



NOTICE OF MEETING OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION

Notice is hereby given that a **Special Meeting** will be held by the Burnet Economic Development Corporation (BEDC) on the **13th day of June, 2023** at **3:00 p.m.** in the Council Chambers, Burnet Municipal Airport, 2402 S. Water, 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 May 23rd, 2023 BEDC Regular Meeting minutes.

3. PUBLIC HEARINGS/ACTION:

3.1) Public hearing and action: A RESOLUTION OF THE BOARD OF DIRECTORS FOR THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE CONSTRUCTION OF PUBLIC RESTROOMS ON THE PUBLIC PARKING LOT LOCATED IN THE BURNET HISTORIC BUSINESS DISTRICT AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT: D. Vaughn

- (1) Board Presentation:
- (2) Public Hearing:
- (3) Consideration and action:

3.2) Public hearing and action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE DEVELOPMENT OF A HOTEL PROJECT ON A LOT WITHIN THE CROSSING AT 281 SUBDIVISION AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT; APPROVING A PERFORMANCE AGREEMENT INCENTIVIZING THE DEVELOPMENT OF THE HOTEL PROJECT; APPROVING THE SALE OF SAID LOT TO THE HOTEL DEVELOPER AND AUTHORIZING THE BOARD PRESIDENT TO EXECUTED NECESSARY INSTRUMENTS: D. Vaughn

- (1) Board Presentation:
- (2) Public Hearing:
- (3) Consideration and action:

4. ACTION ITEMS:

4.1) Discuss and consider action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A REAL ESTATE SALES COMMISSION AGREEMENT WITH DAVID DRAKE FOR THE SALE OF A LOT IN THE CROSSING AT 281.

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

4.3) Discuss and consider action: Related to the potential sale of all or portions of 118 S. Polk Street (Old Bealls Building)

4.4) Discuss and consider action: A RESOLUTION OF THE BOARD OF DIRECTORS FOR THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE CONSTRUCTION OF PUBLIC RESTROOMS ON THE PUBLIC PARKING LOT LOCATED IN THE BURNET HISTORIC BUSINESS DISTRICT AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT; ESTABLISHING A BUDGET FOR SAID PROJECT; AND APPROVING A CHAPTER 380 AGREEMENT WITH THE CITY OF BURNET FOR FUNDING OF THE PROJECT: D. Vaughn

4.5) Discuss and consider action: Related to the Jackson Street Public Restroom Project and the award of the construction bid to Nash Builders, LTD.

4.6) Discuss and consider action: Related to the findings of the Burnet Community Coalition.

4.7) Discuss and consider action: 2023 Summer Series Concert.

4.8) Discuss and consider action: Related to the Coke Street Re-Alignment Project.

5. CONVENE TO EXECUTIVE SESSION:

The Board of Directors of the Burnet Economic Development Corporation shall convene in executive session to:

5.1) Pursuant to Section 551.072 Texas Government Code deliberate the purchase, exchange, lease, or value of real property in order to minimize the detrimental effect of such discussion in open session on the position of the Board in negotiations with third parties for property located at Eastside Commercial Park: D. Vaughn

5.2) Pursuant to Section 551.072 Texas Government Code to deliberate the purchase, exchange, lease, or value of real property in order to minimize the detrimental effect of such discussion in open session on the position of the Board in negotiations with third parties for property located at the Crossings at 281 South Commercial Park: D. Vaughn

5.3) Pursuant to Section 551.072 Texas Government Code to deliberate the purchase, exchange, lease, or value of real property in order to minimize the detrimental effect of such discussion in open session on the position of the Board in negotiations with third parties for the potential sale of all or portions of 118 S. Polk Street (Old Bealls Building): D. Vaughn

5.4) Pursuant to Sec. 551.087 Texas Government Code to deliberate both: (i) commercial or financial information that the board of directors received from a business prospect that the board of directors seeks to have locate a hotel on property located at The Crossings at 281; and (ii) deliberate the offer of a financial or other incentive to said business prospect to facilitate the development of said hotel: D. Vaughn

6. RECONVENE TO REGULAR SESSION FOR POSSIBLE ACTION:

6.1) Discuss and consider action: Regarding deliberations of the purchase, exchange, lease, or value of real property located at Eastside Commercial Park: D. Vaughn

6.2) Discuss and consider action: Regarding deliberations of the purchase, exchange, lease, or value of real property located at the Crossings at 281 South Commercial Park: D. Vaughn

6.3) Discuss and consider action: Regarding deliberations of the purchase, exchange, lease, or value of real property located at 118 S. Polk Street (Old Bealls Building): D. Vaughn

6.4) Discuss and consider action: Regarding deliberations of economic development negotiations to facilitate the development of a hotel on real property located at The Crossings at 281: D. Vaughn

7. REQUESTS FROM BEDC FOR FUTURE REPORTS:

8. ADJOURN:

Dated this 9th day, of June, 2023

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 June 9th, 2023, 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

STATE OF TEXAS {}
COUNTY OF BURNET {}

On this the 23rd day of May, 2023, the Burnet Economic Development Corporation of the City of Burnet convened in Special Session, at 3:00 p.m., at the Burnet City Council Chambers, 2402 S. Water Street, Burnet, with the following members present, to-wit:

Board Members: David Vaughn, Philip Thurman, Crista Goble Bromley, Cary Johnson, Brad Zehner

Absent Wayne Brown, Mary Jane Shanes

City Secretary: Kelly Dix

Guests: Adrienne Feild, Maria Gonzales, Carly Kehoe-Pearson

CALL TO ORDER: The meeting was called to order by Board President Cary Johnson at 3:00 p.m. and quorum was established.

CONSENT AGENDA:

Approval of the May 9th, 2023 BEDC Regular Meeting minutes:

Board Member Philip Thurman moved to approve the consent agenda as presented. Board Member Mary Jane Shanes. The motion carried unanimously.

Discuss and consider action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION AUTHORIZING THE SALE OF A LOT WITHIN THE EASTSIDE COMMERCIAL PARK SUBDIVISION; APPROVING A PERFORMANCE AGREEMENT INCENTIVIZING THE DEVELOPMENT OF A RETAIL STORE AS AN ECONOMIC DEVELOPMENT PROJECT ON SAID LOT; AND AUTHORIZING THE BOARD PRESIDENT TO EXECUTED NECESSARY INSTRUMENTS:

Board Member Philip Thurman moved to approve and adopt Resolution BEDC R2023-06 as presented. Board Member Brad Zehner seconded. The motion carried unanimously.

Discuss and consider action: Related to the potential sale of all or portions of the Crossings at 281 South Commercial Park: All Present reviewed the proposed hotel incentive agreement and sales contract. No action was taken.

Discuss and consider action: Related to the sale of all or portions of the Eastside Commercial Park located on Highway 29 East: Pass. No action taken.

Discuss and consider action: Related to the potential sale of all or portions of 118 S. Polk Street (Old Bealls Building): Pass. No action taken.

Discuss and consider action: Related to the Coke Street Re-Alignment Project: Pass. No action taken.

Discuss and consider action: Related to the Jackson Street Public Restroom Project: Board Member David Vaughn informed all present that the plans are being reviewed by the architect and staff was working on the proposed 380 agreement. The funding will be from general fund, HOT Tax and EDC. The current plan is estimated to cost approximately \$525,000.00. No action taken.

Discuss and consider action: Related to the findings of the Burnet Community Coalition: Pass. No action taken.

Discuss and consider action: 2023 Summer Series Concert: Pass. No action taken.

CONVENE TO EXECUTIVE SESSION: Pass. The Board did not convene in Executive Session and no action was taken.

The Board of Directors of the Burnet Economic Development Corporation shall convene in executive session to:

Pursuant to Section 551.072 Texas Government Code deliberate the purchase, exchange, lease, or value of real property in order to minimize the detrimental effect of such discussion in open session on the position of the Board in negotiations with third parties for property located at Eastside Commercial Park: D. Vaughn

Pursuant to Section 551.072 Texas Government Code to deliberate the purchase, exchange, lease, or value of real property in order to minimize the detrimental effect of such discussion in open session on the position of the Board in negotiations with third parties for property located at the Crossings at 281 South Commercial Park: D. Vaughn

Pursuant to Sec. 551.087 Texas Government Code to deliberate both: (i) commercial or financial information that the board of directors received from a business prospect that the board of directors seeks to have locate a retail store on property located at Eastside Commercial Park; and (ii) deliberate the offer of a financial or other incentive to said business prospect to facilitate the development of said retail store: D. Vaughn

Pursuant to Sec. 551.087 Texas Government Code to deliberate both: (i) commercial or financial information that the board of directors received from a business prospect that the board of directors seeks to have locate a hotel on property located at The Crossings at 281; and (ii) deliberate the offer of a financial or other incentive to said business prospect to facilitate the development of said hotel: D. Vaughn

RECONVENE TO REGULAR SESSION FOR POSSIBLE ACTION:

Discuss and consider action: Regarding deliberations of the purchase, exchange, lease, or value of real property located at Eastside Commercial Park: D. Vaughn

Discuss and consider action: Regarding deliberations of the purchase, exchange, lease, or value of real property located at the Crossings at 281 South Commercial Park: D. Vaughn

Discuss and consider action: Regarding deliberations of economic development negotiations to facilitate the development of a retail store on real property located at Eastside Commercial Park: D. Vaughn

Discuss and consider action: Regarding deliberations of economic development negotiations to facilitate the development of a hotel on real property located at The Crossings at 281: D. Vaughn

REQUESTS FOR FUTURE REPORTS: None.

ADJOURN: There being no further business a motion to adjourn was made by Board Member Wayne Brown at 3:46 p.m., seconded by Board Member Philip Thurman. The motion carried unanimously.

ATTEST:

Kelly Dix, City Secretary

Cary Johnson, President
Burnet Economic Development Corporation



ITEM 3.1

David Vauhgn
City Manager
512-715-3208
dvaughn@cityofburnet.com

Action

Meeting Date: June 13, 2023

Agenda Item: Public Hearing and consider action: A RESOLUTION OF THE BOARD OF DIRECTORS FOR THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE CONSTRUCTION OF PUBLIC RESTROOMS ON THE PUBLIC PARKING LOT LOCATED IN THE BURNET HISTORIC BUSINESS DISTRICT AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT: D. Vaughn

Background: The public parking lot located at the intersection of South Pierce and East Jackson Streets is owned and operated by the Corporation. This parking lot was deemed necessary to improve the vigor of the Burnet Historic Business District and to promote economic development. Recently, the Corporation completed a parking lot resurfacing project. The Corporation's board of directors now considers whether construction of public restroom facilities on the parking lot would also benefit the economic vitality of the historic square.

Information: This resolution designates the public restroom facilities as an economic development project and sets a budget for the project. Moreover, this . The passing of this resolution, and the passage of a companion resolution by City Council, is the first steps to facilitating construction of the project.

Fiscal Impact: This resolution places no monetary obligation on the Corporation and therefore will have no fiscal impact. The Board of Directors shall consider resolutions related to the funding and construction of the project that shall have a fiscal impact up to the entirety of the project costs.

Recommendation: Open the Public hearing.
Approve and adopt Resolution No. BEDC R2023-07 as presented.

RESOLUTION NO. BEDC R2023-07

A RESOLUTION OF THE BOARD OF DIRECTORS FOR THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE CONSTRUCTION OF PUBLIC RESTROOMS ON THE PUBLIC PARKING LOT LOCATED IN THE BURNET HISTORIC BUSINESS DISTRICT AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT.

WHEREAS, the Burnet Economic Development Corporation (the “*Corporation*”) is the owner of a public parking lot located at the intersection of South Pierce and East Jackson Streets (the “parking lot”); and

WHEREAS, the Burnet Historic Business District, also known as the “historic square” is an area of the City where shops and restaurants cater to tourists and locals alike; and

WHEREAS, the Corporation acquired and improved the parking lot due to its the Burnet Historic Business District and the limited availability of either on or off street parking within the District; and

WHEREAS, the Corporation’s Board of Directors has found that the availability of public restroom facilities would benefit the economic viability of the historic square; and

WHEREAS, consistent with those findings the Corporation’s Board of Directors has designated the construction of public restroom facilities on the parking lot as an Economic Development Project; and

WHEREAS, the Board of Directors officially finds and determines that prior to any deliberation or action on this resolution, it conducted a hearing to receive testimony and comments from members of public on the merits of the proposed Project as required by Sec. 505.158 Texas Local Government Code.

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

Section one. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted as the official findings of the Board of Directors and are made a part hereof for all purposes as findings of fact.

Section two. The Project. The construction of public restroom facilities on the public parking lot owned by the corporation is authorized as a Project to be funded by the Corporation.

Section three. Effective Date. This resolution shall take immediate effect after approved upon City Council’s adoption of a resolution as required by Sec. 505.158(b) Texas Local Government Code.

PASSED AND APPROVED on this the day 13t day of June 2023.

**BURNET ECONOMIC DEVELOPMENT
CORPORATION**

Cary Johnson, President

ATTEST:

Kelly Dix, City Secretary



ITEM 3.2

David Vaughn.
City Manager
512-715-3208
dvaughn@cityofburnet.com

Public Hearing and Action Item

Meeting Date: June 13, 2023

Agenda Item: Public Hearing and consider action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE DEVELOPMENT OF A HOTEL PROJECT ON A LOT WITHIN THE CROSSING AT 281 SUBDIVISION AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT; APPROVING A PERFORMANCE AGREEMENT INCENTIVIZING THE DEVELOPMENT OF THE HOTEL PROJECT; APPROVING THE SALE OF SAID LOT TO THE HOTEL DEVELOPER AND AUTHORIZING THE BOARD PRESIDENT TO EXECUTED NECESSARY INSTRUMENTS.

