasonably possible, fulfills the intent of the invalid covenant or restriction
- 10.7 **Leases.** Any lease agreement between an Owner and a lessee pertaining to a Lot shall provide that the lease shall be subject in all respects to the provisions of this Declaration, and any failure by the lessee to comply with the terms of this Declaration shall be a default under the lease. All such leases shall be in writing.
- 10.8 **Binding Effect.** This Declaration shall be binding upon the parties hereto, together with all Owners and occupants of the Lots, and their respective heirs, legal representative, successors and assigns.
- 10.9 **No Personal Liability.** There shall absolutely by no personal liability of the elected and appointed officers, employees, consultants or contractors of Declarant, or the City of Burnet, Texas; nor shall there be any personal liability of the members of the Board of Directors or the ACC.

EXECUTED to be effective the _____ day of _____, 2022.

[Signatures on Following Page]

DECLARANT

THE BURNET ECONOMIC
DEVELOPMENT CORPORATION

Cary Johnson, President

STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the ____ day of _____, 2021, by Cary Johnson, president of the Burnet Economic Development Corporation and on behalf of said corporation.

Notary Seal

Notary Public, State of Texas



ITEM 3.3

Habib Erkan Jr.
Assistant City Manager
512-715-3201
herkan@cityofburnet.com

Agenda Item Brief

Meeting Date:	March 15, 2022
Agenda Item:	Discuss and consider action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS TO BE PLACED ON 13.51 ACRES OF LAND TO BE SUBDIVIDED AS THE CROSSING AT 281.
Background:	The EDC owns the 13.51-acres of land to be subdivided as the Crossing at 281. The Board of Directors authorized the construction and dedication of Cary Johnson Drive to provide internal ingress and egress. Upon completion of the street and drainage improvements the infrastructure will be dedicated to the city and the plat recorded in the public records of the County.
Information:	This resolution approves a Declaration of Covenants, Conditions and Restrictions which requires the owner(s) of Lot Owner to comply with specified construction, use and maintenance standards and authorizes the recordation of the covenants once the plat is recorded.
Fiscal Impact:	The financial impact is de minimis. The Corporation will incur the costs for recording the Declaration in the public records of the County Clerk.
Recommendation:	Approve Resolution BEDC R2022-02 as presented.

RESOLUTION NO. BEDC R2022-02

A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS TO BE PLACED ON 13.51 ACRES OF LAND TO BE SUBDIVIDED AS THE CROSSING AT 281.

Whereas, the Burnet Economic Development Corporation owns and possess that certain 13.51-acre subdivision located at the intersection of US Route 281 and Houston Clinton Drive; and

Whereas, the proposed subdivision consists of two lots; and

Whereas, the Board of Directors has caused to be constructed and dedicated to the City of Burnet, a public road designated the Cary Johnson Drive; and

Whereas, the Board of Directors deem it appropriate to have placed on the Lots a declaration of covenants, conditions, and restrictions to assure the Lots are properly developed and maintained.

NOW THEREFORE BE IT RESOLVED BY THE BOARD OF DIRECTORS FOR THE BURNET ECONOMIC DEVELOPMENT CORPORATION:

Section one. That the Declaration of Covenants, Conditions, and Restrictions attached hereby is approved.

Section two. That upon the recordation of the plat of the Crossing at 281, the Board of Directors President is hereby authorized to execute the Declaration of Covenants, Conditions, and Restrictions in substantial form as the attachment and execute such other documents and take such other actions reasonably necessary to facilitate the purpose of this Resolution.

Section three. That the Board of Directors Secretary is hereby authorized and directed to record the fully executed Declaration of Covenants, Conditions, and Restrictions in the public records of the County Clerk of Burnet County, Texas.

Passed and Approved by the Board of Directors of the Burnet Economic Development Corporation this the 15th day of March 2022.

**THE BURNET ECONOMIC
DEVELOPMENT CORPORATION**

ATTEST:

Cary Johnson, President

Kelly Dix, City Secretary

IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OF THE FOLLOWING INFORMATION FROM THIS INSTRUMENT BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR DRIVER'S LICENSE NUMBER.

