

RESOLUTION NO. R2023-42

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF BURNET, TEXAS AUTHORIZING THE CONSTRUCTION OF A HOTEL AT THE CROSSING AT 281 SUBDIVISION AS A PROJECT THE BURNET ECONOMIC DEVELOPMENT CORPORATION MAY INCENTIVIZE THROUGH A PERFORMANCE AGREEMENT WITH THE HOTEL DEVELOPER

WHEREAS, the Section 505.158(a) Texas Local Government Code, authorizes a Corporation created by a municipality of 20,000 or less to fund a project that includes the land, buildings, equipment, facilities, expenditures, targeted infrastructure, and improvements found by the Corporation's Board of Directors to promote new or expanded business development; and

WHEREAS, the BEDC is the owner of approximately 2.86 acres legally 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 (the "Property"); and

WHEREAS, the Board of Directors of the BEDC, pursuant to BEDC Resolution No. 2023-08, took 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, City Council finds and determines that Project is necessary and suitable to promote or develop new or expanded business enterprises within the City of Burnet, and further, that the proposed Project is an authorized project pursuant to Section 505.158 Texas Local Government Code; and

WHEREAS, City Council finds and determines the notice of the time, place, and subject matter of the first and second readings of this resolution fully complied with the notice requirements of the Texas Open Meetings Act, and that the meeting where the readings were heard was open to public comment as required by said Act.

NOW, THEREFORE, BE IT RESOLVED BY CITY COUNCIL OF THE CITY OF BURNET, TEXAS, THAT:

Section one. Findings. The recitals to this Resolution are deemed to be the true and correct findings of city council and are incorporated herein for all purposes.


Section two. Authorization. The Burnet Economic Development Corporation is hereby authorized to incentivize a hotel project pursuant to the terms and conditions of the draft performance agreement attached hereto.

Section five. Effective Date. That this resolution shall take effect immediately upon its passage, and approval on second reading.

PASSED this the 13th day of June 2023.

PASSED AND APPROVED on second reading this the 27th day of June 2023.

CITY OF BURNET, TEXAS

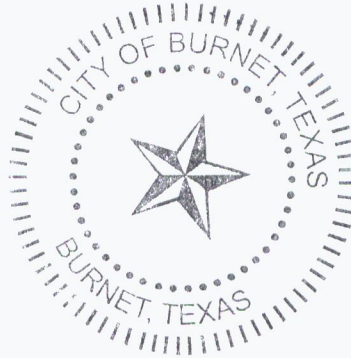


Gary Wideman, Mayor

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 27th day of June, 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



Initials Corporation: _____ Developer: GO

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:

Initials Corporation: _____ Developer: 

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





Performance Agreement

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-seven (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.

Performance Agreement

- (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

Performance 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.

Initials Corporation: _____ Developer:  

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. Corporation 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 Corporation expressly prohibits Developer from selling, transferring, assigning or conveying in any way any rights to receive the proceeds under this Agreement without Corporation's prior written consent.

Initials Corporation:  Developer: 

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

Initials Corporation: _____ Developer:  _____

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.D. 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.

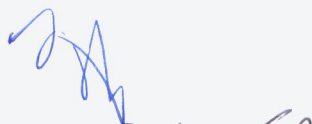
Initials Corporation:  Developer: GD

Performance Agreement

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.