Background: TEKMAK Burnet Hotel, LP proposes to construct a TownePlace Suites by Marriott Hotel at the Crossing at 281. When completed, the hotel project will provide for approximately 87 guest rooms, a swimming pool, and other amenities. Total costs for construction, finish out and furnishing will be at least \$13,000,000.00.

Information: This resolution declares the hotel project to be an Economic Development Project and approves a performance agreement and an unimproved commercial property contract. Pursuant to the terms of the agreement and contract, the Developer will purchase a lot within the Crossing at 281 for \$436,000.00; and, upon completion of the hotel project the corporation shall refund the purchase price to the developer.

Fiscal Impact: Passage of this resolution shall impose no direct financial impact on the corporation's budget.

Recommendation: Approve the resolution as presented.

RESOLUTION NO. BEDC R2023-08

A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE DEVELOPMENT OF A HOTEL PROJECT ON A LOT WITHIN THE CROSSING AT 281 SUBDIVISION AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT; APPROVING A PERFORMANCE AGREEMENT INCENTIVIZING THE DEVELOPMENT OF THE HOTEL PROJECT; APPROVING THE SALE OF SAID LOT TO THE HOTEL DEVELOPER AND AUTHORIZING THE BOARD PRESIDENT TO EXECUTED NECESSARY INSTRUMENTS.

WHEREAS, the Development Corporation Act of 1979, codified as Title 12 Subtitle C-1 Texas Local Government Code (the "Act") authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct Incentive or make expenditures on behalf of a business enterprise under a project; and

WHEREAS, Section 501.158 of the Act requires a performance agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct Incentives provided or expenditures made by the corporation under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the Performance Requirements specified in the agreement; and

WHEREAS, the Burnet Economic Development Corporation owns and possess that certain approximately 2.86 acres legally described as Lot 1B of the Replat of the Crossings at 281 Subdivision recorded as Document No. 202304945 on May 24, 2023, in the Public Records of Burnet County Texas (the "Land"); and

WHEREAS, the Board of Directors by this resolution take formal action to approve a real estate escrow agreement with the developer of a Hotel and approve a Performance Agreement incentivizing the development of a Hotel Project (the "Project") by refunding the real property purchase price of \$436,000.00 to the developer upon the City's issuance of a certificate of occupancy for the Hotel; and

WHEREAS, said Performance Agreement requires the Hotel to provide approximately 87 guest rooms, a swimming pool and other amenities at a total cost for construction, finish out and furnishing of \$13,000,000.00; and

WHEREAS, in accordance with Sec. 505.158(a) Texas Local Government Code, the board of directors conducted a public hearing before passage of this resolution.

WHEREAS, in accordance with Sec. 505.158(b) Texas Local Government Code, this resolution shall become effective upon City Council's authorization of the Project by passage of a resolution on two readings;

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

Section one. Findings. The recitals to this resolution are deemed to be the true and correct findings of the board of directors and are incorporated herein for all purposes.

Section two. Declaration. The Project describe in the recitals is declared to be an Economic Development Project under the Act.

Section three. Approval. The documents attached hereto as the “*Unimproved Commercial Property Contract*”, “*Special Warranty Deed*” and the “*Performance Agreement*” are hereby approved and said documents are hereby incorporated herein for all purposes. Pursuant to the terms of the Unimproved Commercial Property Contract the sale of the Land is approved. Pursuant to the terms of the Performance Agreement the development of the hotel described therein is designated as a Project that shall be eligible to receive the economic incentives pursuant to the terms described in the Performance Agreement.

Section four. Authorization. On or after the Effective Date, the board president is hereby authorized to execute documents substantially similar in form to the documents identified in section one, above, as the “*Performance Agreement*” and “*Unimproved Commercial Property Contract*”. The board president is hereby authorized to execute a document substantially similar in form to the document identified in section one, above, as the “*Special Warranty Deed*” upon Developer’s fulfillment of all buyer’s obligations under the *Unimproved Commercial Property Contract* and there are no other impediments to the closing on the transaction. Further, the board president is authorized to execute such ancillary documents and take such actions as may be reasonably necessary to facilitate the purpose of this resolution.

Section five. Effective Date. This resolution shall be effective immediately upon passage and approval of the second reading of Resolution No. 2023-42 by City Council.

Passed and Approved by the Board of Directors of the Burnet Economic Development Corporation this the 13th day of June 2023.

THE BURNET ECONOMIC DEVELOPMENT CORPORATION

Cary Johnson, President

ATTEST:

Kelly Dix, City Secretary

THE STATE OF TEXAS §

Know all persons by these presents:

COUNTY OF BURNET §

PERFORMANCE AGREEMENT

This Performance Agreement is entered into to be effective as of the ____ day of _____, 2023, by and between the Burnet Economic Development Corporation, located in Burnet County, Texas, a Texas non-profit corporation incorporated under the TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act, and TEKMAK Burnet Hotel, LP, a Texas Limited Partnership formed under the laws of the State of Texas.

RECITALS

WHEREAS, the Act authorizes a development corporation to fund certain projects as defined by the Act and requires development corporations to enter into performance agreements to establish and provide for the direct incentive or make expenditures on behalf of a business enterprise under a project; and

WHEREAS, Section 501.158 of the Act requires a performance agreement to provide at a minimum for a schedule of additional payroll or jobs to be created or retained and capital investment to be made as consideration for any direct incentives provided or expenditures made by the corporation under the agreement and to specify the terms under which repayment must be made if the business enterprise does not meet the performance requirements specified in the agreement; and

WHEREAS, development of the Hotel, as proposed in this Agreement, will contribute to the Economic Development of the City of Burnet by creating new jobs, promoting and developing a new business enterprise, and tax revenue for the City of Burnet; as well as increasing property values and marketability of the lots within The Crossing at 281 Subdivision still held by the Corporation; and

WHEREAS, development of said Hotel, will therefore have both a direct and indirect positive overall improvement/stimulus in the local and state economy;

WHEREAS, Corporation desires to offer incentives to Developer to enable Developer to develop the Hotel pursuant to this Agreement in substantial conformity with the City of Burnet's economic development plan and the Act; and

WHEREAS, Corporation and Developer are executing and entering into this Agreement to set forth certain terms and obligations of the Corporation and Developer with respect to such matters; and

WHEREAS, the Parties recognize that all agreements of the Parties hereto and all terms and provisions hereof are subject to the laws of the State of Texas and all rules, regulations and interpretations of any agency or subdivision thereof at any time governing the subject matters hereof; and

WHEREAS, the Parties agree that all conditions precedent for this Agreement to become a binding agreement have occurred and been complied with, including all requirements pursuant to the Texas Open Meetings Act and all public notices and hearings; if any, have been conducted in accordance with Texas law; and

WHEREAS, on the Effective Date, the commitments contained in this Agreement shall become legally binding obligations of the Parties.

NOW, THEREFORE, in consideration of the mutual covenants, benefits and agreements described and contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and further described herein, Corporation, and Developer agree as follows:

Article One. Authorization

This Agreement is made pursuant to and is authorized by the Act.

Article Two. Term

Section 2.1 Term. Unless otherwise terminated as provided herein, this Agreement will terminate Five (5) years after Developer's Receipt of the Incentive.

Section 2.2 Failure to Close. If Developer fails to close on the purchase of the Real Property in accordance with the terms and conditions of the Unimproved Property Contract; such failure shall cause this Agreement to terminate and neither Party shall have any further obligation to the other under this Agreement.

Article Three. Purpose

The purpose of this Agreement is to formalize agreements between Developer and the Corporation regarding the terms and conditions by which Developer shall be entitled to receive the Incentive for the construction and operation of the Hotel, including the remedies to the Corporation should Developer's Performance Requirements not be met in whole or part.

Article four. Definitions

Capitalized terms and their definitions apply as follows:

Performance Agreement

“Actual Completion Date” means the actual Hotel Completion Date, which shall be on or before the Completion Date as defined herein.

“Agreement” means this Performance Agreement.

“Board” means the Corporation’s Board of Directors.

“City” means the city of Burnet, Burnet County, Texas.

“C of O” means a final certificate of occupancy issued through the City’s Development Services Department.

“Completion Date” means the date by which the Hotel shall be required to receive a final certificate of occupancy and is open for business to the general public.

“Corporation” means the Burnet Economic Development Corporation acting through its board of directors.

“Developer” means TEKMAK Burnet Hotel, LP a Texas Limited Partnership.

“Effective Date” means the date the Agreement becomes binding on the Parties such date stated in the first paragraph of this Agreement.

“Full-time Equivalent Employee” means: (i) an employee with a regular work schedule of at least 32 hours per week; or (ii) part-time employees with a regular work schedule that in the aggregate work at least 32 hours per week.

“Hotel” means a TownePlace Suites by Marriott Hotel, as more particularly described in in Exhibit “A”.

“Jobs Creation/Retention Report” means a report approved by the Corporation, showing the number of Full-time Equivalent Employees working at the Hotel during the year for which the report was created.

“Maximum Incentive Amount” means the maximum amount of incentive the Developer may receive under this Agreement.

“Purchase Price” means the amount of money Developer paid to Corporation to purchase the Real Property, which is \$436,037.00.

“Parties” means the Corporation and Developer collectively.

“Real Property” means **Lot 1B** of the **Replat of The Crossings at 281 Subdivision Lot 1, Block A** recorded as Document No. 202304945 on May 24, 2023, in the Public Records

of Burnet County Texas, as further described and contemplated under the Unimproved Commercial Property Contract attached hereto as Exhibit "B".

"Required Minimum Investment" means the amount Developer shall spend (in equity or in borrowed funds) to build, finish out, furnish, and equip the Hotel. Developer's required minimum investment amount is stated in article six.

"The Act" means the Development Corporation Act of 1979, as codified in Title 12, Subtitle C1 Texas Local Government Code as same may be amended from time to time.

"Unimproved Commercial Property Contract" means the agreement the Parties shall enter to facilitate the conveyance of the Real Property, the form of which shall substantially comply with Exhibit "B".

Article five. The Incentive.

Section 5.1 Incentive. In consideration for Developer's completion of the Hotel on or before the Completion Date at a cost equal to or more than Developer's Required Minimum Investment the Corporation shall reimburse to Developer the full Purchase Price amount within thirty (30) days of request (the "Incentive"). However, the failure of the Developer to complete construction of the Hotel on or before the Completion Date at a cost equal to or more than Developer's Required Minimum Investment shall cause the Developer to forfeit any right to the Incentive under this Agreement; and in such case, the Agreement shall immediately terminate and neither Party shall have any further obligation hereunder.

Section 5.2 Maximum Incentive Amount. Notwithstanding any provision in this Agreement to the contrary, the Maximum Incentive Amount Developer may receive under this Agreement shall not exceed the Purchase Price.

Article six. Developer's Performance Obligations.

Section 6.1 The Hotel.

- (a) *Description of the Hotel.* As more particularly described in Exhibit "A", the scope of the project is the development of a Hotel with no less than Eighty-even (87) guestrooms furnished and maintained to the standard of a TownePlace Suites by Marriott hotel; and which shall include at least the amenities that follow: A pool, 3,000 square feet of special event/meeting space, complimentary hot breakfast, and internet access in-room and throughout hotel. Guest rooms offer spacious suites with full kitchens, closet systems and dedicated home office space.
- (b) *Completion Date.* The Parties agree that the Completion Date shall be June 1, 2026.

- (c) *Required Minimum Investment.* Developer will expend at least Thirteen Million 00/100 Dollars (\$13,000,000.00) of Developer's own funds or borrowed funds to build, finish out, furnish, and equip the Hotel.
- (d) *Development and Construction.* The Hotel shall be completed in one phase and, subject to Force Majeure, the Hotel shall be fully developed on or before the Completion Date.

Section. 6.2 Utilization of Local Contractors and Suppliers. Intentionally Deleted.

Section 6.3 Minimum Job and Salary Requirements. Developer commits, that within six (6) months after the Actual Hotel Completion Date to the occurrence of the following:

- (a) *Full-time Equivalent Employees:* a minimum of Ten (10) Full-time Equivalent Employees shall be employed at the Hotel. Any support staff or other employees that do not report to work at the Hotel shall not be counted towards this minimum Full-time Equivalent Employees requirement; and
- (b) *Annual Payroll:* Intentionally deleted.

During each year during the Term of this Agreement, Developer shall comply with the Full-time Equivalent Employees requirements stated herein.

Section 6.4 Required Reporting.

- (a) *Construction Cost Reports.* Within 60 days after the Actual Completion Date, Developer shall submit a final detailed cost breakdown detailing all costs incurred by Developer in building, finishing out, furnishing, and equipping the Hotel. The final report, subject to verification, shall be the basis for determining if Developer's Required Minimum Investment was achieved.
- (b) *Annual Reports.* The Developer shall submit an annual Jobs Creation/Retention Report. This Report may redact any employee-specific name, address, or full social security number in order to protect employee's privacy.

Section 6.5 Additional Information and Privacy.

- (a) *Maintenance of Records.* Developer shall be responsible for maintaining records evidencing compliance with all of Developer commitments required by this Agreement, during its entire term, and shall make such records available to the Corporation for examination at the Corporation's reasonable request within five business days of receipt of the request. All information required by this Agreement

shall be submitted to the City Manager at the address specified for giving notice in this Agreement.

- (b) *Privacy.* All information provided by Developer to Corporation under the required reporting section shall be deemed confidential and shall not be provided to any person outside City government, the Board, or its employees, and shall not be subject to public inspection in accordance with the exception provided in the Texas Public Information Act (section 552.110 Texas Government Code). In the event a request is made for such information, Corporation will not disclose the information unless required to do so by the Attorney General of Texas.