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
The Crossing at 281 Subdivision

THE STATE OF TEXAS	§	
	§	KNOW ALL PERSON BY THESE PRESENTS
<i>COUNTY OF BURNET</i>	§	

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, is made on the date hereafter set forth by, the Burnet Economic Development Corporation, a Texas 4b municipal development corporation (hereinafter referred to as "Declarant") as follows:

Recitals:

WHEREAS, Declarant is a Type B Economic Development Corporation, established by the City Council of Burnet, Texas, pursuant to the Development Corporation Act of 1979; and

WHEREAS, pursuant to the Act Declarant is charged with promoting sustainable economic development within the City of Burnet for the benefit of the community; and

WHEREAS, Declarant is the owner of certain property in Burnet County, Texas, being 13.51 acres of land more or less consisting of 2 lots, as more particularly described as **the Crossing at 281 Subdivision** according to the Map or Plat Record as Document No. **XXXXXXX** in the Public Records of Burnet County, Texas; a copy of which is attached hereto as **Exhibit "A"** and incorporated herein by this reference for all purposes; and

WHEREAS, Declarant has expended significant funds in the construction of Cary Johnson Drive, bisecting the subdivision and for site work necessary for the preparation of the Lots for development; and

WHEREAS, Declarant has invested in the aforementioned subdivision improvements and adopts this Declaration to insure that improvements to the subdivision shall enhance the commercial building stock, and become an incubator for economic development, within the City of Burnet, Texas.

NOW, THEREFORE, Declarant hereby declares that all of the properties described in **Exhibit “A”** shall be held, sold and conveyed, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with the real property, and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

I. DEFINITIONS

Airport means the Burnet Municipal Airport, also known as Kate Craddock Field.

Architectural Control Committee (“ACC”) shall mean the committee created pursuant to this Declaration to review and approve plans for the construction of improvements upon the property, and to enforce these Restrictions.

Association shall mean the Crossing at 281 Subdivision Property Owners Association.

City Code shall mean the City of Burnet’s Code of Ordinances as same may amended from time to time.

Declarant shall mean and refer to the Burnet Economic Development Corporation, and in the event the Burnet Economic Development Corporation is ever dissolved Declarant shall mean the City of Burnet or such successor corporation established by the City of Burnet to fulfill the duties of the Burnet Economic Development Corporation.

Declaration shall mean this instrument.

Design Guidelines shall mean and refer to those certain Development Design Guidelines for the Subdivision adopted by the Architectural Control Committee, as the same may be amended by the Architectural Control Committee from time to time, and any additional criteria and guidelines established by the Architectural Control Committee which set forth those particular standards, restrictions, guideline, recommendations and specification applicable to architecture design, construction, placement, location, alteration and maintenance of improvements, landscaping and vegetation on Lots within the Subdivision. The Design Guidelines shall be consistent with terms, provisions and restrictions set forth in the Declaration.

Development Period shall mean that period that begins with the recordation of this Declaration in the Public Records of Burnet County, Texas, and that shall conclude upon both: (i) the Declarant’s sale of all Property within the Subdivision; and, (ii) the completion of development on the Lots sold by Declarant as evidenced by the issuance of certificates of occupancy for all buildings to be developed on said Lots; and (iii) Declarant files a

Recorded Instrument stating “*Conclusion of the Development Period*” has occurred.

Improvements shall mean every structure and all appurtenances thereto of every type and kind located on the Property, including but not limited to buildings, outbuildings, parking lots, garages, storage buildings, fences, trash enclosures, animal enclosures, screening walls, retaining walls, dams, stairs, decks, landscaping, all exterior lighting, poles, signs, exterior air conditioning, water softener fixtures or equipment and poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, antennas, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities.

Lot shall mean and refer to any plot of land shown upon the recorded subdivision, or re-subdivision, map or plat of the Properties.

Map shall mean the Subdivision Plat establishing the Crossing at 281 Subdivision according to the Map or Plat Recorded as **Document No. _____**, in the Public Records of Burnet County, Texas.

Owner shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any lot which is a part of the properties, but excluding those having such interest merely as security for the performance of an obligation.

Plans and Specification shall mean any and all documents designed to guide or control the construction or erection of any improvements, including but not limited to those, indicating location, size, building height, shape, configuration, materials, site plans, excavation and grading plans, foundation plans, drainage plans, clearing plans, utility plans (including pole location), landscaping and fencing plans, signage, lighting, elevation drawings, floor plans, specification on all building products and construction techniques, samples or exterior colors, plans for utility services, and all other documentation or information relevant to such improvements.

