

CONSTRUCTION CONTRACT AGREEMENT BETWEEN TSW ENTERPRISES, INC.

D/B/A BLVD BAR & GRILLE AND TURN-KEY ASSOCIATES, LLC

This Construction Contract Agreement (“Contract”) is made on 4-23-2020 by and between TSW Enterprises, Inc. d/b/a BLVD Bar & Grille, 433 E. Mendota Road, West St. Paul, MN 55118 (“Owner”) and Turn-Key Associates, LLC, 1652 East Cliff Road, Burnsville, MN 55337 (“Contractor”).

Contractor wishes to enter into the following Contract with Owner to furnish labor and materials for the construction project located at the BLVD Bar & Grille, 433 E. Mendota Road, West St. Paul, MN 55118 (the “Project”). The Project shall be completed pursuant to Contractor’s Proposal dated April 23, 2020, together with all changes and addendums (“Contract Documents”) prepared thereafter. This Contract includes, by reference, all terms and conditions, and all other documents listed in this Contract, including Exhibits A-B, and any written modifications issued after execution of this Contract.

Owner has made available to Contractor all of the Contract Documents and Contractor has agreed to be responsible for obtaining copies pertinent to its work (the “Work”). The Contract Documents have been examined by Contractor, its agents and representatives. Owner agrees that the Contract Documents are complete and accurate as to all work to be performed by Contractor. Owner assumes all responsibility for any part of the Contract Documents that are incomplete or inaccurate. Contractor shall not be liable for Owner’s design errors, if any, and does not warrant any design provided by Owner or a third-party.

1. **Contract Documents** - This Contract is comprised of the following documents:

Turn-Key Associates, LLC Proposal dated April 23, 2020 concerning “Boulevard Grill Expansion” attached hereto and incorporated herein as Exhibit A; and,

Change Order Form – Attached hereto and incorporated herein as Exhibit B.

2. **Scope of Work** – Contractor shall furnish all necessary labor, materials, tools, equipment and supervision as described in the April 23, 2020 Proposal attached hereto and incorporated herein as Exhibit A, with the exception of pendant and vanity lights, which shall be supplied and provided by Owner.

3. **Contract Price** – Owner shall pay Contractor the Contract Price for Contractor’s performance of the Contract. The Contract Price shall be Two Hundred Thirty-Three Thousand, Eight Hundred Thirty-One Dollars and Zero Cents (\$233,831.00), subject to additions and deductions as provided in the Contract.

4. **Payment Schedule and Terms** - The Contract Price shall be paid by Owner in the manner set forth in Exhibit A attached hereto and incorporated herein.

5. **Commencement Date** - The date of commencement of Contractor's Work shall be:

- The date of this Contract
- A date set forth in a notice to proceed issued by Owner
- Other/Established as follows: RECEIPT OF BUILDING PERMIT

If the date of commencement of Contractor's Work is not selected, then the date of commencement shall be the date of this Contract. Contractor shall not commence Work on the Project until a fully-executed Contract is received from Owner.

Owner shall ensure that the Project is available by the Commencement Date so that Contractor's Work may be performed in a single, continuous operation requiring only one mobilization. If more than one mobilization is required due to Owner's action or inaction, then Contractor shall be entitled to receive additional compensation as determined by the parties and confirmed in a Change Order. If Contractor's equipment is idled due to Owner's action or inaction, then Contractor shall be entitled to receive its daily equipment rental rates for such idle equipment as determined by the parties and confirmed in a Change Order.

6. **Substantial Completion Date** - Subject to any adjustments of time as provided in the Contract Documents, the work shall be deemed substantially complete:

- No later than 67 calendar days from the date of commencement of Contractor's Work.
- By the following date: _____.
- When a Certificate of Occupancy is issued for the Project, or, if no Certificate of Occupancy will be issued, the date that the government building inspector completes a final inspection of the Work
- When Owner and Contractor agree upon a Certificate of Substantial Completion. The Certificate of Substantial Completion shall specify whether Contractor will maintain any responsibility for the job site items such as security, maintenance, utilities, insurance and damage to the Work, include a list of items which are part of the Work that are not complete as of the Substantial Completion Date ("Punch List Items"), and state a time for completion of all Punch List Items.

