

AGENDA



City Council Meeting

Tuesday, November 22, 2022 at 6:00 PM

**Anna Municipal Complex - Council Chambers
120 W. 7th Street, Anna, Texas 75409**

The City Council of the City of Anna will meet on November 22, 2022 at 6:00 PM at the Anna Municipal Complex-Council Chambers, located at 120 W. 7th Street, to consider the following items.

Welcome to the City Council meeting. If you wish to speak on an Open Session agenda item, please fill out the Opinion/Speaker Registration Form and turn it in to the City Secretary before the meeting starts.

1. **Call to Order, Roll Call, and Establishment of Quorum.**
2. **Invocation and Pledge of Allegiance.**
3. **Work Session.**
Move to Executive Conference Room
 - a. Discuss a potential impact fee credit agreement to partner with the development community to abandon an existing sewer lift station and construct a regional sewer lift station in an alternate location for various single family developments east of State Highway 5. (Director of Public Works Greg Peters, P.E.)
 - b. Discuss update on NCTCOG and City of Anna partnership on Ferguson Parkway. (Director of Public Works Greg Peters)
 - c. Presentation and discussion of a resolution of the Anna Community Development Corporation approving and authorizing the expenditure of funds for Phase I of City of Anna Wayfinding Program and approving a professional services agreement with Lee Engineering, L.L.C. (Assistant Director Taylor Lough)
 - d. Zoning Discussion - Anna Ranch Phase 3 (Planning Manager Lauren Mecke)
4. **Neighbor Comments.**
Move to Council Chambers

At this time, any person may address the City Council regarding an item on this meeting Agenda that is not scheduled for public hearing. Also, at this time, any person may address the City Council regarding an item that is not on this meeting Agenda. Each person will be allowed up to three (3) minutes to speak. No discussion or action may be taken at this meeting on items not listed on this Agenda, other than to make statements of specific information in response to a citizen's inquiry or to recite existing policy in response to the inquiry.
5. **Reports.**
Receive reports from Staff or the City Council about items of community interest.

Items of community interest include: expressions of thanks, congratulations, or condolence; information regarding holiday schedules; an honorary or salutory recognition of a public official, public employee, or other citizen (but not including a change in status of a person's public office or public employment); a reminder about an upcoming event organized or sponsored by the governing body; information regarding a social, ceremonial, or community event organized or sponsored by an entity other than the governing body that was attended or is scheduled to be attended by a member of the governing body or an official or employee of the municipality; and announcements involving an imminent threat to the public health and safety of people in the municipality that has arisen after the posting of the Agenda.

- a. Public Announcements (Mayor Nate Pike)
- b. Recreation program and events report and announcement of the 12 Days of Anna programs and Christmas tree lighting event on Saturday, December 3rd (Assistant Director of Neighborhood Services Jeff Freeth).
- c. Recognition of the 2022 City of Anna Youth Soccer volunteer coaches (Assistant Director of Neighborhood Services Jeff Freeth)
- d. Report on November 21st Parks Advisory Board Meeting. (Assistant Director of Neighborhood Services Jeff Freeth)
- e. Update from the November 1, 2022 Diversity and Inclusion Advisory Commission meeting (Assistant to the City Manager Kimberly Winarski).

6. **Consent Items.**

These items consist of non-controversial or "housekeeping" items required by law. Items may be considered individually by any Council Member making such request prior to a motion and vote on the Consent Items.

- a. Approve the City Council Meeting Minutes for the November 8, 2022 meeting. (City Secretary Carrie Land)
- b. Review Minutes of the October 3, 2022 Planning & Zoning Commission Meeting. (Planning Manager Lauren Mecke)
- c. Review Minutes of the October 5, 2022, Joint Community Development Corporation and Economic Development Corporation Board Meetings. (Director of Economic Development Joey Grisham)
- d. Review Monthly Financial Report for the Month Ending October 31, 2022. (Budget Manager Terri Doby)
- e. Approve an Ordinance Amending the FY2023 Operating Budget and Community Investment Program (CIP) Budget to appropriate funding for additional staffing, the Downtown Plaza, and the Wheeled Sports Park. (Budget Manager Terri Doby)
- f. Approve a Resolution establishing a Depository Bank Solicitation Policy. (Finance Director Alan Guard)
- g. Approve a Resolution on an agreement for project initiation services for an indoor recreation facility with Project Advocates. (Director of Public Works Greg Peters, P.E.)
- h. Approve a Resolution for a contract with Teague Nall & Perkins for landscape architecture professional services on the Municipal Complex Plaza. (Director of Public Works, P.E.)

- i. Acting as the Anna Public Facility Corporation Board of Directors, Approve a Resolution authorizing the First Amendment to the Loan Agreement of the Multifamily Housing Revenue Bonds (Palladium East Foster Crossing); approving and authorizing the execution and delivery of related documents; authorizing representatives of the Anna PFC to execute documents; and approving related matters. (Director of Economic Development Joey Grisham)
- j. Approve a Resolution approving and authorizing a First Amendment to Amended and Restated Incentive Agreement for New Economic Development with Anna Village Residential, Ltd. and Anna Village Commercial, Ltd. (Director of Economic Development Joey Grisham)
- k. Accept an equipment donation to the Anna Police Department from RPS Defense (Police Chief Dean Habel)
- l. Approve a Resolution authorizing the City Manager to execute a construction agreement with SPA Skateparks for the construction of a skatepark at Slayter Creek Park. (Neighborhood Services)
- m. Approve a Resolution adopting a New City Seal. (City Secretary Carrie Land)

7. Items For Individual Consideration.

- a. Conduct a Public Hearing/Consider/Discuss/Action on an Ordinance for a Specific Use Permit (SUP) for a hotel on one lot on 2.9± acres located on the east side of Standridge Boulevard, 1,040± feet north of Suzie Lane. (Planning Manager Lauren Mecke)
- b. Consider/Discuss/Action on a Resolution regarding One Anna Two Addition, Block A, Lot 4R, Concept Plan. (Planning Manager Lauren Mecke)
- c. Conduct a Public Hearing/Consider/Discuss/Action on an Ordinance to rezone 1.2± acres located at the southeast corner of E. Fourth Street and S. Sherley Avenue. (Planning Manager Lauren Mecke)
- d. Consider/Discuss/Action on an Ordinance regarding a sign variance. (Planning Manager, Lauren Mecke)
- e. Acting as the Anna Public Facility Corporation Board of Directors, Consider/Discuss/Action on a resolution authorizing the formation of and APFC as sole member of (i) APFC Waters Creek Member, LLC, as special member and landlord, (ii) APFC Waters Creek Contractor, LLC, as general contractor, and (iii) APFC Waters Creek Development, LLC, as co-developer, all in relation to the financing, acquisition, construction and development of the Jefferson Villages at Waters Creek multifamily affordable housing development.(Director of Economic Development Joey Grisham)
- f. Acting as the Anna Public Facility Corporation Board of Directors, Consider/Discuss/Action on a resolution as sole member of APFC Waters Creek Member, LLC and APFC Waters Creek Contractor, LLC, to take certain actions and enter into certain documents relating to the financing of the Jefferson Villages at Waters Creek multifamily affordable housing development. (Director of Economic Development Joey Grisham)
- g. Consider/Discuss/Act on an Ordinance re-naming Throckmorton Boulevard to Buddy Hayes Boulevard. (Director of Public Works Greg Peters, P.E.)
- h. Consider/Discuss/Action to fill an EDC/CDC Boards vacancy. (City Secretary Carrie Land)
- i. Consider/Discuss/Action to fill a BOA vacancy. (City Secretary Carrie Land)

8. **Closed Session (Exceptions).**

Under Tex. Gov't Code Chapter 551, the City Council may enter into Closed Session to discuss any items listed or referenced on this Agenda under the following exceptions:

- a. Consult with legal counsel regarding pending or contemplated litigation and/or on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Government Code (Tex. Gov't Code §551.071).
- b. Discuss or deliberate the purchase, exchange, lease, or value of real property (Tex. Gov't Code §551.072).
- c. Discuss or deliberate Economic Development Negotiations: (1) To discuss or deliberate regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City of Anna and with which the City is conducting economic development negotiations; or (2) To deliberate the offer of a financial or other incentive to a business prospect described by subdivision (1). (Tex. Gov't Code §551.087).
- d. Discuss or deliberate personnel matters (Tex. Gov't Code §551.074).

The Council further reserves the right to enter into Executive Session at any time throughout any duly noticed meeting under any applicable exception to the Open Meetings Act.

9. Consider/Discuss/Action on any items listed on any agenda - work session, regular meeting, or closed session - that is duly posted by the City of Anna for any City Council meeting occurring on the same date as the meeting noticed in this agenda.
10. **Adjourn.**

This is to certify that I, Carrie L. Land, City Secretary, posted this Agenda on the City's website (www.annatexas.gov) and at the Anna Municipal Complex bulletin board at or before 5:00 p.m. on November 18, 2022.

Carrie L. Land, City Secretary

1. The Council may vote and/or act upon each of the items listed in this agenda.
2. The Council reserves the right to retire into executive session concerning any of the items listed on this agenda, whenever it is considered necessary and legally justified under the Open Meeting Act.
3. Persons with a disability who want to attend this meeting who may need assistance should contact the City Secretary at 972 924-3325 two working days prior to the meeting so that appropriate arrangements can be made.



Item No. 3.a.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Gregory Peters

AGENDA ITEM:

Discuss a potential impact fee credit agreement to partner with the development community to abandon an existing sewer lift station and construct a regional sewer lift station in an alternate location for various single family developments east of State Highway 5. (Director of Public Works Greg Peters, P.E.)

SUMMARY:

Staff has been working with multiple developers in the area east of State Highway 5 and north of downtown, where there are several masterplanned single family developments. This item is to present a potential agreement to the City Council to fund the construction of a regional lift station to provide sewer service for the whole area. The existing small sewer lift station in the Sweetwater Crossing neighborhood would be abandoned, and the regional lift station would be constructed in one of the new developments.

Staff is seeking feedback on the terms of the agreement prior to preparing a formal agenda item for the December 13th meeting for approval.

FINANCIAL IMPACT:

TBD

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

N/A

ATTACHMENTS:

APPROVALS:

Gregory Peters, Director of Public Works
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022



Item No. 3.b.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Gregory Peters

AGENDA ITEM:

Discuss update on NCTCOG and City of Anna partnership on Ferguson Parkway.
(Director of Public Works Greg Peters)

SUMMARY:

Ferguson Parkway project update.

FINANCIAL IMPACT:

Staff will provide the City Council with an update on the project and information pertaining to a potential NCTCOG agreement for additional funding.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

N/A

ATTACHMENTS:

APPROVALS:

Gregory Peters, Director of Public Works
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022



Item No. 3.c.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Taylor Lough
Kimberly Garduno

AGENDA ITEM:

Presentation and discussion of a resolution of the Anna Community Development Corporation approving and authorizing the expenditure of funds for Phase I of City of Anna Wayfinding Program and approving a professional services agreement with Lee Engineering, L.L.C. (Assistant Director Taylor Lough)

SUMMARY:

Following the sale of the Anna Business Park, the CDC/EDC Boards held a special-called meeting with the City Council in June 2022. Members discussed various projects related to the development of the downtown and citywide. One Citywide project that was identified as a priority was wayfinding and gateway signage that will help attract visitors and provide a sense of place and direction to destinations.

As the City of Anna's major right-of-way entrances are owned by TxDOT, the CDC coordinated with the City's engineering team to select Lee Engineering to lead the study and design of gateway entrance and wayfinding signage. MERJE will serve as a subcontractor and has extensive experience in community wayfinding programs.

FINANCIAL IMPACT:

Phase I is \$35,960 from the CDC.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Anna - Great Place to Live

STAFF RECOMMENDATION:

Staff will review the scope and timeline of Phase I. As this is a CDC project it requires City Council approval and two readings, which will be placed on the December meeting agenda.

ATTACHMENTS:

1. City of Anna Wayfinding Master Plan Scope _LEE_MERJE.v1
2. Wayfinding PSA_Signed Notarized_11_17_22

APPROVALS:

Kimberly Garduno, Economic Development Coordinator Created/Initiated - 11/17/2022
Jim Proce, City Manager Final Approval - 11/17/2022



November 17, 2022

Kimberly Garduno

Economic Development Coordinator

City of Anna

120 W. 7th St.

Anna, TX 75409

RE: PROPOSAL FOR THE CITY OF ANNA WAYFINDING PROGRAM – Phase I – Wayfinding Assessment and Schematic Design

Dear Ms. Garduno:

Thank you for contacting Lee Engineering and MERJE team for the development of a wayfinding program for the City of Anna. MERJE focuses exclusively on wayfinding and signage projects, with specific expertise in Community Wayfinding programs.

Lee Engineering and MERJE have previously worked on various projects, including the City of Denton Wayfinding Program, LBJ / TEXpress Wayfinding Study, and a Communications Audit for DART.

MERJE has worked with cities, towns, and communities of all sizes and aspirations. We work with organizations, local stakeholders, and approving agencies daily, helping them establish wayfinding programs.

Having developed programs for more than 125 communities nationwide, we can share with you the best practices for designing a regional wayfinding program and the strategies associated with obtaining funding, long-term maintenance, and DOT regulations.

METHODOLOGY

Based on our discussions, we understand the best way to get the project off the ground is to start with a Wayfinding Assessment and Schematic Design. This will help the City and the design team establish appropriate wayfinding tools that are based on community priorities, wayfinding needs, and available funding. This design process provides a basic structure for advancing through the project and offers opportunities to address individual project issues that are unique to the City of Anna.

PHASE 1: DISCOVERY & DESIGN

Task 1 Wayfinding Assessment

TASK 1.1 Virtual Kick-Off meeting with Steering Committee.

The Consultant will conduct a virtual meeting with the City of Anna within one week of receiving a Notice to Proceed and a signed contract.

- Discuss the project work plan and schedule
- The City will identify stakeholders and steering committee members
- Obtain existing relevant documents (i.e., Comprehensive Plan, Downtown Master Plan, branding studies, tourism/marketing initiatives, etc.)

TASK 1.2 INFORMATION GATHERING (MERGE Trip #1)

The Consultant will:

- Conduct a field visit to tour and photograph critical features.
- Review existing relevant documents and planning work accomplished to date. (i.e., Comprehensive Plan, Downtown Master Plan, branding studies, tourism/marketing initiatives, etc.)
- Identify city gateways, districts, primary routes, major areas, points of interest, and destinations (cultural, business, shopping, education, parking, recreation, neighborhoods, etc.).

TASK 1.3 INTERVIEWS (MERGE Trip #1)

To provide the design team with an understanding of the issues, the Consultant will conduct a series of brief working meetings with wayfinding participants and user groups to review program criteria.

Conduct Stakeholder Interviews: The Consultant will conduct working meetings (interviews) with wayfinding participants and user groups to review program criteria: primary and secondary routes, circulation, State & County roadways, assigned speed limits, parking facilities, pedestrian requirements, districts/zones, transition points, decision points, information hierarchy, create a general menu of sign types, terminology/nomenclature, audience considerations, daytime vs. evening travel, design criteria, image, marketing goals, functional requirements, flexibility, vandal resistance, and maintenance. Interviews will be held over a maximum of 3-day period, in small groups of 4-5 participants, typically for 45 min – 1 hour each. (TRIP #1)

TASK 1.4 Summarize the information gathered and set design and planning criteria for the project moving forward.

Confirm traffic engineering and design criteria with DOT and approving agencies. Identify a preliminary budget based on information gathered to date.

TASK 1.5 ADMINISTRATIVE STRATEGY

Finalize the Destination List and determine the terminology (or abbreviations) necessary for each destination/attraction.

Develop a project budget and identify public and private financial resources for the fabrication, installation, and maintenance of the wayfinding program. Outline potential Phasing plans if necessary.

TASK 1.5 DIGITAL STRATEGY REPORT (Optional)

Wayfinding Tools: Review requirements for digital and interactive tools, including wayfinding, mapping, transit, and other informational content and websites. Also, review available data feeds, formats, and existing capabilities (hardware, software, and connectivity). Finally, make recommendations on the types of digital wayfinding tools that may be considered.

Outline what digital content should be considered in the information architecture and user experience sequence. We will also identify the user interface information architecture and interactions. This step allows all stakeholders to understand how information is organized at all levels. It also serves as a diagrammatic map of how the information is stored and how the user accesses it. The resulting outline is a rich wireframe of the entire application structure, as well as the overall wayfinding strategy, including the potential use of electronic signage

TASK 1.7 Prepare a Summary Wayfinding Assessment Presentation.

TASK 1.8 Present Summary Wayfinding Report to Steering Committee (1), Stakeholders (1), and (1) Public Open House. (MERGE TRIP #2 - see Schematic Design Presentation also)

Task 1 Deliverable: WAYFINDING ASSESSMENT PRESENTATION: We will provide recommendations in the form of a presentation.

TASK 2.0 SCHEMATIC DESIGN

TASK 2.1 Schematic Design (3 options)

GATEWAYS: Based on the information gathered during stakeholder interviews, the Consultant team will identify 2-3 typical gateway locations and, through the use of case study images, present potential approaches, materials, and overall design intent. This will include a plan view, photographs of existing conditions, and visual examples of solutions from other places with similar situations. Note that these are not formal concepts, simply examples that show design intent to build consensus for placement and overall aesthetic direction. (See Task 4.0 for concepts).

This would also include an outline of "opportunities" and "challenges" associated with each type of gateway presented.

WAYFINDING SIGNAGE: Analyze tourism initiatives, historic elements, imagery, local architecture and culture, and additional information needed to formulate sign design concepts. Develop a conceptual menu of sign types and other elements. This would include typical designs and systems, location, size, shape, and colors. Three design options will be included.

TASK 2.2 Develop Preliminary Budgets based on design options presented.

TASK 2.3 Prepare Schematic Design Presentations:

- Preview presentation (virtual) with the City of Anna Project Manager. (at least one week before the Steering Committee presentation)

The following presentations/meetings will be conducted during the design team's Trip # 2 and will be conducted on the same or consecutive days)

- Presentation to Steering Committee to receive feedback on proposed design concepts.
- Meet with DOT to review signage concepts/wayfinding on State roadways.
- Present Design Concepts to Stakeholders and/or General Public/Community Review

ASK 2.6

Task 2 Deliverable: A maximum of 3 formal presentations (Steering Committee, Stakeholders, and Public Open House). Note: All presentations shall be coordinated on the same or consecutive days.

Phase 1 recommendations will assist the City in determining which wayfinding initiatives and elements they may move forward with for Phase II.

Fee

Thank you for considering the Lee Engineering team for Phase I of the City of Anna Wayfinding Program development. Based on the scope of the project, your requirements, and the services outlined in our Project Approach, we propose the following Fee:

Phase I: Wayfinding Assessment and Schematic Design

Fee

Task	Fee
1. Wayfinding Analysis	\$14,000 Lump Sum
2. Schematic Design	\$17,960
3. Reimbursable	\$4,000 (Not to Exceed) Bases on 2 Trips for MERGE
Phase I Total Fee	\$35,960

Optional Services

Digital Strategy Report - \$8,500

Additional In-Person Meetings / Trips for MERGE (based on 2 days) \$ 4,640 (per person)

Additional In-Person Meetings for Lee Engineering – Hourly based on the attached hourly rate schedule

Phase II: Planning And Design Development (Not In Contract / Future Tasks)

The following tasks will be required for Phase II. The level of effort for each task (simple vs. complex) will be determined by Phase I recommendations, priorities, and budgets.

Task 3	Programming	Prepare sign location plans and messages.
Task 4	Design Development	Refine and expand the selected design.
Task 5	Documentation	Prepare documentation drawings (Bid Package)
Task 6	Construction Admin.	Review shop drawings, samples, etc.

REIMBURSABLE EXPENSES

Reimbursable expenses, not to exceed the amounts identified per Phase, without prior written approval, are in addition to the basic compensation outlined above and will be billed to the client at the cost as incurred by the Consultant in the interest of the project. These expenses include but are not limited to: CADD machine plots, photocopies, travel, airfare, lodging, meals, fares, tolls, auto rental, parking, art materials, foam-core mock-ups, first-class mail, special overnight mail, and delivery services, and messenger services.

ADDITIONAL SERVICES

The following items are potential additional services, and if authorized by the client, a separate proposal will be developed to address a specific project requirement.

- Programming, Design Development, and/or Documentation
- Bidding Assistance and Construction Administration.
- Additional Meeting Per Diem (\$ 1,320 + Travel Expenses)
- Structural, electrical or civil engineering
- Interpretive signage for historic areas
- Historic markers or special historic walking tour
- Design of wall murals, super graphics, or other sign types outside the agreed-upon menu.
- Landscape or lighting design.
- Orientation map design and artwork.
- Trail or Bicycle Signage
- Mobile phone applications and any other digital wayfinding tools.

We appreciate you considering the Lee Engineering team to provide professional services for this project. If you have any questions regarding the above, do not hesitate to get in touch with me at (972) 948 1009.

Thank you very much for the opportunity. We look forward to working with you on this project.

Sincerely,

Dharmesh Shah, PE, PTOE
Lee Engineering, LLC

PROFESSIONAL SERVICES AGREEMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

THIS AGREEMENT is made and entered into as of the 9th day of November 2022, by and between the Anna Community Development Corporation, a Texas Type B Corporation with its corporate office at 120 W. 7th Street, Anna, Texas 75409, hereinafter called "OWNER" and Lee Engineering, L.L.C., an Arizona limited liability company, with its corporate office at 3030 LBJ Freeway, Suite 1660, Dallas, TX 75234, hereinafter called "CONSULTANT," acting herein, by and through their duly authorized representatives.

WITNESSETH, that in consideration of the covenants and agreements herein contained, the parties hereto do mutually agree as follows:

ARTICLE 1 **ENGAGEMENT OF CONSULTANT**

OWNER hereby contracts with CONSULTANT, as an independent contractor, and CONSULTANT hereby agrees to perform the services described herein in connection with the project(s) as stated herein: (1) with the professional skill and care ordinarily provided by competent engineers practicing under the same or similar circumstances and professional license; and (2) as expeditiously as is prudent considering the ordinary professional skill and care of a competent engineer. The professional services set out here are in connection with the following described project(s) (the "Project" whether one or more):

CITY OF ANNA WAYFINDING PROGRAM – Phase I – Wayfinding Assessment and Schematic Design

The Project shall include the professional services described under Article 2.A. of this Agreement and/or individual task orders which shall be governed by the terms of this Agreement.

ARTICLE 2 **SCOPE OF SERVICES**

CONSULTANT shall perform the following services in a professional manner:

- A. CONSULTANT shall perform all those services as necessary and as described under "Scope of Services" as set forth in Exhibit "A" which is attached hereto and made part hereof as if written word for word herein.

- B. CONSULTANT may perform further services set forth in individual task orders which shall be signed by the parties and governed by the terms of this Agreement.
- C. If there is any conflict between the terms of this Agreement and the exhibits attached to this Agreement or any task orders, the terms and conditions of this Agreement will control over the terms and conditions of the attached exhibits or task orders.

ARTICLE 3

ADDITIONAL SERVICES

Additional services to be performed by CONSULTANT, if authorized in writing by OWNER, whether included in the above-described Scope of Services, are described as follows:

- A. During the course of the Project, as requested by OWNER, CONSULTANT will be available to accompany OWNER's personnel when meeting with or having dealings with the Texas Commission on Environmental Quality, U.S. Environmental Protection Agency, or other regulatory agencies. CONSULTANT will assist OWNER's personnel on an as-needed basis in preparing compliance schedules, progress reports, and providing general technical support for OWNER's compliance efforts.
- B. Assisting OWNER or contractor in the defense or prosecution of litigation in connection with or in addition to those services contemplated by this Agreement. Such services, if any, shall be furnished by CONSULTANT on a fee basis negotiated by the respective parties outside of and in addition to this Agreement.
- C. Sampling, testing, or analysis beyond that specifically included in the above-described Scope of Services.
- D. Preparing copies of computer aided drafting (CAD) electronic data bases, drawings, or files for OWNER's use in a future CAD system.
- E. Preparing applications and supporting documents for government grants, loans, or planning advances and providing data for detailed applications.
- F. Appearing before regulatory agencies or courts as an expert witness in any litigation with third parties or condemnation proceedings arising from the development or construction of the Project, including the preparation of engineering data and reports for assistance to OWNER.

ARTICLE 4

PERIOD OF SERVICE

This Agreement shall become effective upon execution of this Agreement by OWNER and CONSULTANT and upon issue of a notice to proceed by OWNER, and shall remain in force for the period which may reasonably be required for the completion of the Project, including Additional Services, if any, and any required extensions approved by OWNER. This Agreement may be sooner terminated in accordance with the provisions hereof. Time is of the essence in this Agreement.

CONSULTANT shall make all reasonable efforts to complete the services set forth herein as expeditiously as possible and to meet the following schedule for completion:

See Exhibit "B" attached hereto. CONSULTANT shall provide written notice to OWNER if CONSULTANT anticipates any change to the schedule and in such event shall supply a new written schedule to replace Exhibit "B".

ARTICLE 5

COMPENSATION

A. COMPENSATION TERMS:

The amount of compensation paid to CONSULTANT shall be a not to exceed amount of \$35,960, except for option services including: Digital Strategy Report - \$8,500; Additional In-Person Meetings / Trips for MERGE (based on 2 days) \$ 4,640 (per person); and Additional In-Person Meetings for Lee Engineering – Hourly based on the attached hourly rate schedule.

B. BILLING AND PAYMENT: Partial payments to CONSULTANT will be made on the basis of detailed monthly (or agreed upon periodic) statements rendered to and approved by OWNER; however, under no circumstances shall any monthly statement for services exceed the value of the work performed at the time a statement is rendered.

Nothing contained in this Article shall require OWNER to pay for any work which is unsatisfactory, as reasonably determined by the OWNER'S Project representative or his designee, or which is not submitted in compliance with the terms of this Agreement. OWNER shall not be required to make any payments to CONSULTANT when CONSULTANT is in default under this Agreement.

It is specifically understood and agreed that CONSULTANT shall not be authorized to undertake any work pursuant to this Agreement which would require additional payments by OWNER for any charge, expense, or reimbursement above any maximum not-to-exceed fee as stated herein (including without limitation any applicable exhibits) within any specified task order, without first having obtained written authorization from OWNER. CONSULTANT shall not proceed to perform any services without obtaining prior written authorization from the OWNER'S Project representative or his designee.

C. ADDITIONAL SERVICES: For additional services authorized in writing by OWNER in Article 3, CONSULTANT shall be paid based on the Schedule of Charges at an hourly rate shown in Exhibit "A". Payments for additional services shall be due and payable upon submission by CONSULTANT and shall be in accordance with subsection B hereof. Statements shall not be submitted more frequently than monthly.

D. PAYMENT: If OWNER fails to make payments due CONSULTANT for services and expenses within 30 days after receipt of CONSULTANT's undisputed statement thereof, the amounts due CONSULTANT will be increased by the rate of one percent (1%) per month from the said 30th

day, and, in addition, CONSULTANT may, after giving seven days' written notice to OWNER, suspend services under this Agreement until CONSULTANT has been paid in full all amounts due for services, expenses, and charges, provided, however, nothing herein shall require OWNER to pay the late charge of one percent (1%) set forth herein if OWNER reasonably determines that the work is unsatisfactory, in accordance with this Article 5, "Compensation."

ARTICLE 6

OBSERVATION AND REVIEW OF THE WORK

CONSULTANT will exercise reasonable care and due diligence in discovering and promptly reporting to OWNER any defects or deficiencies in the work of CONSULTANT or any subcontractors or subconsultants of CONSULTANT or of any other party providing construction services or related services in furtherance of the Project.

ARTICLE 7

OWNERSHIP OF DOCUMENTS

All documents prepared or furnished by CONSULTANT (and CONSULTANT's subcontractors or subconsultants) pursuant to this Agreement are instruments of service and shall become the property of OWNER upon the termination of this Agreement. CONSULTANT is entitled to retain copies of all such documents. The documents prepared and furnished by CONSULTANT are intended only to be applicable to the Project, and OWNER's use of these documents in other projects shall be at OWNER's sole risk and expense. In the event OWNER uses any of the information or materials developed pursuant to this Agreement in another project or for other purposes than specified herein and by CONSULTANT at the time such information and materials are delivered, CONSULTANT is released from any and all liability relating to such use in that project.

ARTICLE 8

INDEPENDENT CONTRACTOR

CONSULTANT shall provide services to OWNER as an independent contractor, not as an employee of the OWNER. CONSULTANT shall not have or claim any right arising from employee status. OWNER shall not control the means, methods, sequences, procedures, or techniques utilized by CONSULTANT to perform work or services under this Agreement or any associated task order.

ARTICLE 9

AUDITS AND INSPECTION

OWNER shall have the right to audit and make copies of CONSULTANT'S books, records and computations pertaining to this agreement. CONSULTANT shall retain such books, records, documents and other evidence pertaining to this agreement during the contract period and five years thereafter, except if an audit is in progress or audit findings are yet unresolved, in which case records shall be kept until all audit tasks are completed and resolved. These books, records, documents and other evidence shall be available, within 10 business days of written request. Further, CONSULTANT shall also require all Subcontractors, material suppliers, and other payees to retain all books, records, documents

and other evidence pertaining to this agreement, and to allow OWNER similar access to those documents. All books and records will be made available within a 50 mile radius of the City of Anna. The cost of the audit will be borne by OWNER unless the audit reveals an overpayment of 1% or greater. If an overpayment of 1% or greater occurs, the reasonable cost of the audit, including any travel costs, must be borne by CONSULTANT which must be payable within five business days of receipt of an invoice.

Failure to comply with the provisions of this section shall be a material breach of this contract and shall constitute, in OWNER's sole discretion, grounds for termination thereof. Each of the terms "books", "records", "documents" and "other evidence", as used above, shall be construed to include drafts and electronic files, even if such drafts or electronic files are subsequently used to generate or prepare a final printed document.

ARTICLE 10

INDEMNITY AGREEMENT

- A. This Article 10A. applies solely to claims related to, arising from or growing out of professional services rendered by CONSULTANT. The Consultant shall indemnify and hold and save the OWNER and the OWNER's officers, directors, members, and employees harmless from and against damages, losses and judgments including without limitation reasonable attorney's fees and related expenses, and expert and consultant fees and related expenses arising from claims by third parties, but only to the extent they are caused by the willful misconduct or negligent acts, errors, or omissions of CONSULTANT, its employees and its consultants, or anyone for whose acts any of them may be legally liable, in the performance of professional services under this Agreement. CONSULTANT is not obligated to indemnify OWNER in any manner whatsoever for the OWNER's own negligence.
- B. This Article 10B. applies to any and all claims for which OWNER is not indemnified by CONSULTANT under Article 10A., above. CONSULTANT shall indemnify, defend and hold harmless OWNER from any and all liabilities, claims, demands, causes of action, loss, cost, damages and expenses, including without limitation reasonable attorney's fees and related expenses, and expert and consultant fees and related expenses to the extent caused by the willful misconduct or negligent acts or omissions of CONSULTANT and those of its employees and its consultants, or anyone for whose acts any of them may be legally liable. CONSULTANT is not obligated to indemnify or defend OWNER in any manner whatsoever for the OWNER's own negligence.
- C. Nothing in this Agreement shall be construed to create a liability to any person who is not a party to this Agreement, and nothing herein shall waive any of the parties' defenses, both at law or equity, to any claim, cause of action, or litigation filed by anyone not a party to this Agreement, including without limitation the defense of governmental immunity, which defenses are hereby expressly reserved.

ARTICLE 11

INSURANCE

During the performance of the services under this Agreement, CONSULTANT shall maintain the following insurance with an insurance company licensed to do business in the State of Texas by the State Insurance Commission or any successor agency that has a rating with Best Rate Carriers of at least an A- or above:

- A. Comprehensive General Liability Insurance with bodily injury limits of not less than \$500,000 for each occurrence and not less than \$500,000 in the aggregate, and with property damage limits of not less than \$100,000 for each occurrence and not less than \$100,000 in the aggregate.
- B. Automobile Liability Insurance with bodily injury limits of not less than \$500,000 for each person and not less than \$500,000 for each accident, and with property damage limits of not less than \$100,000 for each accident.
- C. Worker's Compensation Insurance in accordance with statutory requirements, and Employers' Liability Insurance with limits of not less than \$100,000 for each accident.
- D. Professional Liability Insurance with limits of not less than \$1,000,000 annual aggregate.
- E. CONSULTANT shall furnish insurance certificates or insurance policies at OWNER's request to evidence such coverages. Except for workers compensation and professional liability, the insurance policies shall name OWNER as an additional insured and shall contain a provision that such insurance shall not be canceled or reduced with respect to by coverages or endorsements without 30 days' prior written notice to OWNER and CONSULTANT. In such event, CONSULTANT shall, prior to the effective date of the change or cancellation, serve substitute policies furnishing the same coverage.

ARTICLE 12

TERMINATION OF AGREEMENT

- A. Notwithstanding any other provision of this Agreement, OWNER may terminate by giving 30 days' advance written notice to the CONSULTANT.
- B. If the Agreement is terminated prior to completion of the services to be provided hereunder, CONSULTANT shall immediately cease all services and shall render a final bill for services to OWNER within 30 days after the date of termination. OWNER shall pay CONSULTANT for all services properly rendered and satisfactorily performed and for reimbursable expenses to termination incurred prior to the date of termination, in accordance with Article 5 "Compensation." Should OWNER subsequently contract with a new consultant for the continuation of services on the Project, CONSULTANT shall cooperate in providing information. CONSULTANT shall turn over all documents prepared or furnished by CONSULTANT pursuant to this Agreement to OWNER on or before the date of termination but may maintain copies of such documents for its use.

ARTICLE 13

RESPONSIBILITY FOR CLAIMS AND LIABILITIES

Approval by the OWNER shall not constitute, nor be deemed a release of the responsibility and liability of CONSULTANT, its employees, associates, agents, subcontractors, and subconsultants for the accuracy and competency of their designs or other work; nor shall such approval be deemed to be an assumption of such responsibility by OWNER for any defect in the design or other work prepared by CONSULTANT, its employees, subcontractors, agents, and consultants.

ARTICLE 14 **NOTICES**

All notices, communications, and reports required or permitted under this Agreement shall be mailed to the respective parties by depositing same in the United States mail to the address shown below, certified mail, return receipt requested, unless otherwise specified herein. Mailed notices shall be deemed delivered as of three days after mailing:

To CONSULTANT:

Attn: Dharmesh Shah, PE, PTOE
Lee Engineering, L.L.C.
3030 LBJ Freeway, Suite 1660
Dallas, TX 75234

To OWNER:

Attn: Kimberly Garduno
Anna CDC
120 W. 7th St.
Anna, Texas 75409

ARTICLE 15 **ENTIRE AGREEMENT**

This Agreement constitutes the complete and final expression of the agreement of the parties and is intended as a complete and exclusive statement of the terms of their agreements, and supersedes all prior or contemporaneous offers, promises, representations, negotiations, discussions, communications, and agreements which may have been made in connection with the subject matter hereof.

ARTICLE 16 **SEVERABILITY**

If any provision of this Agreement is found or deemed by a court of competent jurisdiction to be invalid or unenforceable, it shall be considered severable from the remainder of this Agreement and shall not cause the remainder to be invalid or unenforceable. In such event, the parties shall reform this Agreement to replace such stricken provision with a valid and enforceable provision which comes as close as possible to expressing the intention of the stricken provision.

ARTICLE 17 **COMPLIANCE WITH LAWS**

CONSULTANT shall comply with all federal, state, and local laws, rules, regulations, and ordinances applicable to the work covered hereunder as they may now read or hereinafter be amended.

ARTICLE 18

DISCRIMINATION PROHIBITED

In performing the services required hereunder, the CONSULTANT shall not discriminate against any person on the basis of race, color, religion, sex, national origin or ancestry, age, or physical handicap.

ARTICLE 19 **PERSONNEL**

- A. CONSULTANT represents that it has or will secure, at its own expense, all personnel required to perform all the services required under this Agreement. Such personnel shall not be employees or officers of or have any contractual relations with OWNER. CONSULTANT shall inform OWNER of any conflict of interest or potential conflict of interest that may arise during the term of this Agreement.
- B. All services required hereunder will be performed by CONSULTANT or under its supervision. All personnel engaged in work shall be qualified and shall be authorized and permitted under state and local laws to perform such services.

ARTICLE 20 **ASSIGNABILITY**

CONSULTANT shall not assign any interest in this Agreement and shall not transfer any interest in this Agreement (whether by assignment, novation, or otherwise) without the prior written consent of OWNER.

ARTICLE 21 **MODIFICATION**

No waiver or modification of this Agreement or of any covenant, condition, or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith, and no evidence of any waiver or modification shall be offered or received in evidence in any proceeding arising between the parties hereto out of or affecting this Agreement, or the rights or obligations of the parties hereunder, and unless such waiver or modification is in writing and duly executed; and the parties further agree that the provisions of this section will not be waived unless as set forth herein.

ARTICLE 22 **MISCELLANEOUS**

- A. The following exhibits are attached to and made a part of this Agreement:

Exhibit A – PROPOSAL FOR THE CITY OF ANNA WAYFINDING PROGRAM
- B. Venue of any suit or cause of action under this Agreement shall lie exclusively in Collin County, Texas. This Agreement shall be construed in accordance with the laws of the State of Texas.

- C. For the purpose of this Agreement, the key persons who will perform most of the work hereunder shall be Dharmesh M. Shah. However, nothing herein shall limit CONSULTANT from using other qualified and competent members of its firm to perform the services required herein.
- D. CONSULTANT shall commence, carry on, and complete any and all projects with all applicable dispatch, in a sound, economical, and efficient manner and in accordance with the provisions hereof. In accomplishing the projects, CONSULTANT shall take such steps as are appropriate to ensure that the work involved is properly coordinated with related work being carried on by OWNER.
- E. OWNER shall assist CONSULTANT by placing at CONSULTANT's disposal all available information pertinent to the Project, including previous reports, any other data relative to the Project, and arranging for the access thereto, and make all provisions for CONSULTANT to enter in or upon public and private property as required for CONSULTANT to perform services under this Agreement.
- F. CONSULTANT shall at all times maintain OWNER'S confidential or proprietary information in confidence and shall disclose same to third parties only as specifically instructed by OWNER, unless disclosure is compelled by law, court, or other compulsory legal process. Any disclosure of privileged or confidential information by OWNER to CONSULTANT is in furtherance of OWNER's purposes and is not intended to and does not waive any privileges that may exist with regard to such information.
- G. The captions of this Agreement are for informational purposes only, and shall not in any way affect the substantive terms or conditions of this Agreement.

IN WITNESS HEREOF, the OWNER has caused this Agreement to be executed by its duly authorized undersigned officer, and CONSULTANT has executed this Agreement through its duly authorized undersigned officer.

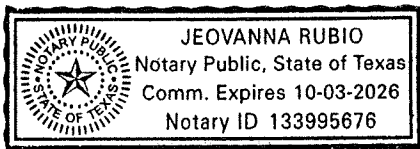
ANNA COMMUNITY DEVELOPMENT CORPORATION,
a Texas Type B corporation

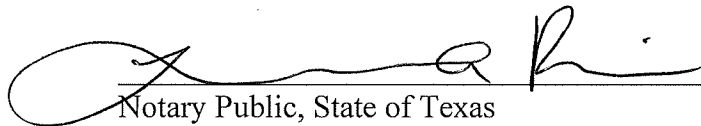
By: 
Bruce Norwood, its President

IN WITNESS WHEREOF:

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

Before me, the undersigned notary public, on the 9th day of November 2022, personally appeared Bruce Norwood, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me that he executed the same in his capacity as President of Anna Community Development Corporation.




Notary Public, State of Texas

(SEAL)

LEE ENGINEERING, L.L.C.,
an Arizona limited liability company



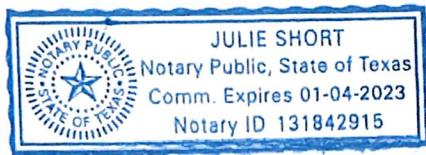
Digitally signed by Dharmesh Shah,
PE, PTOE
DN: cn=Dharmesh Shah, PE, PTOE,
o=Lee Engineering, LLC, ou,
email=dshah@lee-eng.com, c=US
Date: 2022.11.16 14:03:58 -06'00'

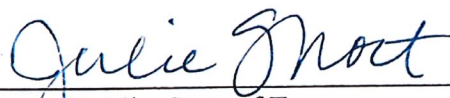
By: _____
Dharmesh Shah, its Vice President

IN WITNESS WHEREOF:

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

Before me, the undersigned notary public, on the 16th day of November 2022, personally appeared Dharmesh Shah, known to me to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me and verified under oath that he/she executed the same for the purposes and consideration therein expressed and in his/her capacity as Vice President of Lee Engineering, L.L.C., an Arizona limited liability company.





Notary Public, State of Texas

(SEAL)



Item No. 3.d.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Lauren Mecke

AGENDA ITEM:

Zoning Discussion - Anna Ranch Phase 3 (Planning Manager Lauren Mecke)

SUMMARY:

Land Use discussion and direction for a tract of land is located on the north and south sides of E. Foster Crossing Road, 1,860 east of Leonard Avenue (CR 422).

The applicant is seeking feedback from the Council regarding a request to rezone the property to allow for a different residential product while preserving roughly 37 acres for parkland dedication.

The residential product includes SF-Z (40's), SF-60 (50's), SF-72 (60's), and an area that would accommodate cluster housing (see attached Bubble Plans).

The property is currently part of the Anna Ranch Planned Development (Ord. No. 323.2007). The existing land area allows for the current residential product types.

a. SF-A (4.2 units per acre)

- Min. Lot Size: 6,050 square feet
- Min. Width: 55 feet
- Min. Depth: 110 feet

b. SF-D

- Min. Lot Size: 8,400 square feet
- Min Width: 70 feet
- Min. Depth: 100 feet

Attached is a zoning map for Anna Ranch that was put together by city staff to identify the existing zoning districts/allowances within the Anna Ranch Planned Development.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

City Council to provide feedback to the applicant on the contemplated zoning amendment.

ATTACHMENTS:

1. Bubble Plan 1 - 11.17.2022
2. Bubble Plan 2 - 11.17.2022
3. Anna Ranch Zoning Map
4. 323-2007

APPROVALS:

Ross Altobelli, Director of Development Services
Lauren Mecke, Planning Manager
Jim Proce, City Manager

Created/Initiated - 11/16/2022
Approved - 11/16/2022
Final Approval - 11/17/2022

[illegible]

798

40's, 50's, 60's

**Cluster Housing,
Townhomes,
Multi-Family**

33

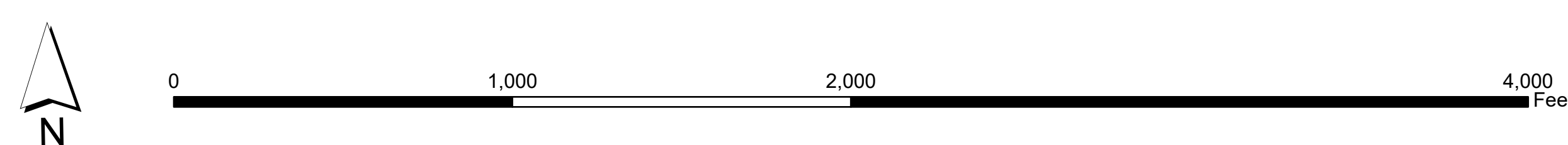
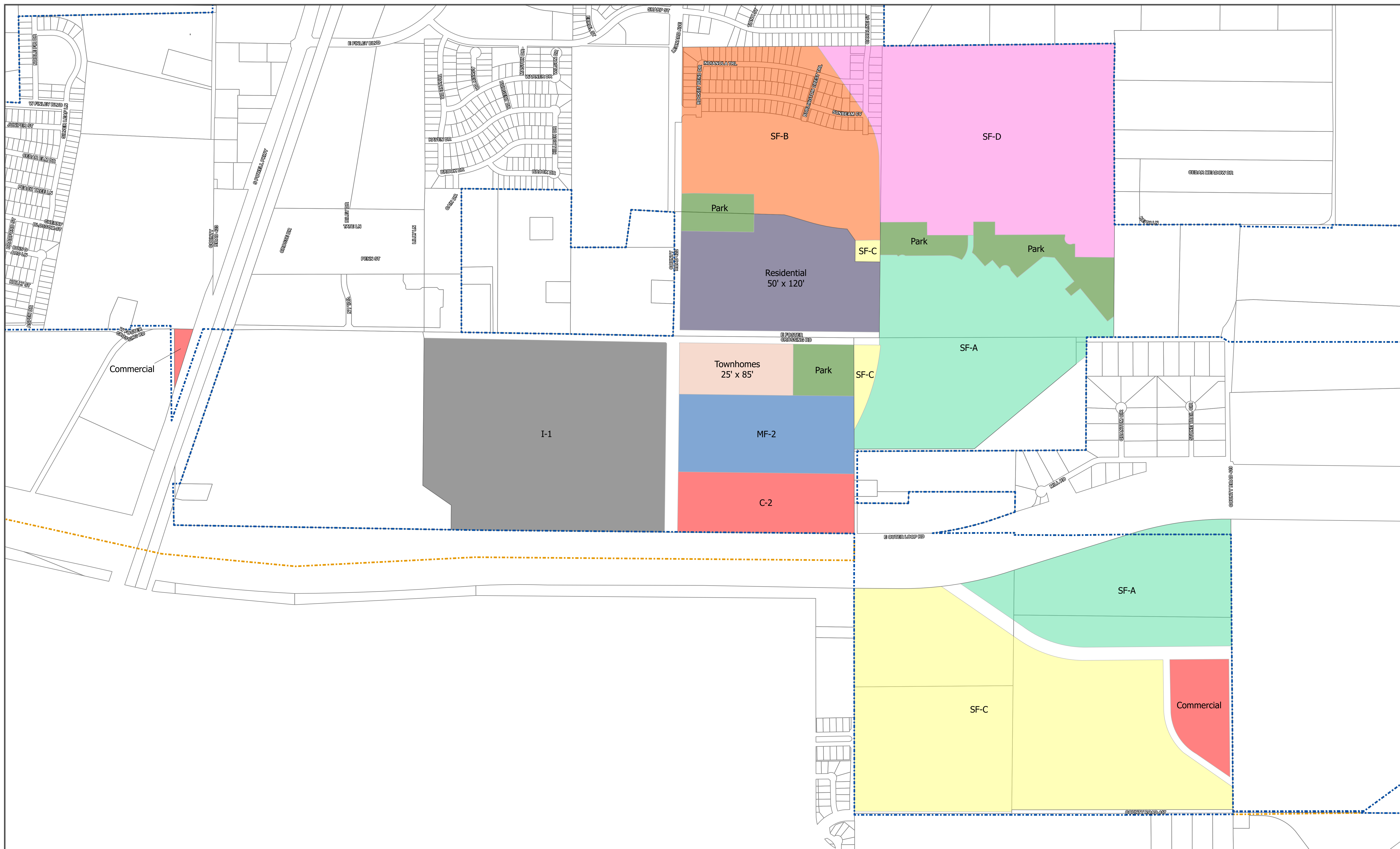
**Parkland
(+/- 37 Acres)**

COUNTY ROAD 418

QUANTUM

MILL

FOSTER CROS



Anna Ranch Zoning Map

Anna Ranch Districts		
C-2	Park	SF-C
Commercial	Residential 50' x 120'	SF-D
I-1	SF-A	Townhomes 25' x 85'
MF-2	SF-B	

Source: City of Anna GIS
Date: 3/23/2022



DISCLAIMER: This map and information contained in it were developed exclusively for use by the City of Anna. Any use or reliance on this map by anyone else is at that party's risk and without liability to the City of Anna, its officials or employees for any discrepancies, errors, or variances which may exist.
Document Path: H:\GIS\Hoc Maps\Anna Ranch Zoning Map\Anna Ranch Zoning Map.aprx

CITY OF ANNA, TEXAS
ORDINANCE NO. 323-2007

(Anna Ranch PD Zoning -- 737.3 acre tract)

**AN ORDINANCE OF THE CITY OF ANNA, TEXAS, AMENDING THE
ZONING MAP OF THE CITY OF ANNA TO PROVIDE FOR REZONING
OF CERTAIN PROPERTY; PROVIDING A REPEALER CLAUSE; AND
PROVIDING AN EFFECTIVE DATE**

WHEREAS, the Owner of the property described in Exhibit "A" attached hereto requested certain zoning for said property; and

WHEREAS, the City Council of the City of Anna gave the requisite notices and afforded a full and fair hearing to all property owners generally and to all persons interested in and situated in the affected area and in the vicinity thereof and the City Council of the City of Anna concluded that the Zoning Ordinance of the City of Anna should be amended; and

WHEREAS, this Ordinance incorporates by reference and restates in their entirety Ordinance No. 262-2006, Ordinance No. 282-2006 and Ordinance No. 304-2007, creating and amending the Anna Ranch Planned Development (the "PD") and supersedes any and all prior Ordinances affecting the PD to the extent they conflict with this Ordinance;

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS:

Section 1 - Generally: The Comprehensive Zoning Ordinance of the City of Anna, Texas, as enacted on September 20, 2003 is hereby conditionally amended by enacting this Planned Development for the property as described in Exhibit "A" and graphically shown on Exhibit "D" -- Concept Plan, attached hereto and made an integral part of this Ordinance, as Planned Development (PD). The Planned Development shall include the following elements:

Section 2 - Permitted Uses:

The permitted uses in the Planned Development will be the same as those permitted in the "SF-60 -- Single Family Residence District", "C-1 Restricted Commercial District", "MF-2 Multiple Family Residential -- High Density", and "SF-TH Townhome District" Regulations as outlined in the City of Anna Zoning Ordinance, except as herein provided.

Section 3 - Height and Coverage Regulations:

The height and coverage regulations in the Planned Development will be the same as those permitted in the "SF-60 -- Single Family Residence District", "C-1 Restricted Commercial District", "MF-2 Multiple Family Residential -- High

Density", and "SF-TH Townhome District" Regulations as outlined in the City of Anna Zoning Ordinance.

Section 4 - Lot Dimensions and Setbacks:

The lot dimensions and setback shall be set as follows:

¹ The minimum lot width shall be as described in Section 8.5.2. of the City of Anna Subdivision Ordinance.

a. SF-A: Has a cap of (4.2) four point two units per acre:

	ADOPTED "PD" CONDITIONS	CURRENT "SF-60" STANDARDS
Minimum Lot Size	6,050 Square Feet	6,000 Square Feet
Minimum Width ¹	55 Feet	50 Feet
Minimum Depth	110 Feet	120 Feet
Minimum Front Yard Setback	25 Feet; however porches and bay windows may encroach up to 5 Feet in Front of the Building Line	25 Feet
Minimum Rear Yard Setback	20 Feet	25 Feet
Side Yard Setback	7.5 Feet	10 Feet
Side Yard Corner	15 Feet	15 Feet
Masonry Percentage	60% Brick or Rock Veneer, Front 100%	60% Brick or Rock Veneer, Front 100%
Building Size	1,400 Square Feet	1,600 Square Feet

b. SF-B:

	ADOPTED "PD" CONDITIONS	CURRENT "SF-60" STANDARDS
Minimum Lot Size	6,600 Square Feet	6,000 Square Feet
Minimum Width ¹	55 Feet	50 Feet
Minimum Depth	100 Feet	120 Feet
Minimum Front Yard Setback	25 Feet; however porches and bay windows may encroach up to 5 Feet in Front of the Building Line	25 Feet
Minimum Rear Yard Setback	20 Feet	25 Feet
Side Yard Setback	7.5 Feet	10 Feet
Side Yard Corner	15 Feet	15 Feet
Masonry Percentage	60% Brick or Rock Veneer, Front 100%	60% Brick or Rock Veneer, Front 100%
Building Size	1,600 Square Feet	1,600 Square Feet

c. SF-C:

	ADOPTED "PD" CONDITIONS	CURRENT "SF-60" STANDARDS
Minimum Lot Size	7,200 Square Feet	6,000 Square Feet
Minimum Width ¹	60 Feet	50 Feet
Minimum Depth	100 Feet	120 Feet
Minimum Front Yard Setback	25 Feet; however porches and bay windows may encroach up to 5 Feet in Front of the Building Line	25 Feet
Minimum Rear Yard Setback	20 Feet	25 Feet
Side Yard Setback	7.5 Feet	10 Feet
Side Yard Corner	15 Feet	15 Feet
Masonry Percentage	60% Brick or Rock Veneer, Front 100%	60% Brick or Rock Veneer, Front 100%
Building Size	1,600 Square Feet	1,600 Square Feet

d. SF-D:

	ADOPTED "PD" CONDITIONS	CURRENT "SF-60" STANDARDS
Minimum Lot Size	8,400 Square Feet	6,000 Square Feet
Minimum Width ¹	70 Feet	50 Feet
Minimum Depth	100 Feet	120 Feet
Minimum Front Yard Setback	25 Feet; however porches and bay windows may encroach up to 5 Feet in Front of the Building Line	25 Feet
Minimum Rear Yard Setback	20 Feet	25 Feet
Side Yard Setback	7.5 Feet	10 Feet
Side Yard Corner	15 Feet	15 Feet
Masonry Percentage	60% Brick or Rock Veneer, Front 100%	60% Brick or Rock Veneer, Front 100%
Building Size	1,600 Square Feet	1,600 Square Feet

e. SF-E (Rear Entry Lots):

	ADOPTED "PD" CONDITIONS	CURRENT "SF-60" STANDARDS
Minimum Lot Size	5,500 Square Feet	6,000 Square Feet
Minimum Width ¹	50 Feet	50 Feet
Minimum Depth	100 Feet	120 Feet
Minimum Front Yard Setback	10 Feet	25 Feet
Minimum Rear Yard Setback	20 Feet	25 Feet
Side Yard Setback	5 Feet	10 Feet
Side Yard Corner	15 Feet	15 Feet
Masonry Percentage	60% Brick or Rock Veneer, Front 100%	60% Brick or Rock Veneer, Front 100%
Building Size	1,400 Square Feet	1,600 Square Feet

- f. Lot dimensions shall be as outlined above; no other restrictions, such as lot to depth ratio, or street frontage requirements, etc., shall be placed upon the development.

g. Zoning Districts:

Zoning districts shall be as shown on attached Exhibit "B".

h. Commercial Element:

The Commercial Element of the PD is graphically identified on Exhibit "B" and Exhibit "D". Except as follows, all provisions of the Anna Zoning Ordinance as related to the C-1 Restricted Commercial zoning district shall apply to the Commercial Element of this Planned Development with 70% lot coverage. The exceptions are as follows:

Schedule of Uses

Not permitted: To be excluded

Radio/TV/microwave operations, amateur
Automobile and trailer sales, new
Motorcycle sales and service
Veterinarian clinic
Heliport or heliport
Service yards of governmental agencies

Permitted only with SUP:

Arts, craft store (outside storage)
Building materials, hardware (outside storage)
Engine and motor repair

i. Multiple Family Residential Element:

The Multiple Family Residential Element of the PD includes approximately ±15 acres, as graphically identified on Exhibit "B" and Exhibit "D". All provisions of the Anna Zoning Ordinance as related to the MF-2 Multiple Family Residential – High Density zoning district shall conform to the Multiple Family Residential Element of this Planned Development. Multiple Family Residential density shall be capped at 18 units per acre.

j. Townhome Element:

The Townhome Element of the PD includes approximately ±15 acres as graphically identified on Exhibit "B" and Exhibit "D". Except as follows, all provisions of the Anna Zoning Ordinance as related to the SF-TH Townhome District shall apply to the Townhome Element of this Planned Development. The exceptions are as follows:

SF-TH Townhome District

	ADOPTED "PD" CONDITIONS	CURRENT "SF-TH" STANDARDS
Minimum Lot Size	2,500 Square Feet	2,700 Square Feet
Minimum Width	25 Feet	25 Feet
Minimum Depth	100 Feet	160 Feet
Minimum Front Yard Setback	20 Feet	20 Feet
Minimum Rear Yard Setback	25 Feet	25 Feet
Side Yard Interior	7 Feet; 14 Feet Between Buildings	7 Feet; 14 Feet Between Buildings
Side Yard Corner	15 Feet	15 Feet
Masonry Percentage	60% Brick or Rock Veneer, Front 100%	60% Brick or Rock Veneer, Front 100%
Minimum Unit Size	900 Square Feet	900 Square Feet

No fire sprinkler system shall be required for the dwelling units unless the building exceeds 5,000 square feet.

*A maximum of six (6) units per building shall be permitted.

Section 5 - Parking Regulations:

The parking regulations in the Planned Development will be the same as those permitted in the "SF-60 – Single Family Residence District", "C-1 Restricted Commercial District", "MF-2 Multiple Family Residential – High Density", and "SF-TH Townhome District" Regulations as outlined in the City of Anna Zoning Ordinance except for the designated lots with alleys where two (2) enclosed spaces must be provided behind the rear yard line.

Section 6 - Permitted Accessory Uses:

The permitted accessory uses in the Planned Development will be the same as those permitted in the "SF-60 – Single Family Residence District", "C-1 Restricted

Commercial District", "MF-2 Multiple Family Residential – High Density", and "SF-TH Townhome District" Regulations as outlined in the City of Anna Zoning Ordinance.

Section 7 - Accesses and Entrances:

The development shall provide connection points to planned street stubs for any adjacent property if such property has an existing preliminary plat or final plat approved by the City of Anna prior to the approval by the City of Anna of the Planned Development Zoning. There shall be no other required connections to adjacent properties, nor shall the number of lots or the density of the development be limited based on the number of connections to existing roads or adjacent properties.

Section 8 - Crosswalk Easements:

Crosswalk Easements as defined in Section 8.6.3 of the City of Anna Subdivision Ordinance shall not be required for the development.

Section 9 - Garages:

Garages may be front or rear facing and there is no requirement for "swing" driveways.

Section 10 - Sidewalks:

- a. Sidewalks 4 feet in width minimum will be installed one foot (1') inside the right-of-way along street frontage of all residential lots prior to the issuance of a final certificate of occupancy for each house constructed thereon.
- b. A sidewalk 5 feet in width minimum will also be installed one foot (1') inside the right-of-way along the Major Collector street prior to the acceptance of the infrastructure improvements. The Developer shall not be required to but has the option of increasing the width any sidewalks.

Section 11 - Screening:

- a. Berms or masonry thin wall screening fences shall be utilized as screening adjacent to Collector streets.
- b. Along Collectors, no walls shall exceed a length of 500 feet without a change in character such as the addition of wrought iron with living screen.
- c. Screening fences will be located between the commercial uses and the residential, multiple family and townhome uses and shall be installed by the commercial user.
- d. There will be a consistent 8' screening wall along the La Poloma subdivision boundary with a capped fence.

- e. Screening fences adjacent to the commercial uses shall be of masonry construction with masonry columns located on 50 foot centers installed by the commercial user. The maintenance of such screening fences shall be funded through the creation of a Political Subdivision such as a Public Improvement District (PID). If a PID or a similar funding mechanism is not created, maintenance shall be the responsibility of a Home Owners Association (HOA).

Section 12 - Private Landscape Improvements (HOA Landscaping):

The Developer shall construct private landscape improvements for the project. The improvements shall be located within open common space areas and landscape easements maintained through the creation of a Political Subdivision such as a Public Improvement District (PID). If a PID or a similar funding mechanism is not created, maintenance shall be the responsibility of a Home Owners Association (HOA).

Section 13 - Right-of-Way and Street Widths:

- a. Typical pavement sections are shown in Exhibit "C" attached hereto.
 - i. Local residential streets shall be 31 feet of concrete pavement from the back of curb to back of curb with a four inch (4") crown, contained within 50 feet of right-of-way, with stand up curbs.
 - ii. Neighborhood streets shall be 37 feet of concrete pavement from back of curb to back of curb with a four inch (4") crown, contained within 60 feet of right-of-way.
 - iii. Minor collector streets shall be 49 feet of concrete pavement from the back of curb to back of curb with a five inch (5") crown, contained within 80 feet of right-of-way.
 - iv. Major collector streets shall be 120 feet of the right-of-way with two (2) - 25.0 foot back of curb to back of curb concrete roadways.
 - v. Alleys in the development shall be 15 feet of concrete pavement from edge to edge with a six inch (6") invert, contained within 20 feet of right-of-way.

Section 14 – Amendment: The official Zoning Map of the City of Anna shall be amended to reflect the change in zoning described herein.

Section 15 – Repealer: All ordinances of the City of Anna in conflict with the provisions of this ordinance are repealed to the extent of that conflict.

Section 16 – Effective Date: This ordinance shall take effect immediately from and after its passage as the law in such case provides.

PASSED on this the 10th day of April, 2007, by the following vote of the City of Anna, Texas.

AYES

6

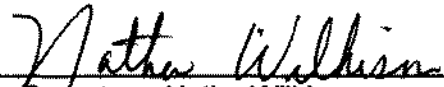
NAYS 0

ABSTENTIONS

0

ATTEST:

APPROVED:



City Secretary, Natha Wilkison



Mayor, Kenneth Pelham



**EXHIBIT A
PROPERTY DESCRIPTION
TRACT ONE**

BEING A 734.964 ACRE TRACT OF LAND SITUATED IN THE D.E.W. BABB SURVEY, ABSTRACT NO. 33 AND THE GRANDISON STARK SURVEY, ABSTRACT NO. 798, COLLIN COUNTY, TEXAS, AND BEING ALL OF A CALLED 88.71 ACRE TRACT OF LAND, CONVEYED TO JNC PARTNERS, LLC., BY DEED RECORDED IN VOLUME 5746, PAGE 4845, LAND RECORDS, COLLIN COUNTY, TEXAS AND BEING ALL OF A CALLED 361.545 ACRE TRACT OF LAND CONVEYED AS TRACT ONE TO JNC PARTNERS, LLC., BY DEED RECORDED IN VOLUME 5785, PAGE 3731, LAND RECORDS, COLLIN COUNTY, TEXAS AND BEING ALL OF A CALLED 171.389 ACRE TRACT OF LAND CONVEYED TO JNC PARTNERS, LLC., BY DEED RECORDED IN VOLUME 5778, PAGE 4036, LAND RECORDS, COLLIN COUNTY, TEXAS AND BEING ALL OF A CALLED 35.0020 ACRE TRACT OF LAND CONVEYED TO JOHN LAU BY DEED RECORDED IN VOLUME 5890, PAGE 5295, LAND RECORDS, COLLIN COUNTY, TEXAS AND BEING ALL OF A CALLED 78.325 ACRE TRACT OF LAND CONVEYED TO JNC PARTNERS, LLC., BY DEED RECORDED IN VOLUME 5757, PAGE 780, LAND RECORDS, COLLIN COUNTY, TEXAS BEING THE SAME CALLED 78.325 ACRE TRACT OF LAND CONVEYED TO JACKIE H.J. LAU BY DEED RECORDED IN VOLUME 5824, PAGE 3728, LAND RECORDS, COLLIN COUNTY, TEXAS. SAID 734.964 ACRE TRACT, WITH BEARING BASIS GRID NORTH, TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE, NAD83 (CORS96, EPOCH DATE 2002), DETERMINED BY GPS OBSERVATIONS BETWEEN JULIAN DAY 253, 2004 AND JULIAN DAY 259, 2004, CALCULATED FROM COLLIN CORS ARP (PID-DF8982) AND DALLAS CORS ARP (PID-DF8984). BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A 1/2 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF AFORESAID 88.71 ACRE TRACT AND BEING AT THE APPROXIMATE INTERSECTION OF COLLIN COUNTY ROAD NO. 417 (A VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY) AND COLLIN COUNTY ROAD NO. 418 (A VARIABLE WIDTH PRESCRIPTIVE RIGHT-OF-WAY);

THENCE NORTH 00 DEGREES 06 MINUTES 22 SECONDS WEST, ALONG THE WEST LINE OF AFORESAID 88.71 ACRE TRACT AND THE APPROXIMATE CENTERLINE OF AFORESAID COLLIN COUNTY ROAD NO. 418, A DISTANCE OF 2555.80 FEET TO A POINT FOR CORNER ON THE SOUTH LINE OF AFORESAID 361.545 ACRE TRACT, FROM WHICH A ½ INCH IRON ROD FOUND, BEARS SOUTH 89 DEGREES 28 MINUTES 57 SECONDS EAST, A DISTANCE OF 0.66 FEET, FOR THE SOUTHEAST CORNER OF SAID 361.545 ACRE TRACT;

THENCE ALONG THE SOUTH LINE OF AFORESAID 361.545 ACRE TRACT THE FOLLOWING COURSES AND DISTANCES:

NORTH 89 DEGREES 28 MINUTES 57 SECONDS WEST, A DISTANCE OF 1379.65 FEET TO A 1/2 INCH CAPPED IRON ROD FOUND FOR CORNER;

NORTH 89 DEGREES 39 MINUTES 07 SECONDS WEST, A DISTANCE OF 2076.95 FEET TO A 2 INCH PIPE FOUND FOR CORNER;

NORTH 89 DEGREES 04 MINUTES 37 SECONDS WEST, A DISTANCE OF 2754.86 FEET TO A POINT FOR THE SOUTHWEST CORNER OF AFORESAID 361.545 ACRE TRACT AND BEING ON THE SOUTHEAST RIGHT-OF-WAY OF A TRACT OF LAND CONVEYED TO DALLAS AREA RAPID TRANSIT TRACT RECORDED IN VOLUME 4951, PAGE 819, LAND RECORDS, COLLIN COUNTY, TEXAS (A VARIABLE WIDTH RIGHT-OF-WAY);

THENCE ALONG THE NORTHWEST LINE OF AFORESAID 361.545 ACRE TRACT AND THE COMMON SOUTHEAST RIGHT-OF-WAY OF AFORESAID DALLAS AREA RAPID TRANSIT TRACT THE FOLLOWING COURSES AND DISTANCES:

NORTH 00 DEGREES 44 MINUTES 31 SECONDS WEST, A DISTANCE OF 207.51 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

NORTH 18 DEGREES 44 MINUTES 53 SECONDS EAST, A DISTANCE OF 1676.05 FEET TO A 1/2 INCH IRON ROD FOUND FOR A NORTHWEST CORNER OF SAID 361.545 ACRE TRACT AND BEING IN THE APPROXIMATE CENTERLINE OF COLLIN COUNTY ROAD NO. 421 (A VARIABLE WIDTH RIGHT-OF-WAY);

THENCE ALONG A NORTH LINE OF AFORESAID 361.545 ACRE TRACT AND THE APPROXIMATE CENTERLINE OF AFORESAID COLLIN COUNTY ROAD NO. 421 THE FOLLOWING COURSES AND DISTANCES:

SOUTH 89 DEGREES 11 MINUTES 32 SECONDS EAST, A DISTANCE OF 2090.23 FEET TO A 3/8 INCH IRON ROD FOUND FOR CORNER;

SOUTH 89 DEGREES 01 MINUTES 26 SECONDS EAST, A DISTANCE OF 1933.03 FEET TO A 1/2 INCH IRON ROD FOUND FOR AN INSIDE ELL CORNER OF AFORESAID 361.545 ACRE TRACT AND BEING AT THE APPROXIMATE INTERSECTION OF AFORESAID COLLIN COUNTY ROAD NO. 421 AND COLLIN COUNTY ROAD NO. 422 (A VARIABLE WIDTH RIGHT-OF-WAY);

THENCE ALONG A WEST LINE OF AFORESAID 361.545 ACRE TRACT AND THE APPROXIMATE CENTERLINE OF AFORESAID COLLIN COUNTY ROAD NO. 422 THE FOLLOWING COURSES AND DISTANCES:

NORTH 00 DEGREES 31 MINUTES 59 SECONDS EAST, A DISTANCE OF 811.24 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

NORTH 00 DEGREES 29 MINUTES 39 SECONDS EAST, A DISTANCE OF 1832.52 FEET TO A 1/2 INCH IRON ROD FOUND FOR A NORTHWEST CORNER OF SAID 361.545 ACRE TRACT;

THENCE NORTH 89 DEGREES 35 MINUTES 58 SECONDS EAST, ALONG A NORTH LINE OF AFORESAID 361.545 ACRE TRACT, A DISTANCE OF 1884.06 FEET TO A POINT FOR THE NORTHEAST CORNER OF SAID 361.545 ACRE TRACT AND BEING THE NORTHWEST CORNER OF AFORESAID 171.389 ACRE TRACT;

THENCE ALONG THE NORTH LINE OF AFORESAID 171.389 ACRE TRACT THE FOLLOWING COURSES AND DISTANCES:

NORTH 89 DEGREES 34 MINUTES 05 SECONDS EAST, A DISTANCE OF 1580.15 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

NORTH 89 DEGREES 30 MINUTES 53 SECONDS EAST, A DISTANCE OF 560.19 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE NORTHEAST CORNER OF SAID 171.389 ACRE TRACT;

THENCE ALONG THE EAST LINE OF AFORESAID 171.389 ACRE TRACT THE FOLLOWING COURSES AND DISTANCES:

SOUTH 00 DEGREES 17 MINUTES 15 SECONDS WEST, A DISTANCE OF 351.05 FEET TO A 3/4 INCH IRON ROD FOUND FOR CORNER;

SOUTH 00 DEGREES 43 MINUTES 52 SECONDS WEST, A DISTANCE OF 1303.32 FEET TO A 5/8 INCH IRON ROD FOUND FOR CORNER;

SOUTH 01 DEGREES 34 MINUTES 41 SECONDS WEST, A DISTANCE OF 1030.94 FEET TO A 1/2 INCH IRON ROD FOUND FOR AN OUTSIDE ELL CORNER OF AFORESAID 171.389 ACRE TRACT;

THENCE SOUTH 89 DEGREES 46 MINUTES 50 SECONDS WEST, A DISTANCE OF 228.24 FEET TO A POINT FOR AN INSIDE ELL CORNER OF AFORESAID 171.389 ACRE TRACT;

THENCE SOUTH 00 DEGREES 12 MINUTES 48 SECONDS EAST, A DISTANCE OF 170.10 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

THENCE SOUTH 50 DEGREES 23 MINUTES 04 SECONDS WEST, A DISTANCE OF 1361.96 FEET TO A 1/2 INCH IRON ROD FOUND FOR CORNER;

THENCE SOUTH 89 DEGREES 33 MINUTES 54 SECONDS WEST, A DISTANCE OF 1073.56 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHWEST CORNER OF AFORESAID 171.389 ACRE TRACT AND BEING ON A EAST LINE OF AFORESAID 361.545 ACRE TRACT IN THE APPROXIMATE CENTERLINE OF AFORESAID COLLIN COUNTY ROAD NO. 418;

THENCE SOUTH 00 DEGREES 10 MINUTES 59 SECONDS EAST, ALONG THE EAST LINE OF AFORESAID 361.545 ACRE TRACT AND THE APPROXIMATE CENTERLINE OF AFORESAID COLLIN COUNTY ROAD NO. 418, A DISTANCE OF 736.61 FEET TO A POINT FOR CORNER, FROM WHICH A 100D NAIL FOUND FOR THE NORTHWEST CORNER OF AFORESAID 88.71 ACRE TRACT BEARS SOUTH 88 DEGREES 02 MINUTES 26 SECONDS WEST, A DISTANCE 0.69 FEET;

THENCE NORTH 89 DEGREES 53 MINUTES 36 SECONDS EAST, ALONG THE NORTH LINE OF AFORESAID 88.71 ACRE TRACT, A DISTANCE OF 1465.95 FEET TO A POINT FOR THE NORTHEAST CORNER OF SAID 88.71 ACRE TRACT;

THENCE SOUTH 00 DEGREES 47 MINUTES 46 SECONDS WEST, ALONG THE EAST LINE OF AFORESAID 88.71 ACRE TRACT, A DISTANCE OF 25.29 FEET TO A POINT FOR THE NORTHWEST CORNER OF AFORESAID 35.0020 ACRE TRACT;

THENCE NORTH 89 DEGREES 54 MINUTES 12 SECONDS EAST, ALONG THE NORTH LINE OF AFORESAID 35.0020 ACRE TRACT, A DISTANCE OF 1976.49 FEET TO A POINT FOR THE NORTHEAST CORNER OF SAID 35.0020 ACRE TRACT AND BEING IN THE APPROXIMATE CENTERLINE OF COLLIN COUNTY ROAD NO. 419 (A VARIABLE WIDTH RIGHT-OF-WAY) FROM WHICH A 1/2 INCH IRON ROD FOUND FOR WITNESS BEARS NORTH 67 DEGREES 57 MINUTES 30 SECONDS EAST, A DISTANCE OF 4.57 FEET;

THENCE SOUTH 00 DEGREES 28 MINUTES 25 SECONDS EAST, ALONG THE EAST LINE OF AFORESAID 35.0020 ACRE TRACT AND THE APPROXIMATE CENTERLINE OF AFORESAID COLLIN COUNTY ROAD NO. 419, A DISTANCE OF 778.58 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID 35.0020 ACRE TRACT AND THE NORTHEAST CORNER OF AFORESAID 78.325 ACRE TRACT;

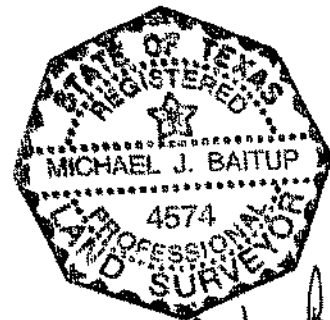
THENCE SOUTH 00 DEGREES 26 MINUTES 49 SECONDS EAST, ALONG THE EAST LINE OF AFORESAID 78.325 ACRE TRACT AND THE APPROXIMATE CENTERLINE OF AFORESAID COLLIN COUNTY ROAD NO. 419, A DISTANCE OF 1762.66 FEET TO A POINT FOR THE SOUTHEAST CORNER OF SAID 78.325

ACRE TRACT AND BEING AT THE APPROXIMATE INTERSECTION OF AFORESAID COLLIN COUNTY ROAD NO. 419 AND AFORESAID COLLIN COUNTY ROAD NO. 418, A 1/2 INCH IRON ROD FOUND FOR WITNESS NORTH 00 DEGREES 08 MINUTES 18 SECONDS EAST, A DISTANCE OF 1.80 FEET;

THENCE ALONG THE APPROXIMATE CENTERLINE OF COLLIN COUNTY ROAD NO. 418 THE FOLLOWING COURSES AND DISTANCES:

SOUTH 89 DEGREES 56 MINUTES 16 SECONDS WEST, ALONG THE SOUTH LINE OF AFORESAID 78.325 ACRE TRACT, A DISTANCE OF 1931.20 FEET TO A 60D NAIL FOUND FOR THE SOUTHWEST CORNER OF SAID 78.325 ACRE TRACT AND THE SOUTHEAST CORNER OF AFORESAID 88.71 ACRE TRACT;

THENCE NORTH 89 DEGREES 58 MINUTES 53 SECONDS WEST, ALONG THE SOUTH LINE OF AFORESAID 88.71 ACRE TRACT, A DISTANCE OF 1527.01 FEET TO THE **POINT OF BEGINNING**, AND CONTAINING 734.964 ACRES OF LAND, MORE OR LESS.



Michael J. Baitup
3/9/07

**EXHIBIT A
PROPERTY DESCRIPTION
TRACT 2**

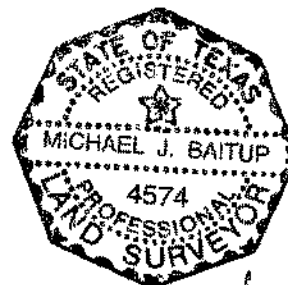
BEING A 2.249 ACRE TRACT OF LAND SITUATED IN THE D.E.W. BABB SURVEY, ABSTRACT NO. 33, COLLIN COUNTY, TEXAS, AND BEING ALL A CALLED 2.249 ACRE TRACT OF LAND CONVEYED AS TRACT TWO TO JNC PARTNERS, LLC., BY DEED RECORDED IN VOLUME 5785, PAGE 3731, LAND RECORDS, COLLIN COUNTY, TEXAS. SAID 2.249 ACRE TRACT, WITH BEARING BASIS GRID NORTH, TEXAS STATE PLANE COORDINATES, NORTH CENTRAL ZONE, NAD83 (CORS96, EPOCH DATE 2002), DETERMINED BY GPS OBSERVATIONS BETWEEN JULIAN DAY 253, 2004 AND JULIAN DAY 259, 2004, CALCULATED FROM COLLIN CORS ARP (PID-DF8982) AND DALLAS CORS ARP (PID-DF8984), BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT A RAILROAD SPIKE FOUND FOR THE NORTHEAST CORNER OF AFORESAID 2.249 ACRE TRACT AND BEING ON THE NORTHWEST RIGHT-OF-WAY OF STATE HIGHWAY 5 (A VARIABLE WIDTH RIGHT-OF-WAY);

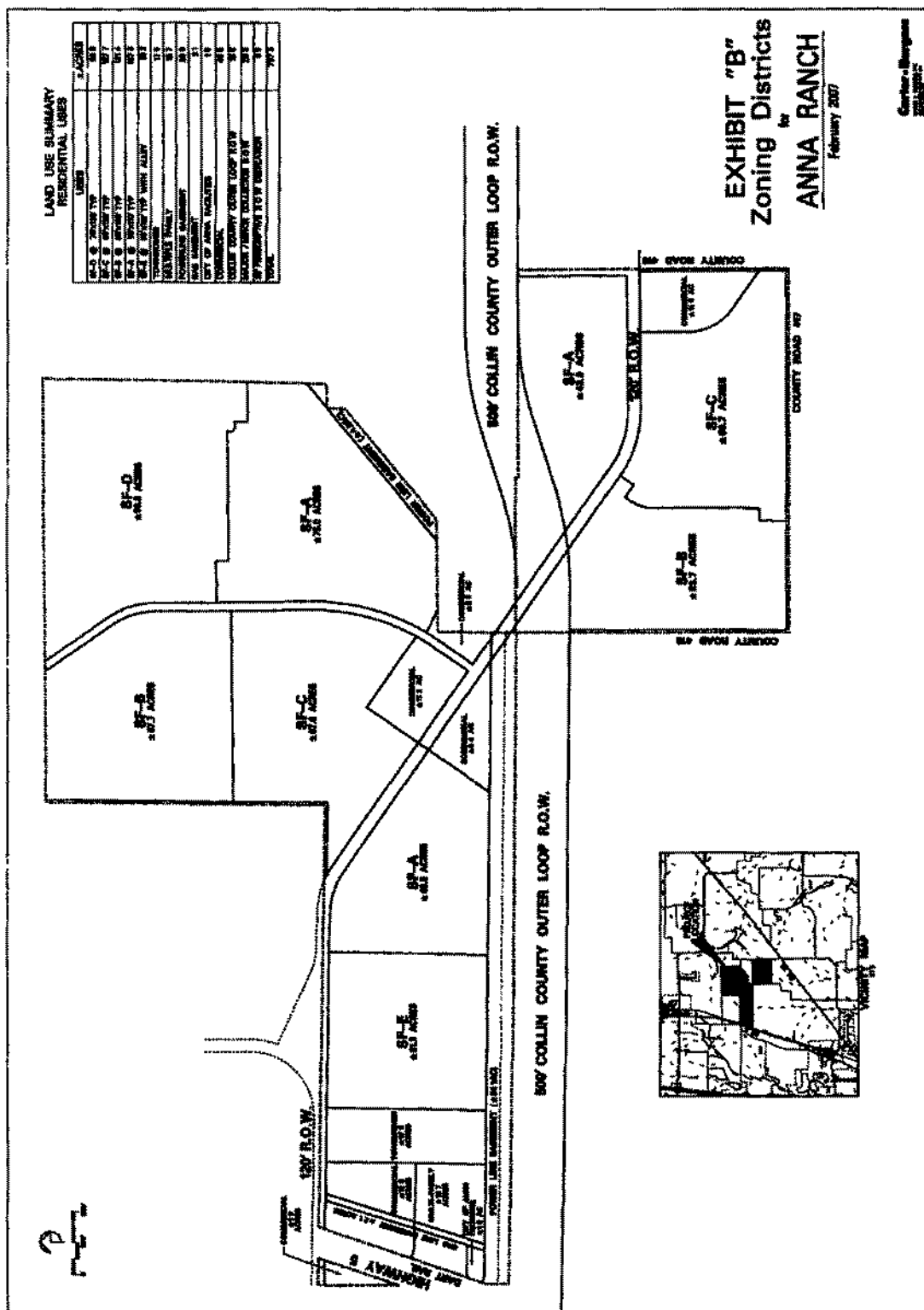
THENCE SOUTH 18 DEGREES 45 MINUTES 16 SECONDS WEST, ALONG THE SOUTHEAST LINE OF AFORESAID 2.249 ACRE TRACT AND THE COMMON NORTHWEST RIGHT-OF-WAY LINE OF AFORESAID STATE HIGHWAY 5, A DISTANCE OF 797.00 FEET TO A 1/2 INCH IRON ROD FOUND FOR THE SOUTH CORNER OF SAID 2.249 ACRE TRACT;

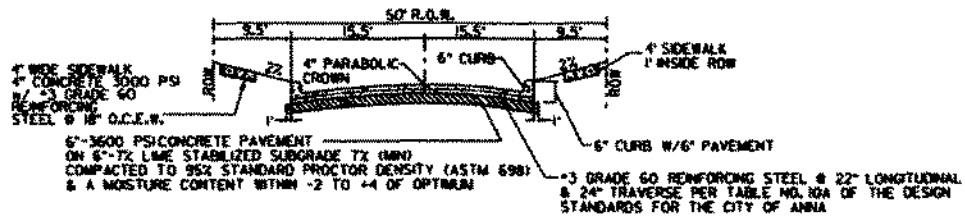
THENCE NORTH 00 DEGREES 11 MINUTES 47 SECONDS WEST, ALONG THE WEST LINE OF AFORESAID 2.249 ACRE TRACT, A DISTANCE OF 757.00 FEET TO A RAILROAD SPIKE FOUND FOR THE NORTHWEST CORNER OF SAID 2.249 ACRE TRACT;

THENCE SOUTH 89 DEGREES 29 MINUTES 18 SECONDS EAST, ALONG THE NORTH LINE OF AFORESAID 2.249 ACRE TRACT, A DISTANCE OF 258.85 FEET TO THE **POINT OF BEGINNING**, AND CONTAINING 2.249 ACRES OF LAND, MORE OR LESS.



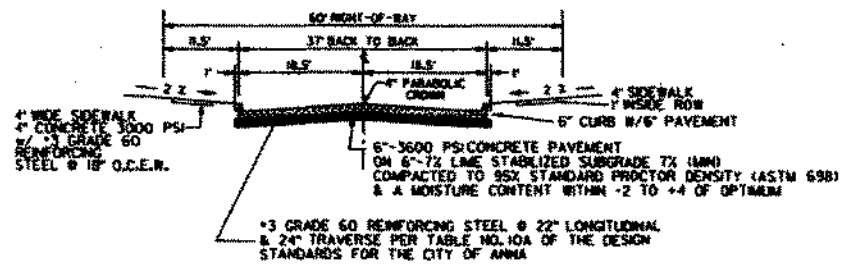
Michael J. Baitup
3/9/07





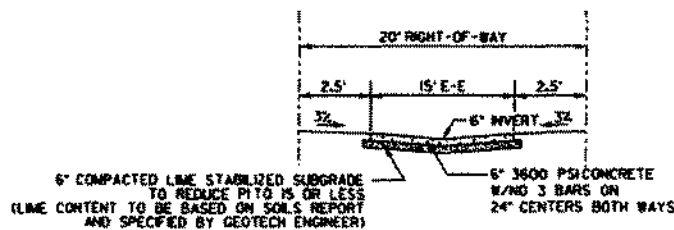
TYPICAL 50' R.O.W. LOCAL RESIDENTIAL STREET PAVEMENT SECTION

N.T.S.



TYPICAL 60' R.O.W. NEIGHBORHOOD STREET PAVING SECTION

N.T.S.

