

**BAKER HOTEL
ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT**

THIS ECONOMIC DEVELOPMENT INCENTIVE AGREEMENT (this "Agreement") is made and entered into by and between the City of Mineral Wells, a Texas home-rule municipal corporation ("City"), Tax Increment Reinvestment Zone Number Two (TIRZ#2), the Mineral Wells Economic Development Corporation, a Type 4B economic development corporation ("EDC") and Baker Hotel Development Partners, LLC, a Texas limited liability company ("Developer"), on this 1st day of June 2021 ("Effective Date"). City, TIRZ#2, EDC and Developer are sometimes individually referred to herein as a "Party" and are sometimes collectively referred to herein as the "Parties."

RECITALS:

WHEREAS, the Baker Hotel is a 14-story Spanish Colonial Revival tower hotel which has been a landmark in Mineral Wells since 1929, was placed on the National Register of Historic Places in 1982, and was internationally renowned for its spa incorporating the local mineral springs, but has been vacant since approximately 1972; and

WHEREAS, with the incentives described herein, Developer will redevelop the Baker Hotel and cause it to be a catalyst for additional economic development within TIRZ#2 and for the City of Mineral Wells and Palo Pinto County; and

WHEREAS, in accordance with Article III, Section 52-a of the Texas Constitution and Chapter 380 of the Texas Local Gov't Code, on October 6, 2020, the City established a Chapter 380 Economic Development Program (the "380 Program") to provide 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 within the City; and

WHEREAS, in accordance with Chapter 380, Texas Local Gov't Code, and pursuant to the City's 380 Program, the City agrees to provide incentives and financial assistance to the Developer to encourage and promote the development of the Property thereby enhancing and stimulating business and commercial activity in the City; and

NOW, THEREFORE, by and in consideration of the mutual covenants and agreements contained herein, the City of Mineral Wells, EDC, TIRZ#2 and Developer hereby agree as follows:

ARTICLE I

DEFINITIONS

Whenever used in this Agreement, the following terms shall have the meanings ascribed to them:

"Ad Valorem Tax Revenues" means the Real Property Taxes collected by TIRZ #2 on the Project.

"Economic Development Grant Payment(s)" means the amount paid by the EDC, TIRZ#2, and the City to Developer as described in Article III.

"Event of Force Majeure" any event or occurrence that is not within the control of such Party or its Affiliates and prevents a Party from performing its obligations under this Agreement, including without limitation, any act of God; act of a public enemy; war; riot; sabotage; blockage; embargo; failure or inability to secure materials, supplies or labor through ordinary sources by reason of shortages or priority; labor strike, lockout or other labor or industrial disturbance (whether or not on the part of agents or employees of either Party); civil disturbance; terrorist act; power outage; fire, flood, windstorm, hurricane, earthquake or other casualty; pandemic; any law, order, regulation or other action of any governing authority; any action, inaction, order, ruling moratorium, regulation, statute, condition or other decision of any governmental agency having jurisdiction over the Party, over the Project or over a Party's operations.

"Program" means the economic development program established by the City pursuant to Texas Local Government Code Chapter 380 and under the Resolution to promote local economic development and stimulate business and commercial activity within the City.

"Project" means the redevelopment of the Baker Hotel and its parking garage and any future land acquired by Developer which is integral to the operation or expansion of the Baker Hotel as described in Article II, below.

"Project Term" shall mean a period beginning on the Effective Date and continuing to December 31, 2039.

"Property" means the real property described on Exhibit A, attached hereto.

"Real Property Improvements" means any improvements constructed on the Project.

"Real Property Taxes" are the TIRZ#2's share of the ad valorem taxes on the value of all Real Property Improvements on the Project.

"Sales Tax Revenues" means the total amount of taxable sales and taxable purchases from and/or on the Project during the Project Term.

"Tax Increment" means the amount of ad valorem property tax collected above the tax generated on January 1, 2019 and deposited into TIRZ#2.

ARTICLE II

PROJECT DESCRIPTION

2.1 Project. Developer intends to construct, or cause to be constructed, the redevelopment of the Baker Hotel to a full-service boutique hotel with a minimum of 160 guest rooms, including at least 10 "historic rooms" that maintain the design of the original 450-room hotel and other rooms ranging from standard guest rooms to signature suites; a minimum of 15,000 square feet of meeting and entertainment space, including the rehabilitation of the nationally renowned Grand Ballroom, unique meeting spaces and a series of additional rooms, areas and gardens; a minimum of 8,000 square feet of retail space including a publicly accessible café, a formal restaurant, a museum, a gift shop, as well as additional dining and drinking options; a spa, a minimum of 10,000 square feet in size, with a focus on mineral water and wellness, with treatment rooms, a fitness center, saunas and a retail store; a renovated resort pool (as originally configured) and surrounding green space for activities and events; development of the property's parking garage; and development of property acquired in the future by Developer which is

integral for the operation or expansion of the Baker Hotel ("Project") as depicted in **Exhibit B** attached hereto and incorporated herein.