Plat shall have the same meaning as map.

Property or Subdivision means and refer to all of the Property shown on **Exhibit “A”** as currently subdivided or as may be re-subdivided in the future.

Recorded Instrument shall mean a writing recorded in the Public Records of Burnet County, Texas.

II. PROPERTY OWNERS' ASSOCIATION.

2.1 **Creation of Association.** To maintain standards and requirements for the Subdivision set forth herein, Declarant hereby establishes the **Crossing at 281 Subdivision Property Owner’s Association** as an unincorporated nonprofit organization authorized to enforce these covenants pursuant to the authority

prescribed in in the constitution and statutes of this state, including but not limited to Texas Property Code Section 202.004.

2.2 **Membership and Voting Rights; Board of Directors.**

- (a) **Membership.** Every Owner shall be a member of the Association. The foregoing does not include persons or entities who hold an interest merely as a security for the performance of an obligation. No Owner or Lot shall have more than one (1) membership in the Association ("Membership"). Membership in the Association shall not be assignable except to a successor in interest of the Owner, and every Membership of an Owner in the Association shall be appurtenant to, and may not be separated from, fee ownership of its Lot.
- (b) **Voting Rights.** Prior to the Conclusion of the Development Period Declarant shall retain all of the voting rights and the Members, other than Declarant, shall have no voting rights. Upon the Conclusion of the Development Period, all Members shall be entitled to one (1) vote for each acre owned by such member. In the event a Member's Lot does not equal a whole acre or an integral multiple thereof, then such additional portion of an acre shall be entitled to a fractional vote (measured in tenths) equal to the portion of acreage so owned which is not a whole acre. Notwithstanding the foregoing, all Members shall be entitled to attend any meeting of the Association or the Board of Directors thereof. Any lawful action permitted in this Declaration taken by the Association in accordance with the voting percentages set forth in this Declaration shall be deemed binding on all Owners, their successors, and assigns. Prior to the Conclusion of the Development Period, Declarant shall have sole authority to approval all matters to be approved by the Association. After the Conclusion of the Development Period, all matters to be approved by the the Association must be so approved by a minimum of greater than fifty percent (50%) of the votes present in person or by proxy at a meeting at which a quorum shall have been attained.
- (c) **Board of Directors:** Prior to the Conclusion of the Development Period Declarant may appoint one or more persons to govern the Association who shall not be required to be a Member. After the Conclusion of the Development Period, the Association shall be governed by the Board of Directors of at least three members (the "Board") which shall be elected, by the Members for two-year terms. A board member may serve concurrent terms and does not have to be a member. The Board of Directors may adopt bi-laws and other instruments of governance; provided that same does not include terms or conditions contrary to this Declaration.
- (d) **Association's Duties and Powers.** Without limiting any other powers granted to it elsewhere in this Declaration, the Association, acting through the Board, shall have the powers and duties which may be necessary or

proper for or incidental to the exercise of any of the express powers and duties granted to it by this Declaration; including the power to enforce the terms and conditions of Articles IV, V, VI, and VII herein.

III. ARCHITECTURAL CONTROL COMMITTEE

Declarant, as an economic development corporation duly established by election of the citizens of Burnet has a substantial interest in ensuring that Improvements within the Property: (i) enhances the commercial building stock, and creates an incubator for economic development, within the City of Burnet; and, (ii) do not impair Declarant's ability to market and sell all or any portion of the Property. Until Declarant has delegated its right to appoint and remove all members of the ACC to the Board as provided in Section 3.02(a) below, the ACC will be acting solely in Declarant's interest and will owe no duty to any other Owner or the Association.

3.01 Construction of Improvements. No Improvement may be erected, placed, constructed, painted, altered, modified or remodeled on any Lot, and no Lot may be re-subdivided or consolidated with other Lots or Property, by anyone other than Declarant without the prior written approval of the ACC.

3.02 Architectural Control Committee.

(a) **Composition.** The ACC will be composed of not more than three (3) appointees, as provided below, who will review Improvements proposed to be made by any Owner other than Declarant. Declarant will have the right to appoint and remove (with or without cause) all members of the ACC. At the Conclusion of the Development Period Declarant shall assign its right to appoint all Members of the ACC to the Owners and the Association by Recorded Instrument, and thereafter, the Owners acting through its Association shall have the right to appoint and remove (with or without cause) all members of the ACC. The ACC will have the right to employ consultants and advisors as it deems necessary or appropriate.