Section 6.6 Indebtedness Incurred by Developer. The payment of all indebtedness and obligations incurred by Developer in connection with the development and construction of the Hotel and the operation of the Hotel shall be solely the obligations of Developer. Corporation shall not be obligated to pay any indebtedness or obligations of Developer.

Article Seven. Zoning and Platting.

Section 7.1 Zoning.

The Real Property is currently assigned the zoning classification Commercial “C-3”. The operation of a Hotel is a permitted use in the Commercial “C-3” District.

Section 7.2 Subdivision Plat. Intentionally deleted.

Article eight. Conveyance of the Real Property.

Section 8.1 Market Value of the Property. The Parties agree that the market value of the Real Property is Four-Hundred Thirty-Six Thousand and Thirty-Seven Dollars (\$436,037.00).

Section 8.2 Unimproved Property Contract. Within 10 days after the date of execution of this Agreement by the Corporation and Developer shall execute an Unimproved Property Contract in substantial compliance with Exhibit “B”, which, with the escrow money, shall be escrowed with the Title Company pursuant to the terms of the Unimproved Property Contract.

Section 8.3 Closing on the Unimproved Property Contract. Closing on the Unimproved Property Contract shall occur when all conditions for closing set out in the Unimproved Property Contract have occurred.

Article nine. Penalties for Failure to Comply with Obligations.

Section 9.1. Hotel Completion Date Requirement. Should Developer fail to obtain a C of O on or before the Completion Date, for reasons other than delays resulting from “Force Majeure” events, Developer shall forfeit the right to receive the incentive and this Agreement shall terminate immediately and neither Party shall have any further obligation to the other upon such termination.

Section 9.2 Minimum Investment. If upon the Completion Date the Developer’s actual cost of building, finishing out, furnishing and equipping the Hotel is less than Developer’s Required Minimum Investment Amount, Developer shall forfeit the right to receive the incentive and this Agreement shall terminate immediately and neither Party shall have any further obligation to the other upon such termination.

Section 9.3 Jobs. Beginning the first calendar year at least six months after the Actual Hotel Completion Date, should Developer, in any year during the term of this Agreement, fail to meet the minimum Full-time Equivalent Employees requirements, for that year, Developer shall be required to pay Corporation One Thousand and 00/100 Dollars (\$1,000.00) per employee below the Minimum Full-time Equivalent Employees number. For example, should the Minimum Full-time Equivalent Employees number be 10 and Developer reports a total of 8 Full-time Equivalent Employees for any given year Developer shall be required to pay to Corporation Two Thousand and 00/100 Dollars (\$2,000.00).

Section 9.4 Payroll. Intentionally deleted.

Section 9.5 Penalty Payment Due. Any payment that becomes due under this Section shall be due 30 days after written demand by the Corporation and the past dues amount shall be subject to interest at the highest rate authorized by law.

Section 9.6 Maximum Penalty. The maximum cumulative penalty Developer shall be obligated to pay under this Section shall not exceed the amount of the Incentive received by Developer.

Article ten. Indemnification

IT IS UNDERSTOOD AND AGREED BETWEEN THE PARTIES THAT THE DEVELOPER, IN PERFORMING ITS OBLIGATIONS HEREUNDER, IS ACTING INDEPENDENTLY, AND THE CORPORATION AND CITY ASSUMES NO RESPONSIBILITY OR LIABILITY IN CONNECTION THEREWITH AND DEVELOPER AGREES TO INDEMNIFY AND HOLD HARMLESS THE CORPORATION AND CITY, THEIR OFFICERS, AGENTS, AND EMPLOYEES, AGAINST ANY AND ALL CLAIMS, LAWSUITS, JUDGEMENTS, COSTS AND EXPENSES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON EXPENSES OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT, SUFFERED BY ANY PERSON OR PERSONS THAT MAY

ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICER, AGENTS, ASSOCIATES, EMPLOYEES OR SUB-CONSULTANTS, IN THE PERFORMANCE OF THIS AGREEMENT; THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL APPLY TO ANY LIABILITY RESULTING FROM THE JOINT AND CONCURRENT NEGLIGENCE OF THE DEVELOPER, THE CITY AND THE CORPORATION; HOWEVER, THE INDEMNITY PROVIDED FOR IN THE PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OF CORPORATION OR THE CITY AND THEIR OFFICER, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND NOTHING HEREIN SHALL BE CONSTRUED AS A WAIVER ANY GOVERNMENTAL IMMUNITY AVAILABLE TO THE CORPORATION OR THE CITY UNDER TEXAS LAW. THE PROVISIONS OF THIS PARAGRAPH ARE SOLELY FOR THE BENEFIT OF THE PARTIES HERETO AND NOT INTENDED TO CREATE OR GRANT ANY RIGHTS, CONTRACTUAL OR OTHERWISE, TO ANY OTHER PERSON OR ENTITY.

Article eleven. Miscellaneous.

This Agreement shall be subject to the terms and conditions which follow:

Section 11. 1. Additional Instruments. City and Developer agree and covenant to cooperate, negotiate in good faith, and to execute such other and further instruments and documents as may be reasonably required to fulfill the public purposes provided for and included within this Agreement.

Section 11.2. Amendments. This Agreement constitutes the entire understanding and agreement of the Parties as to the matters set forth in this Agreement. No alteration or amendment to this Agreement shall be effective unless given in writing and signed by the Party or Parties sought to be charged or bound by the alteration or amendment.

Section 11.3. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to choose-of-law rules of any jurisdiction.

Section 11. 4. Attorney's Fees. In any action or proceeding brought to enforce any provision of this Agreement or where any provision hereof is validly asserted as a defense, the successful party shall, to the extent permitted by applicable law, be entitled to recover reasonable attorney's fees and costs.

Section 11.5. Assignment. Developer understands and agrees that City expressly prohibits Developer from selling, transferring, assigning or conveying in any way any rights to receive the proceeds under this Agreement without City's prior written consent.

Section 11.6. Binding Obligation. This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The City warrants and represents that the individual executing this Agreement on behalf of the City has full authority to execute this Agreement and bind the City to the same. Developer warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind it to the same.

Section 11.7. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute one and the same document.

Section 11.8. Construction. The Parties acknowledge that the Parties and their counsel have reviewed and revised the Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of the Agreement.

Section. 11.9. Enforcement. The City Manager or his or her designee may enforce all legal rights and obligations under this Agreement without further authorization.

Section 11.10. Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement, except as provided for in any Exhibits attached hereto or duly approved amendments to this Agreement, as approved by the City Council.

Section 11.11. Exhibits Addenda, and Attachments. All Exhibits, Addenda and Attachments referenced in this Agreement are attached hereto and incorporated herein for all purposes. Exhibits to this Agreement include the following:

Exhibits:

Exhibit "A"	Description of the proposed Hotel.
Exhibit "B"	Unimproved Commercial Property Contract.

Section 11.12. Force Majeure. It is expressly understood and agreed by the Parties to this Agreement that if the performance of any obligations hereunder is delayed by reason of war, civil commotion, acts of God, inclement weather, fire or other casualty, or court injunction, inability to obtain labor or materials or reasonable substitutes therefore, governmental restrictions, governmental regulations, governmental controls, governmental action, delay in issuance of permits or approvals (including, without limitation, fire marshal approvals), enemy or hostile governmental action, civil commotion, fire or other casualty, and other causes beyond the reasonable control of the obligated party and delays caused by the other party, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such

obligation or requirement shall be extended for a period of time equal to the period such party was delayed.

Section 11.13. Gender. The gender of the wording throughout this Agreement shall always be interpreted to mean either sex; or, where the context requires, the plural of any word shall include the singular.

Section 11.14. Immunities and defenses.

- (a) By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of parties, and nothing contained herein shall ever be construed as a waiver of sovereign, statutory or official immunity by the Corporation with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
- (b) No officer of the Corporation, employee of City or any councilmember or agent of City shall be personally responsible for any liability arising under or growing out of this Agreement.

Section 11.15. Mutual Assistance. City and Developer will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

Section 11.16. No Joint Venture. Nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. It is understood and agreed that this Agreement does not create a joint enterprise, nor does it appoint either Party as an agent of the other for any purpose whatsoever. Except, as otherwise specifically provided herein, neither Party shall in any way assume any of the liability of the other for acts of the other or obligations of the other.

Section. 11.17. Notices. Any notice, statement and/or communication required and/or permitted to be delivered hereunder shall be in writing and shall be mailed by first-class mail, postage prepaid, or delivered by hand, by messenger, by facsimile, or by reputable overnight carrier, and shall be deemed delivered when received at the addresses of the Parties set forth below, or at such other address furnished in writing to the other Parties thereto:

DEVELOPER: TEKMAK Development
 3021 Ridge Rd, A-120
 Rockwall, TX, 75032
 Telephone: (214) 802-2964

CORPORATION Burnet Economic Development Corporation
% City Manager
City of Burnet
P.O. Box 1369
1001 Buchanan Drive, Suite 4
Burnet, Texas 78611
Telephone: (512) 715-3208
Facsimile: (512) 756-8560

Section 11.18. Remedies. The Corporation's remedies for Developer's failure to comply with any obligation set forth in this Agreement are prescribed and limited to the remedies set forth under article nine herein. The Developer's remedies for Corporation's failure to comply with any obligation set forth in this Agreement are prescribed and limited to the remedies set forth under this section. Such remedies shall be limited to the enforcement of this Agreement by bringing an action for specific performance. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COST OF COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT.

Section 11.19. Severability. In the event any provision of this Agreement is illegal, invalid, or unenforceable under the present or future laws, then, and in that event, it is the intention of the Parties hereto that the remainder of this Agreement shall not be affected thereby, and it is also the intention of the Parties to this Agreement that in lieu of each clause or provision that is found to be illegal, invalid, or unenforceable a provision be added to this Agreement which is legal, valid and enforceability and is a similar in terms as possible to the provision found to be illegal, invalid or unenforceable.

Section 11.20. Survival of Covenants. Any of the representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, pertaining to a period of time following the termination of this Agreement shall survive termination.

Section 11.21. Undocumented Workers. Developer covenants and certifies that it does not and will not knowingly employ any undocumented worker as that term is defined by Section 2264.001(4) of the Texas Government Code. In accordance with Section 2264.052 of the Texas Government Code, if Developer is convicted of a violation occurring under 8 U.S.C. Section 1324A(F), Developer shall repay to the Corporation the full amount of the Reimbursement made under this Agreement, plus ten percent (10%) per annum penalty fee from the date the payment was made. Repayment shall be paid within one hundred twenty (120) days after Developer receives written notice of violation from the Corporation.

Section 11.22. Venue. All obligations of the Parties created hereunder are performable in Burnet County, Texas; and, therefore, any action arising under this Agreement shall lie in a court of competent jurisdiction in said county.

Section 11.23. Waiver. The failure of any party to insist in any one or more instances on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights, shall not be construed as a waiver or relinquishment of such term, covenant, or condition, or right with respect to further performance.

Remainder of this page was intentionally left blank. Signatures follow on the next page.

Performance Agreement

EXECUTED to be effective as of the date first stated above.

BURNET ECONOMIC DEVELOPMENT CORPORATION:

By: _____
Cary Johnson, President

ATTEST:

By: _____
Kelly Dix, Secretary

DEVELOPER: TEKMAK DEVELOPMENT COMPANY

By: _____
Glenn Decker, Manager

Exhibit “A”
Description of the Proposed Hotel

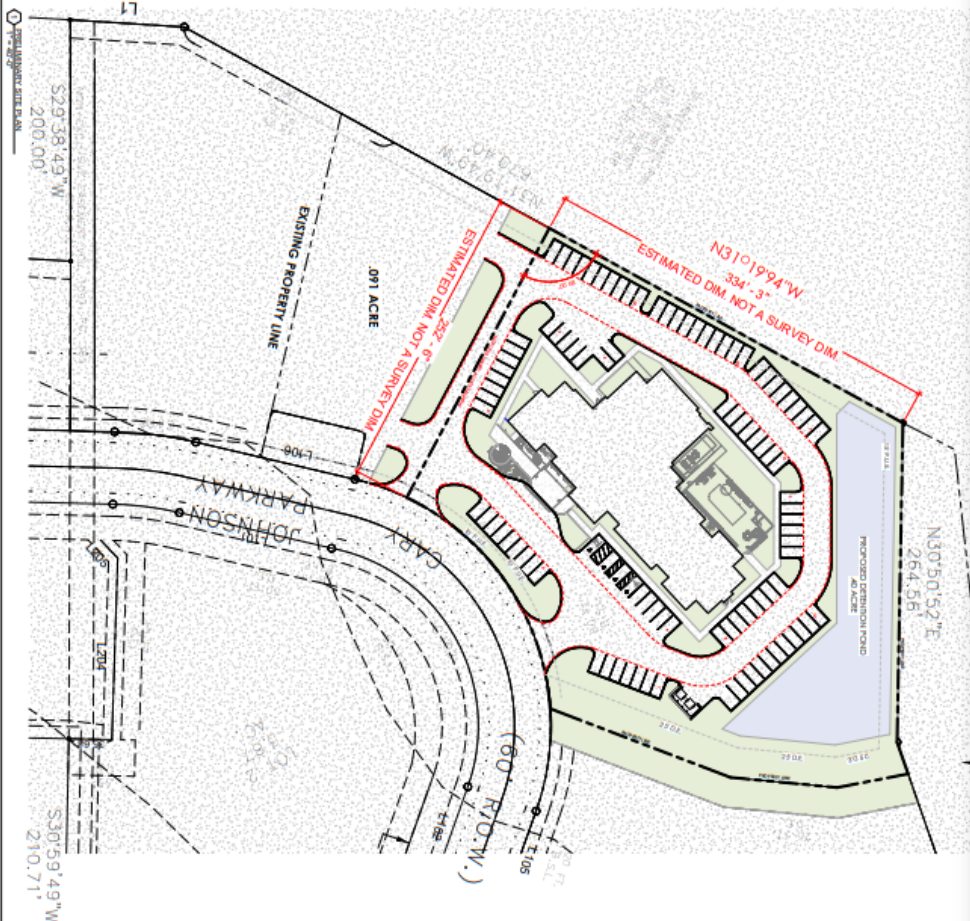


*Subject to Architectural Control Committee Approval

CONCEPTUAL SITE PLAN

BURNETT TEXAS

PROPOSED HOTEL DEVELOPMENT



AREA MAP:



OWNER INFORMATION:

PROPERTY OWNER: TEKMAK Development
EMAIL: tekma@tekmadevelopment.com

SITE INFORMATION:

PROPOSED ACREAGE: 2.859 ACRES

HOTEL INFORMATION:

TOWNPLACE SUITES BY MARRIOTT

4 STORY HOTEL

487 GUESTROOMS

2,000 SF MEETING ROOM

BUILDING SF:

BUILDING FOOTPRINT: 217,809 SQFT

FULLY SPRINKLED - NFPA 113

OCCUPANCY: RT HOTEL AND NON SEPARATED USES

TYPE V-A WOOD FRAMED CONSTRUCTION

PARKING SUMMARY:

1 PER GUESTROOM AND 1 FOR EACH 2 EMPLOYEES

PARKING REQUIRED: 497

PARKING PROVIDED: 103

THIS DOCUMENT IS
INCOMPLETE AND MAY
NOT BE USED FOR
REGULATORY APPROVAL,
PERMIT, OR
CONSTRUCTION.
HAYES HINKLE
28067

CONFIDENTIAL



Performance Agreement

Exhibit “B”
Unimproved Commercial Property Contract

UNIMPROVED COMMERCIAL PROPERTY CONTRACT

1. **PARTIES:** The parties to this contract are the Burnet Economic Development Corporation, a Texas non-profit corporation incorporated under the TEX. LOC. GOV. CODE chapters 501, 502 and 505 and the Texas Non-Profit Corporation Act, (hereinafter called "Seller") and TEKMAK Burnet Hotel, LP, a Texas Limited Partnership formed under the laws of the State of Texas (hereinafter called "Buyer"). Seller agrees to sell and convey to Buyer and Buyer agrees to buy from Seller the Property defined below.
2. **PROPERTY:** As more particularly described in Exhibit "A", approximately 2.86 acres located within the corporate limits of the City of Burnet, Burnet County Texas, described as **Lot 1B of the Replat of The Crossings at 281 Subdivision Lot 1, Block A** recorded as Document No. 202304945 on May 24, 2023, in the Public Records of Burnet County Texas, together with all rights, privileges and appurtenances pertaining thereto, including but not limited to: claims, permits, strips and gores, easements, and cooperative or association memberships; save and except water rights, which have been severed from the Property by separate instrument.
3. **SALES PRICE:** Four Hundred Thirty-Six Thousand Thirty-Seven Dollars and no cents (\$436,037.00) (hereinafter the "Purchase Price").
4. **EARNEST MONEY:** Upon execution of contract by all parties, Buyer shall deposit Ten-Thousand Dollars and no cents (\$10,000.00) as Earnest Money with Attorney Abstract and Title Company, Attn: Trudy Collier, 117 E. Jackson Street, Burnet, TX 78611. If Buyer fails to deposit the Earnest Money within three days of Sellers deliver of this contract, Seller's offer to sell the Property shall be withdrawn, this Agreement shall not be effective and the Escrow Agent shall not accept the late deposit of the Earnest Money.
5. **TITLE POLICY AND SURVEY:**
 - A. **TITLE POLICY:** At closing Seller shall, at its sole costs, provide an Owner's Policy of Title Insurance by Title Company, as agent for Underwriter, or directly by Underwriter.
 - B. **COMMITMENT:** Seller shall, within 20 days of the Effective Date, provide to Buyer a Commitment for Issuance of an Owner Policy of Title Insurance by Title Company, as agent for Underwriter, or directly by Underwriter, stating the condition of title to the Land. The "effective date" stated in the Title Commitment must be after the Effective Date of this contract.
 - C. **SURVEY:** Seller shall, within 20 days of the Effective Date at its sole costs, obtain an on-the-ground, staked plat of survey and metes-and-bounds description of the Property, prepared by a surveyor satisfactory to Title Company, dated after the Effective Date, and certified to: Seller, Buyer, and Title Company, to comply with the current standards and specifications as published by the Texas Society of Professional Surveyors for the Survey Category required for Title Company to issue an Owner's Policy.

D. **OBJECTIONS:** Buyer shall have 20 days after the later of Buyer's receipt of the Title Commitment and a copy of the Survey ("Title Objection Deadline") to review the Survey, Title Commitment, and legible copies of the title instruments referenced in them and notify Seller of Buyer's objections to any of them ("Title Objections"). Buyer will be deemed to have approved all matters reflected by the Survey, and Title Commitment, to which Buyer has made no Title Objection by the Title Objection Deadline. The matters that Buyer either approves or is deemed to have approved are "Permitted Exceptions." If Buyer notifies Seller of any Title Objections, Seller has five days from receipt of Buyer's notice to notify Buyer whether Seller agrees to cure the Title Objections before closing ("Cure Notice"). If Seller does not timely give its Cure Notice or timely gives its Cure Notice but does not agree to cure all the Title Objections before closing, Buyer may, within five days after the deadline for the giving of Seller's Cure Notice, notify Seller that either this contract is terminated or Buyer will proceed to close, subject to Seller's obligations to remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date, and cure only the Title Objections that Seller has agreed to cure in the Cure Notice. At or before closing, Seller must remove all liquidated liens, remove all exceptions that arise by, through, or under Seller after the Effective Date of this contract, and cure the Title Objections that Seller has agreed to cure.

E. **TITLE NOTICES:**

- i. **ABSTRACT OR TITLE POLICY:** Buyer is advised to have the Title Policy Commitment reviewed by an attorney of Buyer's choice due to the time limitations on Buyer's right to object.
- ii. **MEMBERSHIP IN PROPERTY OWNERS ASSOCIATION(S):** The Property is subject to a Declaration of Covenants, Conditions, and Restrictions filed as Document No. 202206551 of the Public Records of Burnet County, Texas. Said declaration requires mandatory membership in the property owners association established thereby.
- iii. **STATUTORY TAX DISTRICTS:** The Property is not situated in a utility or other statutorily created district providing water, sewer, drainage, or flood control facilities and services, as those terms are reference in Texas Water Code Chapter 49.
- iv. **TIDE WATERS:** The Property does not abut tidally influenced waters of the state, as such term is referenced in Texas Natural Resources Code §33.135.
- v. **ANNEXATION:** The Property is located within the corporate limits of the City of Burnet, Burnet County, Texas.
- vi. **PROPERTY LOCATED IN A CERTIFIED SERVICE AREA OF A UTILITY SERVICE PROVIDER:** Notice required by §13.257, Water Code: The Property's water or sewer service is provided by the City of

Burnet and Buyer agrees to inquiry with the City regarding any conditions of service.

- vii. **PUBLIC IMPROVEMENT DISTRICT:** The Property is not in a Public Improvement District, as term is referenced in the Texas Property Code §5.014.
- viii. **TEXAS AGRICULTURAL DEVELOPMENT DISTRICT:** The property is not located in a Texas Agricultural District. (ix) **TRANSFER FEES:** The Property is not subject to a private transfer fee obligation as such term is referenced in Texas Property Code §5.205.
- ix. **PROPANE GAS SYSTEM SERVICE AREA:** The Property is not located in a propane gas system service area owned by a distribution system retailer, as such term is referenced in Texas Utilities Code §141.010.

6. FEASIBILITY:

- A. **FEASIBILITY PERIOD:** Buyer's feasibility period shall begin on the Effective Date and shall end 90 days after the Effective Date.
- B. **BUYER'S RIGHT TO TERMINATE DURING FEASIBILITY PERIOD:** During the Feasibility Period Buyer may, at its sole discretion, terminate this Agreement, for any reason; and, should Buyer timely exercise its right to terminate, as evidenced by written notification to the Corporation then neither Party shall have any further obligation to the other under this Contract. If Buyer terminates this contract before the end of the Feasibility Period, then unless Seller delivers notice of Seller's objection to Title Company's release of the Earnest Money to Buyer within five days after Buyer delivers Buyer's termination notice to Seller and Title Company, Title Company is authorized, without any further authorization from Seller, to deliver the Earnest Money to Buyer, less \$100, which will be paid to Seller as consideration for the right granted by Seller to Buyer to terminate this contract.

7. PROPERTY CONDITION:

- A. **ACCESS, INSPECITONS AND UTILITES:** Seller shall permit Buyer and Buyer's agents access to the Property at reasonable times. Buyer may have the Property inspected by inspectors selected by Buyer who are permitted by law to make inspections. **NOTICE:** Buyer should determine the availability of utilities to the Property suitable to satisfy Buyer's needs.
 - i. **Buyer's Indemnity and Release of Seller**
 - a. **Indemnity.** To the fullest extent authorized by law, Buyer will indemnify, defend, and hold Seller harmless from any loss, attorney's fees, expenses, or claims arising out of Buyer's investigation of the Property, except those arising out of the acts or omissions of Seller and those for repair or remediation of existing conditions discovered by Buyer's inspection. The obligations of

Buyer under this provision will survive termination of this contract and closing.

- b. Release. Buyer releases Seller and those persons acting on Seller's behalf from all claims and causes of action (including claims for attorney's fees and court and other costs) resulting from Buyer's investigation of the Property.

- B. ACCEPTANCE OF PROPERTY CONDITION: "As Is" means the present condition of the Property with any and all defects and without warranty except for the warranties of title and the warranties in this contract. Buyer accepts the Property As Is. Buyer further agrees to accept the special warranty deed with the provision set out below:

GRANTEE ACKNOWLEDGES AND AGREES THAT THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS-IS" CONDITION AND BASIS WITH ALL FAULTS, GRANTEE HEREBY WAIVES, RELEASES, ACQUITS AND FOREVER DISCHARGES GRANTOR, GRANTOR'S EMPLOYEES, AGENTS AND ANY OTHER PERSON ACTING ON BEHALF OF GRANTOR, OF AND FROM ANY CLAIMS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, LIABILITIES, COST AND EXPENSES WHATSOEVER (INCLUDING COURT COSTS AND ATTORNEY'S FEES), DIRECT OR INDIRECT, KNOWN OR UNKNOWN, OR FORESEEN OR UNFORESEEN, WHICH GRANTEE NOW HAS OR WHICH MAY ARISE IN THE FUTURE, ON ACCOUNT OF OR IN ANY WAY GROWING OUT OF OR IN CONNECTION WITH THE PHYSICAL CONDITIONS OF THE PROPERTY OR ANY LAW, STATUTE, ORDINANCE, RULE OR REGULATIONS OF ANY GOVERNMENTAL OR QUASI-GOVERNMENTAL AUTHORITY APPLICABLE THERETO.

GRANTEE ACKNOWLEDGES AND AGREES THAT GRANTOR HAS NOT MADE, DOES NOT MAKE ANY AGREEMENTS OR GUARANTEES OF ANY KIND OR CHARACTER WHATSOEVER, WHETHER EXPRESS RESPECT TO (A) THE NATURE, QUALITY OR CONDITION OF THE PROPERTY, INCLUDING, WITHOUT LIMITATION, THE WATER, SOIL AND GEOLOGY, (B) THE INCOME TO BE DERIVED FROM OR THE EXPENSES GENERATED BY THE PROPERTY, (C) THE SUITABILITY OF THE PROPERTY FOR ANY AND ALL ACTIVITIES AND USED WHICH BUYER MAY CONDUCT THEREON, (D) THE COMPLIANCE OF OR BY THE PROPERTY FOR ITS OPERATION WITH ANY LAWS, RULES. ORDINANCE (INCLUDING ZONING ORDINANCE, IF ANY) OR REGULATIONS OF ANY APPLICABLE GOVERNMENTAL AUTHORITY OR BODY, (E) THE HABITABILITY, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE PROPERTY, OR (E) ANY OTHER MATTER WITH RESPECT TO THE PROPERTY, AND SPECIFICALLY, REPRESENTATIONS REGARDING ANY HAZARDOUS SUBSTANCE OR TOXIC MATERIALS (INCLUDING ANY ASBESTOS, UNDERGROUND STORAGE TANKS OR ANY OTHER SUBSTANCE WHICH IS PROHIBITED BY STATE OR

FEDERAL LAW), OR SOLID WASTE AS DEFINED BY THE COMPREHENSIVE ENVIRONMENTAL RESPONSE COMPENSATION AND LIABILITY ACT OF 1980, AS AMENDED AND REGULATIONS PROMULGATED THEREUNDER. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT GRANTEE IS EXPERIENCED IN THE OWNERSHIP AND OPERATION OF PROPERTIES SIMILAR TO THE PROPERTY; AND, HAVING BEEN GIVEN THE OPPORTUNITY TO INSPECT THE PROPERTY, GRANTEE IS RELYING SOLELY ON ITS OWN INVESTIGATION OF THE PROPERTY AND NOT ON ANY INFORMATION PROVIDED BY GRANTOR. GRANTEE FURTHER ACKNOWLEDGES AND AGREES THAT ANY INFORMATION PROVIDED WITH RESPECT TO THE PROPERTY WAS OBTAINED FROM A VARIETY OF SOURCES AND THAT GRANTOR HAS NOT MADE ANY INDEPENDENT INVESTIGATION OR VERIFICATION OF SUCH INFORMATION AND MAKES NO REPRESENTATIONS AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION.