- 2.2 Certificate of Completion and Subsequent Job Creation.** Developer covenants and agrees to obtain or cause to be obtained a certificate of occupancy from the City for the Project and commence operation within sixty (60) months from Effective Date. Within 12 months of its receipt of a Certificate of Occupancy for the Project, Developer shall, through its management company and third party retail operations, employ at least 50 full time equivalent jobs onsite at the Project and shall maintain such level of employment during the Project Term. On or before February 1 of each calendar year during the Project Term, Developer shall provide to the City an affidavit certifying its compliance with the foregoing employment requirements in the form attached hereto as **Exhibit C** ("Job Compliance Affidavit"), and upon request by the City, Developer shall provide the City with any and all necessary documentation to verify its compliance with the job creation and retention obligations under this Agreement.

ARTICLE III

ECONOMIC INCENTIVES

- 3.1 Project - Economic Development Grant.** EDC shall pay to Developer an economic development grant in the form of a lump sum payment made solely from sales tax revenues collected at the Project. TIRZ#2 shall pay to Developer an economic development grant in the form of an annual payment made solely from Real Property Taxes collected on the Project. Developer understands and agrees the City is not certifying or otherwise encumbering any funds for the incentives set forth in this Agreement. Developer agrees not to make any claims against City, EDC or the TIRZ#2 for any monies other than those from (a) sales tax revenues from the Project and (b) Real Property Taxes collected on the Project. Nothing in this Agreement shall require City, EDC or the TIRZ#2 to make payment from revenue sources other than from (a) sales tax revenues from the Project and (b) Real Property Taxes collected on the Project.
- a. **EDC Project Grant.** EDC shall pay Developer a performance driven incentive of Four Million (\$4,000,000.00) Dollars, generally intended to assist Developer in the purchase of furniture, fixtures and equipment for the Project, conditioned upon Developer's expenditure of not less than Fifty Million (\$50,000,000.00) Dollars in acquisition, construction and development costs associated with the Project and evidenced by a project expense report prepared by an independent Certified Public Accountant and approved by EDC (the "Project Expense Report"). The EDC payment shall be made within 90 days of EDC's approval of the Project Expense Report.
 - b. **TIRZ #2 Project Grant.** TIRZ#2 shall pay to Developer 100 percent of the Tax Increment collected from the Project by each taxing entity participating in TIRZ#2 and conveyed to TIRZ#2 annually beginning with tax year 2020 and ending with tax year 2039.
 - c. **City Project Grant.** City shall waive municipal inspection and permit fees related to the Project as follows:
 - i. 100 percent of fees up to an amount of \$200,000.00,
 - ii. 50 percent of fees in excess of \$200,000.00,
 - iii. total City project grant will not exceed \$250,000.00 of the amount of the municipal inspection and permit fees and Developer shall be responsible for all municipal fees in excess of \$250,000.00.

3.2 Conditions to Program Grants. The City's, EDC's and TIRZ#2's obligation to pay any economic development grant is and shall be conditioned upon and subject to Developer's timely compliance with and satisfaction of all of the terms and conditions of this Agreement, including, without limitation each of the conditions set forth below:

- a. For each year of the term of this Agreement, Developer shall submit to the City a true and correct copy of the Job Compliance Affidavit.
- b. The fiscal year begins October 1st and ends September 30th. Therefore, Developer shall submit written requests for economic development grant payments accrued during that time not later than August 31st of each year. In any year, if Developer fails to request the grant payments as set forth above, a 45-day cure period shall commence. If the request is still not made at the expiration of this 45-day period, the City and/or TIRZ#2 shall have no obligation to make such payment to Developer and Developer will have forever forfeited the right to receive such payment.

3.3 Additional Developer Agreements. In addition to the conditions to the program grant payments set forth above, Developer agrees to the following requirements of the Project:

- a. Include the words "Baker Hotel" on primary signage related to the Project.
- b. Maintain an annual membership with the Mineral Wells Area Chamber of Commerce.
- c. Provide reasonable store space for advertising, marketing and tourism materials (this requirement shall survive termination).
- d. Make a reasonable effort to hire qualified residents of the City of Mineral Wells as employees of the Project (this requirement shall survive termination).
- e. Make a reasonable effort to hire local contractors, subcontractors and suppliers in constructing the Project, as evidenced by the companies from which Developer solicits bids for the Project. Developer shall submit to the City, the names of the companies and individuals from which it solicits bids for the project and the city in which the business or individual is located. This documentation shall be submitted prior to the commencement of construction and annually thereafter until construction is complete as evidenced by the issuance of a certificate of occupancy.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE CITY

4.1 The City represents and warrants that:

- a. The City is a home rule Texas municipality and has the power to enter into, and has taken all required actions to date, including adoption of the 380 Program, required to authorize this Agreement and carry out its obligations hereunder.
- b. The City knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed to the Developer.