(b) **Submission and Approval of Plans and Specifications.** Construction plans and Specifications, or when an Owner desires solely to re-subdivide or consolidate Lots, a proposal for such re-subdivision or consolidation, will be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the ACC together with any review fee which is imposed by the ACC in accordance with Section 3.02(c) to the ACC at the offices of Declarant, at such address as may hereafter be designated in writing from time to time. No re-subdivision or consolidation will be made, nor any Improvement placed or allowed on any Lot, until the plans and specifications and the builder which the Owner intends to use to construct the proposed structure or Improvement have been approved in writing by a Majority of the members of the ACC. The ACC may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits or environmental impact statements that may be required by the ACC or any other entity. The ACC may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the ACC, in its sole discretion, may require. Site plans must be approved by the ACC prior to site work on any Lot, or the construction of any Improvements. The ACC may refuse to approve plans and specifications for

proposed Improvements, or for the re-subdivision or consolidation of any Lot on any grounds that, in the sole and absolute discretion of the ACC, are deemed sufficient, including, but not limited to, purely aesthetic grounds.

- (c) **Design Guidelines.** Declarant may adopt the initial Design Guidelines and, during the Development Period, will have the power from time to time, to adopt (unless previously adopted by Declarant), amend, modify, or supplement the Design Guidelines, if any. In the event of any conflict between the terms and provisions of the Design Guidelines, if any, and the terms and provisions of this Declaration, the terms and provisions of this Declaration will control. In addition, the ACC will have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Declaration. Such charges will be held by the ACC and used to defray the administrative expenses incurred by the ACC in performing its duties hereunder. The ACC will not be required to review any plans until a complete submittal package, as required by this Declaration and the Design Guidelines, is assembled and submitted to the ACC. The ACC will have the authority to adopt such additional procedural and substantive rules and guidelines (including, without limitation, the imposition of any requirements for certificates of compliance or completion relating to any Improvement and the right to approve in advance any contractor selected for the construction of Improvements), not in conflict with this Declaration, as it may deem necessary or appropriate in connection with the performance of its duties hereunder.
- (d) **Actions of the Architectural Control Committee.** The ACC may, by resolution unanimously adopted in writing, designate one or more of its members, or an agent acting on its behalf, to take any action or perform any duties for and on behalf of the ACC, except the granting of variances. In the absence of such designation, the vote of a Majority of all of the members of the ACC taken at a duly constituted meeting will constitute an act of the ACC.
- (e) **Failure to Act.** In the event that any plans and specifications are submitted to the ACC as provided herein, and the ACC fails either to approve or reject such plans and specifications for a period of sixty (60) days following such submission, rejection of such plans and specifications by the ACC will be presumed. In furtherance, and not in limitation, of the foregoing, any failure of the ACC to act upon a request for a variance will not be deemed a consent to such variance, and the ACC's written approval of all requests for variances will be expressly required.
- (f) **Variances.** The ACC may grant variances from compliance with any of the provisions of the Design Guidelines, if any, or this Declaration, when, in the opinion of the ACC, in its sole and absolute discretion, such variance is justified. All variances must be evidenced in writing and must be signed by at least a Majority of the members of the ACC. Each variance must also be Recorded; provided however, that failure to record a variance will not affect the validity thereof or give rise to any claim or cause of action against the ACC, including the Declarant or its designee, the Association, or the Board. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in this Declaration or the Design Guidelines, if any, will be deemed to have occurred with respect to the matter for

which the variance was granted. The granting of such variance will not operate to waive or amend any of the terms and provisions of this Declaration or the Design Guidelines, if any, for any purpose except as to the particular Lot.

- (g) **Duration of Approval.** The approval of the ACC of any plans and specifications, and any variances granted by the ACC, will be valid for a period of one hundred and twenty (120) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and twenty (120) day period and diligently prosecuted to completion within either:
 - (i) one year after issuance of approval of such plans and specifications; or
 - (ii) such other period thereafter as determined by the ACC, in its sole and absolute discretion.