To the extent adverse weather conditions or other unforeseen conditions, including but not limited to vandalism, theft, fire or other casualty, labor shortages, material shortages, delays caused by Owner and other matters outside the reasonable control of Contractor, prevent completion of the Work or make it more costly, Contractor shall be entitled to an extension of time and an adjustment for escalating costs to be determined by the parties and confirmed in a Change Order.

7. **Final Completion Date** - The Final Completion Date is the date when all of the Work and all Punch List items have been completed.
8. **Time is of the Essence** – Time is of the essence for both parties and each agrees to perform their respective obligations so that the Project may be completed in accordance with this Contract.
9. **Quality of Work** - Contractor shall perform and complete the Work in a good and workmanlike manner. The Work shall be free from material defects not intrinsic in the design or materials specified in the Contract. All materials, fixtures and equipment shall be new unless otherwise specified, of good quality, and free from defects. All Work shall conform to applicable building codes and laws. Upon completion of the Work, all improvements will comply with applicable laws, ordinances and regulations and with all disclosed covenants, easements and restrictions affecting the Property. The uses for which the Work is intended will be conforming uses. Contractor shall promptly correct any Work not completed according to this Contract and shall repair or replace any defective materials, fixtures or equipment if requested by Owner in writing.
10. **Construction Obligations** - Contractor shall supervise and be solely responsible for all construction means, methods, techniques and procedures for the Work. Unless otherwise noted, Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, transportation and other facilities and services necessary for execution and completion of the Work. All excess or unused materials for this Project shall be returned to the supplying vendor by Contractor and credited to Contractor's account.
11. **Contractor Compliance** - Contractor shall comply with applicable laws, statutes, ordinances, codes, rules, regulations and lawful orders of public authorities bearing on performance of the Work. Contractor shall also comply with federal, state, and local tax laws; social security acts; unemployment compensation acts; and workers' compensation acts, insofar as applicable to the performance of the Work.
12. **Warranty** – Contractor warrants to Owner that materials and equipment furnished under the Contract will be of good quality and new unless otherwise required or permitted by the Contract Documents, that the Work will be free from defects not inherent in the quality required or permitted, and that the Work will conform to the requirements of the Contract Documents. Work not conforming to these requirements, including substitutions not properly approved and authorized, may be considered defective.

The Statutory Warranties of Minn. Stat. Chapter 327A are incorporated into this Contract and adopted herein if applicable. In the event Minn. Stat. Chapter 327A does not apply to the Project, Contractor warrants that its work shall be free from defects caused by faulty workmanship and defective materials for a period of one year from the date of Final Completion.

Contractor assigns to Owner all available manufacturer's warranties applicable to new materials, fixtures or equipment installed by Contractor or by any subcontractor as part of the Work; however, Contractor specifically excludes and makes no warranties for Owner-supplied components or materials to be installed by Contractor or by any subcontractor as

part of the Work, regardless of source. Contractor specifically excludes and makes no warranties for any work performed by or subcontracted directly by Owner. Contractor's warranty excludes remedy for damage or defect caused by abuse, modifications not executed by Contractor, improper or insufficient maintenance, improper operation or normal wear and tear and normal usage.