- c. The City knows of no law, order, rule or regulation applicable to the City or to the City's governing documents that would be contravened by, or conflict with the execution and delivery of this Agreement.
- d. This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or equity. Subject to the indemnity provided by this Agreement, the City will defend the validity of this Agreement in the event of any litigation arising hereunder that names the City as a party or which challenges the authority of the City to enter into or perform its obligations hereunder.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF THE EDC

5.1 The EDC represents and warrants that:

- a. is a Type B economic development corporation and has the power to enter into and has taken all required actions to date required to authorize this Agreement and carry out its obligations hereunder.
- b. The EDC knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the EDC or its officials with respect to this Agreement that has not been disclosed to the Developer.
- c. The EDC knows of no law, order, rule or regulation applicable to the EDC or to the EDC's governing documents that would be contravened by, or conflict with the execution and delivery of this Agreement.
- d. This Agreement constitutes a valid and binding obligation of the EDC, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or equity. Subject to the indemnity provided by this Agreement, the EDC will defend the validity of this Agreement in the event of any litigation arising hereunder that names the EDC as a party or which challenges the authority of the EDC to enter into or perform its obligations hereunder.

ARTICLE VI

REPRESENTATIONS AND WARRANTIES OF TIRZ #2

6.1 TIRZ #2 represents and warrants that:

- a. TIRZ #2 is a tax increment reinvestment zone created by Ordinance No. 2008-15 of the Mineral Wells City Council dated August 5, 2008, expanded in area by Ordinance No. 2020-11 of the Mineral Wells City Council dated July 21, 2020, and extended in duration by Ordinance No. 2020-21 of the Mineral Wells City Council dated October 20, 2020. TIRZ #2 has the power to enter into and has taken all required actions to date required to authorize this Agreement and carry out its obligations hereunder.

- b. TIRZ #2 knows of no litigation, proceedings, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed to the Developer.
- c. TIRZ #2 knows of no law, order, rule or regulation applicable to the City or to the City's governing documents that would be contravened by, or conflict with the execution and delivery of this Agreement.
- d. This Agreement constitutes a valid and binding obligation of TIRZ #2, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or equity. Subject to the indemnity provided by this Agreement, TIRZ #2 will defend the validity of this Agreement in the event of any litigation arising hereunder that names TIRZ #2 as a party or which challenges the authority of TIRZ #2 to enter into or perform its obligations hereunder.

ARTICLE VII

DEVELOPER REPRESENTATIONS AND WARRANTIES.

7.1 Developer represents and warrants that:

- a. Developer is authorized to do business and is in good standing in the State of Texas and shall remain in good standing in the State of Texas during the Project Term. As used herein, the term "good standing" means the status of Developer with the Comptroller of the State of Texas shall be "Active".
- b. No litigation or governmental proceeding is pending or, to the knowledge of Developer, threatened against or affecting Developer that may result in any material adverse change in Developer's business or operation.
- c. No bankruptcy proceedings or other similar proceedings are currently pending or contemplated and Developer has not been informed of any potential involuntary bankruptcy proceedings.
- d. Developer shall remain current and in good standing with all sales taxes, property taxes, fees and other recurring charges of City, the State of Texas, and Palo Pinto County taxing jurisdictions throughout the Project Term.

ARTICLE VIII

DEFAULT, TERMINATION, AND REMEDIES

- 8.1 Noncompliance with Jobs Obligations; Withholding Payments.** If, at any time during any year of the Project Term, Developer is not in compliance with its obligation under Section 2.2 to create and retain jobs, no Economic Development Grant Payment shall be due for that year and Developer shall have no recourse or claim for recovery of the amount of the Economic Development Grant Payment that would have otherwise been due for that year.
- 8.2 Termination for Misrepresentation.** Notwithstanding any provision for notice of non-compliance and any opportunity to cure, the City, EDC or TIRZ #2 may terminate this Agreement immediately by providing written notice to Developer if Developer, its officers or signatories to this Agreement

intentionally misrepresented or misrepresent any material fact or information: (a) upon which the City, EDC or TIRZ #2 relied in entering into this Agreement; (b) upon which the City, EDC or TIRZ #2 relies in making an incentive payment; or (c) as an inducement for the City, EDC or TIRZ #2 to make an incentive payment. In the event of termination under this Section 8.2, Developer shall, within sixty (60) days of written notice of termination repay 100 percent of all grant payments received by Developer.