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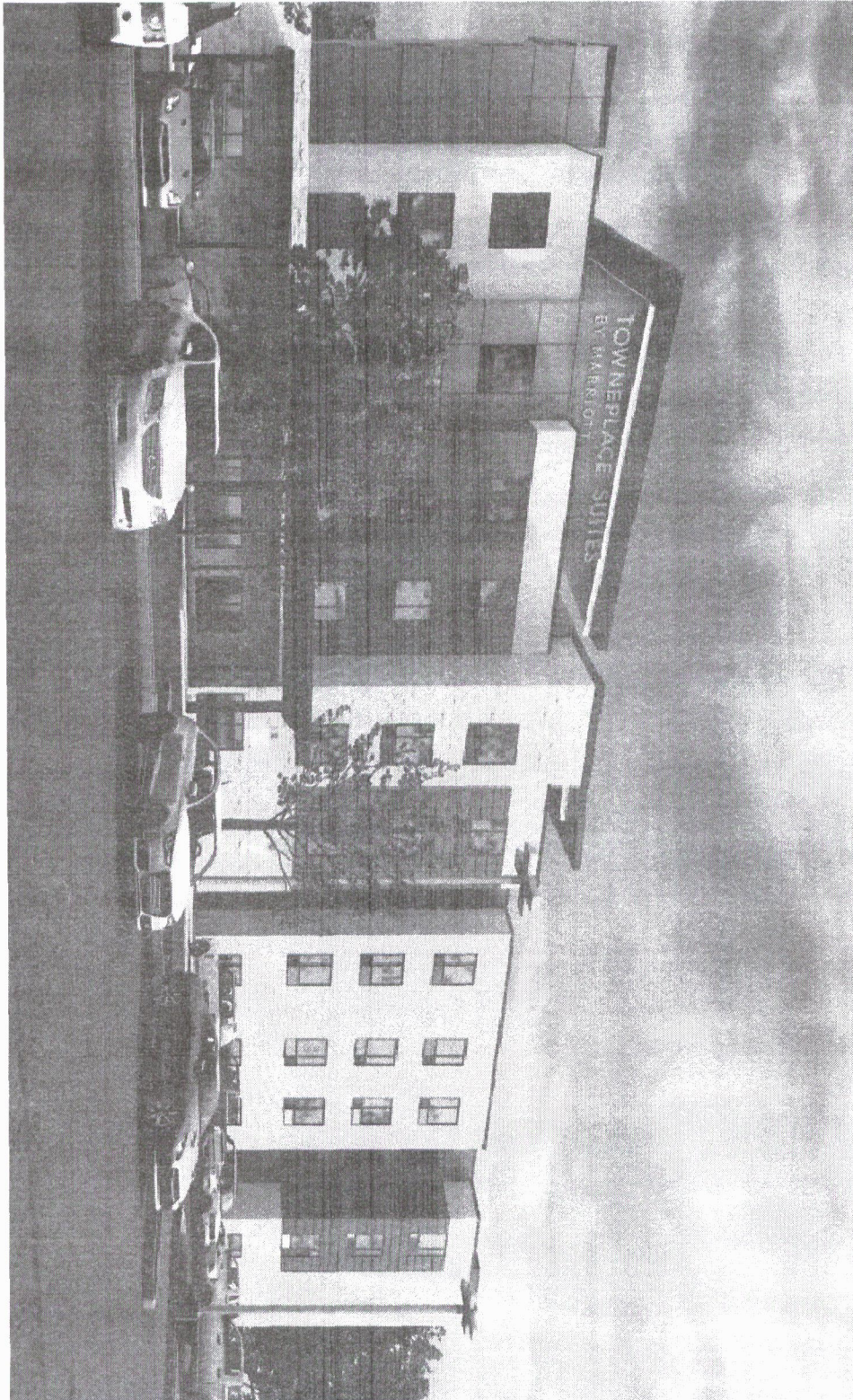