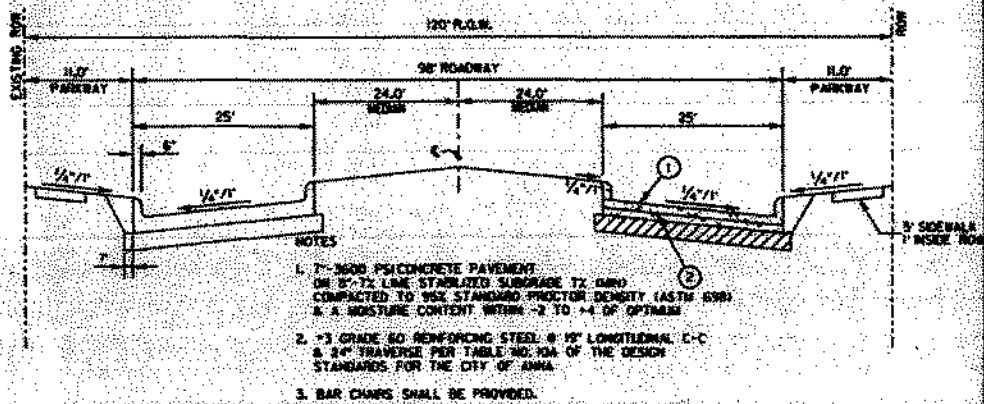


TYPICAL 20' R.O.W. ALLEY PAVING SECTION

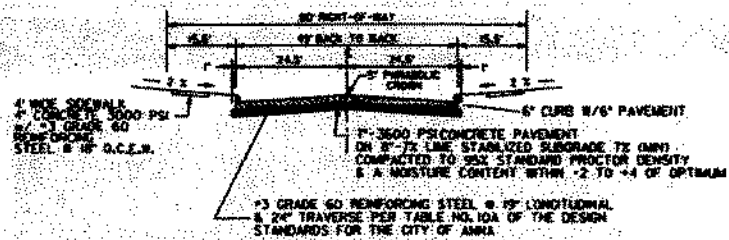
N.T.S.

EXHIBIT "C "

TYPICAL PAVING SECTIONS



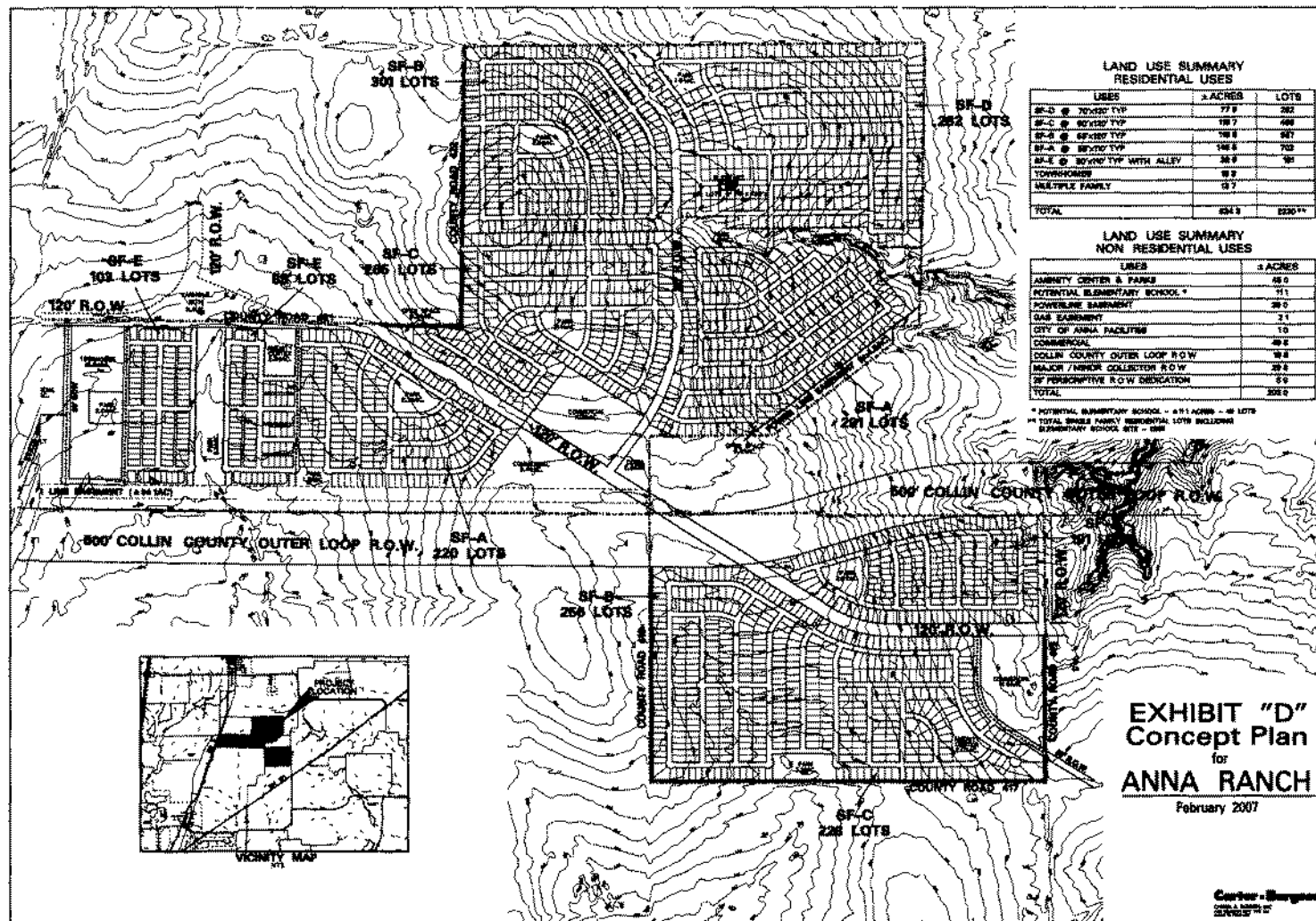
TYPICAL 120' R.O.W. MAJOR COLLECTOR STREET PAVING SECTION
N.T.S.



TYPICAL 80' R.O.W. MINOR COLLECTOR STREET PAVING SECTION
N.T.S.

EXHIBIT "C"

TYPICAL PAVING SECTIONS





Item No. 4.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Jim Proce

AGENDA ITEM:

Neighbor Comments.

Move to Council Chambers

SUMMARY:

Return to Council Chambers to complete agenda items.

FINANCIAL IMPACT:

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Move to Council Chambers.

ATTACHMENTS:

APPROVALS:

Carrie Land, City Secretary
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022



Item No. 5.a.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022

Staff Contact:

AGENDA ITEM:

Public Announcements (Mayor Nate Pike)

SUMMARY:

FINANCIAL IMPACT:

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

STAFF RECOMMENDATION:

ATTACHMENTS:

APPROVALS:

Carrie Land, City Secretary
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022



Item No. 5.b.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Jeff Freeth

AGENDA ITEM:

Recreation program and events report and announcement of the 12 Days of Anna programs and Christmas tree lighting event on Saturday, December 3rd (Assistant Director of Neighborhood Services Jeff Freeth).

SUMMARY:

Staff will provide a report on fall programs and events participation and successes. Additionally, staff will cover programs and events detailed in the Winter Recguide.

FINANCIAL IMPACT:

NA

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Vision:

Principle 1 -(Community of Families)

Means: Strong community events and festivals that bring neighbors together(4) and youth sports opportunities (7).

Principle 7 - (Fun Community for All)

Means 6 - Range of recreational programming for all family generations (6) and senior programs and services (10).

Goals:

Goal 7 - Great Place to Live

Objective: Expand community festivals and events with a feeling of community pride (6).

Value to Neighbors: Recreational and leisure choices within Anna (5) and support for a health and active lifestyle (6).

STAFF RECOMMENDATION:

NA

ATTACHMENTS:

1. Official - Winter 20222023 Rec Guide
2. Winter 2022-23 Rec Guide Postcard

APPROVALS:

Jeff Freeth, Recreation Manager
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022

THE CITY OF **Anna**

Recreation Guide Winter 2022-23 December - February

www.annatexas.gov



FALL GUIDE

TABLE OF CONTENTS

3

SPECIAL EVENTS

5

BINGO

7

YOUTH

9

ADULTS

10

SENIORS

11

**PARK CAPITAL
IMPROVEMENTS, AMENITIES
AND LOCATIONS**

13

**REGISTRATION,
RESERVATIONS AND
VOLUNTEER**

BACK COVER

2023 AT A GLANCE





ANNA FIRE RESCUE

OPERATION SANTA

2022 ROUTE SCHEDULE

MONDAY, DECEMBER 12

- Urban Crossing
- Villages of Hurricane Creek
- Creekside
- The Falls
- Oak Hollow / Park Place
- Lakeview Estates
- Avery Pointe

6-9PM EACH NIGHT

Santa's schedule may vary depending on bad weather and emergency responses. Changes to the schedule will be provided on our Facebook page.

TUESDAY, DECEMBER 13

- Westfield
- Stetson Ranch/West Crossing/Willow Creek
- Sweetwater Crossing
- Tara Farms
- Green Meadows
- North Pointe/North Pointe Crossing
- Camden Parc

WEDNESDAY, DECEMBER 14

- Shadowbend
- Meadow Ridge
- Anna Mobile Home Park
- Downtown
- Anna Crossing/Anna Town Square
- Pecan Grove



★ 12 Days of Anna

a community holiday celebration



- Dec. 3 - Day 1: Christmas Tree Lighting
- Dec. 4 - Day 2: Letters to Santa
- Dec. 5 - Day 3: "Cruising with a Claus" Toy Drive deadline
- Dec. 6 - Day 4: Holiday Home Décor Craft - fees apply
- Dec. 7 - Day 5: Kids' Craft
- Dec. 8 - Day 6: Senior Christmas Brunch
- Dec. 9 - Day 7: Elf on the Shelf Competition
- Dec. 10 - Day 8: Free ice skating at Municipal Complex
- Dec. 11 - Day 9: Christmas Tree Competition
- Dec. 12 - Day 10: Gingerbread House Competition
- Dec. 13 - Day 11: Anna Rivals: Santa's Sleuths
- Dec. 14 - Day 12: Christmas Light Competition (We Notice!)

12 Days of Anna

Special Events



Christmas Tree Lighting

Activities include crafts in Santa's Workshop, photos with Santa, hot chocolate, a live reindeer, fireworks, and more!

Day: Saturday, Dec. 3

Time: 5-8pm

Location: Anna Municipal Complex
120 W. 7th St.

Senior Christmas Brunch

Join your fellow senior neighbors for a holiday spread brunch and festive activities.

Day: Thursday, Dec. 8

Time: 10:30am to Noon

Location: Grace Place Coffee Shop
505 N. Powell Pkwy.



Free Ice Skating

Embrace the holiday spirit this season by gliding around the free ice skating rink!

Day: Dec. 10-11

Time: 10am to 8pm

Location: Anna Municipal Complex



Family Parks Bingo

Get in the Spirit!

Compete for a chance to win prizes! #BINGOjoy



Register for a recreation activity	Complete an Anna rivals: Santa's Sleuths Challenge	Find an Elf on the Shelf	Decorate a gingerbread house	Make a paper snowflake
Sing your favorite holiday song	Watch your favorite holiday movie	Attend the Christmas Tree lighting	Make a cup of hot chocolate	Decorate your Christmas Tree
Hang a stocking	Bake your favorite treat		Write a letter to santa	Wrap a present
Wear a santa hat	Decorate your house	Wear an ugly sweater	Wear you best holiday jammies	Dress your pet/stuffed animal in festive wear
Share seasons greetings	Visit a tree farm	Participate in Cruise for a Claus Toy Drive	Make an ornament	Visit the free ice skating rink

How to play

- Complete five activities in a vertical, horizontal or diagonal row, to earn a Bingo.
- Take a photo of the different activities you participate in or the places you visit.
- Submit online at AnnaTexas.gov/Bingo. Deadline to submit is Dec 31.
- Your name will be entered into a prize drawing for each Bingo you complete.

Holiday Photo Bingo Challenge

Adult Edition

Compete for a chance to win prizes! #BINGOjoy

Holiday Drink	Under the mistletoe	All I want for Christmas	A holiday party	A few of my favorite things
Cookies for santa	Favorite holiday movie	All bundled up	Santa baby	Favorite holiday food
Something nostalgic	Cozy pajamas		Ugly sweater	Festive activities
'Twas a night before Christmas	Something red	Under the tree	All of the lights	The Nutcracker
Winter squad	Tradition	A beautiful Sight	Candy canes	Shopping

How to play

- Be creative and take photos with the following prompts. Complete five prompts in a vertical, horizontal or diagonal row, to earn a Bingo.
- Take a photo of the different activities you participate in or the places you visit.
- Submit online at [AnnaTexas.gov/Bingo](https://anna.texas.gov/Bingo). Deadline to submit is Dec 31.
- Your name will be entered into a prize drawing for each Bingo you complete.

POP-UP RECREATION

**FUN & CREATIVE OUTDOOR
ACTIVITIES FOR ALL AGES.**

12 DAY OF ANNA CHRISTMAS TREE LIGHTING

Saturday, Dec. 3
5-8pm
Anna Municipal Complex

MEET OUR LOCAL HEROES: ANNA FIRE RESCUE

Saturday, January 21
10-11:30am
Code: W22PRFD
Anna Fire Department

MEET OUR LOCAL HEROES: ANNA POLICE DEPARTMENT

Saturday, February 25
10-11:30am
Code: W22PRPD
Anna Municipal Complex



YOUTH AND TEENS

Youth Sports

E-Sports

Youth Baseball & Softball

This new league is provided by the City of Anna Parks and Recreation Department. The season will begin in March.

Registration Deadline: Feb 15

Leagues: 4U T-ball (Co-ed)
6U T-ball (Co-ed)
8 and Under
10 and Under
12 and Under

League	Cost
T-Ball	Early: \$80 Late: \$90
8U-12U	Early: \$120 Late: \$135

Play your favorite games, have fun, and make new friends! Playing time vary.

Ages: 8+
Fee: \$40/player
Host: GG-Leagues
Code: GGLF22

Registration deadline: Jan 8
League dates: Jan 23 - March 3

Join our virtual Anna
Rivals: Santa's Sleuths
Competition via the
Eventzee app

ANNATEXAS.GOV/RIVALS



CITY OF ANNA YOUTH BASEBALL AND SOFTBALL

Coaches needed

- ➔ Parents
- ➔ Grandparents
- ➔ Aunts or uncles
- ➔ Retirees
- ➔ Community members
- ➔ Neighbors

Anyone can apply to become a volunteer.
Whatever talents or skills you have, we can use them!

Questions?



recreation@annatexas.gov

ADULTS

Programs

Anna's Gift Swap

'Tis the season of giving! Bring an unwrapped, unmarked gift valued at under \$15 between Dec. 5-9. Then between Dec. 12-16, participants will pick a random present under the tree. A bonus drawing will take place for a grand prize: One car entrance ticket to "Radiance! A Holiday Light Spectacular" - the largest ice & light spectacular in Texas!

Code: AGSW22
Location: Municipal Complex
Fee: Only the cost of your gift

Digital Holiday Cookbook

Submit your favorite holiday food recipe to be published in our City of Anna Digital Holiday Cookbook.

Deadline	Fee	Code
Friday, Dec 16	Free	HCBW22

Holiday Home Décor

Let's get crafty together! Come to the Municipal Complex and spruce up your home with a new holiday doormat.

Date	Time	Fee	Code
Tuesday, Dec 6	7-9pm	\$20	HHDW22

Decades Trivia Night & Costume Contest

Show off your grasp of random knowledge at our Decades Trivia Night. Win prizes and bragging rights! Snacks provided. This event is free.

Date	Time	Location	Code
Friday, Feb 3	6-8pm	Municipal Complex	DTNW22

NFL Playoff Bracket

"Anna 23, Anna 23 set hut!" Play the free 2023 City of Anna NFL Playoff Bracket Challenge. Try to predict the winner of every playoff game. Our overall winner will receive a prize! Visit online for competition rules.

Dates	Fee	Code
Jan 14 - Feb 12	Free	FBW22



Cruising with a Claus

HOLIDAY TOY DRIVE

ANNA POLICE & FIRE

BENEFITTING KIDS K-5TH
GRADE IN ANNA, TEXAS

Accepting donations from
Nov. 15 - Dec. 5

Please drop off gift cards, new unwrapped toys and youth jackets to the Anna Police Department



SENIOR 50+

Programs

Talks & Talents

Enjoy a free presentation from a variety of guest speakers and musicians each month at the Municipal Complex.

Date	Time	Code
Tues, Jan 10, Feb 7	11am to noon	TTW22

Christmas Senior Brunch

Join your fellow senior neighbors for a holiday spread brunch and festive activities at the Grace Place Coffee Shop.

Date	Time	Fee	Code
Thurs, Dec 8	10:30am to noon	Free	CSBW22

The Crafting Corner

Valentine's Day Wreath

Dress up your door with a new wreath for Valentine's Day or make it as a gift for a friend. Event located at the Municipal Complex.

Date	Time	Fee	Code
Wed, Jan 25	10-11am	\$15	CCVW22

"For the Birds" Seed Wreath

Make a our feathered friends a bird seed wreath to enjoy this winter. Event located at the Municipal Complex.

Date	Time	Fee	Code
Wed, Feb 22	10-11am	\$5	CCBW22

Foodie Troop

Join fellow food lovers for lunch at area restaurants. Bring money to purchase your meal. Location voted on by registered participants.

Date	Time	Code
Tues, Dec 20, Jan 17, Feb 21	11am - 1pm	FTW22

Senior Trips

Grapevine Historic District

Visit the "Christmas Capital of Texas" and enjoy festive Christmas shops, a tour from the observation tower and more.

Date	Time	Fee	Code
Thursday, Dec 15	9am - 2pm	\$3	STGHDW22

Dallas Museum of Art

Visit one of the nation's largest art museums which contains over 24,000 works of art from cultures spanning 5,000 years.

Date	Time	Fee	Code
Thur, Jan 12	9am - 2pm	Free	STDMAW22

Dallas World Aquarium

Explore the beautiful three-story aquarium featuring a rain forest, shark tank, and penguins.

Date	Time	Fee	Code
Thurs, Feb 9	9am 2:30pm	\$23	STDWAW22



Trip registration details:

- Pre-registration is required for all Senior trips.
- Registration is now open.
- Lunch is not included in trip fees. Please pack a lunch or bring money to purchase a meal.



PARKS AND RECREATION

CAPITAL IMPROVEMENT PROJECTS

Slayter Creek Park

Splash Pad renovations: Kraftsman Commercial Playgrounds and Waterparks is creating the design and will complete the build.

Target opening: Late Spring 2023

Fitness Station: A shaded fitness station east of the splash pad will accommodate equipment for various exercises on a padded surface. A \$50,000 grant will supplement the construction.

Target opening: Winter 2023

Restroom: To be located east of the Splash Pad.

Target opening: Spring 2023

North Parking Lot Expansion and Practice Field

Lighting: Funded by the 2021 Bond,

Target opening: Fall 2023.

Pickleball and Basketball Courts: To be located in the southwest corner of the main parking lot off of Rosamond Parkway. Funded by the 2021 Bond,

Target opening: Fall 2023.

Skate Park: SPA Skateparks was selected as the contractor.

Target opening: Fall 2023

Bryant Park

Recently installed a chain link fence and soccer goals will be added to activate the park as a multi-use practice facility. A possible future phase would include irrigation, lighting and parking.

Johnson Park

Permanent sports lights will be installed for both baseball fields.

Target opening: Spring 2023

Yank Park

A half-court basketball court will be added along with a trail around the existing playground to make it more universally accessible. To be funded by the Park Development Fund.

Target opening: Summer 2023

Natural Springs Park

Parking: Add a secondary parking lot near the existing dog park at Natural Springs Park.

Target opening: Spring 2023

Prairie Garden: As a part of the Keep Anna Beautiful program, a portion of the park has been transformed into a natural wildflower prairie garden.

TAKE A LOOK



SLAYTER CREEK PARK
PICKLEBALL AND
BASKETBALL COURTS



FUTURE HOME OF YANK
PARK HALF-COURT
BASKETBALL COURT



NATURAL SPRINGS PARK
PRAIRIE GARDEN

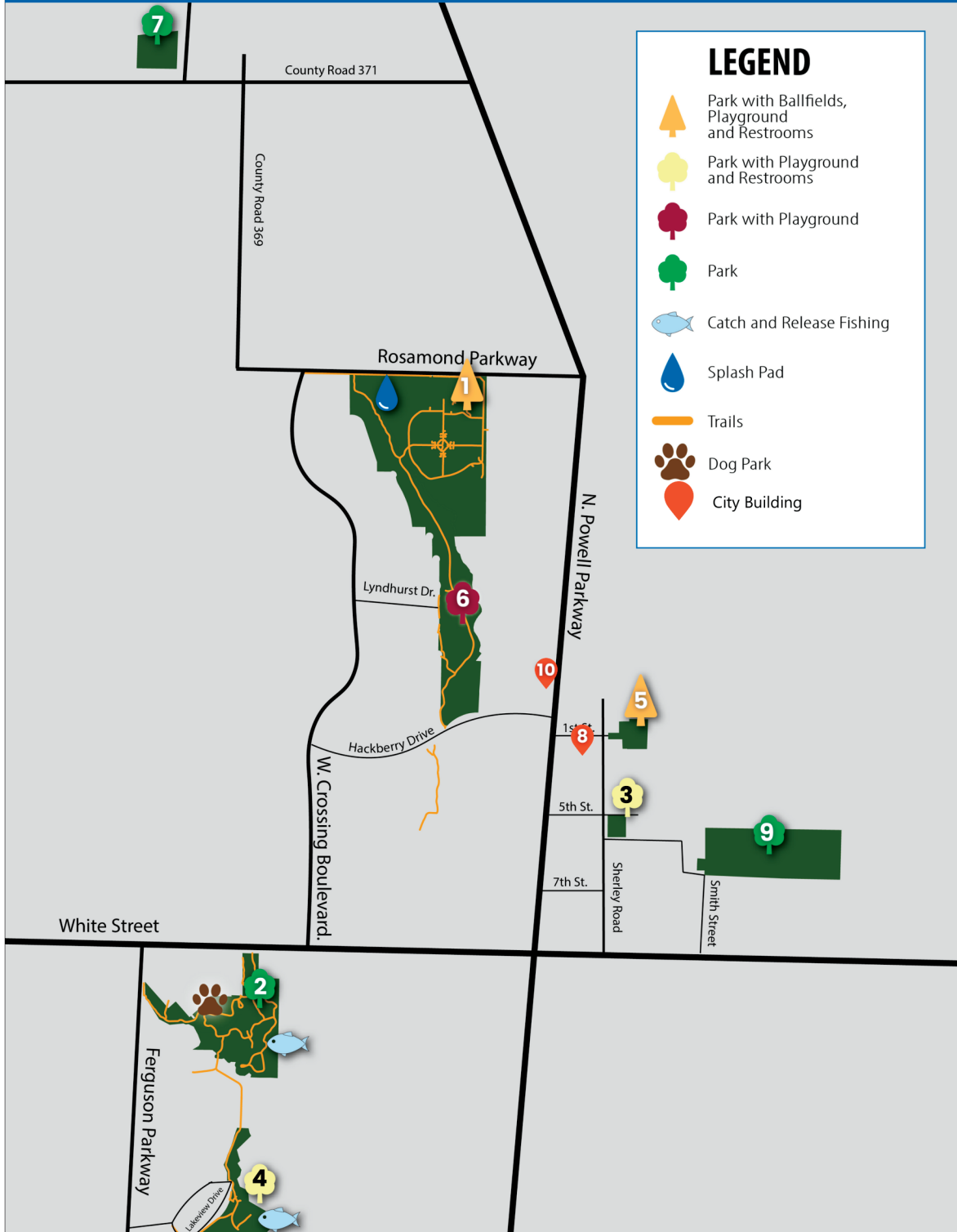


BRYANT PARK
PRACTICE FIELDS



SLAYTER CREEK PARK
WHEELED SPORTS PARK

PARK LOCATIONS



Slayter Creek Park
425 W Rosamond Pkwy.



Natural Springs Park
1201 W. White St.



Sherley Heritage Park
101 S. Sherley Ave.



Baldwin Park
1235 Lakeview Dr.



Johnson Park
320 N. Sherley Avenue



Geer Park
E. 6th St.
(No photo available)



Grace Place Coffee Shop
505 N. Powell Pkwy.



Henry Clay "Yank" Washington Park
636 Banbury Dr.



Bryant Park
Co Rd 371
South of Bryant Elem.



Anna Municipal Complex
120 West 7th St.



Pavilion and Gazebo Rentals

Are you looking to host an outdoor event for your friends and family?

The City of Anna offers beautiful outdoor spaces for rent up to 90 days in advance!



RESERVE NOW

Visit in person at the Anna Municipal Complex, 120 W. 7th St., or online at Annatexas.gov/Reservation

Volunteers needed

Want to get involved in the community? We're looking for volunteers for special events, youth programming, recreation and more.

[ANNATEXAS.GOV/VOLUNTEER](https://Annatexas.gov/Volunteer)

Have a suggestion?

We're always looking for new ideas on programming, events and recreation. Submit an idea to:

RECREATION@ANNATEXAS.GOV

Now hiring!

Contract class instructors are needed to teach a wide range of classes, such as arts and crafts, fitness, dance, special interest, and technology.

RECREATION@ANNATEXAS.GOV

REGISTRATION TERMS

Registration

Visit Annatexas.gov/CivicRec, call 214-831-5333 or visit in person at Anna Municipal Complex, 120 W. 7th St., Anna. M-F, 8am-5pm.

Class Cancellations and Refunds

Providing quality programs and customer service to our neighbors are the Neighborhood Services Departments top priorities. If you are not satisfied with a program, please let us know immediately so we can correct the situation. If you need to request a refund, please contact the City of Anna Neighborhood Services Department.

Full Refunds will be issued if:

Participation is not possible due to program cancellation or change in day, time, or location. Refunds will not be subject to any administrative charges.

Partial Refunds will be issued if:

- Participation is canceled after the class starts due to unusual circumstances (e.g. Sickness or injury). The refund will be prorated minus charges for furnished supplies. All partial refunds are subject to a \$10 administrative fee.
- Participation is canceled regardless of reason with notification of 7 calendar days before the class starts.

No Refunds will be issued if:

- Participation is canceled with notification less than seven (7) calendar days before the class starts.
- The program fee is less than \$10.

THANKS FOR A
GREAT YEAR!



Follow us on social!



PARKS AND RECREATION

2023

Event Calendar

APRIL

EASTER EGGSTRAVAGANZA

SATURDAY, APRIL 1

JUNE

MUSIC IN THE PARK SERIES

THURSDAY, JUNE 1 &
THURSDAY, JUNE 15

JULY

BOOTS AND BOOMS

SATURDAY, JULY 1

OCT

ANNA FEST

SATURDAY, OCTOBER 7

OCT

10 DAYS OF HALLOWEEN

OCTOBER 21-31

DEC

12 DAYS OF ANNA

DECEMBER 2-13

Free Community Events and Programs

Winter 2022/23

December

- 3-14** 12 Days of Anna
- 12-14** Anna Fire Rescue Operation Santa
- 20** Senior (50+) Foodie Troop

January

- 10** Senior (50+) Talks & Talents
- 14** NFL Playoff Bracket Competition
- 17** Senior (50+) Foodie Troop
- 21** Pop-up Rec - Meet Our Local Heroes
featuring Anna Fire

February

- 3** Decades Trivia & Night Costume Contest
- 7** Senior (50+) Talks & Talents
- 12** Senior (50+) Trip - Dallas Museum of Art
- 21** Senior (50+) Foodie Troop
- 25** Pop-up Rec - Meet Our Local Heroes
featuring Anna Police

Scan code to view full calendar and register now for programs or visit www.AnnaTexas.gov/RecGuide

Have questions or need assistance, call us: 214-831-5333



Free ice skating

Dec. 10-11 • 10am to 8pm

Anna Municipal Complex



12 Days of Anna

a community holiday celebration



- Dec. 3 - Day 1: Christmas Tree Lighting
- Dec. 4 - Day 2: Letters to Santa
- Dec. 5 - Day 3: "Cruising with a Claus" Toy Drive deadline
- Dec. 6 - Day 4: Holiday Home Décor Craft - fees apply
- Dec. 7 - Day 5: Kids' Craft
- Dec. 8 - Day 6: Senior Christmas Brunch
- Dec. 9 - Day 7: Elf on the Shelf Competition
- Dec. 10 - Day 8: Free ice skating at Municipal Complex
- Dec. 11 - Day 9: Christmas Tree Competition
- Dec. 12 - Day 10: Gingerbread House Competition
- Dec. 13 - Day 11: Anna Rivals: Santa's Sleuths
- Dec. 14 - Day 12: Christmas Light Competition

Annual Tree Lighting

SATURDAY, DECEMBER 3

5-8PM, MUNICIPAL COMPLEX

Activities include crafts in Santa's Workshop, photos with Santa, hot chocolate, a live reindeer, fireworks, and more!



Item No. 5.c.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Jeff Freeth

AGENDA ITEM:

Recognition of the 2022 City of Anna Youth Soccer volunteer coaches (Assistant Director of Neighborhood Services Jeff Freeth)

SUMMARY:

Staff will be recognizing youth soccer coaches for their dedication to the City and the inaugural program. Included in the recognition will be a 2 minute video highlight of the season.

FINANCIAL IMPACT:

NA

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Vision:

Principle 1 -(Community of Families)

Means: Sense of community – neighbors taking pride in and contributing to our Anna community (2) and Youth sports opportunities (7).

Principle 7 - (Fun Community for All)

Means: Range of recreational programming for all family generations (6).

Goals:

Goal 7 - Great Place to Live

Value to Neighbors: Recreational and leisure choices within Anna (5) and support for a healthy and active lifestyle (6).

STAFF RECOMMENDATION:

NA

ATTACHMENTS:

APPROVALS:

Jeff Freeth, Recreation Manager
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022



Item No. 5.d.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Jeff Freeth

AGENDA ITEM:

Report on November 21st Parks Advisory Board Meeting. (Assistant Director of Neighborhood Services Jeff Freeth)

SUMMARY:

Staff will report on the minutes from the November 21st Parks Advisory Board Meeting.

FINANCIAL IMPACT:

NA

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4 High Performing Professional City

Objective: Have open and transparent City government that is trusted by the neighbors (3).

Value to Neighbors: Opportunities to become involved in the City's governance process (6).

STAFF RECOMMENDATION:

Not applicable.

ATTACHMENTS:

APPROVALS:

Jeff Freeth, Recreation Manager
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022



Item No. 5.e.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Kimberly Winarski

AGENDA ITEM:

Update from the November 1, 2022 Diversity and Inclusion Advisory Commission meeting (Assistant to the City Manager Kimberly Winarski).

SUMMARY:

At our September D&I Advisory Commission meeting, the board asked that we get some further direction from the City Council on what they view as the mission or vision of the board, as well as some feedback from them on potential projects.

For November, those in attendance talked internally about what they saw as important to the board moving forward.

Along the lines of the key parts of what the board does, the group talked about four things:

- Recognition and celebration of the diversity within our community
- The desire to foster inclusion as our city grows
- The opportunity to further create a fully engaged community
- Enhancement of everyone's connection to their community here and their sense of belonging

The board also talked about different projects they're interested in:

- Youth in Government Day
- International Festival
- Development of a community ambassador program specifically focused on welcoming new neighbors
- Culmination of a community resource list
- Transit for elderly neighbors doctors appointments
- Sister Cities

Other stuff that could be further along in the future would be working on board retention and recruitment, development of a public arts plan, etc.

We would love for Council members to be able to join us at our December 6 Board meeting for further feedback and discussion.

FINANCIAL IMPACT:

No financial impact.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Connects to Goal 4 of the Strategic Plan: High Performing Professional City.

STAFF RECOMMENDATION:

N/A

ATTACHMENTS:**APPROVALS:**

Kimberly Winarski, Management Analyst
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022



Item No. 6.a.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Carrie Land

AGENDA ITEM:

Approve the City Council Meeting Minutes for the November 8, 2022 meeting. (City Secretary Carrie Land)

SUMMARY:

Approve meeting minutes.

FINANCIAL IMPACT:

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Approve meeting minutes.

ATTACHMENTS:

1. Draft Minutes (1) 2022-11-08 (1)

APPROVALS:

Carrie Land, City Secretary
Jim Proce, City Manager

Created -

**Regular City Council Meeting
Meeting Minutes**



Tuesday, November 8, 2022 @ 6:00 PM

**Anna Municipal Complex - Council Chambers
120 W. 7th Street, Anna, Texas 75409**

The City Council of the City of Anna met at 6:00 PM, on November 8, 2022, at the Anna Municipal Complex - Council Chambers, located at 120 W. 7th Street, to consider the following items.

1. Call to Order, Roll Call, and Establishment of Quorum.

Mayor Pike called the meeting to order at 6:00 PM.

Members Present:

Mayor Nate Pike
Mayor Pro Tem Lee Miller
Council Member Kevin Toten
Council Member Stan Carver
Council Member Danny Ussery
Council Member Pete Cain

Members Absent:

Deputy Mayor Pro Tem Randy Atchley

2. Work Session

- a. Discuss the process for the Municipal Complex Plaza Design and Construction. (Director of Public Works Greg Peters, P.E.)

The conceptual plan for the central plaza on the Municipal Complex property was completed as a part of the Anna Community Library concept plans. This was done to ensure that the library facility and the plaza would work together as necessary to create well-planned public spaces and facilities for the community. The plaza is a separate project from the Library, and was not included in the 2021 Bond Election for funding. As such, it will require a separate funding source.

- b. Discuss the project initiation and design of a new indoor recreation facility as defined in Proposition C of the City of Anna's 2021 Bond Election and the City of Anna Parks, Open Space, Trails, & Recreation Master Plan. (Director of Public Works Greg Peters, P.E.)

In 2021 Anna Neighbors approved Proposition C of the Bond Election, which

included funding for "Planning, design, and property acquisition for an indoor recreation facility." Staff will present an overview of the project processes needed to complete this work and seek feedback from the City Council on how best to move forward. At a future Council Meeting, staff will present professional service contracts as needed to begin formal work on the project.

Mayor Pike Moved to Closed Session

3. **Invocation and Pledge of Allegiance. - Council Chambers.**

Mayor Pike led the Invocation and Pledge of Allegiance.

4. **Neighbor Comments.**

No public comments were given.

5. **Reports.**

a. Public Announcements (Mayor Nate Pike)

The annual Economic Development Corporation **Business Appreciation Breakfast** this Thursday, November 10 at 8 a.m. at the Municipal Complex. Attendees will receive an update from our EDC staff, learn more about our Business, Retention and Expansion Program, and learn from Keynote speaker Russel Dubree of Performance Faction.

The Community Enhancement and Compliance Division is giving away yard signs to local veterans to show our appreciation for their service. Signs are available on a first-come, first-serve basis and can be picked up at Anna Municipal Complex until November 10.

On Friday, November 11, city facilities will be closed in honor of Veterans Day.

The Annual Christmas Tree lighting event will take place on December 3 here at Anna Municipal Complex starting at 5 p.m. and feature crafts in Santa's Workshop, photos with Santa, hot chocolate, a live reindeer, fireworks, and more.

b. Neighbor Academy Graduation (Assistant to the City Manager Kimberly Winarski).

Staff presented the 2022 Neighbor Academy Graduating Class.

Gordon Besel
Tim Cox
Lindsay Crisostomo-Vickery
Chad Fisher
Tanya Fonville
Julia Fox

Allison Inesta
Kevin Johnson
Theresa King-Bell
Abraham Magana
Faith Matlock Johnson
Timothy Maurice
Cristina Obregon
Kelly Patterson-Herndon
Curtis Scretchen
Charles Tang
Jewells Williams
Paul Williamson

- c. Recognition of September, October, and November We Notice! Property of the Month (Neighborhood Services Olivia Demings)

September: The We Notice! September Property of the Month is First Anna Church. Many updates have been made to the church's façade, including new siding, paint, and cedar-wrapped columns. We are grateful for their participation in making Anna a Great Place to Live.

October: This Northpointe Crossing home ushers in the feeling of Fall with their festive decorations! Their efforts in providing this cheerful look for the neighborhood have not gone unnoticed and that is why they have been selected as the October We Notice! Property. Darrel Jones.

November: Located in Anna Town Square, this home features lush florals that have sustained their beauty well into the Fall season. These flowers bring color and joy to the community. Camile Brown

- d. Presentation of the Downtown Service Day Project (Neighborhood Services Olivia Demings)

The Community Enhancement and Compliance Division is hosting a beautification day in the downtown area on November 19th. A dumpster will be available at Sherley Heritage Park for bulk trash and city staff will be onsite to answer questions and hand out promotional items.

6. **Consent Items.**

MOTION: Mayor Pro Tem Miller moved to approve consent items a. through s. Council Member Toten seconded. Motion carried 6-0.

- a. Approve City Council Meeting Minutes for October 19, 2022 and October 25, 2022. (City Secretary Carrie Land)
- b. Review the Minutes from the August 15th and September 19th, 2022 Parks Advisory Board Meeting (Director of Neighborhood Services Marc Marchand).

- c. Approve the City Manager to execute an additional service letter for \$8,400 to be added to the existing design contract with Birkhoff Hendricks & Carter, LLC, for the design of an additional water main highway crossing to be added to the scope of the US 75 Utility Relocation project. (Director of Public Works Greg Peters, P.E.)

This item is to approve an additional service (\$8,400) to the existing design contract with Birkhoff, Hendricks, & Carter to add an additional water main crossing when we bid/construct US 75 utility relocations. The additional crossing is recommended to account for the likely growth on the northern end of the US 75 corridor, which could include large water users in the future. When the project was originally scoped, interest in the US 75 corridor at the north end of the city was not as significant as it is today, and large water users were not considered likely. With the new chip manufacturing plants coming to Sherman, it is important for Anna to maintain maximum flexibility in our ability to provide utility services for employment centers which could come to our community.

We recommend the additional crossing located near County Road 370 based on likely development needs. This will be significantly cheaper and faster than doing it in the future as a stand-alone project when development occurs. The fund source will be Water Impact Fees, matching the original agreement.

- d. Approve a Resolution amending the representatives authorized to transact business with the Texas Local Government Investment Pool (TexPool). (Finance Director Alan Guard)

The Texas Local Government Investment Pool (TexPool) is one of the City's primary investment vehicles. Authorized representatives who can conduct business for the City must be identified by resolution. This resolution amends the list of City Representatives by substituting the new Assistant Finance Director, Aimee Ferguson, for the previous Accounting Manager.

A RESOLUTION OF THE CITY OF ANNA, TEXAS AMENDING THE AUTHORIZED REPRESENTATIVES AUTHORIZED TO TRANSACT BUSINESS WITH THE TEXAS LOCAL GOVERNMENT INVESTMENT POOL, "TEXPOOL/TEXPOOL PRIME", A PUBLIC FUNDS INVESTMENT POOL.

- e. Approve a Resolution regarding the James' Estates, Block A, Lot 1, Development Plat. (Director of Development Services Ross Altobelli)

One single-family residence, one guest house, and seven accessory structures on one lot on 6.0± acres located on the north side of County Road 505, 2,680± feet west of County Road 508. Located within the Extraterritorial Jurisdiction (ETJ).

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING JAMES' ESTATES, BLOCK A, LOT 1, DEVELOPMENT PLAT.

- f. Approve a Resolution regarding the McAlexander West, Block A, Lot 1, Final

Plat. (Director of Development Services Ross Altobelli)

Vacant lot on 11.0± acres located on the south side of County Road 290, 1,050± feet east of County Road 289. Zoned: Extraterritorial Jurisdiction (ETJ).

The purpose of the Final Plat is to dedicate right-of-way, lot and block boundaries, and easements necessary for future development.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING MCALEXANDER WEST, BLOCK A, LOT 1, FINAL PLAT

- g. Approve a Resolution regarding the Meadow Vista, Phase 2, Final Plat. (Director of Development Services, Ross Altobelli)

Seven single-family dwelling, detached lots and two common area lots on 5.0± acres located at the southwest corner of Hackberry Drive and Stanley Falls Drive. Zoned: Planned Development (Ord. No. 839-2019).

The purpose for the Final Plat is to dedicate right-of-way, lot and block boundaries, and easements necessary for development.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING MEADOW VISTA, PHASE 2, FINAL PLAT.

- h. Approve a Resolution regarding the Pitts Addition, Block A, Lots 1 & 2, Final Plat. (Director of Development Services Ross Altobelli)

Two vacant lots on 7.4± acres located on the east side of County Road 480, 75± feet north of Farm-to-Market Road 2862. Zoned: Extraterritorial Jurisdiction (ETJ).

The purpose for the Final Plat is to dedicate right-of-way, lot and block boundaries, and easements necessary for future development.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING PITTS ADDITION, BLOCK A, LOTS 1 & 2, FINAL PLAT

- i. Approve a Resolution regarding The Woods at Lindsey Place Municipal, Block A, Lot 1, Block B, Lot 1, and Block C, Lot 1X, Final Plat. (Director of Development Services Ross Altobelli)

Two public parks, an access & drainage lot, and right-of-way dedication on 26.8± acres located at the northwest and southwest corners of future Rosamond Parkway and future Ferguson Parkway. Zoned: Planned Development (Ord. No. 881-2020).

The purpose for the Final Plat is to dedicate lot and block boundaries, and easements necessary for the establishment of park land, rights-of-way, and access.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING THE WOODS AT LINDSEY PLACE MUNICIPAL, BLOCK A, LOT 1, BLOCK B, LOT 1, AND BLOCK C, LOT 1X, FINAL PLAT.

- j. Approve a Resolution regarding the Anna Town Center Addition, Block A, Lots 6R & 12, Replat. (Director of Development Services Ross Altobelli)

Restaurant and vacant commercial lot on 35.8± acres located on the east side of U.S. Highway 75, 1,680± feet north of W. White Street. Zoned: Planned Development (Ord. No. 648-2014).

The purpose of the Replat is to subdivide the property, and dedicate lot and block boundaries and easements necessary for the construction of the restaurant on Lot 6R.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING ANNA TOWN CENTER ADDITION, BLOCK A, LOTS 6R & 12, REPLAT.

- k. Approve a Resolution regarding the Independent Bank Addition, Block A, Lot 1R, Replat. (Director of Development Services Ross Altobelli)

Vacant commercial building on one lot on 0.9± acre located at the southeast corner of W. Fourth Street and S. Powell Parkway. Zoned: C-1 Restricted Commercial

The purpose of the Replat is to correctly identify the limits of the parcel.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING THE INDEPENDENT BANK ADDITION, BLOCK A, LOT 1R, REPLAT.

- l. Approve a Resolution regarding the Willow Creek Addition, Phase 1B, Block G, Lot 1R, Replat. (Director of Development Services Ross Altobelli)

Retail and restaurant on one lot on 2.2± acres located at the northeast corner of W. White Street and Westfield Drive. Zoned: C-1 Restricted Commercial.

The purpose of the Replat is to dedicate easements necessary for the construction of the multi-tenant building.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING WILLOW CREEK ADDITION, PHASE 1B, BLOCK G, LOT 1R, REPLAT

- m. Approve a Resolution regarding the Anna Town Square Addition, Block A, Lot 2R, Preliminary Replat. (Director of Development Services Ross Altobelli)

Multiple-family residences on one lot on 11.1± acres located on the north side of E. Finley Boulevard, 515± feet south of Florence Way. Zoned: Planned Development (Ord. No. 983-2022).

The purpose for the Preliminary Replat is to propose lot and block boundaries and easements necessary for the creation of a multiple-family residence development.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING ANNA TOWN SQUARE ADDITION, BLOCK A, LOT 2R, PRELIMINARY REPLAT.

- n. Approve a Resolution regarding the Blacklock Storage, Block A, Lot 1, Preliminary Plat. (Director of Development Services Ross Altobelli)

Self-Storage, mini-warehouse on one lot on 4.9± acres located on the west side of State Highway 5, 240± feet north of County Road 423. Zoned: Planned Development (Ord. No. 981-2022).

The purpose of the Preliminary Plat is to propose lot and block boundaries and easements necessary for the future construction of the self-storage, mini-warehouse development.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING BLACKLOCK STORAGE, BLOCK A, LOT 1, PRELIMINARY PLAT.

- o. Approve a Resolution regarding the Prose Foster Crossing, Block A, Lot 1, Preliminary Plat. (Director of Development Services Ross Altobelli)

Multiple-family residences on one lot on 15.6± acres located on the north side of E. Foster Crossing, 2,280± feet east of S. Powell Parkway. Zoned: Extraterritorial Jurisdiction (ETJ).

The purpose of the Preliminary Plat is to propose right-of-way, lot and block boundaries, and easements necessary for the future construction of the multiple-family residential development.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING PROSE FOSTER CROSSING, BLOCK A, LOT 1, PRELIMINARY PLAT.

- p. Approve a Resolution regarding Anna Fire Station No. 2, The Villages of Hurricane Creek, Phase 1B, Block I, Lot 18X, Site Plan. (Director of Development Services Ross Altobelli)

Fire Station on 2.2± acres located at the northwest corner of Standridge Boulevard and Creek Meadow Drive. Zoned Planned Development SF-84 Single-Family Residence District, SF-72 Single-Family Residence District, SF-60 Single-Family Residence District, and SF-Z Single-Family Residence District – Zero Lot Line homes (PD-SF-84/SF-72/SF-60/SF-Z) (Ord. No. 886-2020).

The purpose of the Site Plan is to show the proposed Fire Station site improvements.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING ANNA FIRE

STATION NO. 2, THE VILLAGES OF HURRICANE CREEK, PHASE 1B,
BLOCK I, LOT 18X, SITE PLAN.

- q. Approve an Ordinance approving the 2022 Tax Roll (Budget Manager Terri Doby).

The Collin County Tax Assessor-Collector recently submitted the Tax Roll Summary for the City of Anna. Texas Property Tax Code, Section 26.09 requires the City to pass an ordinance approving the 2022 Tax Roll.

AN ORDINANCE APPROVING THE 2022 TAX ROLL FOR THE CITY OF ANNA, TEXAS

- r. Approve an agreement with Project Advocates to subcontract comprehensive building commissioning services for the new Anna Community Library Project. (Director of Public Works Greg Peters, P.E.)

The City is now in the design development phase for the Anna Community Library, and the design team is beginning the detailed design process for the facility. A part of design development is to begin the sizing and selection of HVAC components which will serve the facility.

Comprehensive building commissioning services are key to ensuring that the City receives the right size, type, and quality of HVAC system components required to properly heat and cool the facility. In addition, commissioning services will also include the review and oversight of all the electronic and computerized systems related to building climate control. It is essential that all HVAC system operations work seamlessly with the technology the City has in the Municipal Building and the Central Fire Station.

Instead of bringing a building commissioning contractor on at the end of the project to test a completed system, we are proposing to have them as a member of the team through design, construction, start-up, and warranty. This will provide the City with a partner who can ensure that all design, construction, and training associated with the HVAC system accomplishes our goals. In short, comprehensive building commissioning will ensure that we get what we pay for.

The conservative budget estimate for this work is \$171,005, but we will be billed on an hourly not-to-exceed basis instead of a lump sum. This ensures that the cost of the work is directly related to the amount of work done by the commissioning contractor.

This item is within the original project budget estimate of \$205,000, so approval of this item is consistent with the existing budget and project charter.

- s. Approve an Interlocal Agreement by and between the City of Anna and the North Central Texas Council of Governments for the sharing and use of aerial imagery. (Director of Public Works Greg Peters, P.E.)

The City of Anna has purchased NearMap aerial imagery in the past for use in our GIS software and mapping systems. NearMap aerial imagery is updated 2-3 times per year, giving us significantly improved aerial imagery when compared to Google or Bing. In a fast-growing city like Anna, having recent aerial images is a significant benefit to the usefulness of our maps and GIS system.

The latest NearMap aerial imagery for Anna can be viewed on our maps available on the City website, under Departments -> Planning & Development -> City Maps.

The renewal period is coming up, and now NearMap has an agreement with NCTCOG for special pricing of the data. As such, it is in the best interest of the City of Anna to utilize this service through the NCTCOG. In order to complete the membership purchase, the City must enter into a simple interlocal agreement that is specific to the NearMap data. Staff recommends approval of the ILA for a 3-year subscription to NearMap aerial imagery at a cost of \$4,000/year.

7. Items For Individual Consideration.

- a. Conduct a Public Hearing/Consider/Discuss/Action on an Ordinance for a Specific Use Permit (SUP) for a metering station on one lot on 0.6± acre located on the north side of future Rosamond Parkway, 995± feet west of County Road 368. (Director of Development Services Ross Altobelli)

The applicant is requesting a Specific Use Permit (SUP) for a gas metering station. The Zoning Ordinance defines gas metering station as a facility at which natural gas flows are regulated and recorded.

The subject property is undeveloped and zoned Planned Development (Ord. No. 932-2021). The property will be a common area lot of the Villages of Hurricane Creek – North Subdivision. There is an existing 50-foot utility easement and gas line which this would be connecting to.

Request for a Specific Use Permit to allow for a gas metering station on one lot on 0.6± acre located on the north side of future Rosamond Parkway, 995± feet west of County Road 368.

Mayor Pike opened the public hearing at 7:08 PM.

No public comments were given.

Mayor Pike closed the public hearing at 7:13 PM.

AN ORDINANCE OF THE CITY OF ANNA, TEXAS AMENDING THE CITY'S COMPREHENSIVE PLAN, ZONING MAP, AND ZONING ORDINANCE AND APPROVING A SPECIFIC USE PERMIT ON CERTAIN PROPERTY AS

DESCRIBED HEREIN; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A PENALTY CLAUSE NOT TO EXCEED \$2,000 OR THE HIGHEST PENALTY AMOUNT ALLOWED BY LAW, WHICHEVER IS LESS; AND, PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

MOTION: Mayor Pike moved to approve. Council Member Toten seconded. Motion carried 6-0.

- b. Consider/Discuss/Action on a Resolution regarding Villages of Hurricane Creek, North, Block N, Lot 1X, Site Plan. (Director of Development Services Ross Altobelli)

Metering station on one lot on 0.6± acre located at the north side of future Rosamond Parkway, 995± feet west of County Road 368. Zoned: Planned Development (Ord. No. 932-2021).

The purpose of the Site Plan is to show the proposed metering station site improvements.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING A SITE PLAN OF VILLAGES OF HURRICANE CREEK, NORTH, BLOCK N, LOT 1X.

MOTION: Mayor Pike moved to approve. Council Member Toten seconded. Motion carried 6-0.

- c. Consider/Discuss/Action on a Resolution regarding The Parks of Hurricane Creek, Development Agreement. (Planning Manager Lauren Mecke)

The intent of the development agreement is to ensure the use of high quality, durable materials for nonresidential and residential development within the city to create well designed and attractive architecture.

The applicant is proposing the following masonry standards:

Single-Family Townhome District

First floor, front elevation: 25% masonry

Second floor, front elevation: 15% masonry

Remaining cumulative surface (excluding windows and doors): 10% masonry

Restricted Commercial

Exterior facade visible to the public: 100% masonry

Exterior facade not visible to the public: 60% masonry

The applicant has chosen not to propose construction timelines/deadlines within the development agreement.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING A DEVELOPMENT AGREEMENT WITH CHARLES COVEY – LANDVEST DEVELOPMENT, RELATING TO DEVELOPMENT AND DESIGN

REGULATIONS FOR TOWNHOME DISTRICT SUBDIVISION GENERALLY
LOCATED ON THE NORTH SIDE OF FARM-TO-MARKET ROAD 455, 3,830±
FEET WEST OF STANDRIDGE BOULEVARD

MOTION: Mayor Pro Tem Miller moved to approve. Council Member Ussery seconded. Motion carried 6-0.

- d. Consider/Discuss/Act on a Resolution approving an Agreement regarding services including a plan for municipal services regarding 78.0± acres of land generally located on the north side of Farm-to-Market Road 455, 3,830± feet west of Standridge Boulevard. (Planning Manager Lauren Mecke)

Charles Covey - LandVest Development has submitted a petition to annex 78.0± acres of land generally located on the north side of Farm-to-Market Road 455, 3,830± feet west of Standridge Boulevard. The Agreement for Services is required by state law prior to approval of annexation.

A RESOLUTION ADOPTING A CONDITIONAL AGREEMENT REGARDING
SERVICES RELATED TO ANNEXATION OF A 78.0± ACRE TRACT OF LAND

MOTION: Council Member Toten moved to approve. Council Member Carver seconded. Motion carried 6-0.

- e. Conduct a Public Hearing/Consider/Discuss/Action on an Ordinance regarding annexation of 78.0± acres of land generally located on the north side of Farm-to-Market Road 455, 3,830± feet west of Standridge Boulevard. (Planning Manager Lauren Mecke)

Charles Covey - LandVest Development has submitted a petition to annex 78.0± acres of land generally located on the north side of Farm-to-Market Road 455, 3,830± feet west of Standridge Boulevard.

Mayor Pike opened the public hearing at 7:17 PM.

No public comments were given.

Mayor Pike closed the public hearing at 7:17 PM.

AN ORDINANCE ANNEXING THE HEREINAFTER DESCRIBED TERRITORY TO THE CITY OF ANNA, COLLIN COUNTY, TEXAS, AND EXTENDING THE BOUNDARY LIMITS OF SAID MUNICIPALITY SO AS TO INCLUDE SAID HEREINAFTER DESCRIBED PROPERTY WITHIN SAID MUNICIPAL CORPORATE LIMITS AND GRANTING TO ALL THE INHABITANTS OF SAID PROPERTY ALL THE RIGHTS AND PRIVILEGES OF OTHER CITIZENS AND BINDING SAID INHABITANTS BY ALL OF THE ACTS, ORDINANCES, RESOLUTIONS, AND REGULATIONS OF SAID CITY AS SET FORTH HEREIN; PROVIDING A REPEALER CLAUSE; PROVIDING A SEVERABILITY CLAUSE; AND PROVIDING AN EFFECTIVE DATE.

MOTION: Mayor Pro Tem Miller moved to approve. Council Member Ussery

seconded. Motion carried 6-0.

- f. Conduct a Public Hearing/Consider/Discuss/Action on an Ordinance to establish zoning on 78.0± acres located on the north side of Farm-to-Market Road 455, 3,830± feet west of Standridge Boulevard to Planned Development -SF-TH Townhome District. (Planning Manager Lauren Mecke).

Request to establish zoning to allow for a single-family townhome development and a commercial lot with modified development standards on 78.0± acres located on the north side of Farm-to-Market Road 455, 3,830± feet west of Standridge Boulevard to Planned Development. Zoned: Extraterritorial Jurisdiction (ETJ).

Mayor Pike opened the public hearing at 7:20 PM.

No public comments were given.

Mayor Pike closed the public hearing at 7:20 PM.

AN ORDINANCE OF THE CITY OF ANNA, TEXAS AMENDING THE CITY'S COMPREHENSIVE PLAN, ZONING MAP, AND ZONING ORDINANCE AND CHANGING THE ZONING OF CERTAIN PROPERTY AS DESCRIBED HEREIN; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A PENALTY CLAUSE NOT TO EXCEED \$2,000 OR THE HIGHEST PENALTY AMOUNT ALLOWED BY LAW, WHICHEVER IS LESS; AND, PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

MOTION: Mayor Pike moved to approve. Council Member Carver seconded. Motion carried 6-0.

- g. Consider/Discuss/Action on a Resolution regarding The Parks at Hurricane Creek, Concept Plan. (Planning Manager Lauren Mecke)

288 SF-TH Townhome District lots, one C-1 Restricted Commercial lot and ten common area lots on 78.0± acres located on the north side of Farm-to-Market Road 455, 3,830± feet west of Standridge Boulevard. Located in the Extraterritorial Jurisdiction (ETJ). Proposed Zoning: Planned Development

This concept plan is associated with the zoning case and is contingent upon approval of the annexation and zoning case. The purpose of the concept plan is to show the conceptual layout and related site improvements associated with the future residential development. The concept plan complies with the zoning district's area regulations as requested by the zoning case.

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING A CONCEPT PLAN FOR THE PARKS AT HURRICANE CREEK.

MOTION: Mayor Pro Tem Miller moved to approve. Council Member Cain seconded. Motion carried 6-0.

- h. Consider/Discuss/Action on a Resolution authorizing the City Manager to execute a subdivision improvement agreement by and between the City of Anna and Anna Crossing Partners, LLC, for the construction of public water and sanitary sewer improvements serving properties along and adjacent to State Highway 5 in a form approved by the City Attorney. (Director of Public Works Greg Peters, P.E.)

Anna Crossing Partners, LLC is constructing Waterview Apartments, a multi-family development along State Highway 5 in Anna. As a part of the project, the developer has agreed to construct an upsized 12-inch water main and a new 12-inch sewer main to account for future development in the area in accordance with the City of Anna Water Master Plan and the future plans for the utility relocations along State Highway 5. In accordance with common practice, the City is agreeing to reimburse the developer for the improvements the City is requesting which are not required for their project. The reimbursement will include \$86,482 in water impact fees for the size difference of the water main (8" to 12") and \$104,753 in Utility Fund dollars for the entirety of the new sewer main (12" sewer main required for future growth).

Both of these projects would be required to be built with the SH 5 Utility Relocation project (City Capital Improvement Plan project), but partnering with the developer to build these improvements will save money and time, and prevent disturbing the finished apartment project in the future.

A RESOLUTION OF THE CITY OF ANNA, TEXAS AUTHORIZING THE CITY MANAGER TO EXECUTE A SUBDIVISION IMPROVEMENT AGREEMENT WITH ANNA CROSSING PARTNERS, LLC FOR THE DESIGN AND CONSTRUCTION OF PUBLIC WATER AND SANITARY SEWER IMPROVEMENTS, IN A FORM APPROVED BY THE CITY ATTORNEY; AND PROVIDING FOR AN EFFECTIVE DATE.

MOTION: Council Member Toten moved to approve. Council Member Ussery seconded. Motion carried 6-0.

- i. Consider/Discuss/Action on a Resolution authorizing an Incentive Agreement for New Economic Development and related Lease Agreement between the Anna Economic Development Corporation and 3 Nations Brewing LLC. (Director of Economic Development Joey Grisham)

As the City Council conveyed 101 S. Powell to the Anna EDC for the public purpose of economic development, the Anna EDC has been working with 3 Nations Brewing since May. In order to renovate the former bank turned office building into a brewery and revitalize the property to allow for public gathering and accessible pedestrian access, the EDC Board approved an Incentive Agreement and Lease Agreement with 3 Nations Brewing LLC. 3 Nations will update/remodel the building, with the EDC providing a grant of up to \$650,000—this also includes updating the roof, fire suppression system, sidewalks/landscaping, and the HVAC system. Up to \$400,000 may be paid up front and up to \$250,000 being paid in Year 2 conditioned on progress of remodeling and continued operations.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS
APPROVING A PROJECT OF THE ANNA ECONOMIC DEVELOPMENT
CORPORATION INCLUDING INCENTIVES TO 3 NATIONS BREWING LLC
AND RELATED LEASE AGREEMENT

MOTION: Council Member Toten moved to approve. Mayor Pro Tem Miller seconded. Motion carried 6-0.

- j. Consider/Discuss/Action on adopting a Resolution of the City of Anna, Texas, determining the costs of certain authorized improvements to be financed within Improvement Area #2 of the Hurricane Creek Public Improvement District; approving a preliminary amended & restated service and assessment plan, including proposed Improvement Area #2 assessment roll; calling a regular meeting and noticing a Public Hearing for December 13, 2022, to consider an ordinance levying assessments on property located within improvement Area #2 of the Hurricane Creek Public Improvement District; directing the filing of the proposed assessment roll with the City Secretary to make available for public inspection; directing city staff to publish and mail notice of said Public Hearing; and resolving other matters incident and related thereto. (Director of Economic Development Joey Grisham)

The following item is related to the Hurricane Creek Public Improvement District Improvement Area #2 and sets out costs of the improvements to be financed as well as approving the Preliminary Amended and Restated Service and Assessment Plan. It also sets a Public Hearing for December 13, 2022 for the levying of assessments in Improvement Area #2.

A RESOLUTION OF THE CITY OF ANNA, TEXAS DETERMINING THE COSTS OF CERTAIN AUTHORIZED IMPROVEMENTS TO BE FINANCED WITHIN IMPROVEMENT AREA #2 OF THE HURRICANE CREEK PUBLIC IMPROVEMENT DISTRICT; APPROVING A PRELIMINARY AMENDED & RESTATED SERVICE AND ASSESSMENT PLAN, INCLUDING PROPOSED IMPROVEMENT AREA #2 ASSESSMENT ROLL; CALLING A REGULAR MEETING AND NOTICING A PUBLIC HEARING FOR DECEMBER 13, 2022 TO CONSIDER AN ORDINANCE LEVYING ASSESSMENTS ON PROPERTY LOCATED WITHIN IMPROVEMENT AREA #2 OF THE HURRICANE CREEK PUBLIC IMPROVEMENT DISTRICT; DIRECTING THE FILING OF THE PROPOSED ASSESSMENT ROLL WITH THE CITY SECRETARY TO MAKE AVAILABLE FOR PUBLIC INSPECTION; DIRECTING CITY STAFF TO PUBLISH AND MAIL NOTICE OF SAID PUBLIC HEARING; AND RESOLVING OTHER MATTERS INCIDENT AND RELATED THERETO.

MOTION: Council Member Carver moved to approve. Mayor Pro Tem Miller seconded. Motion carried 6-0.

- k. Consider/Discuss/Action on a Resolution approving a Preliminary Limited Offering Memorandum for the sale of special assessment revenue bonds for Hurricane Creek Public Improvement District. (Director of Economic

Development Joey Grisham)

This item is related to the Hurricane Creek Public Improvement District and includes a Resolution approving a Preliminary Limited Offering Memorandum for the sale of assessment revenue bonds for the Hurricane Creek Public Improvement District.

RESOLUTION APPROVING A PRELIMINARY LIMITED OFFERING MEMORANDUM FOR THE SALE OF SPECIAL ASSESSMENT REVENUE BONDS FOR HURRICANE CREEK PUBLIC IMPROVEMENT DISTRICT.

MOTION: Mayor Pike moved to approve. Council Member Ussery seconded. Motion carried 6-0.

8. **Closed Session (Exceptions).**

Under Tex. Gov't Code Chapter 551, the City Council may enter into Closed Session to discuss any items listed or referenced on this Agenda under the following exceptions:

MOTION: Mayor Pike moved to enter closed session. Mayor Pro Tem Miller seconded. Motion carried 6-0.

Mayor Pike recessed the meeting at 6:23 PM.

Mayor Pike reconvened the meeting at 6:49 PM.

- a. Consult with legal counsel regarding pending or contemplated litigation and/or on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the Government Code (Tex. Gov't Code §551.071). City Seal; Business Regulations
 - b. Discuss or deliberate the purchase, exchange, lease, or value of real property (Tex. Gov't Code §551.072).
 - c. Discuss or deliberate Economic Development Negotiations: (1) To discuss or deliberate regarding commercial or financial information that the City has received from a business prospect that the City seeks to have locate, stay, or expand in or near the territory of the City of Anna and with which the City is conducting economic development negotiations; or (2) To deliberate the offer of a financial or other incentive to a business prospect described by subdivision (1). (Tex. Gov't Code §551.087).
 - d. Discuss or deliberate personnel matters (Tex. Gov't Code §551.074).
9. Consider/Discuss/Action on any items listed on any agenda - work session, regular meeting, or closed session - that is duly posted by the City of Anna for any City Council meeting occurring on the same date as the meeting noticed in this agenda.

No action was taken.

10. **Adjourn.**

Mayor Pike adjourned the meeting at 7:32 PM.

Approved on November 22, 2022.

Mayor Nate Pike

ATTEST:

City Secretary Carrie L. Land



Item No. 6.b.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Lauren Mecke

AGENDA ITEM:

Review Minutes of the October 3, 2022 Planning & Zoning Commission Meeting.
(Planning Manager Lauren Mecke)

SUMMARY:

Approved minutes from the October 3, 2022 Planning & Zoning Commission Meeting.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

N/A

ATTACHMENTS:

1. 10-03-2022 PZ Minutes (Signed)

APPROVALS:

Salena Tittle, Planner II
Jim Proce, City Manager

Created/Initiated - 11/15/2022
Final Approval - 11/17/2022

**MINUTES
PLANNING AND ZONING COMMISSION
October 3, 2022**

The Planning and Zoning Commission of the City of Anna held a meeting at 7:00 p.m. on October 3, 2022, at the Municipal Complex located at 120 W. 7th Street, to consider the following items.

1. Call to Order and Establishment of Quorum

The meeting was called to order at 7:01 p.m.

Commissioners present were Kelly Patterson-Herndon, Dennis Ogan, Paul Wenzel, David Nylec, Douglas Hermann, Michelle Clemens, and Staci Martin. Staff present was Ross Altobelli, Lauren Mecke, and Salena Tittle. Councilman Toten, Councilman Cain, and Councilman Atchley were also in attendance.

2. Invocation and Pledge of Allegiance

Commissioner Ogan gave the invocation and led the Pledge of Allegiance.

3. Citizen Comments: At this time, any person may address the Planning and Zoning Commission regarding an item on this meeting agenda that is not scheduled for public hearing. Also, at this time any person may address the Commission regarding an item that is not on this meeting agenda. Each person will be allowed up to three (3) minutes to speak. No discussion or action may be taken at this meeting on items not listed on this agenda, other than to make statements of specific factual information in response to a citizen's inquiry or to recite existing policy in response to the inquiry.

4. Location Map

2023 Planning & Zoning Submittal Calendar

5. Review/Discuss/Action on the 2023 Planning & Zoning Submittal Calendar.

Ms. Mecke discussed the proposed 2023 meeting dates with the Commission and explained that the months of July and September were up for discussion due to Holiday conflicts.

The Commission agreed the meeting dates proposed for 2023 were good with them. Furthermore, they decided that the July 2023 meeting will be held on Thursday, July 6 and the September 2023 meeting will be held on Wednesday, September 6.

Consent Items

Chairwoman Patterson-Herndon advised that she would like to pull Consent Agenda Item 13 from the Consent Agenda for discussion.

A motion was made by Commissioner Nylec, seconded by Commissioner Ogan to recommend approval of consent items 6-12 and 14-17. The vote was unanimous.

6. Consider/Discuss/Action to approve minutes of the September 6, 2022 Planning & Zoning Commission Meeting.
7. Consider/Discuss/Action on the Anna Christian Friendship, Block A, Lot 1, Development Plat. Applicant: Anna Christian Fellowship.
8. Consider/Discuss/Action on the CR505 Addition, Block A, Lot 1, Development Plat. Applicant: Tom Hayes.

9. Consider/Discuss/Action on the Arden Park, Phase 1, Final Plat. Applicant: Arden Park Owner TX LLC, a Delaware limited liability company.
10. Consider/Discuss/Action on the Arden Park, Phase 1, Site Plan. Applicant: Arden Park Owner TX LLC, a Delaware limited liability company.
11. Consider/Discuss/Action on The Woods at Lindsey Place, Phase 1, Final Plat. Applicant: D.R. Horton.
12. Consider/Discuss/Action on The Woods at Lindsey Place, Block L, Lot 9X, Site Plan. Applicant: D.R. Horton.
13. Consider/Discuss/Action on the Avery Pointe Commercial, Block A, Lots 1-5, Replat. Applicant: Davis Group, Aston Gray, LLC & Retail Buildings, Inc.
14. Consider/Discuss/Action on the East Fork Estates, Lot 23, Replat. Applicant: Robert & Melna Rainey.
15. Consider/Discuss/Action on the Blacklock Storage, Block A, Lot 1, Preliminary Plat. Applicant: 926 Powell Anna TX, LLC.
16. Consider/Discuss/Action on the Dreamville Anna, Block A, Lot 1, Preliminary Plat. Applicant: Alvin Johnson / HHF Dreamville Anna, LLC.
17. Consider/Discuss/Action on the Dreamville Anna, Block A, Lot 1, Site Plan. Applicant: Alvin Johnson / HHF Dreamville Anna, LLC.

Items for Individual Consideration

Discussion on Consent Agenda Item 13:

Ms. Mecke introduced the item. The applicant is requesting approval of a Replat. The Replat is recommended for approval.

Chairwoman Patterson-Herndon asked why the original plat had not been filed.

Ms. Mecke explained that the city does not typically allow applicants and owners to file a plat until all of the infrastructure is complete and that staff was unaware that the owner would be selling off the lots the way that they have.

Chairwoman Patterson-Herndon asked if the applicant was allowed to do what they did by selling off the lots without being platted.

Ms. Mecke explained that staff has asked the applicant to move forward with this plat, do the public improvements, and file the plat. Staff has also advised the applicant that they would need to apply for another Replat at a later time should any changes be made during the public improvements portion of building.

A motion was made by Commissioner Hermann, seconded by Commissioner Wenzel to approve the Replat. The vote was unanimous.

18. Consider/Discuss/Action on the Ferguson-White Addition, Block A, Lot 1, Revised Site Plan. Applicant: Lamar National Bank.

Ms. Mecke introduced the item. The applicant is requesting approval of a Revised Site Plan in order to modify the screening for the western property boundary line adjacent to the single-family subdivision. The Revised Site Plan is recommended for approval.

Commissioner Ogan asked if City Council had been made aware of the preferred screening request.

Ms. Mecke explained that she was unaware if City Council had knowledge of the request but that the ordinance states that it is the Planning & Zoning Commission that determines whether the request is approved or denied.

Chairwoman Patterson-Herndon asked if there was a reason why the applicant would like to change from the masonry wall.

The applicant, Clark Miller, came to the podium and explained that masonry materials are currently very hard to obtain, masonry is too expensive, and the newly proposed will help them get it done faster. Mr. Miller also advised that the newly proposed will look nicer for the property.

Commissioner Clemens asked who is responsible for the area between the commercial portion and the residential portion.

Mr. Altobelli explained that the fence will have a 5-foot setback to allow Lamar National Bank access to maintain it.

Commissioner Martin asked the applicant why they chose cedar trees as opposed to a different larger tree.

Mr. Miller advised that they went with the cedar because it grows faster and stays full and green year-round.

Chairwoman Patterson-Herndon asked if the applicant was willing to go with something else because there are a lot of people who are allergic to cedar.

Mr. Miller advised the Commission that they were fine with whatever the Commission wanted to consider. Mr. Miller also explained that there are a lot of kids walking home from school each day and a masonry wall would block visibility.

Commissioner Hermann asked the applicant what the difference was with what they are proposing versus a tubular steel fence.

Mr. Miller advised that what they are proposing is the other option for a "masonry" product type listed in our ordinance.

Commissioner Hermann asked if they even needed the variance for what they are requesting since it conforms to the zoning.

Ms. Mecke explained that the product type the Commission was viewing was different from what was originally sent to staff.

Mr. Ogan asked if the reason for the request was more for speed of construction or aesthetics.

Mr. Miller advised it was more for aesthetics and more for maintenance reasons.

Mr. Ogan asked if the residents of the neighboring subdivision had been notified of the change.

Ms. Mecke advised no but would defer to the applicant.

Mr. Miller advised that they had not notified the residents.

A motion was made by Commissioner Wenzel, seconded by Commissioner Nylec to recommend approval of the Revised Site Plan. The motion passed with a 6-1 vote. Commissioner Ogan voted against the request.

19. Conduct a Public Hearing/Consider/Discuss/Action on a request to establish zoning 78.0± acres located on the north side of Farm-to-Market Road 455, 3,830± feet west of Standridge Boulevard to Planned Development-SF-TH Townhome District. Applicant: Charles Covey – LandVest Development.

Ms. Mecke introduced the item. The applicant is requesting approval of a request to establish zoning on 78.0± acres to allow for a townhome development.

Commissioner Ogan asked if the city had plans to widen F.M. 455 to help with all of the new development.

Ms. Mecke advised that F.M. 455 is a TXDOT road and asked if the City Engineer, Wes Lawson, would come up to the podium to answer that question.

Mr. Lawson explained that TXDOT intends to improve the roadway and the curve in the road, but was not aware of the timeline associated with it.

Ms. Mecke explained that the applicant is fully aware that they must dedicate right-of-way to help with the straightening of the roadway and improvements.

Commissioner Ogan asked if there would be a light at the intersection and if so, would it be before or after the development.

Mr. Lawson explained that it would be at the discretion of TXDOT whether a traffic impact analysis would be needed to facilitate that.

Commissioner Nylec asked for clarification if they were proposing zero-lot line and where they intended to have them.

Ms. Mecke pulled the proposed Concept Plan up on the screen to show the Commission where the applicant intended to have the zero-lot line product and the proposed setbacks.

Commissioner Hermann asked for clarification regarding the required screening.

Ms. Mecke explained the current ordinance and that there is no flexibility within it when two different use types abut each other.

The Public Hearing was opened at 7:33 p.m.

The applicant approached the podium and advised that they did not have any sort of presentation, but that they were happy to answer any questions the Commission may have.

Commissioner Ogan advised that when looking at the Site Plan, he did not see any variation or imagination to the proposed development.

The applicant provided the Commission with a handout, showing elevations and pictures of the unit types for the proposed development.

Commissioner Ogan asked for a total count for parking and explained that he has some concerns about the amount of traffic coming in and out of the proposed development with only one way in and one way out.

The applicant provided a rough estimate for total parking spaces provided. He also explained that they are working with TXDOT to confirm what is needed should they be allowed to develop.

Commissioner Hermann asked if the units were going to be for rent or for sale.

The applicant stated that they were going to be for rent.

The Public Hearing was closed at 7:39 p.m.

Commissioner Hermann asked staff for clarification on the recommendation guidelines.

Ms. Mecke explained what they represent.

A motion was made by Chairwoman Patterson-Herndon, seconded by Commissioner Martin to recommend approval of the zoning request. The motion passed with a 6-1 vote. Commissioner Ogan voted against the request.

20. Consider/Discuss/Action on The Parks at Hurricane Creek, Concept Plan. Applicant: Charles Covey – LandVest Development.

Ms. Mecke introduced the item. The applicant is requesting approval of a Concept Plan associated with the zoning request. The request is contingent on the zoning case.

A motion was made by Chairwoman Patterson-Herndon, seconded by Commissioner Hermann to recommend approval of the Concept Plan. The motion passed with a 6-1 vote. Commissioner Ogan voted against the request.

21. Conduct a Public Hearing/Consider/Discuss/Action on a request for a Specific Use Permit (SUP) for a metering station on one lot on 0.6± acre located on the north side of future Rosamond Parkway, 995± feet west of County Road 368. Applicant: MM Anna 325 LLC.

Ms. Mecke introduced the item. The applicant is requesting approval of a Specific Use Permit for a metering station located within the Villages of Hurricane Creek development. The request is recommended for approval.

Commissioner Nylec asked if the Fire Department has reviewed the request.

Ms. Mecke advised that the Fire Department does review all requests and that all essential staff meets to review plans together to discuss what is presented.

Commissioner asked if the applicant was providing sufficient access.

Ms. Mecke explained that the applicant was, in fact, providing sufficient access and a knox box for fire department entry.

Commissioner Hermann asked who was responsible for maintaining the property.

Ms. Mecke explained that the lot will be a leased lot to Atmos Energy and that Atmos Energy will be responsible for maintaining the leased property.

The Public Hearing was opened at 7:46 p.m.

The applicant's representative, John Tedesco with Kimley-Horn, advised the Commission that he was there to answer any questions that the Commission might have.

Chairwoman Patterson-Herndon asked how the metering station will be serviced and maintained.

Mr. Tedesco explained that Atmos Energy will be maintaining their portion of the property but was unsure what the agreement will be between Atmos and The Villages of Hurricane Creek as it pertains to the screening wall and landscaping.

Chairwoman Patterson-Herndon asked if they had talked with surrounding neighbors about the proposed metering station.

Mr. Tedesco advised they had not talked with neighbors.

Commissioner Hermann asked what the purpose was for the specific location as opposed to another location.

Mr. Tedesco explained to the Commission that Atmos had formal conversations with the Villages of Hurricane Creek to provide gas services to the development and its residents.

Commissioner Clemens asked if there was any kind of humming sounds or any other sounds or smell that the residents would be bothered by if this were approved.

Mr. Tedesco advised that the noise and the lighting would not go past the parcel limits. He further explained that Atmos would be adding devices to the area to help protect the residents from any sound and lighting.

Commissioner Hermann asked if this was going to go in before the rest of the residential development or after.

Mr. Tedesco explained that he did not want to speak for Atmos when it comes to the timing because he is not part of that portion of it, but he was not sure.

Mr. Stewart Brown, residing at 3027 Crossing Drive, expressed that he was against the proposed metering station due to the fact that Mr. Tedesco did not answer the Commission's questions, the metering station does not pass the smell test, or if there will be any noise. He also advised that Atmos waited until after the neighborhood was halfway built before saying they needed this to serve the residents. Mr. Brown also explained that before the Villages of Hurricane Creek was even built, Atmos had the existing easement in place and refused natural gas to him and his neighbors. He explained that this gas metering station can go anywhere else, specifically pointing out other areas with a lot more land, further away from residents.

Mr. Tom Longmire, residing at 3032 Crossing Drive, expressed concerns about the smell and noises. Mr. Longmire also explained that he used to work in the oil and gas industry and that there will be a smell and noise issue if allowed. He also advised the Commission that none of the neighbors have seen any details for the metering station. He asked that the Commission hold off from approving the project until more questions are answered by the applicant.

Mr. Ryan Teichman, residing at 3037 Crossing Drive, advised the Commission that he was opposed to the project and explained that he has three young boys and feels this is a health and safety issue for him and his family. He also feels the project can be moved to another location that is further away from the residents.

Mr. Altobelli recommended that the Commission table the item until the applicant could be present to answer a lot of the unanswered questions that were asked.

A motion was made by Chairwoman Patterson-Herndon, seconded by Commissioner Clemens to table and hold open the public hearing item until the November 7, 2022 Planning & Zoning Commissioner Meeting which will be held at the Municipal Complex located at 120 W. 7th Street at 7:00 p.m. The vote was unanimous.

Mr. Tom Longmire then approached the podium to ask that the city do a better job and notify residents in a larger range rather than the required 200 feet.

Chairwoman Patterson-Herndon advised that the Public Hearing had already been closed and that the 200-foot notice requirement is a requirement by the state, not the city.

22. Consider/Discuss/Action on the Villages of Hurricane Creek, Site Plan. Applicant: MM Anna 325 LLC.

Chairwoman Patterson-Herndon asked staff if this item was contingent on Item 21.

Mr. Altobelli advised that it was, so the Commission would take the same action as they did on Item 21.

A motion was made by Chairwoman Patterson-Herndon, seconded by Commissioner Clemens to table and hold open the public hearing item until the November 7, 2022 Planning & Zoning Commissioner Meeting which will be held at the Municipal Complex located at 120 W. 7th Street at 7:00 p.m. The vote was unanimous.

23. Conduct a Public Hearing/Consider/Discuss/Action on a request to amend Planned Development Ord. No. 860-2020. Applicant: MM Anna 325 LLC.

Ms. Mecke introduced the item. The applicant is requesting to amend the current Planned Development in order to remove language that limits the number of multiple-family units prior to the issuance of a building permit for a commercial use. The request is recommended for approval.

Commissioner Ogan asked if Council has had the opportunity to weigh in on this particular request.

Ms. Mecke advised that the applicant was supposed to go before Council as a workshop item, but that the item was later pulled from that specific agenda. Therefore, the applicant and staff chose to proceed forward with the amendment request to P&Z and then to Council.

Commissioner Clemens asked who pulled the item from Council agenda.

Mr. Altobelli advised the reason it was pulled from Council was because the applicant was unable to make the meeting due to travel. He also advised that it is common protocol that the requests come to the Commission first then to Council.

Commissioner Hermann asked if everyone has reviewed the proposed land uses along with the phasing.

Mr. Altobelli explained that staff has reviewed it and further explained the language written into the Planned Development the section that is being requested to be removed.

Commissioner Clemens asked if the applicant was going to build all of the multifamily only or if the commercial component was also included with construction timelines as well.

Mr. Altobelli explained that the applicant has a separate agreement (not included with the zoning) that goes into detail about the timelines associated with the commercial.

Chairwoman Patterson-Herndon advised that she had compared the old document with the new one and asked for clarification regarding the replacement language in the new document.

Mr. Altobelli explained that the document she was referring to was the separate document that has the applicants language but is reviewed and approved by the City Attorney.

Commissioner Hermann asked for clarification on whether or not the commercial component was going to be built or not.

Mr. Altobelli assured the Commission that the commercial component will still be built because there are still triggers inside the separate document.

Commissioner Clemens asked for clarification on the size of restaurant and whether it could be a fast-food restaurant or sit down restaurant.

Mr. Altobelli explained that it is a minimum size requirement and that 5,000 square feet is a large size. He also advised that the applicant was present to answer any questions the Commission might have. He further explained that the applicant was actively advertising for the commercial component.

Commissioner Ogan expressed concern with moving forward explaining his reason was because there were too many loose ends to the request.

Mr. Altobelli explained that the only request is to remove the stipulation language associated with the commercial component so the multifamily can continue with construction.

Commissioner Nylec asked if the multifamily use was already allowed.

Mr. Altobelli assured the Commission that the multifamily use is already allowed within the current zoning.

Commissioner Ogan still had reservations about the request and asked if the ordinance needed to be re-written.

Commissioner Hermann explained to Commissioner Ogan that the request is just to modify that specific section to allow the buyer to continue building the multifamily portion since they still do not have a commercial buyer yet.

The Public Hearing was opened at 8:12 pm.

Mr. Sean Terry, applicant for the request, explained, more in depth, the request and the history of the original Planned Development. He also explained everything that they, as the applicant, are responsible for, including right-of-way. Mr. Terry also advised that they spoke with the City Manager and talked with Council about the proposed.

Commissioner Clemens asked if the water feature was going to be an actual water feature or a retention pond.

Mr. Terry advised that it would not be a retention pond, but to be an actual water feature.

Commissioner Hermann asked if the apartments were going to be affordable or market rate.

Mr. Terry confirmed that they will be market rate.

Commissioner Hermann asked if they were going to be 3-story or 4-story.

Mr. Altobelli advised that he believed they are allowed up to 5-story with the flexibility of the language.

The Public Hearing was closed at 8:16 pm.

Commissioner Hermann asked if Commissioner Ogan had any more concerns or questions about the request.

Commissioner Ogan expressed his concern regarding how messy this seemed.

Commissioner Hermann asked him to clarify what he meant by messy.

Commissioner Ogan explained that they didn't even receive the staff report until the 11th hour giving the Commission no chance to look at it and he feels this request has some complexity to it that needs to be addressed.

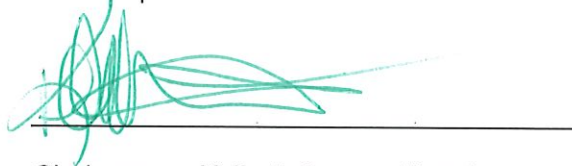
Mr. Altobelli further clarified the only area that is in question and further explained that nothing is changing other than allowing the multifamily to build more units (already approved) before the commercial component comes in.

Ms. Mecke explained to the Commission that the staff report missing from the packet was a technical issue with the software but that the applicant's letter essential addressed all of what was in the staff report.

A motion was made by Commissioner Hermann, seconded by Chairwoman Patterson-Herndon to approve the Planned Development Amendment request. The vote was unanimous.

Adjourn

A motion was made by Commissioner Martin, seconded by Chairwoman Patterson-Herndon to adjourn the meeting. The vote was unanimous. The meeting adjourned at 8:27 p.m.