In the event such Approval expires the Owner shall be required to resubmit such plans and specifications or request for a variance to the ACC, and the ACC will have the authority to re-evaluate such plans and specifications in accordance with this Article and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

- (h) **No Waiver of Future Approvals.** The approval of the ACC to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the ACC will not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor will such approval or consent be deemed to establish a precedent for future approvals by the ACC.
- (i) **Non Liability of Committee Members.** NEITHER DECLARANT, THE BOARD, THE ARCHITECTURAL CONTROL COMMITTEE, NOR ANY MEMBER WILL BE LIABLE TO ANY OWNER OR TO ANY OTHER PERSON FOR ANY LOSS, DAMAGE OR INJURY ARISING OUT OF THE PERFORMANCE OF THE ARCHITECTURAL CONTROL COMMITTEE'S DUTIES UNDER THIS DECLARATION.

IV. ARCHITECTURAL STANDARDS

- 4.1 **Objective.** Declarant purpose in establishing the Subdivision is to provide a first class commercial development with "Hill Country" architectural style and materials (such as native stone, plaster or stucco and standing seam metal roofs). It is the objective of the Architectural Control Committee to protect and preserve Declarant's vision for the Subdivision to the maximum extent feasible in furtherance of promoting the economic development of the community.
- 4.2 **Site Plan.** Such protection requires careful site planning.

- (a) **Site Plan Approval.** The Architectural Control Committee must approve building site locations and building heights before construction authorization, under Article III, will be given. Each building should maintain a reasonable set back from roadways and property lines, as determined by the Architectural Control Committee.
- (b) **Additional site planning approval.** Site grading, surface drainage, erosion control and landscaping shall be a part of the architectural review process. The Architectural Control Committee may require detailed plans on each of the above.

- 4.3 **Facades and external faces of buildings.** This section applies to all buildings proposed to be constructed or placed on a Lot. That portion of the exterior of each wall which faces U. S. Route 281, Houston Clinton Drive, or Cary Johnson Drive shall be one-hundred percent (100%) by area, composed of masonry or masonry veneer, said percentage to apply to the aggregate area of each wall, excluding door, window and similar openings. Masonry or masonry veneer includes stucco, ceramic tile, clay, brick, rock, and all other materials commonly referred to in the Burnet, Texas, area as masonry; but shall not include HardiePlank or similar fiber cement siding, products. Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive this restriction if, in its sole discretion, such waiver is advisable in order to accommodate a unique or advanced building concept, design, or material, and the resulting structure will not detract from the general appearance of the Subdivision. Such waiver must be in writing and signed by a majority of the ACC.
- 4.4 **Fencing.** In order to ensure a general uniformity of appearance of those fence sections that can be viewed from a street, any and all fences erected on areas readily apparent and visible from streets and on all corner Lots along that portion of side or rear yards fronting on side streets, fences shall be six foot (6') vertical privacy fences composed of masonry, cedar, spruce, or other such materials as may be approved from time to time by the Architectural Control Committee. In no event shall any fence extend any closer to the street fronting the main structure than the front outermost corners of such structure. Notwithstanding the foregoing, the Architectural Control Committee is empowered to waive the aforesaid fence limitations in connection with retaining walls and decorative walls if, in its sole discretion, such waiver is advisable in order to accommodate a unique, attractive or advanced building concept design or material and the resulting decorative wall and/or retaining wall will not detract from the general appearance of the Subdivision.
- 4.5 **Storage buildings.** No storage building, or outbuilding of any kind, may be constructed or placed on a Lot without the Architectural Control Committee approval of the proposed building's design, materials, size, and location.
- 4.6 **Screening.**