- C. COMPLETION OF REPAIRS: As the Property is unimproved this Paragraph is not applicable.
- D. ENVIRONMENTAL MATTERS: Buyer is advised that the presence of wetlands, toxic substances, including asbestos and wastes or other environmental hazards, or the presence of a threatened or endangered species or its habitat may affect Buyer's intended use of the Property. If Buyer is concerned about these matters, an addendum promulgated by the Texas Bar Association or otherwise agreed by the parties should be used in lieu of the disclosures stated in section E below.
- E. SELLER'S DISCLOSURES: Except as otherwise disclosed in this contract, Seller has no knowledge of the following:
 - i. any flooding of the Property which has had a material adverse effect on the use of the Property;
 - ii. any pending or threatened litigation, condemnation, or special assessment affecting the Property;
 - iii. any environmental hazards that materially and adversely affect the Property;
 - iv. any dumpsite, landfill, or underground tanks or containers now or previously located on the Property;
 - v. any wetlands, as defined by federal or state law or regulation, affecting the Property; or
 - vi. any threatened or endangered species or their habitat affecting the Property.
- 8. **BROKERS' FEES:** As provided in a separate agreement, Seller shall pay a brokerage fee of 4% to David Drake (agent #531874) an individual whose address is 155 Lake Trail

Drive, Double Oak, TX 75077. Other than the broker's fee so state, neither Buyer nor Seller has engaged a Broker in regards to this transaction. Buyer and Seller each indemnify and agree to defend and hold the other party harmless from any loss, attorney's fees, and court and other costs arising out of a claim by any person or entity claiming by, through, or under the indemnitor for a broker's or finder's fee or commission because of this transaction or this contract, whether the claimant is disclosed to the indemnitee or not.

9. CLOSING:

- A. The closing of the sale shall occur at a mutually agreement time and date within 10 days after the end of Buyer's Feasibility Period.
- B. At closing:
 - i. Seller shall execute and deliver a special warranty deed, in substantial conformance with Exhibit "B", conveying title to the Property to Buyer and showing only the Permitted Exceptions, and shall furnish tax statements or certificates showing no delinquent taxes on the Property.
 - ii. Buyer shall deliver for escrow the balance of the Sales Price.
 - iv. Seller and Buyer shall execute and deliver any notices, statements, certificates, affidavits, releases, loan documents and other documents reasonably required for the closing of the sale.
 - v. The Property will be conveyed to Buyer free and clear of any liens, assessments, or security interests against the Property, but subject to the Permitted Exceptions listed in the Title Commitment.
 - vi. Seller will, at Seller's sole cost, cause the Title Company to issue an owner's title policy in favor of Buyer in the amount of the Purchase Price, insuring Buyer's good and indefeasible title to the Property, subject only to the Permitted Exceptions.

10. POSSESSION:

- A. Buyer's Possession: Seller shall deliver to Buyer possession of the Property in its present condition upon closing.
- B. Leases:
 - i. After the Effective Date, Seller may not execute any lease (including but not limited to mineral leases) or convey any interest in the Property without Buyer's written consent.
 - ii. As of the effective date the Property is not subject to any lease agreements.

11. SPECIAL PROVISIONS:

- A. **PLAT & ZONING REQUIREMENT.** The Property shall be delivered by Seller to Buyer at closing as a platted subdivision lot ready for Buyer's submission of a building permit for the construction of the Hotel, with water and sanitary sewer utilities available at the property line.
- B. **COVENANTS AND CONDITIONS.** A declaration of covenants, conditions, and restrictions is on file as Document No. 202206551 in the Public Records of Burnet County, Texas.
- C. **APPROVALS.** The Execution of this contract on behalf of Seller has been authorized by the Burnet Economic Development Corporation Board of Directors; and by the Seller's Board of Directors.
- D. **RESERVATION.** The Special Warranty Deed shall reserve from conveyance and warranty "water rights" conveyed to the City of Burnet, by that certain Water Deed recorded as Document No. 202304450 in the Public Records of Burnet County, Texas.

12. SETTLEMENT AND OTHER EXPENSES:

- A. The following expenses must be paid at or prior to closing:
 - i. Expenses payable by Seller (Seller's Expenses): Release of existing liens, including prepayment penalties and recording fees; release of Seller's loan liability; tax statements or certificates; preparation of deed; escrow fees; premium for Title Policy; Seller's prorated portion of Ad valorem taxes; Seller's attorney fees and consultant fees; and other expenses payable by Seller under this contract.
 - ii. Expenses payable by Buyer (Buyer's Expenses): Premium for shortage of area endorsement or other endorsements that are not included in the Owner's Policy; all costs incurred by Buyer in obtaining a construction loan to construct the Hotel; Buyer's prorated portion of Ad valorem taxes and special governmental assessments; courier fee; Buyer's attorney fees and consultant fees; and other expenses payable by Buyer under this contract.

13. PRORATIONS AND ROLLBACK TAXES:

- A. **PRORATIONS:** Taxes for the current year, interest, maintenance fees, assessments, dues and rents will be prorated through the Closing Date. The tax proration may be calculated taking into consideration any change in exemptions that will affect the current year's taxes. If taxes for the current year vary from the amount prorated at closing, the parties shall adjust the proration when tax statements for the current year are available. If taxes are not paid at or prior to closing, Buyer shall pay taxes for the current year.
- B. **ROLLBACK TAXES:** Property is not subject to the possible assessment of rollback taxes.

14. **CASUALTY LOSS:** If any part of the Property is damaged or destroyed by fire or other casualty after the effective date of this contract, Seller shall restore the Property to its previous condition as soon as reasonably possible, but in any event by the Closing Date. If Seller fails to do so due to factors beyond Seller's control, Buyer may (a) terminate this contract and the earnest money will be refunded to Buyer (b) extend the time for performance up to 15 days and the Closing Date will be extended as necessary or (c) accept the Property in its damaged condition with an assignment of insurance proceeds and receive credit from Seller at closing in the amount of the deductible under the insurance policy. Seller's obligations under this paragraph are independent of any other obligations of Seller under this contract.
15. **DEFAULT:** If Buyer fails to comply with this contract, Buyer will be in default, and Seller may (a) enforce specific performance, seek such other relief as may be provided by law, or both, or (b) terminate this contract and receive the earnest money as liquidated damages, thereby releasing both parties from this contract. If Seller fails to comply with this contract for any other reason, Seller will be in default and Buyer may (a) enforce specific performance, seek such other relief as may be provided by law or both, or (b) terminate this contract and receive the earnest money, thereby releasing both parties from this contract.
16. **MEDIATION:** It is the policy of the States of Texas to encourage resolution of disputes through alternative dispute resolution procedures such as mediation. Any dispute between Seller and Buyer related to this contract which is not resolved through informal discussion will be submitted to a mutually acceptable mediation service or provider. The parties to the mediation shall bear the mediation costs equally. This paragraph does not preclude a party from seeking equitable relief from a court of competent jurisdiction.
17. **ATTORNEY'S FEES:** A Buyer, Seller, or escrow agent who prevails in any legal proceeding related to this contract is entitled to recover reasonable attorney's fees and all costs of such proceeding.
18. Intentionally deleted.
19. **REPRESENTATIONS:** All covenants, representations and warranties in this contract survive closing. If any representation of Seller in this contract is untrue on the Closing Date, Seller will be in default. Unless expressly prohibited by written agreement, Seller may continue to show the Property and receive, negotiate and accept back up offers.
20. **FEDERAL TAX REQUIREMENTS:** This Paragraph is not applicable as Seller is not a "foreign person," as defined by applicable law.
21. **NOTICES:** All notices from one party to the other must be in writing and are effective when mailed to, hand-delivered at, or transmitted by facsimile as follows:

To Seller at:

BURNET ECONOMIC DEVELOPMENT CORPORATION
Attn. David Vaughn
P. O. Box 1369
Burnet, Texas 78611

Unimproved Property Contract Hotel Project

Telephone: (512) 715-3208
Facsimile: (512) 756-8560
E-mail: dvaughn@cityofburnet.com

To Buyer at:

TEKMAK Development
3021 Ridge Rd, A-120
Rockwall, TX, 75032
Telephone: (214) 802-2964

22. **AGREEMENT OF PARTIES:** This contract contains the entire agreement of the parties and cannot be changed except by their written agreement. Exhibits which are a part of this contract are:
- A. EXHIBIT "A": Description of the Property.
 - B. EXHIBIT "B": Form of Special Warranty deed.
23. **CONSULT AN ATTORNEY BEFORE SIGNING. READ THIS CONTRACT CAREFULLY AND CONSULT WITH YOUR ATTORNEY TO ANSWER ANY QUESTIONS.**

Signature pages to follow:

EXECUTED the ____ day of _____, **2023**. **(EFFECTIVE DATE.)**

SELLER
BURNET ECONOMIC DEVELOPMENT
CORPORATION

By: _____
Cary Johnson, President

BUYER
TEKMAK Burnet Hotel, LP

By: _____
Glenn Decker, Manager

CONTRACT AND EARNEST MONEY RECEIPT

Receipt of Contract and \$10,000.00 Earnest Money in the form of
_____ is acknowledged.

Escrow Agent: Trudy Collier

Date: _____, 2023

By: _____

Attorney Abstract Title Company
117 E. Jackson Street
Burnet, TX 78611

Exhibit “A”

The Property



Exhibit “B”

Warranty Deed

SPECIAL WARRANTY DEED

STATE OF TEXAS §

§

COUNTY OF BURNET §

NOTICE OF CONFIDENTIALITY RIGHTS: 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 NUMBERS OR YOUR DRIVER'S LICENSE NUMBER.

DATE: _____, 2023

GRANTOR: **BURNET ECONOMIC DEVELOPMENT CORPORATION**

GRANTOR'S MAILING ADDRESS: **1001 BUCHANAN DRIVE, SUITE 4
BURNET, BURNET COUNTY, TEXAS 78611**

GRANTEE: **TEKMAK Burnet Hotel, LP**

GRANTEE'S MAILING ADDRESS:

CONSIDERATION: Ten dollars cash in hand received and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged.

PROPERTY (INCLUDING ANY IMPROVEMENTS): Being approximately _____ acres of real property designated as Lot 1B of the Replat of The Crossings at 281 Subdivision Lot 1, Block A recorded as 202304945 on May 24, 2023, in the Public Records of Burnet County Texas.

RESERVATIONS FROM CONVEYANCE: None.

EXCEPTIONS TO CONVEYANCE AND WARRANTY: Those matters set out in Schedule B of the Title Commitment as more fully described in **Exhibit "A,"** attached hereto and incorporated herein for all purposes; and taxes for 2023, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the consideration, receipt of which is acknowledged, and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenance thereto in any wise belonging, **to have and hold** it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to

warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, by through and under it but not otherwise.

GRANTEE ACCEPTS THE PROPERTY "AS IS" AND "WHERE IS", WITH ALL FAULTS, AND , EXCEPT FOR THE WARRANTIES OF TITLE CONTAINED IN THIS DEED AND THE LIMITED EXPRESS WRITTEN REPRESENTATIONS CONTAINED IN THE SURVIVING LANGUAGE OF THE CONTRACT FOR SALE OF THE PROPERTY, NEITHER GRANTOR, NOR ANY OF GRANTOR'S EMPLOYEES OFFICERS, MEMBERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND/OR AGENTS (COLLECTIVELY THE "SELLER RELATED PARTIES") HAVE MADE OR GIVEN ANY WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND WHATSOEVER, REGARDING ANY MATTER RELATING TO THE PROPERTY WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED. MOREOVER, EXCEPT AS SET FORTH IN THE SURVIVING LANGUAGE OF THE CONTRACT FOR SALE OF THE PROPERTY AND THIS DEED, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AND THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING THE PRESENT OR FUTURE VALUE, PROFITABILITY, PERFORMANCE OR PRODUCTIVITY OF THE PROPERTY, THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE OR ANY OTHER USE, OR REGARDING THE PAST OR PRESENT COMPLIANCE BY SELLER WITH LAWS RELATED TO LAND USE, ENVIRONMENTAL MATTERS, POLLUTION, OR ANY LAWS PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING, TRANSPORTING, OR DISPOSING, OR THE PRESENCE OR ABSENCE ON THE PROPERTY OF HAZARDOUS OR TOXIC WASTE OR SUBSTANCES AS SUCH TERMS ARE DEFINED IN FEDERAL, STATE AND LOCAL LAWS.

When the context requires, singular nouns and pronouns include the plural.

Signature pages to follow.

Unimproved Property Contract Hotel Project

To be effective as of the date set out above.

GRANTOR

**BURNET ECONOMIC
DEVELOPMENT CORPORATION**

Cary Johnson, President

**STATE OF TEXAS §
COUNTY OF BURNET §**

This instrument was acknowledged before me on the _____ day of _____, 2023, by Cary Johnson, president of the Burnet Economic Development Corporation, on behalf of said corporation.

NOTARY PUBLIC, THE STATE OF TEXAS

Initials: Corporation:_____ Developer:_____

SPECIAL WARRANTY DEED

STATE OF TEXAS §

§

COUNTY OF BURNET §

NOTICE OF CONFIDENTIALITY RIGHTS: 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 NUMBERS OR YOUR DRIVER'S LICENSE NUMBER.

DATE: _____, 2023

GRANTOR: **BURNET ECONOMIC DEVELOPMENT CORPORATION**

GRANTOR'S MAILING ADDRESS: **1001 BUCHANAN DRIVE, SUITE 4
BURNET, BURNET COUNTY, TEXAS 78611**

GRANTEE: **TEKMAK Burnet Hotel, LP**

GRANTEE'S MAILING ADDRESS:

CONSIDERATION: Ten dollars cash in hand received and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged.