Chairwoman Kelly Patterson-Herndon

ATTEST:



Salena Tittle, Planner II



Item No. 6.c.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Joey Grisham

AGENDA ITEM:

Review Minutes of the October 5, 2022, Joint Community Development Corporation and Economic Development Corporation Board Meetings. (Director of Economic Development Joey Grisham)

SUMMARY:

Approve minutes from the October 5, 2022 Joint Community Development Corporation and Economic Development Corporation Board Meetings.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
This item supports the City of Anna Strategic Plan, specifically advancing: **Goal 1: Growing Anna Economy**

STAFF RECOMMENDATION:

N/A

ATTACHMENTS:

1. October 5 2022 CDC EDC Joint Meeting Minutes

APPROVALS:

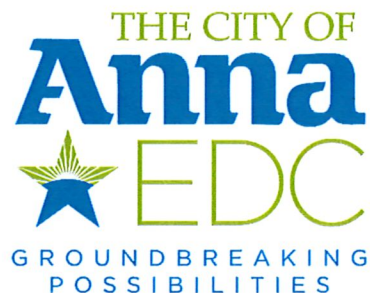
Kimberly Garduno, Economic Development Coordinator Created/Initiated - 11/17/2022
Jim Proce, City Manager Final Approval - 11/17/2022

Officers:

Bruce Norwood, President
Shane Williams, Vice-President
Rocio Gonzalez, Secretary

Staff:

Joey Grisham, Director of Economic Development
Taylor Lough, Assistant Director of Economic Development
Kimberly Garduno, Economic Development Coordinator



Anna Community Development Corporation and Anna Economic Development Corporation Special-Called Meeting Minutes

Wednesday, October 5, 2022, at 6:00 pm
Anna Municipal Complex, Skyview Conference Room
120 W. 7th Street, Anna, Texas 75409

The Anna Community Development Corporation and the Anna Economic Development Corporation conducted a special-called meeting at 6:00 p.m. on Wednesday, October 5, 2022, at the Anna Municipal Complex Skyview Conference Room, located at 120 W. 7th Street Anna, Texas 75409.

A video recording of the open session portions of the meeting may be viewed online at the City of Anna's website: <https://www.annatexas.gov/962/AgendasMinutes>

CDC and EDC Board Members Present: Rocio Gonzalez, Kylee Kelley, Ronnie Kerr, Gina Maria Ottavio, Michelle Hawkins and Shane Williams. **CDC and EDC Board Members Absent:** Bruce Norwood. **Others Present:** Joey Grisham (Director of Economic Development), Taylor Lough (Assistant Director of Economic Development), Kimberly Garduno (Economic Development Coordinator), and Clark McCoy (Attorney).

1. Call to Order. Roll Call and Establishment of Quorum.

The meeting was called to order by Board Vice-President Shane Williams at 6:00 p.m.

2. Invocation and Pledge of Allegiance.

Invocation was led by Shane Williams and Pledge of Allegiance was led by Kylee Kelley.

3. Neighbor Comments.

None.

4. Consent Agenda.

- a. Consider/Discuss/Act on approving minutes from the September 7, 2022, Joint City Council, Community Development Corporation and Economic Development Corporation Special-Called Meeting. (CDC)

Gina Maria made a motion on behalf of the CDC to approve the minutes from the September 7, 2022 Joint Community Development Corporation and Economic

Officers:
Bruce Norwood, President
Shane Williams, Vice-President
Rocio Gonzalez, Secretary

Staff:
Joey Grisham, Director of Economic Development
Taylor Lough, Assistant Director of Economic Development
Kimberly Garduno, Economic Development Coordinator

Development Corporation Special-Called Meeting. Michelle Hawkins seconded the motion. All were in favor. Motion passed.

- b. Consider/Discuss/Act on approving minutes from the September 7, 2022, Joint City Council, Community Development Corporation and Economic Development Corporation Special-Called Meeting. (EDC)

Gina Maria made a motion on behalf of the EDC to approve the minutes from the September 7, 2022 Joint Community Development Corporation and Economic Development Corporation Special-Called Meeting. Michelle Hawkins seconded the motion. All were in favor. Motion passed.

5. Individual Consideration

- a. **Receive a presentation regarding the Anna ISD Bond Election from Superintendent Michael Comeaux.**

Superintendent Michael Comeaux provided an informational presentation about the Anna Independent School District's Bond election and proposed projects within.

- b. **Consider/Discuss/Action on a Resolution approving a Use Agreement with the City of Anna, Texas and a Special Warranty Deed for the transfer of real property to the Anna EDC. (EDC)**

Taylor Lough explained that the City Council voted September 27, 2022, to approve the use agreement and special warranty deed for the transfer of real property at 101 S. Powell Parkway to the Anna EDC. This item is for the same use agreement and special warranty deed for the EDC to consider.

Michelle Hawkins made a motion on behalf of the Economic Development Corporation to approve a resolution approving a use agreement with the City of Anna, Texas and approving a special warranty deed for the sale of real property to the Anna Economic Development Corporation. Shane Williams seconded the motion. All were in favor. Motion Passed.

- c. **Consider/Discuss/Action on a Resolution approving an Incentive Agreement with 3 Nations Brewing LLC. (EDC)**

Taylor Lough explained the attached incentive for economic development will provide 3 Nations Brewing LLC with \$650,000 in exchange for 3 Nations Brewing LLC to improve and occupy 101 S. Powell Parkway for a brewpub that creates 15 jobs.

Shane Williams made a motion on behalf of the Economic Development Corporation Board approving a resolution approving an incentive agreement for new economic development with 3 Nations Brewing, LLC. Kylee Kelley seconded the motion. All were in favor. Motion passed.

Officers:
Bruce Norwood, President
Shane Williams, Vice-President
Rocio Gonzalez, Secretary

Staff:
Joey Grisham, Director of Economic Development
Taylor Lough, Assistant Director of Economic Development
Kimberly Garduno, Economic Development Coordinator

d. Consider/Discuss/Action on a Resolution approving a Lease Agreement with 3 Nations Brewing LLC for 101 S. Powell Pkwy. (EDC)

Taylor Lough explained the resolution and lease agreement is between the Anna EDC as the landlord and 3 Nations Brewing LLC as the tenant. 3 Nations Brewing LLC will lease the property for five years with optional annual renewals for \$6,510 per month. Clark McCoy shared this is a standard lease agreement. Gina Maria Ottavio expressed concerns with section 4 e as the tenant shall be responsible for maintaining the premises and interior in good condition, and the landlord should only be responsible for structural items.

Kylee Kelley made a motion on behalf of the Economic Development Corporation approving a resolution approving a lease agreement with 3 Nations Brewing, LLC and authorizing the lease under said agreement for property located at 101 S. Powell Parkway. Shane Williams seconded the motion. All were in favor. Motion passed.

e. Consider/Discuss/Action on engaging a real estate representative. (EDC)

Joey Grisham explained the EDC has obtained an appraisal of the Inc-Cube building at 312 N. Powell Parkway, and the next step is to obtain a real estate representative to help sell the building. Shane Williams would like to see staff interview at least three potential realtors/groups.

6. Director's Report

a. Strategic Plan Update

The fiscal year annual report was provided to the Board. The Department is still operating under the 2020 Strategic Plan. September was a busy month as staff made several presentations and the city was featured in additional news articles. The LinkedIn page is almost to 1,000 connections.

b. Financial Report/Sales Tax Update

Sales tax reports for July were included in the packet. Sales tax increased 32.1% over last July. The year is expected to end well over the projected budget.

c. November Meeting Update

As the annual North Texas Commercial Association of Realtors (NTCAR) Expo is scheduled for Thursday, November 3, the date of the CDC-EDC Board's regularly scheduled meeting. The CDC-EDC Board will meet in a special called meeting on Wednesday, November 9, 2022, within the Municipal Complex.

7. CLOSED SESSION (exceptions):

- a. Deliberate regarding the purchase, exchange, lease or value of real property.** (Tex. Gov't Code §551.072) possible property acquisition; possible land sale/purchase;
- b. Consult with legal counsel on matters in which the duty of the attorney to the governmental body under the Texas Disciplinary Rules of Professional Conduct of the State Bar of Texas clearly conflicts with Chapter 551 of the**

Officers:
Bruce Norwood, President
Shane Williams, Vice-President
Rocio Gonzalez, Secretary

Staff:
Joey Grisham, Director of Economic Development
Taylor Lough, Assistant Director of Economic Development
Kimberly Garduno, Economic Development Coordinator

Government Code (Tex. Gov't Code §551.071); Grant program; Lease agreement and professional services contract.

c. Discuss or deliberate Economic Development Negotiations:

- (1) To discuss or deliberate regarding commercial or financial information that the Board of Directors has received from a business prospect that the Board of Directors seeks to have locate, stay, or expand in or near the territory of the City of Anna and with which the Board is conducting economic development negotiations; or,
- (2) To deliberate the offer of a financial or other incentive to a business prospect described by subdivision (1). (Tex. Gov't Code §551.087) potential retail and medical projects.

Ronnie Kerr made a motion to enter closed session. Gina Maria Ottavio seconded the motion. All were in favor. Motion passed. CDC Board entered closed session at 7:17 p.m.

8. Reconvene into open session and take any action on closed session items.

Gina Maria Ottavio made a motion to reconvene into open session. Ronnie Kerr seconded the motion. All were in favor. Motion passed. The CDC reconvened into open session at 7:30 p.m.

9. Receive reports from staff or Board Members about items of community interest.

Anna Fest was a great success this past weekend. The Greater Anna Chamber of Commerce will be hosting Harvest Festival on Saturday, October 29th. Tuesday, November 8th is election day! Collin County is looking for temporary workers to help with elections. On Thursday, November 10th, the EDC will be hosting a Business Appreciation Breakfast in the Anna Municipal Complex.

10. Adjourn.

Ronnie Kerr made a motion to adjourn the meeting at 7:34 p.m. Gina Maria Ottavio seconded the motion. All were in favor. Motion passed.

APPROVED:



Bruce Norwood
President of CDC/EDC

ATTESTED:



Rocio Gonzalez
Secretary of CDC/EDC



Item No. 6.d.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Terri Doby

AGENDA ITEM:

Review Monthly Financial Report for the Month Ending October 31, 2022. (Budget Manager Terri Doby)

SUMMARY:

The City of Anna's financial policies require the publication of a financial report monthly. This report covers the financial performance for Fiscal Year 2023 through October 31, 2022. Enclosed in the report is an executive dashboard that provides a high level look at major funds along with detailed reporting of sales tax collections.

The financial condition of the City remains strong and the reported funds adhere to fund balance requirements.

FINANCIAL IMPACT:

Information only

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Approve

ATTACHMENTS:

1. FY2023 City Council Monthly Financial Report October

APPROVALS:

Terri Doby, Budget Manager
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022

CITY OF ANNA
GENERAL & UTILITY FUNDS DASHBOARD
Through October 31, 2022

Positive Positive variance compared to historical trends
Warning Negative variance of 3%-5% compared to historical trends
Negative Negative variance of >5% compared to historical trends

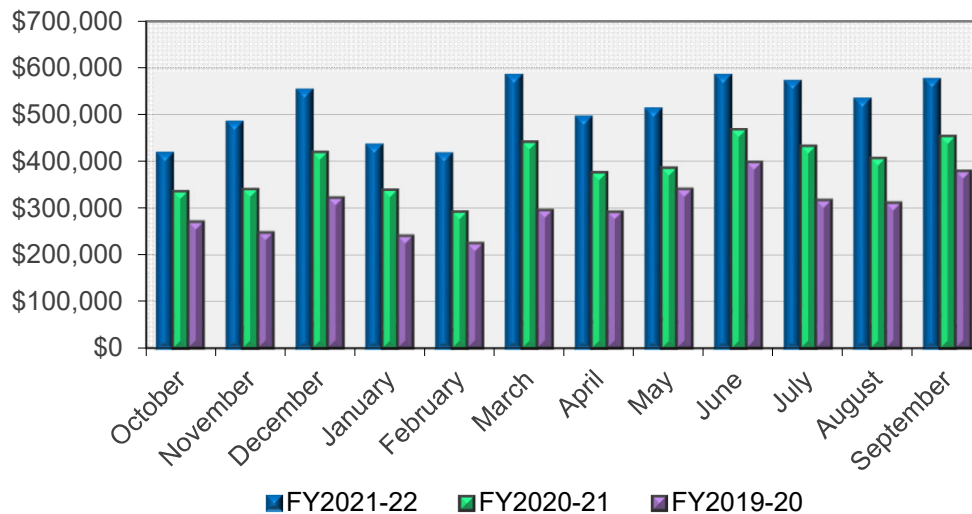
	FY2023 Budget	FY2023 YTD	%	Favorable / Unfavorable
REVENUES				
General Fund				
Property Taxes	\$ 9,418,264	\$ -	0.0%	Property taxes are collected in December and January.
Sales Tax	4,130,000	-	0.0%	Remitted from the Comptroller with lag time of 30 - 60 days; October remittance occurs in December.
Franchise and Local Taxes	825,000	50	0.0%	
Charges for Services	273,000	29,250	10.7%	
Fines	300,000	15,228	5.1%	
Permits, Licenses and Fees	4,305,000	96,571	2.2%	
Investment Income	50,000	-	0.0%	
Other Revenues	16,300	2,178	13.4%	
Revenue Total	\$ 19,317,564	\$ 143,277	0.7%	With 8.3% of the year expired, revenues recorded are at 0.7% of budget but within historical norms.
EXPENDITURES				
General Fund				
Expense Total	\$ 19,275,279	\$ 953,899	4.9%	With 8.3% of the year expired, expenses are 4.9% of budget.
Utility Fund				
REVENUES				
Water Sales	\$ 6,510,000	\$ 902,851	13.9%	
Sewer Charges	5,640,263	537,099	9.5%	
Sanitation Revenue	1,760,000	188,338	10.7%	
Other Charges for Services	802,000	53,859	6.7%	
Permits, Licenses and Fees	461,000	29,604	6.4%	
Investment Income	20,000	-	0.0%	
Other Revenues	7,200	-	0.0%	
Utility Fund Total	\$ 15,200,463	\$ 1,711,751	11.3%	With 8.3% of the year expired, revenues recorded in the General Ledger are at 11.3% of budget.
EXPENDITURES				
Administration	\$ 1,801,749	\$ 98,168	5.4%	
Water	5,522,940	97,002	1.8%	
Sewer	4,772,345	59,700	1.3%	
Sanitation	1,760,000	-	0.0%	
Utility Billing	568,445	37,228	6.5%	
Utility Fund Total	\$ 14,425,479	\$ 292,098	2.0%	With 8.3% of the year expired, expenses are 2.0% of budget.

CITY OF ANNA
Schedule of Sales Tax Collections
For the month September 30, 2022

	2021-22 Collections Monthly	% Change from Prior Year	2020-21 Collections Monthly
October	\$ 417,343	24.4%	\$ 335,454
November	483,556	42.2%	340,156
December	552,138	31.7%	419,319
January	435,037	28.4%	338,879
February	416,044	42.3%	292,405
March	583,700	32.4%	441,021
April	494,472	31.6%	375,823
May	511,309	32.7%	385,457
June	583,874	24.8%	467,686
July	570,950	32.1%	432,097
August	533,224	31.3%	406,214
September	575,011	26.9%	453,292
	\$ 6,156,658		\$ 4,687,804

Budget: 4,926,370 125.0% 4,300,000

**Monthly Sales Tax Collections:
3 Year Comparison**

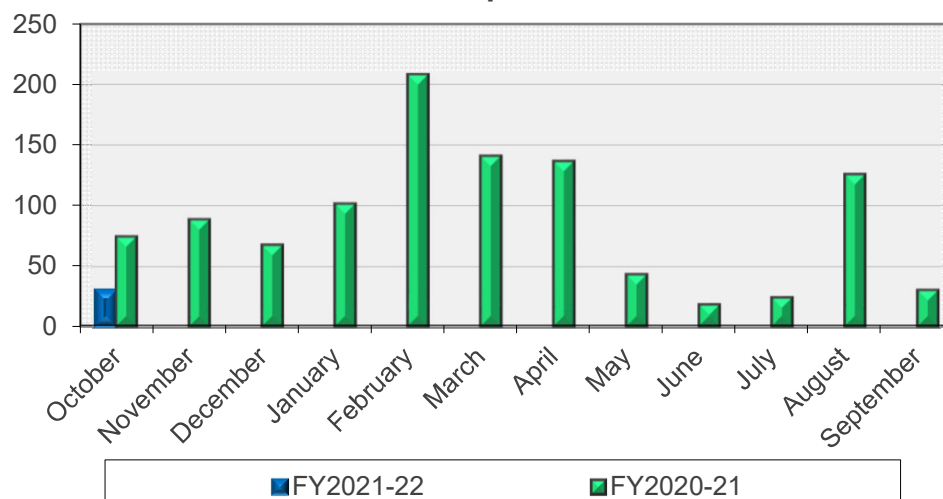


CITY OF ANNA
Building Permits Received
Thru the month October 31, 2022

	Fiscal Year 2022-23 Monthly	Fiscal Year 2021-22 Monthly
October	31	75
November		89
December		68
January		102
February		208
March		141
April		137
May		44
June		19
July		25
August		126
September		31
	31	1,065

		% Budget
FY2022 Budget:	1,100	2.8%

**Monthly Building Permits Received:
2 Year Comparison**





Item No. 6.e.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Terri Doby

AGENDA ITEM:

Approve an Ordinance Amending the FY2023 Operating Budget and Community Investment Program (CIP) Budget to appropriate funding for additional staffing, the Downtown Plaza, and the Wheeled Sports Park. (Budget Manager Terri Doby)

SUMMARY:

The City Council has provided direction to staff to implement the following initiatives, which require a budget amendment.

The proposed budget amendment includes funding for the following purposes:

Sales tax revenue exceeded FY2022 revenue projections and is expected to continue to grow in FY2023 as a result of the explosive growth in our community. This explosive growth is also resulting in the need for additional staff, equipment and services in order to maintain the quality of services for our neighbors.

This budget amendment will add the following additional staff:

- To add an **Assistant City Manager (\$163,000)** position to provide additional planning, directing, management and review of the activities and operations of the City. This Assistant City Manager (ACM) position will assist the City Manager in implementing the City Council's policies and goals, recommend policies and procedures to improve efficiency of City services, and implement and execute those policies as established by the elected City Council. The ACM will also provide strategic direction and leadership oversight to assigned City departments and functions. Costs include insurance, workers' compensation, TMRS, and payroll taxes.

The Fund Balance and Working Capital Reserve Policy that is included in the City's Financial Policies states that it is the goal of the City is to achieve and maintain an unassigned fund balance in the General Fund equal to a range of 25% to 40% of total appropriations. A balance of more than 40% is considered excessive. The unassigned fund balance of the General Fund at the end of FY2022 is estimated at \$9,600,000 or 62.0%, resulting in excess fund estimated balance of \$3,500,000. The attached budget amendment amends the existing budget and allows the City Manager to transfer out the excess funds to the Non-Bond Capital Projects Fund.

- **Downtown Plaza (\$300,000)** To fund the design of the central plaza on the

Municipal Complex property as discussed at the November 8, 2022 City Council meeting during the work session.

Park Development is funded by park development fees as stipulated in either developer agreements or the subdivision ordinance. These funds are used to fund the City's parks master plan through development, improvement, or maintenance of the City's parks. Revenues in FY2022 exceeded expectations.

- **Wheeled Sports Park (\$300,000)** A three-dimensional concept for a wheeled sports park at Slayter Creek Park was presented to City Council at the September 27, 2022 meeting. The estimated construction cost for the project is \$1.8 million. As the original budget from general obligation bond funds was \$1.5 million, additional funds from the Park Development Fund are being added.

FINANCIAL IMPACT:

Amend the FY2023 Adopted Budget.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Approve the FY2023 November Budget Amendment Ordinance.

ATTACHMENTS:

1. November Budget Amendment Ordinance
2. November Budget Amendment Exhibit A

APPROVALS:

Terri Doby, Budget Manager
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022

CITY OF ANNA

ORDINANCE NO.

AN ORDINANCE AMENDING ORDINANCE NO. 1002-2022 ADOPTING THE BUDGET FOR THE 2022-2023 FISCAL YEAR; PROVIDING FOR SAVINGS, SEVERABILITY, AND REPEALING CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, on September 13, 2022, the City Council of the City of Anna, Texas ("City Council"), after a duly noticed public hearing as required under Texas Local Gov't Code §102.106, and in accordance with applicable provisions of the City of Anna, Texas Home-Rule Charter ("Charter"), adopted a budget of all municipal appropriations and expenditures for the 2022-2023 fiscal year; and

WHEREAS, the City is authorized to make this budget amendment by majority vote of the City Council under Section 7.09 of the Charter;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS THAT:

SECTION 1. The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this ordinance for all purposes and are adopted as a part of the judgment and findings of the City Council with respect to the budget amendments described herein.

SECTION 2. The City Council of the City officially finds, determines, and declares that the City of Anna 2022-2023 fiscal year budget is hereby amended with respect to its General Fund and Park Development Fund as set forth in the original budget adopted under Ordinance No. 1002-2022 by replacing the information regarding said funds with the information relating to said funds set forth in the attached Exhibit A, incorporated herein for all purposes.

SECTION 4. Upon adoption and execution of this ordinance, the City Secretary is directed to attach same and its exhibits to the original City of Anna 2022-2023 fiscal year budget in all places where said budget is filed as of public record or posted for public inspection.

SECTION 5. If any provision of this ordinance or the application thereof to any person or circumstance shall be held to be invalid, the remainder of this ordinance and the application of such provision to other persons and circumstances shall nevertheless be valid, and the City Council hereby declares that this ordinance would have been enacted without such invalid provision.

SECTION 6. It is officially found, determined, and declared that the meeting at which this ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this

ordinance, was given, all as required by Chapter 551, as amended, Texas Government Code.

PASSED, APPROVED, AND ADOPTED on first and final reading on this 22nd day of November, 2022.

ATTESTED:

APPROVED:

City Secretary, Carrie Land

Mayor, Nate Pike

CITY OF ANNA
DETAIL OF RECOMMENDED FY2023 BUDGET AMENDMENTS

GENERAL FUND

Revenue:

Account	Dept	Account Title	Budget	Change	Revised Budget
100-400-50210		Sales Tax Revenue - General	\$ 3,310,000	\$ 163,100	\$ 3,473,100
TOTAL REVENUE				\$ 163,100	

Expense:

Account	Dept	Account Title	Budget	Change	Revised Budget
100-403-61010	City Manager	Salaries	\$ 690,403	\$ 125,000	\$ 815,403
100-403-61110	City Manager	Payroll Taxes-City Part FICA	\$ 52,816	\$ 9,600	\$ 62,416
100-403-61210	City Manager	Health Insurance	\$ 76,393	\$ 10,000	\$ 86,393
100-403-61220	City Manager	TMRS Retirement	\$ 97,261	\$ 18,000	\$ 115,261
100-403-61240	City Manager	Workers Compensation	\$ 2,831	\$ 500	\$ 3,331
TOTAL				\$ 163,100	

Justification:

To add an additional Assistant City Manager (ACM) position to provide additional planning, directing, management and review of the activities and operations of the City. This ACM position will assist the City Manager in implementing the City Council's policies and goals, recommend policies and procedures to improve efficiency of City services, and implement and execute those policies as established by the elected City Council. The ACM will also provide strategic direction and leadership oversight to assigned City departments and functions.

NON-BOND CAPITAL PROJECTS

Revenue:

Account	Dept	Account Title	Budget	Change	Revised Budget
100-400-98100	Administration	Transfers Out (Non-Bond Capital)	\$ 468,000	\$ 300,000	\$ 768,000
530-400-59910	Administration	Transfers In	\$ 468,000	\$ 300,000	\$ 768,000

Justification:

Transfer out to the Non-Bond Capital Projects Fund from General Fund fund balance in excess of 40%.

Expense:

Project No.	Project Account	Project Title	Budget	Change	Revised Budget
TBD	Design	Downtown Plaza	\$ -	\$ 300,000	\$ 300,000

Justification:

To fund the design of the central plaza on the Municipal Complex property as discussed at the November 8, 2022 City Council meeting during the work session. Funding is from General Fund fund balance in excess of the 40% maximum set in City of Anna Financial Policies.

PARK DEVELOPMENT FUND

Expense:

Project No.	Project Account	Project Title	Budget	Change	Revised Budget
2022-2015	Construction	Wheeled Sports Park	\$ -	\$ 300,000	\$ 300,000

Justification:

A three dimensional concept for a wheeled sports park at Slayter Creek Park was presented to City Council at the September 27, 2022 meeting. The estimated construction cost for the project is \$1.8 million. As the original budget from general obligation bond funds was \$1.5 million, additional funds from the Park Development Fund are being added.



Item No. 6.f.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022

Staff Contact: Alan Guard

AGENDA ITEM:

Approve a Resolution establishing a Depository Bank Solicitation Policy. (Finance Director Alan Guard)

SUMMARY:

The City's contract for Bank Depository Services with Independent Financial expires May 31, 2023. City staff is currently working with Valley View Consulting on a Request for Applications (RFA) for a new contract beginning June 1, 2023. In working with the consultants, it was discovered that City Council passed a resolution last time that limited the solicitation area to financial institutions within 7 miles of City Hall. It is recommended that Council adopt a new policy that expands the solicitation area that will allow staff and City Council more flexibility in determining the financial institutions that will be eligible. This will potentially lead to more banks applying and higher interest rates paid and lower fees. This is allowable by resolution under Chapter 105 of the Local Government Code.

FINANCIAL IMPACT:

NA

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

GOAL 4 HIGH PERFORMING PROFESSIONAL CITY

STAFF RECOMMENDATION:

Approve the resolution.

ATTACHMENTS:

1. Anna Depository eligibility resolution 2022 11 22
2. Anna Depository Bank Solicitation Policy 2022 11 22

APPROVALS:

Alan Guard, Director of Finance
Jim Proce, City Manager

Created/Initiated - 11/7/2022
Final Approval - 11/17/2022

**CITY OF ANNA, TEXAS
RESOLUTION NO. _____**

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS, ADOPTING A POLICY PERMITTING THE CONSIDERATION OF APPLICATIONS FOR PRIMARY DEPOSITORY SERVICES RECEIVED FROM FINANCIAL INSTITUTIONS THAT ARE NOT DOING BUSINESS WITHIN THE MUNICIPAL BOUNDARIES OF THE CITY.

WHEREAS; Chapter 105 of the Texas Local Government Code requires the City to competitively solicit financial institutions located within the City's municipal boundaries to provide primary depository services; and

WHEREAS; Chapter 105 of the Texas Local Government Code further allows the City Council to adopt a written policy permitting the consideration of applications received from financial institutions that are not doing business within the City's municipal boundaries when it is deemed to be in the best interest of the City; and

WHEREAS; the number of financial institutions located within the municipal boundaries of the City that can provide primary depository bank services is limited; and

WHEREAS; it is in the best interest of the City to include financial institutions from outside the City's municipal boundaries to ensure a competitive application solicitation process.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Anna, Texas ("City"):

Section 1. That the findings and premises contained in the above are deemed to be true and correct.

Section 2. That the attached written policy of the City of Anna, Texas shall be approved.

Section 3. This Resolution shall become effective upon the date of passage.

PASSED AND APPROVED on this 22nd day of November 2022.

ATTEST:

APPROVED:

Carrie Land, City Secretary

Nate Pike, Mayor

CITY OF ANNA, TEXAS
PRIMARY DEPOSITORY SOLICITATION BOUNDARIES POLICY
November 2022

- As permitted by Chapter 105 of the State of Texas Local Government Code, it is the Policy of the City of Anna, Texas to accept applications to serve as the City's Primary Depository from financial institutions ("banks, credit unions, savings associations") doing business from outside of the City's municipal boundaries.
- The bank, credit union, or savings association must maintain a place of business within the State of Texas and offer the services required by the depository services contract.
- The City will limit the selection of those financial institutions to specified locations outside of the City's municipal boundaries, determined by the consideration of operational convenience and increased competitiveness. The specified locations will be determined by City staff and disclosed in the Notice, advertisements (local and financial publication circulation), and the Request for Applications.



Item No. 6.g.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Gregory Peters

AGENDA ITEM:

Approve a Resolution on an agreement for project initiation services for an indoor recreation facility with Project Advocates. (Director of Public Works Greg Peters, P.E.)

SUMMARY:

This item is to approve a contract with Project Advocates to provide the City with professional services pertaining to the project initiation and project scoping for a future indoor recreation center, as approved in Proposition C of the 2021 Bond Election. Project Advocates will assist the City in the development of a project charter through a mix of public engagement, project costing, feedback from the Parks Board and City Council, and scoping of facility needs.

A workshop item for this was held on the November 8th City Council Meeting.

FINANCIAL IMPACT:

The cost of the work is \$70,000 and the funding will come from the 2021 Bond Funds.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Goal 3: Anna – Great Place to Live

STAFF RECOMMENDATION:

Staff recommends approval.

ATTACHMENTS:

1. Resolution and Agreement - Professional Services - Project Advocates

APPROVALS:

Gregory Peters, Director of Public Works
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022

**CITY OF ANNA, TEXAS
RESOLUTION NO. _____**

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR PROFESSIONAL SERVICES BY AND BETWEEN THE CITY OF ANNA, TEXAS AND PROJECT ADVOCATES FOR PROJECT INITIATION SERVICES ON A NEW INDOOR RECREATION FACILITY FOR THE CITY OF ANNA, TEXAS, AS SHOWN IN EXHIBIT “A” ATTACHED HERETO, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Anna voters approved Bond Proposition C for which included funding for the design of an indoor recreation facility in the City of Anna, Texas (“the Project”); and

WHEREAS, the City is entering into the project initiation phase of the project to prepare a project scope, develop a more detailed budget for design and construction, and create a Project Charter for the project; and

WHEREAS, Project Advocates is a professional services firm which provides project management and owner representation services for design and construction projects; and

WHEREAS, the City is seeking to contract with Project Advocates to complete project initiation services on the project on a fixed fee basis totaling \$70,000.00; and

WHEREAS, the services provided by Project Advocates will be funded through 2021 Bond Funds; and

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

Section 1. Recitals Incorporated.

The recitals above are incorporated herein as if set forth in full for all purposes.

Section 2. Authorization.

The City Council hereby approves entering into and authorizes the City Manager to execute a professional services agreement with Project Advocates as shown in Exhibit “A” attached hereto.

PASSED AND APPROVED by the City Council of the City of Anna, Texas, on this ____ day of _____, 2022.

ATTEST:

APPROVED:

City Secretary, Carrie L. Land

Mayor, Nate Pike

EXHIBIT "A"



October 2022

PROJECT ADVOCATES

Community Center and Site Development

Your Project. Our Passion.

City of Anna Texas

This **Agreement** dated October 13th, 2022, between the Owner, City of Anna, and the Project Advisor, Project Advocates (PA), shall define the services and terms agreed to execute the services for the Community Center and Site Development project located at Geer Park in Anna, Texas, designed by an architect that is yet to be determined. The program initially includes Community Center (gymnasium 8,500 sf, weight/cardio 3,000 sf, multi-purpose 2,000 sf, group exercise 2,000 sf, prep/catering kitchen 350 sf, associated common/utilitarian spaces, along with sports fields and other associated amenities. The Target Value Design has yet to be defined.

The **Owner's Designated Representative** is Greg Peters.

The Project Advocate's **Designated Representatives** are Phil Miller and Alma Zamora.

Project Initiation:

Project Advisor will represent Owner in a respectful and cognizant manner that is demonstrative of Owner's organizational culture and values. Identify the Project Charter objectives, location, size, general program scope, and any unique aspects. Work with owner to complete an initial Capital Expenditures Budget. Work with Owner Stakeholders from all departments to establish and maintain Owner's design standards.

The scope of work is detailed below and shall include Project Scoping Exercise, establishing a Project Charter, Big Bar Schedule, and Cost Planning.

Project Scoping Exercise:

- a. Working with the Parks Advisory Board to define:
 - i. Facility needs
 - 1. Coordinate Tours of similar facilities and sites that might be good examples to consider (Sachse, Murphy, and Richardson)
 - 2. Develop a Choosing by Advantages (CBA) matrix of said facilities and sites
 - 3. Establish two facilities and sites for comparisons
 - ii. Space allocation
 - iii. Amenities for a modern community center and associated sporting fields

Establishment of a Project Charter:

- b. Preparation of a Detailed Project Charter, to be adopted formally by the City Council, including:
 - i. Provide recommended guidelines for the Parks Advisory Board outlining the board's purpose, responsibilities, and expectations. The Parks Advisory Board will have the following role in the project:
 - 1. Advise on Project Goals and Objectives (the What? of the project)
 - 2. General input on the overall big bar schedule
 - 3. General input in the Architect selection
 - 4. General input in the design aesthetics



October 2022

PROJECT ADVOCATES

Community Center and Site Development

Your Project. Our Passion.

City of Anna Texas

- ii. Public Input Process
 - 1. Specific public input process, limitations, scope, and controls to allow for public input within specific time frames and with limitations. A separate consultant will be engaged for the public input process, as a separate fee
- iii. Advise on Establishing Design Team Constraints
 - 1. Defined role of the design team in the process
 - 2. Design Team responsibilities and limitations on their authority
 - 3. Utilize the City of Anna's current IDIQ list of design teams
 - 4. Specific design scope boundaries for the design team to stay within
 - 5. Building Materials Scope - Use of readily available and cost-effective building materials (no rare or unreasonably difficult to acquire items which inflate costs and acquisition time)
- iv. Design Team RFQ
 - 1. Produce Request for Qualifications for the Design Team
 - 2. Advertise and issue RFQ for Design Team Qualifications
 - 3. Collect RFQ submissions and prepare a comparison report
 - 4. With the City of Anna, review submissions, comparison report, and shortlist design team.
- v. Produce Design Team RFP
 - 1. Based on approved Project Charter, Project Big Bar Schedule, Cost Planner, and interviews
- vi. Contractor Constraints
 - 1. Defined role of the contractor in the process
 - a. Recommended method of bid/contracting for this project
 - b. Recommended qualifications/requirements to be included in the Bid/SOQ/Selection process

Initial Cost Planning:

Project Advisor will represent Owner in a confidential, respectful, and cognizant manner that is demonstrative of Owner's organizational culture and values. Project Advocates will work with owner to complete an initial Capital Expenditures Budget.

- a. Preparation of a project cost plan for the project, including:
 - i. Construction Hard Costs
 - ii. Soft Costs

The fee for the Project Initiation Services will be \$70,000.00, plus reimbursable expenses up to \$3,000 without prior approval; any expenses above that amount will be pre-approved. It is anticipated that the schedule to complete the Project Initiation Services shall not extend for more than four to six (4-6) months. If the time to complete is extended for any reason, both parties reserve the right to renegotiate the fee or terminate the Agreement.



Reimbursable Costs during Design Management/Pre-Construction Services: All travel expenses, printing, permitting, design related consultant costs, project website & document management services, and any site related costs.

Terms and Conditions:

Extent of Project Advisor's Responsibilities: The Project Advisor shall exercise reasonable care in preparing schedules and estimates. The Project Advisor, however, does not warrant or guarantee estimates and schedule except as may be agreed to in a separate agreement, as part of a Guaranteed Maximum Price contract. The Project Advisor is not required to design the Project within the Owner's budget or to ascertain that the drawings and specifications are so designed or are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Project Advisor shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Project Advisor.

Conflict Resolution: Both parties agree to resolve conflicts starting with mediation. Both parties agree that liability and damage claims shall not exceed the value of the fees identified in this agreement.

Termination: The Owner may terminate this agreement with thirty (30) days written notice with or without cause and the Project Advisor may also terminate the agreement with fourteen (14) days written notice if payment terms are not met or agreement is extended past the agreed upon schedule for the preconstruction phase services. Project Advisor shall be paid for all services provided up to the date of termination plus reasonable demobilization costs.

Payment Terms: Services and fees are to be provided as authorized and shall be invoiced monthly as a prorated amount of the fixed fee over the agreed upon duration of the project or as incurred if engaged for hourly services. Invoices shall be paid within thirty (30) days of receipt.

The undersigned agrees to the terms of this agreement hereby gives notice to proceed with executing the Preconstruction Services.

CLIENT,

BY:

TITLE:

DATE:

Project Advisor, Project Advocates

BY:

TITLE: Principal

DATE: 10.26.2022



Item No. 6.h.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Gregory Peters

AGENDA ITEM:

Approve a Resolution for a contract with Teague Nall & Perkins for landscape architecture professional services on the Municipal Complex Plaza. (Director of Public Works, P.E.)

SUMMARY:

The plaza on the Anna Municipal Complex property is a key component of the overall development of the site. It will tie in all three buildings, including the existing Central Fire Station, Municipal Building, and the future Library. In addition, this will be a public event space and park area for public use, providing a strong link to the business district just north through Interurban. The project is a part of the City of Anna Strategic Plan to enhance the downtown area.

A workshop item for this was on the November 8th meeting for discussion.

FINANCIAL IMPACT:

The fee is \$140,800, and the funding source is excess General Fund fund balance. The project will be charged to the Non Bond Capital Projects Fund.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 3: Anna – Great Place to Live

STAFF RECOMMENDATION:

Staff recommends approval.

ATTACHMENTS:

1. Resolution and Agreement TNP Plaza Design

APPROVALS:

Gregory Peters, Director of Public Works
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022

**CITY OF ANNA, TEXAS
RESOLUTION NO. _____**

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING AND AUTHORIZING THE CITY MANAGER TO EXECUTE A PROJECT SPECIFIC PURCHASE ORDER FOR PROFESSIONAL SERVICES BY AND BETWEEN THE CITY OF ANNA, TEXAS AND TEAGUE NALL & PERKINS, INCORPORATED, FOR LANDSCAPE ARCHITECTURE DESIGN SERVICES RELATED TO THE ANNA MUNICIPAL COMPLEX PLAZA, AS SHOWN IN EXHIBIT “A” ATTACHED HERETO, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Anna is seeking to design and construct a public plaza on the Anna Municipal Complex property in the City of Anna, Texas; and,

WHEREAS, the plaza is a capital project identified in the City of Anna Strategic Plan to redevelop and energize downtown Anna; and,

WHEREAS, Teague Nall & Perkins was pre-selected in the City of Anna multi-disciplinary Request for Qualifications process completed last year; and,

WHEREAS, the City is seeking to contract with Teague Nall & Perkins for landscape architecture professional services pertaining to the project; and,

WHEREAS, the services provided by Teague Nall & Perkins will be funded through Capital Project Funds; and,

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

Section 1. Recitals Incorporated.

The recitals above are incorporated herein as if set forth in full for all purposes.

Section 2. Authorization.

- A. That the funding shall be \$140,800 in Capital Project Funds.
- B. That the City Council hereby approves entering into and authorizes the City Manager to execute a professional services agreement with Teague Nall & Perkins for the scope of services identified in Exhibit “A” attached hereto.

PASSED AND APPROVED by the City Council of the City of Anna, Texas, on this ____ day of _____, 2022.

ATTEST:

APPROVED:

City Secretary, Carrie L. Land

Mayor Pro Tem Lee Miller

EXHIBIT "A"



AUTHORIZATION FOR PROFESSIONAL SERVICES (FIXED FEE)

PROJECT NAME: Anna Town Square CD Phase

TNP PROJECT NUMBER: ANN 22XXX

CLIENT: City of Anna, Attn: Dalan Walker

ADDRESS: 111 North Powell Pkwy
Anna, TX 75409

City of Anna, Texas (the **CLIENT**) hereby requests and authorizes Teague Nall and Perkins, Inc., (the **CONSULTANT**) to perform the following services:

Article I

SCOPE: Provide design, construction documents, and construction phase services for a new town square in Anna, TX. A detailed scope of services is included as Attachment 'A' and is made a part hereto.

Article II

COMPENSATION to be based on the following:

- A. The **CONSULTANT's** compensation for Basic Services included in Attachment 'A' shall be based on a Fixed Fee of \$140,800.00 (One Hundred Forty Thousand and Eight Hundred Dollars) as listed in Attachment B, which includes expenses such as prints, plots, photocopies, plans or documents on CD, DVD or memory devices, mileage, air fare, and lodging. Payment to the **CONSULTANT** shall be due in monthly installments based on the **CONSULTANT's** estimate of the percentage of the contact completed during the billing period.
- B. Fees: Any permit fees, filing fees, or other fees related to the project and paid on behalf of the client by the **CONSULTANT** to other entities shall be invoiced at 1.10 times actual cost.
- C. Additional Services: Any service provided by the **CONSULTANT** which is not specifically described in the scope of work for this contract as defined above or delineated in an attachment shall be considered additional services. Additional services shall include, but shall not be limited to:
 - 1. Work beyond the project limits shown in Attachment 'E'
 - 2. Zoning applications, zoning exhibits
 - 3. Attendance at or preparation of exhibits for meetings beyond what is listed in Attachment 'A'.
 - 4. 3D Renderings
 - 5. Site infrastructure strategies for stormwater and grading concepts.

6. Detailed parking studies
7. Participation in real property acquisition

Upon authorization from the CLIENT, the CONSULTANT will perform Additional Services. Payment to the CONSULTANT for Additional Services shall be on a Fixed Fee or Hourly Reimbursable basis.

Fixed Fee Compensation for Additional Services: Payment shall be as described above for Basic Services.

Hourly Reimbursable Compensation for Additional Services: Payment shall be due in monthly installments based on the number of hours worked by each employee and the CONSULTANT'S current standard rates presented in Attachment 'C' Standard Rate Schedule. A fee equal to 3% of Additional Service labor billings shall be included on each monthly invoice for prints, plots, photocopies, plans or documents on CD, DVD or memory devices, and mileage. No individual or separate accounting of these items will be performed by the CONSULTANT.

- D. Payment Terms: CLIENT shall be billed monthly for services rendered and pay promptly upon receipt of invoice. Delays of transmitting payments to CONSULTANT more than 30 days from invoice date may result in cessation of services until payment is received.
- E. Sample Invoice: The CONSULTANT'S invoice format will match the sample invoice included in Attachment 'C-1'.

Article III

SCHEDULE: The proposed services shall begin within 10 working days of authorization to proceed. A design schedule as defined in Attachment 'D' and made a part hereto.

Article IV

CONTRACT PROVISIONS: Contract provisions are attached hereto and made a part hereof.

Please execute and return a signed copy for our files. Receipt of an executed copy of this contract will serve as notice to proceed. No work shall commence on the project until CONSULTANT receives an executed copy of this contract. By signing below, the signer warrants that he or she is authorized to execute binding contracts for the CLIENT.

Approved by CLIENT:
(City of Anna)

By: _____

Title: _____

Date: _____

Accepted by CONSULTANT:
Teague Nall and Perkins, Inc.

By: _____



Nicholas Nelson

Title: Director of Landscape Architecture

Date: October 17, 2022

Firm Contact Information:

5237 N. Riverside Drive, Suite 100
Fort Worth, Texas 76137
817-665-7136
Contact: Nick Nelson



CONTRACT PROVISIONS

1. AUTHORIZATION TO PROCEED

Signing this agreement shall be construed as authorization by CLIENT for TNP, Inc. to proceed with the work, unless otherwise provided for in this agreement.

2. LABOR COSTS

TNP, Inc.'s Labor Costs shall be the amount of salaries paid TNP, Inc.'s employees for work performed on CLIENT's Project plus a stipulated percentage of such salaries to cover all payroll-related taxes, payments, premiums, and benefits.

3. DIRECT EXPENSES

TNP, Inc.'s Direct Expenses shall be those costs incurred on or directly for the CLIENT's Project, including but not limited to necessary transportation costs including mileage at TNP, Inc.'s current rate when its, or its employee's, automobiles are used, meals, lodging, laboratory tests, computer services, telephone, printing and binding charges times a multiplier of 1.10. Reimbursement for these expenses shall be on the basis of actual charges when furnished by commercial sources and on the basis of usual commercial charges when furnished by TNP, Inc.

4. OUTSIDE SERVICES

When technical or professional services are furnished by an outside source, an additional amount of 10% (actual cost times a multiplier of 1.10) shall be added to the cost of these services for TNP, Inc.'s administrative costs.

5. OPINION OF PROBABLE COST

In providing opinions of probable cost, the CLIENT understands that TNP, Inc. has no control over construction costs or the price of labor, equipment, or materials, or over the Contractor's method of pricing, and that the opinions of probable cost provided to CLIENT are to be made on the basis of the design professional's qualifications and experience. TNP, Inc. makes no warranty, expressed or implied, as to the accuracy of such opinions as compared to bid or actual costs.

6. PROFESSIONAL STANDARDS

TNP, Inc. shall be responsible, to the level of competency presently maintained by other practicing professional engineers in the same type of work in the State of Texas, for the professional and technical soundness, accuracy, and adequacy of all design, drawings, specifications, and other work and materials furnished under this Authorization. TNP, Inc. makes no other warranty, expressed or implied.

7. TERMINATION

Either CLIENT or TNP, Inc. may terminate this authorization by giving 10 days written notice to the other party. In such event CLIENT shall forthwith pay TNP, Inc. in full for all work previously authorized and performed prior to effective date of termination. If no notice of termination is given, relationships and obligations created by this Authorization shall be terminated upon completion of all applicable requirements of this Authorization.

8. MEDIATION

In an effort to resolve any conflicts that arise during the design or construction of the project or following the completion of the project, the CLIENT and the ENGINEER agree that all disputes between them arising out of or relating to this Agreement shall be submitted to nonbinding mediation unless the parties mutually agree otherwise.

The CLIENT and the ENGINEER further agree to include a similar mediation provision in all agreements with independent contractors and consultants retained for the project and to require all independent contractors and consultants retained also to include a similar mediation provision in all agreements with subcontractors,

subconsultants, suppliers or fabricators so retained, thereby providing for mediation as the primary method for dispute resolution between the parties to those agreements.

9. LEGAL EXPENSES

In the event legal action is brought by CLIENT or TNP, Inc. against the other to enforce any of the obligations hereunder or arising out of any dispute concerning the terms and conditions hereby created, the losing party shall pay the prevailing party such reasonable amounts for fees, costs and expenses as may be set by the court.

10. PAYMENT TO TNP, INC.

Monthly invoices will be issued by TNP, Inc. for all work performed under the terms of this agreement. Invoices are due and payable on receipt. If payment is not received within 30 days of invoice date, all work on CLIENT's project shall cease and all work products and documents shall be withheld until payment is received by TNP. Time shall be added to the project schedule for any work stoppages resulting from CLIENT's failure to render payment within 30 days of invoice date. Interest at the rate of 1½% per month will be charged on all past-due amounts, unless not permitted by law, in which case, interest will be charged at the highest amount permitted by law.

11. LIMITATION OF LIABILITY

TNP, Inc.'s liability to the CLIENT for any cause or combination of causes is in the aggregate, limited to an amount no greater than the fee earned under this agreement.

12. ADDITIONAL SERVICES

Services not specified as Basic Services in Scope and Attachment 'A' will be provided by TNP, Inc. as Additional Services when required. The CLIENT agrees upon execution of this contract that no additional authorization is required. Additional services will be paid for by CLIENT as indicated in Article II, Compensation.

13. SALES TAX

In accordance with the State Sales Tax Codes, certain surveying services are taxable. Applicable sales tax is not included in the fee set forth and will be added on and collected when required by state law. Sales tax at the applicable rate will be indicated on invoice statements.

14. SURVEYING SERVICES

In accordance with the Professional Land Surveying Practices Act of 1989, the CLIENT is informed that any complaints about surveying services may be forwarded to the Texas Board of Professional Land Surveying, 12100 Park 35 Circle, Building A, Suite 156, MC-230, Austin, Texas 78753, (512) 239-5263.

15. LANDSCAPE ARCHITECT SERVICES

The Texas Board of Architectural Examiners has jurisdiction over complaints regarding the professional practices of persons registered as landscape architects in Texas. The CLIENT is informed that any complaints about landscape architecture services be forwarded to the Texas Board of Architectural Examiners, Hobby Building: 333 Guadalupe, Suite 2-350, Austin, Texas 78701, Telephone (512) 305-9000, Fax (512) 305-8900.

16. INVALIDITY CLAUSE

In case any one or more of the provisions contained in this Agreement shall be held illegal, the enforceability of the remaining provisions contained herein shall not be impaired thereby.

17. PROJECT SITE SAFETY

TNP, Inc. has no duty or responsibility for project site safety. Means and methods of construction and jobsite safety are the sole responsibility of the contractor.

18. DRAINAGE CLAUSE

The parties to this Agreement recognize that the development of real property has the potential to increase water runoff on downstream properties, and that such increase in runoff increases the possibility of water damage to downstream properties. The CLIENT agrees to indemnify and hold the TNP, Inc harmless from any and all claims and damages arising, directly or indirectly, from water or drainage damage to downstream properties resulting from the development and construction of the Project. CLIENT shall not be required to reimburse

TNP, Inc for any claims or expenses arising out of the Project if it is determined by a court of competent jurisdiction that TNP, Inc was negligent in the performance of its duties and obligations, and that TNP, Inc's negligence was the direct cause of damage to a property downstream of the Project.

19. CONSTRUCTION MEANS AND METHODS AND JOBSITE SAFETY

Means and methods of construction and jobsite safety are the sole responsibility of the contractor.

ATTACHMENT 'A' ITEMIZED SCOPE OF SERVICES

Teague Nall and Perkins, Inc., (Consultant) shall render the following professional services (**BASIC SERVICES**) necessary for the development of the project.

1. LANDSCAPE ARCHITECTURE ASSUMPTIONS & EXCLUSIONS: Below are shown the assumptions and qualifiers for the landscape architecture scope of work found herein.

Assumptions:

- Area of work is as shown in Attachment 'E'
- CONSULTANT shall be designer of record and shall coordinate with other CLIENT subconsultants to assemble a complete bid documents package. CONSULTANT assumes no responsibility or liability plans prepared by others.
- Detailed design survey to be provided by CLIENT.
- The work includes the design and detailing of items in the Master Plan presented to Council on July 26, 2022, including these areas:
 - Large lawn ellipse
 - Associated landscape and hardscape areas shown in Attachment 'E'
 - Pedestrian walks and plazas including the western patio (on the east side of the fire station)
 - Veteran's memorial as discussed with Dalan and the Citizen's group, to be located on the north side of the Council chambers
 - Fireman's Bosque Area
 - General landscape areas per "Attachment E"
- The Landscape Architecture scope includes plans, details, notes, and specifications for each of the programmed items listed above, to be illustrated in these plans:
 - **Hardscape Plan** for all pedestrian areas
 - **Landscape Planting Plan** for all plant material
 - **Irrigation Plan** for all irrigation heads, pipe, equipment, and controllers
- The Consultant will coordinate with the Civil, Electrical, and Structural Engineers as follows:
 - **Plaza Feature Design Intent** - Design intent drawings only that include feature design and layout in both horizontal and vertical composition. It does not include electrical engineering, plumbing, or structural engineering or otherwise for feature elements. The Consultant will work with the project team to develop a schematic plan to include feature selection. Structural and electrical engineering can be provided with complete drawings and specifications for bid after a plaza feature is decided upon.

- **Design Intent Grading**– The Consultant will provide grading design intent to the Owner’s Civil Engineer who will develop detailed grading and drainage plans.
- **Illumination Design** – Design intent drawings only that include layout and lighting fixtures. It does not include electrical engineering. The Consultant will work with the project team to develop a schematic lighting plan to include fixture selection, and the Owner’s electrical engineer will complete the drawings and specifications for bid.
- **OPCC** – Provide review and coordination of Project Advocates (PA) opinion of probable construction cost.
- **Structural Engineering** details for the park elements as identified in schematic design.
- Project construction budget for site improvements is assumed to be approximately \$2,800,000 based on preliminary cost opinion provided by PA (does not include the Phase 1 Library portion). CONSULTANT Fee not to exceed 8% of construction costs. Fee nor fee % will not increase due to market volatility effects on construction hard costs but limited to scope increases.

Not included in this item:

- Any work beyond the back of curb such as parking areas or roads, or streets. The parking and street areas will be addressed under a separate contract, once the Parking and Street area Master Plan is complete.
- Presentations, documents, or plans required for “Special Exceptions”, Variances, or Zoning changes required by the architectural or civil design solutions chosen by the Owner.
- Multiple design alternatives beyond those described in Basic Services or significant site plan revisions following acceptance at each given phase of review documents.
- Library site (Phase 1)
- Irrigation systems utilizing reclaimed or ground water that require pumps, tanks, filters, or associated controls.
- Site signage and/or signs for buildings and vehicular circulation.
- Survey, Subsurface Utility Location, MEP, or Civil Engineering Services of any kind.
- LEED or SITES pursuit.
- Formal TDLR/TAS/ADA reviews and submittals.

2. **COORDINATION MEETINGS & SUBMITTALS**: A Landscape Architect from the CONSULTANT's team will attend virtual and in-person meetings and or presentations to coordinate with other team members and the owner during the design phase. Plans and specifications will be submitted as outlined below for Owner and/or governmental review.

Included in this item (based upon project and meeting schedule provided by PA):

- Up to 20 virtual team coordination meetings.
- Up to 11 in-person team coordination meetings.
- Up to 4 in-person presentations to council at SD and DD phases.
- PDF drawing submittals (one each at the milestones listed below):
 - Schematic Design (SD) review submittal.
 - Design Development (50% DD) review submittal.
 - Design Development (100% DD) review submittal.
 - Construction Document (50% CD) review submittal.
 - Construction Document (90% CD, Permit Package) submittal. Includes one round of City comments.
 - For Construction (100% CD) submittal.

Not included in this item:

- Submittals for multiple early release permit drawings exceeding the total plan submittals described above.
- Splitting the project into multiple phases or bid packages.

3. **LANDSCAPE ARCHITECTURE/HARDSCAPE PLANS**: CONSULTANT will provide a Landscape Architecture Design services that consists of hard surface elements of the site on the ground plane, including vehicular paving for stage access only. Elements include stage area, veteran's memorial, pedestrian paving, selection and location of ornamental light fixtures, pedestrian handrails, exterior stairs and ramps, site furniture, fencing, mow curbs, shade structures, and seat walls/retaining walls less than 36" in height.

Included in this item:

- Coordination of City review and approval of plans prepared as part of this item.
- Up to three (3) team design meetings to coordinate hard surface design elements. If landscape planting is a part of the scope, these are not separate design meetings.
- Schematic Design: One (1) schematic option submitted for client review and coordination. One (1) board depicting critical sections, elevations, or three-dimensional aspects of the design necessary to demonstrate design intent. Following team review, one (1) revision of the Schematic Design to incorporate client comments. An opinion of probable construction cost will be provided.
- Design Development: One (1) image board depicting proposed materials and design

theme options. Plans to include one (1) Layout Plan depicting horizontal alignment, one (1) Grading and Drainage Plan depicting direction and location of site drainage for exterior spaces outside of the parking lots and vehicular circulation that will be passed along and coordinated with the Civil Engineer's site grading and drainage plan and Site Detail Plans depicting elevations and sections of key elements prepared as a part of this item. An opinion of probable construction cost will be provided.

- Construction Documents: Plans to include layout, grading, and detail plans to a level sufficient to demonstrate design intent and allow the construction thereof, including materials and quantity schedules. Technical specifications will be prepared for each critical item in the Landscape Architectural Plans.
- Coordination with the Civil Engineer to connect landscape drainage structures and features into the overall site drainage plan.
- Coordination with the Architect in relation to materials, grades, and amenities.
- Coordination with Structural Engineer related to shade structures and footings, if required.

Not included in this item:

- Retaining wall design for walls over 36" in total height, or with surcharges.
- Vehicular pavement design and grading. Paving enhancement design for vehicular areas, if any, will be provided to the civil engineer in the design development phase for incorporation into the vehicular paving plans.
- Soil testing.
- Fountain, pond, or specialty water feature design. If one of these should be requested, it can be provided as an additional service.
- LEED pursuit.

4. LANDSCAPE PLANTING PLANS: Consultant will provide a Landscape Planting Plan that consists of selection and location of butterfly garden, Fireman's bosque area, ornamental plantings, street or site shade trees, turf, mulches, and associated items.

Included in this item:

- Coordination of City review and approval of plans prepared as part of this item.
- Schematic Design: One (1) approved schematic plan submittal for client review and coordination. One (1) image board depicting proposed plant materials and ornamental mulches/groundcovers.
- Design Development: Plans to include one (1) Planting Plan depicting locations of plants with associated notes, quantities, and schedules. One (1) Planting Details Plan depicting soil preparation and amenities prepared as a part of this item.
- Construction Documents: Plans to include planting and detail plans to a level sufficient to demonstrate design intent and allow the construction thereof, including materials and quantity schedules. Technical specifications will be prepared for each critical item in the Landscape Planting Plans.
- Coordination with the Civil Engineer for any required grading of an ornamental nature to be included into the overall site grading plan.
- Coordination with the Architect in relation to required sleeves for draining enclosed or raised planting structures.

- Coordination with Structural Engineer related to allowable plantings and soil preparation adjacent to structural footings and slabs.

Not included in this item:

- Paving, structural planters, walls, furniture, irrigation, and other inorganic site elements.

- 5. PLAZA SIGNATURE FEATURE DESIGN:** Consultant will provide design intent plans and specifications for a custom plaza signature feature design including selected manufacturer's products and the accessible surfacing pertaining to it.

Included in this item:

- Coordination with the MEP Engineer for lighting and electrical design as needed.
- Coordination with the Civil Engineer for sizing and connections of the subsurface drainage system as needed.
- Two (2) plaza feature concepts – each will include a coordinated water feature with public art.
- One (1) plan showing the dimensional layout of the preferred concept.
- One (1) plan showing drainage for the preferred concept.
- One (1) plan showing hardscape and landscape surrounding the plaza feature improvements with irrigation.
- Specifications and construction details for installation.

Not included in this item:

- MEP plans for plaza feature improvements.

- 6. LANDSCAPE IRRIGATION PLANS:** Consultant will provide a Landscape Irrigation Plan that consists of a fully automated irrigation system to service plantings on the site as required.

Included in this item:

- Coordination of City review and approval of plans prepared as part of this item.
- Schematic Design: One approved (1) schematic plan submittal for client review and coordination. Plan will depict only location of water source, routing of main water service line, proposed irrigation type for each location (i.e., drip, spray, rotor, temporary) and list of proposed manufacturers.
- Design Development: Plans to include one (1) Irrigation Plan depicting locations of all irrigation components, including controllers, main lines, valves, heads, and specialty items.
- Construction Documents: Plans to include Irrigation Plans to a level sufficient to demonstrate design intent and allow the construction thereof, including materials and quantity schedules, pipe sizing, notes, and technical installation details. Technical specifications will be prepared for irrigation components.
- Coordination with the Civil Engineer to pass along requested tap location(s) and meter placement.
- Coordination with the Architect in relation to required sleeves for irrigation service access to enclosed or raised planting structures, or through walls and footings.
- Coordination with Structural Engineer related to allowable irrigation adjacent to structural footings and slabs.

- Coordination with the Civil Engineer to assure that sleeves for irrigation system are accounted for on the plans.
- Coordination with the Electrical Engineer to provide electrical service to the irrigation controller.

Not included in this item:

- Pump systems and filters required for use of non-potable water and storm water recapture. These services can be provided as a Special Service.

STRUCTURAL ENGINEERING DESIGN: Consultant will provide structurally designed engineering plans for various low wall concrete seat bench landscape features, Christmas Tree spread footing foundation and light pole shallow pier foundations. Design work shall include coordination with City officials, Landscape Architects and Geotechnical Engineers. Structural design services shall include preparation of reinforced concrete designs and foundation plans and associated details in accordance with ACI, PCA and local building code design criteria. All design work shall be prepared in AutoCAD electronic format.

Geotechnical Engineer Design Scope of Services to be Provided by Others

The Geotech to provide report with following design criteria for a conventional cast-in-place concrete spread footing foundations and shallow pier foundations:

1. 1 deep boring, near middle of proposed Town Square site.
2. Shallow drilled pier foundation design recommendations for end bearing and skin friction.
3. Recommended minimum depth of load bearing footing below finish grade
4. Allowable soil bearing (psf) capacity.
5. Subgrade Earthwork Improvements to limit spread footing post construction settlements to one inch or less.

Included in this item:

- Coordination with the Landscape Architect.
- Coordination with the MEP Engineer.
- Coordination with the Civil Engineer.
- Specifications and construction details for installation.

Not included in this item:

- Structural plans for plaza signature feature improvements.
- Geotech report.

7. LANDSCAPE ARCHITECTURE BID PHASE SERVICES: During the Bid Phase, Consultant will be available to provide coordination as required with prospective bidders. This may include answering pre-bid RFI's, issuing design revisions as addenda or attendance at a pre-bid conference or scoping session.

8. LANDSCAPE CONSTRUCTION ADMINISTRATION: Consultant will provide limited Construction Administration services by processing shop drawings and product submittals,

responding to RFIs, and issuing supplemental instructions if required related to the work shown on the Landscape Architecture Plans. Submittals not required by the contract

documents or not related to plans developed by the Landscape Architect will not be reviewed.

At the Client's request, a representative will attend up to 5 (five) Owner/Architect/Contractor (OAC) project coordination meetings during construction. At the request of the Owner, and in conjunction with the OAC meetings, Consultant will visit the site at critical junctures during site construction up to 5 (five) times.

Recommended times for site visits could include:

- Paving mockups and site formwork/reinforcing.
- Testing of the irrigation main line and landscape drainage structures.
- Upon completion of soil preparation and finish grade, after plant material has been laid out, but prior to actual planting.
- Substantial Completion Walk-Through.
- Final Completion Walk-Through.

This shall not be construed as performing continuous construction inspection.

Please note the following:

- Consultant shall not at any time supervise or have authority over any Contractor work or jobsite management or safety procedures, nor shall Consultant have authority over or be responsible for the means and methods, or procedures of construction selected or used by the Contractor.
- Consultant neither guarantees the performance of the Contractor nor assumes responsibility for the
- Contractor's failure to furnish and perform the Work in accordance with the Contract Documents.
- Consultant shall not provide or have any responsibility for surety bonding or insurance-related advice, recommendations, counseling, or research, or enforcement of construction insurance or surety bonding requirements.
- Consultant shall not be responsible for the acts or omissions of the Contractor or for any decision or interpretation of the Contract Documents made by the Contractor.

- While at the Site, Consultant's employees and representatives shall comply with the specific applicable requirements of the Contractor's and Owner's safety programs of which Consultant has been informed in writing.

9. REIMBURSABLE EXPENSES: Included in this item are usual and customary expenses normally incurred during this type of project. These could include travel expenses, courier delivery charges, overnight delivery charges, copies of deeds, copies of existing plans and/or maps, photocopies, printing, and reproduction (either in-house or by reproduction company). Application, review and filing fees are not included in this item. A copy of our "Standard Billing Rates for In-House Reimbursable Charges" is attached for your reference.

10. RECORD DRAWINGS: Based on project construction records, maintained, and provided by the Contractor, Consultant will prepare final Record Drawings of the referenced project in conformance with City requirements. These drawings will rely solely on the information provided by the Contractor. Field verification of actual construction is *not* included in this item. In the event the Contractor claims no changes were made to the plans during construction, Contractor will provide a letter on their letterhead positively stating that all construction was done per the construction documents.

ATTACHMENT 'B' COMPENSATION

The services described in Attachment A Scope of Services shall be provided for a total lump sum fee of \$140,800.00 (One Hundred Forty Thousand and Eight Hundred Dollars). The overall fee total shown shall not be exceeded without prior written authorization from the CLIENT.

Payment for the services described in Attachment A Scope of Services shall be invoiced to the CLIENT on a monthly basis, based upon percentage completed for each task. Below is a fee breakdown by task for the services described in Attachment A Scope of Services:

ANNA TOWN SQUARE

Task	Fee
<i>Landscape Architecture Design Services</i>	
Design Development	15,375.00
Construction Documents	
50% CD	20,500.00
90% CD	35,875.00
100% CD	30,750.00
Subtotal	\$ 102,500.00
<i>Structural Design Services</i>	
Construction Documents	
50% CD	2,400.00
90% CD	4,080.00
100% CD	3,120.00
Subtotal	\$ 9,600.00
<i>Construction Services</i>	
Bid Phase	
Construction Administration	
Reimbursable Expenses	
Record Drawings	
Subtotal	\$ 24,000.00
<i>Structural Construction Services</i>	
Construction Administration	
Field Visits (3)	
Subtotal	\$ 4,700.00
TOTAL FEE FOR SERVICES	\$ 140,800.00

ATTACHMENT 'C'

STANDARD RATE SCHEDULE

Effective January 1, 2021 to December 31, 2022

**Hourly
Billing
Rate**

Engineering/Landscape Architecture/ROW

Principal or Director	\$250
Team Leader	\$230
Senior Project Manager	\$220
Project Manager	\$175
Senior Engineer	\$230
Project Engineer	\$160
Engineer III/IV	\$135
Engineer I/II	\$125
Landscape Architect / Planner	\$160
Landscape Designer	\$120
Senior Designer	\$140
Designer	\$130
Senior CAD Technician	\$125
CAD Technician	\$110
IT Technician	\$170
Clerical	\$80
ROW Manager	\$190
Senior ROW Agent	\$160
ROW Agent	\$125
Relocation Agent	\$160
ROW Admin	\$70
Intern	\$70

**Hourly
Billing
Rate**

Surveying

Survey Manager	\$230
Registered Professional Land Surveyor (RPLS)	\$195
Field Coordinator	\$140
S.I.T. or Senior Survey Technician	\$140
Survey Technician	\$110
1-Person Field Crew w/Equipment**	\$145
2-Person Field Crew w/Equipment**	\$175
3-Person Field Crew w/Equipment**	\$200
4-Person Field Crew w/Equipment**	\$220
Flagger	\$50
Abstractor (Property Deed Research)	\$90
Small Unmanned Aerial Systems (sUAS) Equipment & Crew	\$400
Terrestrial Scanning Equipment & Crew	\$250

Hourly

Utility Management, Utility Coordination, and SUE

Senior Utility Coordinator	\$165	
Utility Coordinator	\$150	
SUE Project Manager	\$190	
SUE Engineer	\$170	
Field Coordinator	\$140	
Sr. Utility Location Specialist	\$140	
Utility Location Specialist	\$90	
1-Person Designator Crew w/Equipment***	\$145	
2-Person Designator Crew w/Equipment***	\$170	
2-Person Vac Excavator Crew w/Equip (Exposing Utility Only)	\$275	
Core Drill (equipment only)	\$750	per day
SUE QL-A Test Hole (0 < 4 ft)	\$1,250	each
SUE QL-A Test Hole (> 4 < 6 ft)	\$1,500	each
SUE QL-A Test Hole (> 6 < 8 ft)	\$1,750	each
SUE QL-A Test Hole (> 8 < 10 ft)	\$2,000	each
SUE QL-A Test Hole (> 10 < 12 ft)	\$2,250	each
SUE QL-A Test Hole (> 12 < 14 ft)	\$2,500	each

**Hourly
Billing
Rate**
Construction Management, Construction Engineering, and Inspection (CEI)

Construction Inspector II	\$100
Construction Inspector III	\$110
Senior Construction Inspector	\$130
Construction Superintendent	\$180
Senior Project Manager	\$220

Direct Cost Reimbursables

A fee equal to 3% of labor billings shall be included on each monthly invoice for prints, plots, photocopies, plans or documents on CD, DVD or memory devices, and mileage. No individual or separate accounting of these items will be performed by TNP.

Any permit fees, filing fees, or other fees related to the project and paid on behalf of the CLIENT by TNP to other entities shall be invoiced at 1.10 times actual cost.

Notes:

All subcontracted and outsourced services shall be billed at rates comparable to TNP's billing rates above or cost times a multiplier of 1.10.

* Rates shown are for 2021 and are subject to change in subsequent years.

** Survey equipment may include truck, ATV, Robotic Total Station, GPS Units and Digital Level.

*** Includes crew labor, vehicle costs, and field supplies.

ATTACHMENT 'C-1'

SAMPLE INVOICE

Teague, Nall & Perkins, Inc.

5237 N. Riverside Drive
Suite 100
Fort Worth, TX 76137
817-336-5773

CLIENT Name
Contact Person
Address

Invoice number
Date

Project Name
Contract No.

Professional services rendered for the month ending _____

FIXED FEE

Description	Contract Budget	% Complete to Date	Total to Date	Amount Previously Billed	Current Billed
Basic Services	100,000.00	50.00	\$50,000.00	\$10,000.00	\$40,000.00
Fixed Fee Subtotal	\$100,000.00	50.00	\$50,000.00	\$10,000.00	\$40,000.00

HOURLY OR ADDITIONAL SERVICES

Employee Category	Staff	Hours	Rate	Total
Project Manager	CAE	9.00	\$175.00	\$1,575.00
RPLS	TWS	1.00	\$195.00	\$195.00
Senior Survey Technician	MOH	1.00	\$140.00	\$140.00
Survey Technician	EWV	2.00	\$110.00	\$220.00
Team Leader	JMB	0.25	\$230.00	\$57.50
1-Person Field Crew	JWW	2.50	\$145.00	\$362.50
2-Person Field Crew	JWW	4.00	\$175.00	\$700.00
Labor Subtotal				\$3,250.00
3% Expenses Fee				\$97.50
Hourly Subtotal				\$3,347.50

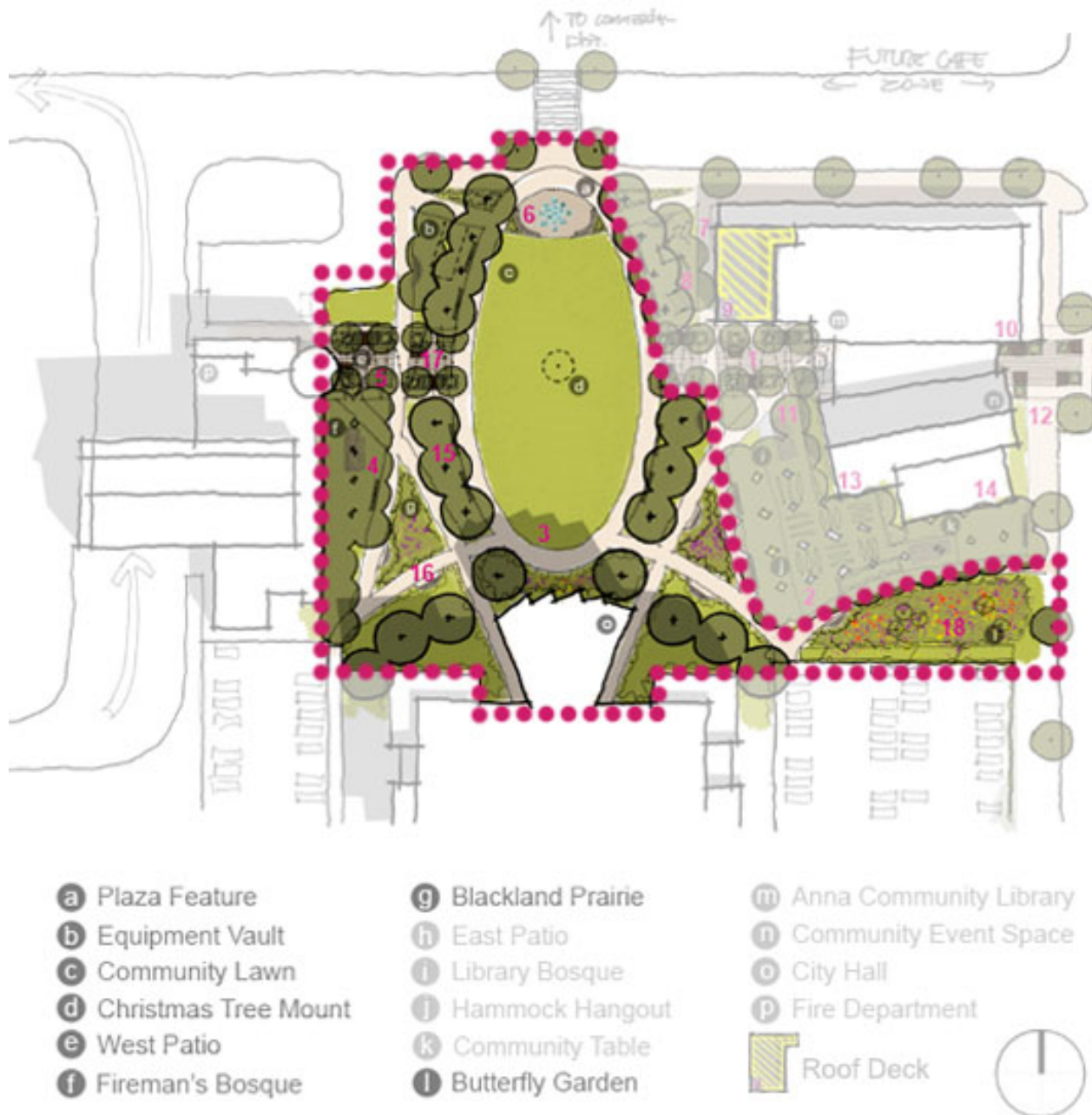
Invoice total **\$43,347.50**

ATTACHMENT 'D' PROJECT SCHEDULE

TNP is prepared to begin work immediately upon receipt of a signed copy of the proposal. We will endeavor to meet PA's published schedule.

ATTACHMENT 'E' PROJECT LOCATION

The area labeled “Town Square Phase” below illustrates the scope of the work:





Item No. 6.i.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Joey Grisham

AGENDA ITEM:

Acting as the Anna Public Facility Corporation Board of Directors, Approve a Resolution authorizing the First Amendment to the Loan Agreement of the Multifamily Housing Revenue Bonds (Palladium East Foster Crossing); approving and authorizing the execution and delivery of related documents; authorizing representatives of the Anna PFC to execute documents; and approving related matters. (Director of Economic Development Joey Grisham)

SUMMARY:

The following item includes minor changes to the Palladium East Foster Crossing Loan Agreement and is not material to the Anna PFC but does require Board approval.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

Approve.

ATTACHMENTS:

1. Bond Resolution 1st Amendment Loan Agmt

APPROVALS:

Joey Grisham, Director Economic Development
Jim Proce, City Manager

Created/Initiated - 11/16/2022
Final Approval - 11/17/2022

CERTIFICATE FOR RESOLUTION

THE STATE OF TEXAS

ANNA PUBLIC FACILITY CORPORATON

§
§

We, the undersigned officers of the Board of Directors of Anna Public Facility Corporation, hereby certify as follows:

1. The Board of Directors of said corporation convened in REGULAR MEETING ON THE ____ DAY OF _____, 2022, and the roll was called of the duly constituted officers and members of said Board, to wit:

Stan Carver II, President
Danny Ussery, Vice-President
Pete Cain, Secretary
Nate Pike, Member
Lee Miller, Member
Kevin Toten, Member
Randy Atchley, Member

and all of said persons were present, thus constituting a quorum. Whereupon, among other business, the following was transacted at said Meeting: a written

RESOLUTION AUTHORIZING THE FIRST AMENDMENT TO LOAN AGREEMENT OF THE MULTIFAMILY HOUSING REVENUE BONDS (PALLADIUM EAST FOSTER CROSSING) SERIES 2022; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AUTHORIZING REPRESENTATIVES OF THE ANNA PUBLIC FACILITY CORPORATION TO EXECUTE DOCUMENTS; AND APPROVING RELATED MATTERS

was duly introduced for the consideration of said Board and read in full. It was then duly moved and seconded that said Resolution be adopted; and, after due discussion, said motion carrying with it the adoption of said Resolution, prevailed and carried, with all members of said Board shown present above voting "Aye," except as follows:

NOES:

ABSTENTIONS:

2. A true, full and correct copy of the aforesaid Resolution adopted at the Meeting described in the above and foregoing paragraph is attached to and follows this Certificate; said Resolution has been duly recorded in said Board's minutes of said Meeting; the above and foregoing paragraph is a true, full and correct excerpt from said Board's minutes of said Meeting pertaining to the adoption of said Resolution; the persons named in the above and foregoing paragraph are the duly chosen, qualified and acting officers and members of said Board as indicated therein; each of the officers and members of said Board was duly and sufficiently notified officially and personally, in advance, of the time, place and purpose of the aforesaid Meeting, and that said Resolution would be introduced and considered for adoption at said Meeting, and each of said officers and members consented, in advance, to the holding of said Meeting for such purpose.

SIGNED

President, Board of Directors

Secretary, Board of Directors

RESOLUTION NO. _____

RESOLUTION AUTHORIZING THE FIRST AMENDMENT TO LOAN AGREEMENT OF THE MULTIFAMILY HOUSING REVENUE BONDS (PALLADIUM EAST FOSTER CROSSING) SERIES 2022; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF RELATED DOCUMENTS; AUTHORIZING REPRESENTATIVES OF THE ANNA PUBLIC FACILITY CORPORATION TO EXECUTE DOCUMENTS; AND APPROVING RELATED MATTERS

WHEREAS, Anna Public Facility Corporation (the "Issuer") has been duly created and organized by action of the City of Anna, Texas (the "Sponsoring Governmental Unit") under the provisions of Chapter 303, Texas Local Government Code, as amended (the "Act"), for the purpose of providing a means of financing the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices they can afford; and

WHEREAS, the Act authorizes the Issuer to issue bonds to defray, in whole or in part, the development costs of a residential development; and

WHEREAS, the Board of Directors of the Issuer (the "Board") authorized the issuance of the Issuer's Multifamily Housing Revenue Bonds (Palladium East Foster Crossing) Series 2022 (the "Bonds"), in one or more series in accordance with the terms of a Trust Indenture (the "Indenture") by and among the Issuer and the Trustee named in the Indenture (the "Trustee"), to obtain funds to finance the Project (defined below); and

WHEREAS, the Issuer and the Palladium East Foster Crossing, Ltd. (the "Borrower") wish to execute and deliver a First Amendment to Loan Agreement (the "First Amendment to Loan Agreement") in which the Issuer will agree to lend funds to the Borrower to enable the Borrower to finance the Project; and

WHEREAS, terms not defined herein shall have the meanings set forth in the Loan Agreement; and

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF THE ANNA PUBLIC FACILITY CORPORATION:

Section 1.1 - Approval, Execution and Delivery of the First Amendment to Loan Agreement. The form and substance of the First Amendment of Loan Agreement is approved in substantially final form, with such changes therein as may be approved by the authorized representatives of the Issuer named in this Resolution at the time of execution and delivery thereof, and the authorized representatives of the Issuer named in this Resolution each are authorized to execute and attest (if required) the First Amendment to Loan Agreement.

Section 1.4 - Execution and Delivery of Other Documents. The authorized representatives of the Issuer named in this Resolution each are authorized to execute, attest to, and to affix the Issuer's seal to such other agreements, commitments, assignments, bonds, certificates,

contracts, documents, instruments, releases, financing statements, letters of instruction, notices of acceptance, written requests and other papers as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 1.5 - Exhibits Incorporated Herein. That all of the terms and provisions of each of the documents listed below as an exhibit shall be and are hereby incorporated into and made a part of this Resolution for all purposes:

Exhibit A – First Amendment to Loan Agreement

Section 1.6 - Power to Revise Form of Documents. The authorized representatives of the Issuer named in this Resolution each are authorized to approve such revisions in the form of the document attached hereto as may be acceptable to such authorized representative or authorized representatives, following consultation with McCall, Parkhurst & Horton L.L.P., Bond Counsel to the Issuer, with such approval to be evidenced by the execution of such documents by the authorized representatives of the Issuer named in this Resolution.

Section 1.7 - Authorized Representatives. The President, Vice President and Secretary each is hereby named as an authorized representative of the Issuer, acting alone, for purposes of executing, attesting, affixing the Issuer's seal to, and delivering the documents and instruments referred to herein.

Section 1.8 - Meeting. The meeting at which this Resolution was adopted was held on _____, 2022 and a quorum was present. Such meeting was held in accordance with the requirements of applicable law and Issuer's bylaws.

PASSED by the Public Facility Corporation of the City of Anna, Texas, on this ____ day of _____, 2022.

FIRST AMENDMENT TO
LOAN AGREEMENT – PALLADIUM EAST FOSTER, LTD.

THIS FIRST AMENDMENT TO LOAN AGREEMENT (the “First Amendment”) is entered into effective as of [REDACTED], by and among of PALLADIUM EAST FOSTER CROSSING, LTD., a Texas limited partnership (the “Borrower”), ANNA PUBLIC FACILITY CORPORATION, a public facilities corporation organized under the laws of the State of Texas (“Issuer”), and CEDAR RAPIDS BANK AND TRUST COMPANY, an Iowa state-chartered banking corporation (“Purchaser”).

WHEREAS, pursuant to that certain Loan Agreement by and between Borrower, Issuer, and Purchaser, dated as of June 1, 2022, (as the same may be modified, supplemented, amended, or restated, the “Loan Agreement”), Issuer made the Loan available to Borrower as more particularly described in the Loan Agreement;

WHEREAS, the Loan encumbers that certain property located at the legal description described on Exhibit A attached hereto (the “Property”);

WHEREAS, Borrower requested, and Issuer and Purchaser have agreed to modify the Loan Agreement as set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements set forth herein and for other good and valuable consideration, the mutuality, receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

- 1) Definitions. All capitalized terms not otherwise defined herein shall have the meanings given to such terms in the Loan Agreement.
- 2) Article 1.1 Definition of the “Permitted Encumbrances” is hereby amended by deleting the reference to “(f) the TCAP RF Loan,” and replacing it with “(f) [Reserved],” in its stead.
- 3) Article 1.1 Definition of the “Permitted Transfer” is hereby amended by deleting the initial paragraph and subpart (d) in their entirety and replacing them with the following in their stead:

““Permitted Transfers” means any of the following, subject to the laws of the State as then in effect at the time of such Permitted Transfer; provided, however, any such transfer shall have received the prior written consent of the Issuer, **to the extent required** by Section 9 of the Regulatory Agreement (all such terms used in this definition and not otherwise defined in this Indenture shall have the meanings as set forth in the Regulatory Agreement):”

“the removal of the Class B Special Limited Partner **and/or the General Partner (as applicable)** for cause as set forth in the Organizational Documents so long as any substitute Class B Special Limited Partner **and/or the General Partner (as applicable)** is an Affiliate of the Equity Investor.”

- 4) Section 2.4(n) of the Loan Agreement is hereby amended by deleting the reference to “Construction Loan and Permanent Loan” and replacing said reference with “Permitted Encumbrances” in its stead.
- 5) Section 6.1(e)(v) of the Loan Agreement is hereby amended by deleting subpart (v) in its entirety and replacing it with the following in its stead:

“The removal of the Class B Special Limited Partner **and/or the General Partner (as applicable)** by the Equity Investor pursuant to the terms of the Organizational Documents of the Borrower; provided that any replacement Class B Special Limited Partner **and/or the General Partner (as applicable)** is subject to the approval of Purchaser;”

- 6) Section 6.1(j) of the Loan Agreement is hereby amended by adding the following to the beginning of said section “*In addition to the for cause removal rights set forth under the Organizational Documents,*”.
- 7) Section 7.1 of the Loan Agreement is hereby amended by replacing the final paragraph in the Section in its entirety with the following:

“Notwithstanding the foregoing, there shall be no payment related default under this Loan Agreement the Notes, the Regulatory Agreement or any other Document in the event of default thereunder (including without limitation foreclosure of the Deed of Trust) to the extent that such Default is a “payment default” resulting from the failure of the Swap Counterparty to make its required payment(s) under the Swap Documents.”

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the undersigned have signed this First Amendment as of the dates set forth below their respective signatures.

BORROWER:

PALLADIUM EAST FOSTER CROSSING, LTD.,
a Texas limited partnership

By: Palladium East Foster Crossing SLP, LLC
a Texas limited liability company,
its class b limited partner

By: _____
Name: Thomas E. Huth
Title: Sole Manager

ISSUER:

ANNA PUBLIC FACILITY CORPORATION,

as Issuer

By: _____
Name: Stan Carver II
Title: President

PURCHASER:

CEDAR RAPIDS BANK AND TRUST COMPANY,
an Iowa state-chartered banking corporation,
as Purchaser

By: _____
Name: Sam Kramer
Title: Vice President



Item No. 6.j.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Joey Grisham

AGENDA ITEM:

Approve a Resolution approving and authorizing a First Amendment to Amended and Restated Incentive Agreement for New Economic Development with Anna Village Residential, Ltd. and Anna Village Commercial, Ltd. (Director of Economic Development Joey Grisham)

SUMMARY:

The Council previously approved an Incentive Agreement for a high-quality 317 unit MF complex on US Highway 75, and this amendment simply updates the dates for project commencement and completion. The Developer has until January 31, 2023 to commence construction and December 31, 2024 to complete the project. They must also obtain the building permit for Phase 1 by December 9, 2022.