8.3 Notice of Default. At any time during the Term of this Agreement that Developer is not in compliance with its obligations under this Agreement, other than its obligations to create and retain jobs, the City, EDC or TIRZ #2 may send Developer notice of such non-compliance. If such non-compliance is not cured within 60 days after Developer's receipt of such notice or, if non-compliance is not reasonably susceptible to cure within 60 days, a cure is not begun within such 60-day period and thereafter continuously and diligently pursued to completion (in either event, a "Cure"), then the City, EDC or TIRZ #2 may, at its option, terminate this Agreement or withhold incentive payments otherwise due for the calendar year or years in which the non-compliance occurred and continues. If the City, EDC or TIRZ #2 elects to withhold incentive payments rather than to terminate the Agreement, then, upon a Cure by Developer, Developer will be eligible to receive incentive payments in future years (provided it is otherwise in compliance and subject to other limitations of this Agreement) for the remainder of the Term. An incentive payment withheld by the City, EDC or TIRZ #2 as a result of Developer's failure to Cure under this Section is deemed forfeited by Developer and the City, EDC or TIRZ #2 has no obligation to make retroactive payment even after Developer comes back into compliance. The Term shall not be extended as a result of any cure period under this Section.

8.4 Remedies. Except to the extent that this Agreement or applicable law requires otherwise, the remedies set forth in this Section are the sole and exclusive remedies available upon a violation, default, Breach or Material Breach (each as defined below) of this Agreement.

a. **Effect of Breach.** A Party will be deemed to be in "Breach" of this Agreement only if:

- i. it fails to substantially comply with any material provision of this Agreement; and
- ii. it does not cure such failure within a reasonable period of time following delivery to it of notice by the other Party describing such failure in reasonable detail, which period will not be less than 60 days. The City, EDC or TIRZ #2 agree and acknowledge that the Developer's representations, warranties, covenants, agreements and performance obligations under this Agreement are limited to and apply exclusively to the operations of Developer at the site of the Project tract and any determination as to whether Developer is in violation, default, Breach or Material Breach of this Agreement will be limited to Developer's operations on the Project tract. In the event of a Breach for which this Agreement does not provide a specific remedy, the other Party may pursue any legal or equitable remedies they may have under this Agreement or applicable law; provided, however, that the City, EDC and TIRZ #2 agree that, except that expressly provided in Section 8.3(b) of this Agreement, in the event of a Breach by Developer, it will not be entitled to and may not seek or pursue the remedy of recapturing any incentive payments realized by Developer prior to the date of the Breach or Material Breach.

b. **Effect of Material Breach.** If Developer Breaches its obligations under this Agreement to make or cause to be made the Project improvements (after any applicable notice and cure period has lapsed, a "Material Breach"), the City, EDC or TIRZ #2 has the right to terminate this Agreement in full and Developer shall repay all grant payments received by Developer, including the waiver of Project fees by City, within sixty (60) days of the written notice of termination.

- c. **Effect of Force Majeure Event.** A Party will not be deemed to be in Breach, Material Breach, default or otherwise in violation of any term of this Agreement to the extent such Party's action, inaction or omission is the result of Force Majeure Event. The Parties agree to use commercially reasonable efforts to promptly resolve any Force Majeure Event that adversely and materially impacts their performance under this Agreement. A force majeure event pauses a Party's performance obligation for the duration of the event but does not excuse it.
- d. **Overpayments.** Notwithstanding the limitations on remedies in this Article, it is understood and agreed that, because the incentive payments are from public funds, any verified overpayments to Developer may be recovered by the City, EDC or TIRZ #2, at the City's, EDC's or TIRZ #2's sole discretion, through available remedies at law or in equity, or by reducing future incentive payments by the amount of an overpayment.
- e. **Offset.** The City may deduct from any Chapter 380 Payments, as an offset, any delinquent and unpaid fees, sums of money or other fees, charges or taxes assessed and owed to or for the benefit of the City by Developer; provided that before offsetting any amounts the City must provide Developer with (a) advance notice of such offset, (b) 60 days to take action to remedy the situation giving rise to the offset, and (c) reasonable opportunity, at Developer's own expense, to contest such offset.
- f. **Limitation on Damages.** Notwithstanding anything contained in this Agreement to the contrary, under no circumstance shall a Party be entitled to punitive, special or consequential damages.

With respect to the above-referenced remedies afforded to Developer under this Agreement, City hereby expressly waives both its sovereign and its governmental immunity solely with respect to (a) the foregoing actions to enforce City's obligations under this Agreement and (b) writs of mandamus with respect to the performance of City's obligations under this Agreement. City acknowledges and agrees that the foregoing waiver may result in a judgment or writ compelling City to take certain actions and/or to pay funds to Developer in accordance with this Agreement, and the foregoing waiver of sovereign and governmental immunity shall apply with respect to the performance of said actions and/or the payment of such funds. In all other respects, the Parties agree that City has not waived, nor shall be deemed hereby to have waived, any defense or immunity, including governmental, sovereign and official immunity, that would otherwise be available to it against claims arising in the exercise of governmental powers and functions. By entering into this Agreement, the Parties do not create any obligations, express or implied, other than those set forth herein.