PROPERTY (INCLUDING ANY IMPROVEMENTS): Being approximately _____ acres of real property designated as Lot 1B of the Replat of The Crossings at 281 Subdivision Lot 1, Block A recorded as 202304945 on May 24, 2023, in the Public Records of Burnet County Texas.

RESERVATIONS FROM CONVEYANCE: None.

EXCEPTIONS TO CONVEYANCE AND WARRANTY: Those matters set out in Schedule B of the Title Commitment as more fully described in **Exhibit "A,"** attached hereto and incorporated herein for all purposes; and taxes for 2023, which Grantee assumes and agrees to pay, and subsequent assessments for that and prior years due to change in land usage, ownership, or both, the payment of which Grantee assumes.

Grantor, for the consideration, receipt of which is acknowledged, and subject to the reservations from and exceptions to conveyance and warranty, grants, sells and conveys to Grantee the property, together with all and singular the rights and appurtenance thereto in any wise belonging, **to have and hold** it to Grantee, Grantee's heirs, executors, administrators, successors or assigns forever. Grantor binds Grantor and Grantor's heirs, executors, administrators, and successors to

warrant and forever defend all and singular the property to Grantee and Grantee's heirs, executors, administrators, successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof, except as to the reservations from and exceptions to conveyance and warranty, by through and under it but not otherwise.

GRANTEE ACCEPTS THE PROPERTY "AS IS" AND "WHERE IS", WITH ALL FAULTS, AND , EXCEPT FOR THE WARRANTIES OF TITLE CONTAINED IN THIS DEED AND THE LIMITED EXPRESS WRITTEN REPRESENTATIONS CONTAINED IN THE SURVIVING LANGUAGE OF THE CONTRACT FOR SALE OF THE PROPERTY, NEITHER GRANTOR, NOR ANY OF GRANTOR'S EMPLOYEES OFFICERS, MEMBERS, DIRECTORS, REPRESENTATIVES, ATTORNEYS AND/OR AGENTS (COLLECTIVELY THE "SELLER RELATED PARTIES") HAVE MADE OR GIVEN ANY WARRANTIES, GUARANTEES, OR REPRESENTATIONS OF ANY KIND WHATSOEVER, REGARDING ANY MATTER RELATING TO THE PROPERTY WHETHER ORAL OR WRITTEN, EXPRESSED OR IMPLIED. MOREOVER, EXCEPT AS SET FORTH IN THE SURVIVING LANGUAGE OF THE CONTRACT FOR SALE OF THE PROPERTY AND THIS DEED, THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OF HABITABILITY, MERCHANTABILITY, SUITABILITY, OR FITNESS FOR A PARTICULAR PURPOSE AND THAT THERE ARE NO EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS REGARDING THE PRESENT OR FUTURE VALUE, PROFITABILITY, PERFORMANCE OR PRODUCTIVITY OF THE PROPERTY, THE CONDITION OF THE PROPERTY FOR GRANTEE'S INTENDED USE OR ANY OTHER USE, OR REGARDING THE PAST OR PRESENT COMPLIANCE BY SELLER WITH LAWS RELATED TO LAND USE, ENVIRONMENTAL MATTERS, POLLUTION, OR ANY LAWS PERTAINING TO THE HANDLING, GENERATING, TREATING, STORING, TRANSPORTING, OR DISPOSING, OR THE PRESENCE OR ABSENCE ON THE PROPERTY OF HAZARDOUS OR TOXIC WASTE OR SUBSTANCES AS SUCH TERMS ARE DEFINED IN FEDERAL, STATE AND LOCAL LAWS.

When the context requires, singular nouns and pronouns include the plural.

Signature pages to follow.

Special Warranty Deed: Crossing at 281 Lot _____

To be effective as of the date set out above.

GRANTOR

**BURNET ECONOMIC
DEVELOPMENT CORPORATION**

Cary Johnson, President

**STATE OF TEXAS §
COUNTY OF BURNET §**

This instrument was acknowledged before me on the _____ day of _____, 2023, by Cary Johnson, president of the Burnet Economic Development Corporation, on behalf of said corporation.

NOTARY PUBLIC, THE STATE OF TEXAS



ITEM 4.1

David Vaughn.
City Manager
512-715-3208
dvaughn@cityofburnet.com

Action

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A REAL ESTATE SALES COMMISSION AGREEMENT WITH DAVID DRAKE FOR THE SALE OF A LOT IN THE CROSSING AT 281.

Background: David Drake is a licensed real estate agent serving as seller's agent for the sale of a lot within the Crossing at 281 subdivision to TEKMAK Burnet Hotel, LP.

Information: This resolution approves a real estate sales commission agreement for four percent of the total sales price.

Fiscal Impact: This commission will be approximately \$7,440.00. The commission will be deducted from the sales price of \$436,000.00

Recommendation: Approve the resolution as presented.

RESOLUTION NO. BEDC R2023-09

A RESOLUTION OF BOARD OF DIRECTORS OF THE BURNET ECONOMIC DEVELOPMENT CORPORATION APPROVING A REAL ESTATE SALES COMMISSION AGREEMENT WITH DAVID DRAKE FOR THE SALE OF A LOT IN THE CROSSING AT 281.

WHEREAS, the Board of Directors approved a contract for the sale of approximately 2.86 acres legally described as Lot 1B of the Replat of the Crossings at 281 Subdivision recorded as Document No. 202304945 on May 24, 2023, in the Public Records of Burnet County Texas (the "Land") to TEKMAK Burnet Hotel, LP.; and

WHEREAS, the negotiation of the sale was facilitated by David Drake a licensed real estate agent; and

WHEREAS, the Board of Directors and Mr Drake agree to a commission fee of four percent of the total sales price of the Land;

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

Section one. Findings. The recitals to this resolution are deemed to be the true and correct findings of the board of directors and are incorporated herein for all purposes.

Section two. Approval. The document attached hereto as "Commission Agreement" is hereby approved.

Section three. Authorization. The board president is hereby authorized to execute documents substantially similar in form to the document identified in section one, above, as "Commission Agreement" and at closing of the sale of Property approve payment of a commission in the amount of four percent of the total sales price. Further, the board president is authorized to execute such ancillary documents and take such actions as may be reasonably necessary to facilitate the purpose of this resolution.

Section four. Effective Date. This resolution shall be effective immediately upon passage and approval.

Passed and Approved by the Board of Directors of the Burnet Economic Development Corporation this the 13th day of June 2023.

**THE BURNET ECONOMIC DEVELOPMENT
CORPORATION**

Cary Johnson, President

ATTEST:

Kelly Dix, City Secretary

COMMISSION AGREEMENT

June __, 2023

Re: Approximately 2.86 acres located within the corporate limits of the City of Burnet, Burnet County Texas, described as Lot 1B of the Replat of The Crossings at 281 Subdivision Lot 1, Block A recorded as Document No. _____ on _____, in the Public Records of Burnet County Texas , located in the City of Burnet, Burnet County, TX 78611.

Seller agrees to pay Agent a real estate sales commission as set forth herein for services rendered by Agent in procuring a fully executed written sales contract (the "Contract") with TEKMAK Burnet Hotel, LP (the "Purchaser"), upon terms and conditions satisfactory to Seller, pertaining to the improved or unimproved property (the "Premises") described above.

PARTIES: This Agreement is executed by and between the Burnet Economic Development Corporation (the "Seller"). and David Drake, an individual, whose address is 155 Lake Trail Drive, Double Oak, TX 75077 (the "Agent").

COMMISSION: Seller agrees to pay to Agent a commission in the amount of four percent (4%) of the total sales price. Notwithstanding the foregoing the Parties agree that such Commission shall only be earned under this Agreement at the closing of the sale of the Premises to Purchaser; and should Seller convey the Property to any party other than Purchaser, Agent shall not be entitled to any Commission under this Agreement or otherwise.

PAYMENT TERMS: The commission for procuring the Contract shall be due in full and payable at closing.

SUCCESSORS TO AGREEMENT: This Agreement and the covenants and terms herein shall apply to and be binding upon and inure to the benefit of the parties hereto and their respective co-brokers, heirs, executors, administrators, assigns, successors, and personal representatives.

CONTINUITY: This Agreement and the obligations hereunder shall continue in full force and effect and shall not terminate because of any one or more of the following events: (a) the death of either Seller or Purchaser; (b) the subletting, assignment, sale, or transfer of the Premises or any interest therein by Seller and/or Purchaser, their heirs, successors, or assigns; or (c) the merger, consolidation, or reorganization of Purchaser or Seller.

MISCELLANEOUS:

This Agreement constitutes the entire agreement between Seller and Agent with respect to the matters set forth herein and supersedes all prior discussions, negotiations, and agreements, whether oral or written. No amendment of this Agreement shall be valid or binding unless made in writing and signed by Seller and Agent.

PURSUENT TO SECTION 62.021 OF THE TEXAS PROPERTY CODE, AGENT HEREBY DISCLOSES TO SELLER THAT AGENT HAS THE RIGHT TO CLAIM A LIEN AGAINST THE PROPERTY BASED ON THIS AGREEMENT, IN THE AMOUNT OF THE COMMISSION SPECIFIED IN THIS AGREEMENT

AGENT:

**David Drake
An Individual**

By: _____
David Drake

Agent License #531874
SS#464-91-8667

Date: _____

SELLER:

**Burnet Economic Development Corporation
A Texas Non-Profit Corporation**

By: _____
Cary Johnson, President

Date: _____

**AGENT'S Broker:
NILLOC, INC**

By: _____
Collin Lasater

License #587548

Date: _____



ITEM 4.2

Agenda Item Brief

Meeting Date:	June 13, 2023
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 4.3

Agenda Item Brief

Meeting Date:	June 13, 2023
Agenda Item:	Discuss and consider action: Related to the potential sale of all or portions of 118 S. Polk Street (Old Bealls Building).
Background:	
Information:	To be presented at the meeting.
Fiscal Impact:	
Recommendation:	To be determined by the Board.



Administration

ITEM 4.4

David Vaughn
City Manager
512.715.3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: A RESOLUTION OF THE BOARD OF DIRECTORS FOR THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE CONSTRUCTION OF PUBLIC RESTROOMS ON THE PUBLIC PARKING LOT LOCATED IN THE BURNET HISTORIC BUSINESS DISTRICT AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT; ESTABLISHING A BUDGET FOR SAID PROJECT; AND APPROVING A CHAPTER 380 AGREEMENT WITH THE CITY OF BURNET FOR FUNDING OF THE PROJECT: D. Vaughn

Background: The public parking lot located at the intersection of South Pierce and East Jackson Streets is owned and operated by the Corporation. This parking lot was deemed necessary to improve the vigor of the Burnet Historic Business District and to promote economic development. Recently, the Corporation completed a parking lot resurfacing project. The Corporation's board of directors now considers whether construction of public restroom facilities on the parking lot would also benefit the economic vitality of the historic square.

Information: This resolution designates the public restroom facilities as an economic development project and sets a budget for the project. Moreover, this resolution approves a Chapter 380 agreement allowing the City to financially participate in the project. The passing of this resolution, and the passage of a companion resolution by City Council, are statutorily required steps to facilitating construction of the project.

Fiscal Impact: The budget for the project is \$575,000.00. Under the Chapter 380 agreement the City will contribute \$400,000.00 to the project. If the project is completed within the budget the fiscal impact to the Corporation will be no more than \$175,000.00. However, should there be change orders the Corporation would be responsible for cost overruns.

Agenda brief: Restroom project

Recommendation: Open the Public hearing; and at, conclusion of the public hearing, approve Resolution No. BEDC R2023-10 as presented.

RESOLUTION NO. BEDC R2023-10

A RESOLUTION OF THE BOARD OF DIRECTORS FOR THE BURNET ECONOMIC DEVELOPMENT CORPORATION DECLARING THE CONSTRUCTION OF PUBLIC RESTROOMS ON THE PUBLIC PARKING LOT LOCATED IN THE BURNET HISTORIC BUSINESS DISTRICT AS A PROJECT UNDER THE TEXAS ECONOMIC DEVELOPMENT ACT; ESTABLISHING A BUDGET; AND APPROVING A CHAPTER 380 AGREEMENT WITH THE CITY OF BURNET FOR FUNDING TO COMPLETE THE PROJECT.

WHEREAS, the Burnet Historic Business District, also known as the “historic square” is area of the city where shops and restaurants cater to tourists and locals alike; and

WHEREAS, because parking at the historic square is limited the Corporation acquired and improved the parking lot located at 305 South Pierce Street; and

WHEREAS, the Board of Directors finds that the availability of public restroom facilities would benefit the economic viability of the historic square; and

WHEREAS, the Board of Directors finds that the construction of public restroom facilities is a “Project” under the Economic Development Act codified as Title 12 Subtitled C1 Texas Local Government Code including Sec. 505.158 therein; and

WHEREAS, the Board of Directors requests financial incentives from the City of Burnet (the “City”) to facilitate the development of the project as authorized by Sec. 380.002(b) Texas Local Government Code; and

WHEREAS, the Board of Directors finds the project shall promote or expand business development in a manner contemplated by the Economic Development Act; and, promote state and local economic development in a manner contemplated by Sec. 380.002(b) Texas Local Government Code in that the availability of public restrooms will bring more tourism, shopping, and dining revenue to the historic square; and

WHEREAS, the Board of Directors officially finds and determines that the meeting at which this resolution was passed was open to the public as required and that public notice of the time, place, and purpose of said meeting was given as required by the Open Meetings Act codified as Chapter 551, Texas Government Code; and

WHEREAS, the Board of Directors officially finds and determines that prior to any deliberation or action on this resolution, it conducted a hearing to receive testimony and comments from members of public on the merits proposed Project as required by Sec. 505.158 Texas Local Government Code.

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

Section one. Findings. The foregoing recitals are hereby found to be true and correct and are hereby adopted as the official findings of the Board of Directors and are made a part hereof for all purposes as findings of fact.