FINANCIAL IMPACT:

Waiver of impact fees and park fees totaling \$1,521,065. The project is valued at over \$65 million with a projected tax revenue for the city of over \$338,000 annually.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 1: Growing Anna Economy

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

Approve.

ATTACHMENTS:

1. Anna Village Amended Contract C03029D20221109CR1 (002)

APPROVALS:

Joey Grisham, Director Economic Development
Jim Proce, City Manager

Created/Initiated - 11/16/2022
Final Approval - 11/17/2022

**FIRST AMENDMENT TO AMENDED AND RESTATED INCENTIVE AGREEMENT
FOR NEW ECONOMIC DEVELOPMENT**

THIS FIRST AMENDMENT TO AMENDED AND RESTATED INCENTIVE AGREEMENT FOR NEW ECONOMIC DEVELOPMENT (this “First Amendment”) is entered into by and among the City of Anna, Texas (the “City”), Anna Village Residential, Ltd., a Texas limited partnership, and Anna Village Commercial, Ltd., a Texas limited partnership.

WHEREAS, the City previously entered into that certain Incentive Agreement for New Economic Development (the “Agreement”) which City approved by City of Anna Resolution No. 2020-020689 on February 25, 2020 and which Assignor executed on February 20, 2020; and

WHEREAS, the City subsequently entered into that certain Amended and Restated Incentive Agreement for New Economic Development (the “Restated Agreement”) which City approved by City of Anna Resolution No. 2021-10-1021 on October 12, 2021, which replaced and superseded the Agreement; and

WHEREAS, the City entered into the Restated Agreement with Anna Village Residential, Ltd. and Anna Village Commercial, Ltd. (collectively referenced herein as “Developer”); and

WHEREAS, the City and Developer desire to modify and amend the Restated Agreement solely as expressly stated in this First Amendment and the Restated Agreement shall otherwise remain in full force and effect including without limitation the exhibits attached thereto;

NOW, THEREFORE, in consideration of the covenants, promises, and conditions stated in this First Amendment, the City and Developer agree as follows:

Section 1. Amendment to Section 2.02 of the Restated Agreement. The entirety of Section 2.02 of the Restated Agreement is replaced with the following:

“2.02 Notwithstanding any provision of this Amendment, Developer shall be deemed to have timely obtained a building permit for Phase I (the “Phase I Permit”) if Developer pays to the City all outstanding fees for the building permit in the amount of \$440,314.50 (the “Permit Payment”) and satisfies all other requirements to obtain the Phase I Permit on or before December 9, 2022. Notwithstanding any provision of this Amendment, if Developer fails to timely obtain the Phase I Permit it shall constitute a material breach of this Amendment and the City may elect to terminate this Amendment by providing written notice of termination and the City shall have no obligation to provide any notice of default before terminating this Amendment. If Developer fails to timely Commence Construction and/or timely construct or cause to be constructed the Apartment Project in accordance with Section 4.01 of this Amendment the City may provide notice of default to Developer pursuant to Section 8.08 of this Amendment and pursue all other remedies available under law or equity.”

Section 2. Amendment to Section 2.03 of the Restated Agreement. The entirety of Section 2.03 of the Restated Agreement is replaced with the following:

“2.03 If this Amendment is terminated by the City for Developer’s failure to timely obtain a building permit for Phase I or timely Commence Construction of Phase I, this Amendment shall terminate and both Parties are relieved of any obligations hereunder including without limitation the City’s obligation to forgo collection of any impact fees or park fees relating to any future development of the Property.”

Section 3. Amendment to Section 2.04 of the Restated Agreement. The entirety of Section 2.04 of the Restated Agreement is replaced with the following:

“2.04 If Developer fails to timely Complete Phase I Construction, Developer will be required to pay the City liquidated damages as set forth in this paragraph. For each day that construction of Phase I remains uncompleted after the expiration of the deadline to Complete Phase I Construction (as required in Section 4.01), Developer shall owe the City the sum of \$500 per day during any such period of construction being uncompleted during the first 90 days after expiration of said deadline. During the period of 640 days following said 90-day period Developer shall owe the City the sum of \$1,126.65 per day that construction remains uncompleted until and unless the amount of the liquidated damages paid by Developer equals the amount of the Phase I Incentive Grant, at which time Developer’s obligation to pay liquidated damages ceases. For example, if Phase I remains uncompleted for 100 days after the expiration of the construction deadline, Developer would owe the City \$56,266.50 (\$500 multiplied by 90 plus \$1,126.65 multiplied by 10). All such sums owed shall be paid to the City within 10 days after demand by the City. Any such sums owed are not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per day that Developer has failed to Complete Phase I Construction. The said sums are fixed and agreed upon by and between the City and Developer because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the City would sustain.”

Section 4. Amendment to Section 2.05 of the Restated Agreement. The entirety of Section 2.05 of the Restated Agreement is replaced with the following:

“2.05 If Developer commences construction of Phase I but abandons Phase I before completion, and the City terminates this Amendment, the Phase I Incentive Grant shall be deemed to have been forfeited by Developer in full and the City shall be entitled to collect and Developer, within 30 days of termination under this paragraph, shall pay the City all impact fees and/or park fees that would have at the time of said termination—in the absence of this Amendment—been due and subject to collection in connection with the development of Phase I and the Parties will have no further obligations hereunder. For the purposes of this paragraph Phase I shall be considered abandoned if Developer either (a) clearly demonstrates that it has relinquished its rights hereunder or (b) without legal excuse, ceases work on Phase I and fails to resume work within 90

days thereafter. The City may cause this Amendment to terminate under this paragraph by following the notice and cure provisions set forth in Section 8.08 of this Amendment. The Developer's obligation to immediately pay all impact fees and/or park fees under this paragraph shall survive the termination of this Amendment."

Section 5. Amendment to Section 2.07 of the Restated Agreement. The entirety of Section 2.07 of the Restated Agreement is replaced with the following:

"2.07 If Developer fails to timely Complete Phase II Construction, Developer will be required to pay the City liquidated damages as set forth in this paragraph. For each day that construction of Phase II remains uncompleted after the expiration of the deadline to Complete Phase II Construction (as required in Section 4.01) Developer shall owe the City the sum of \$500 per day during any such period of construction being uncompleted during the first 90 days after expiration of said deadline. During the period of 640 days following said 90-day period Developer shall owe the City the sum of \$1,109.38 per day that construction remains uncompleted until and unless the amount of the liquidated damages paid by Developer equals the amount of the Phase II Incentive Grant, at which time Developer's obligation to pay liquidated damages ceases. For example, if Phase II remains uncompleted for 100 days after the expiration of the construction deadline, Developer would owe the City \$56,093.80 (\$500 multiplied by 90 plus \$1,109.38 multiplied by 10). All such sums owed shall be paid to the City within 10 days after demand by the City. Any such sums owed are not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages, per day that Developer has failed to Complete Phase I Construction. The said sums are fixed and agreed upon by and between the City and Developer because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages which the City would sustain."

Section 6. Amendment to Section 2.08 of the Restated Agreement. The entirety of Section 2.08 of the Restated Agreement is replaced with the following:

"2.08 If Developer commences construction of Phase II but abandons Phase II before completion, and the City terminates this Amendment, the Phase II Incentive Grant as relates to Phase II shall be deemed to have been forfeited by Developer in full and the City shall be entitled to collect and Developer, within 30 days of termination under this paragraph, shall pay the City all impact fees and/or park fees that would have at the time of said termination—in the absence of this Amendment—been due and subject to collection in connection with the development of Phase II and the Parties will have no further obligations hereunder. For the purposes of this paragraph Phase II shall be considered abandoned, if Developer either (a) clearly demonstrates that it has relinquished its rights hereunder or (b) without legal excuse, ceases work on Phase II and fails to resume work within 90 days thereafter. The City may cause this Amendment to terminate under this paragraph by following the notice and cure provisions set forth in Section 8.08 of this Amendment. The Developer's obligation to immediately pay all impact fees and/or park fees under this paragraph shall survive the termination of this Amendment."

Section 7. Amendment to Section 4.01 of the Restated Agreement. The entirety of Section 4.01 of the Restated Agreement is replaced with the following:

“4.01. Location and Construction Deadlines. The Apartment Project shall be located within the Property consistent with the concept plan attached hereto as **Exhibit B**. Developer shall Commence Construction on Phase I on or before the 31st day of January, 2023. Developer shall Complete Phase I Construction on or before the 31st day of December, 2024. Developer shall submit an application and pay all associated fees for a building permit for Phase II within six months of the City’s issuance of a Certificate of Occupancy for all buildings required to be constructed in Phase I. Developer shall Commence Construction on Phase II on or before the expiration of three months after the building permits, excluding any grading permit, necessary to commence construction on Phase II are approved and issued by the City. Developer shall Complete Phase II Construction on or before the expiration of 30 months after the building permit(s) for Phase II are approved and issued by the City. Notwithstanding the foregoing or any other provision of this Amendment, Developer may submit an application for Phase I and Phase II simultaneously and in such event “Phase I” as used in this Amendment shall include Phase II for all purposes and the Phase I Incentive Grant and the Phase II Incentive Grant shall be combined and all time periods for commencing and completing construction shall be deemed to be those that pertain to Phase I.”

Section 8. Amendment to Section 4.06 of the Restated Agreement. The entirety of Section 4.06 of the Restated Agreement is replaced with the following:

“4.06. Developer Pays All Fees and Costs. After notice to cure and termination by the City of this Amendment, the Phase I Incentive Grant and Phase II Incentive Grant shall be deemed to have been forfeited, if Developer fails to timely pay, or cause third parties to timely pay its engineering, planning, accounting, architectural, legal fees and expenses, survey, testing, laboratory costs, license fees, development fees, permit fees, land clearing and grading costs, advertising and other bidding costs, amounts due under construction contracts, costs of labor and material, inspection fees, impact fees not included in the Incentive Grant, insurance premiums, bond premiums (if applicable), interest, carry cost, financing fees and all other fees, costs and expenses incurred in connection with the construction of the Public Improvements. If the Phase I Incentive Grant and/or Phase II Incentive Grant is forfeited under this paragraph, Developer, within 30 days of termination under this paragraph, shall pay all impact fees and park fees (“in lieu of fees” and park development fees) that would have at the time of said forfeiture—in the absence of this Amendment—been due and subject to collection in connection with the development of the Property and the Parties will have no further obligations hereunder. The Developer’s obligation to immediately pay all impact fees and/or said park fees under this paragraph shall survive the termination of this Amendment.”

Section 9. Amendment to Section 8.08 of the Restated Agreement. The entirety of Section 8.08 of the Restated Agreement is replaced with the following:

“8.08. Notice of Default. Should the City determine that Developer is in default according to the terms of this Amendment, the City shall notify Developer in writing of the event of default, and provide 60 days from the date of the notice (“Cure Period”) for Developer to cure the event of default; provided, however, that if the breach or default cannot reasonably be cured within such period but diligent efforts to cure promptly commence, then the Cure Period shall continue for a period not to exceed a total of 90 days from the date of the notice. This Section 8.08 does not apply to a default by Developer for failure to timely make the Permit Payment described in Section 2.02 of this Amendment.”

Section 10. Amendment to Section 8.09 of the Restated Agreement. The entirety of Section 8.09 of the Restated Agreement is replaced with the following:

“8.09. Results of Termination by City. If the City terminates this Amendment, the Developer shall pay the City the amount of the Phase I Incentive Grant and/or Phase II Incentive Grant, as applicable, to the extent that the same would have at the time of said termination—in the absence of this Amendment—been due and subject to collection in connection with the development of the Property. If the City acts to collect any amounts due hereunder, Developer shall pay the City its reasonable attorney fees and costs of court to collect amounts found to be due to City. Upon full payment by Developer of all sums due under this Amendment including without limitation liquidated damages, the City and Developer shall have no further obligations to one another under this Amendment. Neither the City nor Developer may be held liable for any special or consequential damages except for any liquidated damages that become due under this Amendment.”

Section 11. Amendment to Section 8.10 of the Restated Agreement. The entirety of Section 8.10 of the Restated Agreement is replaced with the following:

“8.10 This section is intentionally blank.”

Section 12. Amendment to Section 8.25 of the Restated Agreement. The entirety of Section 8.25 of the Restated Agreement is replaced with the following:

“8.25. Recording. The Parties agree that this Amendment and any memorandum or short form of this Amendment may be recorded and that this Amendment shall run with the land. The Parties further agree that any amendment to this Amendment and any memorandum or short form of such amendment may be recorded and that such amendment shall run with the land.”

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

EXECUTED BY THE PARTIES:

ANNA VILLAGE RESIDENTIAL, LTD., a Texas limited partnership

By: **BEALL ANNA GENPAR, LLC**, a Texas limited liability company, its general partner

By: _____
Robert S. Beall, its Manager

State of Texas
County of Collin

Before me, on this day personally appeared Robert S. Beall, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his capacity as Manager of Beall Anna Genpar, LLC in its capacity as general partner for Anna Village Residential, Ltd. for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____ 2022.

Notary – State of Texas

ANNA VILLAGE COMMERCIAL, LTD., a Texas limited partnership

By: **BEALL ANNA GENPAR, LLC**, a Texas limited liability company, its general partner

By: _____
Robert S. Beall, its Manager

State of Texas
County of Collin

Before me, on this day personally appeared Robert S. Beall, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his capacity as Manager of Beall Anna Genpar, LLC in its capacity as general partner for Anna Village Commercial, Ltd. for the purposes and consideration therein expressed.

Given under my hand and seal of office this _____ day of _____ 2022.

Notary – State of Texas

CITY OF ANNA, TEXAS

By: _____
Jim Proce, City Manager

State of Texas
County of Collin

Before me, on this day personally appeared Jim Proce known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same in his capacity as City Manager of the City of Anna, Texas.

Given under my hand and seal of office this _____ day of _____ 2022.

Notary – State of Texas



Item No. 6.k.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Dean Habel

AGENDA ITEM:

Accept an equipment donation to the Anna Police Department from RPS Defense (Police Chief Dean Habel)

SUMMARY:

RPS Defense, a private aviation company located in Addison, TX, contacted the police department and offered to donate safety gear with a total estimated retail value of \$9,000.

FINANCIAL IMPACT:

None

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing: High Performing Professional City

STAFF RECOMMENDATION:

Accept donation

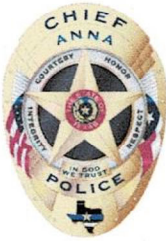
ATTACHMENTS:

1. Donation Memo

APPROVALS:

Dean Habel, Police Chief
Jim Proce, City Manager

Created/Initiated - 11/15/2022
Final Approval - 11/17/2022



**Administrative Division
Anna Police Department**

101 South Powell Parkway
Anna, Texas 75409
T 972.924.2848 | F 972.924.3162
policecomments@annatexas.gov
www.annaTXpolice.org

MEMORANDUM

TO: Chief Dean Habel
FROM: Assistant Chief Foxall *[Signature]*
DATE: November 14, 2022
RE: Donation from RPS Defense

Lt. DeVore was contacted by RPS Defense which is a private aviation services company located in Addison, Texas. RPS Defense advised they had several rifle-rated ballistic vests, rifle-rated ballistic helmets and chemical/biological suits that they wished to donate to the Anna Police Department. The ballistic vests include an outer carrier and rifle-rated ballistic plates however, the ballistic plates are expired. The only request from RPS is that we sign a liability waiver stating we understand the ballistic plates are expired and holding RPS harmless for their use. If approved by City Council, we would take possession of the items late next week or the week after.

Please find below a breakdown of the items and estimated financial cost of the items. The quantity and the value are approximate depending on their available inventory on the day we pick up the items:

Item:	Quantity:	Estimated Value:
Ballistic Helmets	21	\$3,900
Ballistic Vest (carrier only)	21	\$2,000
Chem/Bio Suits	21	\$1,500
Carrying Case	8	\$1,600
Total Value		\$9,000

[Signature]
11-15-2022

SERVICE THROUGH INTEGRITY, COURTESY, HONOR & RESPECT.



Item No. 6.I.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Dalan Walker

AGENDA ITEM:

Approve a Resolution authorizing the City Manager to execute a construction agreement with SPA Skateparks for the construction of a skatepark at Slayter Creek Park. (Neighborhood Services)

SUMMARY:

The design of the skate park at Slayter Creek Park has progressed enough for SPA Skateparks to provide the City with a Guaranteed Maximum Price of \$1.8 million for construction. Tentatively, construction will begin in early April of next year and should be completed by September 2023.

FINANCIAL IMPACT:

The bulk of construction is funded by the 2021 Park Bond in the amount of \$1.5 million. The remaining \$300,000 is funded by the Park Development Fund. Lighting and landscaping will be funded separately.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Principal 5 - Value to Neighbors' Lives
Goal 3 - Anna-Great Place to Live

STAFF RECOMMENDATION:

Staff recommends approval of the construction agreement with SPA Skateparks.

ATTACHMENTS:

1. Resolution for Construction Agreement with SPA Skateparks for Council
2. SPA Skateparks Const Agreement ALL CLARK REDLINES ACCEPTED For Agenda Item

APPROVALS:

Dalan Walker, Parks
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022

CITY OF ANNA, TEXAS

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING A
CONSTRUCTION AGREEMENT WITH TEXAS AND TRANSCEND, INC. D/B/A
SPA SKATEPARKS FOR THE CONSTRUCTION OF A SKATEPARK AT
SLAYTER CREEK PARK.**

WHEREAS, the City Council of the City of Anna, Texas, ("City Council") finds that the construction agreement with SPA Skateparks is instrumental and necessary to the construction of a skatepark at Slayter Creek Park; and

WHEREAS, the City Council considers the skatepark to be beneficial to the neighbors of Anna, Texas, meeting several goals and objectives set forth in the Strategic Plan adopted by City Council; and

WHEREAS, the City Council approves the proposed construction agreement with SPA Skateparks to include the following Guaranteed Maximum Price:

"The total amount for fiscal year 2023: \$1,800,000.

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

Section 1. Recitals Incorporated.

The recitals above are incorporated herein as if set forth in full for all purposes as set forth in full.

Section 2. Approval and Authorization of Agreement.

The City Council hereby approves the extension attached hereto as Exhibit 1 to enter into a construction agreement with SPA Skateparks and ratifies and approves the City Manager's execution of the same. The City Manager is hereby authorized to execute all documents and to take all other actions necessary to finalize and enforce the construction agreement with SPA Skateparks.

PASSED, APPROVED, AND ADOPTED on first and final reading on this 22nd day of November 2022.

ATTEST:

APPROVED:

City Secretary, Carrie Land

Mayor, Nate Pike

**AGREEMENT BETWEEN CITY OF ANNA, TEXAS
AND TRANSCEND, INC. D/B/A SPA SKATEPARKS**

THIS AGREEMENT BETWEEN THE CITY OF ANNA, TEXAS AND TRANSCEND, INC. D/B/A SPA SKATEPARKS (this "Agreement") is made and entered into effective as of the 24th of October 2022 and between THE CITY OF ANNA, TEXAS (the "City"), and TRANSCEND, INC. D/B/A SPA SKATEPARKS ("Contractor").

W I T N E S S E T H:

A. The City owns certain real property, with improvements situated thereon, located at 111 N Powell Parkway, Anna, TX 75409 and known locally as Slayter Creek Park (the "Property").

B. The City desires to have certain improvements constructed on the Property consisting of a new Skatepark, including the creation of a paved skateboard area to include a paved bowl and/or street style elements (the "Improvements"), such Improvements to be constructed in accordance with the Plans and Specifications hereinafter described.

C. Contractor desires to serve as the original or general contractor for the aforementioned construction project (the "Project") for purposes of furnishing the necessary labor and materials (collectively, the "Work," as more specifically detailed in the Scope of Work, which is attached hereto as Exhibit A and incorporated herein by reference for all purposes) to be utilized in the construction of such Improvements, and Contractor shall, subject to and in accordance with the terms and provisions of this Agreement, supervise the construction of, purchase the materials and furnish the equipment necessary to timely complete, the Project.

NOW, THEREFORE, for and in consideration of the premises, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, the City and Contractor hereby agree as follows:

1. Subcontractors. All portions of the Work not performed directly by Contractor or Contractor's employees shall be performed under subcontracts that shall be subject to, and will conform with the requirements of this Agreement and the other Contract Documents. To the extent required by law all work shall be performed by individuals duly licensed and authorized by law to perform said Work. Contractor shall furnish to the City a written list identifying all subcontractors Contractor proposes to use for the Work to be performed hereunder, if any. The Contractor shall assume the obligation to pay for and control the work performed by subcontractors, if any.

2. Construction Work; City to Provide Utilities for the Work. Contractor shall, in a good and workmanlike manner and in accordance with this Agreement, prosecute and perform the Work necessary to construct the Improvements described in and reflected on the Plans and Specifications. All work shall be completed in a workmanship like manner and in compliance with all building codes and other applicable laws. Contractor understands and acknowledges that the City is entering into this Agreement in reliance upon Contractor's special skill and abilities in

performing the Work hereunder. Contractor has visited the Project site and immediately adjacent areas and has become familiar with the local conditions under which the Work is to be performed. Contractor shall supervise and direct the Work to be performed in connection with the construction of the Improvements upon the Property and the completion of the Project using Contractor's best efforts, skill, judgment, abilities and attention, and Contractor shall be solely responsible for all fabrication, shipment, delivery and installation means, methods, techniques, sequences and procedures, and for coordinating and implementing all portions of the Work to be performed under this Agreement. The City will provide temporary water and electricity utilities at no cost to the Contractor for the purpose of the Work. The City will furnish Contractor temporary water and electricity service connections to within 150 feet of the Work. Contractor will utilize the temporary water and electricity service solely the benefit of the Work. Contractor will cooperate with the City and any of the City's separate or other contractors or laborers whose work might interfere with the Work to be performed by Contractor hereunder, and Contractor shall, as requested by the City, participate in the preparation of coordinated plans and schedules to alleviate any such interference or congestion. Contractor shall provide and pay for all labor, materials, equipment, tools, machinery, transportation, storage and other facilities and services necessary for the proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Project. Contractor shall at all times enforce strict discipline and good order among Contractor's employees and shall not employ on the Project any unfit person or anyone not skilled in the task assigned them. Contractor will clean up and haul away all debris resulting from the performance of the Work hereunder and will at all times keep and leave the Project in as clean and orderly condition as the circumstances will permit. All materials, equipment, furnishings and fixtures incorporated in the Work will be new unless otherwise specified, and all Work to be performed hereunder will be of a good quality, free from faults and defects, and in conformance with the documents referenced herein as the "Contract Documents," which consist solely of the following: (i) this Agreement, any written amendments hereto, and the exhibits attached hereto; (ii) the plans and specifications by New Line Skateparks Inc. dated the [REDACTED] day of [REDACTED] [REDACTED] (the "Plans and Specifications"); (iii) the Budget; and (iv) any change orders approved by the City and Contractor in writing in accordance with Paragraph 8.

3. Adequate Safety Precautions. Hazardous Substances. Differing Site Conditions

- (a) Adequate Safety Precautions. Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of its obligations pursuant to this Agreement. Contractor shall take reasonable precautions for the safety of, and shall provide reasonable protection to prevent damage, injury or loss to, (a) employees at the Project and other persons who may be affected thereby, (b) the Work and all materials and equipment to be incorporated therein, whether in storage on or off the Project site, and (c) all other property at the Project site or adjacent thereto, such as trees, shrubs, walkways, pavement, driveways, streets and utilities not designated for removal, relocation or replacement during the course of construction. Contractor shall erect and maintain, as may be dictated by the conditions surrounding the performance of the Work, reasonable safeguards for the safety and protection of all

Page 2 of 19

persons and property, including, without limitation, posting danger signs and warnings against potential hazards, promulgating safety regulations, and installing and maintaining safety and silt fencing around the perimeter of the Project site, if necessary. If and to the extent any hazardous materials or equipment or other unusual methods become necessary for the execution of the Work, Contractor shall exercise utmost care and carry on such activities under the supervision of properly qualified personnel. The City shall be responsible for regulating access to the Project site, and for excluding the City's guests, employees and the public from the Project site during the period when the Work is being performed, provided that Contractor shall cooperate with such efforts.

- (b) Hazardous Substances. In the event Contractor encounters on the Property any Hazardous Substances (defined below) that Contractor knows, or reasonably believes, to be a Hazardous Substance which has not been rendered harmless, Contractor shall immediately stop Work in the affected area, report the condition to City in writing, and, if required by applicable legal requirements, report the condition to all government or quasi-government entities with jurisdiction over the Project or Property. The Work in the affected area shall thereafter be resumed in the absence of a Hazardous Substance, or when it has been rendered harmless by City or, if reasonably disputed, by written agreement of City and Contractor. Contractor will not be required to perform, without Contractor's consent, any Work relating to Hazardous Substances existing on the Property and not placed on the Property by Contractor, a Subcontractor, or any other person or party acting by, through, at the direction of, or under the authority of any of them (a "City Hazardous Substance"). Contractor will be entitled, in accordance with the Agreement, or as mutually agreed by City and Contractor, to an adjustment in the Contract Price and/or Contract Times to the extent Contractor's cost and/or time of performance have been adversely impacted by the presence of Hazardous Substances. To the fullest extent permitted by law, City shall indemnify, defend and hold harmless Contractor, Subcontractors, anyone employed directly or indirectly by any of them, and their officers, directors, employees and agents (collectively, the "Contractor Indemnitees") from and against any and all claims, losses, damages, liabilities and expenses, including reasonable attorneys' fees and expenses, arising out of or resulting from the performance of the Work in the affected area if, in fact, the material is a City Hazardous Substance, and provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including loss of use resulting therefrom, but not if caused by the negligent, grossly negligent willful conduct, or omissions of Contractor, anyone directly or indirectly employed by Contractor or anyone for whose acts Contractor may be liable. To the fullest extent permitted by law, Contractor shall indemnify, defend and hold harmless City, its officers,

directors, employees, agents, consultants, and representatives (collectively, the "City Indemnitees") from and against claims, damages, losses and expenses, including but not limited to attorney's fees, arising out of or resulting from any Hazardous Substance provided by, through, or under Contractor ("Contractor Hazardous Substances"), provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease, or death, or to injury to or destruction of tangible property including loss of use resulting therefrom, but not if caused by the negligent, grossly negligent willful conduct, or omissions of City, anyone directly or indirectly employed by City or anyone for whose acts City may be liable. "Hazardous Substances" are defined as (a) any "hazardous waste" or "regulated substance" as defined by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. Section 6901 et seq.), as amended from time to time, and regulations promulgated thereunder; (b) any "hazardous substance" as defined by the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (42 U.S.C. Section 9601 et seq.) ("CERCLA"), as amended from time to time, and regulations promulgated thereunder; (c) any "toxic substance" as defined by the Toxic Substance Control Act (15 U.S.C. Section 2601 et seq.), Texas Water Quality Act (Tex. Water Code Ann. Sections 26.001-225), Texas Solid Waste Disposal Act (Tex. Rev. Civ. Stat. Ann. art. 4477-7), Texas Clear Air Act (Tex. Rev. Civ. Stat. Ann. art. 4477-5), and Texas Hazardous Substance and Spill Prevention and Control Act (Tex. Water Code Ann. Sections 26.261-268), as amended from time to time, and any regulations promulgated thereunder; (d) asbestos or "asbestos containing materials" defined in the National Emissions Standards for Asbestos (40 C.F.R. Section 61.140 et seq.); (e) polychlorinated biphenyls; (f) underground storage tanks, whether empty, filled or partially filled with any substance; (g) any substance the presence of which on the Site is prohibited by any governmental requirements; and (h) any other substance which is deemed to be hazardous under applicable legal requirements or which by any governmental requirements requires special handling or notification of any federal, state or local governmental entity in its collection, storage, transportation, treatment or disposal.

- (c) Differing Site Conditions. Concealed or latent physical conditions or subsurface conditions at the Property that (i) materially differ from the conditions indicated in the Contract Documents or (ii) are of an unusual nature, differing materially from the conditions ordinarily encountered and generally recognized as inherent in the Work are collectively referred to herein as "Differing Site Conditions." If Contractor encounters a Differing Site Condition, Contractor will be entitled to an adjustment in the Contract Price and/or Contract Times to the extent Contractor's cost and/or time of performance are adversely impacted by the Differing Site Condition. Upon encountering a Differing Site Condition, Contractor shall provide prompt written notice to Owner of such condition, which notice shall not be later

than five (5) days after such condition has been encountered. In any event other than emergency circumstances, Contractor shall provide such notice before the Differing Site Condition has been substantially disturbed or altered.

4. Commencement and Completion of Work; Mobilization Fee. Contractor shall commence the Work promptly upon receiving a Notice to Proceed from the City, it being understood that the City shall not unreasonably withhold the Notice to Proceed. At the time the Notice to Proceed is issued by the City, the City shall pay to Contractor a Mobilization Fee in an amount equal to ten percent (10%) of the total Budget for the Work. At Contractor's sole risk, Contractor may commence preparing for the Work at the Property prior to receiving the Notice to Proceed, subject to the terms of this Agreement, provided that no such Work preparation shall occur at the Property unless pursuant to written instructions from the City to Contractor. The City will obtain any required permits and licenses prior to commencement of construction, with Contractor's reasonable assistance, if requested. Contractor will, from and after the date on which construction commences, diligently and continuously perform and prosecute the Work to its completion in accordance with the Contract Documents and shall use its best efforts to achieve final completion of the entire Project within three hundred (300) business days after Contractor's receipt of the City's Notice to Proceed (such date of required completion being referred to herein as the "Scheduled Completion Date"). Notwithstanding any provision contained herein which could be construed to the contrary, final completion of the Project (herein called "Completion of the Project") shall not be deemed to have occurred until and unless (a) construction thereof is sufficiently complete so that the Project may be used by the City for its intended purpose, subject only to minor "punch list"-type items, (b) all required permits, licenses, certificates of compliance, certificates of occupancy and other approvals from the applicable governmental authorities exercising jurisdiction over the Project shall have been issued, (c) all utilities necessary to service the Improvements have been connected and are available for immediate use and (d) the City shall have conducted an inspection of the Project, shall have reasonably approved of same, and shall have reasonably determined that all Work has been completed substantially in compliance with the Contract Documents, subject only to completion of punch-list items, if any. Within ten (10) days of notice from Contractor that Completion has occurred, the City and Contractor shall inspect the Work for purposes of creating a list of punch-list items. Upon Completion of the Project, if requested by the City, Contractor shall join with the City in the execution of an Affidavit of Completion (herein so called) or similar instrument evidencing Completion of the Project; provided, however, that any failure or refusal on the part of Contractor to execute such Affidavit of Completion upon Completion of the Project shall not prejudice the right of the City to unilaterally execute such Affidavit of Completion and cause the same to immediately be filed of record in the county in which the Property is located.

5. Force Majeure. Contractor shall be excused from performance entirely or in part, or for the period of any delay in performance of any obligations hereunder when it is prevented from doing so by the wrongful or negligent acts or omissions of the City or by causes beyond either party's control, which shall include all labor disputes, civil disturbance, war, warlike operations, invasions, rebellion, hostilities, military or usurped power, sabotage, governmental orders, regulations or controls, fires or other casualties, adverse weather conditions, or acts of God. In the event that Contractor claims any cause for delay under this paragraph, Contractor shall

Page 5 of 19

immediately provide written notice to the City and shall resume its obligations under this Agreement in full immediately after such cause ceases. During the period of any delay under this paragraph, Contractor shall provide to the City—at least once every 14 days—a written update detailing all efforts made by Contractor to be able to perform its obligations under this Agreement and the extent to which such cause for delay continues to endure.

6. Contractor's Fee. For and in consideration of the faithful performance of this Contract in accordance with all terms herein contained, the City agrees to pay the total construction cost of the Work as set forth in the Budget in the amount of **one million eight hundred thousand dollars (\$1,800,000.00)** inclusive of the specific payments made to Contractor as provided above. Such fee will be paid by the City to Contractor as the Work progresses as described in Paragraph 8 below. Contractor shall be entitled to no other compensation for the Work to be performed hereunder, and Contractor expressly covenants and agrees that all expenses incurred by Contractor in the conduct of its activities and the performance of its obligations and services hereunder shall be borne exclusively by Contractor (even if at variance with the Budget), and Contractor shall be solely responsible for the payment of same. Contractor understands and agrees that Contractor shall not be entitled to any benefits not expressly specified in this Agreement.

7. Changes in the Work. No change, modification, addition, deletion or other revision to the Work and/or the Contract Documents in furtherance of the Project shall be valid, binding or effective unless a written change order approved by the City and signed by the City and Contractor shall authorize the same. In the event of any such written change order approved by the City and signed by the City and Contractor, the value of the labor or materials, or both, added or omitted from the Work to be performed in furtherance of the Project shall be computed and determined by Contractor, subject to the written approval and acceptance by the City, and the amount so determined shall be added to or deducted from the Budget. Contractor shall have no claim for additional work performed by Contractor unless such work has been done pursuant to a written change order approved by, and signed by The City and Contractor. If, as the result of any valid change order effected pursuant to the provisions of this Paragraph 8, the applicable changes in the Work may reasonably be expected to delay Contractor in achieving Completion of the Project, the City and Contractor may agree and stipulate in the written change order itself that the Scheduled Completion Date will be extended by the appropriate number of days corresponding to the anticipated delay. However, absent any such stipulation in the change order serving to extend the Scheduled Completion Date, the Scheduled Completion Date shall not be deemed to be extended and Contractor will be expected to achieve Completion of the Project (including those portions of the Work covered by the change order) on or prior to the Scheduled Completion Date.

8. Progress Payments. All payments to Contractor hereunder shall be made on a work-in-place basis following inspection and approval by the City, such approval not to be unreasonably withheld. Every four (4) weeks or less during the progress of construction, Contractor will submit to the City an application for payment (referred to herein as an "Application for Payment") covering the portion of the Work performed (and materials used) for which payment has not been previously made. Each such Application for Payment shall be in form and substance reasonably satisfactory to the City and shall include, without limitation, (a) the amount due for the Work performed for which Contractor is requesting payment, (b) a reasonably detailed breakdown and itemization of such Work and the amount due, (c) the percentage of completion of the Work

performed, (d) the sum of all prior payments made from the City to Contractor hereunder and (e) such other information and attachments as shall be reasonably required by the City for purposes of evaluating the Work performed for which Contractor is requesting payment. At the time Contractor submits an Application for Payment to the City, if requested by the City, Contractor will also provide to the City true, correct and legible copies of all invoices and bills for labor and materials incorporated in the Work and which are to be paid from the proceeds of the payment to be made by the City at such time. Within five (5) business days following the timely submission of an Application for Payment by Contractor to the City, the City shall provide notice to Contractor stating either (1) that the Application for Payment as submitted by Contractor has been approved by the City, or (2) that payment will be withheld until Contractor shall perform such corrective measures as shall reasonably be specified by the City to ensure that the Work performed for which payment is to be made conforms in all substantive respects to the Contract Documents. Within ten (10) business days following the City's receipt of the Application for Payment or, as applicable, within two (2) business days after Contractor's completion of such corrective measures as shall have been reasonably identified by the City as aforesaid, and subject to the other provisions of this Agreement, the City shall make payment to Contractor.

9. Effect of Application for Payment. Each Application for Payment made from Contractor to the City hereunder shall be deemed a representation and warranty by Contractor to the City that, as of the date of such Application for Payment, (a) there exists no Event of Default (as hereinafter defined) and no event or condition that, with notice or lapse of time, or both, would constitute an Event of Default, (b) there has been no material variance from the Contract Documents with respect to the Work performed through the date of such Application for Payment and (c) all Work performed in furtherance of the construction of the Improvements at the then current state of construction has been done in a good and workmanlike manner, and all materials, equipment, furnishings and fixtures usually furnished and installed at such time have been so furnished and installed in a good and workmanlike manner.

10. Retainage. During the period in which the Work is being performed and for thirty (30) days thereafter, the City shall retain five percent (5%) of the amounts paid by the City under Paragraph 6 above (the "Retainage"). Subject to the provisions of this Agreement, such Retainage as aforesaid will be advanced to Contractor as the final payment hereunder upon the later of (i) the expiration of thirty-one (31) days following Completion of the Project or (ii) Contractor's completion of the punch-list items referred to in Paragraph 4 above.

11. Withholding of Payments. Notwithstanding any provision contained herein which could be construed to the contrary, the City shall not be obligated to make any payment to Contractor hereunder (whether a progress payment or the final payment) if any one or more of the following conditions exist:

(a) An Event of Default, or any event or condition which, with notice or lapse of time, or both, would constitute an Event of Default, has occurred;

12. Inspection by the City. The City shall have the right, but not the obligation, at any time and from time to time during construction of the Improvements to inspect the progress of the Work and to ensure that the same is being prosecuted and performed fully in accordance with the

Contract Documents; provided, however, no inspection made by the City shall relieve Contractor of any of its obligations hereunder, including, without limitation, Contractor's obligations to correct defects in the Work and to provide the warranties set forth in this Agreement. In addition, the City, at its own expense, shall have the right, but not the obligation, to appoint a person or firm with architectural and/or engineering expertise (for convenience, referred to herein as the "City's Architect") to observe, inspect and monitor the Work performed hereunder and the progress of construction at the Project. Contractor covenants and agrees that the City's Architect shall be permitted to visit and be on the Project from time to time for such purposes and Contractor shall use its best efforts to cooperate fully with the City's Architect in the performance of its duties and to supply the City's Architect with such materials and information as the City's Architect may reasonably request for such purposes.

13. Correction of Work. All Work not conforming to the requirements of the Contract Documents, or which is rejected by any governmental authority, will be considered defective. Contractor shall promptly correct defects in the Work, whether observed before or after Completion of the Project and whether or not fabricated, installed or completed. Contractor shall bear all costs and expenses of correcting defective Work. The City may correct any defective Work (a) which Contractor does not undertake to correct within ten (10) days following written notice from the City to Contractor of the need for such correction or which Contractor thereafter fails to continue to correct with due diligence, or (b) without notice, in the case of an emergency. In the event the City undertakes to correct defects in the Work as aforesaid, Contractor shall reimburse the City for all costs and expenses reasonably incurred in connection therewith promptly on demand, supported by reasonable documentation of such costs and expenses. The provisions of this paragraph will apply to Work done or furnished by Contractor or its employees. If the City, in its sole and absolute discretion and without any obligation to do so, elects to accept Work which is defective, then the City may do so instead of requiring its correction, in which case the fee payable to Contractor under Paragraph 6 above will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made to Contractor hereunder.

14. No Liens. As the Project is a public work and the Work is to be performed only on public property, the Contractor is not permitted to fix any type of lien on the City's property.

15. Contractor's Representative. Yann Curtis ("Curtis") is hereby designated as the person in charge of the Work to be performed by Contractor under this Agreement. Curtis will participate in and will at all times be completely familiar with the performance by Contractor of the Work hereunder and will serve as the Contractor's point of contact between the City and Contractor.

16. Communications With the City. As to any matter on which the City's input shall be required hereunder, Contractor shall provide the City with all necessary materials and information from which the City may formulate its input and thereafter provide the City with a reasonable opportunity to respond. Upon request by the City, Contractor shall prepare and distribute minutes of all meetings and conferences held with the City to the participants of such meetings and conferences indicating Contractor's interpretation of the decisions reached and actions to be taken resulting therefrom.

17. Bonds. Contractor shall provide performance and payment bonds executed with a surety company authorized to do business in the State of Texas. Such bonds shall be furnished in full accordance with Texas Government Code, Chapter 2253. Further, Contractor, or Contractor's subcontractors, for each part of the Improvements, must execute and deliver a maintenance bond naming the City as the obligee that guarantees the full costs of any repairs that may become necessary to any part of the Work performed or Improvements constructed in connection with the Project, arising from defective workmanship or materials used therein, for a full period of two (2) years from the date of Completion of the Project.

18. Insurance. Contractor shall acquire and maintain, during the period of time when any part of the Project is under construction or Work is being performed (and until Completion of Project and completion of all punch-list items): (a) workers compensation insurance in the amount required by law; and (b) commercial general liability insurance including personal injury liability, premises operations liability, and contractual liability, covering, but not limited to, the liability assumed under any indemnification provisions of this Agreement, with limits of liability for bodily injury, death and property damage of not less than \$1,000,000.00. Such insurance shall also cover any and all claims which might arise out of the Work or Project construction contracts, whether by Contractor, a contractor, subcontractor, material man, or otherwise. Coverage must be on a "per occurrence" basis. All such insurance shall: (i) be issued by a carrier which is rated "A-1" or better by A.M. Best's Key Rating Guide and licensed to do business in the State of Texas; and (ii) name the City as an additional insured and contain a waiver of subrogation endorsement in favor of the City. Before commencing the Work, Contractor shall provide to the City certificates of insurance evidencing such insurance coverage together with the declaration of such policies, along with the endorsement naming the City as an additional insured. Each such policy shall provide that, at least 30 days prior to the cancellation, non-renewal or modification of the same, the City shall receive written notice of such cancellation, non-renewal or modification.

19. Warranties Concerning Improvements. Contractor warrants and represents to the City that the Work performed in connection with the construction of the Improvements shall be done in a timely, good and workmanlike manner and in accordance with the Contract Documents. Contractor covenants and warrants that title to all work, materials and equipment incorporated in the Work will pass to the City free and clear of all liens, claims, security interests or encumbrances. In addition, Contractor will obtain and provide, for the benefit of the City and its assigns, all customary warranties and guarantees in regard to any materials, equipment, furnishings and fixtures incorporated in the Work.

20. Compliance With Laws; Payment of Taxes. Contractor warrants and represents to the City that the Project and all Work to be performed in connection therewith and in furtherance thereof shall conform to all applicable federal, state and/or local or municipal laws, rules, regulations, codes and ordinances and with those of any other governmental or quasi-governmental body having jurisdiction over the Project, or any portion thereof. Contractor has reviewed the Plans and Specifications and is satisfied that they do not call for construction that would violate such laws, rules, etc. Contractor will pay all employment, social security and other taxes imposed upon it as an employer in connection with its performance of this Agreement and will furnish evidence, when requested by the City, showing that payment of all such taxes has been made. Contractor shall pay timely when due all applicable local, state and federal taxes in connection

with the Work to be performed hereunder and Contractor's business operations generally. City is sales tax-exempt. Accordingly, no sales or use tax will be included in the Contract Price or otherwise charged to City under this Agreement.

21. Indemnity. To the fullest extent permitted by law, Contractor shall defend, indemnify and hold harmless The City, and its officer, officials, agents, employees and representatives, from and against any and all claims, causes of action, damages, losses and expenses of any nature whatsoever, including, without limitation, court costs, attorneys' fees and related legal expenses, arising out of or resulting from any material defects in the Work or any negligence, gross negligence, or other wrongful conduct or omissions in the performance of the Work hereunder or occurring in connection therewith. Without limiting the generality of the preceding sentence, Contractor understands and acknowledges that the indemnity provided pursuant to this paragraph shall extend to and cover, and Contractor shall accordingly defend, indemnify and hold harmless the City, its officers, officials, agents, employees and representatives, from and against, any and all claims, causes of action, damages, losses and expenses of any nature whatsoever brought or asserted by any person or party whomsoever (including, without limitation, any third party purchaser of the Project) arising out of or resulting from defects in the Work. Such obligations of indemnity on the part of Contractor hereunder shall survive the expiration or any termination of this Agreement.

22. Default by the City and Contractor's Remedies. If the City fails to make payment to Contractor hereunder for a period of ten (10) days after the date on which such payment became due pursuant to the provisions hereof, Contractor may, upon seven (7) additional days' written notice to the City, in addition to any other remedies which may be available to Contractor, (a) bring a suit at law against the City for recovery of sums due Contractor and/or (b) discontinue the performance of the Work hereunder until such time as the appropriate payment is received by Contractor. All payments not made timely hereunder shall bear interest, without the necessity of demand or presentment, which are hereby waived, from the date due at the rate of eight percent (8%) per annum or the maximum rate of interest allowed by applicable federal or state law. No waiver by Contractor of any of its rights or remedies hereunder shall be considered a waiver of any other or subsequent right or remedy of Contractor, and no delay or omission in the exercise or enforcement by Contractor of any rights or remedies shall ever be construed as a waiver of any right or remedy of Contractor.

23. Default by Contractor. Any one or more of the following shall constitute an event of default ("Event of Default") by Contractor hereunder:

(a) The breach by Contractor of any warranty or representation contained herein;

(b) The failure of Contractor to perform or observe any term, provision, covenant, agreement or condition contained herein or in any of the other Contract Documents and the continuance of such failure for five (5) days following written notice thereof from the City to Contractor, except that if the nature of the particular failure on the part of Contractor is such that, by its nature, cannot be cured, the City shall not be required to give Contractor notice of such failure, and such failure shall constitute an Event of Default immediately upon its occurrence;

- (c) The insolvency of Contractor;
- (d) The appointment of a receiver of Contractor, or of all or any substantial part of its property, and the failure of such receiver to be discharged within thirty (30) days thereafter;
- (e) The admission by Contractor in writing of its inability to pay its debts generally as they become due;
- (f) The execution by Contractor of an assignment for the benefit of its creditors;
- (g) The filing by or against Contractor of a petition to be adjudged a bankrupt, or a petition or answer seeking reorganization or admitting the material allegations of a petition filed against it in any bankruptcy or reorganization proceeding, or the act of Contractor in instituting or voluntarily being or becoming a party to any other judicial proceeding intended to effect a discharge of the debts of Contractor, in whole or in part, or a postponement of the maturity or the collection thereof, or a suspension of any other rights or powers granted to The City herein or in any other documents executed in connection herewith;
- (h) The failure of Contractor to pay any money judgment against it before the expiration of thirty (30) days after such judgment becomes final and no longer appealable; or
- (i) The failure of any attachment, sequestration or similar proceeding against any of Contractor's property to remain undischarged or unbonded by Contractor, or undismissed, for a period of thirty (30) days after the commencement thereof.

24. The City's Remedies. Without limitation of the right of the City to all remedies available to the City as otherwise provided herein, at law and/or in equity, upon the occurrence of an Event of Default, the City, at its option, without any further notice or demand whatsoever, which are hereby waived, may perform such acts or expend such sums as shall be reasonably necessary to remedy any such Event of Default and may deduct the cost thereof from payments then or thereafter due Contractor hereunder. Upon the occurrence of an Event of Default, at the City's option, and without prejudice to any other remedy the City may have, the City may terminate this Agreement and may finish the Work by whatever method the City may deem expedient, and to the extent the costs thereof shall reasonably exceed those which would have otherwise become due to Contractor hereunder had Contractor timely and properly performed its obligations under this Agreement, Contractor shall pay and reimburse the City on demand for such costs, together with interest thereon calculated at the lesser of (i) the maximum rate of interest allowed by applicable federal or state law or (ii) eight percent (8%) per annum. All rights and remedies of the City hereunder are cumulative of each other and of every other right or remedy which the City may otherwise have at law or in equity, and the exercise of one or more rights or remedies by the City shall not prejudice or impair the concurrent or subsequent exercise of other rights or remedies. No waiver by the City of any of its rights or remedies hereunder shall be considered a waiver of any other or subsequent right or remedy of the City, and no delay or omission in the exercise or enforcement by the City of any rights or remedies shall ever be construed as a waiver of any right or remedy of the City.

25. Collection Rights. With respect to any sums or charges which may become due from one party to the other pursuant to the provisions of this Agreement, the party to whom such sums are due shall have all rights and remedies available at law or in equity to collect such sums or charges, including, without limitation, the right to set off any such sums or charges against payments becoming due to the other party hereunder.

26. Termination by the City. Notwithstanding any provision contained in this Agreement which could be construed to the contrary, and irrespective of whether there shall have occurred an Event of Default, the City may terminate this Agreement at any time effective upon ten (10) days' written notice to Contractor of such termination, whereupon neither party shall have any further liability or obligation to the other hereunder, except as otherwise expressly provided herein. In the event of any such termination by the City pursuant to this provision, Contractor shall be entitled to be paid for Work performed hereunder as of the date of termination (including Contractor's fee hereunder earned as of such date), together with Contractor's actual and provable costs and/or losses with respect to materials, equipment, tools and storage, including profit and overhead, mobilization, demobilization and if there is no Event of Default, reasonable lost opportunity costs. In the event the City and Contractor are unable to agree upon the amount to be paid as a result of any such termination within ten (10) days after termination, the City and Contractor shall jointly obtain, at the City's own expense, a mutually selected Professional Engineer to form and deliver to the City and Contractor a sealed opinion of the amount due in consideration of all circumstances surrounding the termination and shall make payment accordingly. Such an Engineer shall be independent and unbiased, representing both the City and Contractor equally. In such event, in addition to any other remedies available to Contractor, Contractor shall have all the remedies available for other payment claims under Paragraph 22 above.

27. Special Circumstances – Right Of Termination. Should there be a rise in the cost of any specified construction material or materials, exclusive of any other price changes, that would cause the total contract price to increase by more than ten percent (10%), Contractor shall, before making any additional purchases of specified material or materials, provide to the City a written statement expressing the percentage increase of the contract price, the construction material or materials in question, and the dollar amount of the price increase to be incurred. The City may then, at its option, terminate the contract by providing within 10 business days both written notice of termination to Contractor, and payment to Contractor for the Work performed hereunder as of the date of termination (including Contractor's fee hereunder earned as of such date), together with Contractor's actual and provable costs and/or losses with respect to materials, equipment, tools and storage, including profit and overhead, mobilization, demobilization and if there is no Event of Default, reasonable lost opportunity costs. In the event the City and Contractor are unable to agree upon the amount to be paid as a result of any such termination within 10 business days after termination, The City and Contractor shall jointly obtain, at the City's own expense, a mutually selected Professional Engineer to form and deliver to the City and Contractor a sealed opinion of the amount due in consideration of all circumstances surrounding the termination and shall make payment accordingly. Such an Engineer shall be independent and unbiased, representing both the City and Contractor. In such event, in addition to any other remedies available to Contractor, Contractor shall have all the remedies available for other payment claims under Paragraph 25 above. Should the City not send notice of termination within 10 business days, as provided herein,

Page 12 of 19

Contractor shall have the option to terminate the contract, or to proceed with the contract and purchase the specified construction materials at the increased price. If Contractor elects to proceed on the contract, it may then purchase the specified construction material or materials at the increased price, and the City shall be required to pay the increased cost incurred.

If termination is elected pursuant to this paragraph by Contractor, Contractor shall provide to the City a written notice of termination, and the City shall be required to pay Contractor for the Work performed hereunder as of the date of termination (including Contractor's fee hereunder earned as of such date), together with Contractor's actual and provable costs and/or losses with respect to materials, equipment, tools and storage, including profit and overhead, mobilization, demobilization and if there is no Event of Default, reasonable lost opportunity costs. In the event The City and Contractor are unable to agree upon the amount to be paid as a result of any such termination within ten (10) days after termination, The City and Contractor shall jointly obtain, at the City's own expense, a mutually selected Professional Engineer to form and deliver to The City and Contractor a sealed opinion of the amount due in consideration of all circumstances surrounding the termination and shall make payment accordingly. Such an Engineer shall be independent and unbiased, representing both the City and Contractor. In such event, in addition to any other remedies available to Contractor, Contractor shall have all the remedies available for other payment claims under Paragraph 25 above.

28. Independent Contractor. It is understood and agreed that the relationship of Contractor to the City shall be that of an independent contractor. At no time shall the City have any control over or charge of Contractor's design, construction or installation of any part of the Work or the Project, nor the means, methods, techniques, sequences or procedures utilized for said design, construction or installation. Nothing contained herein shall be deemed or construed to (a) make Contractor the agent, servant or employee of the City, or (b) create any partnership, joint venture or other association between the City and Contractor. Contractor shall not have the right to bind the City to any obligations whatsoever, and this Agreement shall not be construed to make the City liable to any person or party for debts or claims of any character accruing to them against Contractor.

29. Notices. Notices to be given by either party hereto shall be in writing and shall be deemed to have been served, given and received (a) if hand delivered, when delivered in person to the address set forth hereinafter for the party to whom notice is given, or (b) if mailed, when placed in the United States mail, postage prepaid, by certified mail, return receipt requested, properly addressed to the party to whom notice is given at the address hereinafter specified. Until changed by written notice, the parties' addresses for notices are as set forth on the signature page(s) attached hereto.

30. Assignment. Without the prior written consent of the City, Contractor shall not assign any of its rights or delegate any of its duties hereunder. Any such attempted assignment or delegation, without the prior written consent of the City as aforesaid, shall be null and void. The City may assign its rights and obligations under this Agreement from time to time to any third party provided such third party assignee expressly assumes the City's obligations hereunder, provided that the City shall not be released by any such assignment from the performance of any obligations hereunder.

31. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective heirs, legal representatives, successors and permitted assigns.

32. Time of Essence. Time is of the essence of this Agreement and any breach of same shall go to the essence thereof, and Contractor, in agreeing to use its best efforts to complete the Work within the time period prescribed herein, has taken into consideration and made allowances for common and foreseeable hindrances incident to the Work to be performed hereunder.

33. Attorneys' Fees. Should any party bring suit against the other party concerning matters arising out of this Agreement, the prevailing party shall be entitled to recover from the other party court costs, reasonable attorneys' fees and related legal expenses incurred in connection with such suit.

34. Applicable Law. This Agreement is to be governed and construed under the laws of the State of Texas, Collin County and the laws of the United States applicable to transactions in Texas. All of the obligations contained in this Agreement are and shall be performable in the county where the Property is located and exclusive venue of any claims or any litigation or other legal proceedings shall be in the state district courts of Collin County, Texas.

35. Entire Agreement. This Agreement constitutes the entire agreement and understanding, and supersedes all prior agreements and understandings, if any, whether written or oral, between the City and Contractor concerning the subject matter hereof, and there are no other covenants, agreements, promises, terms, provisions, conditions, undertakings or understandings, either oral or written, between them concerning the subject matter of this Agreement other than those expressly set forth herein. No subsequent alteration, amendment, change, deletion or addition to this Agreement shall be binding upon the City or Contractor unless in writing and signed by both parties to this Agreement.

36. Headings. The headings, captions, numbering system, etc., are inserted only as a matter of convenience and under no circumstances will they be considered in interpreting the provisions of this Agreement.

37. Singular and Plural; Gender. Where required for proper interpretation, words in the singular shall mean the plural, and vice versa; the masculine gender shall include the neuter and the feminine, and vice versa.

38. Unenforceable or Inapplicable Provisions. If any provision hereof is for any reason unenforceable or inapplicable, the other provisions hereof will remain in full force and effect in the same manner as if such unenforceable or inapplicable provision had never been contained herein.

39. Counterparts. This Agreement may be executed in any number of counterparts, each of which will for all purposes be deemed to be an original, and all of which are identical.

40. Construction. The parties hereto each acknowledge and agree that this Agreement shall be construed without presumption of any rule requiring construction to be made against the party causing same to be drafted.

41. Authority. Each person executing this Agreement, by their execution hereof, represents and warrants that they are fully authorized to do so, and that no further action or consent on the part of the party for whom they are acting is required to the effectiveness and enforceability of this Agreement against such party following such execution.

42. Anti-Boycott Verification. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2271.002, Texas Government Code, the Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to enable the Issuer to comply with such Section and to the extent such Section does not contravene applicable federal law. As used in the foregoing verification, “boycott Israel” means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes.

43. Iran, Sudan and Foreign Terrorist Organizations. The Contractor represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>, or
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to enable the Issuer to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable State or federal law and excludes the Contractor and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Contractor understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Contractor and exists to make a profit.

44. No Discrimination Against Fossil-Fuel Companies. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 13 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott energy companies and will not boycott energy companies during the term of this Agreement. The

foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable federal or Texas law. As used in the foregoing verification, “boycott energy companies,” shall mean, without an ordinary business purpose, refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations with a company because the company (A) engages in the exploration, production, utilization, transportation, sale, or manufacturing of fossil fuel-based energy and does not commit or pledge to meet environmental standards beyond applicable federal and State law; or (B) does business with a company described by (A) above.

45. No Discrimination Against Firearm Entities and Firearm Trade Associations. To the extent this Agreement constitutes a contract for goods or services for which a written verification is required under Section 2274.002 (as added by Senate Bill 19 in the 87th Texas Legislature, Regular Session), Texas Government Code, as amended, the Contractor hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association and will not discriminate against a firearm entity or firearm trade association during the term of this Agreement. The foregoing verification is made solely to enable the City to comply with such Section and to the extent such Section does not contravene applicable federal or State law.

As used in the foregoing verification,

(a) “discriminate against a firearm entity or firearm trade association” (A) means, with respect to the firearm entity or firearm trade association, to (i) refuse to engage in the trade of any goods or services with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, (ii) refrain from continuing an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association, or (iii) terminate an existing business relationship with the firearm entity or firearm trade association based solely on its status as a firearm entity or firearm trade association and (B) does not include (i) the established policies of a merchant, retail seller, or platform that restrict or prohibit the listing or selling of ammunition, firearms, or firearm accessories and (ii) a company’s refusal to engage in the trade of any goods or services, decision to refrain from continuing an existing business relationship, or decision to terminate an existing business relationship (aa) to comply with federal, state, or local law, policy, or regulations or a directive by a regulatory agency or (bb) for any traditional business reason that is specific to the customer or potential customer and not based solely on an entity’s or association’s status as a firearm entity or firearm trade association,

(b) “firearm entity” means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (i.e., weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (i.e., devices specifically designed or adapted to enable an individual to wear, carry, store, or mount a firearm on the individual or on a conveyance and items used in conjunction with or mounted on a firearm that are not essential to the basic function of the firearm, including detachable firearm magazines), or ammunition (i.e., a loaded cartridge case, primer, bullet, or

propellant powder with or without a projectile) or a sport shooting range (as defined by Section 250.001, Texas Local Government Code), and

(c) “firearm trade association” means a person, corporation, unincorporated association, federation, business league, or business organization that (i) is not organized or operated for profit (and none of the net earnings of which inures to the benefit of any private shareholder or individual), (ii) has two or more firearm entities as members, and (iii) is exempt from federal income taxation under Section 501(a), Internal Revenue Code of 1986, as an organization described by Section 501(c) of that code.

Affiliate. As used in Sections 22 through 25, the Contractor understands “affiliate” to mean an entity that controls, is controlled by, or is under common control with the Contractor within the meaning of SEC Rule 405, 17 C.F.R. § 230.133(f), and exists to make a profit.

46. Form 1295. Submitted herewith is a completed Form 1295 in connection with the Contractor’s participation in the execution of this Agreement generated by the Texas Ethics Commission’s (the “TEC”) electronic filing application in accordance with the provisions of Section 2252.908 of the Texas Government Code and the rules promulgated by the TEC (the “Form 1295”). The City hereby confirms receipt of the Form 1295 from the Contractor, and the City agrees to acknowledge such form with the TEC through its electronic filing application not later than the 30th day after the receipt of such form. The Contractor and the City understand and agree that, with the exception of information identifying the City and the contract identification number, neither the City nor its consultants are responsible for the information contained in the Form 1295; that the information contained in the Form 1295 has been provided solely by the Contractor; and, neither the City nor its consultants have verified such information.

[Signature pages follow]IN WITNESS WHEREOF, the parties have executed this Agreement between City of Anna, Texas and Transcend, Inc. d/b/a SPA Skateparks to be effective as of the day and year first above written.

THE CITY:

CITY OF ANNA, TEXAS

By (sign): _____

Name (print): _____

Date: _____

Title: _____

Address: 111 N Powell Parkway

Anna, TX 75409

TRANSCEND, INC. D/B/A SPA SKATEPARKS

By: _____

Name: Yann Curtis

Date: _____

Title: Vice President

Address: 1301 Orlando Rd
Austin, Texas 78733

EXHIBIT A
Scope of Work

Thank you for the opportunity to work with your community on the continued development of Anna's modern youth park. Consistent with our recent discussions, we respectfully submit the following Scope of Work for the Project. This Scope of Work is intended to supplement and further define the details of the Skatepark Agreement between City of Anna and Transcend, Inc. d/b/a SPA Skateparks and shall be an exhibit thereto.

SPA Skateparks Scope of Work:

- Construction of project named "City of Anna Slayter Creek Skatepark" per plans and specifications by New Line Skateparks Inc. (Designer) dated TBD. Plans and specs by the Designer will be incorporated into this agreement.
- Earthworks: per provided geotechnical report.
- Turn-key skatepark terrain: All labor and materials required for the grading/drainage, forming, placing and finishing of all proposed skate park concrete hard surface areas. All labor and materials required for the fabrication and installation of all proposed steel work including structural steel, steel coping/edging, grind rails and other miscellaneous steel.
- Project management. Foreman or other approved capable representative on site during construction.
- Any item agreed to in writing by both parties.

Commented [CM1]: This should be updated.

SPA Skateparks Scope of Work Does Not Include / Provided by Others:

- City to provide geotechnical report, materials testing services, topographic and civil survey, third party inspections.

- Site environmental assessments and any contamination remediation, contractor registration fees, City permits and building fees, if any, are not included.
- Landscaping and irrigation procedures, fencing, park signage, shade structures, lighting, and site amenities unless otherwise agreed to in writing by both parties.
- All work physically outside the perimeter of the skatepark footprint
- All aspects of Work not included in SPA Skateparks Scope of Work above, unless otherwise agreed to in writing by both parties



Item No. 6.m.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Carrie Land

AGENDA ITEM:

Approve a Resolution adopting a New City Seal. (City Secretary Carrie Land)

SUMMARY:

The City seal is affixed to all appropriate documents, ordinances, resolutions, minutes and proclamations by the City Secretary. Staff is recommending personalizing the City seal to match the inlay in the lobby at the Municipal Complex. The seal would then be unique to the City of Anna.

FINANCIAL IMPACT:

Cost of a rubber seal and embosser, estimated \$300.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Approve adoption of a new city seal.

ATTACHMENTS:

1. Res City Seal

APPROVALS:

Carrie Land, City Secretary
Jim Proce, City Manager

Created/Initiated - 11/3/2022
Final Approval - 11/17/2022

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY
OF ANNA, TEXAS ADOPTING A NEW CITY SEAL; AND
OTHER MATTERS IN CONNECTION THEREWITH**

WHEREAS, the City Council (the "Council") of the City of Anna, Texas (the "City") has determined to adopt a new seal for the City;

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

SECTION 1: Pursuant to Section 3.15(a) of the City Charter, the City Council hereby adopts the seal set forth on Exhibit "A" (the "New City Seal") as the seal of the City. The New Seal may be stamped on any document requiring or permitting the seal of the City to be affixed thereto.

SECTION 2: The recitals contained in the preamble hereof are hereby found to be true, and such recitals are hereby made a part of this Resolution for all purposes and are adopted as a part of the judgment and findings of the Council.

SECTION 3: All resolutions, or parts thereof, which are in conflict or inconsistent with any provision of this Resolution are hereby repealed to the extent of such conflict, and the provision of this Resolution shall be and remain controlling as to the matters resolved herein.

SECTION 4: This Resolution shall be in force and effect from and after its final passage, and it is so resolved.

PASSED AND APPROVED by the City Council of the City of Anna, Texas on this _____ day of _____, 2022.

ATTEST:

APPROVED:

City Secretary, Carrie L. Land

Mayor, Nate Pike



THE CITY OF
Anna

TEXAS

1913



Item No. 7.a.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Lauren Mecke

AGENDA ITEM:

Conduct a Public Hearing/Consider/Discuss/Action on an Ordinance for a Specific Use Permit (SUP) for a hotel on one lot on 2.9± acres located on the east side of Standridge Boulevard, 1,040± feet north of Suzie Lane. (Planning Manager Lauren Mecke)

SUMMARY:

The applicant is requesting a Specific Use Permit (SUP) for a motor hotel. The Zoning Ordinance defines a motor hotel as:

A building or group of buildings designed for and occupied as a temporary dwelling place, providing four or more room units for compensation, and where an office and register is maintained separately and apart from any of the rooms or units provided for the customers and where the operation is supervised by a person or persons in charge at all hours. A motel, motor hotel, or motor lodge may include restaurants, club rooms, banquet halls, ballrooms and meeting rooms as accessory uses.

The subject property is undeveloped and zoned Planned Development (Ord. No. 765-2018).

A concept plan for the motor hotel, One Anna Two Addition, Block A, Lot 4R, accompanies this request.

Surrounding Land Use and Zoning

North Undeveloped land zoned PD-General Business District (PD-C-2) (Ord No. 860-2020)

East Undeveloped land zoned PD (Ord. No. 765-2018)

South Under construction, medical office building, zoned PD (Ord. No. 765-2018)

West Under construction, single-family dwellings, detached. Villages of Hurricane Creek, zoned PD (Ord. No. 886-2020)

Specific Use Permit

The Zoning Ordinance designates certain uses as requiring a SUP to allow the Planning & Zoning Commission and City Council to review requests on a case-by-case basis as to its probable effect on the adjacent property and the community welfare. The request may be approved or denied as the findings indicate appropriate with regard to the health, safety and welfare of the general public.

The Zoning Ordinance and Planned Development allows motor hotel within the Restricted and General Commercial districts with approval of a SUP.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 1: Growing Anna Economy

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

The requested use (motor hotel) is appropriate for the proposed location.

The Planning & Zoning Commission recommended approval.

ATTACHMENTS:

1. One Anna Two Addition Block A Lot 4R Locator Map
2. Ordinance - (SUP) Motor Hotel - One Anna Two Addn, Block A, Lot 4R
3. Exhibit A - Ord. (SUP motor hotel)
4. Exhibit B - Ord. (CP - One Anna Two Addn, Bl A, Lt 4R)
5. PZ - STAFF REPORT (Zoning) - One Anna Two Addn, Bl A, Lt 4R SUP

APPROVALS:

Ross Altobelli, Director of Development Services
Lauren Mecke, Planning Manager
Jim Proce, City Manager

Created/Initiated - 11/15/2022
Approved - 11/16/2022
Final Approval - 11/17/2022

Specific Use Permit - One Anna Two Addition, Block A, Lot 4R



CITY OF ANNA, TEXAS
(Specific Use Permit for Motor Hotel)

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ANNA, TEXAS AMENDING THE CITY'S COMPREHENSIVE PLAN, ZONING MAP, AND ZONING ORDINANCE AND APPROVING A SPECIFIC USE PERMIT ON CERTAIN PROPERTY AS DESCRIBED HEREIN; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A PENALTY CLAUSE NOT TO EXCEED \$2,000 OR THE HIGHEST PENALTY AMOUNT ALLOWED BY LAW, WHICHEVER IS LESS; AND, PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City of Anna, Texas ("City") has previously adopted ordinances, rules and regulations governing the zoning in the City; and

WHEREAS, the City has received a requested specific use permit from North Texas HOCO, LLC on Property identified as One Anna Two Addition, Block A, Lot 4R as shown on Exhibit A ("Property") attached hereto and incorporated herein for all purposes as if set forth in full; and

WHEREAS, said Property is zoned Planned Development (Ordinance No. 765-2018); and

WHEREAS, the Planning and Zoning Commission of the City and the City Council of the City of Anna ("City Council") have given the requisite notices by publication and otherwise and have held the public hearings as required by law and afforded a full and fair hearing to all property owners and generally to all persons interested in and situated in the affected area and in the vicinity thereof, the City Council has concluded that the Zoning Ordinance of the City should be amended as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS THAT:

Section 1. Recitals Incorporated

The above recitals are incorporated herein by reference for all purposes.

Section 2. Zoning Change

The Comprehensive Zoning Ordinance of the City of Anna, Texas, is amended by approving a Specific Use Permit on the tract described in Exhibit A, attached hereto and made an integral part of this ordinance, and approving the Specific Use Permit in the Planned Development zoning district to allow the use of motor hotel as depicted in the Concept Plan on the attached Exhibit B.

Section 3. Official Zoning Map

The official Zoning Map of the City shall be corrected to reflect the change in zoning described herein.

Section 4. **Savings, Repealing and Severability Clauses**

It is hereby declared to be the intention of the City Council that the words, sentences, paragraphs, subdivisions, clauses, phrases, and provisions of this ordinance are severable and, if any phrase, sentence, paragraph, subdivision, clause, or provision of this ordinance shall be declared unconstitutional or otherwise invalid or inapplicable by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality, invalidity or inapplicability shall not affect any of the remaining words, sentences, paragraphs, subdivisions, clauses, phrases, or provisions of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional, invalid or inapplicable words, sentences, paragraphs, subdivisions, clauses, phrases, or provisions. Further, all ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are consistent and do not conflict with the terms and provisions of this ordinance are hereby ratified to the extent of such consistency and lack of conflict, and all ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict. Notwithstanding any provision of this ordinance or the Anna Code, it is intended that this ordinance fully comply with Chapter 3000 of the Texas Government Code ("Chapter 3000") and this ordinance shall and the City Code shall be interpreted in a manner to comply with Chapter 3000. For the purposes of this ordinance, any provision of the City Code that does not comply with Chapter 3000 shall be deemed to have been excluded and not a part of this ordinance.

Section 5. **Penalty**

Any violation of any of the terms of this ordinance, whether denominated in this ordinance as unlawful or not, shall be deemed a misdemeanor. Any person convicted of any such violation shall be fined in an amount not to exceed \$2,000 for each incidence of violation. Each day a violation exists is considered a separate offense and will be punished separately.

Section 6. **Publication of the Caption and Effective Date**

This ordinance shall be effective upon its passage by the City Council, approval by the Mayor, and posting and/or publication, if required by law, of its caption. The City Secretary is hereby authorized and directed to implement such posting and/or publication.

PASSED by the City Council of the City of Anna, Texas this 22nd day of November 2022.

ATTESTED:

APPROVED:

Carrie L. Land, City Secretary

Nate Pike, Mayor

EXHIBIT A

Anna Hotel Site

BEING a tract of land situated in the W.S. Rattan Survey Abstract No. 752, City of Anna, Collin County, Texas, and being part of Lot 3, Block A of One Anna Two Addition, an addition to the City of Anna, Collin County, Texas according to the plat thereof recorded in Instrument No. 20120607010002180, Official Public Records, Collin County, Texas; same being a portion of that tract of land conveyed to Anna Investments, LLC by deed recorded in Instrument No. 20180622000777080, Official Public Records, Collin County, Texas, and being more particularly described as follows:

COMMENCING at a TxDOT concrete monument found for corner in the west right-of-way line of US Highway No. 75 (a variable width right-of-way) at the northeast corner of said Lot 3;

THENCE S 89°04'37" W, departing said west right-of-way line of US Highway 75 and with the north line of said Lot 3, a distance of 352.41 feet to the **POINT OF BEGINNING**;

THENCE departing said north line of Lot 3, the following courses and distances:

S 07°37'25" W, a distance of 320.70 feet to a point for corner;

N 82°26'42" W, a distance of 437.43 feet to a point for corner in the east right-of-way line of Standridge Boulevard (an 80-foot wide right-of-way) and the west line of said Lot 3; said point being the beginning of a non-tangent curve to the left;

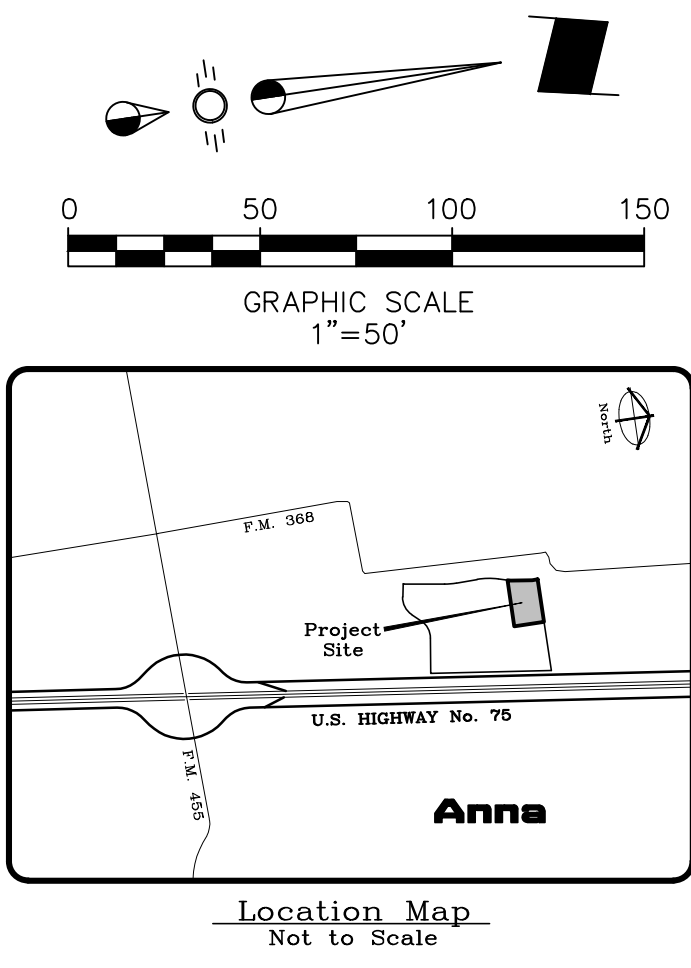
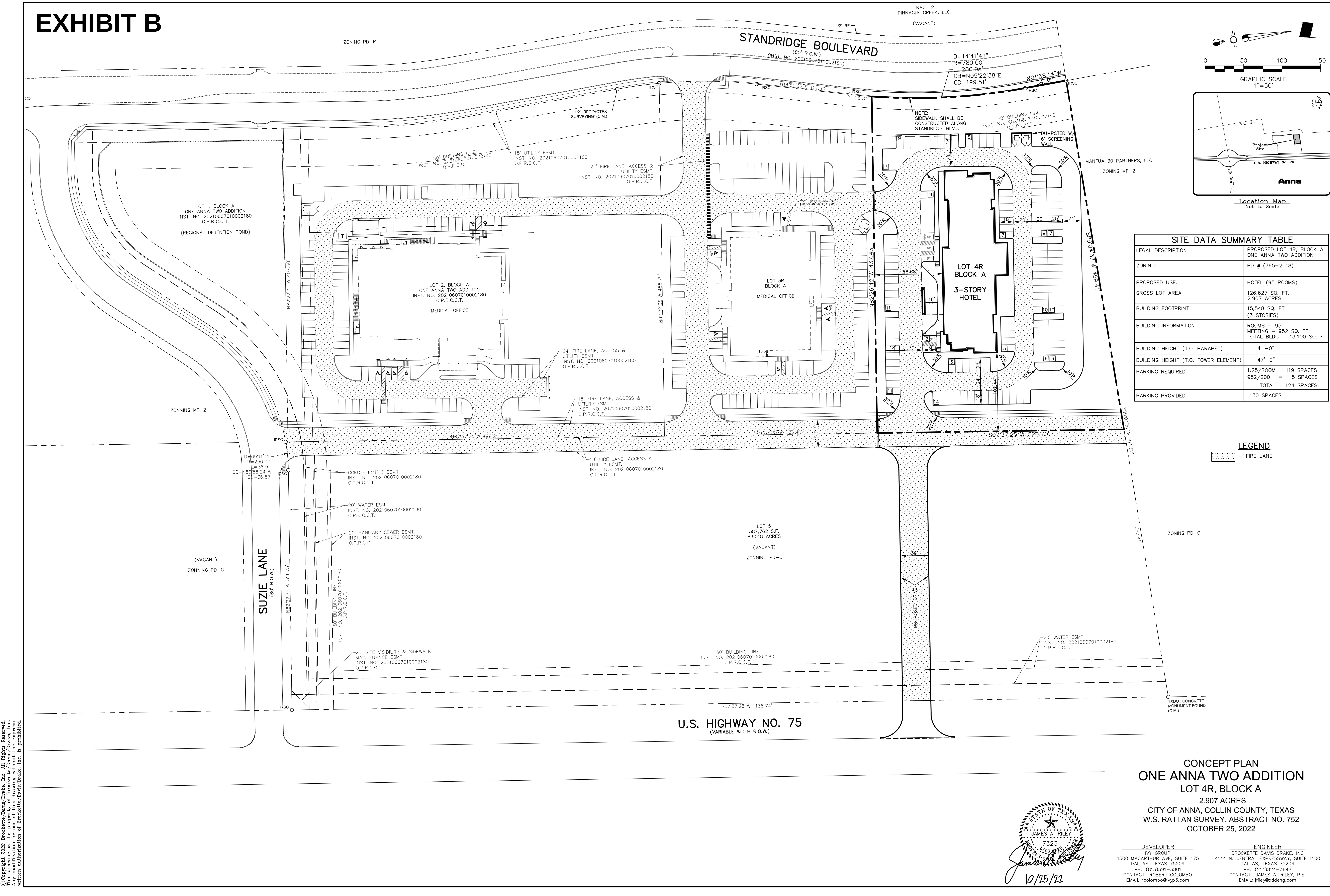
THENCE with said east right-of-way line and said west line of Lot 3, the following courses and distances:

In a northeasterly direction with said curve to the left, having a central angle of 14°41'43", a radius of 780.00 feet, a chord that bears N 05°22'38" E, a distance of 199.51 feet, and an arc length of 200.05 to a point at the end of said curve;

N 01°58'14" W, a distance of 54.35 feet to a 1/2-inch iron rod with yellow plastic cap stamped "VOTEX SURVEYING" found for the northwest corner of said Lot 3;

THENCE N 89°04'37" E, departing said east right-of-way line of Standridge Boulevard and with the north line of Lot 3, a distance of 459.41 feet to the **POINT OF BEGINNING** and containing 126,627 square feet or 2.907 acres of land more or less.

EXHIBIT B



SITE DATA SUMMARY TABLE	
LEGAL DESCRIPTION	PROPOSED LOT 4R, BLOCK A ONE ANNA TWO ADDITION
ZONING:	PD # (765-2018)
PROPOSED USE:	HOTEL (95 ROOMS)
GROSS LOT AREA	126,627 SQ. FT. 2.907 ACRES
BUILDING FOOTPRINT	15,548 SQ. FT. (3 STORIES)
BUILDING INFORMATION	ROOMS - 95 MEETING - 952 SQ. FT. TOTAL BLDG - 43,100 SQ. FT.
BUILDING HEIGHT (T.O. PARAPET)	41'-0"
BUILDING HEIGHT (T.O. TOWER ELEMENT)	47'-0"
PARKING REQUIRED	1.25/ROOM = 119 SPACES 952/200 = 5 SPACES TOTAL = 124 SPACES
PARKING PROVIDED	130 SPACES

LEGEND
- FIRE LANE

Copyright 2022 Brockette/Davis/Drake, Inc. All Rights Reserved.
No part of this drawing may be reproduced or transmitted in any form or by any means electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the express written authorization of Brockette/Davis/Drake, Inc. is prohibited.

CONCEPT PLAN
ONE ANNA TWO ADDITION
LOT 4R, BLOCK A
2.907 ACRES
CITY OF ANNA, COLLIN COUNTY, TEXAS
W.S. RATTAN SURVEY, ABSTRACT NO. 752
OCTOBER 25, 2022

DEVELOPER
IVY GROUP
4300 MACARTHUR AVE, SUITE 175
DALLAS, TEXAS 75209
PH: (813)391-3801
CONTACT: ROBERT COLOMBO
EMAIL: rcolombo@ivy3.com

ENGINEER
BROCKETTE DAVIS DRAKE, INC.
4144 N. CENTRAL EXPRESSWAY, SUITE 1100
DALLAS, TEXAS 75204
PH: (214)824-3647
CONTACT: JAMES A. RILEY, P.E.
EMAIL: jriley@bddeng.com

STATE OF TEXAS
JAMES A. RILEY
73231
Professional Engineer
10/25/22

CITY OF ANNA
PLANNING & ZONING COMMISSION

November 7, 2022

Public Hearing: Specific Use Permit for Motor Hotel

Applicant: North Texas HOCO, LLC

DESCRIPTION:

The applicant is requesting a Specific Use Permit to allow for a motor hotel on one lot on 2.9± acres located on the east side of Standridge Boulevard, 1,040± feet north of Suzie Lane. Zoned: Planned Development (PD) (Ord. No. 765-2018).

REMARKS:

The applicant is requesting a Specific Use Permit (SUP) for a motor hotel. The Zoning Ordinance defines a motor hotel as:

A building or group of buildings designed for and occupied as a temporary dwelling place, providing four or more room units for compensation, and where an office and register is maintained separately and apart from any of the rooms or units provided for the customers and where the operation is supervised by a person or persons in charge at all hours. A motel, motor hotel, or motor lodge may include restaurants, club rooms, banquet halls, ballrooms and meeting rooms as accessory uses.

The subject property is undeveloped and zoned Planned Development (Ord. No. 765-2018).

A concept plan for the motor hotel, One Anna Two Addition, Block A, Lot 4R, accompanies this request.

Surrounding Land Use and Zoning

North	Undeveloped land zoned PD-General Business District (PD-C-2) (Ord No. 860-2020)
East	Undeveloped land zoned PD (Ord. No. 765-2018)
South	Under construction, medical office building, zoned PD (Ord. No. 765-2018)
West	Under construction, single-family dwellings, detached. Villages of Hurricane Creek, zoned PD (Ord. No. 886-2020)

Specific Use Permit

The Zoning Ordinance designates certain uses as requiring a SUP to allow the Planning & Zoning Commission and City Council to review requests on a case-by-case basis as to its probable effect on the adjacent property and the community welfare. The request may be approved or denied as the findings indicate appropriate with regard to the health, safety and welfare of the general public.

The Zoning Ordinance and Planned Development allows motor hotel within the Restricted and General Commercial districts with approval of a SUP.

SUMMARY:

Request for a Specific Use Permit to allow for a motor hotel on one lot on 2.9± acres located on the east side of Standridge Boulevard, 1,040± feet north of Suzie Lane.

RECOMMENDATION:

The requested use is appropriate for the proposed location.



Item No. 7.b.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Lauren Mecke

AGENDA ITEM:

Consider/Discuss/Action on a Resolution regarding One Anna Two Addition, Block A, Lot 4R, Concept Plan. (Planning Manager Lauren Mecke)

SUMMARY:

Hotel on one lot on 3.0± acres located on the east side of Standridge Boulevard, 1,040± feet north of Suzie Lane. Zoned: Planned Development (Ord. No. 765-2018).

The purpose of the Concept Plan is to show the future hotel and related site improvements.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 1: Growing Anna Economy

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

The Concept Plan is in conformance with the city's Subdivision Regulations and Zoning Ordinances.

The Planning & Zoning Commission recommended approval subject to City Council approval of the Specific Use Permit request to allow for a hotel.

ATTACHMENTS:

1. One Anna Two Addition Block A Lot 4R Concept Plan Locator Map
2. RESOLUTION (CP) One Anna Two Addition, BI A, Lt 4R
3. Exhibit A (stamped) - CP (One Anna Two Addn, BI A, Lt 4R)

APPROVALS:

Ross Altobelli, Director of Development Services
Lauren Mecke, Planning Manager
Jim Proce, City Manager

Created/Initiated - 11/15/2022
Approved - 11/16/2022
Final Approval - 11/17/2022

Concept Plan - One Anna Two Addition, Block A, Lot 4R



THE CITY OF
Anna

N

Subject Property

City Limits

ETJ

0 150 300 600 Feet

October 2022

CITY OF ANNA, TEXAS

RESOLUTION NO. _____

A RESOLUTION OF THE CITY OF ANNA, TEXAS APPROVING A CONCEPT PLAN FOR ONE ANNA TWO ADDITION, BLOCK A, LOT 4R.

WHEREAS, In order to provide for the orderly development of land within the Anna city limits and extraterritorial jurisdiction, the City Council of the City of Anna, Texas (the "City Council") has adopted Article 9.02 (Subdivision Regulations") and Article 9.04 (Zoning Ordinance) of the Anna City Code of Ordinances; and

WHEREAS, North Texas HOCO, LLC, has submitted an application for the approval of the Concept Plan for One Anna Two Addition, Block A, Lot 4R; and

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

Section 1. Recitals Incorporated.