13. **Contractor Controls Construction** - Owner agrees that direction and supervision of the work forces, including but not limited to subcontractors, rests exclusively with Contractor. Owner agrees not to interfere with or issue any instructions to work forces, nor to contract for additional work with work forces except with Contractor's prior written consent, and then only in such manner as will not interfere with Contractor's completion of the Project.
14. **Permits, Fees, Inspections** - Contractor shall obtain and pay for all required permits, fees and licenses. Contractor shall schedule all governmental inspections necessary for proper execution and completion of the Work.
15. **Safety** – Contractor is responsible for initiating, maintaining and supervising all safety precautions and measures in connection with performance of this Contract and agrees to take all safety precautions with respect to its work and shall comply with all applicable laws, ordinances, rules and regulations and lawful orders of any public or governmental authority for the safety of persons or property.
16. **Access to Worksite** – Owner shall allow free access to work areas for workers and vehicles and shall allow areas for the storage of materials and debris. Work access hours shall begin at 7:00 A.M. and conclude at 7:00 P.M. Monday through Saturday until the Project is completed. Driveways and roadways will be kept clear for the movement of vehicles during work hours. Contractor will make reasonable efforts to protect driveways, lawns, shrubs, and other vegetation. Contractor also agrees to keep the worksite clean and orderly and to remove all debris as needed during the hours of work in order to maintain work conditions which do not cause health or safety hazards.
17. **Utilities** – Owner shall provide and maintain water and electrical service as necessary for Contractor to carry out and complete the Work.
18. **Temporary Facilities** - Contractor shall provide a portable, self-contained toilet on the job site as part of the Contract Price. Contractor shall make the temporary facilities available to subcontractors at no cost.
19. **Condition of Property** - Contractor shall keep the Project and surrounding area free from trash, garbage and miscellaneous waste materials caused by the Work, but shall not be held responsible for conditions caused by other contractors or subcontractors. Upon completion of all Work, Contractor shall remove all waste materials and trash occasioned by its Work, as well as, all of its tools, equipment, machinery and surplus materials.
20. **Concealed Conditions** – This Contract is based solely upon the observations Contractor was able to make concerning the Project in its condition at the time this Contract was bid. If additional concealed conditions are discovered once Work has commenced which were not visible at the time the Project was bid, Contractor may stop work and identify any

unforeseen concealed conditions to Owner so that Owner and Contractor may prepare and execute a Change Order for any additional Work.

21. **Existing Conditions** – Owner is responsible for existing conditions at the property and shall provide Contractor with all requested data concerning the property in its possession or under its control. If conditions are different than as represented by Owner and the changes adversely affects Contractor, then Contractor may stop work and identify any unforeseen conditions to Owner so that Owner and Contractor may prepare and execute a Change Order for any additional work.
22. **Inspection** – Owner shall have the right to inspect all Work performed under this Contract. All defects and incomplete items shall be reported to Contractor immediately. All Work that needs to be inspected or certified by any government department or agency shall be done at each necessary stage of construction and before further construction may continue. Owner acknowledges that by inspecting the Work, Owner assumes all risks and agrees to hold Contractor harmless from any claims arising out of or relating to injuries occurring at the Project, unless the same are the result of the negligent or intentional acts of Contractor, its employees or subcontractors.
23. **Owner Financing** – Contract is not contingent upon Owner securing financing or a loan commitment; however, in the event Owner requires financing for the Project by a third-party, Owner agrees that all disbursements from the third-party shall be made directly to Contractor as the sole payee. In the event the third-party disburses funds which include Owner as a co-payee, Owner agrees that Contractor may deposit such funds without Owner's endorsement and Owner shall hold Contractor harmless for same.
- (Optional) Owner and Contractor appoint _____ as Disbursing Agent for payments from Owner's funds. Owner shall either: (select one)
 - deposit the balance of the Contract Price (less any initial payment to Contractor) with Disbursing Agent before the Commencement Date, or
 - make periodic deposits to Disbursing Agent sufficient to fund contract payments.
- ___ ___ (Initials)

If no Disbursing Agent is appointed, payments from Owner's funds shall be made directly by Owner to Contractor.

24. **Contractor's Right to Stop Construction** – Contractor shall have the right to stop or discontinue Work in the event payments are not made to Contractor as due under the terms of this Contract, unless such non-payment results from Contractor's failure to timely perform its obligations as required by the terms of this Contract. Contractor may idle the Project until such time as payments which are due to the Contractor are made and the time for completion shall be extended by the time for such delay.
25. **Interest** - If payment is not received in full on or before the payment due date, Owner shall pay to Contractor a late payment charge for each month during which such payment delinquency exists, equal to one percent (1%) of such amount past due.