8.5 Indemnity. DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, EDC AND TIRZ#2, THEIR COUNCIL MEMBERS, BOARD MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY A THIRD PARTY AND ARISING OUT OF DEVELOPER'S PERFORMANCE OF THIS AGREEMENT. THE RIGHTS AND OBLIGATIONS CREATED BY THIS SECTION 8.5 SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT.

8.6 Acknowledgement of City's Compliance with Applicable Law.

- a. Developer acknowledges and agrees that:

- i. The conveyances, dedications, easements and/or payment of money required for the Project to be performed by Developer, in whole or in part, do not constitute a:

- (A) Taking under the Texas or United States Constitution;
- (B) Violation of the Texas Water Code, as it exists or may be amended;
- (C) Nuisance; or
- (D) Claim for damages or reimbursement against City for a violation of any federal or state constitution, statute or case law or any federal, state or local ordinance, rule or regulation.

- ii. The amount of Developer's financial or infrastructure contribution or conveyance of real property or interests therein (after receiving all contractual offsets, credits and reimbursements, if any) agreed to for the Project is roughly proportional to the demand that such Developer's development places on City's infrastructure.

- iii. Developer hereby releases City from any obligation to perform or commission a takings impact assessment under Chapter 2007 of the Texas Government Code, as it exists or may be amended.

- iv. Developer hereby agrees that any property which it conveys to City for the Project is roughly proportional to the benefit received by Developer for such land, and Developer hereby waives any claim therefore that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any value received by City relative to said conveyance are related both in nature and extend to the impact of the development of Developer's adjacent property on City's infrastructure. Developer and City further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by Texas Local Government Code §212.904, as well as any other requirements of a nexus between development conditions and the projected impact of the public infrastructure.

- v. **DEVELOPER SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CITY, ITS COUNCIL MEMBERS, OFFICERS, AGENTS, REPRESENTATIVES AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, SUITS, AND CAUSES OF ACTIONS, LIABILITIES AND EXPENSES, INCLUDING REASONABLE ATTORNEY'S FEES, OF ANY NATURE WHATSOEVER, ASSERTED BY THIRD PARTIES, INCLUDING BUT NOT LIMITED TO, DEVELOPER'S PARTNERS, OFFICERS, DIRECTORS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, ASSIGNEES, VENDORS, GRANTEES OR TRUSTEES, BROUGHT PURSUANT TO THIS SECTION 8.6.**

- b. Developer releases City, its council members, officers, agents, representatives and employees from any and all claims or causes of action based on excessive or illegal exactions for the Project.
- c. Developer waives any claim for damages or reimbursement against City for a violation of any federal or state constitution, statute or case law or any federal, state or local ordinance, rule or regulation.
- d. This Section 8.6 shall survive the termination of this Agreement.

8.7 Vested Rights/Chapter 245 Waiver. This Agreement shall confer no vested rights on the Property, or any portion thereof, unless specifically enumerated herein. In addition, nothing contained in this

Agreement shall constitute a “permit” as defined in Chapter 245 of the Texas Local Government Code, as amended, and nothing in this Agreement provides City with fair notice of any project of Developer. Developer waives any statutory claim under Chapter 245 of the Texas Local Government Code, as amended, arising out of any acts or omissions under this Agreement. This Section 8.7 shall survive the termination of this Agreement.

ARTICLE IX

MISCELLANEOUS PROVISIONS

- 9.1 Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the heirs, successors, affiliates, administrators, executors, and assigns of the respective parties.
- 9.2 Audits and Monitoring.** During the term of this Agreement, the City reserves the right to conduct reasonable audits to determine compliance with the terms and conditions of the Agreement. Auditable materials, include but are not limited to, the sales and use tax records, property tax records and employment records of all businesses associated with this Agreement. Developer is required to provide reasonable assistance in obtaining such records from tenant businesses. Failure to provide such assistance shall be grounds for the City to withhold grant payments until assistance is provided and records received.
- 9.3 No Waiver.** Except as specifically stated in this Agreement, nothing contained in this Agreement shall be construed in any way to limit or to waive the City’s sovereign immunity. However, the Parties agree that they have entered into this Agreement in good faith, intend to deal with each other in good faith, and intend for this Agreement to be enforceable as to its terms under Texas law.
- 9.4 Applicability of Ordinances.** Developer acknowledges and agrees this Agreement does not alter the applicability of the ordinances of the City. Further, this Agreement does not waive or limit any of the obligations of Developer to City under any other ordinance whether now existing or in the future arising. This Agreement (i) is not in any manner to be considered a waiver by the Parties of any requirement contained in the City’s ordinances and/or development requirements; (ii) will not and does not conflict with said ordinances, and in the event of such a conflict the terms of said ordinances control; and (iii) does not modify any City ordinances and/or development requirements. Where silent in this Agreement, the terms of City ordinances and/or development requirements shall control.
- 9.5 Separate Status.** None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint ventures or members of any joint enterprise.
- 9.6 Construction and Interpretation.**
- a. Whenever required by the context of this Agreement, (i) the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa, and (ii) use of the words “including”, “such as”, or words of similar import, when following any general term, statement or matter, shall not be construed to limit such statement, term or matter to specific terms, whether or not language of non-limitation, such as “without limitation” or “but not limited to” are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