The recitals above are incorporated herein as if set forth in full for all purposes.

Section 2. Approval of Concept Plan

The City Council hereby approves the Concept Plan for One Anna Two Addition, Block A, Lot 4R attached hereto as Exhibit A.

PASSED AND APPROVED by the City Council of the City of Anna, Texas, on this 22nd day of November 2022.

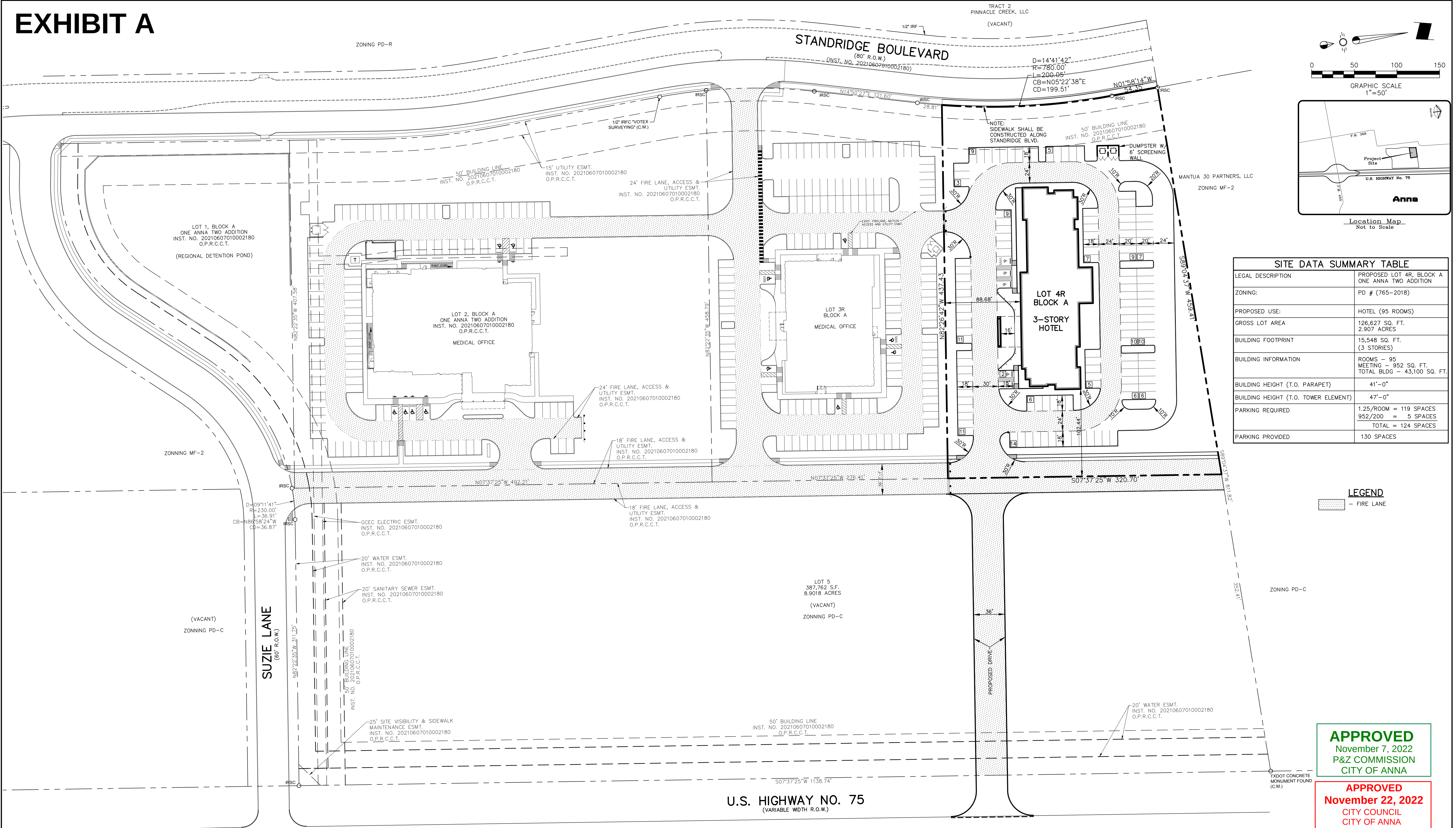
ATTEST:

APPROVED:

City Secretary, Carrie L. Land

Mayor, Nate Pike

EXHIBIT A



SITE DATA SUMMARY TABLE	
LEGAL DESCRIPTION	PROPOSED LOT 4R, BLOCK A ONE ANNA TWO ADDITION
ZONING:	PD # (765-2018)
PROPOSED USE:	HOTEL (95 ROOMS)
GROSS LOT AREA	126,627 SQ. FT. 2.907 ACRES
BUILDING FOOTPRINT	15,548 SQ. FT. (3 STORIES)
BUILDING INFORMATION	ROOMS - 95 MEETING - 952 SQ. FT. TOTAL BLDG - 43,100 SQ. FT.
BUILDING HEIGHT (T.O. PARAPET)	41'-0"
BUILDING HEIGHT (T.O. TOWER ELEMENT)	47'-0"
PARKING REQUIRED	1.25/ROOM = 119 SPACES 952/200 = 5 SPACES TOTAL = 124 SPACES
PARKING PROVIDED	130 SPACES

APPROVED
November 7, 2022
P&Z COMMISSION
CITY OF ANNA

APPROVED
November 22, 2022
CITY COUNCIL
CITY OF ANNA

CONCEPT PLAN
ONE ANNA TWO ADDITION
LOT 4R, BLOCK A
2.907 ACRES
CITY OF ANNA, COLLIN COUNTY, TEXAS
W.S. RATTAN SURVEY, ABSTRACT NO. 752
OCTOBER 25, 2022

DEVELOPER	ENGINEER
IVY GROUP 4300 MACARTHUR AVE, SUITE 175 DALLAS, TEXAS 75209 PH: (813)391-3801 CONTACT: ROBERT COLOMBO EMAIL: rcolombo@ivy3.com	BROCKETTE DAVIS DRAKE, INC. 4144 N. CENTRAL EXPRESSWAY, SUITE 1100 DALLAS, TEXAS 75204 PH: (214)824-3647 CONTACT: JAMES A. RILEY, P.E. EMAIL: jriley@bddeng.com

STATE OF TEXAS
JAMES A. RILEY
73231
10/25/22

Copyright 2022 Brockette/Davis/Drake, Inc. All Rights Reserved.
No part of this drawing may be reproduced or transmitted in any form or by any means electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without the express written authorization of Brockette/Davis/Drake, Inc. is prohibited.



Item No. 7.c.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Lauren Mecke

AGENDA ITEM:

Conduct a Public Hearing/Consider/Discuss/Action on an Ordinance to rezone 1.2± acres located at the southeast corner of E. Fourth Street and S. Sherley Avenue. (Planning Manager Lauren Mecke)

SUMMARY:

At the November 7, 2022 Planning & Zoning Commission meeting, the public hearing was tabled until the December 5, 2022 Planning & Zoning Commission meeting in order for the applicant to address outstanding plan review comments.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 2: Sustainable Anna Community Through Planned Managed Growth

Goal 3: Anna – Great Place to Live

STAFF RECOMMENDATION:

Recommend the public hearing be tabled and held open until the Tuesday, December 13, 2022 City Council meeting at 6PM to be held in the Municipal Complex Building (120 W Seventh Street).

ATTACHMENTS:

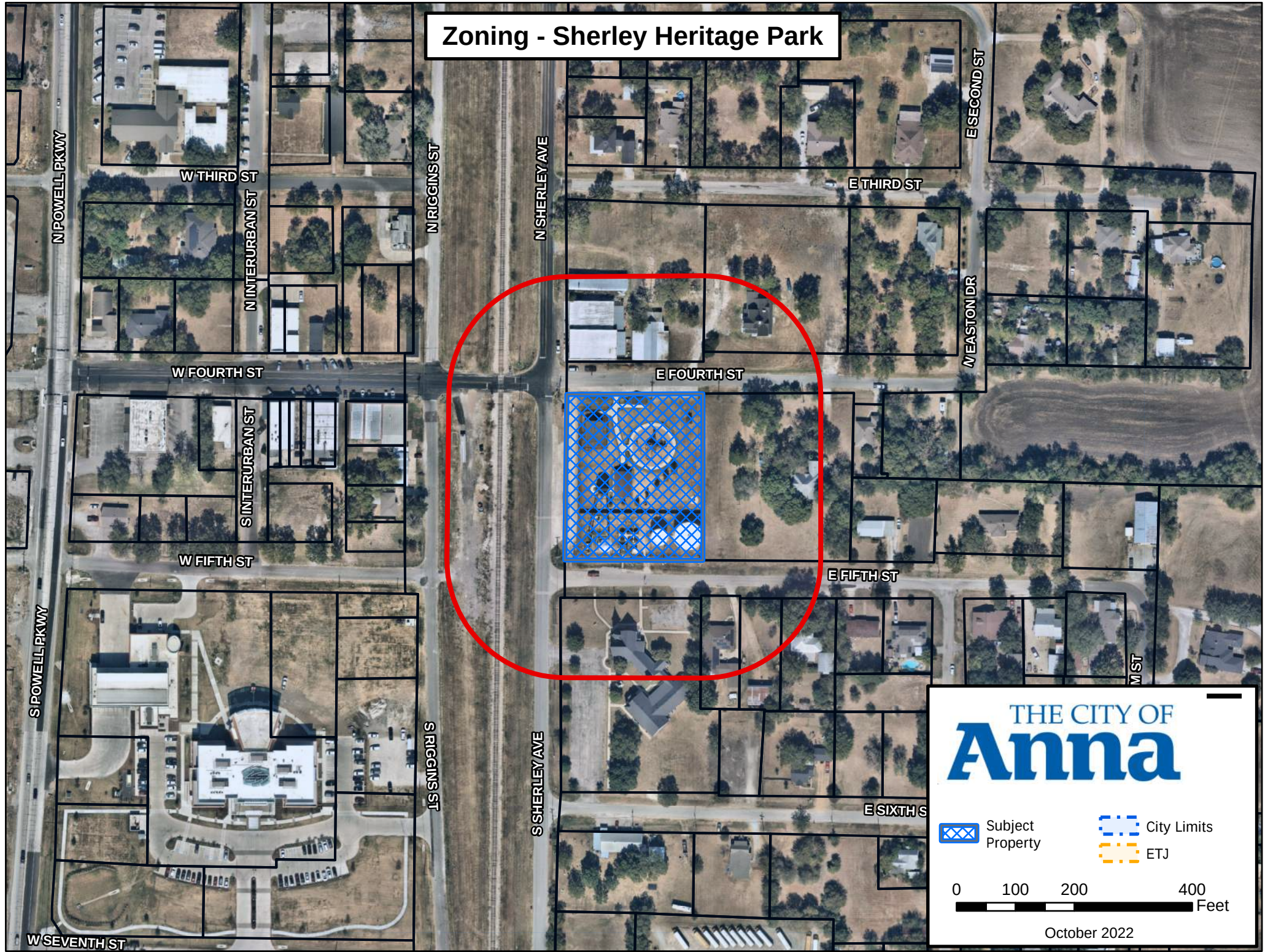
1. Sherley Heritage Park, Block A, Lot 1 Zoning Locator Map

APPROVALS:

Ross Altobelli, Director of Development Services
Lauren Mecke, Planning Manager
Jim Proce, City Manager

Created/Initiated - 11/15/2022
Approved - 11/16/2022
Final Approval - 11/17/2022

Zoning - Sherley Heritage Park



THE CITY OF
Anna

 Subject Property  City Limits
 ETJ

0 100 200 400 Feet

October 2022



Item No. 7.d.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Lauren Mecke

AGENDA ITEM:

Consider/Discuss/Action on an Ordinance regarding a sign variance. (Planning Manager, Lauren Mecke)

SUMMARY:

Request for a sign variance of a unified development zone multi-tenant monument sign with retail and restaurants on three lots on 2.1± acres, located at the northeast corner of W. White Street (FM 455) and S Ferguson Parkway.

The applicant is requesting a variance from Article 9.05 *Signs* to reduce the required setback of a unified monument sign from 15 feet to 10 feet. The applicant has provided a signage plan, Exhibit A, that identifies the location of the sign requesting the variances as well as an elevation, Exhibit B.

REMARKS:

Class 6, Monument Signs

A unified development monument sign shall be located within a unified development zone, which shall consist of multiple lots with the same subdivision name or multiple lots that were depicted on the same concept plan, preliminary site plan, or site plan, and be united through common building architecture, color, and materials, landscaping, and parking.

The minimum front yard setback for a unified development monument sign is 15 feet from the property line. No minimum side and rear yard setbacks are required for a unified development monument sign, but such sign shall not be located closer than 75 feet to another unified development monument sign or an individual monument sign.

- The applicant is requesting to reduce the setback to 10 feet
- The sign will be greater than 85 feet from the existing Avery Pointe Subdivision Sign and the nearest entrance/exit drive.
- The sign will be united through common color and materials with structures located on Avery Pointe Commercial, Block A, Lots 1R, 4, & 5.

SUMMARY

The applicant is requesting a variance to allow for the sign to be five feet closer to the right-of-way, reducing the setback from 15 feet to 10 feet. Additional signage on the property will be subject to the rules and regulations of Article 9.05 *Signs*.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 2: Sustainable Anna Community Through Planned Managed Growth**STAFF RECOMMENDATION:**

Staff is in support of the reduced setback request due to;

1. The distance of the proposed location from the nearest drive or intersection and existing monument sign is greater than 85 feet, and;
2. The applicant's willingness to incorporate materials from the sign into each of the buildings within the unified development zone.

ATTACHMENTS:

1. Avery Pointe Commercial Block A, Lots 1R, 4 & 5 Locator Map
2. Ordinance (Variance Sign) Avery Pointe
3. Exhibit A (Unified Delevopement Zone Sign Plan) Avery Pointe Commercial
4. Exhibit B (Sign Elevation) Avery Pointe Commercial BL A Lts 1R 4 5

APPROVALS:

Lauren Mecke, Planning Manager
Ross Altobelli, Director of Development Services
Jim Proce, City Manager

Created/Initiated - 11/16/2022
Approved - 11/16/2022
Final Approval - 11/17/2022

Unified Development Zone & Sign Coordination Plan – Avery Pointe Commercial, Block A, Lots 1R, 4 & 5



CITY OF ANNA, TEXAS

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF ANNA, TEXAS AMENDING THE CITY’S ZONING ORDINANCE AND CHANGING THE ZONING OF CERTAIN PROPERTY AS DESCRIBED HEREIN; PROVIDING FOR SAVINGS, REPEALING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE; PROVIDING FOR A PENALTY CLAUSE NOT TO EXCEED \$2,000 OR THE HIGHEST PENALTY AMOUNT ALLOWED BY LAW, WHICHEVER IS LESS; AND, PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the City of Anna, Texas (“City”) has previously adopted ordinances, rules and regulations governing the subdivision of land, zoning, signs, landscape regulations, and tree preservation in the City; and

WHEREAS, after due consideration and discussion the City Council finds based on the evidence and arguments presented during the public hearing that the evidence:

- Demonstrates the degree of the variance is in conformance with the spirit of Article 9.05 Signs;
- Demonstrates a reasonable request due to the distance from proposed drives;
- Demonstrates that the location of the request shall be only for the single sign as shown on Exhibit A and Exhibit B;
- Demonstrates the duration of the request to run concurrently with the unified development zone;
- Demonstrates that the request will not impact public safety;
- Demonstrates the conformance with the general plan within the city;
- Demonstrates protection of neighborhood property and property values; and
- Demonstrates the hardship is not self-inflicted.

NOW, THEREFORE, BE IT ORDERED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS:

Section 1. Recitals Incorporated

The above recitals are incorporated herein by reference for all purposes.

Section 2. Amendment

1. Unified Development Sign (Avery Pointe Commercial) front yard setback: 10 feet

2. The Unified Development Sign shall be united through common color and materials with structures located on Avery Pointe Commercial, Block A, Lots 1R, 4, & 5.

Section 3. **Savings, Repealing and Severability Clauses**

It is hereby declared to be the intention of the City Council that the words, sentences, paragraphs, subdivisions, clauses, phrases, and provisions of this ordinance are severable and, if any phrase, sentence, paragraph, subdivision, clause, or provision of this ordinance shall be declared unconstitutional or otherwise invalid or inapplicable by the valid judgment or decree of any court of competent jurisdiction, such unconstitutionality, invalidity or inapplicability shall not affect any of the remaining words, sentences, paragraphs, subdivisions, clauses, phrases, or provisions of this ordinance, since the same would have been enacted by the City Council without the incorporation in this ordinance of any such unconstitutional, invalid or inapplicable words, sentences, paragraphs, subdivisions, clauses, phrases, or provisions. Further, all ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are consistent and do not conflict with the terms and provisions of this ordinance are hereby ratified to the extent of such consistency and lack of conflict, and all ordinances or parts of ordinances in force when the provisions of this ordinance become effective that are inconsistent or in conflict with the terms and provisions contained in this ordinance are hereby repealed only to the extent of any such conflict.

Section 4. **Penalty**

Any violation of any of the terms of this ordinance, whether denominated in this ordinance as unlawful or not, shall be deemed a misdemeanor. Any person convicted of any such violation shall be fined in an amount not to exceed the lesser of \$2,000 or the highest amount allowed by applicable law for each incidence of violation. Each day a violation exists is considered a separate offense and will be punished separately.

Section 5. **Publication of the Caption and Effective Date**

This ordinance shall be effective upon its passage by the City Council and posting and/or publication, if required by law, of its caption. The City Secretary is hereby authorized and directed to implement such posting and/or publication.

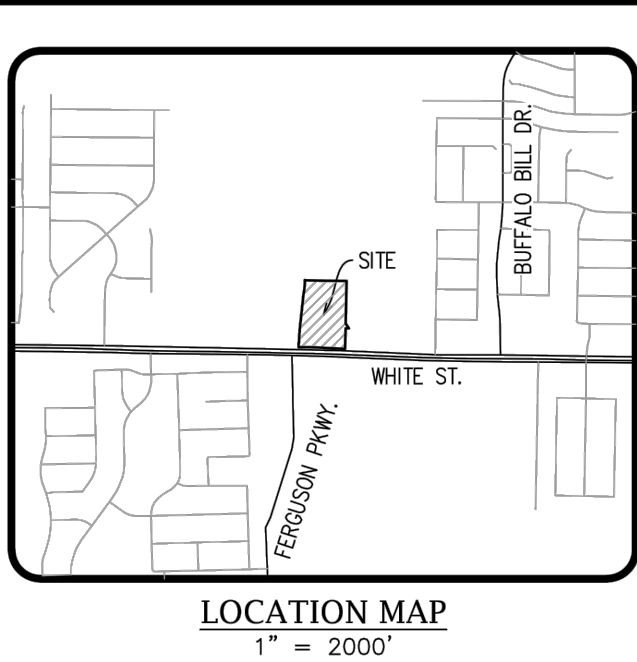
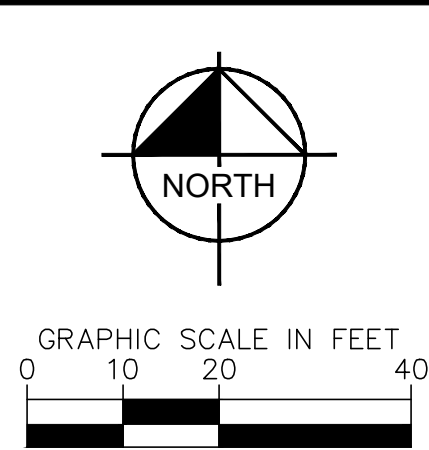
PASSED by the City Council of the City of Anna, Texas this 22nd day of November 2022.

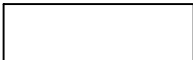
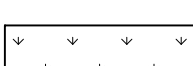
ATTESTED:

APPROVED:

Carrie L. Land, City Secretary

Nate Pike, Mayor



LEGEND	
	PROPERTY LINE
	FIRE LANE STRIPING
	PARKING COUNT
	CONCRETE SIDEWALK
	STANDARD DUTY PAVEMENT RE: C-600
	FIRE LANE/DUMPSTER PAVEMENT RE: C-600
	TURN LANE PAVEMENT RE: C-600
	LANDSCAPING

GENERAL NOTES

1. DIRECTIONS ARE TO BE FACE OF CURB UNLESS OTHERWISE NOTED.
2. ALL SLOPES UNLESS OTHERWISE NOTED.
3. REFER TO ARCHITECTURAL PLANS FOR SITE LIGHTING POLES AND FIXTURES AND ELECTRICAL PLANS PRIOR TO PLACING PAVEMENT.
4. REFER TO ARCHITECTURAL PLANS FOR EXACT BUILDING DIMENSIONS.
5. SIDEWALKS SHALL NOT EXCEED A 5% MAXIMUM RUNNING SLOPE AND A MAXIMUM CROSS SLOPE IN ACCORDANCE WITH ADA REQUIREMENTS, PARKING SPACES & ACCESS AISLES SHALL NOT EXCEED 2% IN ANY DIRECTION.
6. FIELD VERIFY ADA GRADES PRIOR TO PLACING PAVEMENT.
7. CONTRACTOR SHALL PROVIDE ALL ACCESSIBLE ROUTES IN ACCORDANCE WITH ADA STANDARDS AND TACS.
7. REF. IRRIGATION PLANS PRIOR TO PLACING PAVEMENT.
8. CONTRACTOR SHALL PROVIDE ACCESSIBLE STALL STRIPING, FIRE LANE STRIPING, DIRECTIONAL ARROWS, ETC.
9. SITE LIGHTING IS BY OTHERS. REF. SITE LIGHTING PLANS FOR LOCATION AND DETAILS.
10. CONTRACTOR TO ADJUST EXISTING SANITARY SEWER MANHOLES, STORM SEWER MANHOLES, ELECTRICAL MANHOLES, FIRE HYDRANTS, VALVE BOXES, WATER METERS, ETC. TO MATCH PROPOSED FINISHED GRADES IF NECESSARY.

BENCH MARK LIST

BM 56 "X" SET ON CENTER OF THE NORTH SIDE OF CURB
INLET ON THE NORTH SIDE OF WHITE LANE, 564' WEST OF
THE CENTERLINE OF FERGUSON LANE

ELEV=716.78'

BM 57 "X" SET ON SOUTH SIDE OF SIDEWALK ON NORTH
SIDE OF WHITE LANE, 518' EAST OF THE CENTERLINE OF
OAK HOLLOW LANE, 8' SOUTH OF A POWER POLE.

ELEV=724.64'

BM 58 "X" SET ON THE NORTHEAST CORNER OF A CURB
INLET ON THE NORTH SIDE OF W. WHITE STREET, 250' EAST
OF THE CENTERLINE OF FERGUSON PARKWAY.

ELEV=730.31'

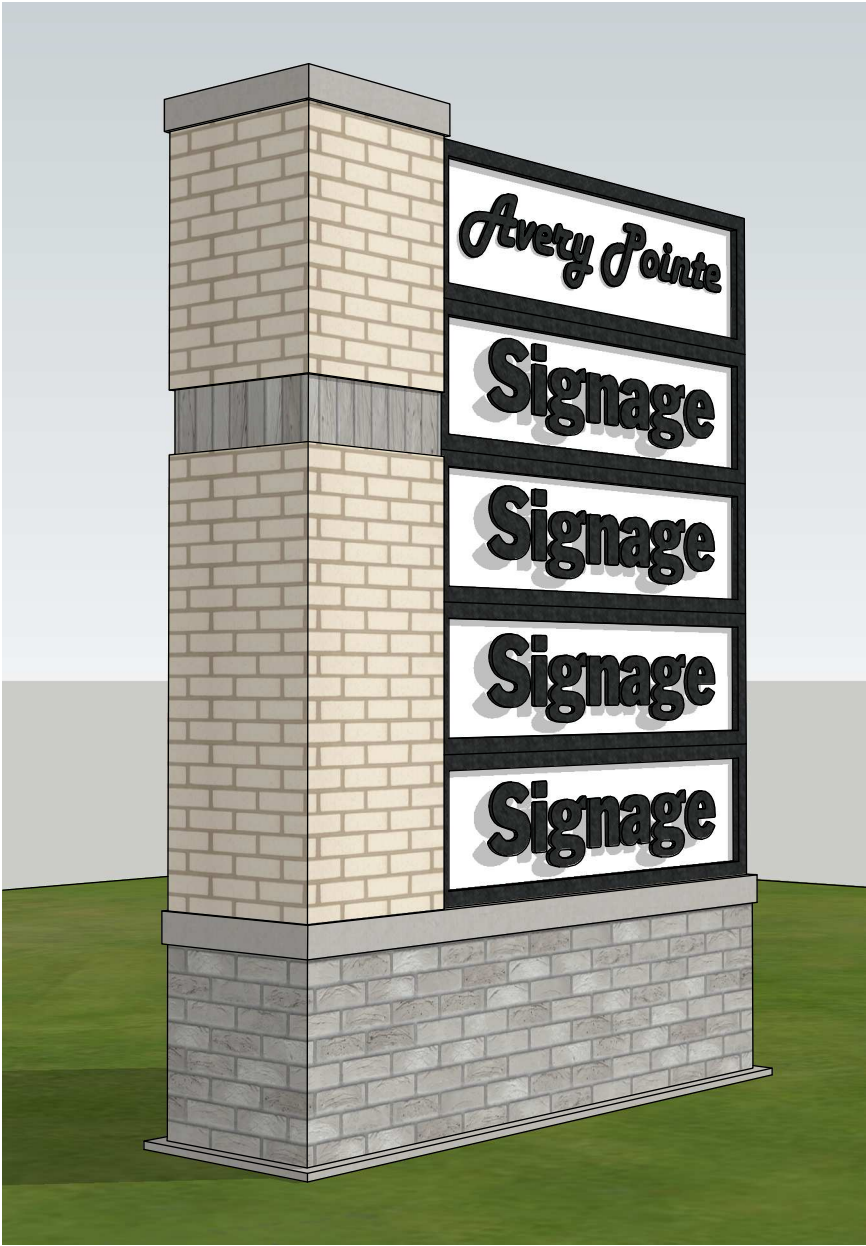
EXHIBIT A

ASHTON GRAY, LLC
Trevor Hayes
12360 Market Drive
Oklahoma City, OK 73114
(405) 823-9266

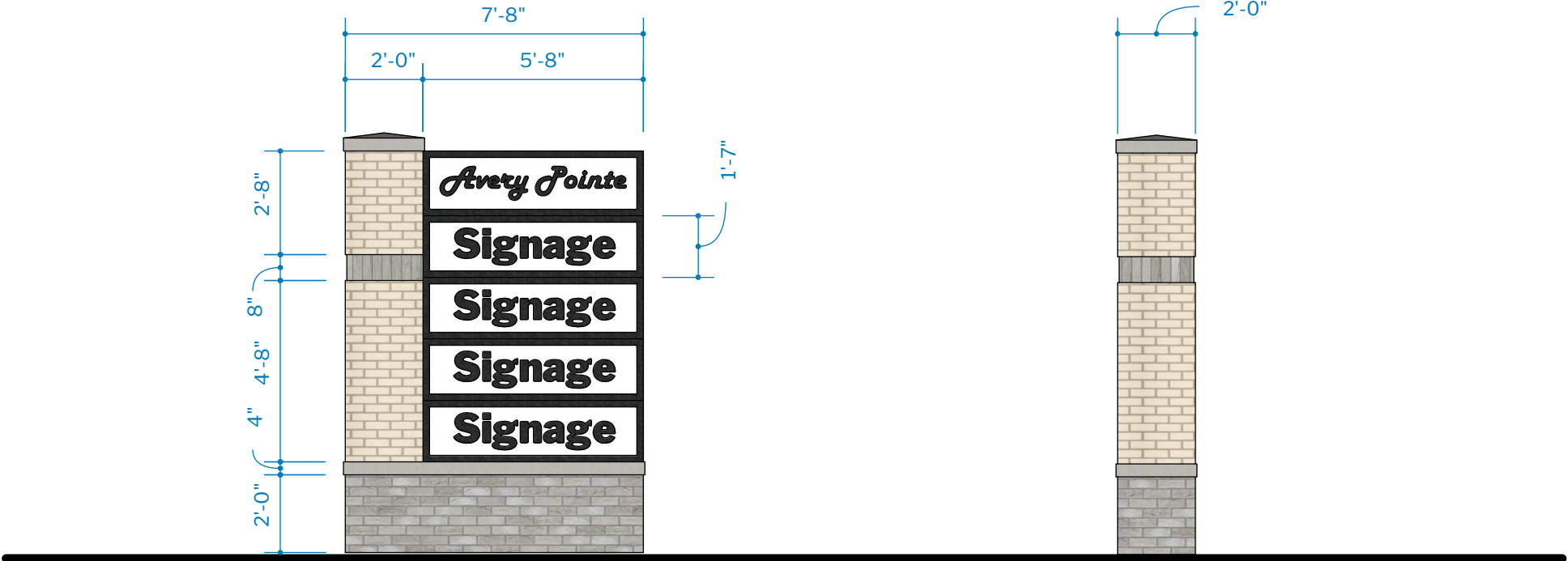
UNIFIED DEVELOPMENT ZONE - SIGN PLAN
AVERY POINTE COMMERCIAL
BLOCK A, LOTS 1R, 4 AND 5
BEING A REPLAT OF BLOCK A, LOT 1R.
BEING 2.068 ACRES SITUATED IN THE
FRANCIS T. DUFFAU, ABSTRACT NO. 288
CITY OF ANNA, ANNA, COLLIN COUNTY, TEXAS
JUNE, 2022

[illegible]

EXHIBIT B



1 PERSPECTIVE
1 Scale: NTS



2 FRONT ELEVATION
1 Scale: 1/4" : 1'-0"

3 SIDE ELEVATION
1 Scale: 1/4" : 1'-0"



4 SIDE ELEVATION
1 Scale: 1/4" : 1'-0"

5 BACK ELEVATION
1 Scale: 1/4" : 1'-0"

Miller

ASHTON GRAY

ENTIRE SIGN IS 83 SQFT
PER SIDE OF SINGLE
SIGN, 84 SQFT ALLOWED

MONUMENT SIGN - ANNA, TX
NOT FOR PERMIT OR CONSTRUCTION
SIGN DESIGN
September 22, 2022



Item No. 7.e.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Joey Grisham

AGENDA ITEM:

Acting as the Anna Public Facility Corporation Board of Directors, Consider/Discuss/Action on a resolution authorizing the formation of and APFC as sole member of (i) APFC Waters Creek Member, LLC, as special member and landlord, (ii) APFC Waters Creek Contractor, LLC, as general contractor, and (iii) APFC Waters Creek Development, LLC, as co-developer, all in relation to the financing, acquisition, construction and development of the Jefferson Villages at Waters Creek multifamily affordable housing development. (Director of Economic Development Joey Grisham)

SUMMARY:

As the PFC Board will recall, the Villages of Waters Creek is a Class A Multifamily project being developed by JPI, who is also doing the Parmore Senior Living project in Anna Town Square. The Anna PFC approved an MOU for this project earlier this year. This item approves the necessary documents for the partnership structure. 50% of the units will be targeted for those who earn 80% AMI, while the remaining 50% will be market rate units.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 1: Growing Anna Economy

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

Approve the resolution.

ATTACHMENTS:

1. APFC-Waters Creek - Board Package 11-22 -Item 1
2. APFC-Waters Creek Packet

APPROVALS:

Joey Grisham, Director Economic Development
Jim Proce, City Manager

Created/Initiated - 11/16/2022
Final Approval - 11/17/2022

ANNA PUBLIC FACILITY CORPORATION

RESOLUTION AUTHORIZING THE FORMATION OF APFC WATERS CREEK MEMBER, LLC AS SPECIAL MEMBER OF [JEFFERSON VILLAGE WATERS CREEK, LLC] (THE “*SPECIAL MEMBER*”) IN CONNECTION WITH THE FINANCING, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC FACILITY; AUTHORIZING THE DESIGNATION OF THE ANNA PUBLIC FACILITY CORPORATION (THE “*CORPORATION*”) AS THE SOLE MEMBER OF THE SPECIAL MEMBER; APPROVING THE FORM AND SUBSTANCE OF A LIMITED LIABILITY COMPANY AGREEMENT AND THE EXECUTION THEREOF; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN IN CONNECTION WITH THE SPECIAL MEMBER; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING THERETO

WHEREAS, the Anna Public Facility Corporation (the “*Corporation*”) has been duly created and organized pursuant to and in accordance with the provisions of the Texas Public Facility Corporation Act, Chapter 303, Local Government Code, as amended (the “*Act*”), for the purpose of providing a means of financing the costs of the acquisition, construction, rehabilitation, renovation, repair, equipping furnishing and placement in service of public facilities; and

WHEREAS, the Board of Directors of the Corporation has determined that it is in the best interest of the Corporation to act as the special member of APFC Waters Creek Member, LLC (the “*Special Member*”), which will be the special member of [Jefferson Village Waters Creek, LLC] (the “*Borrower*”) in order to participate in the financing, acquisition, construction and equipping of a public facility consisting of a multifamily residential rental development for low and moderate income tenants to be known as Villages at Waters Creek, and located in the City of Anna, Collin County, Texas; and

WHEREAS, the Special Member, in its capacity as landlord will enter into a lease agreement (the “*Lease Agreement*”) with the Borrower; and

WHEREAS, as the sole member of the Special Member, the Corporation desires to authorize all action necessary and appropriate to enter into and carry out all actions under the Lease Agreement, to appoint officers of the Special Member; to approve of the Special Member’s formation and the form and substance of its Limited Liability Company Agreement (the “*Company Agreement*”); and to ratify all actions previously taken on behalf of the Special Member;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ANNA PUBLIC FACILITY CORPORATION THAT:

Section 1. Formation of Special Member. The formation of APFC Waters Creek Member, LLC is hereby approved and ratified.

Section 2. Designation of Sole Member. The designation of the Corporation as the sole member of the Special Member is hereby approved and ratified.

Section 3. Approval and Execution of the Company Agreement. The form and substance of the Company Agreement are hereby approved, and the officers of the Corporation, as sole member of the Special Member, are each hereby authorized to execute the Company Agreement.

Section 4. Appointment of Officers of the Special Member. Stan Carver II is appointed President, Danny Ussery is appointed Vice President and Pete Cain is appointed Secretary of the Special Member.

Section 5. Execution and Delivery of Financing Documents. The officers of the Special Member are each hereby authorized to negotiate the terms of, execute and attest to the Lease Agreement and any other such agreements, assignments, notes, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 6. Ratification of Previous Actions. The Corporation hereby ratifies, confirms and adopts all actions previously taken on behalf of the Special Member to carry into effect the transactions contemplated by this Resolution.

Section 7. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

Section 8. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED the 22nd day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION

By _____
Stan Carver II
President

ANNA PUBLIC FACILITY CORPORATION

RESOLUTION AUTHORIZING THE FORMATION OF APFC WATERS CREEK DEVELOPMENT, LLC (THE “*Co-DEVELOPER*”) IN CONNECTION WITH THE FINANCING, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC FACILITY; AUTHORIZING THE DESIGNATION OF THE ANNA PUBLIC FACILITY CORPORATION AS THE SOLE MEMBER OF THE CO-DEVELOPER; APPROVING THE FORM AND SUBSTANCE OF A LIMITED LIABILITY COMPANY AGREEMENT AND THE EXECUTION THEREOF; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN IN CONNECTION WITH THE CO-DEVELOPER; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING THERETO

WHEREAS, the Anna Public Facility Corporation (the “*Corporation*”) has been duly created and organized pursuant to and in accordance with the provisions of the Texas Public Facility Corporation Act, Chapter 303, Local Government Code, as amended (the “*Act*”), for the purpose of providing a means of financing the costs of the acquisition, construction, rehabilitation, renovation, repair, equipping furnishing and placement in service of public facilities; and

WHEREAS, pursuant to the Act, the Corporation intends to participate in the financing, acquisition, construction and equipping of a public facility consisting of a multifamily residential rental development for low and moderate income tenants to be known as Villages at Waters Creek, and located in the City of Anna, Collin County, Texas; and

WHEREAS, APFC Waters Creek Development, LLC (the “*Co-Developer*”), a Texas limited liability company whose sole member is the Corporation, will serve as co-developer to [Jefferson Village Waters Creek, LLC] (the “*Borrower*”) in connection with the acquisition, owning, leasing and managing of the Development pursuant to a Development Agreement (the “*Development Agreement*”) between the Co-Developer and an affiliate or designee the Borrower; and

WHEREAS, as the sole member of the Co-Developer, the Corporation desires to authorize all action necessary and appropriate to enter into and carry out all actions for the benefit of the Borrower in connection with the Development, to appoint officers of the Co-Developer; to approve of the Co-Developer’s formation and the form and substance of its Limited Liability Company Agreement (the “*Company Agreement*”); and to ratify all actions previously taken on behalf of the Co-Developer;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ANNA PUBLIC FACILITY CORPORATION THAT:

Section 1. Formation of Co-Developer. The formation of APFC Waters Creek Development, LLC is hereby approved and ratified.

Section 2. Designation of Sole Member. The designation of the Corporation as the sole member of the Co-Developer is hereby approved and ratified.

Section 3. Approval and Execution of the Company Agreement. The form and substance of the Company Agreement are hereby approved, and the officers of the Corporation, as sole member of the Co-Developer, are each hereby authorized to execute the Company Agreement.

Section 4. Appointment of Officers of the Co-Developer. Stan Carver II is appointed President, Danny Ussery is appointed Vice President and Pete Cain is appointed Secretary of the Co-Developer.

Section 5. Execution and Delivery of Financing Documents. The officers of the Co-Developer are each hereby authorized to negotiate the terms of, execute and attest to the Development Agreement and any other such agreements, assignments, notes, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 6. Ratification of Previous Actions. The Corporation hereby ratifies, confirms and adopts all actions previously taken on behalf of the Co-Developer to carry into effect the transactions contemplated by this Resolution.

Section 7. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

Section 8. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED the 22nd day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION

By _____
Stan Carver II
President

ANNA PUBLIC FACILITY CORPORATION

RESOLUTION AUTHORIZING THE FORMATION OF APFC WATERS CREEK CONTRACTOR, LLC (THE “*GENERAL CONTRACTOR*”) IN CONNECTION WITH THE FINANCING, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC FACILITY; AUTHORIZING THE DESIGNATION OF THE ANNA PUBLIC FACILITY CORPORATION (THE “*CORPORATION*”) AS THE SOLE MEMBER OF THE GENERAL CONTRACTOR; APPROVING THE FORM AND SUBSTANCE OF A LIMITED LIABILITY COMPANY AGREEMENT AND THE EXECUTION THEREOF; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN IN CONNECTION WITH THE GENERAL CONTRACTOR; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING THERETO

WHEREAS, the Anna Public Facility Corporation (the “*Corporation*”) has been duly created and organized pursuant to and in accordance with the provisions of the Texas Public Facility Corporation Act, Chapter 303, Local Government Code, as amended (the “*Act*”), for the purpose of providing a means of financing the costs of the acquisition, construction, rehabilitation, renovation, repair, equipping furnishing and placement in service of public facilities; and

WHEREAS, pursuant to the Act, the Corporation intends to participate in the financing, acquisition, construction and equipping of a public facility consisting of a multifamily residential rental development for low and moderate income tenants to be known as Villages at Waters Creek, and located in the City of Anna, Collin County, Texas; and

WHEREAS, APFC Waters Creek Contractor, LLC (the “*General Contractor*”), a Texas limited liability company whose sole member is the Corporation, will serve as general contractor to [Jefferson Village Waters Creek, LLC] (the “*Borrower*”) in connection with the construction of the Development pursuant to a Construction Contract (the “*Construction Contract*”) between the General Contractor and the Borrower, or an affiliate or designee thereof; and

WHEREAS, as the sole member of the General Contractor, the Corporation desires to authorize all action necessary and appropriate to enter into and carry out all actions for the benefit of the Borrower in connection with the Development, to appoint officers of the General Contractor; to approve of the General Contractor’s formation and the form and substance of its Limited Liability Company Agreement (the “*Company Agreement*”); and to ratify all actions previously taken on behalf of the General Contractor;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ANNA PUBLIC FACILITY CORPORATION THAT:

Section 1. Formation of General Contractor. The formation of APFC Waters Creek Contractor, LLC is hereby approved and ratified.

Section 2. Designation of Sole Member. The designation of the Corporation as the sole member of the General Contractor is hereby approved and ratified.

Section 3. Approval and Execution of the Company Agreement. The form and substance of the Company Agreement are hereby approved, and the officers of the Corporation, as sole member of the General Contractor, are each hereby authorized to execute the Company Agreement.

Section 4. Appointment of Officers of the General Contractor. Stan Carver II is appointed President, Danny Ussery is appointed Vice President and Pete Cain is appointed Secretary of the General Contractor.

Section 5. Execution and Delivery of Financing Documents. The officers of the General Contractor are each hereby authorized to negotiate the terms of, execute and attest to the Construction Contract and any other such agreements, assignments, notes, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 6. Ratification of Previous Actions. The Corporation hereby ratifies, confirms and adopts all actions previously taken on behalf of the General Contractor to carry into effect the transactions contemplated by this Resolution.

Section 7. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

Section 8. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED the 22nd day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION

By _____
Stan Carver II
President

This Limited Liability Company Agreement (this “*Agreement*”) of APFC Waters Creek Member, LLC (the “*Company*”) is entered into by the Anna Public Facility Corporation, as the sole member of the Company (the “*Member*”).

- 1. Name** The name of the limited liability company formed hereby is APFC Waters Creek Member, LLC.
- 2. Purpose** The general purpose of the Company is to assist the Member in financing public facilities in the jurisdiction of the Anna Public Facility Corporation. The specific purposes of the Company are to (i) be admitted as a member and serve as special member of [Jefferson Village Waters Creek, LLC], a Texas limited liability company (the “*Project Owner*”) and in connection therewith, to own, hold, sell, dispose of or otherwise deal with its member interest in the Project Owner; and (ii) acquire, own and lease a tract of real property in City of Anna, Collin County, Texas, on which a multifamily residence will be constructed.
- 3. Registered Office** The address of the registered office of the Company in the State of Texas is c/o Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 4. Registered Agent** The name and address of the registered agent of the Company for service of process on the Company in the State of Texas is Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 5. Members** The names and the business, residence or mailing addresses of the Member is as follows:

Special Member - LLC Agreement 4892-9820-4477 v3.docx
2297737

- 6. Powers**

The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the laws of the State of Texas. The Member shall have the authority to bind the Company.
- 7. Dissolution**

The term of the Company commenced on the filing of the Certificate of Formation Limited Liability Company with the Texas Secretary of State and shall be perpetual unless dissolved as provided in this Agreement.
- 8. Capital Contributions**

The Member has contributed \$10,000, in cash, and no other property, to the Company.
- 9. Additional Contributions**

No Member is required to make any additional capital contribution to the Company.
- 10. Allocation of Profits and Losses**

The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.
- 11. Distributions**

Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Member in the same proportion as their capital account balances.
- 12. Assignments**

A Member may assign its limited liability company interest in whole or in part only with the consent of the other Members.
- 13. Resignation**

Without the consent of the remaining Members, a Member may not resign from the Company.
- 14. Admission of Additional Members**

One (1) or more additional members of the Company may be admitted to the Company with the consent of the Members and upon being so admitted shall become bound by all of the terms of this Agreement and shall execute a written joinder to this Agreement.
- 15. Liability of Members**

The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act. The Company shall indemnify, in accordance with and to the full extent now or hereafter permitted by law, the Members and any officer or employee of the Company, and may so indemnify any agent of the Company, who was or is a party or is threatened to be made a party to any

threatened, pending or completed action, suit or proceeding, whether civil, criminal, administration or investigative (including, without limitation, an action by or in the right of the Company) by reason of any action or omission in their respective capacities against any liabilities, expenses (including, without limitation, attorneys' fees and expenses and any other costs and expenses incurred in connection with defending such action, suit or proceeding), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with such action, suit or proceeding, if the Person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its, his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption (i) that the Person did not act in good faith and in a manner which it, he or she reasonably believed to be in or not opposed to the best interests of the Company, and (ii) with respect to any criminal action or proceeding, that the Person had reasonable cause to believe its, his or her conduct was unlawful. Expenses (including, without limitation, attorneys' fees and expenses) incurred by a Person seeking indemnification hereunder shall be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking from the Person to repay such amount if it shall ultimately be determined that the Person is not entitled to indemnification.

For purposes of the preceding paragraph, the word "Person" shall include each Member and any officer, employee or agent of the Company.

16. Officers

The officers of the Company shall be a President, a Vice President and a Secretary. The President shall be the chief executive officer of the Company and shall be in general charge of the properties and affairs of the Company; shall preside at all meetings; in furtherance of the purposes of the Company, may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Company. The Vice President shall carry out the powers and responsibilities of the President when the President is absent or unable to act. The Secretary shall attend to the giving and serving of all notices; in furtherance of the purposes of the Company, may

sign with the President or Vice President in the name of the Company, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Company; shall have charge of the corporate books, records, documents and instruments, and such other books and papers as may be necessary, all of which shall at all reasonable times be open to inspection upon application at the office of the Company during business hours. Such offices shall be assumed by the persons serving in the respective office on the Board of Directors of the Member.

17. Governing Law

This Agreement shall be governed by, and construed under, the laws of the State of Texas, all rights and remedies being governed by said laws.

18. Amendment

This Agreement may be amended in writing by the Members.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 7th day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION, as sole
member

By _____
Stan Carver II
President

**LIMITED LIABILITY COMPANY AGREEMENT
OF
APFC WATERS CREEK DEVELOPMENT, LLC**

This Limited Liability Company Agreement (this “*Agreement*”) of APFC Waters Creek Development, LLC (the “*Company*”) is entered into by the Anna Public Facility Corporation, as the sole member of the Company (the “*Member*”).

The Member hereby forms a limited liability company pursuant to and in accordance with the Texas Limited Liability Company Act, as amended from time to time (currently Chapter 101 of the Texas Business Organizations Code), (the “Act”) by filing a Certificate of Formation with the Texas Secretary of State and hereby agrees as follows:

- 1. Name** The name of the limited liability company formed hereby is APFC Waters Creek Development, LLC.
- 2. Purpose** The general purpose of the Company is to assist the Member in providing public facilities in the jurisdiction of the Anna Public Facility Corporation. The specific purpose of the Company is to serve as co-developer with in connection with the development of a multifamily housing development in City of Anna, Collin County, Texas.
- 3. Registered Office** The address of the registered office of the Company in the State of Texas is c/o Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 4. Registered Agent** The name and address of the registered agent of the Company for service of process on the Company in the State of Texas is Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 5. Members** The names and the business, residence or mailing addresses of the Member is as follows:

Anna Public Facility Corporation
P.O. Box 776
Anna, Texas 75409
- 6. Powers** The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the laws

of the State of Texas. The Member shall have the authority to bind the Company.

- 7. Dissolution**

The term of the Company commenced on the filing of the Certificate of Formation Limited Liability Company with the Texas Secretary of State and shall be perpetual unless dissolved as provided in this Agreement.
- 8. Capital Contributions**

The Member has contributed \$10,000, in cash, and no other property, to the Company.
- 9. Additional Contributions**

No Member is required to make any additional capital contribution to the Company.
- 10. Allocation of Profits and Losses**

The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.
- 11. Distributions**

Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Member in the same proportion as their capital account balances.
- 12. Assignments**

A Member may assign its limited liability company interest in whole or in part only with the consent of the other Members.
- 13. Resignation**

Without the consent of the remaining Members, a Member may not resign from the Company.
- 14. Admission of Additional Members**

One (1) or more additional members of the Company may be admitted to the Company with the consent of the Members and upon being so admitted shall become bound by all of the terms of this Agreement and shall execute a written joinder to this Agreement.
- 15. Liability of Members**

The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act. The Company shall indemnify, in accordance with and to the full extent now or hereafter permitted by law, the Members and any officer or employee of the Company, and may so indemnify any agent of the Company, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administration or investigative (including, without limitation, an action by or in the right of the Company) by reason of any action or omission in their respective capacities against any liabilities, expenses

(including, without limitation, attorneys' fees and expenses and any other costs and expenses incurred in connection with defending such action, suit or proceeding), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with such action, suit or proceeding, if the Person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its, his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption (i) that the Person did not act in good faith and in a manner which it, he or she reasonably believed to be in or not opposed to the best interests of the Company, and (ii) with respect to any criminal action or proceeding, that the Person had reasonable cause to believe its, his or her conduct was unlawful. Expenses (including, without limitation, attorneys' fees and expenses) incurred by a Person seeking indemnification hereunder shall be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking from the Person to repay such amount if it shall ultimately be determined that the Person is not entitled to indemnification.

For purposes of the preceding paragraph, the word "Person" shall include each Member and any officer, employee or agent of the Company.

16. Officers

The officers of the Company shall be a President, a Vice President and a Secretary. The President shall be the chief executive officer of the Company and shall be in general charge of the properties and affairs of the Company; shall preside at all meetings; in furtherance of the purposes of the Company, he may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Company. The Vice President shall carry out the powers and responsibilities of the President when the President is absent or unable to act. The Secretary shall attend to the giving and serving of all notices; in furtherance of the purposes of the Company, may sign with the President or Vice President in the name of the Company, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Company; shall have charge of the corporate books, records,

documents and instruments, and such other books and papers as may be necessary, all of which shall at all reasonable times be open to inspection upon application at the office of the Company during business hours. Such offices shall be assumed by the persons serving in the respective office on the Board of Directors of the Member.

17. Governing Law

This Agreement shall be governed by, and construed under, the laws of the State of Texas, all rights and remedies being governed by said laws.

18. Amendment

This Agreement may be amended in writing by the Members.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 7th day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION, as sole
member

By _____
Stan Carver II
President

**LIMITED LIABILITY COMPANY AGREEMENT
OF
APFC WATERS CREEK CONTRACTOR, LLC**

This Limited Liability Company Agreement (this “*Agreement*”) of APFC Waters Creek Contractor, LLC (the “*Company*”) is entered into by the Anna Public Facility Corporation, as the sole member of the Company (the “*Member*”).

The Member hereby forms a limited liability company pursuant to and in accordance with the Texas Limited Liability Company Act, as amended from time to time (currently Chapter 101 of the Texas Business Organizations Code), (the “*Act*”) by filing a Certificate of Formation with the Texas Secretary of State and hereby agrees as follows:

- 1. Name**

The name of the limited liability company formed hereby is APFC Waters Creek Contractor, LLC.
- 2. Purpose**

The general purpose of the Company is to assist the Member in providing public facilities in the jurisdiction of the Anna Public Facility Corporation. The specific purpose of the Company is to serve as general contractor in connection with the construction of a multifamily housing development to be located in the City of Anna, Collin County, Texas.
- 3. Registered Office**

The address of the registered office of the Company in the State of Texas is c/o Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 4. Registered Agent**

The name and address of the registered agent of the Company for service of process on the Company in the State of Texas is Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 5. Members**

The names and the business, residence or mailing addresses of the Member is as follows:

Anna Public Facility Corporation
P.O. Box 776
Anna, Texas 75409
- 6. Powers**

The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the laws

of the State of Texas. The Member shall have the authority to bind the Company.

- 7. Dissolution**

The term of the Company commenced on the filing of the Certificate of Formation Limited Liability Company with the Texas Secretary of State and shall be perpetual unless dissolved as provided in this Agreement.
- 8. Capital Contributions**

The Member has contributed \$10,000, in cash, and no other property, to the Company.
- 9. Additional Contributions**

No Member is required to make any additional capital contribution to the Company.
- 10. Allocation of Profits and Losses**

The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.
- 11. Distributions**

Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Member in the same proportion as their capital account balances.
- 12. Assignments**

A Member may assign its limited liability company interest in whole or in part only with the consent of the other Members.
- 13. Resignation**

Without the consent of the remaining Members, a Member may not resign from the Company.
- 14. Admission of Additional Members**

One (1) or more additional members of the Company may be admitted to the Company with the consent of the Members and upon being so admitted shall become bound by all of the terms of this Agreement and shall execute a written joinder to this Agreement.
- 15. Liability of Members**

The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act. The Company shall indemnify, in accordance with and to the full extent now or hereafter permitted by law, the Members and any officer or employee of the Company, and may so indemnify any agent of the Company, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administration or investigative (including, without limitation, an action by or in the right of the Company) by reason of any action or omission in their respective capacities against any liabilities, expenses

(including, without limitation, attorneys' fees and expenses and any other costs and expenses incurred in connection with defending such action, suit or proceeding), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with such action, suit or proceeding, if the Person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its, his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption (i) that the Person did not act in good faith and in a manner which it, he or she reasonably believed to be in or not opposed to the best interests of the Company, and (ii) with respect to any criminal action or proceeding, that the Person had reasonable cause to believe its, his or her conduct was unlawful. Expenses (including, without limitation, attorneys' fees and expenses) incurred by a Person seeking indemnification hereunder shall be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking from the Person to repay such amount if it shall ultimately be determined that the Person is not entitled to indemnification.

For purposes of the preceding paragraph, the word "Person" shall include each Member and any officer, employee or agent of the Company.

16. Officers

The officers of the Company shall be a President, a Vice President and a Secretary. The President shall be the chief executive officer of the Company and shall be in general charge of the properties and affairs of the Company; shall preside at all meetings; in furtherance of the purposes of the Company, may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Company. The Vice President shall carry out the powers and responsibilities of the President when the President is absent or unable to act. The Secretary shall attend to the giving and serving of all notices; in furtherance of the purposes of the Company, may sign with the President or Vice President in the name of the Company, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Company; shall have charge of the corporate books, records, documents

and instruments, and such other books and papers as may be necessary, all of which shall at all reasonable times be open to inspection upon application at the office of the Company during business hours. Such offices shall be assumed by the persons serving in the respective office on the Board of Directors of the Member.

17. Governing Law

This Agreement shall be governed by, and construed under, the laws of the State of Texas, all rights and remedies being governed by said laws.

18. Amendment

This Agreement may be amended in writing by the Members.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 7th day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION, as sole
member

By _____
Stan Carver II
President

INDEMNIFICATION AGREEMENT

THIS INDEMNIFICATION AGREEMENT (the “*Agreement*”), dated as of [November 30], 2022, is entered into between and among JEFFERSON VILLAGES OF WATERS CREEK HOLDINGS, LLC, a Delaware limited liability company (the “*Managing Member*”), [JPI MULTIFAMILY DEVELOPMENT, LLC, a Texas limited liability company] (the “*Developer*”), APFC WATERS CREEK MEMBER, LLC, a Texas limited liability company (the “*Special Member*”), and ANNA PUBLIC FACILITY CORPORATION, a Texas public facility corporation (the “*PFC*”).

RECITALS

A. Jefferson Villages of Waters Creek, LLC (the “*Company*”) contemplates constructing an approximately 325-unit multifamily residential development [for rental to low- and moderate- income individuals], to be known as Jefferson Villages at Waters Creek and to be located in the City of Anna, Collin County, Texas (the “*Project*”).

B. The Company currently consists of the Managing Member as managing member and the Special Member as the special member.

C. Financing for acquisition and construction of the Project is expected to be provided by: (i) a loan (the “*Loan*”) from Texas Capital Bank, a Texas state bank, to the Company; and (ii) certain equity proceeds (the “*Equity*”) from the Managing Member pursuant to an Operating Agreement dated as of the date hereof, and which may be amended from time to time (the “*Operating Agreement*”) among the Managing Member and the Special Member. Collectively, the Loan and the Equity and any other development financing that may be used in connection with the Project are referred to herein as the “*Financing*.”

D. In connection with the Financing and the Project, the Managing Member or its Affiliates (as defined in the Operating Agreement) and the Developer will be required to provide certain guarantees or indemnities, representations, warranties and covenants (altogether, the “*Guaranteed Obligations*”) as evidenced by the documentation relating to the Financing and the Project (altogether, the “*Financing and Project Documentation*” and the Managing Member, its Affiliates, and the Developer as described in this Recital D, the “*Guarantor*”).

E. Title to the land for the Project shall be taken in the name of the Special Member, in its capacity as landlord, which shall then enter into a lease agreement (the “*Lease Agreement*”) with the Company as tenant.

F. The parties desire to set forth their agreement pursuant to which they will proceed with the closing of the Financing, the development, construction and operation of the Project, and operation of the Company.

G. Capitalized terms not otherwise defined herein shall have the meanings set forth in the Operating Agreement.

NOW, THEREFORE, in consideration of the premises herein, and other good and valuable consideration, the parties hereto agree as follows:

1. *Limitation of PFC Project Affiliates.* The PFC is the sole member of the Special Member, APFC Waters Creek Contractor, LLC (the “*Contractor*”), and APFC Waters Creek Development, LLC (the “*Co-Developer*”) (the Special Member, the Contractor and the Co-Developer are sometimes collectively referred to herein as the “*PFC Project Affiliates*”). Such PFC Project Affiliates shall not conduct any activities or serve any purpose other than in connection with the financing, construction, development ownership or operation of the Project (as applicable), as set forth in the respective organizational documents of each such PFC Affiliate (and pursuant to the applicable provisions of the Operating Agreement, the Lease Agreement and any documents entered into in connection therewith).

2. *Indemnification.* (a) *BY GUARANTOR.* GUARANTOR SHALL INDEMNIFY AND HOLD THE PFC (AND ITS AFFILIATES, OFFICERS AND DIRECTORS) HARMLESS FROM AND AGAINST ANY AND ALL CLAIMS AND ACTIONS AND ACTUAL LOSSES, EXPENSES AND LIABILITIES INCURRED BY THE PFC (OR ITS AFFILIATES, OFFICERS OR DIRECTORS) AND PAID TO ANY PARTY, INCLUDING, BUT NOT LIMITED TO, THIRD PARTIES IN CONNECTION WITH OR ARISING OUT OF ANY DEFAULT OF THIS AGREEMENT, THE OPERATING AGREEMENT OR THE FINANCING AND PROJECT DOCUMENTATION, EXCEPT IN INSTANCES WHERE ANY SUCH DEFAULT HAS BEEN CAUSED BY THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF THE PFC, THE SPECIAL MEMBER OR ANY OTHER PFC PROJECT AFFILIATE. FOR PURPOSES OF THIS PARAGRAPH, THE TERM “CAUSED” SHALL ONLY INCLUDE MATTERS WITHIN THE CONTROL OF THE APPLICABLE PERSON OR ENTITY.

(b) *By the Special Member.* The Special Member shall indemnify and hold the Managing Member (and its affiliates, officers and directors) harmless from and against any and all claims and actions and actual losses, expenses and liabilities incurred by the Managing Member (or its affiliates, officers or directors) and paid to any third party in connection with or arising out of: (1) material default of this Agreement or the Financing and Project Documentation directly caused by Special Member, the PFC or any other PFC Project Affiliate; or (2) the gross negligence or willful misconduct on the part of Special Member, the PFC or any other PFC Project Affiliate, except in instances where any default of this Agreement or the Financing and Project Documentation or any claim, action, loss, expense or liability has been caused (directly or indirectly) by: (1) the Guarantor; or (2) the gross negligence or willful misconduct of the Guarantor. For purposes of this paragraph, the term “caused” shall only include matters within the control of the applicable person or entity. The parties hereto acknowledge and agree that liabilities of the Special Member under this Agreement, the Operating Agreement and the Lease Agreement are solely liabilities of the Special Member and not of the PFC.

(c) Notwithstanding the above, the parties agree that a default caused by a lack of cash flow of the Project shall not result in an indemnification obligation hereunder, except where the event or circumstance causing the lack of cash flow was within the control of the indemnifying party. and the indemnifying party (or its applicable affiliate) acted with gross negligence or willful misconduct.

(d) After closing, all reasonable third-party expenses incurred by the Special Member in connection with satisfying its obligations under the Operating Agreement shall be reimbursed to the Special Member from the Company pursuant to section 3.5(h) of the Operating Agreement.

3. *Notice.* Any notice or communication required or permitted hereunder shall be given in writing, sent by: (i) personal delivery; or (ii) United States mail, postage prepaid, registered or certified mail, return receipt requested; or (iii) upon having been sent by telefax or another means of immediate electronic communication, addressed as follows:

If to PFC: Anna Housing Finance Corporation
120 W 7th Street
P.O. Box 776
Anna, Texas 75409
Attn: Jim Proce, City Manager
Email: jproce@annatexas.gov

With a copy to: Chapman and Cutler LLP
320 South Canal Street, 27th Floor
Chicago, IL 60606
Attn: Ryan Bowen
Email: rbowen@chapman.com

If to Special Member: APFC Waters Creek Member, LLC
120 W 7th Street
P.O. Box 776
Anna, Texas 75409
Attn: Jim Proce, City Manager
Email: jproce@annatexas.gov

With a copy to: Chapman and Cutler LLP
320 South Canal Street, 27th Floor
Chicago, IL 60606
Attn: Ryan Bowen
Email: rbowen@chapman.com

If to Managing Member
or Developer: 600 E. Las Colinas Boulevard, Suite 1800
Irving, Texas 75039
Attn: Ryan Combs
Email: ryan.combs@jpi.com

With copies to:

Coats Rose, P.C.
9 Greenway Plaza, Suite 1000
Houston, Texas 77046
Attention: Barry J. Palmer

600 E. Las Colinas Boulevard, Suite 1800
Irving, Texas 75039
Attn: Legal Department
Email: legal@jpi.com

or to such other address or to the attention of such other person as hereafter shall be designated in writing by the applicable parties sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or in the case of mail, as of three (3) days after postmark when sent by United States mail at the address and in the manner provided herein, or in the case of facsimile or electronic communication, upon receipt.

4. *Texas Law to Apply.* This Agreement shall be construed under and in accordance with the laws of the State of Texas without regard to its conflicts of laws or principles, and exclusive venue for any action or proceeding arising under this Agreement shall be brought in the courts of Collin County, Texas.

5. *Parties Bound.* This Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective heirs, executors, administrators, legal representatives, successors and assigns where permitted by this Agreement.

6. *Legal Construction.* In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

7. *Prior Agreements Superseded.* This Agreement supersedes any prior understandings or agreements, whether written or oral, between the parties as to the subject matter herein.

8. *Headings.* The headings used in this Agreement have been included for the sole purpose of making it easier to locate the subject covered by each provision and shall not be used in construing the contents of this Agreement.

9. *Assignment.* No party may assign this Agreement without the prior written consent of the other parties, except as otherwise provided herein.

10. *Attorneys' Fees and Legal Expenses.* Should either party hereto institute any action or proceeding in a court of law to enforce any provision hereof or for damages by reason of any alleged breach of any provision of this Agreement or for any other judicial remedy, the prevailing party shall be entitled to receive from the losing party reasonable attorneys' fees and all court costs

in connection with said proceeding. Notwithstanding the foregoing, attorney fees cannot be awarded against the PFC.

11. *Counterparts and Facsimiles.* This Agreement may be executed in multiple counterparts, each of which shall be deemed an original and all of which counterparts taken together shall constitute one and the same Agreement. In addition, this Agreement may be executed by facsimile signatures and such signatures shall be deemed an original.

12. *Modification and Termination.* This Agreement may not be modified or amended except by a written agreement signed by the parties hereto and referring specifically to this Agreement.

13. *Rule of Construction.* The parties acknowledge that each party and its counsel have reviewed and revised this 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 this Agreement.

14. *Exclusive Dealing.* No party shall, directly or indirectly, through an owner, employee, agent, representative, officer, director or affiliate, enter into discussions with (or consummate an agreement with) any party not a signatory to this Agreement with respect to the performance of the terms of this Agreement as set forth herein.

15. *Access to Information.* The Special Member and the PFC agree to grant a right of reasonable access to the Company, the Managing Member and their respective authorized representatives with respect to the Special Member's, PFC's, or PFC Project Affiliates' books, records, contracts, and other documents and information concerning its business operations, finances, and assets relating to the Project solely for the purpose of performing their obligations, and determining their rights pursuant to this Agreement. The Special Member and the PFC shall have the same right of access to the properties, books, records, contracts, and other documents and information of the other parties hereto relating to the Project.

16. *Public Disclosures.* Each party shall consult the other(s) and must agree as to the timing, content, and form before issuing any press release or other public disclosure related to this Agreement or the Project. However, this paragraph does not prohibit any party from making a public disclosure regarding this Agreement and the Project as otherwise permitted by the Operating Agreement or Lease Agreement or if, in the opinion of its legal counsel, such disclosure is required by law, including, but not limited to, the Texas Public Information Act, Chapter 552 of the Texas Government Code.

[SIGNATURES CONTAINED ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have duly executed this Indemnification Agreement as of the day and year first above written.

PFC:

ANNA PUBLIC FACILITY CORPORATION, a Texas
public facility corporation

By: _____

Name: Stan Carver II

Title: President

SPECIAL MEMBER:

APFC WATERS CREEK MEMBER, LLC,
a Texas limited liability company

By: Anna Public Facility Corporation,
a Texas public facility corporation,
its sole member

By: _____

Name: Stan Carver II

Title: President

MANAGING MEMBER:

JEFFERSON VILLAGES OF WATERS CREEK
HOLDINGS, LLC, a Texas limited liability
company

By: _____
Name:
Title:

DEVELOPER:

[JPI MULTIFAMILY DEVELOPMENT, LLC, a
Texas limited liability company]

By: _____
Name:
Title:

OPERATING AGREEMENT
OF
JEFFERSON VILLAGES OF WATERS CREEK, LLC
BY AND BETWEEN
APFC WATERS CREEK MEMBER, LLC
AND
JEFFERSON VILLAGES OF
WATERS CREEK HOLDINGS, LLC

TABLE OF CONTENTS

	Page
ARTICLE I FORMATION; NAME, PURPOSE AND TERM.....	1
1.1. Formation; Name.	1
1.2. Purposes of the Company	2
1.3. Powers of the Company	2
1.4. Registered Agent and Office; Principal Office.....	3
1.5. Term.....	3
1.6. Entity Characterization	3
1.7. Definitions and Exhibits Incorporated.....	3
1.8. Representations and Warranties.....	4
1.9. Lease Agreement	6
1.10. Governmental Certificates	7
1.11. Real Estate Tax Exemption.....	7
ARTICLE II CAPITAL CONTRIBUTIONS AND THE LIABILITY OF MEMBERS	7
2.1. Capital Contributions	7
2.2. Funding Deficits.....	7
2.3. Withdrawal of Capital.....	8
2.4. Liability of Members	8
2.5. Loan Guaranties	8
ARTICLE III MANAGEMENT; RIGHTS, POWERS; DUTIES; DEFAULTS AND REMOVAL OF THE SPECIAL MEMBER	9
3.1. Management of the Company.....	9
3.2. Major Decisions; Affiliated Contracts.....	12
3.3. Exculpation; Indemnification.....	13
3.4. Outside Activities of Members	14
3.5. Certain Affiliate Fees and Reimbursements	14
3.6. Information and Meetings.....	16
3.7. Duties to Others	16
3.8. Event of Default as to Special Member	16
3.9. Replacement Trigger Event as to the Managing Member.	17
ARTICLE IV DISTRIBUTIONS.....	17
4.1. General.....	17

4.2.	In-Kind Distributions	18
4.3.	Tax Withholding	18
ARTICLE V CAPITAL ACCOUNTS AND ALLOCATIONS OF PROFITS AND LOSSES		20
5.1.	Allocations of Profits and Losses	20
5.2.	Capital Accounts	20
5.3.	Additional Provisions Regarding Capital Accounts.	21
ARTICLE VI FISCAL MATTERS		21
6.1.	Books and Records	21
6.2.	Bank Accounts	22
6.3.	Accounting and Fiscal Year	22
6.4.	Tax Filings, Tax Elections and Tax Audits	22
ARTICLE VII BUDGETS AND REPORTS		22
7.1.	Budgets.	22
7.2.	Annual Reports.	23
7.3.	Other Reports	23
ARTICLE VIII TRANSFERS.....		24
8.1.	Restrictions on Transfer of Membership Interests.....	24
8.2.	General Restrictions on All Transfers.....	25
8.3.	Substitute Members	26
ARTICLE IX DISSOLUTION AND TERMINATION OF THE COMPANY		26
9.1.	Events Causing Dissolution	26
9.2.	Procedures on Winding Up.....	27
9.3.	Insufficient Assets.....	27
9.4.	Termination of Interest	28
9.5.	Subsequent Distributions	28
9.6.	Filing Certificate of Cancellation.....	28
9.7.	Date of Termination	28
9.8.	Disposition of Documents and Records.....	28
ARTICLE X GENERAL PROVISIONS		28
10.1.	Notices	28
10.2.	Word Meanings.....	29
10.3.	Binding Provisions.....	29
10.4.	Applicable Law; Venue; No Jury Trial.....	29

10.5.	Counterparts	30
10.6.	Severability	30
10.7.	Captions	30
10.8.	Entire Agreement; Amendments; Further Assurances.	30
10.9.	No Third Party Beneficiaries	30
10.10.	Waiver of Partition, Etc	30
10.11.	Remedies; Waivers; Attorney’s Fees.....	31
10.12.	Survival of Certain Provisions	31
10.13.	Members’ Limited Liability.....	32
10.14.	Offset.....	32
10.15.	Limitation on Liability	32
10.16.	Special Senior Lender Provisions	32

EXHIBIT A	Allocations of Profits and Losses and Other Tax Matters
EXHIBIT B	Defined Terms
EXHIBIT C	Member Information
EXHIBIT D	Legal Description
EXHIBIT E	Major Decisions

OPERATING AGREEMENT
OF
JEFFERSON VILLAGES OF WATERS CREEK, LLC

THIS OPERATING AGREEMENT (this “**Agreement**”) of **JEFFERSON VILLAGES OF WATERS CREEK, LLC**, a Delaware limited liability company, dated as of _____, 2022 (the “**Effective Date**”), is by and between **JEFFERSON VILLAGES OF WATERS CREEK HOLDINGS, LLC**, a Delaware limited liability company (“**Managing Member**”) and **APFC WATERS CREEK MEMBER, LLC**, a Texas limited liability company (the “**Special Member**”).

RECITALS

A. On November 10, 2022 (the “**Formation Date**”), Jefferson Villages of Waters Creek, LLC (the “**Company**”) was formed pursuant to the Delaware Limited Liability Company Act (as from time to time amended and including any successor statute of similar import, the “**LLC Act**”) by the filing of the Certificate of Formation (the “**Certificate**”) with the Secretary of State of the State of Delaware in accordance with the LLC Act.

B. The Company was formed to acquire, maintain and operate collectively approximately 325 units and associated improvements in that certain development to be known as Jefferson Villages of Waters Creek (the “**Project**”), which such development is to be located in the City of Anna, Collin County, Texas, for rental in accordance with the Housing Requirements.

C. The Members now desire to enter into this Agreement in order to establish the manner in which the business and affairs of the Company shall be managed and set forth the respective rights, duties and obligations of the Members with respect to the Company and each other from and after the Effective Date.

NOW, THEREFORE, in consideration of the foregoing, of mutual promises, covenants and conditions of the parties hereto herein contained and other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Members hereby agree as follows:

ARTICLE I

Formation; Name, Purpose and Term

1.1. **Formation; Name.**

(a) The Company was formed upon the filing of the Certificate. This Agreement amends, restates and supersedes in its entirety the Original Agreement. The Members hereby agree to operate the Company as a limited liability company under the LLC Act.

(b) The names and addresses of the Members are as set forth in **Exhibit C** attached hereto. The Managing Member identified in **Exhibit C** attached hereto is hereby admitted as the sole managing member of the Company; the Special Member identified in

Exhibit C attached hereto is hereby admitted as the sole special member of the Company. The initial Percentage Interest of each Member is as set forth in **Exhibit C** attached hereto.

(c) The Managing Member shall file such amendments and restatements to the Certificate as may be required by the LLC Act, and any other certificates, applications or other documents and do or cause to be done all such filing, recording, publishing, or other acts as may be necessary or appropriate to comply with the requirements of law for the formation and/or operation of a limited liability company in accordance with the laws of the States of Delaware and Texas and in all other jurisdictions, if any, in which the Company shall conduct business. The Managing Member shall deliver to the Members a copy of the Certificate, any changes thereto, and any other document or instrument required to be filed, recorded or published under this Article I.

(d) The name of the Company shall be Jefferson Villages of Waters Creek, LLC. All of the business and other activities of the Company shall be carried out in the name of, and all assets shall be held in the name of, the Company, unless the Managing Member reasonably determines that using a different name is necessary or desirable.

1.2. Purposes of the Company. The Company was formed, and its sole purpose is, to construct, acquire, own, lease, and otherwise deal with the Property. The Company may construct, acquire, own, rehabilitate, renovate, improve, maintain, finance, refinance, manage, operate, lease, convey, assign, mortgage, pledge, encumber, and sell and otherwise deal with the Property, or any portion thereof and any other real and/or personal property (tangible, intangible or otherwise) now or hereafter appurtenant thereto or a part thereof, or hereafter acquired in connection therewith. In addition, the Company was formed to fulfill the public purpose of the PFC to, among other things, provide decent, safe and affordable housing in or around the City of Anna, Texas.

1.3. Powers of the Company. In furtherance of its purposes, but without limiting in any way the powers conferred upon the Company under the LLC Act, and in any event subject to all the other provisions of this Agreement, the Company is hereby authorized to, and shall have full power to do the following:

(a) construct, acquire, own, rehabilitate, renovate, operate, manage, maintain, finance, refinance, improve, assign, mortgage, pledge, encumber, lease and sell, convey or otherwise transfer, the Property and any other real or any personal property (tangible, intangible or otherwise) now or hereafter appurtenant thereto or a part thereof or hereafter acquired in connection therewith, and construct, acquire, own and operate any other assets convenient or incidental to the accomplishment of the purposes of the Company;

(b) enter into agreements or other arrangements with any federal, state or other governmental authorities as to the rental of the Property, including, without limitation, restrictions thereon for the purpose of promoting affordable housing;

(c) borrow money (including from Members or their Affiliates as and to the extent permitted by the other provisions of this Agreement) and issue evidences of indebtedness in furtherance of any or all of the purposes of the Company, and to secure the same by mortgages, pledges, or other liens on the Property or any other assets of the Company;

(d) prepay or repay, in whole or in part, refinance, recast, increase, modify, or extend any loans, financing, mortgages, pledges or other liens or encumbrances affecting the Property or any portion thereof and in connection therewith to execute any extensions, renewals or modifications of any such loans, financing, mortgages, pledges or other liens or encumbrances securing such indebtedness;

(e) enter into, execute, modify, amend, perform and carry out contracts of any kind (including contracts with Affiliated Persons of any Member permitted by the other provisions of this Agreement) necessary or convenient to, in connection with, or incidental to the accomplishment of the purposes of the Company; and

(f) enter into, carry on, or otherwise engage in any kind of activity necessary to, in connection with or incidental to the accomplishment of the purposes of the Company, and have and exercise all of the powers and rights conferred upon limited liability companies formed pursuant to, and take any other action permitted under, the LLC Act.

1.4. Registered Agent and Office; Principal Office.

(a) The registered agent and office of the Company required under the LLC Act shall be as designated in the Certificate, and may be changed by the Managing Member in accordance with the LLC Act. The principal business office of the Company shall be located at 600 E. Las Colinas Blvd., Suite 1800, Irving, Texas 75039, or such other address as shall be designated by the Managing Member.

(b) The Managing Member may establish additional places of business of the Company within and without the State of Texas as and when required by the business of the Company, and may appoint agents for service of process in any jurisdiction in which the Company shall conduct business.

1.5. Term. The Company commenced as of the Formation Date, and shall continue in perpetuity, unless sooner terminated in accordance with the provisions hereof or pursuant to the LLC Act.

1.6. Entity Characterization. It is the intention of the Members that the Company constitute a partnership for federal, state and local income tax purposes. The Members agree that they: (a) will not cause or permit the Company to elect (i) to be excluded from the provisions of Subchapter K of the Code, or (ii) to be treated as a corporation for federal, state and local income tax purposes; and (b) will cause the Company to make any election and otherwise take such acts as are reasonably necessary or appropriate in order to ensure the treatment of the Company as a partnership for federal income tax purposes.

1.7. Definitions and Exhibits Incorporated. Capitalized terms used in this Agreement shall have the meanings ascribed to them in Exhibit B attached hereto or as they appear elsewhere in this Agreement. All accounting terms used in this Agreement shall have the meanings assigned to them in accordance with GAAP. The Exhibits attached hereto are incorporated herein and made a part hereof.

1.8. Representations and Warranties.

(a) Each Member (including, without limitation, each permitted transferee as a condition to becoming a Member), for itself only, represents and warrants to the Company and to each other Member and acknowledges that as of the Effective Date:

(i) It is duly organized, validly existing and in good standing under the laws of its jurisdiction of formation with all requisite power and authority to enter into this Agreement and to conduct the business of the Company.

(ii) It has all requisite power, authority and financial capacity to enter into and to perform its obligations under this Agreement.

(iii) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the performance of all obligations and all transactions contemplated by this Agreement to be performed by it have been duly authorized by all necessary limited liability company, corporate or partnership action on the part of the Member and any other organizational and any other necessary actions.

(iv) This Agreement and the performance by such Member of its covenants and obligations under this Agreement will not result in a breach or violation of, or a default under, its partnership or operating agreement, trust agreement, charter or by-laws, as the case may be, any material agreement by which such Member or any of such Member's property, is or are bound, or any statute, regulation, order or other law to which such Member or its principals is subject.

(v) Other than the consents or approvals obtained by each Member, no consents or approvals are required from any governmental authority or other Person or Entity for the Member to enter into this Agreement.

(vi) It has acquired its Membership Interest for investment, solely for its own account, with the intention of holding the Membership Interest for investment only, or with respect to the Special Member in connection with the public purposes of the PFC, and not for the purpose of, or with a view toward, the resale, fractionalization, division or distribution of all or any part thereof, nor with a view toward selling or otherwise distributing such Membership Interest or any part thereof at any particular time or under any predetermined circumstances.

(vii) Its Membership Interest is a speculative security for which there is no established market and that no such market is likely to exist, and without any portion of its Membership Interest being in violation of the Securities Act or any applicable state securities law.

(viii) It acknowledges that (x) it is aware that its Membership Interest has not been registered under the Securities Act in reliance upon exemptions contained in the Securities Act and that its Membership Interest has not been

registered under the securities law of any state in reliance upon the exemptions contained in such state securities law, (y) the Company will not and has no obligation to register any Member's Membership Interest under the Securities Act or any state securities law, and (z) the Company has no obligation to recognize any Transfer of a Member's Membership Interest to any Person other than as expressly permitted pursuant to the other provisions of this Agreement.

(ix) It has consulted and been advised by its legal counsel and tax advisor in connection with the potential profit, tax consequences of any sort (including, without limitation, the tax consequences resulting from forming the Company, executing this Agreement, making or failing to make a Capital Contribution to, and being admitted as a Member of, the Company, or being allocated profits, losses and items of each thereof), cash flows and yield, if any, in respect of the Company.

(x) It is neither a "foreign person" within the meaning of Code Section 1445(f) nor a "foreign partner" within the meaning of Code Section 1446(e).

(xi) It has not retained any Person or otherwise agreed to any brokerage or commission or other similar compensation due or payable on an absolute or contingent basis to any Person with respect to or on account of the execution of this Agreement.

(xii) It is in compliance with and at all times will comply with all laws relating to anti-money laundering, anti-bribery, anti-corruption, anti-terrorism, trade embargoes and economic sanctions now or hereafter in effect, including, without limitation, the U.S. Foreign Corrupt Practices Act of 1977, the International Emergency Economic Powers Act, 50 U.S.C. §§1701 et seq., The Trading with the Enemy Act, 50 U.S.C. App. 1 et seq., and any Executive Orders or regulations promulgated thereunder (including regulations administered by the Office of Foreign Assets Control ("OFAC") of the U.S. Department of the Treasury and the Specially Designated Nationals List and Blocked Persons List and all other lists maintained by OFAC) or any other U.S. government agency, Executive Order 13224, "Blocking Property Transactions with Persons who Commit, Threaten to Commit, or Support Terrorism," 66 Fed. Reg. 49079 (Sept. 23, 2001) and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (the "**Patriot Act**"), or any enabling legislation or executive order relating hereto (collectively, the "**AT/AML Laws**").

(xiii) It is in compliance with all applicable anti-money laundering and anti-terrorist laws, regulations, rules, executive orders and government guidance, including the reporting, record keeping and compliance requirements of the Bank Secrecy Act, as amended by The International Money Laundering Abatement and Financial Anti-Terrorism Act of 2001,

Title III of the Patriot Act and other authorizing statutes, executive orders and regulations administered by OFAC, and related Securities and Exchange Commission, SRO or other agency rules and regulations, and has policies, procedures, internal controls and systems that are reasonably designed to ensure such compliance.

(xiv) It is the Company's policy to cooperate fully with law enforcement agencies. Each Member hereby represents that: (x) it is, and shall continue to be, in compliance with all AT/AML Laws; (y) it is not directly or indirectly owned or controlled, in whole or in part, by any Person listed on OFAC's Specially Designated Nationals and Blocked Persons List (a "**Blocked Person**"); and (z) it has not, does not, and will not, conduct any business with a Blocked Person or otherwise engage in any transaction relating to any property, or interests in property, blocked by any AT/AML Law.

(xv) There are no actions, suits, proceedings or investigations pending, or, to the knowledge of such Member or any of its Affiliates, threatened against or affecting such Member or any of its Affiliates or any of their properties, assets or businesses in any court or before or by any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator which could, if adversely determined (or, in the case of an investigation could lead to any action, suit or proceeding which if adversely determined could) reasonably be expected to materially impair such Member's ability to perform its obligations under this Agreement or to have a material adverse effect on the financial condition of such Member; such Member or any of its Affiliates has not received any currently effective notice of any default, and neither such Member nor any of its Affiliates is in default, under any applicable order, writ, injunction, decree, permit, determination or award of any court, any governmental department, board, agency or instrumentality, domestic or foreign, or any arbitrator which could reasonably be expected to materially impair such Member's (or any of its Affiliate's) ability to perform its obligations under this Agreement or to have a material adverse effect on the financial condition of such Member.

(xvi) No broker, agent or other person acting as such on behalf of such Member was instrumental in consummating the acquisition of the Property or this transaction and no conversations or prior negotiations were had by such party with any broker, agent or other such person concerning the transaction that is the subject of this Agreement and there are no brokerage commissions or finders' fees due in connection with entering into this Agreement.

1.9. Lease Agreement. The Members acknowledge that the Lease Agreement is necessary in order for the Company to receive the Real Estate Tax Exemption, and that the Members would not undertake to acquire the Real Property without such Real Estate Tax Exemption. Therefore, the Members hereby authorize the Company's execution of the Lease Agreement.

1.10. Governmental Certificates.

(a) The execution, delivery and filing of the Certificate with the Secretary of State of the State of Delaware is hereby confirmed, ratified and approved.

(b) Prior to commencing any activities in any jurisdiction other than the State of Delaware, the Members will execute and acknowledge, and the Company will promptly file or record with the proper offices in such jurisdiction, such certificates as are required or permitted by any limited liability company or fictitious name act or similar statute in effect in such jurisdiction or political subdivision. The Members will further execute and acknowledge, and the Company will promptly file or record as aforesaid, such amended certificates or additional certificates as may from time to time be required by the statutes to permit the continued existence and operation of the Company.

1.11. Real Estate Tax Exemption. The Members acknowledge that the Real Estate Tax Exemption is necessary to allow for the operation of the Real Property. In order to maintain the Real Estate Tax Exemption, within one hundred eighty (180) days after the end of each Fiscal Year, Managing Member shall cause the Company to prepare and submit to PFC, the Special Member and the Collin County Appraisal District a certification in form and substance reasonably acceptable to the Special Member that the Company's subleasing of the Real Property complies with the restrictions set forth in Section 14.2 of the Lease Agreement.