Performance Agreement

Exhibit "A"
Description of the Proposed Hotel

Initials Corporation: Developer: SP

Performance Agreement

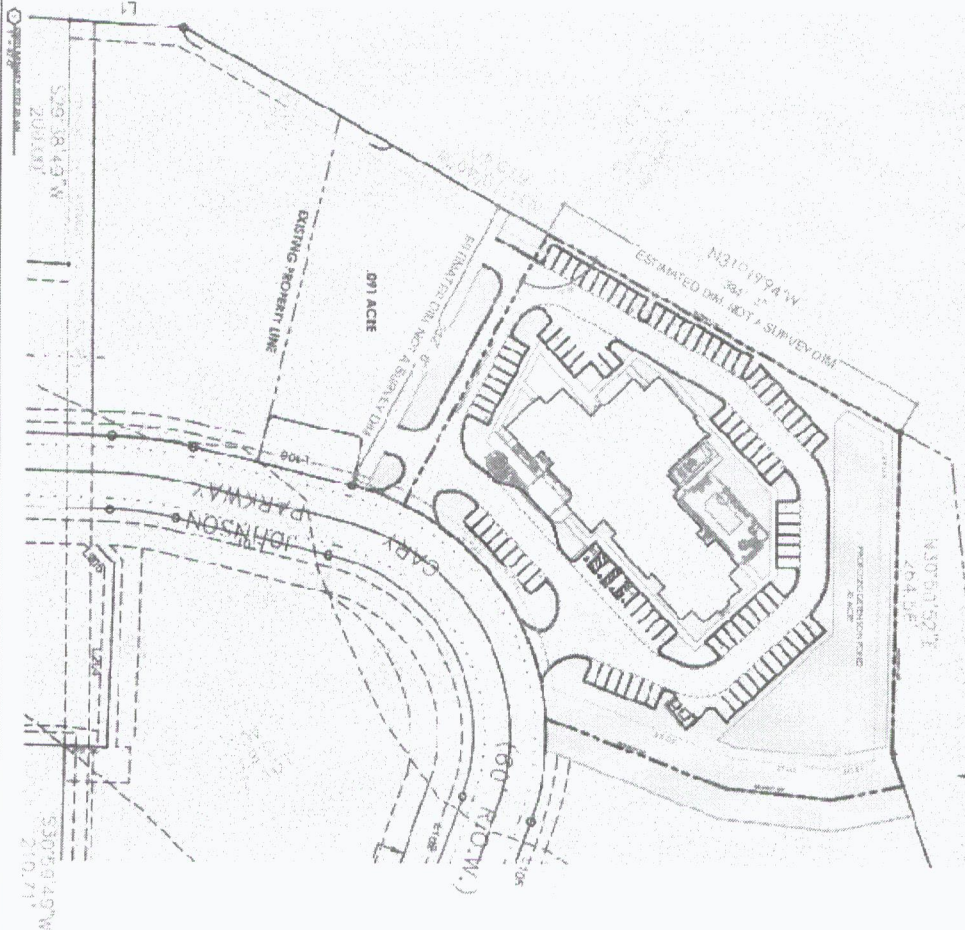


*Subject to Architectural Control Committee Approval

Initials Corporation: _____ Developer: GD

**CONCEPTUAL
SITE PLAN**

**PROPOSED HOTEL DEVELOPMENT
BURNETT TEXAS**



AREA MAP:



OWNER INFORMATION:
 PROPERTY OWNER: TERRACE DEVELOPMENT
 EMAIL: BURNETT@TERRACEDEVELOPMENT.COM

SITE INFORMATION:

PROPOSED ACREAGE: 2.259 ACRES

HOTEL INFORMATION:

TOWNPLACE SUITES BY MARRIOTT

4 STORY HOTEL
 187 QUERCUS
 2,000 SF MEETING ROOM

BUILDING SF:

BUILDING FOOTPRINT: 17,805 SQ FT
 FLOOR SPREAD FT: N/A
 OCCUPANCY: RI HOTEL AND NON SEPARATED USES
 TYPE: V A WOOD FRAMED CONSTRUCTION

PARKING SUMMARY:

HOTEL TAKING FROM REVENUE:
 8 PER GARAGE AND 1 FOR EACH 2 BARRIERS
 8 BARRIERS REQUIRED: 9103
 PARKING PROVIDED: 2103

THIS DOCUMENT IS
 INCOMPLETE AND MAY
 NOT BE USED FOR
 REGULATORY APPROVAL
 WITHOUT THE
 CONSULTATION
 HAVE & REVISE
 282-92





Performance Agreement

Exhibit "B"
Unimproved Commercial Property Contract

Initials Corporation: _____ Developer: GD

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 and attaching or including all exception documents (the "Title Commitment"). 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.