- b. The captions preceding the text of each article and section of this Agreement are included only for convenience of reference. Captions shall be disregarded in the construction and interpretation of this Agreement. Capitalized terms are also selected only for convenience of reference and do not necessarily have any connection to the meaning that might otherwise be attached to such term in a context outside of this Agreement.
 - c. This Agreement may be executed in several counterparts, each of which shall be deemed an original. The signatures to this Agreement may be executed and notarized on separate pages, and when attached to this Agreement shall constitute one (1) complete document.
- 9.7 **Revenue Sharing Agreement.** The City designates this Agreement as a revenue sharing agreement, thereby entitling the City to request and receive sales and use tax information from the State of Texas Comptroller, pursuant to Section 321.3022 of the Texas Tax Code for any and all projects and supplemental projects associated with this Agreement.
- 9.8 **Assignability.** Developer may assign or transfer its rights (including the right to receive payments), duties and obligations under this Agreement to any person or entity only with prior written approval and consent by City, which approval shall not be unreasonably withheld, conditioned or delayed.
- 9.9 **Severability.** If any provision hereof shall be finally declared void or illegal by any court or administrative agency having jurisdiction, the entire Agreement shall not be void; but the remaining provisions shall continue in effect as nearly as possible in accordance with the original intent of the Parties.
- 9.10 **Entire Agreement.** This Agreement represents the entire agreement of the Parties with respect to the subject matter hereof and supersedes all prior written and oral matters related to this Agreement. Any amendment to this Agreement must be in writing and signed by all Parties hereto or permitted or approved assignees.
- 9.11 **Exhibits.** All exhibits attached to this Agreement are incorporated herein by reference and are expressly made part of this Agreement as if copied verbatim.
- 9.12 **Notice.** Any notice or demand, which any party is required to or may desire to serve upon the other, must be in writing, and shall be sufficiently served if (i) personally delivered, (ii) sent by registered or certified mail, postage prepaid, or (iii) sent by commercial overnight carrier, and addressed to:

If to City, EDC or TIRZ #2:

City of Mineral Wells
ATTN: City Manager
PO Box 460
Mineral Wells, TX 76067

With Copy to:

Brenda N. McDonald
Messer, Fort & McDonald, PLLC
6371 Preston Road
Suite 200
Frisco, TX 75034

If to Developer: BAKER HOTEL HOLDINGS
c/o LAIRD A. FAIRCHILD
161 SUMMIT AVE.

With Copy to: SOUTHLAKE TX 76092
RYAN
c/o MICHAEL CAMPEN
100 CONGRESS AVE. STE. A00
AUSTIN, TX 78701

or such other address or addresses which any Party may be notified in writing by any other Party to this Agreement.

Such notice shall be deemed to have been served (a) four (4) business days after the date such notice is deposited and stamped by the U.S. Postal Service, except when lost, destroyed, improperly addressed or delayed by the U.S. Postal Service, or (b) upon receipt in the event of personal service, or (c) the first business day after the date of deposit with an overnight courier, except when lost, destroyed or improperly addressed; provided, however, that should such notice pertain to the change of address to either of the Parties hereto, such notice shall be deemed to have been served upon receipt thereof by the Party to whom such notice is given.

- 9.13 Force Majeure.** In the event any party is rendered unable, wholly or in part, by force majeure to carry out any of its obligations under this Agreement, it is agreed that on such party's giving notice and full particulars of such force majeure in writing to the other party as soon as possible after the occurrence of the cause relied upon, then the obligations of the party giving such notice, to the extent it is affected by force majeure and to the extent that due diligence is being used to resume performance at the earliest practicable time, shall be suspended during the continuance of any inability but for no longer period. Such cause shall as far as possible be remedied with all reasonable dispatch.
- 9.14 Governing Law.** This Agreement and the relationship between the Parties shall be governed by the laws of the State of Texas, and venue for any action pertaining to this Agreement shall be in the State District Court of Palo Pinto County, Texas. The parties agree to submit to the personal and subject matter jurisdiction of the said Court.
- 9.15 Appointment of Representatives.** To further the commitment of the Parties to cooperate in the implementation of this Agreement, the Parties shall designate and appoint a representative to act as a liaison between the Parties. The initial representative for the City shall be the City Manager or their designee ("City Representative"), and the initial representative for Developer shall be Laird Fairchild ("Developer Representative"). The representatives shall be available at all reasonable times and places to discuss and review the performance of the Parties to this Agreement and the development of the Property.
- 9.16 Effective Date.** This Agreement shall be binding and take effect only upon all Parties signatures hereto, attachment of all required exhibits, and receipt by the Parties of a fully executed copy hereof. For the purposes of timetables provided in this Agreement, the Effective Date shall be the date first above written.
- 9.17 Legal Contest.** This Agreement is entered into in accordance with applicable law as understood by the Parties. In the event any part, provision or paragraph hereof shall become unenforceable by reason of judicial decree or determination, the Parties agree to the extent possible to ensure that all