- (a) **Refuge collection.** All rubbish, trash, garbage, debris, and other waste (including paper), all garbage collection facilities, and all incinerators, trash bins, trash compactors, storage tanks, and like equipment, which would otherwise be open or exposed to public view, shall be stored within fully enclosed dumpster enclosures which shall be of sufficient height and capacity to screen all contents from view.
 - (b) **Equipment.** Mechanical equipment, such as power transformers, air conditioning equipment, heating equipment, cooling towers, ventilating equipment, electrical equipment shall be reasonably screened from public view by parapet wall, fencing, or landscaping.
 - (c) **Loading docks.** All loading docks, service delivery and maintenance areas, which would otherwise be open or exposed to public view, shall be screened from public view.
- 4.7 **Signs.** All signs visible from a public street must be approved by the Architectural Control Committee before installation. The Architectural Control Committee shall not review sign content. Rather the Architectural Control Committee shall review the proposed design, materials, and location to insure the proposed sign is of professional quality and construction and of a type customarily used in first class commercial development. Signs must comply with all applicable laws, rules, regulations and building codes, including the City of Burnet's sign ordinance.
- 4.8 **Lighting.** All exterior lighting must be approved by the Architectural Control Committee and shall be installed, regulated and maintained by the Lot Owner in such a manner that the direct beam of any such light shall be oriented so that it will not glare upon any neighboring property and any illumination from direct or indirect lighting in, on, or over the ground at or beyond the boundary of the Lot will be minimized. In addition, all exterior lighting shall comply with the Airport Protection requirements of Section 5.3.
- 4.9 **Landscaping.** Each finished Lot shall be landscaped as required by the City of Burnet's Code of Ordinances and approved by the Architectural Control Committee. Owners are encourage to feature native trees, shrubs and plants in Lot landscapes.
- 4.10 **Driveways and parking areas.** All driveways and parking areas shall be surfaced with concrete or asphalt and spaces shall be striped in accordance with the requirement of the City Code of Ordinances. Parking lot design must be approved by the Architectural Control Committee, to assure safe and efficient traffic circulation.

- 4.11 **Antennae.** Antennae must be approved by the Architectural Control Committee before installation on a Lot. All permitted antennas or dishes shall be reasonably concealed from public view by parapet wall, fencing, or landscaping.

V. PERMITTED AND PROHIBITED USES.

- 5.1 **Zoning classification.** Each Lot shall be designated with a zoning classification as authorized by the City Code; and, except as provided in this Declaration, may be used for any use authorized by the City Code for such designated zoning classification.
- 5.2 **Prohibited uses or activities - generally.** The prohibitions described below shall apply to any and all Lots or any portion of such Lots.
- (a) No noxious or offensive activity shall be carried out on upon any Lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to any neighboring Lot.
 - (b) No owner shall do any work that will impair the structural soundness or integrity of a neighboring Lot or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Lots or their owners.
 - (c) No exterior speakers, horn, whistles, bells or other sound devices (except security alarms as authorized by the City Code) shall be placed or used upon any Lot.
 - (d) No hazardous material or inflammable liquids shall be stored on any Lot without compliance with all applicable laws, rules, regulations, statutes, ordinances, and codes, including without limitations the City Code.
 - (e) No trailer, motor home, tent, boat, recreational vehicle, travel trailer, house trailer, or any commercial truck, shall be kept, parked, stored, or maintained on any part of a Lot for more than 12 hours. No wrecked, junked, or inoperable vehicle shall ever be kept, parked, stored, or maintained on any part of a Lot.
 - (f) Business activities that are strictly prohibited by these Covenants, and which shall not be conducted on any Lot or any portion thereof, include the following:
 - (1) “*sexually oriented businesses*” (as the term is currently defined in Section 243.002 of the Texas Local Government Code); and
 - (2) outside storage or sale of junk or second hand materials.

- 5.3 **Prohibited uses or activities – Airport protection.** Uses and activities that create electrical interference with navigational signals or radio communications between the Airport and aircraft, make it difficult for pilots to distinguish between airport lights and others, result in glare in the eyes of pilots using the airport, impair visibility in the vicinity of the airport, create potential bird strike hazards, or otherwise in any way endanger or interfere with the landing, taking off, or maneuvering of aircraft intending to use the Airport are prohibited on any Lot or portion of any Lot.

VI. PROPERTY MAINTENANCE.

- 6.1 **Landscaping.** Grass, weeds and vegetation on each Lot shall be kept mowed at regular intervals. Trees, shrubs, vines and plants which die shall be promptly removed from a Lot and replacements of equal quality or value promptly installed. Landscaping must be properly maintained and fences must be repaired and maintained.
- 6.2 **Rubbish and Debris.** No rubbish or debris (which shall include dead vegetation and dead cedar or discarded furniture) of any kind shall be placed or permitted to accumulate upon a Lot and no odors shall be permitted to arise there from so as to render such Lot or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property or its occupants. Refuse, garbage and trash shall be kept at all times in covered containers and such containers shall be kept within enclosed structures or appropriately screened from view.
- 6.3 **Noise.** No noise or other nuisance shall be permitted exist or operate upon any portion of a Lot so as to be offensive or detrimental to any other portion of the Property or to its occupants.
- 6.4 **Unsightly Articles.** No article deemed to be unsightly by the Architectural Control Committee shall be permitted to remain on any Lot so as to be visible from any other portion of the Subdivision or public or private thoroughfares. No automobiles or other vehicles (including, but not limited to, farm equipment) may be parked overnight on any roadway within a Lot. Service area, storage area, loading area and compost piles shall be appropriately screened from view from public or private thoroughfares and other properties and no lumber, grass, plant waste, shrub or tree clippings, propane tank, metals, bulk materials or scrap or refuse or trash shall be kept, stored or permitted to accumulate on any portion of the Property except within enclosed structures of appropriately screened from view from public or private thoroughfares and adjacent properties.
- 6.5 **Repairs.** All improvements upon any Lot shall be at all times kept in good condition and repair and adequately painted or otherwise maintained by the Owner thereof; however, any construction, other than normal maintenance, which in any way alters the exterior appearance of any Improvement, or the removal of any