Initials: Corporation:  Developer: 

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 ten 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 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, an 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 referenced 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 inquire 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.
- x. 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, 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 or claims to the Property (including any attorney's fees or expenses) when such claims arise soley out of Buyer's investigation of the Property, and excluding i) those claims arising out of the acts or omissions of Seller, ii) those conditions that existed before the Effective Date, ande iii) 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:

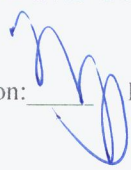
GRANTEE ACKNOWLEDGES AND AGREES THAT THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS-IS" CONDITION AND BASIS WITH ALL FAULTS. GRANTEE HEREBY WAIVES, RELEASES, ACQUITS AND FOREVER DISCHARGES GRANTOR, GRANTOR'S EMPLOYEES, AGENTS AND ANY OTHER PERSON ACTING ON BEHALF OF GRANTOR, 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 DISCLSURES: 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

Initials: Corporation:  Developer: 

Drive, Double Oak, TX 75077. Other than the broker's fee so state, neither Buyer nor Seller has engaged a Broker in regard 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:**

Initials: Corporation:  Developer: 

- 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, 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, 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

Telephone: (512) 715-3208

Facsimile: (512) 756-8560

Initials: Corporation:  Developer: 

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:

Initials: Corporation:  Developer: 


EXECUTED the 6th day of July, 2023. (EFFECTIVE DATE.)

SELLER
BURNET ECONOMIC DEVELOPMENT
CORPORATION

By: _____
Cary Johnson, President

BUYER
TEKMAK Burnet Hotel, LP

By: _____
Glenn Decker, Manager

Initials: Corporation: _____ Developer: 

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

Initials: Corporation:  Developer: 

Exhibit "A"
The Property

Initials: Corporation:  Developer: GD

Unimproved Property Contract Hotel Project



Initials: _____ Corporation: Developer: CP

Exhibit "B"
Warranty Deed

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 2.86 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

Initials: Corporation: _____ Developer: 

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.

Initials: Corporation: _____ Developer:  _____

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: GD

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 and attaching or including all exception documents (the "Title Commitment"). 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.

Initials: Corporation: _____ Developer: TEKMAK

Unimproved Property Contract Hotel Project

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 ten 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 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 referenced 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

Initials: Corporation:  Developer: 

Unimproved Property Contract Hotel Project

Burnet and Buyer agrees to inquire 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.
- x. 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, 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 or claims to the Property (including any attorney's fees or expenses) when such claims arise soley out of Buyer's investigation of the Property, and excluding i) those claims arising out of the acts or omissions of Seller, ii) those conditions that existed before the Effective Date, ande iii) for repair or remediation of existing conditions discovered

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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

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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 DISCLSURES: 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

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Drive, Double Oak, TX 75077. Other than the broker's fee so state, neither Buyer nor Seller has engaged a Broker in regard 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:

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- 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.

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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, 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, 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
Telephone: (512) 715-3208
Facsimile: (512) 756-8560

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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.**

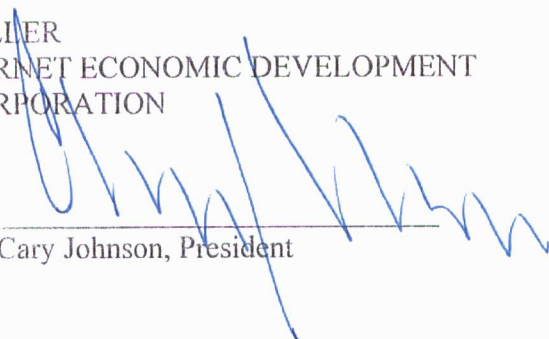
Signature pages to follow:

Initials: Corporation: NA Developer: TEKMAK

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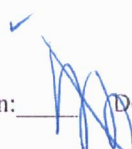
EXECUTED the 6th day of July, 2023. (EFFECTIVE DATE.)