other provisions of this Agreement, including the intent of this Agreement, be honored and performed.

- 9.18 Economic Incentives Constitute a Program.** This Agreement constitutes an economic development program to promote state or local economic development and to stimulate business and commercial activity in the City and the area annexed for limited purposes pursuant to Article III, Sec. 52-a, Texas Constitution and Chapter 380, Texas Local Government Code.
- 9.19 Public and Confidential Information.** Information provided by or on behalf of Developer pursuant to this Agreement that Developer considers to be proprietary and/or confidential and marked as such shall be maintained by City as confidential to the extent allowed by law. If proprietary financial or trade secret information is requested under the Texas Public Information Act ("Act"), City shall follow the standards set out in the Act and under the Texas Attorney General's procedures for such requests and Developer shall be responsible for defending the confidentiality of such information.
- 9.20 Automatic Termination.** In the event Developer elects not to proceed with the acquisition of the Property or the development of the Project, Developer will notify City in writing and this Agreement and the obligations of the Parties hereunder shall automatically terminate and be of no further force or effect as of the date of such notice. If a term, covenant or condition of this Agreement does not have an earlier express termination date, all terms covenants and conditions of this Agreement shall automatically terminate upon the later of the payment of all grant funds due herein.
- 9.21 Undocumented Workers.** During the term of this Agreement and in accordance with Chapter 2264 of the Texas Government Code, Developer agrees to not knowingly employ any undocumented worker and if convicted of a violation under 8 U.S.C § 1324a(f), grant payments shall terminate.
- 9.22 Incorporation of Recitals.** The Recitals set forth hereinabove are declared true and correct and are hereby incorporated into and made a part of this Agreement for all purposes.

LIST OF EXHIBITS

Exhibit A	Property Description (Survey and Legal Description)
Exhibit B	Project (Baker Hotel site plans, concept plans, elevations and sketches)
Exhibit C	Job Compliance Affidavit (form)

(Signature Pages Follow)

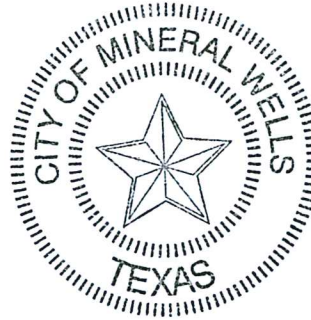
EXECUTED on this 1st day of June, 2021.

CITY OF MINERAL WELLS:

Regan Johnson
REGAN JOHNSON, Mayor

ATTEST:

Peggy Clifton
PEGGY CLIFTON, City Clerk



EXECUTED on this 1st day of June, 2021.

**MINERAL WELLS ECONOMIC DEVELOPMENT
BOARD:**



DR. JOHN KUHN, President


ATTEST:



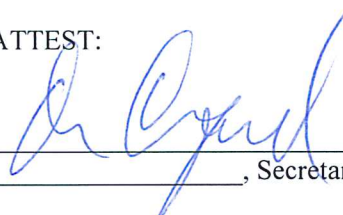
TRACEY KIRSCH, Secretary

EXECUTED on this 1st day of June, 2021.

**REINVESTMENT ZONE NUMBER TWO, CITY
OF MINERAL WELLS:**


_____, Chairperson

ATTEST:


_____, Secretary

EXECUTED on this 15th day of JUNE, 2021.

DEVELOPER:

BAKER HOTEL DEVELOPMENT PARTNERS, LLC
a Texas limited liability company


By: 
Name: LAIRD A. FAIRCHILD
Title: MANAGER

EXHIBIT A

TRACT ONE:

Being a 1.981 acres tract of land being all of Lots 1 thru 8, inclusive, Block 2, Lynch Addition to the City of Mineral Wells, Palo Pinto County, Texas, according to the plat thereof recorded in Volume "H", Page 262 of the Deed Records of Palo Pinto County, Texas; and all of Lots 1 thru 16, inclusive, Block "B," French Addition to the City of Mineral Wells, Palo Pinto County, Texas, according to the plat thereof recorded in Volume 2, Page 44 of the Plat Records of Palo Pinto County, Texas; and a strip of land 81.39 feet east to west and 200 feet north to south lying between said Block 2, Lynch Addition and said Block "B," French Addition, said 81.39 feet x 200 feet strip includes a portion of Northeast 2ND Avenue as closed by ordinance of the City of Mineral Wells on April 27, 1926; being all of that certain tract (Tract 1) described in Volume 2219, Page 59 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at a set "MAG" nail in a found "X" on concrete at the intersection of the south right of way line of Northeast 1ST Street (paved) and the east right of way line of Northeast 1ST Avenue (paved) and at the northwest corner of said Lot 6, Block 2, Lynch Addition for the northwest and beginning corner of this tract.