Improvement, shall be performed only with the prior written approval of the Architectural Control Committee.

- 6.6 **Drainage.** There shall be no interference with the established drainage patterns over any of the Property, unless adequate provision is made for proper drainage.
- 6.7 **Temporary Structures.** No temporary structures, including but not limited to tents shall be allowed. Notwithstanding the forgoing the AAC may approve the location of a Construction Office Trailer for a specific period of time not to exceed the time needed to complete construction of improvements authorized by the AAC.

VII. CONSTRUCTION ACTIVITIES.

- 7.1 **Generally.** Notwithstanding any provision herein to the contrary, this Declaration shall not be construed so as to unreasonable interfere with or prevent normal construction activities during the construction of Improvements by an Owner (including Declarant) upon any Lot within the Subdivision. Specifically, no such construction activities shall be deemed to constitute a nuisance or a violation of this Declaration by reason of noise, dust, presence of vehicles or construction machinery, porting of signs or similar activities, provided that such construction is pursued to completion with reasonable diligence and conforms to usual construction practices in the area. In the event of any dispute regarding such matters, a temporary waiver of the applicable provision may be granted by the Architectural Control Committee, provided that such waiver shall be only for the reasonable period of such construction. The Architectural Control Committee is also empowered in the event of a dispute to set a reasonable schedule including days of the week and times for the performance of construction activities.
- 7.02 **Unfinished Structures.** No structure shall remain unfinished for more than twelve (12) months after the same has been commenced.

VIII. Intentionally Blank.

IX. TERM AND AMENDMENT

- 9.1 **Term.** This Declaration shall be binding upon the undersigned and all parties and persons claiming through and under it for an initial term of thirty (30) years from the date this Declaration is recorded in the Official Public Records of Burnet County, Texas. Thereafter this Declaration shall be automatically renewed for successive twenty (20) year terms; provided however after the expiration of the initial term this Declaration may be terminated by Recorded Instrument signed by the Owners of not less than seventy-five percent (75%) of the Property confirming their consent to such termination.
- 9.2 **Amendment.** This Declaration may be amended during the first thirty (30) year period by an instrument signed by both the Declarant (so long as Declarant owns

any Lot within the Properties) and by the Owners of not less than fifty percent (50%) of the Property, and thereafter by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Property. Notwithstanding the foregoing, Declarant shall have the right to record an amendment to this Declaration, without the necessity of joinder by any other Owner, for the limited purposes of complying with a statutory requirement, correcting a clerical error, clarifying an ambiguity, inserting an unintentionally omitted portion or removing any contradiction in the terms hereof.

X. GENERAL PROVISIONS

- 10.1 **Notices.** All notices must be in writing and must be given as required or permitted by the Dedicatory Instruments or by law. Notice by mail is deemed delivered (whether actually received or not) when properly deposited with the United States Postal Service, addressed (a) to a Member, at the Member's last known address according to the Property Owners Association's records, and (b) to the Property Owners Association, the Board, the ACC, or a managing agent at the Property Owners Association's principal office or another address designated in a notice to the Members. Unless otherwise required by law or the Dedicatory Instruments, actual notice, however delivered, is sufficient. For purposes hereof, until changed by written notice from Declarant to Owners, notice to Declarant, the Property Owners Association or the ACC shall be given to the address that follows:

Burnet Economic Development Corporation
P.O. Box 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611

- 10.2 **Covenants Run with the Land.** The terms of this Declaration shall constitute covenants running with, and shall be appurtenant to, the land affected by this Declaration for the term hereof. All terms of this Declaration, shall inure to the benefit of, and be binding upon the Owners and their respective assigns and successors in title.
- 10.3 **Negation of Partnership or Other Entity.** None of the terms or provisions of this Declaration shall be deemed to create a partnership between or among the Owners, nor shall it cause them to be conserved joint venturers or members of any joint enterprise.
- 10.4 **Enforcement.** Declarant, the Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. To the fullest extent allowed by

law the Association shall be entitled to an award of reasonable attorney's fees and other reasonable costs incurred in the enforcement of these Covenants.