SELLER
BURNET ECONOMIC DEVELOPMENT
CORPORATION

By: 
Cary Johnson, President

BUYER
TEKMAK Burnet Hotel, LP

By: 
Glenn Decker, Manager

Initials: Corporation:  Developer: GD

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: July 20, 2023

By: Trudy collier (contract only) _____

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

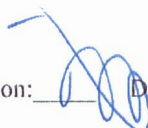
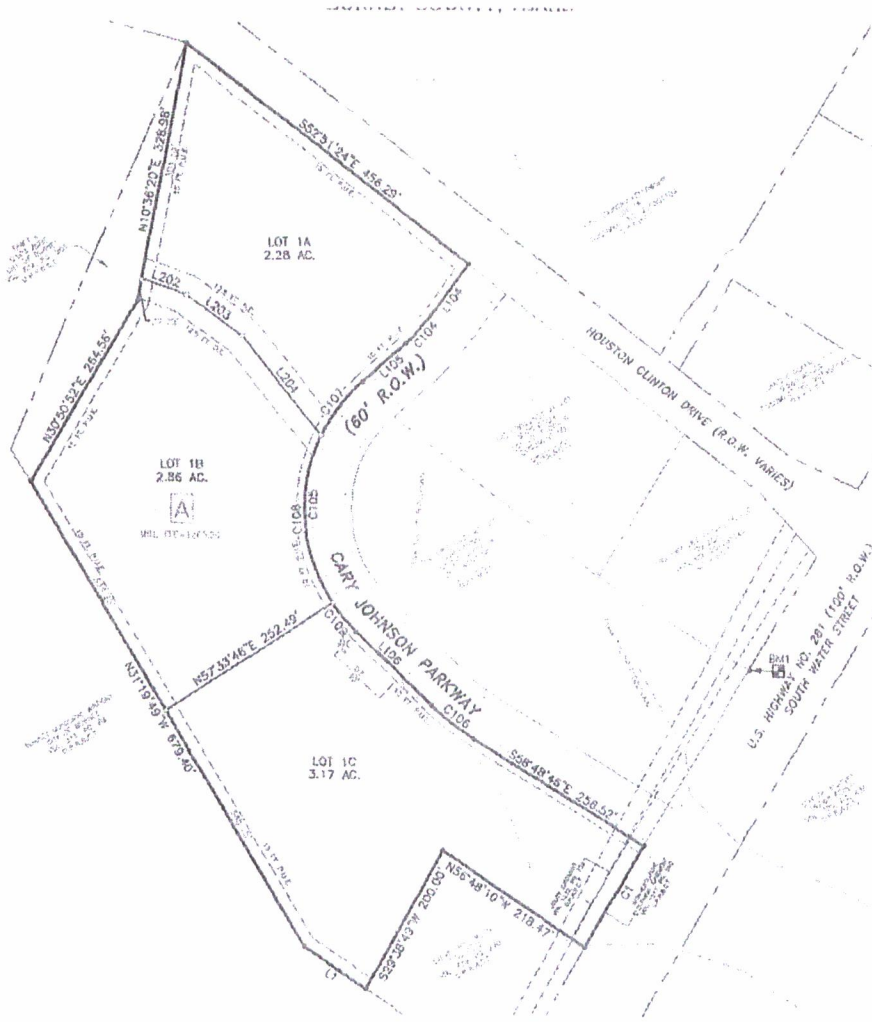
Initials: Corporation:  Developer: GP

Exhibit "A"

The Property

Initials: Corporation:  Developer: GD

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Initials: Corporation: [Signature] Developer: GO

Exhibit "B"

Warranty Deed

Initials: Corporation:  Developer: GP

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 2.86 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

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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.

Initials: Corporation:  Developer: GP

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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: GP



WIRE INSTRUCTIONS

Federal Reserve to: First State Bank of Burnet
136 E Washington St.
Burnet, TX 78611
Ph 512-756-2191

ABA #114907387

Credit to the Account of Attorney's Abstract & Title Company

Acct #053611

Reference: GF#07-23-15267 Burnet EDC-TEKMAK

**PLEASE NOTE: THIS TITLE COMPANY DOES NOT ACCEPT ACH
(AUTOMATIC CLEARING HOUSE) FUNDS OF ANY TYPE OR FORM**

117 E JACKSON ST. BURNET, TX 78611
INFO BURNETCOUNTYTITLE.COM
512-756-2006