ARTICLE II

Capital Contributions and the Liability of Members

2.1. Capital Contributions.

(a) The commitments of the Members to make Capital Contributions are as set forth in **Exhibit C** attached hereto. The Managing Member shall make its Capital Contribution to the Company in installments as required by the construction lender for completion of the Project. The Special Member shall be deemed to have fulfilled its commitment to make Capital Contributions on the Effective Date.

(b) At the closing of the Company's acquisition of its leasehold interest in the Real Property by execution of the Lease Agreement, the Company shall (i) pay to Managing Member (or its Affiliate), and Managing Member (or its Affiliate) shall be entitled to reimbursement from the Company for, an amount equal to all deposits made by Managing Member (or its Affiliate) (to the extent applied to the purchase of the Company's interest in the Real Property) and all costs incurred in connection with the formation of the Company and due diligence activities related to the Real Property and (ii) pay the reasonable out-of-pocket costs of the Special Member's (or its Affiliate's) legal counsel in connection with this Agreement and the Housing Agreements.

2.2. Funding Deficits.

(a) In the event the Company requires funds to conduct its business or to meet its obligations (in addition to the Capital Contributions to be made by the Members as contemplated by Section 2.1(a)), the additional amount needed (the "**Deficit**") shall be

obtained as follows: (i) the Company may borrow funds from third-party lender(s) or from any Member or any Affiliated Person of any Member on such terms and conditions as are approved by the Managing Member, and (ii) the Managing Member may make a Capital Contribution to eliminate such Deficit.

(b) In addition to the above, the Managing Member may at any time make a Capital Contribution for the amount of any Non-Discretionary Expenditures which are in excess of the amount of cash which the Managing Member in good faith reasonably believes is available for the payment of such amounts (such excess also being herein referred to as a Deficit).

(c) Except as set forth in Sections 2.2(a) and 2.2(b), no Capital Contributions or loans may be made by any Member except as specifically provided in this Agreement or with the Consent of the Managing Member.

(d) Nothing in this Section 2.2 requires a Member to make a Capital Contribution except as it otherwise may agree in its sole discretion.

2.3. Withdrawal of Capital. Although pursuant to this Agreement the Company may make distributions to the Members during the term of the Company in return of their Capital Contributions, no Member shall have the right to Withdraw from the Company, except as permitted herein, or to demand a return of all or any part of its Capital Contribution or its Capital Account or to receive property of the Company in exchange therefor, except upon the dissolution of the Company, and then only in the manner specifically provided in this Agreement. Any return of any Member's Capital Contributions or a Member's Capital Account shall be made solely from the assets of the Company and only in accordance with the terms of this Agreement, and no Member shall have personal liability for the return of any other Member's capital. To the extent any monies which any Member is entitled to receive pursuant to Article IV hereof or any other provision of this Agreement would constitute a return of capital, each of the Members consents to the return of such capital.

2.4. Liability of Members. No Member shall be personally liable for any debts, liabilities or obligations of the Company. No Member shall be required to make any Capital Contributions or lend or contribute any other sums to the Company on account of the liabilities or the obligations of the Company, or otherwise, other than its initial Capital Contributions pursuant to Section 2.1 or as required under Section 18-502 of the LLC Act.

2.5. Loan Guaranties.

(a) In connection with securing financing and refinancing for the Real Property (if applicable), the Managing Member shall be responsible to provide, or cause its Affiliate to provide, any guaranty required by the Loan Documents. The Special Member and its Affiliates shall not be required to provide any guarantees. The Special Member shall not have any personal liability in connection with any Company financing unless it agrees in writing thereto.

(b) The Company shall, and hereby does, indemnify, hold harmless and defend the Managing Member and each of its Affiliates that provide any guaranty or indemnity in

favor of any lender under any of the Loan Documents (collectively, the “**Indemnified Persons**”) from and against (i) any and all loss, cost, liability, damage or claim incurred by any such Indemnified Person under the Loan Documents, (ii) any and all reasonable expenses incurred by any such Indemnified Person in connection therewith, including, without limitation, legal fees and expenses, and (iii) any reasonable expenses incurred by any of them in enforcing their rights pursuant to this Section 2.5, including, without limitation, legal fees and expenses; except, however, the Company shall not indemnify the Managing Member for claims, losses or expenses (to the extent in excess of the principal, interest, fees or reimbursements otherwise owing under the Loan Documents) related to its own gross negligence, willful misconduct, or unlawful acts. If legal fees and expenses are incurred by an Indemnified Person in advance of the final disposition of any proceeding to which such Indemnified Person was, is or is threatened to be made a party relating to the Loan Documents, or in connection with such person’s appearance as a witness or other participation in any such proceeding, (i) the Company shall advance to each Indemnified Person the amount of reasonable legal fees and expenses that such Indemnified Person reasonably expects to incur in connection therewith and (ii) the Company shall reimburse each Indemnified Person for all reasonable legal fees and expenses actually paid by such Indemnified Person to the extent not previously paid or advanced by the Company, in each case to the extent requested by such Indemnified Person in a notice to the Members with such advance or reimbursement to be made promptly but in no event later than five (5) days following such notice; provided, however, that a payment of expenses incurred by or on behalf of any Indemnified Person shall be made only upon delivery to the Company of an undertaking, by or on behalf of such Indemnified Person, to repay all amounts so paid if it shall ultimately be determined by final judicial decision from which there is no further right to appeal that the Indemnified Person is not entitled to be indemnified for such expenses under this Agreement or otherwise. If and to the extent any Indemnified Person is obligated to make any payment pursuant to any of the Loan Documents (a “**Loan Documents Payment**”), then the Company shall be obligated to make such payment for such Indemnified Person on or before the date such payment is due. If and to the extent any Indemnified Person makes any Loan Documents Payment, then the Company shall reimburse such Indemnified Person for the amount of the Loan Documents Payment actually paid by such Indemnified Person, together with interest at the default rate under the Loan Documents, with such reimbursement to be made promptly but in no event later than five (5) days following notice by such Indemnified Person to the Members requesting such reimbursement. The provisions of this Section 2.5 shall not be exclusive of any other right of any Indemnified Person under any law, this Agreement or any other agreement.

ARTICLE III

Management; Rights, Powers; Duties; Defaults and Removal of the Special Member

3.1. Management of the Company.

(a) The Managing Member shall serve as the initial Managing Member of the Company. Subject to Sections 3.1 and 3.2, and any other provision of this Agreement limiting or restricting the Managing Member’s authority and/or requiring the Consent of the Special Member (collectively, the “**Managing Member Restrictions**”), the Managing Member shall have the right, power and duty to implement the Major Decisions and

otherwise to manage the Company's affairs and to make decisions as to all other matters involving the Company, and in so implementing the Major Decisions and any other decisions of the Company, to do all things reasonably necessary or appropriate to carry on the business and purposes of the Company and, consistent with the above, to exercise all rights and powers reasonably necessary to effectuate the purposes of the Company. The Managing Member shall have the power and authority to execute, acknowledge and deliver any and all instruments necessary or desirable in effectuating the foregoing.

(b) Subject in all events to the Managing Member Restrictions, the Managing Member's rights and powers shall include (without limitation) the following and the Managing Member shall have the duty to use commercially reasonable efforts, within the limitations of funds available to the Company, to accomplish the following:

(i) Do any and all acts and things necessary, proper, convenient or advisable to effectuate the purposes of the Company, and to direct the Company in accordance with the terms of this Agreement, and devote such time as is reasonably necessary to perform the foregoing, and perform any other duties or obligations of the Managing Member pursuant to this Agreement or any other duties or obligations of the Company in a competent and professional manner;

(ii) Subject to any other applicable provisions of this Agreement, pay (or reimburse) as and when due all debts, obligations, costs and expenses incurred as to the Property, or the Company, and create and maintain all required reserves, all out of the Company funds, and take reasonable steps to ensure that such amounts are timely paid or provision for payment thereof is timely undertaken from such funds;

(iii) Subject to any other applicable requirements under this Agreement, cause the Company to negotiate, execute and deliver appropriate contracts and other agreements, and cause the Company to comply with and perform under all contracts and other agreements of the Company or to which any of its respective properties is subject;

(iv) Develop, construct, operate, maintain, improve and otherwise manage and deal with the Real Property;

(v) Oversee and supervise the Property Manager;

(vi) Implement all Major Decisions once made pursuant to Section 3.2, and all other decisions made under this Agreement as to the Company and/or the Property;

(vii) Keep all books of account and other records of the Company and, as appropriate, record, file or deliver all certificates, returns, budgets, plans, reports and other information in the manner and at the times provided for in Section 6.4, Article VII, or as required by any other provision of this

Agreement or pursuant to any agreement binding on the Company or to which it or any of its properties is subject;

(viii) Cause the Company to comply with the Housing Agreements and all other Housing Requirements and with all Loan Documents (if any) and with the terms and provisions of any other agreement executed by the Company or to which the Property is subject;

(ix) Enforce the Company's rights and remedies under all leases, agreements and applicable deeds, easements, conditions, covenants and restrictions, Loan Documents, insurance policies and service contracts;

(x) Institute as necessary, and defend, any claims, demands or legal proceedings involving the Company through legal counsel engaged in accordance with the other terms of this Agreement;

(xi) Cause the Company to obtain and maintain insurance fulfilling such requirements as the Company or any of its property may be subject or as any Loan Documents may require;

(xii) Cause the Company to comply with all present and future applicable laws, ordinances, orders, rules, regulations and requirements of all federal, state and municipal governments, courts, departments, commissions, and boards, including, without limitation, all Hazardous Materials Laws, and any national or local Board of Fire Underwriters or any other body exercising functions similar to those of any of the foregoing, all as may be applicable to the Property or the operation and management thereof (collectively "**Laws**"), and, subject to any limitations set forth elsewhere in this Agreement, take action to contest the validity or application of any such Laws; and

(xiii) Provide copies to the Members of all material notices received or sent with respect to any mortgages, security agreements, contracts or other agreements of the Company and all reports, notices and any other material writings relating to Hazardous Materials and Hazardous Materials Laws.

(c) The Managing Member shall devote, and shall cause its partners, members, officers, directors and employees, if any, to devote such time to the affairs of the Company as the Managing Member, in its reasonable discretion, exercised in good faith, determines is necessary for performance by Managing Member of its duties under this Agreement. It is understood that neither the Managing Member nor any single Person serving the Managing Member (including any of its officers, directors and employees) shall be required to devote full time to the business and affairs of the Company.

(d) The Company shall have no employees and the Managing Member shall have no authority to hire any employees for the Company.

(e) Subject to the Managing Member Restrictions, the Managing Member is authorized to execute, sign, seal and deliver in the name and on behalf of the Company, any and all agreements, certificates, instruments, or other documents requisite to carrying

out its duties under this Agreement. Except where any such Person has actual notice of the applicability of a Managing Member Restriction that has not been satisfied, every agreement, instrument, certificate or other document executed by the Managing Member, on behalf of the Company shall be conclusive evidence in favor of every Person relying thereon or claiming thereunder that, at the time of the delivery thereof: (i) the Company is in existence, (ii) this Agreement has not been terminated or canceled or amended in any manner so as to restrict such authority (except as shown in certificates or other instruments duly filed in accordance with the LLC Act), and (iii) the execution and delivery of such instruments is duly authorized under this Agreement. Any Person dealing with the Company may rely on the power and authority of the Managing Member as set forth in this Agreement, except where any such Person has actual notice of the applicability of a Managing Member Restriction that has not been satisfied.

(f) The Managing Member may, from time to time as it deems advisable, appoint officers of the Company and assign in writing titles (including, without limitation, President, Vice President, Secretary, and Treasurer) to any such person. Unless the Managing Member decides otherwise, if the title is one commonly used for officers of a business corporation formed under the Delaware General Corporation Law, the assignment of such title shall constitute the delegation to such person of the authorities and duties that are normally associated with that office. Any delegation pursuant to this Section 3.1(f) may be revoked at any time by the Managing Member.

3.2. Major Decisions; Affiliated Contracts.

(a) All Major Decisions shall be made and implemented only with the Consent of the Special Member. “**Major Decisions**” shall mean all those matters set forth in Exhibit E attached hereto. If there is disagreement as to any matter which is a Major Decision or as to any other matter under this Agreement where the Consent of the Special Member is expressly required, then the “status quo” shall be maintained and the matter as to which approval was sought shall not be implemented; furthermore, any such inability to agree on, and any impasse on, any matter shall not give rise to the right of any Member as to any legal or equitable rights or relief under any laws or at equity, instead the rights under this Agreement, if any are provided in any such circumstance, as to any such matter being the sole and exclusive rights of the Members.

(b) As of the date of this Agreement, there are no Affiliated Contracts other than the Development Agreement and the Master Construction Subcontract. The execution of any future Affiliated Contracts shall require the Consent of the Special Member (except as otherwise provided in this Agreement). Upon request from time to time by the Special Member, the Managing Member shall deliver a status report to the Special Member regarding the Affiliated Contracts then in effect confirming, after appropriate investigation, whether the parties thereto are in compliance therewith, detailing any defaults thereunder, and including such other information as may be requested by the Special Member from time to time.

(c) It is the intent of the Members that the Real Property will be operated under the applicable Housing Agreements and in accordance with all other applicable Housing Requirements (including any cure periods provided therein), so long as such is in effect.

Except in connection with an Early Termination Election under the Lease Agreement or as otherwise permitted under the Housing Agreements, the Company shall not seek to terminate the Housing Agreements or otherwise withdraw therefrom without the Consent of the Special Member.

3.3. Exculpation; Indemnification.

(a) Neither the Managing Member, any other Member, the Partnership Representative, Designated Individual nor any officer of the Company shall have any liability to the Company or to any other Member for any loss suffered by the Company which arises out of any action or inaction of such Managing Member, Member, Partnership Representative, Designated Individual or officer if, such Managing Member, Member, Partnership Representative, Designated Individual or officer, as applicable, acted in good faith, in the best interests of the Company, unless such course of conduct constituted gross negligence, misfeasance, malfeasance, fraud or willful misconduct of such Managing Member, Member, Partnership Representative, Designated Individual or officer or, as to the Managing Member, was not within the scope of the Managing Member's authority or was in violation of any of the Managing Member Restrictions.

(b) To the fullest extent permitted by applicable law, the Company shall indemnify and hold the officers of the Company, the Managing Member, the Partnership Representative, Designated Individual and each other Member, and their respective direct or indirect owners, officers, directors, employees and agents harmless from and against any and all costs and expenses (including attorneys' fees and expenses), imposed upon any such Person by reason of any action or omission by such Person unless and to the extent any such loss, cost or expense was the result of the gross negligence, misfeasance, malfeasance, fraud or willful misconduct on the part of the officer, Managing Member, Partnership Representative, Designated Individual or other Member or such other Person or, as to actions by the officer, Managing Member, Partnership Representative, Designated Individual or other Member or Persons acting by, through, under or on behalf of the Company, Managing Member, Partnership Representative, Designated Individual or other Member, was not within the scope of such Person's authority or was in violation of any of the Managing Member Restrictions. THE INDEMNIFICATION OBLIGATIONS PROVIDED IN THIS Section 3.3(b) ARE INTENDED TO BE ENFORCEABLE AGAINST THE COMPANY AND THE MEMBERS IN ACCORDANCE WITH THE EXPRESS TERMS AND SCOPE HEREOF NOTWITHSTANDING TEXAS' EXPRESS NEGLIGENCE RULE OR ANY SIMILAR RULE THAT WOULD PROHIBIT OR OTHERWISE LIMIT INDEMNIFICATION OBLIGATIONS BECAUSE OF THE SIMPLE NEGLIGENCE (WHETHER SOLE, CONCURRENT, ACTIVE OR PASSIVE) OR OTHER FAULT OR STRICT LIABILITY OF ANY OF THE INDEMNIFIED PERSONS. ACCORDINGLY, THE INDEMNIFICATION PROVIDED HEREUNDER SHALL APPLY TO MATTERS THAT ARISE OUT OF THE NEGLIGENCE, STRICT LIABILITY, OR OTHER FAULT OR RESPONSIBILITY BY AN INDEMNIFIED PERSON; *PROVIDED, HOWEVER*, THAT THE INDEMNIFICATION PROVIDED HEREUNDER SHALL NOT APPLY TO MATTERS ARISING OUT OF ACTION OR THE OMISSION OF ACTION DONE IN GROSS NEGLIGENCE, MISFEASANCE, MALFEASANCE, FRAUD OR WILLFUL MISCONDUCT. The indemnity under this Section 3.3(b) shall be provided out of and only to the extent of the assets of the Company,

and no Member shall have any personal liability on account thereof. Further, the Company's indemnity obligation under this Section 3.3(b) shall be subordinate to its obligations under the Loan Documents.

(c) Except as otherwise expressly provided in this Agreement or by separate written agreement, any obligation or liability whatsoever of a Member that may arise at any time under this Agreement or any obligation or liability that may be incurred by it pursuant to any other instrument, transaction, or undertaking contemplated hereby shall be satisfied, if at all, out of such Member's assets only. Except as otherwise expressly provided in this Agreement or by separate written agreement, no such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the property of any of its direct or indirect shareholders, partners, members, trustees, officers, employees, or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

3.4. Outside Activities of Members. Any Member, and any direct or indirect partner, member, shareholder, equity holder, officer, director, employee, agent, trustee, or Affiliate of any Member shall be entitled to and may have and own real property and other business interests and engage in business activities in addition to those relating to the Company, including real property and other business interests and activities that are contiguous, adjacent to or near the Real Property and/or in direct competition with the Real Property, and/or the Company or that are directly enhanced by the Real Property and/or activities of the Company. Neither the Company, nor any Member nor any Affiliate of any Member nor any other Person shall have any rights by virtue of this Agreement or the Company relationship established hereby in any such or any other business ventures of any other Member, or any of their Affiliates. No Member shall have any obligation pursuant to this Agreement to offer any interest in any such business ventures to the Company or any Member, even if such opportunity is of a character which, if presented to the Company or any Member could be undertaken by such Person.

3.5. Certain Affiliate Fees and Reimbursements.

(a) Pursuant to the Development Agreement, Developer, an Affiliate of the Managing Member, shall be entitled to (i) a development fee equal to 5.0% of the total construction costs for the Project (including the fees paid pursuant to the Construction Contract as described below) (the "**Developer's Fee**"), payable 25.0% on the Effective Date and 75.0% in equal monthly installments based on the pro forma construction schedule for the Project, (ii) an annual asset management fee equal to 0.35% of the total costs of the Project (which fee will (1) begin to accrue from and after the Effective Date, (2) be subject to reduction to a maximum annual amount of \$150,000 following Substantial Completion and the stabilization of the Project, and (3) be payable in full upon the occurrence of a JPI Exit Event, (iii) a disposition fee upon the occurrence of a JPI Exit Event equal to 0.50% of the total sales price related thereto (as determined pursuant to the terms of the Development Agreement), and (iv) certain reimbursements, in each case as set forth in the Development Agreement. The Development Agreement will be subject to approval by the construction lender under the Loan Documents.

(b) On the Effective Date, the Co-Developer shall be entitled to a one-time development fee in an amount equal to twenty percent (20%) of the Developer's Fee. For

the avoidance of doubt, such development fee payable to the Co-Developer will be in addition to the Developer's Fee payable to Developer as described above.

(c) The Special Member shall be entitled to an annual partnership management fee in an amount equal to \$10,000 (which amount shall begin to accrue upon Substantial Completion and increase by 3.0% on each annual anniversary thereof during the term of this Agreement), payable annually. Notwithstanding the foregoing, the payment of any such fee shall be deferred during any period of time in which the Company has insufficient Net Cash Flow to make such payment or such payment is restricted under the Loan Documents (or any third-party investment documents relating to the Project which are binding on the Company).

(d) The Company shall pay to the Special Member, in its capacity as landlord, the Rent amount as defined and set forth in the Lease Agreement, which is payable by the Company as an operating expense.

(e) Pursuant to the Construction Contract, the Contractor shall be entitled to (i) a construction fee equal to 5.25% of the total construction costs for the Project (excluding such construction fee) (the "**Builder's Fee**"), payable 25.0% on the Effective Date and 75.0% in monthly installments based on the percentage of completion of the Project, (ii) a construction oversight fee equal to 1.0% of the total construction hard costs for the Project (excluding, among other things, the Builder's Fee and such construction oversight fee) included in the initial Development Budget (but not any subsequent increases in such construction hard costs as a result of any change orders or otherwise) (the "**Construction Oversight Fee**"), payable one-half on the Effective Date and one-half within thirty (30) days following Substantial Completion, (iii) certain reimbursements, and (iv) one hundred percent (100%) of any cost savings, in each case as set forth in the Construction Contract. The Construction Contract will be subject to approval by the construction lender under the Loan Documents.

(f) Pursuant to the Master Construction Subcontract, the Master Subcontractor, an Affiliate of the Managing Member, shall be entitled to a fee for its services under the Master Construction Subcontract in an amount equal to (i) one hundred percent (100%) of the Builder's Fee, and (ii) one hundred percent (100%) of all other amounts payable under the Construction Contract (other than the Construction Oversight Fee). The Master Construction Contract will be subject to approval by the construction lender under the Loan Documents.

(g) On the Effective Date, the Managing Member or its applicable Affiliates will be reimbursed for their pre-development expenses incurred prior to such date, plus a return thereon, in amounts consistent with the Development Budget, which reimbursements will be recorded for federal income tax purposes (and state and local income tax purposes, as applicable) under Regulations Section 1.707-4(d).

(h) On the Effective Date, the Special Member will be reimbursed for the following expenses (in amounts consistent with the Development Budget and as evidenced by reasonable documentation provided by the Special Member to the Managing Member on or before the Effective Date): (i) the reasonable internally allocated costs incurred by

the Special Member in connection with the Project, including but not limited to costs for (1) staff time to review the proposed Project or an third-party reports provided by the Developer, and (2) the Special Member's in-house counsel relating to the negotiation of this Agreement and the Lease Agreement; (ii) the reasonable out-of-pocket costs incurred by the Special Member for its outside legal counsel (*i.e.*, Chapman and Cutler, LLP) relating to the negotiation of this Agreement and the Lease Agreement, and (iii) the reasonable out-of-pocket costs incurred by the Special Member for its financial advisory firm (*i.e.*, Hilltop Securities, Inc.) in connection with the transactions contemplated hereby. Such reimbursement will be partially offset by the amount of any deposits for expense reimbursements previously made by the Managing Member or its Affiliates to the Special Member or its Affiliates prior to the Effective Date. All such reimbursements will be recorded for federal income tax purposes (and state and local income tax purposes, as applicable) under Regulations Section 1.707-4(d).

3.6. Information and Meetings. The Managing Member shall keep the Members reasonably informed of all facts, information, projections, litigation, or other matters which could be expected to have a material impact upon the operations or maintenance or the condition of the Property or on the economic interests of the Members. A meeting of the Members may be called by any Member. Meetings of the Members may be held in such place mutually agreed upon by the Members. Meetings may be held via teleconference or in person. The Managing Member shall solicit the Special Member as to matters it desires to discuss and shall endeavor to submit to the Members prior to any such meeting an agenda of all material matters to be covered in such meeting. The Managing Member shall further provide all information relating to the Company which the Members reasonably propose to be so provided.

3.7. Duties to Others. The Managing Member understands and acknowledges that the Special Member may have contractual and statutory fiduciary and other duties to various direct and/or indirect members in the Special Member, and further acknowledges and agrees that the duties, if any, which the Special Member has to the Managing Member and to the Company are expressly subject and subordinate to the Special Member's duties to others as described above.

3.8. Event of Default as to Special Member. Upon the occurrence of, and during the continuance of an Event of Default as to the Special Member: (i) the Special Member shall lose its right to direct or vote on any matters on which the Special Member may otherwise vote, act, or consent to under this Agreement or under the LLC Act (including without limitation, all rights to participate, directly or indirectly, in the management of the business of the Company) other than where, under the LLC Act, such rights may not be waived; and (ii) the Special Member shall not have the right to require the consent of Special Member for any matter which the consent of the Special Member would otherwise have been required under this Agreement. Further, if the Event of Default relates to loss of the Real Estate Tax Exemption, the Special Member shall, upon request of the Managing Member, withdraw from the Company, the Lease Agreement will terminate without payment of the Early Termination Fee, the Regulatory Agreement shall terminate, the Real Estate shall be transferred to the Company at no cost and a release or termination of all such rights shall be executed by the Special Member.

3.9. Replacement Trigger Event as to the Managing Member.

(a) Upon the occurrence of a Replacement Trigger Event as to the Managing Member, the Special Member's designee shall, at the option of the Special Member, be admitted as a replacement Managing Member (the "Replacement Managing Member") on the terms set forth herein without any further action by any other Member (provided that, notwithstanding the foregoing, the replaced Managing Member will remain as a Member and retain its economic interests as a Member hereunder). Each Member hereby grants to the Special Member a special power of attorney, irrevocable to the extent permitted by law and coupled with an interest, to amend this Agreement to the extent necessary to reflect such replacement of the Managing Member. The admission of the Replacement Managing Member shall not relieve the former Managing Member of any of its obligations hereunder already incurred as a Managing Member for prior periods, and the former Managing Member shall fully indemnify and hold harmless the Replacement Managing Member from and against any and all losses, judgments, liabilities, expenses and amounts paid in settlement of any such claims for prior periods sustained in connection with its capacity as a Managing Member. For the avoidance of doubt, the Managing Member shall not be responsible for obligations incurred or arising from the actions or inactions of the Replacement Managing Member on or after the date the Replacement Managing Member is admitted to the Company or for claims arising after its removal and not attributable to the former Managing Member's actions or inactions.

(b) Prior to the exercise of any remedy as set forth in Section 3.9(a), the Special Member shall provide notice to the Managing Member of any Replacement Trigger Event, and the Managing Member shall have reasonable opportunity to cure.

(c) Notwithstanding anything herein to the contrary, the Special Member will not have the right to replace the Managing Member pursuant to this Section 3.9 unless (i) all necessary consents related thereto under the Loan Documents or the Lease Agreement (as applicable) have been obtained and (ii) all guaranties or indemnities given by the Managing Member or its Affiliates to any third parties (including any lenders or investors) in connection with the Project have been released.

(d) Upon the removal of the Managing Member as described herein, the Special Member will have the right to cause the Development Agreement to be terminated.

ARTICLE IV

Distributions

4.1. General. The Managing Member shall cause the Company to make distributions of Net Cash Flow to the Members, as the Managing Member may determine, from time to time, but not less often than on a quarterly basis. The Capital Transaction Proceeds from any Interim Capital Transaction shall be distributed within fifteen (15) days after the Company's receipt of the applicable Capital Transaction Proceeds. All such Net Cash Flow (as measured from and after the date of this Agreement) or Capital Transaction Proceeds shall be distributed in the following order:

(a) First, to the payment of all matured debts and liabilities of the Company (including, without limitation, all affiliated fees and reimbursements described in Section 3.5 above);

(b) Second, to fund and/or replenish any reserves as necessary in the Managing Member's reasonable discretion;

(c) Third, to pay any accrued and unpaid portion of the partnership management fee payable to the Special Member pursuant to Section 3.5(c) hereof;

(d) Fourth, one hundred percent (100%) to the Managing Member until such time as the cumulative distributions under this clause (c) have resulted in an IRR to the Managing Member of eight percent (8.0%); and

(e) Fifth, ten percent (10.0%) to the Special Member (but only to the extent the amount distributable under this clause (d) consists of Capital Transaction Proceeds), and the balance to the Managing Member.

4.2. In-Kind Distributions. No Member shall have the right to require any distribution of assets of the Company in kind. If any assets of the Company are to be distributed in kind, such assets shall be distributed on the basis of the fair market value thereof and any Member entitled to any interest in such assets shall receive such interest therein as a tenant-in-common with all other Members so entitled. The fair market value of such assets shall be determined by the Managing Member, acting reasonably or, if any Member so desires, such fair market value shall be determined by a disinterested independent appraiser selected by the Managing Member with the Consent of the Special Member.

4.3. Tax Withholding.

(a) The Company may withhold from distributions, allocations or portions thereof if it is required to do so by any applicable rule, regulation or law, and each Member hereby authorizes the Company to withhold or pay on behalf of or with respect to such Member any amount of U.S. federal, state, local or foreign taxes that the Managing Member determines, in good faith, that the Company is required to withhold or pay with respect to any amount distributable or allocable to such Member pursuant to this Agreement. To the extent that any tax is paid by (or withheld from amounts payable by) the Company and the Managing Member determines, in good faith, that such tax relates to one or more specific Members (including any Company Level Taxes apportioned to the Members under Section 3.2 of Exhibit A attached hereto), such tax shall be treated as an amount of taxes withheld or paid with respect to such Member pursuant to this Section 4.3(a). Any determinations made in good faith by the Managing Member pursuant to this Section 4.3(a) shall be binding upon the Members.

(b) For all purposes under this Agreement, any amounts withheld or paid with respect to a Member pursuant to Section 4.3(a) hereof shall offset any distributions to which such Member is entitled concurrently with such withholding or payment and shall be treated as having been distributed to such Member pursuant to Section 4.1 or Article IX, as applicable, at the time such offset is made. To the extent that the cumulative amount of

such withholding or payment exceeds the distributions to which such Member is entitled concurrently with such withholding or payment, the amount of such excess shall be promptly paid to the Company by the Member on whose behalf such withholding or payment is required to be made; provided, however, that the Managing Member may consider the amount of such excess as a loan payable on demand; provided, further, that any such payment shall not be treated as a Capital Contribution and shall not reduce the amount that a Member is otherwise obligated to contribute to the Company. Any such loan shall be satisfied out of distributions to which such Member would otherwise be subsequently entitled (and to the extent satisfied out of such distributions, such amounts shall be treated as distributed to such Member pursuant to Section 4.1 or Article IX, as applicable, at the time of such satisfaction) until such loan is paid in full, which shall occur at such time as the Managing Member requests that the Member pay such amount to the Company. Each Member hereby unconditionally and irrevocably grants to the Company a security interest in such Member's Membership Interest to secure such Member's obligation to pay to the Company any amounts required to be paid pursuant to Section 4.3(a). Each Member shall take such actions as the Company may reasonably request in order to perfect or enforce the security interest created hereunder. Each Member hereby agrees to indemnify and hold harmless the Company, the other Members, the Partnership Representative, any Designated Individual and the Managing Member from and against any liability (including any liability for Company Level Taxes) with respect to income attributable to or distributions or other payments to such Member and any costs and expenses incurred by the Company in collection of any such amounts from the Member. If any Company Level Tax is recoverable from a Member in accordance with this Section 4.3, then to the extent that the Partnership Representative determines in good faith that it is appropriate for purposes of properly maintaining Capital Accounts (including by avoiding duplicative reductions thereto), the Company (A) shall make special allocations in accordance with Section 2.1(g)(ii) of Exhibit A attached hereto, if applicable, (B) to the extent the Company recovers the Company Level Tax by payment from such Member (whether directly or in payment to the Company), shall increase such Member's Capital Account by the amount of such payment (notwithstanding that for all other purposes of the Agreement, the amount of such payment shall not be treated as a Capital Contribution and shall not reduce the amount that such Member is otherwise obligated to contribute to the Company), and (C) to the extent the Company recovers the Company Level Tax by reducing the distributions to which such Member would otherwise be entitled, shall not reduce the Capital Account of such Member by the amount of the distributions that were offset (notwithstanding that for purposes of Article IV of the Agreement, the amount of such distributions that were offset will be treated as having been distributed to such Member).

(c) Notwithstanding any other provision of this Agreement, (1) any Person who ceases to be a Member shall be treated as a Member for purposes of this Section 4.3 and (2) the obligations of a Member pursuant to this Section 4.3 shall survive indefinitely (including for the avoidance of doubt the liquidation of the Company or a Member's Membership Interest) with respect to any taxes withheld or paid by the Company pursuant to this Section 4.3 that relate to the period during which such Person was actually a Member, regardless of whether such taxes are assessed, withheld or otherwise paid during such period.

ARTICLE V

Capital Accounts and Allocations of Profits and Losses

5.1. Allocations of Profits and Losses. All allocations of Profits and Losses (as such terms are defined in **Exhibit A** attached hereto) or items of income, gain, deduction, loss and credit of the Company shall be allocated among the Members in accordance with the provisions of **Exhibit A** attached hereto, which exhibit is hereby incorporated by reference for all purposes of this Agreement. The Members are aware of the income tax consequences of the allocations made by **Exhibit A** and hereby agree to be bound by the provisions of **Exhibit A** in reporting their shares of Company Profits and Losses or items of income, gain, loss deduction and credit for income tax purposes.

5.2. Capital Accounts. A separate Capital Account (herein so called) shall be maintained for each Member for the full term of this Agreement in accordance with the capital accounting rules of Regulations Section 1.704-1(b)(2)(iv). Each Member shall have only one Capital Account, regardless of the number or classes of interests in the Company owned by such Member and regardless of the time or manner in which such interests were acquired by such Member. Pursuant to the provisions of Regulations Section 1.704-1(b)(2)(iv), the balance of each Member's Capital Account shall be:

(a) Increased by the amount of money contributed by such Member (or such Member's predecessor in interest) to the capital of the Company pursuant to Article II and decreased by the amount of money distributed to such Member (or such Member's predecessor in interest) pursuant to Article IV or Article IX;

(b) Increased by the Gross Asset Value (as such term is defined in **Exhibit A** attached hereto) (determined without regard to Section 7701(g) of the Code) of each property contributed by such Member (or such Member's predecessor in interest) to the capital of the Company pursuant to Article II (net of liabilities secured by such property that the Company is considered to assume or take subject to) and decreased by the Gross Asset Value (as such term is defined in **Exhibit A** attached hereto) (determined without regard to Section 7701(g) of the Code) of each property distributed to such Member (or such Member's predecessor in interest) by the Company pursuant to Article II or Article IX (net of liabilities secured by such property that such Member is considered to assume or take subject to);

(c) Increased by the amount of Profits (as such term is defined in **Exhibit A** attached hereto) or each item of income or gain allocated to such Member (or such Member's predecessor in interest) pursuant to Section 2.1 of **Exhibit A** attached hereto;

(d) Decreased by the amount of Losses (as such term is defined in **Exhibit A** attached hereto) or each item of loss or deduction allocated to such Member (or such Member's predecessor in interest) pursuant to Section 2.1 of **Exhibit A** hereto; and

(e) Otherwise adjusted in accordance with the other capital account maintenance rules of Regulations Section 1.704-1(b)(2)(iv) as determined necessary by the Managing Member.

5.3. Additional Provisions Regarding Capital Accounts.

(a) If a Member pays any Company indebtedness, and if such payment reduces the outstanding amount of such indebtedness, then to the extent such payment reduces the outstanding amount of such indebtedness such payment shall be treated as a contribution by that Member to the capital of the Company pursuant to Article II, and the Capital Account of such Member shall be increased by the amount so paid by such Member, provided, however, that no Member shall have the right to pay any Company indebtedness except as otherwise provided herein.

(b) Except as otherwise provided herein, no Member may contribute capital to, or withdraw capital from, the Company. To the extent any monies which any Member is entitled to receive pursuant to Article IV or Article IX or any other provision of this Agreement would constitute a return of capital, each Member consents to the withdrawal of such capital.

(c) A loan by a Member to the Company shall not be considered a contribution of money to the capital of the Company, and the balance of such Member's Capital Account shall not be increased by the amount so loaned. No repayment of principal or interest on any such loan, reimbursement made to a Member with respect to advances or other payments made by such Member on behalf of the Company, or payments of fees to a Member which are made by the Company shall be considered a return of capital or in any manner affect the balance of such Member's Capital Account.

(d) No Member with a deficit balance in its Capital Account shall have any obligation to the Company, the other Members or any creditor of the Company or Members to restore said deficit balance. In addition, no venturer or partner in any Member shall have any liability to the Company, the other Members or any creditor of the Company or Members for any deficit balance in such venturer's or partner's capital account in the Member in which it is a partner or venturer. Furthermore, a deficit Capital Account balance of a Member (or a capital account of a partner or venturer in a Member) shall not be deemed to be a liability of such Member (or of such venturer or partner in such Member) or a Company asset or property.

(e) Except as otherwise provided herein, no interest will be paid on any Capital Contribution to the Company or the balance in any Member's Capital Account.

ARTICLE VI

Fiscal Matters

6.1. Books and Records. In addition to any documents and information required to be furnished to the Members under the LLC Act, the Managing Member shall maintain, or cause to be maintained, for the Company, in a manner customary and consistent with generally accepted accounting principles (“GAAP”) practices and procedures, a comprehensive system of office records, books and accounts in which shall be entered, as applicable, the financial transactions of the Company. All of the aforesaid records, books, accounts, documents and other information shall be and remain the property of the Company. Such books and records of account shall be prepared

and maintained by the Managing Member at the principal place of business of the Company, or such other place or places as may from time to time be determined by the Managing Member. Each Member or its duly authorized representative shall have the right to inspect, examine and copy (at its own expense) any and all such books and records of account at the applicable office during reasonable business hours.

6.2. Bank Accounts.

(a) The bank accounts of the Company shall be maintained in a national bank with offices in Dallas, Texas, whose deposits are insured by the Federal Deposit Insurance Corporation, as selected by the Managing Member, and withdrawals shall be made only in the regular course of business on such signature or signatures as shall be determined by the Managing Member.

(b) The Company shall from time to time invest funds not required for the operation of the Real Property or the maintenance of the existence of the Company in (i) marketable direct obligations of the United States of America or any of its agencies, (ii) marketable obligations fully guaranteed by the United States of America or any of its agencies, (iii) time certificates of deposit issued by commercial banks and fully insured by the Federal Deposit Insurance Corporation, (iv) so-called “repos”, and (v) in such other instruments as the Managing Member may from time to time determine is appropriate.

(c) The funds of the Company shall not be commingled with the funds of any other Person, and the Managing Member shall not use, or permit any other Persons to use, such funds in any manner except for the benefit of the Company.

6.3. Accounting and Fiscal Year. The books of the Company shall be kept on the accrual basis in accordance with GAAP, and the Company shall report its operations for federal, state, and local income tax purposes on the accrual method. The fiscal year of the Company shall end on December 31 of each year (the “**Fiscal Year**”), and the taxable year of the Company shall end on December 31 of each year unless a different taxable year shall be required by the Code.

6.4. Tax Filings, Tax Elections and Tax Audits. All tax returns required to be filed by the Company under the Code or state and local tax laws, all tax elections permissible under the Code or state or local tax laws, and all provisions regarding tax audits under the Code or state and local tax laws shall be filed, made or administered as provided in **Exhibit A** attached hereto or as otherwise expressly provided in this Agreement.

ARTICLE VII

Budgets and Reports

7.1. Budgets.

(a) At least sixty (60) days prior to the Opening Date, and at least sixty (60) days prior to the beginning of each Fiscal Year thereafter, the Managing Member shall send to the Special Member (i) an annual capital budget (an “**Annual Capital Budget**”) for the following Fiscal Year, setting forth estimates, reasonably itemized, of all capital expenditures and receipts from Capital Transactions relating to the Real Property, (ii) an

annual operating budget (an “**Annual Operating Budget**”) for such Fiscal Year setting forth estimates, reasonably itemized, of all income and expenses of the Company for such Fiscal Year and establishing reserves and working capital for the Company. The Annual Operating Budget shall include occupancy projections. The Managing Member shall invite the Special Member to comment upon any budget so submitted, and will take into consideration the Special Member’s comments prior to adopting the budget on behalf of the Company. The Managing Member will provide the Special Member with a copy of an adopted budget upon request. All of the above, as, when and to the extent approved by the Managing Member following consultation with the Special Member is herein referred to as the “**Approved Budget**”. An Approved Budget may be supplemented and amended by the Managing Member from time to time, provided that the Managing Member shall invite the Special Member to comment upon any such supplement or amendment and take into consideration any comments from the Special Member prior to adopting such supplement or amendment.

(b) Notwithstanding anything to the contrary contained in this Section 7.1, the Managing Member shall be entitled to cause the Company to make expenditures incurred as a result of an emergency posing imminent danger to persons or property or an emergency requiring an immediate response under applicable law (and in the event of any such emergency expenditure, the Managing Member shall reasonably promptly notify the Special Member) regardless of whether the same is provided for in the Approved Budget.

7.2. Annual Reports.

(a) As soon as practicable, and in all events within forty-five (45) days after the close of each Fiscal Year, the Managing Member shall cause to be provided to each Member as of the close of the applicable Fiscal Year, unaudited financial statements to include a balance sheet, statement of operations, statement of cash flow and statement of Members’ capital of the Company for such Fiscal Year, prepared, as relevant, in accordance with GAAP (excluding footnotes), consistently applied.

(b) In addition to the above, within one hundred eighty (180) days after the close of each Fiscal Year, the Managing Member shall provide a report as to compliance with the requirements of the Housing Requirements, in accordance with Section 7.4 of the Lease Agreement.

7.3. Other Reports. As soon as practicable, but in no event later than forty-five (45) days after the end of each calendar quarter, the Managing Member shall provide to each Member unaudited GAAP-basis financial statements and cash flow statements of the Company for such calendar quarter and for the Fiscal Year to date, a rent roll for such calendar month, copies of bank statements and bank reconciliations for such calendar quarter, an aged accounts receivable schedule for such calendar quarter, and an aged accounts payable schedule for such calendar quarter, together with a narrative summary in form and substance reasonably satisfactory to the Special Member, which narrative summary shall include (a) the status of the Real Property, (b) the status of the real estate market in which the Real Property is located, and (c) a leasing activity summary and vacancy report.

In addition to all of the above, the Managing Member shall also provide to the Members copies of all material reports and all other material information required pursuant to the Housing Agreements and all other Housing Requirements, the Loan Documents (if any) or which otherwise relates to the status of the Real Property and is provided to any lender, any party to or beneficiary of the Housing Agreements or any of the other Housing Requirements or to any other similar third party.

So long as the Company and the Real Property are subject to the Real Estate Tax Exemption, the Company shall promptly provide the Collin Central Appraisal District with all records or documents reasonably requested.

ARTICLE VIII

Transfers

8.1. Restrictions on Transfer of Membership Interests.

(a) Except as provided in in this Section 8.1 or Section 8.2 below or pursuant to Section 3 of the Regulatory Agreement, no Member may Transfer all or any part of its Membership Interest or otherwise Withdraw from the Company without the Consent of the Managing Member and the Special Member.

(b) Notwithstanding anything to the contrary in this Agreement, except as otherwise provided in Section 8.3, substitute Members (including assignees of existing Members) may be admitted only with the Consent of the Managing Member.

(c) Except as permitted pursuant to Section 3 of the Regulatory Agreement, there shall be no Transfer of the ownership or any direct or indirect interest in the Special Member without the Consent of Managing Member, which consent shall not be unreasonably withheld, conditioned, or delayed so long as the Transfer does not impact the Real Estate Tax Exemption or the public purpose of the Company described in Section 1.2, and does not violate the restrictions on transfer set forth in the Loan Documents (if any).

(d) Nothing in this Agreement, including without limitation, the phrase “Transfer”, shall prohibit in any way any Transfers of any ownership interests in Managing Member or any other Transfer of any direct or indirect equity interests in the Managing Member so long as the Transfer is a Permitted Ownership Transfer.

(e) Notwithstanding the foregoing, upon termination of the Lease Agreement, the Special Member shall immediately Withdraw from the Company and, subject to the applicable provisions of the Lease Agreement and/or any amounts accrued and outstanding pursuant to Section 3.5 and Article IV of this Agreement, shall have no further legal or economic interest in the Company.

8.2. General Restrictions on All Transfers.

(a) Every Transfer by a Member of a Membership Interest permitted by Section 8.1(a) with the Consent of the Managing Member and the Special Member, shall nevertheless be subject to the following:

(i) No Transfer of any Membership Interest may be made if such Transfer would cause or result in a breach of any agreement binding upon the Company or the Property or of then applicable rules and regulations of any governmental authority having jurisdiction over such Transfer. Any Transfer must be made in accordance with the requirements of the Loan Documents (if any), to the extent applicable;

(ii) Any non-Transferring Member may require as a condition of Transfer of any Membership Interest that the transferor and/or transferee assume all costs incurred by the Company and any Member in connection therewith, including, without limitation, any sales tax, real estate transfer tax or other taxes (excluding income taxes) that arise as a result of such Transfer;

(iii) No Member shall have the right to Transfer its Membership Interest if, by reason of such Transfer, the classification of the Company as a partnership for federal income tax purposes would be adversely affected or jeopardized; and

(iv) In the event of a Transfer of a Membership Interest (x) the Managing Member shall (upon receipt thereof) file with the Company a duly executed and acknowledged counterpart of the instrument effecting such Transfer, and any and all necessary certificates or other documents (including certification that all other necessary acts have been performed) as required in accordance with the laws of the State of Delaware and any other states in which the Company is then doing business, (y) the transferee shall enter into a valid and binding agreement with the Company and each of its Members the effect of which will be that the Membership Interest so Transferred shall continue to remain subject to the provisions of this Agreement with the same force and effect as if such transferee had originally been a party hereto as to the Membership Interest so Transferred, and (z) each transferee shall execute such additional certificates and other instruments as may be reasonably required by the non-transferring Member. The Company need not recognize any Transfer for any purpose unless and until the foregoing provisions of this clause (iv) have been fully satisfied.

(b) Each transferee, whether or not it becomes a substituted Member, shall by its acceptance of an assignment to it of a Membership Interest, be deemed to be bound by all of the terms and conditions of this Agreement, including, without limitation, this Article VIII, and to have assumed its proportionate share of the obligations of the Member which is making such Transfer, provided that no such Transfer shall release the transferor Member from its liabilities and obligations as to the Membership Interest so Transferred which have accrued prior to the date of such Transfer.

(c) Upon the admission or Withdrawal of a Member (whether by reason of a Transfer or otherwise), the Managing Member shall cause this Agreement (including without limitation **Exhibit C** hereto) and the Certificate, to the extent required under the LLC Act, to be amended appropriately to reflect the then existing names and addresses of the Members and their respective Percentage Interests in the Company.

(d) Any Transfer in contravention of any of the provisions of this Agreement shall be null and void and ineffective to Transfer any Membership Interest, and shall not bind, or be recognized by, or on the books of, the Company.

(e) Reserved.

(f) Any Member who shall Transfer all of its Membership Interest in the Company shall cease to be a Member of the Company, and shall no longer have any rights or privileges of a Member; provided, however, that, unless and until the Transferee of such Member is admitted to the Company as a substituted Member in accordance with Section 8.3, such Transferor Member shall retain the statutory obligations of an assignor or Member under the LLC Act.

8.3. Substitute Members. Except as to Transfers described in Section 8.2(a) (a transferee under said provision being entitled to be admitted as a substitute Member), or a Transfer made pursuant to Section 8.1(a) with the Consent of the Managing Member and the Special Member, no transferee (by conveyance, operation of law or otherwise) of the whole or any portion of any Membership Interest shall have the right to become a substitute Member, unless and until the other Member has given its consent thereto. An assignee of a Member's Membership Interest shall be entitled only to the rights conferred by the LLC Act on a transferee who does not become a substitute or additional Member, and in any event, such assignee shall not have the right (a) to act on any matters on which a Member may act under this Agreement, or (b) otherwise to participate in the management of the business of, or as to any other matters as to, the Company unless, and to the extent, required by the LLC Act notwithstanding this provision.

ARTICLE IX

Dissolution and Termination of the Company

9.1. Events Causing Dissolution. The Company will dissolve upon the first to occur of the following events:

- (a) the dissolution by the written agreement of all Members;
- (b) the entry of a decree of judicial dissolution under the LLC Act;
- (c) the occurrence of an event of withdrawal with respect to the Managing Member, as described in the LLC Act, which under the terms of the LLC Act cannot be waived by agreement of the Members; and
- (d) a Terminating Capital Transaction occurs and all promissory notes or other evidences of indebtedness derived from the Terminating Capital Transaction (other than

those to be distributed in kind, if any) have been collected or otherwise converted into cash or cash equivalents.

9.2. Procedures on Winding Up.

(a) Winding Up. Upon the dissolution of the Company, if it is not reconstituted by the Members as permitted in this Agreement, the Liquidating Manager will proceed to wind up the affairs and business of the Company. A reasonable time will be allowed for the orderly liquidation of the Company's assets under this Article IX in order to minimize the risk of loss that might be attendant upon a liquidation. In connection any such winding up, the Liquidating Manager will sell or otherwise dispose of the Company's assets (other than cash and cash equivalents).

(b) Powers. Until final distribution, the Liquidating Manager will continue to operate the Company and its properties with all of the power and authority of the Managing Member.

(c) Distributions in Liquidation. Liquidating distributions will be applied and distributed as follows:

(i) to the repayment of debts and liabilities of the Company, including those owed to Members; then

(ii) to the establishment of cash reserves as the Liquidating Manager deems appropriate for any contingent or unforeseen liabilities of the Company; provided, however, that at the expiration of the period as the Liquidating Manager deems advisable, the balance of such cash reserves will be distributed to the Members in the manner hereinafter provided; and then

(iii) to the Members in accordance with the provisions of Article IV.

(d) In-Kind Distributions. No in-kind distributions will be made to the Members without the approval of all Members.

(e) Cost of Winding Up; Audit. The costs of winding up and liquidation will be borne by the Company. At the election of the Managing Member, the Liquidating Manager will cause an independent auditor to prepare a complete and final certified audit of the books, records, and accounts of the Company and all adjustments between the Members will be made upon the basis of the certified audit.

9.3. Insufficient Assets. The Members will look solely to the assets of the Company for the return of their Capital Contributions and, if the funds remaining after the payment or discharge of the debts and liabilities of the Company are insufficient to return the Capital Contributions, no Member will have any recourse against any other Member for that purpose. As provided in Section 5.3, to the extent any Member has a negative Capital Account such deficit amount shall not be an asset of the Company and such Member shall not be obligated to contribute such deficit amount, unless otherwise provided herein.

9.4. Termination of Interest. The distribution of cash or property to a Member in accordance with the provisions of this Article IX constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member in respect of its Membership Interest and all the Company's property and constitutes a compromise to which all Members have consented for purposes of the LLC Act. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

9.5. Subsequent Distributions. If at any time (whether before or after termination of the Company) any of the funds placed in reserve(s) under this Article IX are released because, in the opinion of the Liquidating Manager, the need for the reserve(s) has ended, the funds will be distributed in accordance with this Article IX.

9.6. Filing Certificate of Cancellation. Promptly after the distribution of assets under this Article IX (other than funds that are reserved under this Article IX), the Managing Member (or the other Person or Persons as the LLC Act may require or permit) will cause a certificate of cancellation to be filed with the Secretary of State of the State of Delaware, and take such other actions as may be necessary to terminate the Company.

9.7. Date of Termination. The Company will be terminated when all of its assets (other than those to be distributed in kind, if any) have been converted into cash, all promissory notes or other evidences of indebtedness derived by the Company from the conversion of its assets (other than those to be distributed in kind, if any) have been collected or otherwise converted into cash, and all the cash, together with any other cash held by the Company and the assets to be distributed in kind, if any, has been applied and distributed in accordance with the provisions of this Article IX. The establishment of any cash reserves under this Article IX will not have the effect of extending the term of the Company, but any such cash reserves will be applied and distributed in the manner provided in this Article IX upon expiration of the period of the reserve.

9.8. Disposition of Documents and Records. All documents and records of the Company, including all financial records, tax returns, vouchers, canceled checks and bank statements shall be retained by the Managing Member upon termination of the Company. The Managing Member shall retain such documents and records for a period of not less than seven (7) years and shall make such documents and records available during normal business hours to any Member for inspection and copying (at the expense of the requesting Member).

ARTICLE X

General Provisions

10.1. Notices.

(a) Any and all notices, consents, demands, requests, approvals, proposals, offers, elections and other communications required or permitted under this Agreement shall be adequately given only if in writing and sent to such Member's address set forth in **Exhibit C** and either: (i) personally delivered, (ii) sent prepaid by a recognized national overnight courier service; or (iii) sent by electronic mail with an electronic delivery receipt requested; and in the event of sending under clause (iii) hereof the simultaneous sending thereof by one of the previous two methods. Such notice or other communication shall be

deemed received upon the earlier of (x) if personally delivered, the date of delivery or tender for delivery during regular business hours on a Business Day where received by or tendered for receipt to a Person apparently authorized to receive mail and/or packages, (y) if sent via courier service, on the day delivered or tendered for receipt by such service, or (z) if transmitted by electronic mail, on the day when received at the receiving transcribing device, unless the receipt thereof is sooner acknowledged on a Business Day during normal business hours, in which event the time of acknowledgment shall be the time when notice has been given.

(b) By giving to the other Member at least ten (10) days' prior notice thereof, a Member shall have the right from time to time and at any time during the term of this Agreement to change its address to any other address within the United States of America.

(c) In computing any period of time under this Agreement, the day of the act, event or default from which the designated period of time begins to run shall not be included. If the last day of the period so designated is not a Business Day, the period shall run until the end of the next Business Day, whether or not Business Days are otherwise referred to.

10.2. Word Meanings. The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. References to a paragraph shall only be to the grammatical paragraph referred to unless there is a specific paragraph and/or Section designated. The use herein of the word "including," when following any general statement, term or matter shall not be construed to limit such statement, term or matter to the specific items or matters set forth immediately following such word or to similar items or matters, whether or not non-limiting language (such as "without limitation," or "but not limited to," or words of similar import) is used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest possible scope of such general statement, term or matter.

10.3. Binding Provisions. The covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto and, their respective permitted successors and assigns. Each and every successor to any Member, whether such successor acquires such Membership Interest by way of gift, purchase, foreclosure or by any other method, shall hold such Membership Interest subject to all of the terms and provisions of this Agreement.

10.4. Applicable Law; Venue; No Jury Trial. This Agreement shall be construed and enforced in accordance with the laws of the State of Delaware and any suit, action or other legal proceeding arising out of this Agreement or any of the transactions contemplated hereby shall be brought in the courts of the State of Texas.

EVERY PARTY TO THIS AGREEMENT AND ANY OTHER PERSON WHO BECOMES A MEMBER OR HAS RIGHTS AS AN ASSIGNEE OF ANY PORTION OF ANY MEMBER'S MEMBERSHIP INTEREST HEREBY WAIVES ANY RIGHT TO A JURY TRIAL AS TO ANY MATTER UNDER THIS AGREEMENT OR IN ANY OTHER WAY RELATING

TO THE COMPANY OR THE RELATIONS UNDER THIS AGREEMENT OR OTHERWISE AS TO THE COMPANY AS BETWEEN OR AMONG ANY SAID PERSONS.

10.5. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original copy of this Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement. Delivery of a copy of this Agreement bearing an original signature by facsimile transmission or by electronic mail in “portable document format” form shall have the same effect as physical delivery of the paper document bearing the original signature.

10.6. Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the provision will be fully severable; this Agreement will be construed and enforced as if the illegal, invalid or unenforceable provision had never comprised a part of this Agreement; and the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of each such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a provision as similar in terms to the illegal, invalid, or unenforceable provision as may be possible and be legal, valid and enforceable.

10.7. Captions. Article, Section and paragraph titles and captions are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

10.8. Entire Agreement; Amendments; Further Assurances.

(a) This Agreement, including the Schedules attached hereto, sets forth the full and complete agreement of the Members with respect to the subject matter hereof, and each Member hereby warrants and agrees that there have been no promises, obligations or undertakings, oral or written, other than those set forth in this Agreement. This Agreement may only be modified, altered or amended pursuant to a written agreement executed by all of the Members.

(b) The Members hereby covenant, for themselves and their respective permitted successors and assigns, that they will cooperate with each other and will execute, acknowledge, verify, deliver, record, or cause to be delivered or recorded, with affidavit, as applicable, all such other instruments, and will take all such other actions, as the other Member may reasonably request from time to time, to effectuate, implement, and/or accomplish the provisions and purposes hereof.

10.9. No Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto, and their permitted successors and assigns, and nothing herein shall be deemed to confer upon any creditor of the Company or any other Person other than the parties to this Agreement any right to insist upon or to enforce the performance or observance of any of the rights and obligations contained herein, any and all of which may be freely waived by the parties hereto.

10.10. Waiver of Partition, Etc. Each Member agrees that irreparable damage would be done to the Company if any Member brought an action in court to dissolve or liquidate the Company. Accordingly, unless otherwise expressly authorized in this Agreement, each Member agrees that

it shall not, either directly or indirectly, take any action to require partition or appraisal of the Company or of any of the assets or properties of the Company, or any action which might otherwise be available to such Member outside the terms and provisions of this Agreement for the purpose of severing its relationship with the Company or with any of the Members of the Company as set forth in this Agreement. Notwithstanding any provisions of this Agreement to the contrary, each Member (and its successors and assigns) accepts the provisions of the Agreement as its sole entitlement on termination, dissolution, and/or liquidation of the Company and hereby irrevocably waives any and all right to maintain any action for partition or to compel any sale or other liquidation with respect to the Company or its Membership Interest, in or with respect to, any assets or properties of the Company; and each Member agrees that it will not petition a court for the dissolution, termination, or liquidation of the Company.

10.11. Remedies; Waivers; Attorney's Fees. Except as otherwise expressly provided in this Agreement, each Member, in addition to all other rights provided herein or as may be provided by applicable law, shall be entitled to all equitable remedies, including, without limitation, those of specific performance and injunction, to enforce such Member's rights hereunder. Except as otherwise provided herein, each right, power, and remedy provided for herein or now or hereafter existing at law or in equity, shall be in addition to every other right, power or remedy provided for herein or now or hereafter existing at law or in equity, by statute or otherwise, and the exercise, the commencement of the exercise, or the forbearance of the exercise by any Member of any one or more of such rights, powers, or remedies shall not preclude the simultaneous or later exercise by such Member of any or all of such other rights, powers or remedies.

No consent or waiver, express or implied, by a Member to or of any breach or default by any other Member in the performance by such other Member of such other Member's obligations hereunder shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Member hereunder. Failure on the part of a Member to complain of any act or failure to act of any other Member or to declare any other Member in default, irrespective of how long such failure continues, shall not constitute a waiver by such non-complaining or non-declaring Member of the latter's rights hereunder.

Each Member shall pay its own legal fees and costs associated with any dispute between or among themselves related to the Company or this Agreement, except that if the Company, whether by derivative action or otherwise, or any Member obtains a judgment against any other Member by reason of the breach of this Agreement or the failure to comply with the terms hereof or otherwise in connection with the interpretation or enforcement of any term or provision of this Agreement, attorneys' fees and costs, as approved by the court, shall be included in such judgment.

10.12. Survival of Certain Provisions. The Members acknowledge and agree that in addition to creating the Company hereby created and providing for all the terms and conditions and covenants as among the Members as to the Company, this Agreement contains certain terms and conditions which are intended to survive the dissolution and termination of the Company. The Members agree that such provisions of this Agreement which by their terms require, given their context, that they survive the dissolution and termination of the Company so as to effectuate the intended purposes and agreements of the Members shall survive notwithstanding that such provisions had not been specifically identified as surviving and notwithstanding the dissolution and termination of the Company or the execution of any document terminating this Agreement, unless such

termination document specifically provides for nonsurvival by reference to this Section 10.12 and by reference therein as to any identified or as to all such surviving provisions hereof.

10.13. Members' Limited Liability. Except for fraud, embezzlement and misappropriation, the liability of each Member under this Agreement shall be limited to the Membership Interest of such Member in the Company, and neither the Company nor the other Members shall seek to enforce any judgment or other remedy against any other assets of a Member. Neither any Member nor any of their authorized representatives shall have any fiduciary duty to each other or to the Company. No Member, nor any other investment or asset of any Member, nor any partner, shareholder or member of, or other participant in or beneficiary of, a Member, nor any trustee, beneficiary, employee, member, partner, shareholder, officer, director, legal heir, estate, successor or assign of any of them, whether disclosed or undisclosed, shall have any personal liability with respect to the payment and performance by a Member of its obligations under this Agreement, and each of the other Members agrees that it will not seek to obtain any deficiency or any other money judgment against any Person herein named or referred to as being exculpated from personal liability.

10.14. Offset. If a Member has any obligation to pay money to the Company at a time that the Company or the other Member is required to make any payment or distribution to the obligated Member, the Company may deduct the amount of the liability from its payment or distribution to the obligated Member and the other Member may fulfill its requirement to make a payment to the obligated Member by paying the amount of the obligated Member's liability to the Company instead of to the Member. If a Member has any obligation to pay money to the other Member at a time that the other Member is required to make any payment to the obligated Member, the other Member may deduct the amount of the liability from its payment to the obligated Member.

10.15. Limitation on Liability. Any liabilities of any Member shall not be liabilities of such Member's direct or indirect owners.

10.16. Special Senior Lender Provisions. Notwithstanding anything in this Agreement to the contrary, so long as any indebtedness is owing (or any lending commitment exists) under any Loan Documents with (or in favor of) Texas Capital Bank, a Texas state bank (the "**Initial Lender**"), the following provisions shall apply:

- (a) Any loans to the Company to fund Deficits pursuant to Section 2.2(a) must be (i) unsecured, (ii) expressly subordinate to the indebtedness under the Loan Documents, and (iii) if from third-party lender(s), such lender(s) have been approved (in writing) by the Initial Lender in its sole discretion.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties hereto have executed this Operating Agreement of Jefferson Villages of Waters Creek, LLC, effective as of the Effective Date.

MANAGING MEMBER

**JEFFERSON VILLAGES OF WATERS CREEK
HOLDINGS, LLC**, a Delaware limited liability company

By: _____
Name: _____
Title: _____

[Signatures continue on following page.]

SPECIAL MEMBER

APFC WATERS CREEK MEMBER, LLC, a Texas limited liability company

By: Anna Public Facility Corporation, a Texas public facility corporation, its sole member

By: _____

Stan Carver, II
President

EXHIBIT A
Allocations of Profits and Losses
And
Other Tax Matters

TABLE OF CONTENTS

	<u>Page</u>
ARTICLE I. TAX DEFINITIONS	A – 2
Section 1.1 Definitions.....	A – 2
ARTICLE II. ALLOCATIONS OF PROFITS AND LOSSES.....	A – 7
Section 2.1 Allocation of Book Items.....	A – 7
Section 2.2 Allocation of Tax Items	A – 10
Section 2.3 Allocations of Profit and Losses and Distributions in Respect of Interests Transferred	A – 11
ARTICLE III. OTHER TAX MATTERS	A – 11
Section 3.1 Tax Elections	A – 11
Section 3.2 Partnership Representative.....	A – 12
Section 3.3 Tax Returns.....	A – 15

ARTICLE I.

TAX DEFINITIONS

Section 1.1 Definitions and Section References. Unless otherwise provided in this Exhibit A, any reference to a Section shall mean a Section in this Exhibit A, and all capitalized terms used herein shall have the meanings either assigned to them in the Operating Agreement of Jefferson Villages of Waters Creek, LLC, dated as of _____, 2022 (the “Agreement”) to which this Exhibit is attached, or as follows:

(a) Adjusted Capital Account Deficit

“Adjusted Capital Account Deficit” means, with respect to any Member, the deficit balance, if any, in such Member’s Capital Account as of the end of the relevant Allocation Year, after giving effect to the following adjustments:

(i) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed obligated to restore pursuant to the penultimate sentences of Regulations Section 1.704-2(g)(1) and Section 1.704-2(i)(5); and

(ii) Debit from such Capital Account the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), Section 1.704-1(b)(2)(ii)(d)(5), and Section 1.704-1(b)(2)(ii)(d)(6).

The foregoing definition of “Adjusted Capital Account Deficit” is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

(b) “Adjustment Year”

“Adjustment Year” has the meaning given to such term in Section 6225(d)(2) of the Code.

(c) Allocation Year

“Allocation Year” means (i) the period commencing on the Effective Date and ending on the close of the last day of the Company’s first taxable year, (ii) any subsequent period commencing on beginning of the first day of the Company’s taxable year and ending on the close of the last day of the Company’s taxable year or (iii) any portion of the period described in clause (ii) above for which the Company is required to allocate Profits, Losses, and other items of Company income, gains, deductions, losses and credits pursuant to Article II.

(d) BBA

“BBA” shall mean section 1101 of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74.

(e) Book Depreciation

“Book Depreciation” allowable to the Company for any Allocation Year with respect to any Company property shall be calculated an amount equal to the depreciation, amortization, or other cost recovery deduction allowable with respect to an asset for such Allocation Year for federal income tax purposes, except that (i) with respect to an asset the Gross Asset Value of which differs from its adjusted basis for U.S. federal income tax purposes and which difference is being eliminated by use of the “remedial allocation method” as defined in Regulations Section 1.704-3(d), Book Depreciation for such period shall be the amount of the book basis recovered for such period under the rules prescribed in Regulations Section 1.704-3(d)(2), and (ii) with respect to any other asset whose Gross Asset Value differs from its adjusted tax basis for federal income tax purposes at the beginning of such Allocation Year, Book Depreciation with respect to a Company property shall be equal to the amount that bears the same proportion to the Gross Asset Value of the Company property as of the beginning of such Allocation Year (or the date of acquisition or contribution if the property is acquired or contributed during such Allocation Year) as the depreciation or amortization for federal income tax purposes for such period bears to the property’s adjusted tax basis as of the beginning of such Allocation Year (or the date of acquisition or contribution if the property is acquired during such Allocation Year). If the property’s adjusted tax basis is equal to zero, the amount of “Book Depreciation” allowable to the Company for any Allocation Year with respect to the Company property in question shall be determined under any reasonable method selected by the Managing Member.

(f) Book/Tax Disparity Property

“Book/Tax Disparity Property” shall mean any Company property that has a Gross Asset Value, which is different from its adjusted tax basis to the Company. Thus, any property (other than cash) that is contributed to the capital of the Company by a Member shall be a Book/Tax Disparity Property if its initial Gross Asset Value is not equal to the Company’s initial tax basis in the property. In addition, once the Gross Asset Value of a Company property is adjusted to an amount other than is adjusted tax basis, the property shall thereafter be a “Book/Tax Disparity Property”.

(g) Designated Individual

“Designated Individual” means the person designated pursuant to Section 3.2.

(h) Gross Asset Value

“Gross Asset Value” means, with respect to any asset, the asset’s adjusted basis for federal income tax purposes, except as follows:

(i) the initial Gross Asset Value of any asset contributed by a Member to the Company shall be the gross fair market value of such asset as agreed upon by the contributing Member and Managing Member;

(ii) the Gross Asset Value of all Company assets shall be adjusted to equal their respective gross fair market values as reasonably determined by the Managing Member upon (a) the acquisition of additional Membership Interests by a new or existing Member in exchange for more than a de minimis Capital Contribution; (b) the distribution by the Company to a Member

of more than a de minimis amount of Company assets in partial or complete redemption of Membership Interests; (c) the date of the grant of a Membership Interest (other than a de minimis Membership Interest) as consideration for the provision of services to or for the benefit of the Company by an existing Member acting in a Member capacity, or by a new Member acting in a Member capacity or in anticipation of becoming a Member; or (d) the liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); provided, however, that the adjustments pursuant to clauses (a), (b) and (c) above shall be made only if determined to be necessary by the Managing Member;

(iii) the Gross Asset Value of any Company asset distributed to any Member shall be adjusted to equal the gross fair market value of such asset on the date of distribution as agreed by the Managing Member and the distributee Member;

(iv) The Gross Asset Values of Company assets will be increased (or decreased) to reflect any adjustments to the adjusted basis of such assets pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent that such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) and clause (vii) of the definition of Profits and Losses or Section 2.1(g)(i); provided, however, that Gross Asset Values will not be adjusted pursuant to this clause (iv) to the extent that an adjustment pursuant to the foregoing clause (ii) is made in connection with a transaction that would otherwise result in an adjustment pursuant to this clause (iv); and

(v) if the Gross Asset Value of a Company asset has been determined or adjusted pursuant to clauses (i), (ii) or (iv) above, such Gross Asset Value shall be adjusted each Allocation Year by the Book Depreciation with respect to such asset taken into account for purposes of computing Profits or Losses for such year.

(i) Member Nonrecourse Debt

“Member Nonrecourse Debt” shall mean any Company liability that is treated as “partner nonrecourse debt” under Regulations Section 1.704-2(b)(4).

(j) Member Nonrecourse Deductions

“Member Nonrecourse Deductions” of the Company shall mean any and all items of Book Depreciation and other expenses that are treated as “partner nonrecourse deductions” under Regulations Section 1.704-2(i)(1) and Section 1.704-2(i)(2).

(k) Member Nonrecourse Minimum Gain

“Member Nonrecourse Minimum Gain” of the Company shall mean the amount of “minimum gain” of the Company that is attributable to Member Nonrecourse Debt (as determined strictly in accordance with Regulations Section 1.704-2(i)(3)). A Member’s share of such Member Nonrecourse Minimum Gain shall be calculated in accordance with the provisions of Regulations Section 1.704-2(i)(5).

(l) Nonrecourse Deductions

“Nonrecourse Deductions” has the meaning set forth in Regulations Section 1.704-2(b)(1) and Section 1.704-2(c).

(m) Nonrecourse Liability

“Nonrecourse Liability” of the Company shall mean any Company liability treated as a “nonrecourse liability” under Regulations Section 1.704-2(b)(3).

(n) Nonrecourse Minimum Gain

“Nonrecourse Minimum Gain” of the Company shall mean the amount of “minimum gain” of the Company that is attributable to Nonrecourse Liabilities (as determined in accordance with Regulations Section 1.704-2(b)(2) and Section 1.704-2(d).

(o) Partially Adjusted Capital Account

“Partially Adjusted Capital Account” means, with respect to each Allocation Year of the Company and with respect to each Member during such year, the Capital Account balance of such Member at the beginning of such year, adjusted for all contributions and distributions during such year and all special allocations pursuant to Section 2.1(a) through (g) made to such Member for such year, but before giving effect to any allocations of Profits or Losses (or items thereof) for such year pursuant to Section 2.1(h).

(p) Partnership Representative

“Partnership Representative” means the person designated in Section 3.2.

(q) Partnership Tax Audit Rules

“Partnership Tax Audit Rules” shall mean Section 6221 through 6241 of the Code, as amended by the BBA and Section 411 of the Protecting Americans from Tax Hikes Act of 2015, Pub. L. 114-113, Div. Q., and the Tax Technical Corrections Act of 2018, together with any guidance issued thereunder or successor provisions or amendments thereto and any similar provisions of state or local tax laws.

(r) Profits or Losses

“Profits or Losses” means, for each Allocation Year, an amount equal to the Company’s taxable income or loss for such year, determined in accordance with Section 703(a) of the Code (for this purpose, all items of income, gain, loss or deduction required to be stated separately pursuant to Section 703(a) of the Code shall be included in taxable income or loss), with the following adjustments (without duplication):

(i) any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits or Losses pursuant to this definition shall be added to any taxable income or decrease any taxable loss;

(ii) any expenditures of the Company described in Section 705(a)(2)(B) of the Code or treated as Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits or Losses pursuant to this definition of “Profits” and “Losses,” shall be subtracted from any taxable income or added to any taxable loss;

(iii) any income, gain or loss attributable to the taxable disposition of any Company property with respect to which income, gain or loss is recognized for federal income tax purposes shall be determined as if the adjusted basis of such property as of such date of disposition were equal in amount to the Company's Gross Asset Value with respect to such property as of such date;

(iv) in lieu of depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there will be taken into account Book Depreciation for such Allocation Year;

(v) if the Gross Asset Value of any Company asset is adjusted under clause (ii) or (iii) of the definition of Gross Asset Value, the amount of such adjustment will be taken into account as gain or loss from disposition of the asset for purposes of computing Profits or Losses; and

(vi) any items which are specially allocated pursuant to the provisions of Section 2.1(a) through (g) shall not be taken into account in computing Profits or Losses.

(vii) To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) or Section 743(b) of the Code is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(2) or Section 1.704-1(b)(2)(iv)(m)(4) to be taken into account in determining a Capital Account as a result of a distribution other than in liquidation of a Member's Membership Interest, the amount of such adjustment shall be treated as an item of gain (if the adjustment increases the basis of asset) or an item of loss (if the adjustment decreases the basis of the asset) from the disposition of the asset and shall be taken into account in computing Profits or Losses.

The amounts of any items of income, gain, loss or deduction available to be allocated pursuant to Section 2.1(a) through (g) shall be determined by applying rules analogous to those set forth above in this definition of "Profits or Losses."

(s) "Reviewed Year"

"Reviewed Year" has the meaning given to such term in Section 6225(d)(1) of the Code.

(t) Target Capital Account

"Target Capital Account" means, with respect to each Allocation Year and with respect to each Member during such year, the amount (which may be either a positive or a deficit balance) equal to the difference between (i) the amount of the hypothetical distribution (if any) that such Member would receive if, on the last day of such year, (x) all Company assets, including cash, were sold for cash equal to their Gross Asset Value, taking into account any adjustments thereto for such year, (y) all Company liabilities were satisfied in cash according to their terms (limited, with respect to each Nonrecourse Liability or Member Nonrecourse Debt, to the Gross Asset Value of the assets securing such liability), and (z) the net proceeds thereof (after satisfaction of such liabilities) were distributed in full pursuant to Section 10.2 of the Agreement and (ii) the sum of (x) the amount, if any, without duplication, that such Member would be obligated to contribute to the capital of the Company pursuant to any provision of this Agreement, if applicable, (y) such Member's share of Nonrecourse Minimum Gain determined pursuant to Regulations Section

1.704-2(g), and (z) such Member's share of Member Nonrecourse Minimum Gain determined pursuant to Regulations Section 1.704-2(i)(5), all computed immediately prior to the hypothetical sale described in clause (i) hereof.

ARTICLE II.

ALLOCATIONS OF PROFITS AND LOSSES

Section 2.1 Allocation Of Book Items. Before the allocations of Profits or Losses (or items thereof) pursuant to Section 2.1(h), the following special allocations shall be made in the following order:

(a) Except as otherwise provided in Regulations Section 1.704-2(f), notwithstanding any other provision of this Article II, if there is a net decrease in Nonrecourse Minimum Gain of the Company for the Allocation Year (or if there was a net decrease in Nonrecourse Minimum Gain for a prior Allocation Year and the Company did not have sufficient amounts of income or gain during the Allocation Year to allocate to the Members under this Section 2.1(a)), then items of Company income or gain shall be allocated, before any other allocation is made pursuant to the succeeding provisions of this Section 2.1 for such year, to each Member in proportion to, and to the extent of, the total net decrease in such Member's share of the Nonrecourse Minimum Gain (determined and adjusted in accordance with the provisions of Regulations Section 1.704-2(g)). This Section 2.1(a) is intended to comply with the minimum gain chargeback requirement in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith. To the extent permitted by Regulations Section 1.704-2(h)(3), the Managing Member shall endeavor to treat distributions of cash as having been from the proceeds of a Nonrecourse Liability only to the extent that such distributions would cause or increase an Adjusted Capital Account Deficit for any Member.

As provided in Regulations Section 1.704-2(j), income or gain of the Company allocated for any Allocation Year under this Section 2.1(a) shall consist first of a pro rata portion of income or gain recognized from the disposition of Company property subject to a Nonrecourse Liability and discharge of indebtedness income relating to the Nonrecourse Liability to which the property is subject, with any remaining allocated income deemed to be made up of a pro rata portion of the Company's other items of income and items of gain for such year (provided that gain from the disposition of property which is subject to Member Nonrecourse Debt and discharge of indebtedness income relating to the Member Nonrecourse Debt to which the property is subject shall be allocated under this Section 2.1(a) only to the extent not allocated under Section 2.1(b)).

(b) Except as otherwise provided in Regulations Section 1.704-2(i)(4), notwithstanding any other provision of this Article II, if there is a net decrease in Member Nonrecourse Minimum Gain of the Company for such Allocation Year (or if there was a net decrease in Member Nonrecourse Minimum Gain for a prior Allocation Year and the Company did not have sufficient amounts of income during such prior year to allocate to the Members under this Section 2.1(b)), then items of Company income and gain shall be allocated, before any other allocation is made pursuant to the succeeding provisions of this Section 2.1 for such year, to the Members with shares of such minimum gain as of the first day of such taxable year or other period in proportion to, and to the extent of, such Member's share of the net decrease in such minimum gain all as provided under Regulations Section 1.704-2(i)(4). This Section 2.1(b) is intended to comply with the

partner nonrecourse minimum gain chargeback requirement in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

As provided in Regulations Section 1.704-2(j), income or gain of the Company allocated for any Allocation Year under this Section 2.1(b) shall consist first of a pro rata portion of income or gain recognized from the disposition of Company property subject to Member Nonrecourse Debt and discharge of indebtedness income relating to the Member Nonrecourse Debt to which the property is subject, with any remaining allocated income deemed to be made up of a pro rata portion of the Company's other items of income and other items of gain for such year (provided that items of gain from the disposition of property which is subject to a Nonrecourse Liability and discharge of indebtedness income relating to the Nonrecourse Liability to which the property is subject shall be allocated under this Section 2.1(b) only to the extent not allocated under Section 2.1(a)).

(c) In the event a Member unexpectedly receives an adjustment, allocation or distribution described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate, to the extent required by the Regulations, such Member's Adjusted Capital Account Deficit as quickly as possible, provided that an allocation pursuant to this Section 2.1(c) shall be made only if and to the extent that the Member would have an Adjusted Capital Account Deficit after all other allocations provided for in Section 2.1 have been tentatively made as if this Section 2.1(c) were not in this Exhibit A. This clause (c) of Section 2.1 is intended to be a "qualified income offset" within the meaning of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted in a manner consistent therewith.

(d) In the event any Member has a deficit balance in its Capital Account at the end of any Allocation Year that is in excess of the amount such Member is obligated to restore under this Agreement or pursuant to the penultimate sentences of Regulations Section 1.704-2(g)(1) and Section 1.704-2(i)(5), each such Member shall be specially allocated items of Company income or gain in the amount of such excess as quickly as possible, provided that an allocation pursuant to this Section 2.1(d) shall be made only if and to the extent that such Member would have a deficit Capital Account balance in excess of such amount after all other allocations provided in this Section 2.1 have been made as if Section 2.1(c) and this Section 2.1(d) were not contained in this Exhibit A.

(e) For any Allocation Year, all Nonrecourse Deductions shall be allocated among the Members in proportion to their respective final distribution sharing ratios as set forth in Section 4.1(e). As provided in Regulations Section 1.704-2(j), Nonrecourse Deductions allocated hereunder for any Allocation Year shall consist first of Book Depreciation with respect to property which is subject to Nonrecourse Liability for such year, with any remaining Nonrecourse Deductions deemed to be made up of a pro rata portion of the Company's other deductions or losses for such year.

(f) Any Member Nonrecourse Deductions for any Allocation Year shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1).

(g) (i) To the extent any adjustment to the adjusted tax basis of any Company asset pursuant to Section 734(b) of the Code or Section 743(b) of the Code is required pursuant to Regulations Section 1.704-1(b)(2)(iv)(m) to be taken into account in determining Capital Accounts as a result of the complete liquidation of the Member's Membership Interest, the amount of such adjustment to the Capital Accounts will be treated as an item of gain (if the adjustment increased the basis of the asset) or loss (if the adjustment decreases such basis), and such gain or loss will be specially allocated to the Members in accordance with their interests in the Company as determined under Regulations Section 1.704-1(b)(3) if the adjustment is pursuant to such Regulations Section 1.704-1(b)(2)(iv)(m)(2) or to the Member to whom a distribution is made resulting in an adjustment pursuant to Regulations Section 1.704-1(b)(2)(iv)(m)(4).

(ii) Items of income, gain, loss or deduction may be specially allocated by the Managing Member to correct for distortions arising from the Partnership Tax Audit Rules, which allocations shall preserve, to the extent permitted by law, the after-tax economic arrangement of the Members.

(h) (i) For each Allocation Year, after giving effect to Sections 2.1(a) through (g), the rules set forth below in this Section 2.1(h) shall apply for the purpose of determining each Member's allocable share of the items of income, gain, loss and deduction of the Company comprising Profits and Losses of the Company for such year.

(ii) The items of income, gain, deduction and loss of the Company comprising Profits or Losses for an Allocation Year shall be allocated among the persons who were Members during such year in a manner that will reduce, proportionately, the differences between their respective Partially Adjusted Capital Accounts and Target Capital Accounts for such year.

(iii) No portion of the Losses for any Allocation Year shall be allocated to a Member whose Target Capital Account is greater than or equal to its Partially Adjusted Capital Account for such year, and the provisions of clauses (X) and (Y), as applicable, shall apply. No portion of the Profits for any Allocation Year shall be allocated to any Member whose Partially Adjusted Capital Account is greater than or equal to its Target Capital Account for such year, and the provisions of clauses (X) and (Y), as applicable, shall apply.

(X) If the Company has a Profits for an Allocation Year, then, (A) for any Member whose Partially Adjusted Capital Account balance needs to be decreased pursuant to Section 2.1(h)(ii), the allocations required by Section 2.1(h)(ii) shall be comprised of a proportionate share (based on the relative amounts by which their Partially Adjusted Capital Accounts need to be reduced) of each of the Company's items of deduction or loss entering into the computation of Profits for such year to the extent necessary to eliminate, to the maximum extent possible for such year, the differential between their respective Partially Adjusted Capital Accounts and Target Capital Accounts, and (B) the allocations made pursuant to Section 2.1(h)(ii) in respect of each other Member not described in the foregoing Section 2.1(h)(iii)(X) (A) shall be comprised of a proportionate share (based upon the relative amounts by which their Partially Adjusted Capital Accounts need to be adjusted) of each Company item of income, gain, deduction and loss entering into the computation of Profits for such year (other than the portion of each Company item of deduction and loss, if any, allocated pursuant to Section 2.1(h)(iii)(X)(A) hereof). In the event the Company has insufficient items of deduction or loss for such Allocation Year to satisfy the previous sentence with respect to all such Members, the available items of deduction or loss shall be divided among such Members in proportion to such differences.

(Y) If the Company has Losses for an Allocation Year, then, (A) for any Member whose Partially Adjusted Capital Account balance needs to be increased pursuant to Section 2.1(h)(ii), the allocations required by Section 2.1(h) shall be comprised of a proportionate share (based on the relative amounts by which their Partially Adjusted Capital Accounts need to be increased) of each of the Company's items of income or gain entering into the computation of Losses for such year to the extent necessary to eliminate, to the maximum extent possible for such year, the difference between their respective Partially Adjusted Capital Accounts and Target Capital Accounts, and (B) the allocations made pursuant to Section 2.1(h)(ii) in respect of each other Member not described in the foregoing Section 2.1(h)(iii)(Y) (A) shall be comprised of a proportionate share (based upon the relative amounts by which their Partially Adjusted Capital Accounts need to be adjusted) of each Company item of income, gain, deduction and loss entering into the computation of Losses, for such year (other than the portion of Company items of income or gain, if any, that is allocated pursuant to Section 2.1(h)(iii)(Y) (A) above. In the event the Company has insufficient items of income or gain for such Allocation Year to satisfy the previous sentence with respect to all such Members, the available items of income or gain shall be divided among the Members in proportion to such differences.

(Z) Notwithstanding anything to the contrary in this Section 2.1(h), the amount of Losses or items of Company deduction and loss allocated pursuant to this Section 2.1(h) to any Member shall not exceed the maximum amount of the Losses or such items that can be so allocated without causing such Member to have an Adjusted Capital Account Deficit at the end of any Allocation Year. All Losses or such items in excess of the limitation set forth in this Section 2.1(h)(iii)(Z) shall be allocated first to Members who would not have an Adjusted Capital Account Deficit, pro rata in proportion to their Capital Account balances as adjusted in accordance with subdivisions (i) and (ii) of the definition of Adjusted Capital Account Deficit, until no Member would be entitled to any further allocation, and thereafter to all Members in accordance with the provisions of Regulations Section 1.704-1(b)(3) as determined by the Managing Member.

Section 2.2 Allocation Of Tax Items.

(a) Except as otherwise provided in Section 2.2(b), each item of income, gain, loss and deduction as determined for federal income tax purposes (a "Tax Item") shall be allocated among the Members in the same manner as each correlative item of "book" income, gain, deduction or loss is allocated pursuant to the provisions of Section 2.1.