- 10.5 **Gender.** The gender of the wording throughout this Agreement shall always be interpreted to mean either sex; and, where the context requires, the plural of any word shall include the singular.
- 10.6 **Severability.** Invalidation of any one of these covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect. Further it is the intent of Declarant that should any one of these covenants or restrictions be held invalid, it be replaced by valid covenant or restriction that, to the extent reasonably possible, fulfills the intent of the invalid covenant or restriction
- 10.07 **Leases.** Any lease agreement between an Owner and a lessee pertaining to a Lot shall provide that the lease shall be subject in all respects to the provisions of this Declaration, and any failure by the lessee to comply with the terms of this Declaration shall be a default under the lease. All such leases shall be in writing.
- 10.08 **Binding Effect.** This Declaration shall be binding upon the parties hereto, together with all Owners and occupants of the Lots, and their respective heirs, legal representative, successors and assigns.
- 10.09 **No Personal Liability.** There shall absolutely be no personal liability of the elected and appointed officers, employees, consultants or contractors of Declarant, or the City of Burnet, Texas; nor shall there be any personal liability of the members of the Board of Directors or the ACC.

EXECUTED to be effective the _____ day of _____, 2022.

[Signatures on Following Page]

DECLARANT

THE BURNET ECONOMIC
DEVELOPMENT CORPORATION

Cary Johnson, President

STATE OF TEXAS §
 §
COUNTY OF BURNET §

This instrument was acknowledged before me on the ____ day of _____, 2021, by Cary Johnson, president of the Burnet Economic Development Corporation and on behalf of said corporation.

Notary Seal

Notary Public, State of Texas



ITEM 3.4

Agenda Item Brief

Meeting Date:	March 15, 2022
Agenda Item:	Discuss and consider action: Related to the potential sale of all or portions of the Eastside Commercial Park located on Highway 29 East.
Background:	To be presented at the meeting.
Information:	
Fiscal Impact:	
Recommendation:	To be determined by the board.



ITEM 3.5

Agenda Item Brief

Meeting Date:	March 15, 2022
Agenda Item:	Discuss and consider action: Related to the potential sale of all or portions of the The Crossings at 281 South Commercial Park.
Background:	Update on interest in property purchases - to be presented at the time of the meeting.
Information:	
Fiscal Impact:	
Recommendation:	To be determined by the board.



ITEM 3.6

Agenda Item Brief

Meeting Date:	March 15, 2022
Agenda Item:	Discuss and consider action: 2022 Summer Series.
Background:	To be presented at the meeting.
Information:	
Fiscal Impact:	
Recommendation:	To be determined by the board.



ITEM 3.7

Agenda Item Brief

Meeting Date:	March 15, 2022
Agenda Item:	Discuss and consider action: Commercial Drivers License (CDL) program.
Background:	To be presented at the meeting.
Information:	
Fiscal Impact:	
Recommendation:	To be determined by the board.



ITEM 4.1

Agenda Item Brief

Meeting Date: March 15, 2022

Agenda Item: Executive Session: The Board of Directors shall convene in executive session pursuant to Texas Government Code Sec. 551.072 to deliberate on the value of real property the purchase, exchange, lease, or value of real property as follows:

- (a) Eastside Commercial Park;
- (b) The Crossings at 281 South Commercial Park; and
- (c) Acquisition of real property to enhance Eastside Commercial Park; and

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 4.2

Agenda Item Brief

Meeting Date: March 15, 2022

Agenda Item: Executive Session: The Board of Directors shall convene in executive session pursuant to Texas Government Code Sec. 551.087 to deliberate regarding commercial or financial information the board has received from a business prospect that the board seeks to have locate, stay, or expand within the corporate limits of the City of Burnet and with which the board is conducting economic development negotiations.

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.