Agenda brief: Restroom project

Section two. The Project. The construction of public restroom facilities on the public parking lot owned by the corporation is authorized as a Project to be funded by the Corporation.

Section three. Budget. The Project budget is established at an amount not to exceed \$575,000.00.

Section four. Approval. The attachment hereto labeled Chapter 380 Development Agreement is hereby approved.

Section five. Authorization. The board president is hereby authorized to execute an agreement, substantially similar to the attachment and to take such actions and execute such ancillary documents as may reasonably be necessary to accomplish the purposes of this resolution.

Section six. Effective Date. This resolution shall take immediate effect after approved upon City Council's adoption of a resolution as required by Sec. 505.158(b) Texas Local Government Code.

PASSED AND APPROVED on this the 13th day of June, 2023.

**BURNET ECONOMIC DEVELOPMENT
CORPORATION**

Cary Johnson, President

ATTEST:

Kelly Dix, City Secretary

**CHAPTER 380 ECONOMIC
DEVELOPMENT AGREEMENT**

THIS AGREEMENT (“Agreement”) by and between the CITY OF BURNET, TEXAS, and the BURNET ECONOMIC DEVELOPMENT CORPORATION is entered into upon the “Effective Date,” as more clearly defined herein.

WHEREAS, the Corporation is the owner of real property located at 305 South Pierce, Burnet, Texas; and

WHEREAS, the Corporation has improved the real property as a public parking lot serving the historic square; and

WHEREAS, the Corporation proposes to construct the Project, which consists of public restroom facilities to be located on the public parking lot; and

WHEREAS, the Corporation has requested financial incentives from the City and has represented to the City that without financial incentives the Project would not be possible; and

WHEREAS, the Project would significantly contribute to the economic viability of the community and the historic square; and

WHEREAS, the grant of funds by the City for the Project is consistent with the City’s Economic Development Program promoting state or local economic development and stimulating business and commercial activity in the City; and

WHEREAS, Sec. 380.002(b) Texas Local Government Code, authorizes the city under contract with the Corporation to grant public money for the development and diversification of the economy of the state, eliminate unemployment or underemployment in the state, and development and expansion of commerce in the state; and

WHEREAS, Sec. 351.101(a)(5) Texas Tax Code authorizes up to 50% of Hotel Occupancy Tax revenue to be provided to this Project as a Program encouraging tourists and convention delegates to visit preserved historic districts; and

WHEREAS, the Corporation’s participation in the Project is authorized under the Act;

WHEREAS, the Corporation has agreed, in exchange and as consideration for funding by the City, to satisfy and comply with certain terms and conditions, (as more fully defined herein); and

WHEREAS, City Council has adopted Resolution No. _____ on _____, authorizing the City Manager to enter into this Agreement; and

WHEREAS, Corporation’s Board of Directors has adopted Resolution No. _____ on _____, authorizing the President of the Board of Directors to enter into this Agreement.

NOW, THEREFORE, for and in consideration of the promises and the mutual agreements set forth herein, the Parties hereby agree as follows:

ARTICLE I RECITALS

Recitals. The recitals set forth above are declared true and correct by the Parties and are hereby incorporated as part of this Agreement.

ARTICLE II AUTHORITY AND TERM

1. **Authority.** The City's execution of this Agreement is authorized by Chapter 380 Texas Local Government Code and constitutes a valid and binding obligation of the City. The City acknowledges that the Corporation is acting in reliance upon the City's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the establishment of the Facility, as defined herein. The Corporation's execution of this Agreement is authorized by the Act; and the Corporation acknowledges that the City is acting in reliance upon the Corporation's performance of its obligations under this Agreement in making the decision to commit substantial resources and money to the Project.
2. **Term.** This Agreement shall become enforceable upon execution by the City Manager on behalf of the City after first being executed by the Board President on behalf of the Corporation, and shall remain in full force and effect until the Expiration Date unless terminated as provided for in Article VII of this Agreement. Notwithstanding the foregoing, the provisions of this Agreement that include the clause "shall survive termination" shall continue in effect until terminated by separate agreement of the Parties.

ARTICLE III DEFINITIONS

As used in this Agreement, the following terms shall have the meanings ascribed below:

"The Act" shall mean the Economic Development Act codified in Title 12, Subtitle C1 Texas Local Government Code.

"Board of Directors" shall mean the Corporation's governing body.

"City" shall mean the City of Burnet a Texas home-rule municipality.

"*City Council*" shall mean the governing body of the City.

"*City Manager*" shall mean the City Manager for the City of Burnet, Texas.

"*Completion Date*" shall mean the date described in Article V Section 1.

"*Burnet Economic Development Corporation*" shall mean the economic development corporation established by the City under the Act.

"*Economic Development Program*" shall mean a program established by City Council in accordance with Article III, Section 52-a Texas Constitution, and Section 380.001 Texas

Agenda brief: Restroom project

Local Government Code for the administration of a program for making loans and grants of public money to promote state or local economic development and to stimulate business and commercial activity in the City.

“Effective Date” shall mean the date of execution of this Agreement.

“Expiration Date” the Expiration Date of this Agreement shall be September 30, 2028.

“Force Majeure” shall mean an event beyond the reasonable control of a Party obligated to perform an act or take some action under this Agreement including, but not limited to, acts of God, earthquake, fire, explosion, war, civil insurrection, acts of the public enemy, act of civil or military authority, sabotage, terrorism, floods, lightning, hurricanes, tornadoes, severe snow storms or utility disruption, strikes and lockouts.

“Grant(s)” shall mean the payment of funds, up to the Maximum Grant Amount, as defined herein.

“Maximum Grant Amount” shall mean the dollar amount described in Article.

“Parties” shall mean the City and Corporation collectively.

“Project” shall mean the improvements made to the Property for the development of public restroom facilities, as provided for in Exhibit “A.”

“Project Completion Date” shall mean the date described in Article V Section 1.

“Property” shall mean the real property assigned the physical address of 305 South Pierce, Burnet, Texas, and Burnet Central Appraisal District Property ID No. 35369, and improvements thereon.

“Required Use” shall mean the continuous operation of a public parking lot with public restroom facilities.

“State” shall mean the State of Texas.

ARTICLE IV

ECONOMIC DEVELOPMENT INCENTIVES

Subject to the Required Use and continued satisfaction of all the terms and conditions of this Agreement, the City agrees to provide the Corporation with incentives as follows:

- (a) **Building Permits and Fee Waivers.** Subject to the conditions contained in this Agreement, the City agrees to waive building permit fees, standard water tap charges, standard sewer tap fees, and standard electrical connect fees for the Project. Nothing in this Agreement shall be deemed to waive the City requirements for the issuance of building permits and/or permit inspections, non-standard water taps fees, non-standard wastewater tap fees, non-standard electrical connect fees, other utility extension related costs, and/or impact fees. All construction of the Project shall be in full compliance with all state, federal and local rules and

Agenda brief: Restroom project

regulations including, but not limited to, the City's Code of Ordinances and all Model Building and Development Codes adopted by City.

(b) **Grants.** Subject to terms and conditions contained in this Agreement, the City agrees to provide Grants as follows:

- (1) *Maximum Grant Amount.* Within 30 days of the Effective Date, or such later date as determined by the City Manager, the City shall tender to the Corporation the Maximum Grant amount of FOUR-HUNDRED THOUSAND DOLLARS AND 00/100 (\$400,000.00) subject to the refunding provision stated in Article V.
- (2) *Current Revenue.* The Grants made hereunder shall be paid solely from lawfully available funds that have been appropriated by the City. Under no circumstances shall the City's obligations hereunder be deemed to create any debt within the meaning of any constitutional or statutory provision. The Grant shall be paid solely from appropriations from:
 - (A) The general funds of the City in the amount of TWO-HUNDRED AND FIFTY THOUSAND DOLLARS AND 00/100 (\$250,000.00); and
 - (B) Hotel occupancy tax revenue of the City in the amount of ONE-HUNDRED AND FIFTY THOUSAND DOLLARS AND 00/100 (\$150,000.00), which is less than fifty percent (50%) of total hotel occupancy tax revenue;
 - (C) or from such other funds of the City as may be legally set aside for such purpose consistent with Article III, Section 52(a) of the Texas Constitution.

Further, the City shall not be obligated to pay any commercial bank lender or similar institution for any loan or credit agreement made by the Corporation. None of the City's obligations under this Agreement shall be pledged or otherwise encumbered in favor of any commercial lender and/or similar financial institution.

- (2) *Grant funds distribution.* The City shall make payment of the Project Contractor's pay draw requests approved by the City Engineer, pursuant to the terms of the Project's Construction Contract until such time as the Maximum Grant Amount is paid. Thereafter, the Corporation shall be responsible for all Project Costs as provided in the Article immediately below.

ARTICLE V

CONDITIONS TO ECONOMIC DEVELOPMENT GRANTS

The obligation of the City to pay Grants shall be conditioned upon the Corporation's continued compliance with, and satisfaction of, each of the conditions set forth in this Agreement, including:

- (a) **The Project.** The Corporation agrees to expend the Grant funds for the construction of the Project in a manner substantially similar to that shown in Exhibit "A." Subject to Force Majeure, the Corporation agrees to have the Project substantially

Agenda brief: Restroom project

completed prior to the Expiration Date. Grant funds shall only be used to cover expenses directly relating to the construction of the Project, including furniture, fixtures, and equipment.

- (b) **Project Costs.** The Project's costs are estimated to be FIVE-HUNDRED AND SEVENTY-FIVE THOUSAND DOLLARS AND 00/100 (\$575,000.00).
- (c) **Corporations Contribution.** The Corporation agrees to expend its own funds to cover the difference between the Project Costs and the Grant funds provided under this Agreement. Further, should the actual Project Costs exceed the estimated Project Costs the Corporation agrees to pay for any and all cost overruns.
- (d) **Local Vendors.** The Corporation agrees to make good faith efforts to give preference and priority to suppliers of goods and services located within the city of Burnet for the restoration/renovation of the Facility, except where not reasonably possible to do so without sacrificing quality, adding expense, or creating substantial inconvenience.
- (e) **Required Reporting.**
 - (1) *Cost Certification Report.* The Corporation shall submit the Cost Certification Report, in a form substantially similar to Exhibit "B", no later than thirty days after substantial completion of the Project.
 - (2) *Local Vendor Report.* The Corporation shall submit the Local Vendor Compliance Report, in a form substantially similar to Exhibit "C", demonstrating efforts to utilize suppliers of goods and services located within the city of Burnet, as provided for herein, no later than 30 days after substantial completion of the Project. Submittal of the Local Vendor Compliance Report shall be deemed as evidence of compliance with the Local Vendor provision of this Agreement.
 - (3) *Sales and Use Tax Grant Reports.* Intentionally deleted.
- (f) **Additional Information.**
 - (1) Upon written request by the City, the Corporation shall, within a reasonable time, provide additional information necessary to determine if the Corporation is in compliance with this Agreement. All information required by this Agreement shall be submitted to the City Manager at the address specified in this Agreement for giving notice.
 - (2) The City shall have the right, at its expense, to audit the Corporation's financial records in order to verify compliance with the Corporation's obligations under this Agreement.
 - (3) The payment of all indebtedness and obligations incurred by the Corporation in connection with the Property shall be solely the obligations of the Corporation. The City shall not be obligated to pay any indebtedness or obligations of the Corporation.

Agenda brief: Restroom project

- (g) **Repayment of Grants.** The Corporation has an absolute obligation to repay to the City any funds received under this Agreement as follows:

- (1) *Completed Project repayment obligation.* Intentionally deleted.
- (2) *Incomplete Project.* Should, subject to Force Majeure or any extensions agreed by the Parties, the Project not be completed by the Project Completion Date, the Corporation shall refund the City the Grant amount awarded under this Agreement within thirty days of demand by the City Manager.

This section six shall survive termination of this Agreement.

ARTICLE VI COVENANTS AND WARRANTIES

- (a) **The Corporation Covenants and Warranties.** The Corporation makes the following covenants and warranties to the City:

- (1) The Corporation is the owner of the Property and shall be solely responsible for the care, maintenance, repair or replacement of the parking lot and the public restroom facilities. This subsection shall survive termination of this Agreement.
- (2) The Corporation shall timely and fully comply with all of the terms and conditions of this Agreement.
- (3) The Corporation shall cooperate with the City in providing all necessary information to assist the City in complying with this Agreement.
- (4) In accordance with Texas Government Code Section 2264.051, the Corporation certifies that it and all branches, divisions or departments of the Corporation do not and will not knowingly employ an undocumented worker.
- (5) Any false or substantially misleading statements contained herein shall be an act of default by the Corporation.

- (b) **The City Covenants and Warranties.** The City makes the following covenants and warranties to the Corporation:

- (1) The City represents and warrants to the Corporation that this Agreement is within their authority, and that the City Manager is duly authorized and empowered to enter into this Agreement, on its behalf, unless otherwise ordered by a court of competent jurisdiction.
- (2) Subject to the Corporation's compliance with all obligations herein, the City is obligated to pay the Corporation from sources contemplated by this Agreement.

Agenda brief: Restroom project

- (3) Pursuant to a separate administrative services agreement between the Parties, the City may provide janitorial services to the public restrooms.

ARTICLE VII DEFAULT AND TERMINATION

(a) Default.

- (1) If either Party should default in the performance of any obligation of this Agreement, the other Party shall provide such defaulting Party written notice of the default, and a minimum period of thirty (30) days to cure such default, prior to instituting an action for breach or pursuing any other remedy for default.
- (2) In the event of any claim of default or the breach of any obligation, covenant, representation, or warranty contained herein, the Burnet City Council shall be the final arbiter of the validity of such claim and shall administer the appropriate remedy to the aggrieved Party.
- (3) Notwithstanding any provision to the contrary, the total liability either Party to the other under this Agreement shall not exceed the Maximum Grant Amount.