(b) The Members hereby acknowledge that all Tax Items in respect of Book/Tax Disparity Property are required to be allocated among the Members in the manner provided under Section 704(c) of the Code (as specified in Regulations Section 1.704-1(b)(2)(iv)(f) and Section 1.704-1(b)(2)(iv)(g)) and that the principles of Section 704(c) of the Code and the Regulations promulgated hereunder require that such Tax Items must be shared among the Members so as to take account of the variation between the adjusted tax basis and Gross Asset Value of each such Book/Tax Disparity Property. Thus, notwithstanding anything in Sections 2.1 or 2.2(a) to the contrary, the Members' distributive shares of Tax Items in respect of each Book/Tax Disparity Property shall be separately determined and allocated among the Members in accordance with the principles of Section 704(c) of the Code. Any elections or decisions relating to allocations under this Section 2.2(b) will be made by the Managing Member.

(c) For purposes of determining the character (as ordinary or capital) of any item of income, gain or Profits allocated among the Members for federal income tax purposes pursuant to

Section 2.1, the portion of such item of income, gain or Profits required to be recognized as ordinary income pursuant to Sections 1245 and/or 1250 of the Code shall be determined in the manner provided in Regulations Section 1.1245-1(e) or Section 1.1250-1(f), as applicable.

(d) “Excess nonrecourse liabilities” of the Company, within the meaning of Regulations Section 1.752-3(a)(3), shall be allocated among the Members in proportion to their respective final distribution sharing ratios as set forth in Section 4.1(e).

(e) All tax credits shall be allocated among the Members as determined by the Managing Member, consistent with applicable laws.

(f) Members shall be bound by the provisions of this Article II in reporting their distributive shares of Company items of increase, gain, deduction, loss and credit.

Section 2.3 Allocations Of Profits And Losses And Distributions In Respect Of Varying Membership Interests. If any Membership Interest is Transferred, or is increased or decreased by reason of the admission of a new Member or otherwise varies, during any Allocation Year, each Member’s distributive share of Profits or Losses and each item of income, gain, deduction or loss shall be determined by use of any method reasonably determined by the Managing Member and permitted under Section 706(d) of the Code to account for the varying interests of the Members.

ARTICLE III.

OTHER TAX MATTERS

Section 3.1 Tax Elections.

(a) For tax purposes to the extent permitted by law, the Company shall elect to use the calendar year as its taxable year and to report income and loss under the accrual method of accounting.

(b) The Managing Member may make elections provided in Section 709 of the Code.

(c) The Managing Member may make elections provided in Section 195 of the Code.

(d) The Company shall compute depreciation under Section 168 of the Code with respect to its items of real property which are “recovery property” within the meaning of such Section and for this purpose shall utilize the straight-line method, provided, however, that the Managing Member may (i) with respect to Section 179 property (as such term is defined in Section 179 of the Code) elect to expense the cost of such property as deduction for the taxable year the property is placed in service and (ii) elect to take the maximum amount of additional first year depreciation deduction allowable eligible property under Section 168(k) of the Code and Regulations promulgated thereunder.

(e) In connection with any Transfer or other assignment of a Membership Interest permitted by the terms and provisions of this Agreement or in connection with the distribution of any Company property to a Member, the Managing Member may cause the Company at the time and in the manner provided in Regulations Section 1.754-1(b) (or any like statute or Regulation then in effect), to make an election to adjust the basis of the Company’s property in the manner

provided in Sections 734(b) and 743(b) of the Code (or any like statute or Regulation then in effect).

(f) It is intended that the Company be classified as a partnership for federal income tax purposes. Accordingly, neither the Company nor any Member shall file any election pursuant to Sections 761 or 7701 of the Code or Regulations Section 301.7701-3 or otherwise, the effect of which would cause the Company not to be treated as a partnership for federal income tax purposes.

(g) Except as otherwise expressly provided in this Exhibit A, any other tax election or methods of accounting shall be made as determined by the Managing Member.

Section 3.2 Partnership Representative. The Managing Member shall be designated on the Company's annual federal information tax return as the "Partnership Representative" for the purposes of the Partnership Tax Audit Rules, and shall continue to serve in that capacity so long as the Managing Member remains as a Member, and in that designated role, the Managing Member shall be referred to as the "Partnership Representative." The Managing Member shall designate an individual to serve as a Designated Individual (herein so called) to the extent required under the Partnership Tax Audit Rules. The Partnership Representative (and Designated Individual, as applicable) may resign at such time permitted under the Partnership Tax Audit Rules or their appointment revoked under the terms of the Agreement, in which event the Managing Member shall appoint a new Partnership Representative (and Designated Individual, as applicable).

(a) The Partnership Representative is authorized to represent the Company in connection with all examinations of the Company's affairs by taxing authorities, including any resulting administrative and judicial proceedings, and except as otherwise provided herein, has all of the authority provided to a partnership representative under the Code or Regulations. The Partnership Representative shall keep the Members reasonably informed of all audit, administrative or judicial activity or non-ministerial correspondence to and from taxing authorities pertinent to Company affairs. Without limiting the generality of the foregoing, the Partnership Representative shall promptly notify each Member if any tax return or report of the Company is audited, or if adjustments are proposed by any taxing authority. Without limiting the generality of the foregoing, the Partnership Representative shall promptly furnish to each Member all material notices concerning administrative or judicial proceedings relating to federal income tax matters of the Company. During the pendency of any such administrative or judicial proceeding, the Partnership Representative shall furnish to each Member quarterly reports concerning the status of any such proceeding and any additional information regarding the subject matter of the audit that will allow the Member to determine its tax exposure. Without limiting the generality of the foregoing, the Partnership Representative may extend the statute of limitations, file a request for administrative adjustment, file suit relating to any Company tax refund or deficiency, or enter into any settlement agreement relating to items of income, gain, loss, or deduction of the Company with any taxing authority.

(b) In the event of any administrative or judicial proceeding by a taxing authority, the Partnership Representative may retain accountants, lawyers, and other professionals to participate in the audit or judicial proceedings. All expenses incurred by the Partnership Representative in connection with its duties, obligations and responsibilities as the Partnership Representative, including but not limited to expenses incurred by the Partnership Representative in connection with Company level administrative or judicial tax proceedings, shall be paid for out of Company assets and shall be treated as Company expenses.

(c) The provisions of this Section 3.2 shall survive the termination of the Company, this Agreement or the termination of any Member's Membership Interest in the Company and shall remain binding on the Members (and former Member's) for a period of time necessary to resolve with the Internal Revenue Service and/or any taxing authority any and all matters regarding the United States federal and state and local income taxation of the Company and the Member's (and former Member's) obligations and duties provided in the Agreement and this Exhibit A including without limitations Section 4.3 of the Agreement.

(d) Procedures similar to those provided in this Section 3.2 regarding administrative and judicial proceedings in connection with U.S. federal income tax matters of the company shall be followed in connection with any state or local income tax audit that incorporates rules similar to the U.S. federal income tax rules.

(e) No Member shall file a notice of inconsistent treatment under the Partnership Tax Audit Rules.

(f) The Partnership Representative may make, if and to the extent permitted by applicable law, the election provided by Section 6221(b) of the Partnership Tax Audit Rules to have Subchapter C of Chapter 63 of the Code not apply (the "Election Out"), as well as any comparable election permitted under applicable state or local law, and each of the Members agrees to cooperate if and to the extent required by applicable law in making each such Election Out.

(g) If the Internal Revenue Service, in connection with an audit governed by the Partnership Tax Audit Rules, proposes an adjustment in the amount of any "partnership-related item" (as defined in the Partnership Tax Audit Rules), and such adjustment results in an "imputed underpayment" as described in the Partnership Tax Audit Rules (a "Covered Audit Adjustment"), the Partnership Representative may elect, to the extent that such election is available under the Partnership Tax Audit Rules (taking into account whether the Partnership Representative has received any needed information on a timely basis from the Members) and the Election Out described in Section 3.2(f) was not previously made or is otherwise not effective, to apply the alternative method provided by Section 6226 of the Partnership Tax Audit Rules (the "Alternative Method"); provided further that the Members (including former Members) agree to act in a timely manner to permit an election of the Alternative Method and each such Member agrees to provide any needed information on a timely basis required or reasonably requested by the Partnership Representative to elect the Alternative Method. If the Alternative Method is elected, the Members covenant to timely report and pay any tax liability, together with interest and penalties related to any adjustment, determined under the Alternative Method (the "Section 6226 Adjustments") for the Reviewed Years as notified to them by the Partnership Representative on behalf of the Company regardless of whether such Member owns any interest the Company or remains a Member in the Adjustment Year. Any Member that fails to report and/or pay its share of the tax liability, penalties, and interest related to the Section 6226 Adjustments shall indemnify and hold harmless the Company and the other Members against any tax, penalties, and interest collected from the Company as a result of such Member's failure to report and/or pay its share of the tax liability, penalty, and interest (or failure to otherwise comply with the Alternative Method) together with interest thereon and all costs and expense including attorneys' fees incurred by the Company as a result of such Member's actions or inactions. To the extent that the Alternative Method is not elected for the Covered Audit Adjustment, the Partnership Representative shall use commercially reasonable efforts to make any modifications available under Section 6225(c)(3) and (4) of the Code to the extent that such modifications are available (taking into account whether

the Partnership Representative has received any needed information on a timely basis from the Members) and that would reduce any Company Level Taxes (defined below) payable by the Company with respect to the Covered Audit Adjustment. Additionally, to the extent that the Company does not elect the Alternative Method with respect to a Covered Audit Adjustment, the Partnership Representative may require each Member in a Reviewed Year to file an amended U.S. federal income tax return, as described in the Partnership Tax Audit Rules, or to follow the alternative procedures in lieu of filing an amended U.S. federal income tax return pursuant to the Partnership Tax Audit Rules, to the extent such amended return or the reporting under the alternative procedures in lieu of filing an amended tax return and payment of any related taxes, additions to tax, penalties and interest, would reduce the Company Level Taxes attributable to the Covered Audit Adjustments. The Company shall provide to such Member information allowing such Member (or indirect Member as defined under Regulations Section 301.6241-1(a)(4)) to file an amended U.S. federal income tax return, as described in Section 6225(c)(2)(A) of the Partnership Tax Audit Rules, or to follow the alternative procedures in lieu of filing an amended U.S. federal income tax return pursuant to Section 6225(c)(2)(B) of the Partnership Tax Audit Rules. In addition to and not in limitation of the forgoing, each Member agrees to timely provide the Partnership Representative with any information, statements, affidavits or executed Internal Revenue Service forms reasonably necessary for the Partnership Representative: (i) to make an Election Out, (ii) to elect the Alternative Method, (iii) to make modification under Section 6225(c) of the Partnership Tax Audit Rules, (iv) to allow the Members (or indirect Members as defined above) to file any amended returns under the Partnership Tax Audit Rules, or to adopt reporting procedures in lieu of filing an amended return under the Partnership Tax Audit Rules or (v) to provide evidence of a Member's (or indirect Member's as defined above) filing of, and payment of taxes, additions to taxes, penalties and interest attributable to, an amended tax return under the Partnership Tax Audit Rules or reporting procedures in lieu of filing an amended tax return under the Partnership Tax Audit Rules. Procedures similar to those contained in this Section 3.2 shall be followed in connection with any state or local tax audit that incorporates rules similar to the Revised Company Audit Rules.

(h) Notwithstanding any provision of this Agreement to the contrary, any taxes, penalties, and interest payable under the Partnership Tax Audit Rules (and any comparable state and local income tax rules) by the Company ("Company Level Taxes") shall be treated as attributable to the Members (including Members in the Reviewed Year and former Members) of the Company, and the Partnership Representative shall allocate the burden of any such Company Level Taxes to those Members (including Members in the Reviewed Year and former Members, as applicable) to whom such amounts are attributable (whether as a result of their status, actions, inactions, or otherwise), as determined by the Partnership Representative and taking into account the effect of any modifications described in Section 3.2(g) that reduce the amount of Company Level Taxes. All Company Level Taxes allocated to a Member (or former Member, as applicable) shall be paid by the Member as provided in Section 4.3 of the Agreement.

Section 3.3 Tax Returns. At the Company's expense, the Managing Member shall cause the preparation and filing on a timely basis of the United States federal, state and local income and other tax returns required to be filed by the Company, on an accrual basis and in accordance with the provisions of this Agreement. The Managing Member shall timely furnish to the other Members a copy of each such return, together with Schedule K-1s and any other schedules or information which the Member may reasonably require in connection with the Member's own tax affairs.

EXHIBIT B

Defined Terms

The following defined terms used in this Agreement shall have the meanings specified below:

“Affiliated Person” or **“Affiliate”** means, with respect to any Person, any (i) Person who owns directly or indirectly twenty percent (20%) or more of the beneficial ownership in such Person; (ii) the Immediate Family of, or the legal representative or trustee of, or trust principally for the benefit of, any such Person or any Person referred to in the preceding clause (i); (iii) any Entity in which such Person and/or one or more of the Persons referred to in the preceding clauses (i) and (ii) own directly or indirectly fifty percent (50%) or more of the beneficial ownership of such Entity, and (iv) any Entity which, for purposes of making day to day decisions controls, is controlled by or is in common control with such Person and/or one or more of the Persons referred to in the preceding clauses (i) and (ii).

“Affiliated Contract(s)” means any contract, agreement or other arrangement between the Company and the Managing Member or any of its Affiliates, now existing or hereafter entered into.

“Agreement” means this Operating Agreement, as it may be amended from time to time.

“AMI” shall mean the area median income for the Dallas TX HUD Metro FMR Area for the applicable year, as adjusted for household size.

“Annual Capital Budget” shall have the meaning provided in Section 7.1.

“Annual Operating Budget” shall have the meaning provided in Section 7.1.

“Approved Budget” shall have the meaning provided in Section 7.1.

“AT/AML Laws” shall have the meaning provided in Section 1.8(a)(xii).

“Blocked Person” shall have the meaning provided in Section 1.8(a)(xiv).

“Builder’s Fee” shall have the meaning provided in Section 3.5(e).

“Business Day” means any day excluding Saturday, Sunday and any day which shall be in the State of Texas a legal holiday or a day on which banking institutions in the State are authorized by law or executive action to close.

“Capital Account” has the meaning provided in Article V.

“Capital Contributions” means the Capital Contributions made by the Members as described in Article II plus the amount of cash and the agreed value of any other property contributed to the Company by a Member in accordance with the provisions of this Agreement. Any reference in this Agreement to Capital Contribution shall include the Capital Contributions or, as the case may be, the appropriate portion thereof, previously made by a Member’s transferor.

“Capital Transaction” means any of the following: (i) a sale, exchange, transfer, assignment or other disposition of all or any portion of the Property or other assets of the Company including a Leasehold Sale (but not including occasional sales in the ordinary course of business of inventory, operating equipment or furniture, fixtures and equipment); (ii) any financing or refinancing of indebtedness of the Company; (iii) any condemnation or deed in lieu of condemnation of all or a portion of the Property; (iv) any collection in respect of property, hazard or casualty insurance (but not rental or business interruption insurance); or (v) any other transaction the proceeds of which, in accordance with generally accepted accounting principles, are considered to be capital in nature. The receipt by the Company of Capital Contributions from the Members shall not constitute a Capital Transaction.

“Capital Transaction Proceeds” means the net cash proceeds of a Capital Transaction, after deducting all expenses incurred in connection therewith and after application of any proceeds as required by any obligations binding on the Company to which the Company is subject and after the establishment of reserves for contingent or unforeseen liabilities deemed necessary or appropriate by the Managing Member.

“Certificate” shall have the meaning provided in Recital A.

“Co-Developer” means APFC Waters Creek Development, LLC, a Texas limited liability company wholly owned by the PFC.

“Code” means the Internal Revenue Code of 1986, as amended to the date hereof and as hereafter amended, and any successor provisions of federal law.

“Consent” means, with respect to any Person, the prior written consent or approval of such Person, which shall not be unreasonably withheld, delayed or conditioned.

“Construction Contract” means the Construction Management Agreement between the Company and the Contractor dated as of the Effective Date, as it may be amended from time to time.

“Construction Oversight Fee” shall have the meaning provided in Section 3.5(e).

“Contractor” means APFC Waters Creek Contractor, LLC, a Texas limited liability company wholly owned by the PFC.

“Deficit” shall have the meaning provided in Section 2.2(a).

“Developer” means JPI Multifamily Development, LLC, a Texas limited liability company, or its successors or assigns.

“Developer’s Fee” shall have the meaning provided in Section 3.5(a).

“Development Agreement” means the Development Management Agreement between the Company and Developer dated as of the Effective Date, as it may be amended from time to time.

“Development Budget” means the development and construction budget, prepared by the Managing Member and approved by the construction lender under the Loan Documents on or before the Effective Date, setting forth the estimated costs to develop and build the Project.

“Early Termination Election” shall have the meaning assigned to such term in the Lease Agreement.

“Early Termination Fee” shall have the meaning assigned to such term in the Lease Agreement.

“Effective Date” shall have the meaning provided in the Preamble.

“Entity” means any general partnership, limited partnership, corporation, trust, business trust, cooperative, limited liability company, limited liability partnership, cooperative, or association or any other form of incorporated or unincorporated business association which is a legal Entity under applicable law.

“Event of Bankruptcy” means, with respect to any Person any of the following: (i) if such Person shall file a voluntary petition in bankruptcy or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for himself under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or shall seek or consent to or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator of itself or of all or any substantial part of its properties or its interest in the Company (the term “acquiesce” as used herein includes but is not limited to the failure to file a petition or motion to vacate or discharge any order, judgment, or decree within thirty (30) days after such order, judgment or decree); or (ii) if a court of competent jurisdiction shall enter in an order, judgment or decree approving a petition filed against such Person seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other statutes or law relating to bankruptcy, insolvency, or other relief for debtors and such Person shall acquiesce in the entry of such order, judgment, or decree, or if such Person shall suffer the entry of any order for relief under Title 11 of the United States Code and such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of sixty days (whether or not consecutive) from the date of entry thereof, or if any trustee, receiver, conservator, or liquidator of such Person or of all or any substantial part of its properties or its interest in the Company shall be appointed without the consent or acquiesce of said Person and such appointment shall remain unvacated and unstayed for an aggregate of sixty days (whether or not consecutive); or (iii) if such Person shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

“Event of Default” means, as to the Special Member, the occurrence of any of the following:

- (i) An Event of Bankruptcy shall occur as to such Member;
- (ii) Such Member gives notice to any governmental body or court of insolvency or pending insolvency or suspension of operations;

- (iii) A breach of Article VIII by such Member or any Person holding a direct or indirect interest in such Member;
- (iv) An act of fraud, misappropriation or embezzlement by such Member in respect of the Company or of the Property;
- (v) An act of dishonesty, willful misconduct or gross negligence by such Member in respect of the Company or the Property;
- (vi) Any material breach or default by such Member in the performance of its duties or obligations under this Agreement not specified above or below in this definition, and such breach or default is not cured to the reasonable approval of the non-defaulting party within any cure period set forth herein or, if no cure period is otherwise provided herein, such breach or default is not cured within thirty (30) days after notice from the non-defaulting Member of such breach or default or such longer period as may be reasonably required given the nature of such breach or default, but not to exceed ninety (90) days;
- (vii) A material uncured default occurs and is continuing by the Company under any mortgage encumbering any of the Real Property, and any such default is the result of an act or omission of such Member of its duties or responsibilities under this Agreement; or
- (vii) Any loss of the Real Estate Tax Exemption that is not the result of the negligence or willful misconduct of the Managing Member or any Affiliate thereof, or the failure of the Property Manager to operate the Real Property in accordance with the Regulatory Agreement.

“Fiscal Year” shall have the meaning provided in Section 6.3.

“Formation Date” shall have the meaning provided in Recital A.

“GAAP” shall have the meaning provided in Section 6.1.

“Hazardous Materials” means any or all of the following: explosives, radioactive materials, petroleum, asbestos, asbestos containing materials, PCBs, hazardous wastes, toxic substances or related materials, including, without limitation, any substances defined as or included in the definition of “hazardous substances,” “hazardous wastes,” “hazardous materials,” or “toxic substances” under any applicable federal or state law or regulation.

“Hazardous Materials Law” means all applicable federal, state or local laws, ordinance, regulation or common law relating to any Hazardous Materials.

“Housing Agreements” means, collectively, the Lease Agreement and the Regulatory Agreement.

“Housing Requirements” means all restrictions and all other requirements under any of the Housing Agreements, and any requirements to maintain the Real Estate Tax Exemption, including the requirements of Section 3.2(c).

“HUD” means the United States Department of Housing and Urban Development.

“Immediate Family” means, with respect to any individual, his or her parents, spouse, descendants, or spouse of a descendant, and any trusts principally for the benefit of any of the foregoing; with respect to any trust, any beneficiary of such trust or any member, as described above, of the Immediate Family of any such beneficiary; and any Entity or Entities all of the beneficial owners of which are any one or more of such individuals and trusts described immediately above.

“Indemnified Affiliates” means, with respect to a particular Person, such Person’s owners, officers, directors, partners, managers, agents, employees and Affiliates, as well as any Affiliate of the foregoing (other than the Company).

“Indemnified Person” means any Person entitled to indemnification in accordance with this Agreement (assuming the prerequisites for indemnification are met).

“Initial Lender” shall have the meaning provided in Section 10.16.

“Institutional Equity Investor” means, whether one or more, each of (a) Peaceable Street Capital or any of its designated Affiliates (or any of their respective successors or assigns), (b) Sumitomo Forestry America, Inc., or any of its designated Affiliates (or any of their respective successors or assigns), or (c) any replacement investor(s) for any of the foregoing.

“Interim Capital Transaction” means any Capital Transaction other than a Terminating Capital Transaction.

“IRR” means that annual interest rate which, when used as a discount rate, causes (a) the net present value of the cumulative distributions made to the Managing Member, from the respective dates of such distributions through the computation date to equal (b) the net present value of the Managing Member’s Capital Contributions on the respective dates such Capital Contributions were contributed or deemed contributed to the Company through the computation date. IRR will be calculated using the XIRR Function in Microsoft Excel. Notwithstanding the foregoing, for purposes of the calculation of IRR hereunder, the Managing Member’s Capital Contributions shall include (without duplication) any applicable Step-Up Amount.

“JPI Exit Event” means the earliest to occur of either (a) a Leasehold Sale by the Company to an unrelated third-party, (b) the termination of the Lease Agreement and the subsequent sale of the Project by the Company to an unrelated third party, or (c) at any time following Substantial Completion, any transfer of the direct or indirect ownership interests in the Company resulting in neither Developer nor any of its Affiliates having a remaining majority and controlling ownership interest in the Company.

“Laws” shall have the meaning provided in Section 3.1(b)(xii).

“Lease Agreement” means the Lease Agreement dated or to be dated on or about the date of this Agreement, between the Company and the Special Member, in its capacity as landlord, as the same may be amended from time to time.

“Leasehold Sale” means a transfer of the Company’s leasehold estate in the Real Property with the Lease Agreement remaining in full force and effect.

“LLC Act” shall have the meaning provided in Recital A.

“Liquidating Manager” means the Managing Member or a liquidator selected by the Managing Member with the Consent of the Special Member.

“Loan Documents” means any note, mortgage, deed of trust and any other document executed by the Company, now or in the future, evidencing or securing any loan to the Company or which is secured by any of the Real Property.

“Loan Documents Payment” shall have the meaning provided in Section 2.5(b).

“Major Decisions” shall have the meaning provided in Section 3.2(a).

“Managing Member” means Jefferson Villages of Waters Creek Holdings, LLC, a Delaware limited liability company, and any other Person who becomes an additional, substitute or replacement Managing Member as permitted by this Agreement.

“Managing Member Restrictions” shall have the meaning provided in Section 3.1(a).

“Master Construction Subcontract” means the Master Subcontract between Contractor and Master Subcontractor dated as of the Effective Date, as it may be amended from time to time.

“Master Subcontractor” means JPI Construction, LLC, a Texas limited liability company, or its successors or assigns.

“Member” means each of the Managing Member and the Special Member, and each of their respective permitted successors and assigns, and **“Members”** shall refer collectively to the Managing Member and the Special Member and each of their respective permitted successors and assigns.

“Membership Interest” means the interest of a Member in the Company, including legal and beneficial interests and the rights, duties and obligations of a Member.

“Net Cash Flow” of the Company, with respect to any Fiscal Year or other relevant period, means the gross revenues received by the Company, from time to time, from operation of the Real Property less (a) all cash expenditures for operating costs and expenses of the Company, including the fees and reimbursements payable under Section 3.5 (excluding charges for depreciation, amortization and other expenses not paid in cash, and any expenditures from reserves established by the Company), and (b) any reserves contained in the Approved Budget, all to the extent actually so set aside during such Fiscal Year, to the extent funded from receipts which are included in the definition of Net Cash Flow.

“Non-Discretionary Expenditures” means funds needed to meet any or all of the following obligations of the Company which funds are not available from receipts or reserves of the Company or from borrowings of the Company, and which funds the Managing Member is not obligated to expend for other identified obligations of the Company and which are not already specifically committed or reserved for other commitments of the Company, it being agreed that funds of the Company shall first be used for the following obligations (without priority among them) to the exclusion of other obligations of the Company:

- (i) real estate taxes and assessments on any Property of the Company;
- (ii) payments required to be made pursuant to any mortgage on, or any lease of, the Real Property or to make payments on any other indebtedness of the Company, as well as the expense of curing any default under any such mortgage or lease or other indebtedness;
- (iii) insurance premiums;
- (iv) any alteration, repair or replacement required by any present or future law, ordinance, order, rule, regulation or requirement of any federal, state or municipal government, department, commission, board or officer, or any order, rule or regulation of the National Board of Fire Underwriters or any other body exercising similar functions;
- (v) any amount required to be paid pursuant to any final order, judgment, or decree of any court or governmental body having jurisdiction; and
- (vi) any amount required to fulfill any contractual obligations of the Company with any Entity which is not a Member or an Affiliate of a Member, including without limitation, any obligations under the Housing Agreements.

“**OFAC**” shall have the meaning provided in Section 1.8(a)(xii).

“**Opening Date**” means the date that the leasing office at the Project is scheduled to open for business to the public.

“**Original Agreement**” means that certain Limited Liability Company Agreement of the Company dated as of November 10, 2022, as amended prior to the Effective Date.

“**Patriot Act**” shall have the meaning provided in Section 1.8(a)(xii).

“**Percentage Interest**” shall be the percentage interest of each Member in the Company set forth in Exhibit C, as such shall be amended from time to time to reflect the withdrawal or admission of Members, and any change in the Percentage Interest of any Member for any other reason.

“**Permitted Ownership Transfer**” means any direct or indirect Transfer of ownership of the Managing Member so long as, following the effectiveness thereof, either (a) TDI Consolidated LLC, a Texas limited liability company, or its Affiliates remain in Control of the Managing Member, (b) following the exercise of any of their applicable remedies under their respective investment documents, any Institutional Equity Investor remains in Control of the Managing Member, or (c) any unrelated third-party sponsor or its Affiliates who, with the prior written approval of the Special Member (such approval not to be unreasonably withheld, conditioned or delayed), assumes and thereafter is in Control of the Managing Member.

“**Person**” means any natural person or any Entity and, where the context so admits, the heirs, executors, administrators, legal representatives, successors and/or assigns of any such Person.

“PFC” means the Anna Public Facility Corporation, a Texas public facility corporation.

“Premises” shall have the meaning given it in the Lease Agreement.

“Project” shall have the meaning provided in Recital B.

“Property” shall mean all of the assets owned or held by the Company from time to time, including its direct and indirect interests in the Real Property.

“Property Manager” means (a) ZRS Management LLC or its Affiliates, (b) American Management Services Central LLC, an Affiliate of Cushman and Wakefield, or any of its Affiliates, or (c) any other third-party property manager for the Project appointed by the Managing Member from time to time with the prior approval of the Special Member (such approval not to be unreasonably withheld, conditioned or delayed).

“Real Estate Tax Exemption” shall mean that certain exemption from ad valorem taxes pursuant to Section 303.042 of the Texas Local Government Code.

“Real Property” means that certain land described in **Exhibit D** attached hereto and the improvements now or hereafter located thereon.

“Regulation(s)” shall mean the final or temporary regulations promulgated by the United States Department of the Treasury under the Code.

“Regulatory Agreement” means that certain Regulatory Agreement and Declaration of Restrictive Covenants by and among the Company, the Managing Member, the Special Member and the PFC dated as of the Effective Date, as it may be amended from time to time.

“Replacement Trigger Event” means, with respect to the Managing Member, the occurrence of any of the following:

(i) the occurrence of an Event of Bankruptcy (as a result of a voluntary petition made by or at the direction of the Managing Member or its Affiliates) with respect to the Managing Member, the Company or the Developer;

(ii) any conviction with respect to a felony involving moral turpitude by the Managing Member or any entity that owns a controlling interest in the Managing Member with respect to its or their management or oversight over the Project;

(iii) any actual fraud by the Managing Member with respect to the Project, which has a material adverse impact upon the Company or the Project; or

(iv) the intentional, willful and continuing failure of the Managing Member to observe and perform in any respect any covenant, condition, duty, obligation or agreement set forth herein and which has a material adverse impact upon the Company or the Project.

“Special Member” shall have the meaning provided in the Preamble.

“Securities Act” shall have the meaning provided in **Section 1.8**.

“**SRO**” means a self-regulatory organization.

“**Step-Up Amount**” means any amount paid by any third-party acquiror of (a) a direct or indirect interest in the Managing Member, or (b) the Managing Member’s interest in the Lease, including as a result of any Leasehold Sale. For the avoidance of doubt, the Step-Up Amount will include the sum of all such amounts calculated for any such transactions which occur during the term of this Agreement.

“**Substantial Completion**” means the date of issuance of the last temporary certificate of occupancy for a building in the Project.

“**Terminating Capital Transaction**” means a sale, exchange, condemnation, eminent domain taking, casualty or other disposition of all or substantially all of the assets of the Company and shall include the receipt and collection of notes, if any, and payments thereon or any other consideration received or to be received by the Company upon a sale, exchange or other disposition of all or substantially all of the assets of the Company, and all activities reasonably related to any of the above including activities which were included in the dissolution, termination and winding-up of the affairs of the Company (but not in any event including therein the operation and the winding-up of the Company affairs).

“**Transfer**” or “**Transferred**” or any other capitalized grammatical variation thereof, means the sale, exchange, issuance, assignment, distribution, encumbrance, hypothecation, gift, pledge, retirement, resignation, or other Withdrawal, transfer or other disposition or alienation, whether absolute, contingent or collateral, in any way of all or any part of any Membership Interest in the Company. Transfer shall specifically, without limitation of the above, include assignments and distributions resulting from death, incompetency, bankruptcy, liquidation and dissolution.

“**Withdrawal**” (including the terms “**Withdraw**,” “**Withdrawn**” and “**Withdrawing**,”) means, as to a Member, the occurrence of such Member’s death, the adjudication of insanity or incompetence of such Member, the occurrence with respect to such Member of an Event of Bankruptcy, dissolution or liquidation, or the voluntary or involuntary withdrawal or retirement of such Member from the Company for any reason.

The definitions set forth in the LLC Act shall be applicable, to the extent not inconsistent herewith, to define terms not defined herein and to supplement definitions contained herein. In addition, certain capitalized terms used in this Agreement and not otherwise defined will have the meanings given to them in **Exhibit A** attached hereto.

EXHIBIT C

Member Information

<u>Percentage Interest and Required Capital Contribution of Each Member</u>	<u>Percentage Interest</u>	<u>Capital Contribution Commitment</u>
<u>Managing Member:</u> Jefferson Villages of Waters Creek, LLC 600 E. Las Colinas Blvd., Suite 1800 Irving, Texas 75039 Attention: Ryan Combs Email: ryan.combs@jpi.com <u>With a copy to:</u> Jefferson Villages of Waters Creek, LLC 600 E. Las Colinas Blvd., Suite 1800 Irving, Texas 75039 Attention: Legal Department Email: Legal@jpi.com <u>and</u> Coats Rose PC 9 Greenway Plaza, Suite 1000 Houston, Texas 77046 Attention: Barry Palmer Email: bpalmer@coatsrose.com <u>and</u> PPI Jefferson Waters Creek (TX) LLC c/o Peaceable Street Capital LLC 1000 Floral Vale Blvd., Suite 250 Yardley, Pennsylvania 19067 Attention: Chief Executive Officer Email: _____	90.0%	[\$_____]
<u>Special Member:</u> APFC Waters Creek Member, LLC 120 W 7th Street P.O. Box 776 Anna, Texas 75409 Attention: Jim Proce, City Manager Email: jproce@annatexas.gov	10.0%	\$0

With a copy to:

Chapman and Cutler LLP
320 S Canal Street, 27th Floor
Chicago, Illinois 60606
Attention: Ryan J. Bowen
Email: rbowen@chapman.com

EXHIBIT D

Legal Description

[To Come]

EXHIBIT E

Major Decisions

The following are Major Decisions requiring the Consent of the Special Member:

- Any change to this Agreement, other than correction of a scrivener's error;
- Any transactions between the Company, on the one hand, and the Managing Member or its Affiliates, on the other hand, other than (a) the transactions contemplated by the Affiliated Contracts, (b) any other affiliated transactions contemplated by this Agreement or the Lease Agreement, or (c) any other transaction which is made on an arm's-length basis, on substantially the same overall terms as could be obtained from an unrelated third party;
- Any act in contravention of this Agreement or any activity materially inconsistent with the purposes of the Company;
- Any act that would, to the Managing Member's actual knowledge, make it impossible to carry out the ordinary business of the Company;
- Any act that would, to the Managing Member's actual knowledge, subject any Member to personal liability in any jurisdiction for the debts or obligations of the Company;
- Filing any petition, or consenting to the filing of any petition, that would subject the Company to an Event of Bankruptcy;
- The admission of a new Member to the Company other than as otherwise provided in this Agreement;
- Permit the Company to have any employees; or
- Distributions of Net Cash Flow or Capital Transaction Proceeds, except as contemplated by Article IV or Article IX.

ANNA PUBLIC FACILITY CORPORATION

The undersigned officer of Anna Public Facility Corporation (the “*Sole Member*”), sole member of APFC Waters Creek Member, LLC (the “*Special Member*”), hereby certifies that he is the duly elected qualified and acting President of the Sole Member, and hereby certifies that true, correct and complete copies of certain resolutions adopted by the Board of Directors of the Sole Member at its November 22, 2022 meeting are attached hereto (the “*Resolutions*”). The Resolutions have not been amended or revoked and are now in full force and effect.

Dated: November 22, 2022

By _____
Stan Carver II
President

ANNA PUBLIC FACILITY CORPORATION

**RESOLUTION OF THE SOLE MEMBER OF
APFC WATERS CREEK MEMBER, LLC**

November 22, 2022

ANNA PUBLIC FACILITY CORPORATION, a nonprofit public facility corporation duly organized and validly existing under the laws of the State of Texas (the “*Member*”), the sole member of APFC WATERS CREEK MEMBER, LLC (the “*Special Member*”), the special member of JEFFERSON VILLAGES OF WATERS CREEK, LLC, a Texas limited liability company (the “*Company*”) hereby adopts the following resolutions:

1. LEASE OF REAL PROPERTY

WHEREAS, Anna Public Facility Corporation, a Texas nonprofit public facility corporation (the “*Member*”), is the sole member of the Special Member;

WHEREAS, Stan Carver II, an individual, is the President of the Member (the “*President*”);

WHEREAS, the Special Member, in its capacity as landlord, will acquire certain real property located in Anna, Texas (the “*Real Property*”) on which a 325-Unit multifamily project is to be constructed, developed and operated, to be known as “Jefferson Villages at Waters Creek” (the “*Apartment Complex*”); and

WHEREAS, the Special Member will enter into (a) a Lease Agreement (the “*Lease Agreement*”) with the Company pursuant to which the Special Member will lease the Real Property to the Company for a 99-year term; and (b) various documents as may be required in connection therewith ((a) and (b) collectively, the “*Lease Documents*”).

RESOLVED, that the prior actions of the President (or any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member, with respect to the lease of the Real Property, including but not limited to the execution of the Lease Agreement, are hereby ratified and approved.

RESOLVED, that (a) the Special Member, acting on its own behalf, is hereby authorized to execute and deliver the Lease Documents and to do all things necessary or desirable to facilitate the lease of the Real Property and the construction, development and operation of the Apartment Complex thereon; (c) the Member, acting on behalf of the Special Member is hereby authorized to execute and deliver the Lease Documents and to do all things necessary or desirable to facilitate the lease of the Real Property and the construction, development and operation of the Apartment Complex thereon; and (d) the President (or in his absence, any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member is hereby individually authorized to (i) execute and deliver the Lease Documents, with such changes as the President in his discretion believes to be necessary or desirable, and such other documents and instruments in connection therewith as may be necessary or desirable and (ii) do all things necessary or desirable to facilitate

the lease of the Real Property and the construction, development and operation of the Apartment Complex thereon.

2. COMPANY DOCUMENTATION

WHEREAS, in connection with its admission to the Company, the Special Member will enter into (a) an Operating Agreement of the Company (the “*Operating Agreement*”) between Special Member, as special member, and Jefferson Villages of Waters Creek Holdings, LLC, a Delaware limited liability company, as managing member; and (b) various documents as may be required in connection with such Company admission (collectively, the “*Company Documents*”).

RESOLVED, that (a) the Special Member, acting on its own behalf, is authorized to execute and deliver the Company Documents and do all things necessary and desirable to facilitate the admission to the Company; (b) the Member, acting on behalf of the Special Member, acting on its own behalf, is hereby authorized to execute and deliver the Company Documents and do all things necessary to facilitate the admission to the Company; and (c) the President (or in his absence, any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member is hereby individually authorized to (i) execute and deliver the Company Documents, with such changes as the President in his discretion believe to be necessary or desirable, and such other documents and instruments in connection therewith as may be necessary or desirable and (ii) do all things necessary or desirable to facilitate the admission to the Company and perform the obligations thereunder.

3. CONSTRUCTION CONTRACT

WHEREAS, APFC WATERS CREEK CONTRACTOR, LLC, a Texas limited liability company, will serve as general contractor (in such capacity, the “*General Contractor*”) in connection with the construction and development of the Apartment Complex; and

WHEREAS, in connection with such role, the General Contractor will enter into a Construction Management Agreement with the Company (the “*Construction Contract*”) and a Master Subcontract with JPI Construction, LLC (the “*Master Subcontract*”).

RESOLVED, that the President (or in his absence, any officer of the Member), is hereby individually authorized to (i) execute and deliver the Construction Contract and the Master Subcontract, with such changes as the President in his discretion believes to be necessary or desirable, and such other documents and instruments in connection therewith as may be necessary or desirable and (ii) do all things necessary or desirable to cause the Member to perform the Member’s obligations thereunder.

4. AUTHORIZATION/RATIFICATION.

RESOLVED, that the President (or in his absence, any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member, acting on its own behalf, is individually authorized to (a) sign, certify to, acknowledge, deliver, accept, file, and record any

and all instruments, resolutions and documents, and (b) take, or cause to be taken, any and all such action, in the name and on behalf of the Member and the Special Member, as such person shall deem to be necessary, desirable, or appropriate in order to effect the purposes of the foregoing resolutions.

FURTHER RESOLVED, that any and all action taken by the President (or in his absence, any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member, acting on its own behalf, prior to the date this consent is actually executed in effecting the purposes of the foregoing resolutions is hereby approved, ratified, and adopted in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

This Limited Liability Company Agreement (this “*Agreement*”) of APFC Waters Creek Member, LLC (the “*Company*”) is entered into by the Anna Public Facility Corporation, as the sole member of the Company (the “*Member*”).

- 1. Name** The name of the limited liability company formed hereby is APFC Waters Creek Member, LLC.
- 2. Purpose** The general purpose of the Company is to assist the Member in financing public facilities in the jurisdiction of the Anna Public Facility Corporation. The specific purposes of the Company are to (i) be admitted as a member and serve as special member of [Jefferson Village Waters Creek, LLC], a Texas limited liability company (the “*Project Owner*”) and in connection therewith, to own, hold, sell, dispose of or otherwise deal with its member interest in the Project Owner; and (ii) acquire, own and lease a tract of real property in City of Anna, Collin County, Texas, on which a multifamily residence will be constructed.
- 3. Registered Office** The address of the registered office of the Company in the State of Texas is c/o Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 4. Registered Agent** The name and address of the registered agent of the Company for service of process on the Company in the State of Texas is Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 5. Members** The names and the business, residence or mailing addresses of the Member is as follows:

Special Member - LLC Agreement 4892-9820-4477 v3.docx
2297737

- 6. Powers**

The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the laws of the State of Texas. The Member shall have the authority to bind the Company.
- 7. Dissolution**

The term of the Company commenced on the filing of the Certificate of Formation Limited Liability Company with the Texas Secretary of State and shall be perpetual unless dissolved as provided in this Agreement.
- 8. Capital Contributions**

The Member has contributed \$10,000, in cash, and no other property, to the Company.
- 9. Additional Contributions**

No Member is required to make any additional capital contribution to the Company.
- 10. Allocation of Profits and Losses**

The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.
- 11. Distributions**

Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Member in the same proportion as their capital account balances.
- 12. Assignments**

A Member may assign its limited liability company interest in whole or in part only with the consent of the other Members.
- 13. Resignation**

Without the consent of the remaining Members, a Member may not resign from the Company.
- 14. Admission of Additional Members**

One (1) or more additional members of the Company may be admitted to the Company with the consent of the Members and upon being so admitted shall become bound by all of the terms of this Agreement and shall execute a written joinder to this Agreement.
- 15. Liability of Members**

The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act. The Company shall indemnify, in accordance with and to the full extent now or hereafter permitted by law, the Members and any officer or employee of the Company, and may so indemnify any agent of the Company, who was or is a party or is threatened to be made a party to any

threatened, pending or completed action, suit or proceeding, whether civil, criminal, administration or investigative (including, without limitation, an action by or in the right of the Company) by reason of any action or omission in their respective capacities against any liabilities, expenses (including, without limitation, attorneys' fees and expenses and any other costs and expenses incurred in connection with defending such action, suit or proceeding), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with such action, suit or proceeding, if the Person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its, his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption (i) that the Person did not act in good faith and in a manner which it, he or she reasonably believed to be in or not opposed to the best interests of the Company, and (ii) with respect to any criminal action or proceeding, that the Person had reasonable cause to believe its, his or her conduct was unlawful. Expenses (including, without limitation, attorneys' fees and expenses) incurred by a Person seeking indemnification hereunder shall be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking from the Person to repay such amount if it shall ultimately be determined that the Person is not entitled to indemnification.

For purposes of the preceding paragraph, the word "Person" shall include each Member and any officer, employee or agent of the Company.

16. Officers

The officers of the Company shall be a President, a Vice President and a Secretary. The President shall be the chief executive officer of the Company and shall be in general charge of the properties and affairs of the Company; shall preside at all meetings; in furtherance of the purposes of the Company, may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Company. The Vice President shall carry out the powers and responsibilities of the President when the President is absent or unable to act. The Secretary shall attend to the giving and serving of all notices; in furtherance of the purposes of the Company, may

sign with the President or Vice President in the name of the Company, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Company; shall have charge of the corporate books, records, documents and instruments, and such other books and papers as may be necessary, all of which shall at all reasonable times be open to inspection upon application at the office of the Company during business hours. Such offices shall be assumed by the persons serving in the respective office on the Board of Directors of the Member.

17. Governing Law

This Agreement shall be governed by, and construed under, the laws of the State of Texas, all rights and remedies being governed by said laws.

18. Amendment

This Agreement may be amended in writing by the Members.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 7th day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION, as sole
member

By _____
Stan Carver II
President

**LIMITED LIABILITY COMPANY AGREEMENT
OF
APFC WATERS CREEK DEVELOPMENT, LLC**

This Limited Liability Company Agreement (this “*Agreement*”) of APFC Waters Creek Development, LLC (the “*Company*”) is entered into by the Anna Public Facility Corporation, as the sole member of the Company (the “*Member*”).

The Member hereby forms a limited liability company pursuant to and in accordance with the Texas Limited Liability Company Act, as amended from time to time (currently Chapter 101 of the Texas Business Organizations Code), (the “Act”) by filing a Certificate of Formation with the Texas Secretary of State and hereby agrees as follows:

- 1. Name** The name of the limited liability company formed hereby is APFC Waters Creek Development, LLC.
- 2. Purpose** The general purpose of the Company is to assist the Member in providing public facilities in the jurisdiction of the Anna Public Facility Corporation. The specific purpose of the Company is to serve as co-developer with in connection with the development of a multifamily housing development in City of Anna, Collin County, Texas.
- 3. Registered Office** The address of the registered office of the Company in the State of Texas is c/o Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 4. Registered Agent** The name and address of the registered agent of the Company for service of process on the Company in the State of Texas is Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 5. Members** The names and the business, residence or mailing addresses of the Member is as follows:

Anna Public Facility Corporation
P.O. Box 776
Anna, Texas 75409
- 6. Powers** The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the laws

of the State of Texas. The Member shall have the authority to bind the Company.

- 7. Dissolution**

The term of the Company commenced on the filing of the Certificate of Formation Limited Liability Company with the Texas Secretary of State and shall be perpetual unless dissolved as provided in this Agreement.
- 8. Capital Contributions**

The Member has contributed \$10,000, in cash, and no other property, to the Company.
- 9. Additional Contributions**

No Member is required to make any additional capital contribution to the Company.
- 10. Allocation of Profits and Losses**

The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.
- 11. Distributions**

Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Member in the same proportion as their capital account balances.
- 12. Assignments**

A Member may assign its limited liability company interest in whole or in part only with the consent of the other Members.
- 13. Resignation**

Without the consent of the remaining Members, a Member may not resign from the Company.
- 14. Admission of Additional Members**

One (1) or more additional members of the Company may be admitted to the Company with the consent of the Members and upon being so admitted shall become bound by all of the terms of this Agreement and shall execute a written joinder to this Agreement.
- 15. Liability of Members**

The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act. The Company shall indemnify, in accordance with and to the full extent now or hereafter permitted by law, the Members and any officer or employee of the Company, and may so indemnify any agent of the Company, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administration or investigative (including, without limitation, an action by or in the right of the Company) by reason of any action or omission in their respective capacities against any liabilities, expenses

(including, without limitation, attorneys' fees and expenses and any other costs and expenses incurred in connection with defending such action, suit or proceeding), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with such action, suit or proceeding, if the Person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its, his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption (i) that the Person did not act in good faith and in a manner which it, he or she reasonably believed to be in or not opposed to the best interests of the Company, and (ii) with respect to any criminal action or proceeding, that the Person had reasonable cause to believe its, his or her conduct was unlawful. Expenses (including, without limitation, attorneys' fees and expenses) incurred by a Person seeking indemnification hereunder shall be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking from the Person to repay such amount if it shall ultimately be determined that the Person is not entitled to indemnification.

For purposes of the preceding paragraph, the word "Person" shall include each Member and any officer, employee or agent of the Company.

16. Officers

The officers of the Company shall be a President, a Vice President and a Secretary. The President shall be the chief executive officer of the Company and shall be in general charge of the properties and affairs of the Company; shall preside at all meetings; in furtherance of the purposes of the Company, he may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Company. The Vice President shall carry out the powers and responsibilities of the President when the President is absent or unable to act. The Secretary shall attend to the giving and serving of all notices; in furtherance of the purposes of the Company, may sign with the President or Vice President in the name of the Company, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Company; shall have charge of the corporate books, records,

documents and instruments, and such other books and papers as may be necessary, all of which shall at all reasonable times be open to inspection upon application at the office of the Company during business hours. Such offices shall be assumed by the persons serving in the respective office on the Board of Directors of the Member.

17. Governing Law

This Agreement shall be governed by, and construed under, the laws of the State of Texas, all rights and remedies being governed by said laws.

18. Amendment

This Agreement may be amended in writing by the Members.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 7th day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION, as sole
member

By _____
Stan Carver II
President

**LIMITED LIABILITY COMPANY AGREEMENT
OF
APFC WATERS CREEK CONTRACTOR, LLC**

This Limited Liability Company Agreement (this “*Agreement*”) of APFC Waters Creek Contractor, LLC (the “*Company*”) is entered into by the Anna Public Facility Corporation, as the sole member of the Company (the “*Member*”).

The Member hereby forms a limited liability company pursuant to and in accordance with the Texas Limited Liability Company Act, as amended from time to time (currently Chapter 101 of the Texas Business Organizations Code), (the “*Act*”) by filing a Certificate of Formation with the Texas Secretary of State and hereby agrees as follows:

- 1. Name**

The name of the limited liability company formed hereby is APFC Waters Creek Contractor, LLC.
- 2. Purpose**

The general purpose of the Company is to assist the Member in providing public facilities in the jurisdiction of the Anna Public Facility Corporation. The specific purpose of the Company is to serve as general contractor in connection with the construction of a multifamily housing development to be located in the City of Anna, Collin County, Texas.
- 3. Registered Office**

The address of the registered office of the Company in the State of Texas is c/o Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 4. Registered Agent**

The name and address of the registered agent of the Company for service of process on the Company in the State of Texas is Anna Public Facility Corporation, 120 West 7th Street, Anna, Texas 75409.
- 5. Members**

The names and the business, residence or mailing addresses of the Member is as follows:

Anna Public Facility Corporation
P.O. Box 776
Anna, Texas 75409
- 6. Powers**

The business and affairs of the Company shall be managed by the Member. The Member shall have the power to do any and all acts necessary or convenient to or for the furtherance of the purposes described herein, including all powers, statutory or otherwise, possessed by members under the laws

of the State of Texas. The Member shall have the authority to bind the Company.

- 7. Dissolution**

The term of the Company commenced on the filing of the Certificate of Formation Limited Liability Company with the Texas Secretary of State and shall be perpetual unless dissolved as provided in this Agreement.
- 8. Capital Contributions**

The Member has contributed \$10,000, in cash, and no other property, to the Company.
- 9. Additional Contributions**

No Member is required to make any additional capital contribution to the Company.
- 10. Allocation of Profits and Losses**

The Company's profits and losses shall be allocated in proportion to the capital contributions of the Members.
- 11. Distributions**

Distributions shall be made to the Members at the times and in the aggregate amounts determined by the Members. Such distributions shall be allocated among the Member in the same proportion as their capital account balances.
- 12. Assignments**

A Member may assign its limited liability company interest in whole or in part only with the consent of the other Members.
- 13. Resignation**

Without the consent of the remaining Members, a Member may not resign from the Company.
- 14. Admission of Additional Members**

One (1) or more additional members of the Company may be admitted to the Company with the consent of the Members and upon being so admitted shall become bound by all of the terms of this Agreement and shall execute a written joinder to this Agreement.
- 15. Liability of Members**

The Members shall not have any liability for the obligations or liabilities of the Company except to the extent provided in the Act. The Company shall indemnify, in accordance with and to the full extent now or hereafter permitted by law, the Members and any officer or employee of the Company, and may so indemnify any agent of the Company, who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administration or investigative (including, without limitation, an action by or in the right of the Company) by reason of any action or omission in their respective capacities against any liabilities, expenses

(including, without limitation, attorneys' fees and expenses and any other costs and expenses incurred in connection with defending such action, suit or proceeding), judgments, fines and amounts paid in settlement actually and reasonably incurred by the Person in connection with such action, suit or proceeding, if the Person acted in good faith and in a manner reasonably believed to be in or not opposed to the best interests of the Company, and, with respect to any criminal action or proceeding, had no reasonable cause to believe its, his or her conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption (i) that the Person did not act in good faith and in a manner which it, he or she reasonably believed to be in or not opposed to the best interests of the Company, and (ii) with respect to any criminal action or proceeding, that the Person had reasonable cause to believe its, his or her conduct was unlawful. Expenses (including, without limitation, attorneys' fees and expenses) incurred by a Person seeking indemnification hereunder shall be paid in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking from the Person to repay such amount if it shall ultimately be determined that the Person is not entitled to indemnification.

For purposes of the preceding paragraph, the word "Person" shall include each Member and any officer, employee or agent of the Company.

16. Officers

The officers of the Company shall be a President, a Vice President and a Secretary. The President shall be the chief executive officer of the Company and shall be in general charge of the properties and affairs of the Company; shall preside at all meetings; in furtherance of the purposes of the Company, may sign and execute all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments in the name of the Company. The Vice President shall carry out the powers and responsibilities of the President when the President is absent or unable to act. The Secretary shall attend to the giving and serving of all notices; in furtherance of the purposes of the Company, may sign with the President or Vice President in the name of the Company, and/or attest the signature thereto, all contracts, conveyances, franchises, bonds, deeds, assignments, mortgages, notes and other instruments of the Company; shall have charge of the corporate books, records, documents

and instruments, and such other books and papers as may be necessary, all of which shall at all reasonable times be open to inspection upon application at the office of the Company during business hours. Such offices shall be assumed by the persons serving in the respective office on the Board of Directors of the Member.

17. Governing Law

This Agreement shall be governed by, and construed under, the laws of the State of Texas, all rights and remedies being governed by said laws.

18. Amendment

This Agreement may be amended in writing by the Members.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned, intending to be legally bound hereby, have duly executed this Limited Liability Company Agreement as of the 7th day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION, as sole
member

By _____
Stan Carver II
President

ANNA PUBLIC FACILITY CORPORATION

RESOLUTION AUTHORIZING THE FORMATION OF APFC WATERS CREEK MEMBER, LLC AS SPECIAL MEMBER OF [JEFFERSON VILLAGE WATERS CREEK, LLC] (THE “*SPECIAL MEMBER*”) IN CONNECTION WITH THE FINANCING, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC FACILITY; AUTHORIZING THE DESIGNATION OF THE ANNA PUBLIC FACILITY CORPORATION (THE “*CORPORATION*”) AS THE SOLE MEMBER OF THE SPECIAL MEMBER; APPROVING THE FORM AND SUBSTANCE OF A LIMITED LIABILITY COMPANY AGREEMENT AND THE EXECUTION THEREOF; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN IN CONNECTION WITH THE SPECIAL MEMBER; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING THERETO

WHEREAS, the Anna Public Facility Corporation (the “*Corporation*”) has been duly created and organized pursuant to and in accordance with the provisions of the Texas Public Facility Corporation Act, Chapter 303, Local Government Code, as amended (the “*Act*”), for the purpose of providing a means of financing the costs of the acquisition, construction, rehabilitation, renovation, repair, equipping furnishing and placement in service of public facilities; and

WHEREAS, the Board of Directors of the Corporation has determined that it is in the best interest of the Corporation to act as the special member of APFC Waters Creek Member, LLC (the “*Special Member*”), which will be the special member of [Jefferson Village Waters Creek, LLC] (the “*Borrower*”) in order to participate in the financing, acquisition, construction and equipping of a public facility consisting of a multifamily residential rental development for low and moderate income tenants to be known as Villages at Waters Creek, and located in the City of Anna, Collin County, Texas; and

WHEREAS, the Special Member, in its capacity as landlord will enter into a lease agreement (the “*Lease Agreement*”) with the Borrower; and

WHEREAS, as the sole member of the Special Member, the Corporation desires to authorize all action necessary and appropriate to enter into and carry out all actions under the Lease Agreement, to appoint officers of the Special Member; to approve of the Special Member’s formation and the form and substance of its Limited Liability Company Agreement (the “*Company Agreement*”); and to ratify all actions previously taken on behalf of the Special Member;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ANNA PUBLIC FACILITY CORPORATION THAT:

Section 1. Formation of Special Member. The formation of APFC Waters Creek Member, LLC is hereby approved and ratified.

Section 2. Designation of Sole Member. The designation of the Corporation as the sole member of the Special Member is hereby approved and ratified.

Section 3. Approval and Execution of the Company Agreement. The form and substance of the Company Agreement are hereby approved, and the officers of the Corporation, as sole member of the Special Member, are each hereby authorized to execute the Company Agreement.

Section 4. Appointment of Officers of the Special Member. Stan Carver II is appointed President, Danny Ussery is appointed Vice President and Pete Cain is appointed Secretary of the Special Member.

Section 5. Execution and Delivery of Financing Documents. The officers of the Special Member are each hereby authorized to negotiate the terms of, execute and attest to the Lease Agreement and any other such agreements, assignments, notes, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 6. Ratification of Previous Actions. The Corporation hereby ratifies, confirms and adopts all actions previously taken on behalf of the Special Member to carry into effect the transactions contemplated by this Resolution.

Section 7. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

Section 8. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED the 22nd day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION

By _____
Stan Carver II
President

ANNA PUBLIC FACILITY CORPORATION

RESOLUTION AUTHORIZING THE FORMATION OF APFC WATERS CREEK DEVELOPMENT, LLC (THE “*Co-DEVELOPER*”) IN CONNECTION WITH THE FINANCING, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC FACILITY; AUTHORIZING THE DESIGNATION OF THE ANNA PUBLIC FACILITY CORPORATION AS THE SOLE MEMBER OF THE CO-DEVELOPER; APPROVING THE FORM AND SUBSTANCE OF A LIMITED LIABILITY COMPANY AGREEMENT AND THE EXECUTION THEREOF; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN IN CONNECTION WITH THE CO-DEVELOPER; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING THERETO

WHEREAS, the Anna Public Facility Corporation (the “*Corporation*”) has been duly created and organized pursuant to and in accordance with the provisions of the Texas Public Facility Corporation Act, Chapter 303, Local Government Code, as amended (the “*Act*”), for the purpose of providing a means of financing the costs of the acquisition, construction, rehabilitation, renovation, repair, equipping furnishing and placement in service of public facilities; and

WHEREAS, pursuant to the Act, the Corporation intends to participate in the financing, acquisition, construction and equipping of a public facility consisting of a multifamily residential rental development for low and moderate income tenants to be known as Villages at Waters Creek, and located in the City of Anna, Collin County, Texas; and

WHEREAS, APFC Waters Creek Development, LLC (the “*Co-Developer*”), a Texas limited liability company whose sole member is the Corporation, will serve as co-developer to [Jefferson Village Waters Creek, LLC] (the “*Borrower*”) in connection with the acquisition, owning, leasing and managing of the Development pursuant to a Development Agreement (the “*Development Agreement*”) between the Co-Developer and an affiliate or designee the Borrower; and

WHEREAS, as the sole member of the Co-Developer, the Corporation desires to authorize all action necessary and appropriate to enter into and carry out all actions for the benefit of the Borrower in connection with the Development, to appoint officers of the Co-Developer; to approve of the Co-Developer’s formation and the form and substance of its Limited Liability Company Agreement (the “*Company Agreement*”); and to ratify all actions previously taken on behalf of the Co-Developer;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ANNA PUBLIC FACILITY CORPORATION THAT:

Section 1. Formation of Co-Developer. The formation of APFC Waters Creek Development, LLC is hereby approved and ratified.

Section 2. Designation of Sole Member. The designation of the Corporation as the sole member of the Co-Developer is hereby approved and ratified.

Section 3. Approval and Execution of the Company Agreement. The form and substance of the Company Agreement are hereby approved, and the officers of the Corporation, as sole member of the Co-Developer, are each hereby authorized to execute the Company Agreement.

Section 4. Appointment of Officers of the Co-Developer. Stan Carver II is appointed President, Danny Ussery is appointed Vice President and Pete Cain is appointed Secretary of the Co-Developer.

Section 5. Execution and Delivery of Financing Documents. The officers of the Co-Developer are each hereby authorized to negotiate the terms of, execute and attest to the Development Agreement and any other such agreements, assignments, notes, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 6. Ratification of Previous Actions. The Corporation hereby ratifies, confirms and adopts all actions previously taken on behalf of the Co-Developer to carry into effect the transactions contemplated by this Resolution.

Section 7. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

Section 8. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED the 22nd day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION

By _____
Stan Carver II
President

ANNA PUBLIC FACILITY CORPORATION

RESOLUTION AUTHORIZING THE FORMATION OF APFC WATERS CREEK CONTRACTOR, LLC (THE “*GENERAL CONTRACTOR*”) IN CONNECTION WITH THE FINANCING, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A PUBLIC FACILITY; AUTHORIZING THE DESIGNATION OF THE ANNA PUBLIC FACILITY CORPORATION (THE “*CORPORATION*”) AS THE SOLE MEMBER OF THE GENERAL CONTRACTOR; APPROVING THE FORM AND SUBSTANCE OF A LIMITED LIABILITY COMPANY AGREEMENT AND THE EXECUTION THEREOF; RATIFYING CERTAIN ACTIONS HERETOFORE TAKEN IN CONNECTION WITH THE GENERAL CONTRACTOR; AUTHORIZING THE EXECUTION OF DOCUMENTS AND INSTRUMENTS NECESSARY OR CONVENIENT TO CARRY OUT THE PURPOSES OF THIS RESOLUTION; AND CONTAINING OTHER PROVISIONS RELATING THERETO

WHEREAS, the Anna Public Facility Corporation (the “*Corporation*”) has been duly created and organized pursuant to and in accordance with the provisions of the Texas Public Facility Corporation Act, Chapter 303, Local Government Code, as amended (the “*Act*”), for the purpose of providing a means of financing the costs of the acquisition, construction, rehabilitation, renovation, repair, equipping furnishing and placement in service of public facilities; and

WHEREAS, pursuant to the Act, the Corporation intends to participate in the financing, acquisition, construction and equipping of a public facility consisting of a multifamily residential rental development for low and moderate income tenants to be known as Villages at Waters Creek, and located in the City of Anna, Collin County, Texas; and

WHEREAS, APFC Waters Creek Contractor, LLC (the “*General Contractor*”), a Texas limited liability company whose sole member is the Corporation, will serve as general contractor to [Jefferson Village Waters Creek, LLC] (the “*Borrower*”) in connection with the construction of the Development pursuant to a Construction Contract (the “*Construction Contract*”) between the General Contractor and the Borrower, or an affiliate or designee thereof; and

WHEREAS, as the sole member of the General Contractor, the Corporation desires to authorize all action necessary and appropriate to enter into and carry out all actions for the benefit of the Borrower in connection with the Development, to appoint officers of the General Contractor; to approve of the General Contractor’s formation and the form and substance of its Limited Liability Company Agreement (the “*Company Agreement*”); and to ratify all actions previously taken on behalf of the General Contractor;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE ANNA PUBLIC FACILITY CORPORATION THAT:

Section 1. Formation of General Contractor. The formation of APFC Waters Creek Contractor, LLC is hereby approved and ratified.

Section 2. Designation of Sole Member. The designation of the Corporation as the sole member of the General Contractor is hereby approved and ratified.

Section 3. Approval and Execution of the Company Agreement. The form and substance of the Company Agreement are hereby approved, and the officers of the Corporation, as sole member of the General Contractor, are each hereby authorized to execute the Company Agreement.

Section 4. Appointment of Officers of the General Contractor. Stan Carver II is appointed President, Danny Ussery is appointed Vice President and Pete Cain is appointed Secretary of the General Contractor.

Section 5. Execution and Delivery of Financing Documents. The officers of the General Contractor are each hereby authorized to negotiate the terms of, execute and attest to the Construction Contract and any other such agreements, assignments, notes, certificates, contracts, documents, instruments, releases, financing statements, letters of instruction, written requests and other papers, whether or not mentioned herein, as may be necessary or convenient to carry out or assist in carrying out the purposes of this Resolution.

Section 6. Ratification of Previous Actions. The Corporation hereby ratifies, confirms and adopts all actions previously taken on behalf of the General Contractor to carry into effect the transactions contemplated by this Resolution.

Section 7. Effective Date. This Resolution shall be in full force and effect from and upon its adoption.

Section 8. Severability. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

[Remainder of Page Intentionally Left Blank]

PASSED AND APPROVED the 22nd day of November, 2022.

ANNA PUBLIC FACILITY CORPORATION

By _____
Stan Carver II
President

REGULATORY AGREEMENT AND
DECLARATION OF RESTRICTIVE COVENANTS

By and Among

ANNA PUBLIC FACILITY CORPORATION,

JEFFERSON VILLAGES OF WATERS CREEK HOLDINGS, LLC,

JEFFERSON VILLAGES OF WATERS CREEK, LLC

and

APFC WATERS CREEK MEMBER, LLC

Relating to:

Jefferson Villages of Waters Creek

Dated as of November [____], 2022

Recording Requested By and When
Recorded Send to:

Chapman and Cutler LLP
320 South Canal Street
27th Floor
Chicago, Illinois 60606
Attention: Ryan J. Bowen

TABLE OF CONTENTS

SECTION	HEADING	PAGE
SECTION 1.	TERM OF RESTRICTIONS	2
SECTION 2.	OCCUPANCY RESTRICTIONS	2
SECTION 3.	ENFORCEMENT	4
SECTION 4.	RECORDING AND FILING	5
SECTION 5.	AMENDMENT	5
SECTION 6.	SEVERABILITY	5
SECTION 7.	NOTICES	5
SECTION 8.	GOVERNING LAW	6
SECTION 9.	ESTOPPEL CERTIFICATE	6
SECTION 10.	SPECIAL PROVISION REGARDING THE MANAGING MEMBER	6
EXHIBIT A	— Legal Description	
EXHIBIT B	— Certification of Income	
EXHIBIT C	— Certificate of Continuing Program Compliance	

**REGULATORY AGREEMENT AND DECLARATION
OF RESTRICTIVE COVENANTS**

THIS REGULATORY AGREEMENT AND DECLARATION OF RESTRICTIVE COVENANTS (including the Exhibits attached hereto, and as amended, modified or supplemented from time to time, this “*Regulatory Agreement*”), dated as of November [____], 2022 (the “*Effective Date*”), is entered into by and among the ANNA PUBLIC FACILITY CORPORATION, a public, nonprofit housing finance corporation duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the “*APFC*”), JEFFERSON VILLAGES OF WATERS CREEK HOLDINGS, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware (together with its permitted successors and assigns, the “*Managing Member*”), JEFFERSON VILLAGES OF WATERS CREEK, LLC, a limited liability company duly organized and validly existing under the laws of the State of Delaware (together with its permitted successors and assigns, the “*Owner*”), and APFC WATERS CREEK MEMBER, LLC, a limited liability company duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the “*Special Member*”).

WITNESSETH:

WHEREAS, the Owner will be the record owner and operator of buildings and related improvements, furnishings, equipment and related property to be installed therein, located in the City of Anna, Collin County, Texas, on the real property legally described in *Exhibit A* attached hereto and made a part hereof (the “*Project Site*” or the “*Land*”), comprising approximately 325 units of housing for residential rental purposes, a portion of such units which are to be rented to individuals and families of low or moderate income (all such buildings, improvements, furnishings, equipment and related property being collectively referred to as the “*Project Facilities*” and, together with the Project Site, the “*Development*”); and

WHEREAS, the Special Member is an affiliate of the APFC; and

WHEREAS, compliance of the Development with the requirements of Section 303.042 of the Texas Public Facility Corporation Act, Chapter 303, Texas Local Government Code, as amended (the “*Act*”) and certain other restrictions required by the APFC, is within the control of the Owner; and

WHEREAS, it is necessary for the Owner to agree to this Regulatory Agreement, and thereby consent to be regulated as herein set forth to ensure compliance with the Act and certain other restrictions required by the APFC.

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the APFC, the Managing Member and the Owner hereby agree, as follows:

SECTION 1. TERM OF RESTRICTIONS.

(a) *Occupancy Restrictions*: The term of the Occupancy Restrictions set forth in Section 2 hereof (the “*Occupancy Restrictions*”) with respect to the Development shall commence on the Effective Date and end concurrent with the date of termination of that certain Lease Agreement dated as of November [___], 2022 (as amended or restated from time to time, the “*Lease Agreement*”), between the Special Member, as landlord, and the Owner, as tenant. The Special Member shall be permitted to take affirmative action to place the Land on the tax rolls maintained by the Collin Central Appraisal District upon the termination of the Lease Agreement (and the transfer of the fee ownership of the Land to the Owner pursuant to the terms thereof) and the resulting termination of this Regulatory Agreement.

For the avoidance of doubt, this Regulatory Agreement shall not be terminated in the event that Senior Lender (as defined in the Lease Agreement) exercises its option to enter into a new lease pursuant to the provisions of Section 23.8 of the Lease Agreement.

(b) Notwithstanding the provisions of paragraph (a) of this Section 1, this Regulatory Agreement and all other restrictions hereunder shall cease to apply in the event of an involuntary noncompliance caused by weather events, fire and other casualties, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, orders or restraints of any kind of the State of Texas or of any of its departments, agencies or officials.

(c) Upon termination of this Regulatory Agreement pursuant to the terms hereof, the APFC shall, upon request by the Owner or its assigns, file in the real estate records of Collin County, Texas any documentation necessary to evidence and provide notice of the termination of this Regulatory Agreement.

SECTION 2. OCCUPANCY RESTRICTIONS.

The Owner represents, warrants and covenants that:

(a) At all times during the term of this Regulatory Agreement, at least fifty percent (50%) of the residential units in the Development will be reserved for or rented to or occupied by individuals and households whose aggregate adjusted gross incomes as determined pursuant to the methodology set forth in the form of “Certification of Income” attached hereto as *Exhibit B* (hereinafter, “*Adjusted Gross Incomes*”) do not exceed eighty percent (80%) of AMI, as defined in the Lease Agreement (the “*80% AMI Affordable Units*”). The determination of whether an individual or household meets such income requirements (hereinafter, a “*Qualifying Tenant*”) shall be made at the time occupancy commences and shall be verified on an annual basis thereafter based upon the Income Certifications (as hereinafter defined). For the sake of clarity and notwithstanding anything in this Regulatory Agreement to the contrary, each Qualifying Tenant determination shall be effective for purposes of this Regulatory Agreement through and until the date that is the one-year anniversary of such determination. For purposes of this Regulatory Agreement, AMI shall be determined as specified in the Lease Agreement.

(b) As a condition to occupancy, each individual or household who is intended to be a Qualifying Tenant shall, prior to occupying a residential unit or signing a lease, be required to sign, have notarized and deliver to the Owner, a "Certification of Income" substantially in the form attached hereto as *Exhibit B* or any other form reasonably acceptable to the Owner and the APFC (the "*Income Certification*") in which the prospective Qualifying Tenant certifies that the tenant and the tenant's household, if applicable, are Qualifying Tenants, and pursuant to the lease signed by a Qualifying Tenant, said tenant shall be required to submit, no more frequently than annually, a new Income Certification on the basis of the income of the tenant for the immediately preceding tax year. In addition, such Qualifying Tenant shall be required to provide whatever other information, documents or certifications as are reasonably deemed necessary by the Owner or the APFC to substantiate the initial or subsequent Income Certification, which may include employment verifications, income tax returns, employee pay stubs, W-2s and K-1s (each to the extent applicable).

(c) On or before the tenth (10th) day of each calendar quarter after any residential unit in the Development is available for occupancy, the Owner will or will cause the property manager for the Development (the "*Property Manager*") to submit to the APFC the "Certificate of Continuing Program Compliance," in the form attached hereto as *Exhibit C*, executed by the Owner or the Property Manager (as applicable) stating the percentage of completed residential units in the Development which were occupied or held available for occupancy by Qualifying Tenants during the preceding calendar quarter, and identifying Qualifying Tenants who commenced or terminated occupancy in the Development during such quarter.

(d) In order to satisfy the requirements of the Act, the Owner covenants and agrees to obtain and maintain (or cause the Property Manager to obtain and maintain) on file the Income Certification for each Qualifying Tenant who, to Owner's knowledge, resides in the Development (and of any persons who reside in the same residential unit with such Qualifying Tenant) for the immediately preceding taxable year. All Income Certifications will be maintained on file with the Owner or the Property Manager (as applicable) throughout the term of this Regulatory Agreement and the Owner shall, upon five (5) business days' prior request, make such Income Certifications available for inspection by the APFC.

(e) The Owner will comply with all fair housing laws, rules, regulations or orders applicable to the Development and shall not discriminate on the basis of race, creed, color, sex, age or national origin in the lease, use or occupancy of the Development or in connection with the employment of persons for the operation and management of the Development.

(f) Notwithstanding anything herein to the contrary, neither the Owner nor the Property Manager will be responsible for (i) the accuracy of any information provided by any Qualifying Tenant in any Income Certification or otherwise, or (ii) any failure or refusal of any Qualifying Tenant to provide any information required to be provided by them to the Owner or the Property Manager as provided herein (it being acknowledged that

any such failure or refusal will be a breach of the underlying residential lease with such Qualifying Tenant, and the Owner and the Property Manager, as applicable, will thereupon exercise customary remedies against such Qualifying Tenant in accordance with the terms of such underlying lease, with no impact on the Owner's rights or obligations under this Regulatory Agreement or the Lease Agreement).

SECTION 3. ENFORCEMENT.

(a) The Owner shall permit, after five (5) business days' prior notice, any duly authorized representative of the APFC to inspect any books and records of the Owner regarding the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Regulatory Agreement.

(b) In addition to the information provided for in Section 2 hereof, the Owner shall submit any other information, documents or certifications reasonably requested by the APFC which is reasonably necessary to substantiate continuing compliance with the provisions of this Regulatory Agreement.

(c) If the Owner shall fail to observe or perform any covenant, condition or agreement contained herein on its part to be observed or performed, and such failure continues for sixty (60) days after the Owner receives written notice from the APFC of such failure, then and in such event, the APFC shall be entitled in addition to all other remedies provided by law or in equity, to compel specific performance by the Owner of its obligations under this Regulatory Agreement.

Notwithstanding anything in this subsection (c) to the contrary, if with respect to any calendar quarter for which a Certificate of Continuing Program Compliance is provided pursuant to Section 2(c) hereof, the Owner has failed to comply with the Occupancy Restrictions described in Section 2(a) hereof and such failure is not cured by the later of (x) thirty (30) days after receipt of written notice from the APFC of such failure or (y) the forty-fifth (45th) day following the end of the calendar quarter for which such Certificate of Continuing Program Compliance pertains, then:

(i) the Owner shall pay to the APFC a fee calculated by multiplying the estimated quarterly tax savings created by the exemption from ad valorem property taxation (based on the appraised value and applicable tax rate received from the Collin Central Appraisal District) by a fraction, the numerator of which is the total number of units needed to reach full compliance with the Occupancy Restrictions (*i.e.* the number of units out of compliance) and the denominator is the total number of units in the Development; and

(ii) so long as the Owner fails to comply with the Occupancy Restrictions beyond any applicable notice and cure periods set forth herein, the Special Member shall have the right, but not the obligation to withdraw as the special member of the Owner.

Calculation of the fee owed pursuant to clause (i) above shall be calculated by the APFC and shall be conclusive and binding on the parties hereto absent error. For the avoidance of doubt, payment of the fee set forth in (i) above shall not be considered a substitute for compliance with

the Occupancy Restrictions and such fees shall be due and owing with respect to each quarter for which the Occupancy Restrictions are not complied with.

SECTION 4. RECORDING AND FILING.

The Owner shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the real property records of Collin County, Texas. This Regulatory Agreement shall be recorded in the grantor-grantee index to the name of the Owner as grantor and to the name of the APFC as grantee. The Owner shall pay all fees and charges incurred in connection with any such recording.

SECTION 5. AMENDMENT.

Neither this Regulatory Agreement nor any provisions hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the duly authorized representatives of the APFC and the Owner.

SECTION 6. SEVERABILITY.

The invalidity of any clause, part or provision of this Regulatory Agreement shall not affect the validity of the remaining portions of this Regulatory Agreement.

SECTION 7. NOTICES.

Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered and receipted for, or, if sent by private courier service, overnight mail or delivery service or United States registered or certified mail, return receipt requested, postage prepaid, shall be deemed to have been given if and when received (unless the addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the addressee for acceptance). Any such notice, demand or other communication shall be addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

To the Owner: Jefferson Villages of Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attention: Ryan Combs

With a copy to: Jefferson Villages of Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attention: Legal Department

With a copy to: Any additional parties who are entitled to be copied on notices to
the Owner as set forth in Section 1 of the Lease Agreement.

To the APFC: Anna Public Facility Corporation
120 W 7th Street
PO Box 776
Anna, Texas 75409
Attention: Jim Proce, City Manager

To the Managing
Member: Jefferson Village Waters Creek Holdings, LLC
600 E Las Colinas Blvd, Suite 1800
Irving, Texas 75039
Attention: Ryan Combs

With a copy to: Jefferson Villages of Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attention: Legal Department

With a copy to: Any additional parties who are entitled to be copied on notices to
the Owner as set forth in Section 1 of the Lease Agreement.

SECTION 8. GOVERNING LAW.

This Regulatory Agreement shall be construed in accordance with and governed by the laws of the State of Texas, excluding its choice and conflict of law principles.

SECTION 9. ESTOPPEL CERTIFICATE.

Each party hereto shall, at any time and from time to time within ten (10) business days after being requested to do so by the other party and/or any mortgagee with respect to any portion or all of the Development, in writing, execute, acknowledge, and address and deliver to the requesting party (or, at the latter's request, to any existing or prospective mortgagee, transferee or other assignee of the requesting party's interest in the Development or under this Regulatory Agreement) a certificate in recordable form, (i) certifying (a) that this Regulatory Agreement is unmodified and in full force and effect (or, if there has been any modification thereof, that it is in full force and effect as so modified, stating therein the nature of such modification); (b) as to whether, to the best of such party's knowledge, information and belief, the requesting party is then in default in performing any of its obligations hereunder (and, if so, specifying the nature of each such default); and (c) as to any other fact or condition reasonably requested by the requesting party; and (ii) acknowledging and agreeing that any statement contained in such certificate may be relied upon by the requesting party and any such other addressee.

SECTION 10. SPECIAL PROVISION REGARDING THE MANAGING MEMBER.

Notwithstanding anything in this Agreement to the contrary, the Managing Member will be automatically released from any of its obligations under this Agreement upon the occurrence of

any Transfer permitted by Section 17.2(A) of the Lease Agreement which results in the Managing Member no longer owning a direct or indirect ownership interest in the Owner.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties hereto have caused this Regulatory Agreement to be signed by their respective, duly authorized representatives, as of the day and year first above written.

ANNA PUBLIC FACILITY CORPORATION

By _____
Stan Carver II
President

JEFFERSON VILLAGES OF WATERS CREEK, LLC,
a Delaware limited liability company

By _____
[]
[]

By _____
[_____] [_____]
[_____] [_____]

APFC WATERS CREEK MEMBER, LLC, a Texas
limited liability company

By: Anna Public Facility Corporation, a Texas
public facility corporation, its sole
member

By _____
Stan Carver II
President

STATE OF TEXAS)
) SS
COUNTY OF COLLIN)

I, _____, a Notary Public, do hereby certify that Stan Carver II, personally known to me to be the same person whose name is, as President of the Anna Public Facility Corporation, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of November, 2022.

Notary Public in and for the State of Texas

(SEAL)

My commission expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, a Notary Public, do hereby certify that [_____] , personally known to me to be the same person whose name is, as [_____] of Jefferson Villages of Waters Creek, LLC, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that such person, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as such person's own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of November, 2022.

Notary Public in and for the State of Texas

(SEAL)

My commission expires: _____

STATE OF _____)
) SS
COUNTY OF _____)

I, _____, a Notary Public, do hereby certify that [_____] , personally known to me to be the same person whose name is, as [_____] of Jefferson Villages of Waters Creek Holdings, LLC, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that such person, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as such person's own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of November, 2022.

Notary Public in and for the State of Texas

(SEAL)

My commission expires: _____

STATE OF TEXAS)
) SS
COUNTY OF COLLIN)

I, _____, a Notary Public, do hereby certify that Stan Carver II, personally known to me to be the same person whose name is, as President of the Anna Public Facility Corporation, sole member of APFC Water Creek Member, LLC, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of November, 2022.

Notary Public in and for the State of Texas

(SEAL)

My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION

[To Be Inserted]

EXHIBIT B

CERTIFICATION OF INCOME

Attached Hereto

CERTIFICATION OF INCOME☐ Initial Certification ☐ Recertification ☐ Other* _____Effective Date: _____
Move-in Date: _____
(MM/DD/YYYY)
*Transfer from Unit: _____**PART I. DEVELOPMENT DATA**

Property Name: _____ Unit Number: _____ # Bedrooms: _____

PART II. HOUSEHOLD COMPOSITION

HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (MM/DD/YYYY)	Student Status (circle one)	Last 4 digits of Social Security Number
1			HEAD		FT / PT / NA	
2					FT / PT / NA	
3					FT / PT / NA	
4					FT / PT / NA	
5					FT / PT / NA	
6					FT / PT / NA	
7					FT / PT / NA	

PART III. GROSS ANNUAL INCOME (USE ANNUAL AMOUNTS)

HH Mbr #	(A) Employment/Wages	(B) Soc. Security/Pensions	(C) Public Assistance	(D) Other Income
TOTALS	\$	\$	\$	\$
Add totals from (A) through (D) above				TOTAL INCOME (E): \$

PART IV. INCOME FROM ASSETS

HH Mbr #	(F) Type of Asset	(G) C/I	(H) Cash Value of Asset	(I) Annual Income from Asset
TOTALS:			\$	\$

Enter Column (H) Total _____ Passbook Rate _____
If over \$5000 \$ _____ X .06% = (J) Imputed Income \$ _____Enter the greater of the total of column I, or J: imputed income **TOTAL INCOME FROM ASSETS (K)** \$

(L) Total Annual Household Income from all Sources [Add (E) + (K)] \$

HOUSEHOLD CERTIFICATION & SIGNATURES

The information on this form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.

Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.

Signature_____
(Date)_____
Signature_____
(Date)_____
Signature_____
(Date)_____
Signature_____
(Date)

PART V. DETERMINATION OF INCOME ELIGIBILITY

TOTAL ANNUAL
HOUSEHOLD INCOME
FROM ALL SOURCES:
From item (L) on page 1

\$

Current Income Limit per Family Size:

\$ _____

Household Meets Income Restriction at:

☐ 60% ☐ 80% ☐ 100% ☐ Market

PART VI. RENT

A. Tenant Paid Rent:

\$ _____

B. Rent Assistance:

\$ _____

List Source: _____

C. Other non-optional charges and mandatory fees:

\$ _____

D. Gross Rent For Unit:

\$ _____

SIGNATURE OF OWNER/REPRESENTATIVE

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Certification of Income is/are eligible under the provisions of program's rules, regulations and Regulatory Agreement (if applicable), to live in a unit in this Project.

SIGNATURE OF OWNER/REPRESENTATIVE

(Date)

INSTRUCTIONS FOR COMPLETING CERTIFICATION OF INCOME

This form is to be completed by the owner or an authorized representative.

PART I – DEVELOPMENT DATA

Check the appropriate box for Initial Certification (move-in), Recertification (annual recertification), or Other. If a household transfers from a unit, enter the unit number the household transferred from in the area below the Move-in Date.

Move-in Date Enter the date the tenant has or will take occupancy of the unit.

Effective Date For initial move-ins and certification, the effective date is the date of move-in. For annual recertification, the effective date should be the anniversary of the original move-in date. The tenant must execute the certification no more than 120 days prior to the effective date, regardless of when the tenant signs the certification. *NOTE: Verifications must be valid (i.e., dated no more than 120 days prior to the effective date of the certification).*

Property Name Enter the name of the development.

Unit Number Enter the unit number.

Bedrooms Enter the number of bedrooms in the unit.

PART II – HOUSEHOLD COMPOSITION

List all occupants of the unit. State each household member's relationship to the head of household by using one of the following coded definitions:

H – Head of Household

S – Spouse

A – Adult co-tenant

O – Other family member

C – Child

F – Foster child(ren)/adult(s)

L – Live-in caretaker

N – None of the above

Enter the date of birth, student status, and last 4 digits of the Social Security number/Alien Registration number for each occupant. Student Status as determined by the academic institution.

If there are more than 7 occupants, use an additional sheet of paper to list the remaining household members and attach it the certification.

PART III – ANNUAL INCOME

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income, including acceptable forms of verification.

From the third party verification forms or first-hand documentation obtained from each income source, enter the gross amount anticipated to be received for the twelve months from the effective date of the (re)certification. List the respective household member number from Part II and complete a separate line for each income-earning member.