Thence S. 89 deg. 53 min. 32 sec. E. 431.39 feet along the south right of way line of said Northeast 1ST Street to a found 3/8" iron rod in the west right of way line of Northeast 3RD Avenue (paved) for the northeast corner of this and said Lot 8, Block "B," French Addition.

Thence S. 00 deg. 06 min. 28 sec. W. 200.00 feet along the west right of way line of Northeast 3RD

Avenue to a set "MAG" nail in a found "X" on a concrete walk in the north right of way line of East Hubbard Street (also known as U.S. Highway No. 180, west bound) for the southeast corner of this and said Lot 16, Block "B," French Addition.

Thence N. 89 deg. 53 min. 32 sec. W. 431.39 feet along the north right of way line of said East Hubbard Street to a set "MAG" nail in a found "X" on concrete in the east right of way line of said Northeast 1ST Avenue for the southwest corner of this and said Lot 1, Block 2, Lynch Addition.

Thence N. 00 deg. 06 min. 28 sec. E. 200.00 feet to the place of beginning.

EXHIBIT A

TRACT TWO:

Being a 0.560 acre tract of land being all of Lots 1 thru 4 and all of Lots 9 thru 12 and part of Lot 5 and part of Lot 13, Block "C," French Addition to the City of Mineral Wells, Palo Pinto County, Texas, according to the plat thereof recorded in Volume 2, Page 44 of the Plat Records of Palo Pinto County, Texas; being the same tract (Tract 2) described in Volume 2219, Page 59 of the Official Public Records of Palo Pinto County, Texas; and being further described by metes and bounds as follows:

Beginning at a set "MAG" nail in a found "X" on a concrete sidewalk at the intersection of the east right of way line of Southeast 2ND Avenue and the north right of way line of Southeast 1ST Street (also known as U.S. Highway No. 180, east bound) and at the southwest corner of said Lot 9, Block "C," French Addition for the southwest and beginning corner of this tract.

Thence N. 00 deg. 06 min. 28 sec. E. 200.00 feet along the east right of way line of said Southeast 2ND Avenue to a point in the west wall of a building and in the south right of way line of East Hubbard Street (also known as U.S. Highway No. 180, west bound) for the northwest corner of this and said Lot 1, Block "C," French Addition. Whence a set "MAG" nail in a concrete sidewalk bears N. 00 deg. 06 min. 28 sec. E. 2.00 feet.

Thence S. 89 deg. 53 min. 32 sec. E. 122.00 feet along the south right of way line of said East Hubbard Street to a set 1/2" iron rod with cap (PRICE SURVEYING) in the north line of said Lot 5, Block "C," French Addition and at the northwest corner of a certain tract described in Volume 1343, Page 848 of said Official Public Records for the northeast corner of this tract.

Thence S. 00 deg. 06 min. 28 sec. W. 200.00 feet to a set 1/2" iron rod with cap (PRICE SURVEYING) in the north line of said Southeast 1ST Street and in the south line of said Lot 13, Block "C," French Addition and at the southwest corner of said tract described in Volume 1343, Page 848 for the southeast corner of this tract.

Thence N. 89 deg. 53 min. 32 sec. W. 122.00 feet to the place of beginning.

[illegible]

EXHIBIT B

(INSERT PLANS, ELEVATIONS, CONCEPT DRAWINGS)

EXHIBIT C

JOB COMPLIANCE AFFIDAVIT

STATE OF TEXAS §
 §
COUNTY OF PALO PINTO §

On this day personally appeared _____, a person known to me, who being duly sworn stated as follows:

1. “My name is _____, I am over the age of 21, have never been convicted of a felony, and am fully competent to testify to the truth of the matters stated herein. Each and every statement contained herein is based upon my personal knowledge and is true and correct.
2. I am the _____ of _____, a Texas _____, and am duly authorized to make this affidavit of behalf of _____.
3. At all times from January 1, _____ to December 31, _____, _____ directly employed at least _____ full-time equivalent jobs at the Baker Hotel located in Mineral Wells, Texas.”

Further Affiant sayeth not.

Printed Name

Sworn and subscribed to before me this _____ day of _____, 20__.

Notary Public in and for the State of Texas