(b) Term and Termination.

- (1) The Term of this Agreement shall begin upon the Effective Date and shall terminate upon the Expiration Date as defined herein.
- (2) Notwithstanding the foregoing, this Agreement may terminate before the Expiration Date upon written agreement of the Parties.

ARTICLE VIII MISCELLANEOUS

- (a) **Binding Agreement.** The terms and conditions of this Agreement shall be binding on and insure to the benefit of the City, the Corporation, and their respective successors and assigns. The City Manager shall be responsible for the administration of this Agreement and the City Manager shall have the authority to execute any instruments duly approved by the City Council of the City of Burnet, Texas required by or relating to this Agreement.
- (b) **Force Majeure.** Neither Party shall be deemed in violation of this Agreement if it is prevented from performing any of its obligations hereunder by reasons of Force Majeure.
- (c) **Mutual Assistance.** The City and the Corporation will do all things reasonably necessary or appropriate to carry out the terms and provisions of this Agreement and to aid and assist each other in carrying out such terms and provisions.

(d) **Independent Contractors.**

- (1) It is expressly understood and agreed by all Parties hereto that in performing their services hereunder, the Corporation at no time will be acting as an agent of the City and that all consultants or contractors engaged by the Corporation will be independent contractors of the Corporation; and nothing contained in this Agreement is intended by the Parties to create a partnership or joint venture between the Parties and any implication to the contrary is hereby expressly disavowed. The Parties hereto understand and agree that the City will not be liable for any claims that may be asserted by any third party occurring in connection with services performed by the Corporation under this Agreement, unless any such claims are due to the fault of the City.
 - (2) By entering into this Agreement, the Parties do not waive, and shall not be deemed to have waived, any rights, immunities, or defenses either may have, including the defense of Parties, and nothing contained herein shall ever be construed as a waiver of sovereign or official immunity by the City with such rights being expressly reserved to the fullest extent authorized by law and to the same extent which existed prior to the execution hereof.
 - (3) No employee of the City, or any Councilmember or agent of the City, nor any member of the Corporation's Board of Directors shall be personally responsible for any liability arising under or growing out of this Agreement.
- (e) **Notice.** Any notice required or permitted to be delivered hereunder shall be deemed delivered by actual delivery, facsimile with receipt confirmation, or by depositing the same in the United States Mail, postage prepaid and certified with return receipt requested, addressed to the Party at the address set forth below:

If to the City: The City of Burnet
Attn: City Manager
P.O. Box 1369
1001 Buchanan Drive, Suite #4
Burnet, Texas 78611

If to the Corporation: The Corporation
Attn: Board President
P.O. Box 1369
1001 Buchanan Drive, Suite #4
Burnet, Texas 78611

Either Party may designate a different address at any time upon written notice to the other Party.

- (f) **Governing Law.** The Agreement shall be governed by the laws of the State of Texas, and the venue for any action concerning this Agreement shall be in Burnet County, Texas. The Parties agree to submit to the personal and subject matter jurisdiction of said court. In any action to enforce this Agreement, each Party shall

Agenda brief: Restroom project

pay its own attorney's fees and costs, regardless of results.

- (g) **Amendment.** This Agreement may be amended by mutual written agreement of the Parties, as approved by the City Council and the Board of Directors.
- (h) **Legal Construction.** In the event any one or more of the provisions contained in this Agreement shall, for any reason, be held invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect other provisions of this Agreement, and it is the intention of the Parties to this Agreement that, in lieu of each provision that is found to be illegal, invalid, or unenforceable, a provision be added to this Agreement which is legal, valid and enforceable and is as similar in terms as possible to the provision found to be illegal, invalid, or unenforceable.
- (i) **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter covered in this Agreement. There is no other collateral, oral or written agreement between the Parties that, in any manner, relates to the subject matter of this Agreement.
- (j) **Paragraph Headings.** The paragraph headings contained in this Agreement are for convenience only and will in no way enlarge or limit the scope or meaning of the various and several paragraphs.
- (k) **Number and Gender of Words.** Whenever herein the singular number is used, the same shall include the plural where appropriate, and words of any gender shall include each other gender where appropriate.
- (l) **Counterparts.** This Agreement may be executed in multiple counterparts. Each of the counterparts shall be deemed an original instrument, but all of the counterparts shall constitute one and the same instrument.
- (m) **Exhibits.** Any Exhibits attached hereto are incorporated by reference for all purposes.
- (n) **Survival of Covenants.** Certain representations, warranties, covenants, and obligations of the Parties, as well as any rights and benefits of the Parties, shall survive termination as expressed herein.
- (o) **Indemnification.** Intentionally blank.

(Signatures on following page)

Agenda brief: Restroom project

EXECUTED on this _____ day of _____, 2023.

CITY OF BURNET, TEXAS

By: _____
David Vaughn, City Manager

ATTEST:

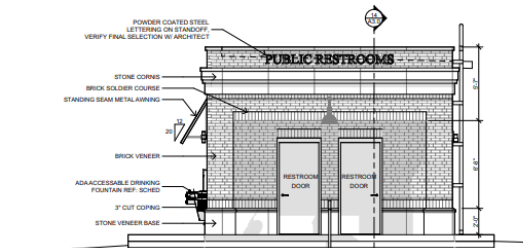
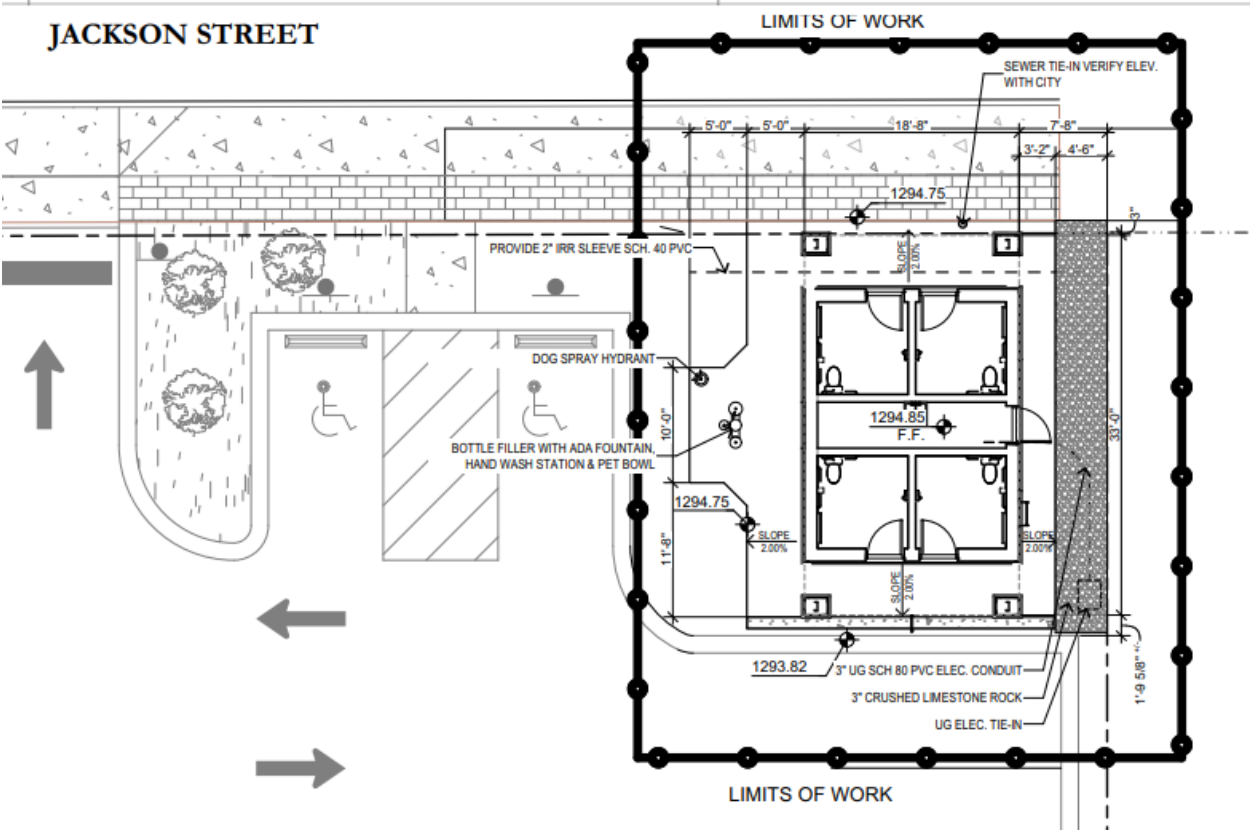
By: _____
Kelly Dix, City Secretary

THE CORPORATION

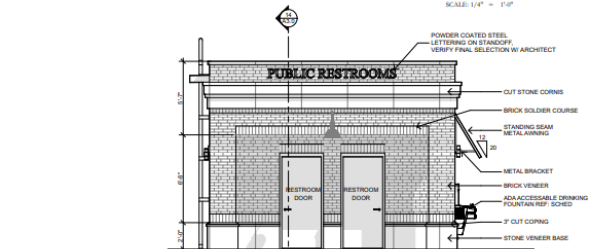
By: _____
Cary Johnson, President

Exhibit “A” The Project

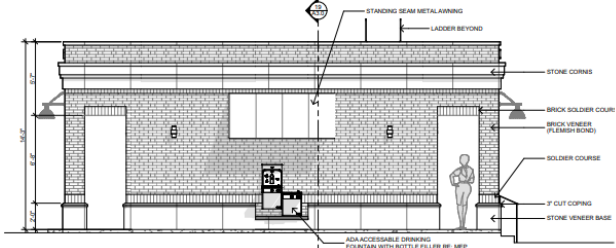
Agenda brief: Restroom project



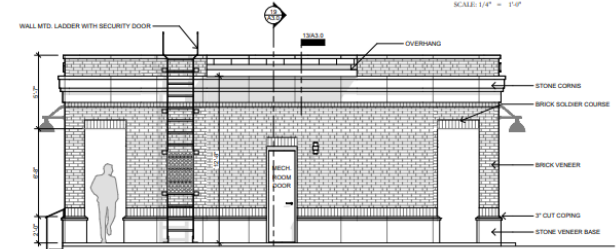
12 South Elevation



17 North Elevation



04 West Elevation



09 East Elevation

Exhibit “B”

The Corporation
COST CERTIFICATE REPORT

Attach documentation demonstrating compliance with the Cost reporting requirement, including the name of the supplier of goods or services, the types of goods or services provided and the cost.

AFFIDAVIT

STATE OF TEXAS §
COUNTY OF BURNET §

I _____, being the _____ of the Corporation, an economic development corporation of the State of Texas, do hereby certify that the Corporation expended the amount of \$ _____, to complete construction of the Project described in that certain 380 Agreement with the City of Burnet. I further certify that the attached documentation are true and correct copies of records of the Corporation.

By: _____

Date: _____

Exhibit “C”

[illegible]

STATE OF TEXAS §
COUNTY OF BURNET §

Date: _____



Administration

ITEM 4.5

David Vaughn
City Manager
512.715.3208
dvaughn@cityofburnet.com

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: Related to the Jackson Street Public Restroom Project and the award of the construction bid to Nash Builders, LTD.

Background: To be provided at the meeting

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 4.6

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: Related to the findings of the Burnet Community Coalition.

Background: To be presented at the meeting.

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 4.7

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: 2023 Summer Series Concert.

Background: To be presented at the meeting.

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 4.8

Agenda Item Brief

Meeting Date:	June 13, 2023
Agenda Item:	Discuss and consider action: Related to the Coke Street Re-Alignment Project.
Background:	To be presented at the meeting.
Information:	
Fiscal Impact:	
Recommendation:	To be determined by the board.



ITEM 5.1

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Executive Session: Pursuant to Section 551.072 Texas Government Code deliberate the purchase, exchange, lease, or value of real property in order to minimize the detrimental effect of such discussion in open session on the position of the Board in negotiations with third parties for property located at Eastside Commercial Park: D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 5.2

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Executive Session:) Pursuant to Section 551.072 Texas Government Code to deliberate the purchase, exchange, lease, or value of real property in order to minimize the detrimental effect of such discussion in open session on the position of the Board in negotiations with third parties for property located at the Crossings at 281 South Commercial Park: D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 5.3

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Executive Session: Pursuant to Section 551.072 Texas Government Code to deliberate the purchase, exchange, lease, or value of real property in order to minimize the detrimental effect of such discussion in open session on the position of the Board in negotiations with third parties for the potential sale of all or portions of 118 S. Polk Street (Old Bealls Building): D. Vaughn.

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 5.4

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Executive Session: Pursuant to Sec. 551.087 Texas Government Code to deliberate both: (i) commercial or financial information that the board of directors received from a business prospect that the board of directors seeks to have locate a hotel on property located at The Crossings at 281; and (ii) deliberate the offer of a financial or other incentive to said business prospect to facilitate the development of said hotel: D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 6.1

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: Regarding deliberations of the purchase, exchange, lease, or value of real property located at Eastside Commercial Park: D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 6.2

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: Regarding deliberations of the purchase, exchange, lease, or value of real property located at the Crossings at 281 South Commercial Park: D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 6.3

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: Regarding deliberations of the purchase, exchange, lease, or value of real property located at 118 S. Polk Street (Old Bealls Building): D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.



ITEM 6.4

Agenda Item Brief

Meeting Date: June 13, 2023

Agenda Item: Discuss and consider action: Regarding deliberations of economic development negotiations to facilitate the development of a hotel on real property located at The Crossings at 281: D. Vaughn

Background:

Information:

Fiscal Impact:

Recommendation: To be determined by the board.