26. **Change Order** - All Change Orders shall be in writing, numbered serially and approved by both parties which shall substantially be in the form attached hereto as an Exhibit to this Contract and made a part hereof. The Change Order shall specifically describe the nature of the change and shall state the amount of the extra charge or credit resulting from the change. The signature and approval of one Owner shall be sufficient to bind all Owners to the new Contract Price. Owner shall compensate Contractor \$125.00 for each and every Change Order approved and accepted throughout the course of the Project with the exception of those Change Orders prepared for the sole purpose of extending the Substantial or Final Completion Date. No oral Change Orders shall be permitted and are void.

(*Optional*) In the event Owner and Contractor cannot reach an agreement as to the value of the additional work, Owner may direct Contractor to perform such work and shall pay Contractor for all of its direct labor, material and equipment costs, plus 15% for overhead and profit, as full compensation for the additional work. ____ ____ (*Initials*)

27. **Mechanic Lien Pre-Lien Notice** -

(A) ANY PERSON OR COMPANY SUPPLYING LABOR OR MATERIALS FOR THIS IMPROVEMENT TO YOUR PROPERTY MAY FILE A LIEN AGAINST YOUR PROPERTY IF THAT PERSON OR COMPANY IS NOT PAID FOR THE CONTRIBUTIONS.

(B) UNDER MINNESOTA LAW, YOU HAVE THE RIGHT TO PAY PERSONS WHO SUPPLIED LABOR OR MATERIALS FOR THIS IMPROVEMENT DIRECTLY AND DEDUCT THIS AMOUNT FROM OUR CONTRACT PRICE, OR WITHHOLD THE AMOUNTS DUE THEM FROM US UNTIL 120 DAYS AFTER COMPLETION OF THE IMPROVEMENT UNLESS WE GIVE YOU A LIEN WAIVER SIGNED BY PERSONS WHO SUPPLIED ANY LABOR OR MATERIAL FOR THE IMPROVEMENT AND WHO GAVE YOU TIMELY NOTICE.

28. **Mechanic Lien Waivers** - Contractor shall timely pay all subcontractors, laborers, and material suppliers for their respective contributions to the Project so as to prevent mechanics' or material suppliers' liens against the Project. Contractor shall furnish conditional and unconditional lien waivers and any other documents that may be reasonably requested by Owner or its lender at the time of each pay application or disbursement to Contractor.

29. **Insurance** - Contractor has, and shall continue to maintain, insurance coverage sufficient to protect Contractor and Owner from the claims of workers under the Workers' Compensation Act and other employee benefit acts for damages because of bodily injury, including death. Contractor has, and shall continue to maintain, insurance coverage sufficient to protect Contractor and Owner from claims for damages to property, other than to the Work itself, which may arise out of or result from Contractor's work under this Contract, whether the Work is conducted by Contractor or by any Subcontractor or anyone directly or indirectly employed by Contractor or any Subcontractor. Contractor has, and shall continue to maintain, liability insurance sufficient to protect Contractor and

Owner against claims that arise from any liability and operations under this Contract, which insurance shall name Owner as an additional insured. Prior to the Commencement Date, Contractor shall provide to Owner certificates evidencing insurance coverage. In the event Contractor's insurance coverage is not sufficient or satisfactory to Owner, Owner shall provide written notice to Contractor of its required insurance coverage and Contractor shall obtain and maintain such coverage and provide proof of same to Owner prior to commencement of the Work. No insurance coverage shall be cancelled, amended, revoked or non-renewed without thirty days (30) notice to Owner.

(*Optional*) Contractor shall obtain and maintain insurance in accordance with the requirements set forth and attached hereto as an Exhibit to this Contract and made a part hereof. ____ ____ (*Initials*)

30. **Indemnification** - To the fullest extent permitted by law, Contractor shall indemnify, defend and hold Owner harmless from and against all claims, damages, losses, and expenses, including but not limited to reasonable attorneys' fees for bodily injury, sickness, disease or death or from injury to or destruction of tangible property (other than the Work itself) including the resulting loss of use from any negligent act or omission of Contractor, any of its subcontractor, anyone directly or indirectly employed by Contractor or its subcontractor or anyone for whose acts any of them may be liable, except to the extent that the claim, loss or expense is caused in part by Owner.
31. **Notice** - Any notice or communication required or permitted under this Contract shall be provided in writing and shall be deemed to have been sufficiently given if delivered in person, by courier or by certified mail, return receipt requested, to the designated representative of the party to whom the notice is addressed to as set forth below.

OWNER'S REPRESENTATIVE		CONTRACTOR'S REPRESENTATIVE	
Name:	Thomas Williams	Name:	Tom Duffy
Address:	433 E. Mendota Road West St. Paul, MN 55118	Address:	1652 East Cliff Road Burnsville, MN 55337
Mobile No.:	651-450-7736	Mobile No.:	651-600-8313

Neither Owner's nor Contractor's representative shall be changed without ten days (10) notice to the other party.

32. **Claims** - Claims by Contractor for an adjustment in the Contract Price or Completion Dates shall be initiated by written Notice to Owner within 14 days after occurrence of the event giving rise to such claim.
33. **Delay** - If Contractor is delayed in the progress of the Work by weather conditions not reasonably anticipated or any other cause not reasonably foreseeable and beyond Contractor's reasonable control, then the Substantial Completion Date shall be extended for a reasonable period of time as determined by the parties and confirmed in a Change

Order. There shall be no fee for any Change Order prepared for the sole purpose of extending the Substantial Completion Date.

34. **Default** - The following default provisions shall survive termination of this Contract:

By Owner: If Owner breaches a material term of this Contract and fails to cure the breach within five (5) business days after written notice by Contractor, Owner shall be deemed to be in default.

By Contractor: If Contractor breaches a material term of this Contract and fails to cure the breach within five (5) business days after written notice by Owner, Contractor shall be deemed to be in default.

35. **Termination and Remedies** – In addition to any and all other rights a party may have available according to the laws of the State of Minnesota, if a party defaults by failing to substantially perform any provision, term or condition of this Contract (including, without limitation, the failure to make monetary payments when due), the other party may terminate the Contract by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving said notice shall have ten (10) days from the date of receiving said notice to cure the default or begin substantial completion if completion cannot be made in thirty (30) days. Unless waived by a party providing notice, the failure to cure or begin curing the default within such time period shall result in the automatic termination of this Contract.

36. **Waiver of Consequential Damages** – Owner and Contractor waive claims for consequential damages against one another.

37. **Dispute Resolution and Attorney Fees** – Owner and Contractor agree that all disputes relating to or arising out of this Contract shall first be subject to Mediation before a single Mediator jointly selected by the parties. Mediation attendees shall have full authority to settle the dispute and the parties shall jointly pay for the expense of Mediation. If the parties are unable to reach a settlement through Mediation, then either party may commence an action in District Court.

If an action or other legal proceeding is commenced in District Court concerning a dispute relating to or arising out of this Contract, including but not limited to mechanic lien claims, the prevailing party, as determined by the Court, shall be entitled to receive from the other party the prevailing party's costs and expenses, including reasonable attorney's and expert witness fees incurred in connection therewith, in preparation therefor and on appeal therefrom, which amounts shall be included in any judgment therein.

38. **Amendment** – This Contract may not be amended, altered or modified in any respect, except by in writing and duly executed by both parties. Any alleged oral agreement prior to or subsequent hereto shall be strictly void if not so subscribed in writing and signed by Owner and Contractor.

39. **Restriction on Assignment** – Neither party may assign this Contract without the express written consent of the other party. However, this restriction does not preclude Contractor’s hiring of subcontractors for performance of parts of the Work.
40. **Subcontractor** - A subcontractor is a person or entity who has a direct contract and authority from Contractor to perform any part of the Work. Contractor will have sole discretion as to whom it hires for subcontracted work and shall be solely responsible for the conduct and performance of the subcontractor. Upon written request from Owner, Contractor shall provide Owner the names and addresses of each subcontractor engaged to perform labor and material supplier retained to supply materials for the Work.
41. **Waiver** – The failure of either party to enforce any provision of this Contract shall not be construed as a waiver or limitation of that party’s right to subsequently enforce and compel strict compliance with said provision or with any other provision of this Contract.
42. **Governing Law** – This Contract shall be governed and enforced by the laws of the State of Minnesota and any legal action commenced with respect to this Contract shall be venued in the District Court for the County in which the Project is located.
43. **Entire Agreement** - This Contract contains the entire agreement between the parties regarding the matters set forth herein, and supersedes all previous negotiations, discussions and understandings regarding such matters. Each of the parties acknowledge and represent that the party has not relied upon any promise, inducement, representation or other statement made in connection with this Contract that is not expressly contained herein. The terms of this Contract are contractual in nature and not a mere recital.
44. **Severability** – If a Court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable for any reason, then the remaining provisions shall continue to be valid and enforceable. If a Court of competent jurisdiction finds that any provision of this Contract is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.
45. **No Presumption Against the Drafter** - Should any of the provisions or terms of this Contract require interpretation by a court, it is agreed by the parties that the court shall not apply a presumption that the terms of the Contract will be more strictly construed against one party because of that party’s role in drafting the Contract. It is agreed that all parties have participated in the preparation and review of this Contract.
46. **Conflicts in Documents** - The terms of this Contract shall control in the event of any conflict between the terms of this Contract and any other agreement or document concerning the Project.
47. **Other** – Allowances, Liquidated Damages, Unit Pricing or Schedule of Values, if any, shall be in writing, separately prepared and attached hereto as an Exhibit to this Contract and made a part hereof.

* * *

THIS CONTRACT IS BINDING UPON THE PARTIES HERETO, THEIR RESPECTIVE HEIRS, SUCCESSORS AND ASSIGNS. THE PARTIES REPRESENT THAT THEY HAVE THE CAPACITY AND THE AUTHORITY TO ENTER INTO THIS CONTRACT

TSW Enterprises, Inc.
d/b/a BLVD Bar & Grille

Turn-Key Associates, LLC

By: _____
(Date)

By: _____
(Date)

Its: _____

Its: _____

* * *

PERSONAL GUARANTEE

(*Optional*) I hereby personally guaranty all obligations of the Owner under this Contract, including monetary payments, and adopt and agree to all terms and conditions set forth in the Contract.

Date: _____

Name: _____

Address: _____

EXHIBIT A

Turn-Key Associates, LLC Proposal

Dated April 23, 2020 – Boulevard Grill Expansion

EXHIBIT B

Change Order Form

CHANGE ORDER NUMBER _____

*Attach to Construction Contract Agreement between Turn-Key Associates, LLC and
TSW Enterprises, Inc. d/b/a BLVD Bar & Grille dated _____*

Nature of Change:

Attachments: *(Identify and attach any amended plans, drawings, specifications, etc.)*

Changes to Contract Price and Contract time resulting from this Change Order

Contract Price *before* this Change Order: \$ _____

Net increase (decrease) from this Change Order: \$ _____

Change Order Fee \$ 125.00

Resulting (New) Contract Price: \$ _____

Estimated Substantial Completion Date *before* this Change Order: _____

Net increase (decrease) in contract time: _____

Resulting (New) Substantial Completion Date: _____

This Change Order is accepted and approved this ____ day of _____, 2020.

Turn-Key Associates, LLC

TSW Enterprises, Inc. d/b/a/ BLVD Bar & Grille

By: _____

By: _____

Its: _____

Its: _____