Column (A)	Enter the annual amount of wages, salaries, tips, commissions, bonuses, and other income from employment, distributed profits and/or net income from a business.
Column (B)	Enter the annual amount of Social Security, Supplemental Security Income, pensions, military retirement, etc.
Column (C)	Enter the annual amount of income received from public assistance (<i>e.g.</i> , TANF, general assistance, etc.).
Column (D)	Enter the annual amount of alimony, child support, unemployment benefits, or any other income regularly received by the household.
TOTALS	Add the total for each Column (A, B, C, and D), respectively.
Row (E)	Add the totals from columns (A) through (D), above. Enter this amount.

PART IV – INCOME FROM ASSETS

See HUD Handbook 4350.3 for complete instructions on verifying and calculating income from assets, including acceptable forms of verification.

From the third party verification forms or first-hand documentation obtained from each asset source, list the gross amount anticipated to be received during the twelve months from the effective date of the (re)certification. List the respective household member number from Part II and complete a separate line for each member.

Column (F)	List the type of asset (<i>e.g.</i> , checking account, savings account, etc.).
Column (G)	Enter C (for current, if the family currently owns or holds the asset), or I (for imputed, if the family has disposed of the asset for less than fair market value within two years of the effective date of (re)certification).
Column (H)	Enter the cash value of the respective asset.
Column (I)	Enter the anticipated annual income from the asset (<i>e.g.</i> , savings account balance multiplied by the annual interest rate).
TOTALS	Add the total of Column (H) and Column (I), respectively.

If the total in Column (H) is greater than \$5,000, you must do an imputed calculation of asset income. Enter the Total Cash Value of Assets, multiply by .06% (effective 2/1/2015) and enter the amount in (J), Imputed Income.

Row (K) Enter the greater of the total in Column (I) or (J).

Row (L) Total Annual Household Income From all Sources. Add (E) and (K) and enter the total.

HOUSEHOLD CERTIFICATION AND SIGNATURES

After all verifications of income and/or assets have been received and calculated, each household member age 18 or older must sign and date the Certification of Income. For move-in, it is recommended that the Certification of Income be signed no earlier than 120 days prior to the effective date of the certification.

PART V – DETERMINATION OF INCOME ELIGIBILITY

Total Annual Household Income from All Sources: Enter number from Item (L) on page 1.

Current Income Limit per Family Size: Enter current HUD income guidelines for family size.

Household Meets Income Restriction at: Check the appropriate box for the income restriction that the household meets according to what is required by the set-aside(s) for the project.

PART VI – RENT

Tenant Paid Rent Enter the amount the tenant pays toward rent as listed on the lease contract (not including rent assistance payments such as Section 8).

Rent Assistance Enter the amount of monthly rental assistance payments paid directly to the development from a welfare agency, if any. Remember to list source of rental assistance.

Other non-optional charges Enter the amount of non-optional charges.

Gross Rent for Unit Enter total of applicable amounts from A, B, C, & D.

SIGNATURE OF OWNER/REPRESENTATIVE

It is the responsibility of the owner or the owner's representative to sign and date this document immediately following execution by the resident(s).

The responsibility of documenting and determining eligibility (including completing and signing the Income Certification form) and ensuring such documentation is kept in the tenant file is extremely important and should be conducted by someone well trained in program compliance.

These instructions should not be considered a complete guide on program compliance. The responsibility for compliance with federal, state, and local program regulations lies with the owner of the property.

EXHIBIT C

CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE

Reporting Month/Year: _____

Property Name: *JEFFERSON VILLAGES OF WATERS CREEK*

On Site Property Mgr: _____

Address: _____ Telephone No. _____

To: Anna Public Facility Corporation
120 W 7th Street
PO Box 776
Anna, Texas 75409
Attention: Jim Proce, City Manager

The undersigned, as the authorized representative of _____
(the [“Owner”] [“Property Manager”]), hereby certifies that he or she has read and is thoroughly familiar with the provisions of the Regulatory Agreement and Declaration of Restrictive Covenants, dated as of November [___], 2022 (as amended, the “Regulatory Agreement”), among the Anna Public Facility Corporation, Jefferson Villages of Waters Creek Holdings, LLC, Jefferson Villages of Waters Creek, LLC, and APFC Waters Creek Member, LLC, and certifies the following as of the date of this certificate:

DEVELOPMENT UNITS

_____ Total Occupied Units in Development
_____ Total Vacant Units
_____ Total Units = 325 Units

QUALIFYING TENANTS WITH ADJUSTED GROSS INCOMES AT OR BELOW 80% AMI

_____ Units Occupied by such Qualifying Tenants
_____ Units Held Vacant for such Qualifying Tenants
_____ Total (At least 50% of Total Units) = 163 Units

The terms Qualifying Tenants, Adjusted Gross Incomes and AMI have the meanings given to them in the Regulatory Agreement.

CERTIFIED:

By: _____

Name: _____

Title: _____

Authorized Representative Signature

Date: _____

LEASE AGREEMENT

Between

**APFC WATERS CREEK MEMBER, LLC
“Landlord”**

and

**JEFFERSON VILLAGES OF
WATERS CREEK, LLC
“Tenant”**

TABLE OF CONTENTS

1.	BASIC TERMS AND DEFINITIONS.....	1
2.	GRANT OF LEASE	7
3.	MASTER LEASE	7
4.	TERM AND PREMISES.	7
	4.1 Lease Term.....	7
	4.2 Premises	8
	4.3 Acceptance of the Premises	8
5.	RENT	8
	5.1 Base Rent	8
	5.2 Absolute Net Intent	8
6.	TITLE.	8
	6.1 Title	8
	6.2 Ownership of the Project	9
7.	TAXES.	9
	7.1 Taxes	9
	7.2 Property Tax Exemption	9
	7.3 Federal Taxes	10
	7.4 Appraisal District Audit.....	10
	7.5 Proceedings to Contest.....	10
8.	TENANT’S REPAIRS AND MAINTENANCE.	10
	8.1 Maintenance of Premises	10
	8.2 Preventative System Maintenance	11
	8.3 Landlord’s Option to Maintain Premises.....	11
9.	ALTERATIONS AND RETURN CONDITION.	12
	9.1 Approvals for Alterations	12
	9.2 Status of Alterations.....	12
10.	UTILITIES.	12
	10.1 Utilities at Tenant’s Cost	12
	10.2 Interruption of Utility Service.....	12
11.	INSURANCE.....	12
	11.1 Tenant’s Insurance	12
	11.2 Prohibited Uses	14

12.	FIRE AND CASUALTY DAMAGE	14
12.1	Damage or Destruction	14
12.2	Termination Upon Non-Restoration	15
13.	LIABILITY AND INDEMNIFICATION.	15
13.1	Tenant’s Indemnification of Landlord	15
13.2	Limits on Liability of Landlord	15
13.3	No Obligation to Provide Security.....	16
14.	PERMITTED USE.	16
14.1	Permitted Use.....	16
14.2	Rent Restrictions.....	17
15.	HAZARDOUS SUBSTANCES AND COMPLIANCE WITH ENVIRONMENTAL LAW.	17
15.1	Definitions.....	17
15.2	Tenant’s Activities Related to Hazardous Substances.....	17
15.3	Landlord’s Activities Related to Hazardous Substances	17
15.4	Correction Measures	18
15.5	Indemnity	18
16.	RIGHT OF ENTRY.....	19
16.1	Right of Entry	19
16.2	Reserved.....	19
16.3	Access	19
17.	ASSIGNMENT AND SUBLETTING.	19
17.1	Subleases of Apartment Units to Residential Subtenants	19
17.2	Assignments and Transfers	19
17.3	Leasehold Sales.....	20
17.4	Effect on Obligations	20
18.	CONDEMNATION	20
18.1	Termination Rights	20
18.2	Continuation of Taking Is Not Material; Rent Abatement	21
18.3	Condemnation Awards.....	21
19.	SURRENDER; HOLDING OVER.	21
19.1	General.....	21
19.1	Landlord Cooperation	21

20.	QUIET ENJOYMENT	21
21.	EVENTS OF DEFAULT.....	22
21.1	Events of Default	22
21.2	Mortgagees' Notice and Cure Rights.....	23
22.	REMEDIES UPON DEFAULT.....	24
22.1	Limitation on Remedies.....	24
22.2	Interest on Past Due Amounts.....	24
22.3	No Implied Acceptances or Waivers	24
22.4	Landlord's Default.....	24
22.5	Tenant's Personal Property	25
23.	LEASEHOLD MORTGAGE REQUIREMENTS.	25
23.1	Nonmerger	25
23.2	Foreclosure Rights of Senior Lender	25
23.3	Obligations of New Tenant.....	26
23.4	Voluntary Surrender.....	26
23.5	Notices	26
23.6	Permitted Leasehold Mortgages.	26
23.7	Encumbrance of Fee Estate to Secure Leasehold Financing	27
23.8	New Lease.....	27
23.9	Bankruptcy	28
23.10	Further Assurances.....	28
23.11	Landlord's Right to Notice and Cure of Default under Permitted Leasehold Mortgage.....	28
24.	LIENS; RIGHT TO CONTEST.....	28
24.1	Liens.....	28
24.2	Right to Contest Certain Claims	29
25.	MISCELLANEOUS.	29
25.1	Consent by Landlord/Tenant.....	29
25.2	Interpretation.....	29
25.3	Binding Effect.....	29
25.4	Evidence of Authority.....	29
25.5	Force Majeure	30
25.6	Counterparts.....	30

25.7	Payments Constitute Rent	30
25.8	Estoppel Certificates	30
25.9	Entire Agreement	30
25.10	Severability of Terms	31
25.11	Effective Date	31
25.12	Broker's Commission	31
25.13	Ambiguity	31
25.14	Third Party Rights	31
25.15	Exhibits and Attachments	31
25.16	Applicable Law/Venue	31
25.17	Time of Essence	32
25.18	Recording	32
25.19	Payment on Demand	32
25.20	Days	32
25.21	Attorney's Fees	32
25.22	Exculpation	32
25.23	Waiver of Jury Trial	33
25.24	Further Assurances	33
25.25	Special Senior Lender Provisions	33
26.	NOTICES.	35
26.1	Procedure for Notices	35

LEASE AGREEMENT

THIS LEASE AGREEMENT (this “**Lease**”) is made and entered into as of the Lease Date by and between **APFC WATERS CREEK MEMBER, LLC**, a Texas limited liability company (“**Landlord**”), as *lessor*, and **JEFFERSON VILLAGES OF WATERS CREEK, LLC**, a Delaware limited liability company (“**Tenant**”), as *lessee*.

WHEREAS, Landlord has acquired the Premises (as defined below) concurrently herewith; and

WHEREAS, Landlord desires to lease to Tenant, and Tenant desires to lease from Landlord, the Premises, at the Rent (as defined below) and subject to the terms, covenants and conditions set forth in this Lease.

1. BASIC TERMS AND DEFINITIONS.

“**Lease Date**”: November ___, 2022

“**Tenant**”: Jefferson Villages of Waters Creek, LLC, a Delaware limited liability Company

“**Address of Tenant**”: Jefferson Villages of Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attention: Ryan Combs
Email: ryan.combs@jpi.com

With a copy to:

Jefferson Villages of Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attention: Legal Department
Email: Legal@jpi.com

and

Coats Rose PC
9 Greenway Plaza, Suite 1000
Houston, Texas 77046
Attention: Barry Palmer
Email: bpalmer@coatsrose.com

and

PPI Jefferson Waters Creek (TX) LLC
c/o Peaceable Street Capital LLC
1000 Floral Vale Blvd., Suite 250
Yardley, Pennsylvania 19067
Attention: Chief Executive Officer

“Landlord”: APFC Waters Creek Member, LLC, a Texas limited liability company

“Address of Landlord”: APFC Waters Creek Member, LLC
120 W 7th Street
P.O. Box 776
Anna, Texas 75409
Attention: Jim Proce, City Manager

With a copy to:

Chapman and Cutler, LLP
320 South Canal Street, 27th Floor
Chicago, Illinois 60606
Attention: Ryan Bowen
Email: rbowen@chapman.com

“Senior Lender”: Texas Capital Bank, a Texas state bank, and individually or in its agency capacity on behalf of one or more lenders, its successors and assigns, and any other person or entity, individually or in its agency capacity on behalf of one or more lenders, that holds a lien under a mortgage or deed of trust secured by the Leasehold Estate in the Premises.

“Address of Senior Lender”: Texas Capital Bank, a Texas state bank
2000 McKinney Avenue, #700
Dallas, Texas 75201
Attention: Tim Harrigan
Email: tim.harrigan@texascapitalbank.com

With a copy to:

Holland & Knight LLP
1722 Routh Street, Suite 1500
Dallas, TX 75201
Attention: Matthew H. Swerdlow
Email: matthew.swerdlow@hklaw.com

“80% AMI Affordable Units” is defined in Section 14.2.

“80% Low Income Household” means a household earning less than eighty percent (80%) of AMI and calculated in accordance with the Calculator.

“Additional Rent” is defined in Section 5.2.

“Affiliate” means, as to any person, any other person, directly or indirectly, controlling or controlled by or under direct or indirect common control of such person. For purposes of this definition, “control” means the ability, whether by the ownership of shares or other equity interests, by contract or otherwise, to elect a majority of the directors of a corporation, to make management decisions on behalf of, or independently to select the managing partner of, a partnership, or otherwise to have the power independently to remove and then select a majority of those individuals exercising managerial authority over an entity.

“Alterations” is defined in Section 9.1.

“AMI” means the area median family income for the Dallas TX HUD Metro FMR Area for the applicable year, as adjusted for the number of persons in the household and calculated in accordance with the Calculator.

“Bankruptcy Sale” means the sale of any property, or any interest in any property, under 11 U.S.C. §363 or otherwise in any bankruptcy, insolvency, or similar proceeding affecting the owner of that property.

“Calculator” means the Novogradac Rent and Income Limit Calculator for the applicable year, under the “Other Federal, State, or Local Program” category for the Dallas TX HUD Metro FMR Area with rent calculations based on the HUD Published Income Limit of “AMI” and displaying results for 80% AMI and Imputed Persons Per Bedroom for Rent Limit Calculations set to “1.5 Person/Bedroom” and the applicable household size selected for an 80% Low Income Household leasing an 80% AMI Affordable Unit. In the event such tool is not available, applicable rent and income limits shall be calculated using a reasonable substitute tool as proposed by Tenant and approved by Landlord (such approval not to be unreasonably withheld, conditioned or delayed).

“Casualty” is defined in Section 12.1.

“CCAD” means the Collin Central Appraisal District.

“Constituent Member” is defined in Section 25.22(A) and Section 25.22(B).

“Construction Completion” means the date of substantial completion of construction of the Improvements, as evidenced by certificate(s) of occupancy (or the local equivalent) issued by the applicable governmental department for the location of the Project. If there is more than one certificate of occupancy (or local equivalent) with more than one date, the latest date for the last certificate of occupancy (or local equivalent) shall be deemed the date of Construction Completion. A temporary or conditional certificate of occupancy (or local equivalent) shall suffice for purposes of establishing Construction Completion.

“days” is defined in Section 25.20.

“Early Termination Date” is defined in Section 4.1(B).

“Early Termination Election” is defined in Section 4.1(B).

“Early Termination Fee” means (a) in the case of an Early Termination Date which occurs on or before the tenth (10th) anniversary of the Lease Date, \$1,000,000, (b) in the case of an Early Termination Date which occurs after the tenth (10th) anniversary of the Lease Date but on or before the fifteenth (15th) anniversary of the Lease Date, \$750,000, (c) in the case of an Early Termination Date which occurs after the fifteenth (15th) anniversary of the Lease Date but on or before the twentieth (20th) anniversary of the Lease Date, \$500,000, (d) in the case of an Early Termination Date which occurs after the twentieth (20th) anniversary of the Lease Date but on or before the twenty-fifth (25th) anniversary of the Lease Date, \$250,000, (e) in the case of an Early Termination Date which occurs after the twenty-fifth (25th) anniversary of the Lease Date but on or before the thirtieth (30th) anniversary of the Lease Date, \$100,000, or (f) in the case of an Early Termination Date which occurs at any time after the thirtieth (30th) anniversary of the Lease Date, \$0.

“Early Termination Notice” is defined in Section 4.1(B).

“Environmental Claims” is defined in Section 15.5.

“Environmental Law(s)” is defined in Section 15.1.

“Event of Default” is defined in Section 21.1.

“Exemption” is defined in Section 7.2.

“Fee Estate” means Landlord’s fee interest in the Premises.

“Force Majeure” is defined in Section 25.5.

“Foreclosure Event” means any (a) foreclosure sale under the Senior Loan Documents (or trustee’s sale, the exercise of any power of sale by a lender, assignment in lieu of foreclosure, non-judicial foreclosure, Bankruptcy Sale, appointment of a receiver for the Project, or similar transfer) affecting the Leasehold Estate; or (b) Senior Lender’s exercise of any other right or remedy under the Senior Loan Documents that divests Tenant of its Leasehold Estate.

“Hazardous Substances” is defined in Section 15.1.

“Improvements” means the improvements to be located on the Premises, together with and including any structures, fixtures, parking areas, or any other buildings or site improvements constructed or otherwise located from time to time on the Premises, including, without limitation, the Project, and any Alterations or improvements made to the Project, the Improvements, or the Premises.

“Institutional Equity Investor” means, whether one or more, each of (a) Peaceable Street Capital or any of its designated Affiliates (or any of their respective successors or assigns),

(b) Sumitomo Forestry America, Inc., or any of its designated Affiliates (or any of their respective successors or assigns), or (c) any replacement investor(s) for any of the foregoing.

“Integrated Transactions” is defined in Section 6.1.

“Landlord Indemnified Party” is defined in Section 13.1.

“Lease” means this Lease Agreement.

“Leasehold Estate” means all rights, titles and interests of Tenant (and its successors and assigns) in and to the Premises under this Lease.

“Leasehold Sale” is defined in Section 17.3(A).

“Losses” is defined in Section 13.1.

“Major Casualty” is defined in Section 12.1.

“Managing Member” means Jefferson Villages of Waters Creek Holdings, LLC, a Delaware limited liability company, which is the sole managing member of Tenant, together with its successors and assigns.

“Mortgage Loan Default Notice” is defined in Section 23.11.

“New Tenant” is defined in Section 23.2.

“Operating Agreement” means that certain Operating Agreement of the Tenant, dated of even date herewith, as it may be amended or restated from time to time.

“Owner’s Policy” is defined in Section 23.6(C).

“Permitted Encumbrances” is defined in Section 23.6(C).

“Permitted Leasehold Mortgage” is defined in Section 23.6(A).

“Permitted Materials” is defined in Section 15.2(B).

“Permitted Ownership Transfer” means any direct or indirect Transfer of ownership of the Managing Member so long as, following the effectiveness thereof, either (a) TDI Consolidated LLC, a Texas limited liability company, or its Affiliates remain in Control of the Managing Member, (b) following the exercise of any of their applicable remedies under their respective investment documents, any Institutional Equity Investor remains in Control of the Managing Member, or (c) any unrelated third-party sponsor or its Affiliates who, with the prior written approval of Landlord (such approval not to be unreasonably withheld, conditioned or delayed), assumes and thereafter is in Control of the Tenant.

“Permitted Use” means the operation and marketing of a multi-family apartment project, including sublease of units in the Project to third parties for residential multi-family and affiliated and incidental uses only (e.g. laundry rentals, garage rentals and tenant amenities) and for no other use or purpose; provided, however, after the occurrence of a Foreclosure Event, “Permitted Use”

will include any lawful purpose or use, but only so long as such use is not prohibited by the Regulatory Agreement and any other restrictive covenants of record that apply to the Premises.

“PFC Statute” is defined in Section 7.2.

“Premises” means that certain tract of land located in the City of Anna, Collin County, Texas and more particularly described on Exhibit A attached hereto and all Improvements constructed thereon, including the Project, together with non-exclusive ingress/egress thereto.

“Project” means an approximately 325-unit apartment project to be located on the Premises.

“Regulatory Agreement” means that certain Regulatory Agreement and Declaration of Restrictive Covenants among Anna Public Facility Corporation, the Managing Member, the Special Member and Tenant dated November [], 2022, and recorded in the Official Public Records of Collin County, Texas, as it may be amended from time to time.

“Rent” means \$288,812 per year, with such amount to be increased by 2.50% on each one-year anniversary of the Rent Commencement Date. Any Rent due hereunder will be paid in equal monthly installments (subject to pro rations for any partial months).

“Rent Commencement Date” means the date which is six (6) months after Construction Completion.

“Residents” is defined in Section 3.

“Restoration” is defined in Section 12.1.

“Senior Lender” means Texas Capital Bank, a Texas state bank (in its individual or agency capacity as described above), its successor and assigns, and any other person or entity that holds a first lien under a mortgage or deed of trust secured by the Leasehold Estate in the Premises.

“Senior Loan” means that certain loan entered into between Tenant and Senior Lender concurrently herewith, and any other loan between Tenant and Senior Lender.

“Senior Loan Agreement” means any loan agreement or similar financing agreement between Tenant and Senior Lender.

“Senior Loan Documents” means the Senior Loan Agreement, the Permitted Leasehold Mortgage, and any other loan documents executed in connection with the foregoing.

“Special Member” means Landlord, together with its successors and assigns, in its capacity as a special member of Tenant.

“Tax” or **“Taxes”** is defined in Section 7.1.

“Term” means the period of time commencing on the Lease Date and terminating on the Termination Date.

“**Termination Date**” means ninety-nine (99) years (1,188 months) from the Lease Date or such earlier date for termination of the Term as provided in this Lease.

“**Transfer**” is defined in Section 17.2(A).

2. GRANT OF LEASE. In consideration of the mutual obligations of Landlord and Tenant set forth in this Lease, Landlord leases to Tenant, and Tenant takes from Landlord, the Premises to have and to hold, subject to the terms, covenants and conditions in this Lease.

3. MASTER LEASE. This Lease is a master lease of the Premises with the understanding that Tenant will sublease each of the residential rental units to individuals and families (“**Residents**”) for residential dwelling under tenancy agreements between Tenant and a Resident, and Tenant may sublease the clubhouse, laundry, garages and other facilities within the Premises for related purposes, with all such sublease agreements being entered into without Tenant having to obtain the consent of Landlord.

4. TERM AND PREMISES.

4.1 Lease Term.

(A) The Term of this Lease is set out in the Basic Terms and Definitions in Section 1 of this Lease.

(B) Tenant may elect to terminate this Lease (such election, an “**Early Termination Election**”) at any time following the thirtieth (30th) day after Construction Completion. Such Early Termination Election shall be exercised by delivery to Landlord of written notice of Tenant’s intent to terminate this Lease (an “**Early Termination Notice**”) no less than thirty (30) days prior to the proposed effective date of such termination (as adjusted pursuant to the terms hereof, the “**Early Termination Date**”). On the Early Termination Date:

(i) (A) Tenant shall pay to Landlord the Early Termination Fee (except as otherwise provided in Section 7.2, Section 12.1, Section 12.2, Section 18.1 or Section 22.4), (B) Landlord shall execute and deliver a special warranty deed, a bill of sale and other customary documents conveying the Premises to Tenant, or its designee or assignee, free and clear of this Lease, the Regulatory Agreement and all other encumbrances (except for encumbrances existing at the time of Landlord’s acquisition of the Premises and other encumbrances created or approved by Tenant), and (C) this Lease and the Regulatory Agreement shall terminate, the Special Member shall withdraw as a member of Tenant, and all rights of Landlord and the Special Member under this Lease, the Regulatory Agreement and/or the Operating Agreement shall terminate, and Landlord shall deliver to Tenant written confirmation (in recordable form if requested by Tenant) of the same from Landlord and the Special Member.

(ii) (A) Tenant, the Special Member and Landlord will make customary prorations of Project-related expenses (including Rent) and cash flow for Tenant as would be typical for a transaction of the type being effected by the parties and (B) closing costs for the transaction will be allocated among Tenant, the Special Member and Landlord as is typical for a transaction of the type being effected by the parties (with the understanding that each party will be

responsible for all legal, accounting and similar fees incurred by it in connection with the transaction).

(C) Notwithstanding the foregoing, it is understood and agreed that (i) an Early Termination Election may be revoked by Tenant at any time prior to the Early Termination Date, and (ii) the Early Termination Date may be extended by Tenant at any time following the delivery of the Early Termination Notice in order to facilitate the closing of the transaction contemplated thereby. Tenant will keep Landlord reasonably updated regarding any such extension of time or revocation of its Early Termination Election.

4.2 Premises. The premises demised under this Lease are the Premises, as identified in the Basic Terms and Definitions in Section 1. The Premises has been acquired by Landlord as of the Lease Date. Tenant will be responsible for constructing the Improvements on the Premises in accordance with Tenant's specifications and requirements. Tenant shall pay all costs incurred by it in completing the construction of the Improvements without right of reimbursement from Landlord. Title to the Improvements will vest in Landlord as constructed.

4.3 Acceptance of the Premises. Except as expressly provided in this Lease, Landlord makes no warranty or representation, express or implied or arising by operation of law, with respect to the Premises, including, but in no way limited to, any warranty of condition, suitability or fitness for a particular purpose.

5. RENT.

5.1 Base Rent. Beginning on the Rent Commencement Date, Tenant shall pay Landlord the Rent on a monthly basis, in arrears, on the tenth (10th) day of each month. If any such payment date is not a business day, such payment date shall be extended to the first business day following such scheduled payment date. The Rent payable during any partial month will be prorated based on the number of days for which Rent is due hereunder.

5.2 Absolute Net Intent. It is the purpose and intent of Landlord and Tenant that the Rent provided in this Section 5 shall be absolutely net to Landlord; and any amount or obligation herein relating to Tenant's leasing and use of the Premises shall be deemed to be an obligation of Tenant to be performed by Tenant at Tenant's expense. If Tenant is required to directly make any payment or incur any expense to a third party (other than Landlord), as provided in this Lease, and fails to do so beyond any applicable notice and cure periods so that such failure has become an Event of Default hereunder, then Landlord, at its option, may make the payment or incur the expense on Tenant's behalf, and the cost thereof shall be charged to Tenant as additional rent (any such payment made by Landlord on Tenant's behalf shall be considered "**Additional Rent**") and shall be due and payable by Tenant within thirty (30) days of its receipt of Landlord's invoice accompanied with reasonable documentation containing sufficient detail regarding the expense incurred by Landlord.

6. TITLE.

6.1 Title. Notwithstanding the provisions of Section 6.2 below, Tenant and Landlord hereby acknowledge and agree: (i) that Landlord's acquisition of the Premises and the concurrent execution of this Lease are intended by Landlord and Tenant to be integrated transactions (the

“**Integrated Transactions**”) pursuant to which the Landlord’s acquisition of the Premises would not have occurred but for the Tenant’s and Landlord’s execution of this Lease; (ii) that for all U.S. federal income tax purposes the Integrated Transactions will be treated as a transaction under which Tenant retains the ownership of the Premises. Accordingly, for the duration of the Term, the Tenant’s rights and obligations with regards to the Premises hereunder sufficiently vest in Tenant the incidence of ownership of the Premises for U.S. federal income tax purposes and that Tenant shall therefore be entitled to any and all depreciation and similar U.S. federal income tax deductions with respect to the Premises and the Rent paid by Tenant to Landlord shall be treated as an operating expense of Tenant but not as rent for U.S. federal income tax purposes. Neither Tenant nor Landlord shall voluntarily take any position for U.S. federal income tax purposes, including on any tax return or in any administrative or judicial proceeding, relating to the tax reporting of the transactions under this Lease or the ownership for income tax purposes of the Premises or the Improvements that is inconsistent with this Section 6.1.

6.2 Ownership of the Project. Legal and beneficial title to the Project, including the Improvements, will be the property of Landlord during the Term of this Lease, except as expressly provided herein (including, without limitation, Section 6.1). Personal property of Tenant or its Affiliates located at the Premises will remain the property of Tenant or its Affiliates. Landlord hereby waives any landlord’s lien it might hold, statutory, constitutional, contractual or otherwise, in any personal property owned or leased by Tenant or its Affiliates and now or hereafter located in the Premises. If so requested by Tenant, Landlord shall execute a waiver of any right, title or interest in or right to seize any of the personal property of Tenant or its Affiliates on the Premises that may be subject to a lien or security interest in favor of Senior Lender or another creditor holding a security interest in such personal property or that may be sold or otherwise transferred by Tenant or any of its Affiliates to any third party.

7. **TAXES.**

7.1 Taxes. Subject to Tenant’s rights and remedies under this Agreement, Tenant (a) shall bear the full expense of any and all real property or other taxes, including any and all payments in lieu of taxes, if applicable, metropolitan district charges or other assessments or charges levied against any or all of the Project, whether against the Fee Estate or the Leasehold Estate therein, and payable with respect to any calendar or tax year or other period falling wholly or partly within the Term, including but not limited to any assessments or fees levied against the Project pursuant to any Permitted Encumbrances (each a “**Tax**” and all of which are hereinafter referred to collectively as “**Taxes**”), except that if any such Tax is levied with respect to a period beginning before the Lease Date or ending after the Termination Date, Tenant shall bear the full expense of only that percentage thereof equaling the percentage of such period falling within the Term; (b) shall pay the same before past due and before any penalty is incurred for late payment thereof; and (c) shall deliver to Landlord the receipted bill for such Taxes within ten (10) days after Landlord requests it from Tenant in writing. Tenant shall not be required to pay any income or franchise taxes otherwise chargeable to Landlord.

7.2 Property Tax Exemption. The Project is anticipated to qualify for exemption from all state and local government real estate taxes pursuant to Chapter 303 of the Texas Local Government Code (“**PFC Statute**”), as in effect and as interpreted on the Lease Date (the exemption from ad valorem taxation established therein, the “**Exemption**”). Tenant (with reasonable cooperation from Landlord, if requested) will use prompt, commercially reasonable

efforts to secure and maintain the Exemption. Prior to the Lease Date, Landlord applied for and obtained, a predetermination letter from CCAD providing provisional approval of the Project's 100% exemption from ad valorem taxation. Within thirty (30) days of the Lease Date, Tenant (with reasonable cooperation from Landlord) will provide CCAD the documentation required to formally establish the Exemption effective as of the Lease Date. Each of Landlord and Tenant agree not to take any action within its reasonable control that would jeopardize the Exemption, including transfer of the Fee Estate by Landlord to a third party, and further each agrees to take such commercially reasonable action as either may reasonably request (at Tenant's reasonable expense) to preserve such Exemption, unless such action is prohibited by law. In the event of a loss of the Exemption that is a result of the willful misconduct of the Managing Member or the developer of the Project, or failure of the property manager of the Project to operate the Project in accordance with the Regulatory Agreement (after notice of such failure to the Managing Member and the failure of the Managing Member to either cause the cure thereof or the replacement of such property manager), Tenant may terminate this Lease and such termination will be deemed to be an Early Termination Election and Tenant will pay the Early Termination Fee in connection therewith. In the event of loss of the Exemption for any reason other than the willful misconduct of the Managing Member or the developer of the Project, or failure of the property manager of the Project to operate the Project in accordance with the Regulatory Agreement (after notice of such failure to the Managing Member and the failure of the Managing Member to either cause the cure thereof or the replacement of such property manager), Tenant may terminate this Lease and such termination will be deemed to be an Early Termination Election but Tenant will not be required to pay the Early Termination Fee in connection therewith.

7.3 Federal Taxes. Landlord and Tenant acknowledge and agree that, in connection with the Integrated Transactions, Tenant retains all incidents of ownership and, accordingly, Landlord shall not take any federal income tax benefits incident to ownership of the Premises, including, without limitation, depreciation. Landlord acknowledges that Tenant intends to claim the federal income tax benefits generated from the Premises.

7.4 Appraisal District Audit. In order to maintain the Exemption, within one hundred eighty (180) days after the end of each calendar year, Tenant shall prepare and submit to Landlord and CCAD a certification, in form and substance as required by the Regulatory Agreement, that Tenant's subleasing of the Premises complies with the restrictions set forth in Section 14.2 of this Lease.

7.5 Proceedings to Contest. Without limiting Tenant's rights under Section 24 hereof, Tenant may, without postponing payment thereof, bring proceedings to contest the validity or the amount of any Taxes, or to recover any amount thereof paid by Tenant, provided that prior thereto Tenant notifies Landlord in writing that Tenant intends to take such action. Landlord shall, upon written request by Tenant, cooperate with Tenant in taking any such action, provided that Tenant indemnifies and holds harmless Landlord against and from any reasonable out-of-pocket cost and expense arising out of such cooperation.

8. TENANT'S REPAIRS AND MAINTENANCE.

8.1 Maintenance of Premises. Tenant, at its own cost and expense, will maintain, repair and, if necessary, replace all parts of the Premises, and promptly make all such necessary repairs and replacements to the Premises as reasonably determined by Tenant. Tenant may, in the ordinary

course of operations and maintenance of the Premises, remove, dispose of and replace personal property used in the Premises, whether owned by Landlord or Tenant, with no duty to account to Landlord for any such personal property removed or disposition thereof so long as any such property needed for operation and maintenance of the Premises is replaced by similar property. Tenant's obligation to maintain, repair and make replacements to the Premises will cover, but not be limited to, pest control (including termites), janitorial services for common areas, trash removal, and the maintenance, repair and replacement of all HVAC, electrical, plumbing, sprinkler and other mechanical systems within and exclusively serving the Premises.

8.2 Preventative System Maintenance. Tenant, at its own cost and expense, will perform regularly scheduled preventive maintenance for servicing all hot water, heating and air conditioning, electrical, plumbing, sprinkler and other mechanical systems and equipment within and exclusively serving the Premises. Landlord will cooperate with Tenant in making all warranties on any such items applicable to the Premises available for the benefit of Tenant.

8.3 Landlord's Option to Maintain Premises. Subject to the rights of Senior Lender to prior notice under this Lease, if Tenant fails to maintain the Premises in accordance with the terms of this Section 8, and after thirty (30) days' written notice from Landlord to Tenant of such failure Tenant continues to fail to provide such maintenance, then Landlord will have the right (upon written notice to Tenant) to enter the Premises and perform, in whole or in part, maintenance, repairs and replacements to the Premises that are otherwise Tenant's obligations under this Section 8, in which event Tenant will be liable for the reasonable out-of-pocket cost and expense of these repairs, replacements, maintenance and other similar items and will reimburse Landlord for such reasonable, out-of-pocket expenses as Additional Rent. In the event of an emergency or a situation in which the health, welfare or safety of Residents or the physical condition of the Premises would be materially and unreasonably jeopardized (and Landlord reasonably believes that Tenant does not intend to address such emergency or other situation), Landlord shall be permitted to enter the Premises (upon notice to Tenant that is reasonable under the circumstances and, at Tenant's election, accompanied by Tenant or a representative of Tenant) to make immediately-required repairs or take other immediately-required actions that Tenant has failed to take in connection with such emergency or other situation. Nothing in this Paragraph 8.3 shall be deemed to impose any duty upon Landlord to make such repair or take any such action, and Landlord's performance thereof shall not constitute a waiver of Landlord's right hereunder to have Tenant perform such work. The Landlord may, while taking any such action upon the Premises, store therein any and all necessary materials, tools and equipment, and the Tenant shall have no liability to the Landlord for any damage to or destruction of any such materials, tools and equipment, except if and to the extent that such damage or destruction is proximately caused by the gross negligence or intentional misconduct of the Tenant or its agents and employees. The Landlord shall not in any event be liable to the Tenant for any inconvenience, annoyance, disturbance, loss of business or other damage sustained by the Tenant by reason of the making of such repairs or the taking of such action, or on account of the bringing of materials, supplies and equipment onto the Premises during the course thereof, and the Tenant's obligations under the provisions of this Lease shall not be affected thereby. In exercising its rights under this Paragraph 8.3, the Landlord shall not cause or allow any interference or disruption of the Tenant's work or the Tenant's use, operation or enjoyment of the Premises, or that of any Resident.

9. ALTERATIONS AND RETURN CONDITION.

9.1 Approvals for Alterations. Tenant may make any alterations, additions or improvements (“**Alterations**”) to the Premises consistent with the Permitted Use that Tenant, in its judgment, considers advisable without obtaining Landlord’s approval or consent and that do not violate the terms of the Regulatory Agreement. All Alterations will be performed in compliance with all applicable governmental laws, regulations, codes and standards and in a good and workmanlike manner and Tenant will notify Landlord in writing of all material Alterations.

9.2 Status of Alterations. All Alterations made by Tenant will be and remain part of the Fee Estate, but during the Term of this Lease will be included in the demised premises leased to Tenant under this Lease.

10. UTILITIES.

10.1 Utilities at Tenant’s Cost. Tenant shall be responsible to secure, through third party utility providers, water, sanitary and storm sewer, gas and electricity service to the Premises. Tenant will, prior to delinquency, pay to the utility provider all applicable amounts due for utility services used by Tenant at the Premises, together with any taxes, penalties, or surcharges pertaining to Tenant’s utility use and any maintenance charges for utilities imposed by the utility providers.

10.2 Interruption of Utility Service. Except to the extent caused by Landlord or Landlord’s Affiliates, Landlord will not be liable for any interruption or failure of utility service at the Premises, and Tenant has no rights or claims as a result of any failure.

10.3 Utility Accounts. Landlord hereby authorizes Tenant to establish all utility accounts for the Premises in Tenant’s name. If Tenant does so, and if Landlord or its designee subsequently acquires Tenant’s interest in the Premises, then Landlord shall re-establish such utility accounts in the name of Landlord or the designee and arrange for the replacement and return to Tenant of all deposits posted with each applicable utility provider by Tenant.

11. INSURANCE.

11.1 Tenant’s Insurance. Tenant will obtain and maintain with solvent insurance companies licensed to provide coverage in the State of Texas having at least an “A-” Financial Strength Rating and a Financial Size Category of Class “VII” by A.M. Best (or another company approved by Landlord) the following:

(A) Property Insurance. Property coverage with respect to all insurable property on the Premises, against loss or damage by, without limitation, fire, lightning, windstorm, hurricane, explosion, hail, tornado, collapse, riot, riot attending a strike, sprinkler leakage, civil commotion, damage from aircraft and vehicles, smoke damage, vandalism, acts of terrorism, and malicious mischief and loss or damage from such other hazards as are presently included in so called “all risks” or “special form” coverage. The amount of such insurance will be the full replacement cost of the buildings, Improvements, furniture, furnishings, fixtures, equipment and other items (whether personalty or fixtures) included in the Premises. Full replacement cost, as used herein, means, with respect to the buildings and improvements, the cost of replacing the

buildings and improvements, exclusive of the cost of excavations, site improvements, foundations and footings below the first floor slab grade, but including the cost of debris removal, and means, with respect to such furniture, furnishings, fixtures, equipment and other items, the cost of replacing same. Each such policy will contain a replacement cost endorsement, on a completed value form, and with an ordinance or law coverage endorsement and such other endorsements as are sufficient to prevent Tenant and Landlord from becoming a coinsurer.

(B) Flood Insurance. If and to the extent any of the buildings on the Premises is now or hereafter located in a special flood hazard area, a flood insurance policy in an amount equal to the lesser of the amount of the Senior Loan or the maximum amount commercially available at reasonable pricing.

(C) Commercial General Liability Insurance. Commercial general liability insurance, providing not less than One Million and No/100 Dollars (\$1,000,000.00) in coverage per occurrence (with an umbrella/excess policy in the amount of not less than Three Million and No/100 Dollars (\$3,000,000.00) per occurrence and in the aggregate), on an "occurrence" per project basis, including contractual liability (including coverage to the extent available of the indemnifications by Tenant set forth in this Lease, but such coverage will not limit such indemnifications), for the benefit of Tenant. Landlord will be named as an additional insured.

(D) Wind, Hurricane and Hail Insurance. If and to the extent any of the Premises is located in a wind hazard area, and the property insurance policy does not provide wind coverage, then a wind insurance policy in an amount equal to the lesser of the amount of the Senior Loan or the maximum amount commercially available at reasonable pricing must be provided.

(E) Other. Such other commercially reasonable insurance with respect to the Premises and the Improvements, or any replacements or substitutions thereof, or additions thereto, in such commercially reasonable amounts as may from time to time be requested by Landlord against other insurable hazards or causes of loss, to the extent such insurable hazards or causes of loss are commonly insured against in the case of premises similarly situated, due regard being given to the height and type of the buildings and improvements, or any replacements or substitutions therefor, or additions thereto, and their construction, location, use, nature, risk profile and occupancy.

(F) Restoration. With respect to any contractor of Tenant performing work in connection with any Alterations or in connection with the restoration of any of the buildings or Improvements following a loss:

1. Commercial General Liability Insurance, including blanket contractual liability, products and completed operations, personal injury (including employees), independent contractors, explosion, collapse and underground hazards for not less than One Million and No/100 Dollars (\$1,000,000.00) arising out of any one occurrence, for the benefit of such contractor, with Landlord named as additional insured;

2. Business Automobile Liability Insurance covering owned, now owned and rental vehicles for not less than Two Hundred Fifty Thousand and No/100 Dollars (\$250,000.00) for bodily injury and Five Hundred Thousand and No/100 Dollars (\$500,000.00) for property damage arising out of any one occurrence; and

3. Workers' Compensation Insurance for statutory limits.

All insurance policies will be “*occurrence*” based policies, issued with deductibles or any self-insured retention customary in the case of premises similarly situated, due regard being given to the height and type of the buildings and improvements, or any replacements or substitutions therefor, or additions thereto, and their construction, location, use, nature, risk profile and occupancy, and will require not less than thirty (30) days’ prior written notice to Tenant (who shall provide prompt written notice thereof to Landlord) of any cancellation, reduction, endorsement, or other change of coverage.

11.2 Prohibited Uses. If any increase in the cost of any insurance on the Premises is caused by Tenant’s use of the Premises or because Tenant vacates the Premises and this Lease is still in effect, then Tenant shall be responsible for paying such increase. Tenant will not permit the Premises to be used for any purpose or in any manner not permitted by this Lease that would:

- (i) Void the insurance thereon;
- (ii) Increase by any material amount the insurance risk or cost thereof unless Tenant makes the payment required pursuant to the first sentence of this Section 11.2; or
- (iii) Cause the disallowance of any sprinkler credits, including, without limitation, use of the Premises for the receipt, storage, handling or use of any product, material or merchandise that is explosive or highly inflammable, except as used by Tenant in the ordinary course of its business and in accordance with all applicable state and federal law.

12. FIRE AND CASUALTY DAMAGE.

12.1 Damage or Destruction. If fifty percent (50%) or less of the Improvements are damaged by any peril covered by the property and casualty insurance maintained by Tenant under Section 11.1 (a “**Casualty**”), or if the Improvements are damaged by a Major Casualty (as defined below) but Tenant does not elect to terminate this Lease, then this Lease will not terminate and, as between Tenant and Landlord, Tenant will receive the proceeds from the property and casualty insurance and may, at Tenant’s election, use those proceeds to substantially restore the Improvements to as nearly as possible their value, condition, utility and useful life immediately before such Casualty or better (“**Restoration**”). If the damaged part of the Improvements cannot be repaired within one hundred eighty (180) days or if more than fifty percent (50%) of the Improvements then in use by Tenant is damaged (in either case, a “**Major Casualty**”), then Tenant, at Tenant’s sole discretion (subject to obtaining any necessary consents from any applicable lender for the Project), may elect to terminate this Lease, in which case Tenant will receive the proceeds from the property and casualty insurance and will have the right and obligation to acquire from Landlord (and/or any successors and transferees of Landlord), and Landlord (and/or such successors and transferees of Landlord) shall have the obligation to sell to Tenant, the Fee Estate and any personal property that is part of the Project for One Dollar (\$1.00), free and clear of all liens and encumbrances and any further obligations to Landlord, which transfer shall be completed on terms like those provided in Section 4.1(B) for an Early Termination Election but without payment of the Early Termination Fee. Any such purchase and sale shall be effected promptly following Tenant’s election to terminate this Lease. Along with such transfer of the Fee Estate, (i) Landlord, the Special Member and their Affiliates will execute a release and termination of all

rights with respect to the Project, (ii) the Special Member shall withdraw from the Operating Agreement without payment of any amount to it, and (iii) the Regulatory Agreement will terminate and Landlord shall deliver to Tenant written confirmation (in recordable form if requested by Tenant) of the same.

12.2 Termination Upon Non-Restoration. Following a Casualty, the Lease may be terminated by Tenant if such Casualty prevents the use and operation of the Improvements, or if the insurance proceeds made available to Tenant are insufficient to restore the Improvements to a condition substantially similar to the condition existing prior to such Casualty and Landlord does not elect to fund the shortfall, and in such case Tenant will have the right and obligation to acquire from Landlord (and/or any successors and transferees of Landlord), and Landlord (and/or such successors and transferees of Landlord) shall have the obligation to sell to Tenant, the Fee Estate and any personal property that is part of the Project for One Dollar (\$1.00), free and clear of all liens and encumbrances and any further obligations to Landlord, which transfer shall be completed on terms like those provided in Section 4.1(B) for an Early Termination but without the payment of the Early Termination Fee. Any such purchase and sale shall be effected promptly following Tenant's election to terminate this Lease. Along with such transfer of the Fee Estate, (i) Landlord, the Special Member and their Affiliates will execute a release and termination of all rights with respect to the Project, (ii) the Special Member shall withdraw from the Operating Agreement without payment of any amount to it, and (iii) the Regulatory Agreement will terminate and Landlord shall deliver to Tenant written confirmation (in recordable form if requested by Tenant) of the same, subject, however, to the rights, liens, assignments and security interests of the Senior Lender (to the extent required pursuant to the Senior Loan Documents).

13. LIABILITY AND INDEMNIFICATION.

13.1 Tenant's Indemnification of Landlord. **TENANT WILL INDEMNIFY, DEFEND, AND HOLD HARMLESS LANDLORD, TOGETHER WITH ITS BOARD OF DIRECTORS, SHAREHOLDERS, AGENTS, EMPLOYEES, OFFICERS, AFFILIATES AND REPRESENTATIVES (INDIVIDUALLY OR COLLECTIVELY, "LANDLORD INDEMNIFIED PARTY"). FROM AND AGAINST ALL SUITS, ACTIONS, LOSSES, ACTUAL MONETARY DAMAGES (EXCLUDING CONSEQUENTIAL, PUNITIVE AND OTHER SPECIAL DAMAGES), DEMANDS, JUDGMENTS, CLAIMS, OR LIABILITY OF ANY CHARACTER, TYPE OR DESCRIPTION, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL EXPENSES OF LITIGATION, COURT COSTS, AND REASONABLE ATTORNEYS' AND EXPERTS' FEES, FOR INJURY OR DEATH TO ANY PERSON, OR LOSS OR DAMAGE TO ANY PROPERTY, RECEIVED OR SUSTAINED BY ANY PERSON OR PERSONS OR PROPERTY (THE "LOSSES"), TO THE EXTENT ARISING OUT OF, OR OCCASIONED BY, ACTS OR OMISSIONS OF TENANT ARISING OUT OF TENANT'S USE OF THE PREMISES, OR FROM THE CONDUCT OF TENANT'S BUSINESS WITH RESPECT TO THE PREMISES, OR FROM ANY ACTIVITY, WORK, OR THING DONE OR PERMITTED BY TENANT IN OR ON THE PREMISES, UNLESS SUCH LOSSES ARE THE RESULT OF THE GROSS (NOT ORDINARY) NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY LANDLORD INDEMNIFIED PARTY.**

13.2 Limits on Liability of Landlord. **NEITHER LANDLORD NOR ANY OTHER LANDLORD INDEMNIFIED PARTY WILL BE LIABLE IN ANY EVENT FOR**

PERSONAL INJURY OR LOSS OF TENANT'S PROPERTY CAUSED BY FIRE, FLOOD, WATER LEAKS, RAIN, HAIL, ICE, SNOW, SMOKE, LIGHTNING, WIND, EXPLOSION, INTERRUPTION OF UTILITIES OR OTHER OCCURRENCES, UNLESS SUCH LOSS IS ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY LANDLORD INDEMNIFIED PARTY. FURTHERMORE, UNLESS SUCH LOSS IS ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY LANDLORD INDEMNIFIED PARTY, NEITHER LANDLORD NOR ANY OTHER LANDLORD INDEMNIFIED PARTY WILL BE RESPONSIBLE FOR LOST OR STOLEN PERSONAL PROPERTY, EQUIPMENT, MONEY OR JEWELRY FROM THE PREMISES, REGARDLESS OF WHETHER SUCH LOSS OCCURS WHEN THE AREA IS LOCKED AGAINST ENTRY. NEITHER LANDLORD NOR ANY OTHER LANDLORD INDEMNIFIED PARTY WILL BE LIABLE TO TENANT OR TENANT'S EMPLOYEES, CUSTOMERS OR INVITEES FOR ANY DAMAGES OR LOSSES TO PERSONS OR PROPERTY CAUSED BY ANY SUBLESSEE OR ITS AGENTS OR INVITEES ANYWHERE ON THE PREMISES, OR FOR ANY DAMAGES OR LOSSES CAUSED BY THEFT, BURGLARY, ASSAULT, VANDALISM OR OTHER CRIMES UNLESS ATTRIBUTABLE TO THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY LANDLORD INDEMNIFIED PARTY. NOTWITHSTANDING THE ABOVE, LANDLORD'S LIMITATIONS OF LIABILITY WILL NOT APPLY TO THE GROSS (NOT ORDINARY) NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY LANDLORD INDEMNIFIED PARTY.

13.3 No Obligation to Provide Security. TENANT ACKNOWLEDGES THAT (A) LANDLORD SHALL HAVE NO OBLIGATION TO SECURE OR PROVIDE SECURITY OR ANY SECURITY OR SAFETY MEASURES AT THE PREMISES, (B) LANDLORD IS NOT A GUARANTOR OF THE SECURITY OR SAFETY OF TENANT, ITS AFFILIATES OR THEIR PROPERTY, (C) SUCH SECURITY AND SAFETY MATTERS ARE THE SOLE AND EXCLUSIVE RESPONSIBILITY OF TENANT AND LAW ENFORCEMENT AUTHORITIES, AND (D) IN NO EVENT SHALL LANDLORD BE LIABLE FOR DAMAGES, LOSSES, CLAIMS, INJURY TO PERSONS OR PROPERTY, OR CAUSES OF ACTION ARISING OUT OF ANY THEFT, BURGLARY, TRESPASS, OR OTHER ENTRY INTO THE PREMISES OR THE PROJECT, AND TENANT RELEASES EACH LANDLORD INDEMNIFIED PARTY FROM ALL LIABILITIES FOR SUCH LOSSES, DAMAGES, OR INJURIES, REGARDLESS OF THEIR CAUSE. NOTWITHSTANDING THE ABOVE, LANDLORD'S LIMITATIONS OF LIABILITY WILL NOT APPLY TO THE GROSS (NOT ORDINARY) NEGLIGENCE OR WILLFUL MISCONDUCT OF ANY LANDLORD INDEMNIFIED PARTY.

14. PERMITTED USE.

14.1 Permitted Use. The Premises will be used for the Permitted Use set out in the Basic Terms and Definitions in Section 1 of this Lease and for no other use or purpose without the prior written consent of Landlord. Tenant will comply with all applicable governmental laws, ordinances and regulations and will promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances in, upon or connected with the Premises, as between Landlord and Tenant all at Tenant's sole expense.

14.2 Rent Restrictions. The Project will be operated in accordance with the Regulatory Agreement as follows:

(A) No less than fifty percent (50.0%) of the total number of units in the Project (the “**80% AMI Affordable Units**”) will be reserved for or rented to and occupied by 80% Low Income Households (taking into account, for this purpose, the combined incomes of each unit occupant, to the extent such occupant and their income are disclosed to Tenant by the prospective residential tenant as part of the lease application process involving any such unit, without regard to whether any particular occupant is a party to a residential lease with the Tenant for payment of rent with respect to the unit).

(B) Rental rates for the 80% AMI Affordable Units shall be calculated in accordance with the Calculator, with no need for reduction with regard to utility allowances, and shall not exceed 30% of 0.8 multiplied by AMI, divided by 12. In the event of a conflict between the provisions of this Section 14.2 and the Regulatory Agreement, the provisions of the Regulatory Agreement shall control.

15. HAZARDOUS SUBSTANCES AND COMPLIANCE WITH ENVIRONMENTAL LAW.

15.1 Definitions. The term “**Hazardous Substances**,” as used in this Lease, means pollutants, contaminants, pesticides, toxic or hazardous wastes, radioactive materials or any other substances, the removal of which is required or the use of which is restricted, prohibited or penalized by any Environmental Law(s). “**Environmental Law(s)**,” as used in this Lease, means any applicable federal, state or local statute, ordinance, regulation or other law of a governmental authority relating to pollution or protection of the environment or the regulation of the storage or handling of Hazardous Substances.

15.2 Tenant’s Activities Related to Hazardous Substances. Tenant agrees that:

(A) Tenant’s operations at the Premises shall comply in all material respects with Environmental Law and Tenant shall use commercially reasonable efforts to cause all activities at the Premises during the Term of the Lease to be conducted in compliance with Environmental Law in all material respects. Tenant is responsible for obtaining any required permits or authorizations and paying any fees applicable under Environmental Laws in connection with Tenant’s use of the Premises; and

(B) Except for Hazardous Substances which are used or present in the ordinary course of Tenant’s business activities including but not limited to demolition, construction, maintenance, and residential occupancy of the Premises and used or stored in material compliance with Environmental Laws (the “**Permitted Materials**”), Tenant shall not use or store Hazardous Substances on the Premises, and Tenant shall use commercially reasonable efforts to not permit residential tenants to use or store Hazardous Substances on the Premises in violation of Environmental Laws.

15.3 Landlord’s Activities Related to Hazardous Substances. Landlord agrees that:

(A) With respect to the Premises, all of Landlord's activities shall comply in all material respects with Environmental Law; and

Landlord shall not use or store Hazardous Substances on the Premises, and Landlord shall use commercially reasonable efforts to not permit third parties to use or store Hazardous Substances on the Premises in violation of Environmental Laws.

15.4 Correction Measures. If it is determined, after review of applicable Environmental Laws, in a written opinion from legal counsel or other qualified expert (which written opinion shall be delivered to Tenant), that Tenant is storing, using or disposing of any Hazardous Substances on the Premises in material violation of Environmental Laws, then Tenant will make timely and appropriate corrective action as necessary for compliance with all Environmental Laws. If Tenant fails to begin corrective action within a reasonable time after receipt by Tenant of such written opinion, Landlord may perform reasonably necessary work to remove Tenant's Hazardous Substances to the extent required by Environmental Laws, and Tenant will reimburse Landlord as Additional Rent, in accordance with Section 5.2, for any and all reasonable out-of-pocket costs associated with such work. If at any time during or after the Term of this Lease, the Premises are found to have been contaminated by a release of Hazardous Substances in violation of Environmental Laws by Tenant or any of its agents or invitees, Tenant will diligently institute corrective action procedures to the extent required by applicable Environmental Laws, as between Landlord and Tenant at Tenant's sole cost. Such corrective action procedures may be contingent on institutional or engineering controls to the extent allowable under Environmental Laws provided that such controls do not materially interfere with the use of the Premises for a multi-family residential development.

15.5 Indemnity. Tenant agrees to indemnify and hold any Landlord Indemnified Party harmless from all claims, demands, actions, liabilities, costs, expenses, actual monetary damages (excluding consequential, punitive and other special damages), penalties and obligations of any nature (collectively, "**Environmental Claims**") arising from or as a result of any release, discharge, emission, spill, storage, disposal or contamination of the Premises with Hazardous Substance as a result of the violation of any Environmental Laws by Tenant, its officers, agents, employees, contractors or licensees, or the invitees of any of them. Notwithstanding the foregoing, Tenant's indemnification obligation under this Section 15.5 do not include any obligation to indemnify Landlord against any Environmental Claims arising from or as a result of any release, discharge, emission, spill, storage, disposal or contamination of the Premises with Hazardous Substances: (i) to the extent caused by the negligence or willful misconduct of any Landlord Indemnified Parties, (ii) necessitated solely from the acts or omissions of any Landlord Indemnified Party throughout the Term of this Lease; or (iii) resulting from any violations of Environmental Laws with respect to the Premises that arise during the Term as a result solely of the acts or omissions of any Landlord Indemnified Party or any other party other than Tenant and its officers, agents, employees, contractors or licensees, or the invitees of any of them. The parties hereto expressly agree that in no event shall Tenant be liable for any Hazardous Substances resulting solely from the migration of Hazardous Substances to the Premises at any time from neighboring properties. Landlord agrees to indemnify and hold Tenant, together with its board of directors, shareholders, agents, employees, officers, affiliates and representatives, harmless from all Environmental Claims arising from or as a result of any Landlord Indemnified Party's violation of any Environmental Laws or the use or storage of Hazardous Substances on the Premises by Landlord or any third party permitted to use or store Hazardous Substances by Landlord in

violation of Environmental Laws.. The foregoing indemnifications and the responsibilities in this Section 15.5 will survive the termination or expiration of this Lease.

16. RIGHT OF ENTRY.

16.1 Right of Entry. Subject to the rights of Residents, Landlord and Landlord's agents and representatives have the right to enter the Premises at any reasonable time during business hours, with at least five (5) business days prior written notice to Tenant and, at Tenant's election, accompanied by Tenant or a representative of Tenant, to inspect the Premises for any reason reasonably related to this Lease or the transactions contemplated hereby; provided that in doing so Landlord and each such invitee shall observe all reasonable safety standards and procedures which Tenant may require. In exercising its rights under this Section 16.1, Landlord shall use reasonable efforts not to cause or allow any interference or disruption of Tenant's work or Tenant's use, operation or enjoyment of the Premises, or enjoyment of the Premises by any Resident.

16.2 Reserved.

16.3 Access. Tenant agrees to grant a right of access to Landlord, its authorized representatives, and CCAD with respect to all books, documents, papers, or other records related to this Lease that are reasonably required in order to make audits, examinations, excerpts and transcripts pertinent to verification of Tenant's compliance with this Lease; provided, however that such access granted to CCAD shall be solely limited to the purpose of verifying that the Project continues to qualify for the exemption from ad valorem taxation.

17. ASSIGNMENT AND SUBLETTING.

17.1 Subleases of Apartment Units to Residential Subtenants. Without prior approval of or notice to Landlord, Tenant may lease (i) the apartment units and all related facilities, such as garages, of the Project to Residents, and (ii) the laundry, cable, phone, satellite, clubhouse and other facilities of the Project, in each case, on such terms as Tenant shall determine in its sole discretion and in compliance with this Lease and all applicable laws, regulations, statutes and local ordinances.

17.2 Assignments and Transfers.

(A) Subject to the other provisions of this Lease, Tenant hereby acknowledges that Landlord has entered into this Lease because of Tenant's financial strength, goodwill, ability and expertise and that, accordingly, this Lease is one which is personal to Tenant, and Tenant agrees for itself and its successors and assigns that it will not, without in each case obtaining the prior consent of Landlord (which consent shall not be unreasonably withheld, conditioned or delayed), (a) assign this Lease or any of its rights under this Lease as to all or any portion of the Premises, or (b) make or permit any direct or indirect transfer of the ownership interests held by the Managing Member in Tenant (each of which event under clause (a) or (b) above is hereinafter referred to as a "**Transfer**"), except (i) by a Permitted Leasehold Mortgage, (ii) by rentals made in accordance with Section 17.1 hereof, (iii) pursuant to a foreclosure or deed-in-lieu thereof of a Permitted Leasehold Mortgage, (iv) in connection with a Permitted Ownership Transfer, (v) a Leasehold Sale, (vi) a Foreclosure Event or (vii) as otherwise permitted by this Lease or the

Operating Agreement. Notwithstanding the foregoing or the other provisions of this Lease, Tenant may make a Transfer of this Lease to an Affiliate of Tenant without the consent of Landlord.

(B) Landlord shall not assign, delegate, mortgage, grant a security interest in or otherwise transfer this Lease, or any rights or obligations hereunder, by operation of law or otherwise, or any interest in the Premises (including the Fee Estate) without obtaining the prior written consent and approval of Tenant and any Senior Lender (if applicable). Such approval may be conditioned upon, among other things, the continuation of the Exemption with no adverse impact to Tenant or the operation of the Project, and Landlord reimbursing Tenant for any reasonable out-of-pocket costs or expenses incurred by Tenant in connection with such proposed transaction.

17.3 Leasehold Sales.

(A) Notwithstanding anything to the contrary set forth elsewhere in this Lease, Tenant is hereby permitted to sell the Leasehold Estate at any time following the thirtieth (30th) day after Construction Completion. Any such sale will be a transfer of Tenant's Leasehold Estate to a third-party purchaser with this Lease remaining in full force and effect, which transfer shall be expressly subject to Tenant's receipt of Landlord's written approval (such approval not to be unreasonably withheld, conditioned or delayed) of the intended third-party purchaser (a "**Leasehold Sale**").

(B) If Tenant identifies a third party to acquire the Leasehold Estate pursuant to a Leasehold Sale, it shall first provide written notice of the identity of the third party to Landlord. Landlord shall have twenty (20) days following its receipt of such notice in which to perform a due diligence review on the proposed replacement tenant. Landlord shall not unreasonably withhold, condition or delay its consent if the proposed replacement tenant would satisfy a national bank's customary "know your customer" requirements. Landlord's failure to provide a consent to or a disapproval of a proposed replacement tenant within such twenty (20) day period shall be deemed to constitute its approval of such Leasehold Sale. Following Landlord's approval (or deemed approval) of a Leasehold Sale, Tenant may transfer the Leasehold Estate and all of its rights and obligations under this Lease to the proposed replacement tenant and this Lease shall continue in full force and effect on all of the same terms and conditions.

(C) Notwithstanding anything herein to the contrary, the rights of Landlord under this Section 17.3 are subordinate in all respects to the Senior Loan Documents.

17.4 Effect on Obligations. Except as set forth in this Lease, no such Transfer described herein shall alter or impair the obligations hereunder of Tenant or any other person constituting Tenant or holding any interest hereunder before any such Transfer.

18. **CONDEMNATION.**

18.1 Termination Rights. If any material portion of the Premises are taken for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain or private purchase in lieu thereof, and the taking prevents or materially interferes with the use of the remainder of the Premises for the purpose for which they were leased to Tenant, then, at Tenant's option, this Lease will terminate, effective on the date Tenant delivers notice of

termination to Landlord. On such termination, (i) Tenant will have the right and obligation to acquire from Landlord, and Landlord shall have the obligation to sell to Tenant, the Fee Estate (including all claims and proceeds arising from such taking) and any personal property owned by Landlord and used in connection with the Project pursuant to this Lease for One Dollar (\$1.00), free and clear of all liens and encumbrances and any further obligations to Landlord (which transfer shall be completed on terms like those provided in Section 4.1(B) for an Early Termination Election but without the payment of the Early Termination Fee), (ii) Landlord, the Special Member and their Affiliates will execute a release and termination of all rights with respect to the Project, (iii) the Special Member shall withdraw from the Operating Agreement without payment of any amount to it, and (iv) the Regulatory Agreement will terminate and Landlord shall deliver to Tenant written confirmation (in recordable form if requested by Tenant) of the same. Any such actions shall be effected promptly following such termination of this Lease, subject to the rights, liens, assignments, and security interests of the Senior Lender (to the extent set forth in the Senior Loan Documents).

18.2 Continuation of Taking Is Not Material; Rent Abatement. If the taking does not prevent or materially interfere with the use of the remainder of the Premises for the purpose for which it was leased to Tenant, then this Lease will not terminate, but the Rent payable during the unexpired portion of the Term of this Lease will be reduced to the extent as may be fair and reasonable under the circumstances.

18.3 Condemnation Awards. If the Lease is not terminated, all compensation awarded in connection with or as a result of any of the foregoing proceedings will be the property of Tenant, and Landlord hereby assigns any interest in any award to Tenant, and if the Lease is terminated, all compensation awarded will go to Tenant and, in any such case, Landlord will have no interest in any award made to Tenant for the loss of business or goodwill or for the taking of Tenant's trade fixtures and personal property or for relocation expense, whether or not a separate award for such items is made to Tenant.

19. SURRENDER; HOLDING OVER.

19.1 General. Subject to Section 19.1, at the termination of this Lease by the expiration of the Term, Tenant will immediately vacate the Premises, at Tenant's sole cost and expense, and Landlord shall re-enter the Premises and retain possession thereof. Except as provided in Section 19.1, nothing in this Lease shall be deemed in any way to permit Tenant to use or occupy the Premises after the expiration of the Term of this Lease.

19.1 Landlord Cooperation. Notwithstanding the foregoing, certain circumstances enumerated in this Lease require Landlord to immediately execute a deed, bill of sale and/or other documents conveying the Premises to Tenant or its designee, whereupon this Lease and all rights of Landlord hereunder with respect to the Premises shall terminate. In any such circumstance, such other provisions of this Lease shall prevail over the provisions of Section 19.1.

20. QUIET ENJOYMENT. Upon payment by Tenant of the Rent and all other sums due hereunder, and upon the observance and performance of all material covenants, terms and conditions on Tenant's part to be observed and performed hereunder, Tenant will peaceably and quietly hold and enjoy the for the Term without hindrance or interruption by Landlord or any other person lawfully or equitably claiming by, through or under Landlord.

21. EVENTS OF DEFAULT.

21.1 Events of Default. Each of the following events described in Sections 21.1.1 through 21.1.7 below (“**Event of Default**”) will be deemed to be a default or breach of Tenant’s obligations under this Lease after written notice to Tenant of the same and the passing of applicable cure periods:

21.1.1 Failure to Pay. If Tenant fails to pay any installment of the Rent required herein when due, or any other payment or reimbursement to Landlord required under this Lease when due, and Tenant’s failure continues for a period of thirty (30) days after the date of written notice of such failure from Landlord to Tenant.

21.1.2 Vacation or Abandonment. If Tenant vacates or abandons the Premises for more than twelve (12) consecutive months whether or not Tenant is in default of the rental payments due under this Lease. As used in the previous sentence, “vacates or abandons” means the complete cessation of business activity on the Premises by Tenant, except on the occurrence of an event contemplated under Section 25.5 or following a Foreclosure Event or during any period within which any Senior Lender is exercising any of its applicable cure rights under this Lease.

21.1.3 All Other Lease Violations. If Tenant fails to comply with any material term, provision or covenant of this Lease (other than those listed above in this Section 21.1), and Tenant has not cured such failure within thirty (30) days after the date of written notice of such failure from Landlord to Tenant. If, however, the time required to return to compliance exceeds such thirty (30) day period, Tenant will not be in default if Tenant, within the 30-day period, begins the actions necessary to bring it into compliance with this Lease, provided that Tenant prosecutes such actions diligently through to cure and/or reinstate compliance.

21.1.4 Falsification of Information. If Tenant knowingly and intentionally falsifies any material report or knowingly and intentionally misrepresents other material information required to be furnished to Landlord pursuant to this Lease and such action by Tenant has a material adverse effect on Landlord.

21.1.5 Bankruptcy. The commencement of a case under any chapter of the Federal Bankruptcy Code by or against Tenant, or the filing of a voluntary or involuntary petition proposing the adjudication of Tenant as bankrupt or insolvent, or the reorganization of Tenant in bankruptcy or a similar proceeding, unless in any such event the petition is filed or case commenced by a party other than Tenant and is withdrawn or dismissed within one hundred twenty (120) days after the date of its filing.

21.1.6 Assignment or Attachment. The making of an assignment by Tenant for the benefit of its creditors generally, or if in any other manner Tenant’s interest in this Lease (other than under or pursuant to a Permitted Leasehold Mortgage or as permitted in Section 17 above) passes to another by operation of law, including, without limitation, by attachment, execution or similar legal process, which is not discharged or vacated with one hundred twenty (120) days.

21.1.7 Appointment of Receiver or Trustee. Except to the extent in connection with a Foreclosure Event, the appointment of a receiver or trustee for the business or property of Tenant, unless such appointment is vacated within one hundred twenty (120) days of its entry.

21.2 Mortgagees' Notice and Cure Rights. Landlord will notify Tenant and Senior Lender of each alleged default or Event of Default. No notice of any alleged default or Event of Default will be effective unless and until that notice is also given to Senior Lender. Any such notice will describe in reasonable detail the alleged default, Event of Default, or other event or circumstance allegedly entitling Landlord to exercise rights or remedies and, to the extent known, the steps Landlord requires Tenant to take in order to cure such alleged default, Event of Default, or other event or circumstance. Landlord shall also provide Senior Lender with copies of all other notices sent to Tenant under this Lease, other than routine administrative or billing notices. Further, if Landlord receives any notice from any applicable governmental authorities or insurance carrier relating to the Premises indicating any noncompliance with applicable governmental regulations or insurance requirements, or otherwise indicating the need for action related to the Premises, then Landlord will promptly give a copy of that notice to Tenant and Senior Lender. Notwithstanding the above, Tenant may cure such any such default, Event of Default, or other event or circumstance within the applicable cure period, if any, set forth in this Section 21. If Tenant does not cure that default, Event of Default, or other event or circumstance within the cure period provided for under this Lease, then Landlord will promptly give Tenant and Senior Lender written notice stating, for any Event of Default: (a) that Tenant's cure period has expired and (b) the applicable provisions of the Lease under which that Event of Default arose. On receipt of that written notice, Senior Lender shall have the right, but not the obligation, to perform any obligation of Tenant under this Lease and to cure any Event of Default. Landlord will accept performance by Senior Lender in fulfillment of Tenant's obligations, for the account of Tenant, and with the same force and effect as if performed by Tenant. On receipt of that notice, Senior Lender will enjoy the same cure period, if any, available to Tenant under this Lease, plus the following additional period of time (regardless of the original time provided for performance by Tenant):

(i) If the Event of Default involves the failure of Tenant to pay Rent or any other payment or reimbursement to Landlord required under this Lease when due, then Senior Lender may at its option cure that Event of Default within a cure period consisting of the same time allowed Tenant under this Lease, but extended for an additional thirty (30) days after Senior Lender has received proper notice of Tenant's failure to cure under this Lease.

(ii) If the Event of Default does not involve the failure of Tenant to pay Rent or any other payment or reimbursement to Landlord required under this Lease when due, and that Event of Default is one that Senior Lender can reasonably cure without obtaining possession of the Premises, then Senior Lender may at its option cure that Event of Default within a cure period consisting of the same time allowed Tenant under this Lease, but extended for an additional ninety (90) days after Senior Lender has received proper notice of Tenant's failure to cure under this Lease; provided, however, that if Senior Lender commences cure of that Event of Default within the ninety (90) day period indicated above and continues to diligently prosecute that cure to completion, then that ninety (90) day period will be extended as may be reasonably necessary to allow that cure.

(iii) If the Event of Default is such that Senior Lender would not be reasonably capable of curing or would not be reasonably capable of curing without obtaining possession of the Premises, then Senior Lender may at its option cure that Event of Default (to the extent curable) and Landlord will allow such additional time Senior Lender reasonably requires to exercise its remedies under its Permitted Leasehold Mortgage or to prosecute and complete that cure, provided that Senior Lender has provided Landlord notice of its intention to exercise such

remedies or to prosecute that cure within ninety (90) days after Senior Lender has received proper notice of Tenant's failure to cure under this Lease. If Senior Lender diligently exercises its rights and remedies hereunder, then Landlord will waive any Events of Default that cannot reasonably be cured by Senior Lender.

Even if Senior Lender has commenced a cure under this Lease, Senior Lender may abandon or discontinue that cure at any time, without liability to Landlord or otherwise. Senior Lender's exercise of its cure rights will not be deemed an assumption of this Lease in whole or in part. No default, Event of Default, or other exercise of Landlord's rights or remedies predicated on giving notice to Tenant will be deemed to have occurred or arisen unless Landlord has given like notice to the Senior Lender in accordance with this Lease.

22. REMEDIES UPON DEFAULT.

22.1 Limitation on Remedies. Notwithstanding anything in this Lease to the contrary, the parties agree that in the event and during the continuance of any Event of Default, Landlord may specifically enforce Tenant's obligations or seek actual (excluding consequential, punitive and other special damages) monetary damages, but this Lease will not in any case be terminated without the prior written consent of Tenant and Senior Lender, unless such Event of Default is described in Sections 21.1.2, 21.1.4, 21.1.5, 21.1.6 or 21.1.7 of this Lease.

22.2 Interest on Past Due Amounts. If Tenant fails to pay to Landlord when due any sum under any provision of this Lease and Tenant's failure to pay continues for ten (10) days after the due date, then Tenant will pay to Landlord interest on the overdue amounts from the date due until paid at an annual rate which equals the lesser of eight percent (8%) or the highest rate then permitted by law.

22.3 No Implied Acceptances or Waivers. Exercise by Landlord of any one or more remedies hereunder or otherwise available will not be deemed to be an acceptance by Landlord of Tenant's surrender of the Premises, it being understood that Tenant's surrender can be affected only by the written agreement of Landlord and Tenant. Tenant and Landlord further agree that forbearance by either party to enforce any of its rights under this Lease or at law or in equity will not be a waiver of such party's right to enforce any one or more of its rights, including any right previously forborne, in connection with any existing or subsequent default. Landlord's acceptance of any Rent following an Event of Default under this Lease will not be construed as Landlord's waiver of the Event of Default unless the payment is the full amount of Rent then due. No waiver of any violation or breach of any of the terms, provisions and covenants of this Lease will be deemed or construed to constitute a waiver of any other violation or default.

22.4 Landlord's Default. If Landlord fails to perform any of its covenants or obligations under this Lease (or if in its capacity as Special Member breaches any of its covenants or obligations under the Operating Agreement), and any such failure or breach is continuing, then Tenant shall be entitled to exercise any and all remedies available to Tenant for such default under this Lease, at law or in equity, including, but not limited to, an action for damages or injunctive relief or a termination of this Lease, in the case of termination, exercisable only after Tenant has given Landlord thirty (30) days' written notice and Landlord (or the Special Member, as applicable) has failed to cure the default. In no event will any deficiency judgment or any money judgment of any kind be sought or obtained under this Lease against Landlord's directors,

employees or agents. On such termination, (i) Tenant will have the right and obligation to acquire from Landlord, and Landlord shall have the obligation to sell to Tenant, the Fee Estate and any personal property owned by Landlord and used in connection with the Project pursuant to this Lease for One Dollar (\$1.00), free and clear of all liens and encumbrances and any further obligations to Landlord (which transfer shall be completed on terms like those provided in Section 4.1(B) for an Early Termination Election but without the payment of the Early Termination Fee), (ii) Landlord, the Special Member and their Affiliates will execute a release and termination of all rights with respect to the Project, (iii) the Special Member shall withdraw from the Operating Agreement without any payment to it, and (iv) the Regulatory Agreement will terminate and Landlord shall deliver to Tenant written confirmation (in recordable form if requested by Tenant) of the same. Any such actions shall be effected promptly following such termination of the Lease.

22.5 Tenant's Personal Property. If Landlord repossesses the Premises, then Tenant may remove from the Premises any of its personal property located therein, and if Tenant does not remove such personal property within thirty (30) days of Landlord's demand given to Tenant and Senior Lender then, in addition to Landlord's rights under this Section 22, Landlord has the right to (i) keep in place and use, or (ii) remove and store, all of such personal property at the Premises, including that which is owned by or leased to Tenant, at all times prior to repossession by any lessor thereof or third party having a lien thereon. Landlord may dispose of the stored property if Tenant does not claim the property within ten (10) days after the date the property is stored and notice of such action is given to Tenant. Landlord will give Tenant at least ten (10) days prior written notice of the intended disposition. Tenant will be liable to Landlord for any expenses incurred in connection with the storage and/or disposition of Tenant's personal property. The rights of Landlord stated in this Section 22.5 are in addition to any and all other rights that Landlord has or may hereafter have at law or in equity. Tenant stipulates and agrees that the rights granted Landlord under this Section 22.5 are commercially reasonable.

23. LEASEHOLD MORTGAGE REQUIREMENTS.

23.1 Nonmerger. This Lease will not terminate as to Senior Lender because of any conveyance of Tenant's Leasehold Estate to Landlord or of Landlord's Fee Estate to Tenant. Accordingly, if this Lease and the Fee Estate in the Premises are commonly held, then they will remain separate and distinct estates; they will not merge without consent by Senior Lender.

23.2 Foreclosure Rights of Senior Lender. Notwithstanding anything in this Lease to the contrary, if Tenant defaults under the Senior Loan, that default will not constitute an Event of Default hereunder except to the extent that Tenant's acts or omissions in and of themselves, constitute an Event of Default under the express terms of this Lease. The occurrence of a Foreclosure Event under a Permitted Leasehold Mortgage will not require Landlord's consent, violate this Lease, in and of itself constitute an Event of Default hereunder, limit Landlord's obligations under this Lease, or in and of itself entitle Landlord to exercise any rights and remedies under this Lease. Upon the occurrence of a Foreclosure Event, Senior Lender will have the right to acquire the Lease in its own name or the name of a nominee without consent or approval of Landlord. In the event that Tenant's Leasehold Estate hereunder is acquired by Senior Lender, or its nominee or designee, then Senior Lender, or its nominee or designee, will also have the right to further assign or sublet the Leasehold Estate hereunder to a third party without the consent or approval of Landlord. Notwithstanding any other provision of this Lease, Landlord will recognize Senior Lender, its nominee or designee, or its assigns as Tenant under this Lease (the "New

Tenant”). The New Tenant will have the right to further assign or sublet the Leasehold Estate to a third party without the consent or approval of Landlord, and on any such assignment or subletting of the whole of the Leasehold Estate, the assignee or sublessee will have the same status as a New Tenant. From and after the effective date of such assignment, Senior Lender or the New Tenant (as applicable) will be released from all liability under the Lease thereafter accruing. The New Tenant will be responsible for any Events of Default under this Lease that occur prior to the Foreclosure Event. Additionally, if requested, Landlord will enter into a new lease with either Senior Lender or any such New Tenant on the same terms and conditions set forth herein but for the then remaining Term of this Lease.

23.3 Obligations of New Tenant. The New Tenant will only be personally obligated for performance of obligations and payment of Rent under the Lease commencing as of the date of the Foreclosure Event or assignment by which it acquires the Leasehold Estate and ending as of the time that it disposes of the Leasehold Estate.

23.4 Voluntary Surrender. Landlord will not accept a voluntary surrender of this Lease at any time during which the Leasehold Estate is encumbered by a Permitted Leasehold Mortgage.

23.5 Notices. Any notice or other communication which Landlord will desire or is required to give to or serve upon Senior Lender will be in writing and will be served by a nationally recognized courier service providing delivery on the next business day (e.g., Federal Express) to Senior Lender at its address as set forth in this Lease or at such other address as will be designated from time to time by Senior Lender by notice in writing given to Landlord by commercial courier service, with receipt. Any notice or other communication which Senior Lender will desire or is required to give to or serve upon Landlord will be deemed to have been given or served if sent by commercial courier service, with receipt, addressed to Landlord at Landlord’s address as set forth in the provisions of this Lease providing for notices to Landlord or at such other address as will be designated from time to time by Landlord by notice in writing given to Senior Lender by commercial courier service, with receipt. Notices will be effective upon receipt or refusal.

23.6 Permitted Leasehold Mortgages.

(A) Landlord and Tenant acknowledge and agree that it will not be possible for Tenant to operate the Premises without obtaining a loan or loans from one or more persons or entities in order to finance the acquisition, construction and operation of the Premises. Therefore, Landlord hereby covenants and agrees that Tenant’s interest in the Lease is and will be subject and subordinate to any and all loans obtained by Tenant for the purpose of financing or refinancing the Premises or the acquisition of Tenant’s rights in the Premises by a third party in accordance with Section 17, and to the lien of any mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments (each, a “**Permitted Leasehold Mortgage**”) required by the lender or lenders providing such financing, and to all renewals, extensions, modifications, consolidations, replacements and refinancings, and to all advances made or hereafter to be made upon the security of such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments. For the avoidance of doubt, the mortgage/deed of trust included in the Senior Loan Documents executed on or about the Lease Date shall be a Permitted Leasehold Mortgage.

(B) Tenant may, with ten (10) days prior written notice to Landlord, assign or mortgage this Lease (including any options it contains) to Senior Lender. Senior Lender may, without having to obtain Landlord's consent, cause a Foreclosure Event, hold a foreclosure sale, take title to this Lease and the Leasehold Estate, and transfer or assign this Lease and/or the Leasehold Estate, either in its own name or through a nominee. Landlord will not be bound to recognize any Senior Lender (if other than the initial Senior Lender named hereunder) unless Senior Lender or Tenant will have notified Landlord of the existence of the Permitted Leasehold Mortgage benefitting such Senior Lender and of the name and address of such Senior Lender.

(C) Except as permitted pursuant to this Lease, neither Tenant nor any successor in interest to the Leasehold Estate or any part thereof will engage in any transaction creating any encumbrance, pledge or lien upon the Fee Estate, whether by express agreement or operation of law, or suffer any encumbrance, pledge or lien to be made on or attached to the Fee Estate through it, except for the following (collectively, "**Permitted Encumbrances**"): any encumbrance as approved with the prior written consent of Senior Lender, an inchoate lien for taxes or municipal obligations, utility and access easements, other encumbrances incurred in the ordinary course of business of Tenant, and other matters set forth in the Owner's Policy of Title Insurance under GF No.: [] dated on or about the date hereof ("**Owner's Policy**"), issued by [] Title Company].

23.7 Encumbrance of Fee Estate to Secure Leasehold Financing. If requested by Tenant, Landlord will execute a deed of trust encumbering the Fee Estate as collateral for any loan made to Tenant in order to finance all or part of the costs of the acquisition, development, construction and operation of the Premises.

23.8 New Lease. In the event of the termination, for any reason, of this Lease or of any new lease made pursuant to the provisions of this Section 23.9 prior to the Termination Date, Landlord will notify Senior Lender and, at Senior Lender's election, Landlord will enter into a new lease of the Premises with Senior Lender or its designee or nominee (on which occurrence they will become a New Tenant) for the remainder of the Term, to commence as of the date of the termination of the Lease (or any new lease) and upon all of the other terms, provisions, covenants and agreements in the Lease; provided, however, that Senior Lender will make written request to Landlord for such new lease not later than ninety (90) days after the date notice of termination is given by Landlord to Senior Lender. Any such new lease will be automatically subject to any Permitted Leasehold Mortgages that previously encumbered the Leasehold Estate demised under this Lease. The New Tenant may assign its rights thereunder or mortgage its leasehold estate, but subject to the applicable terms and provisions of this Lease. Upon such an assignment and assumption of the new lease by the assignee, the New Tenant will, without the necessity of any further instrument, be released from any and all liability or responsibility thereafter accruing under the new lease. If requested by the New Tenant or Senior Lender, Landlord will enter into any agreements reasonably required for the benefit of Senior Lender or any title insurance company insuring the Permitted Leasehold Mortgage, which confirm the continued existence of the Permitted Leasehold Mortgage, notwithstanding the termination of this Lease or any prior new lease and the continuing nature of Landlord's obligations under this Lease for and during any period of time that elapsed between the termination of this Lease and the execution and delivery of the new lease.

23.9 Bankruptcy. During the term of any Permitted Leasehold Mortgage, if Tenant (as debtor in possession) or a trustee in bankruptcy, or any other similar representative for Tenant rejects this Lease in any bankruptcy proceeding, then that rejection will be deemed Tenant's permitted assignment (without any need for Landlord's consent) of this Lease and the Leasehold Estate to a New Tenant (as will be designated by Senior Lender within a reasonable period after request), in the nature of an assignment in lieu of foreclosure, subject to any Permitted Leasehold Mortgage. That deemed assignment will not terminate this Lease, but after that assignment the assignor's liability under this Lease will not exceed the liability that would have existed if that assignor had rejected this Lease. Senior Lender will continue to have its rights under the Permitted Leasehold Mortgage as if the bankruptcy proceedings had not occurred, unless Senior Lender disapproves that deemed assignment by written notice to Landlord within thirty (30) days after Senior Lender received notice of rejection of this Lease pursuant to those bankruptcy proceedings. If any court determines that this Lease terminated notwithstanding the foregoing deemed assignment, then (a) that termination will constitute a termination of this Lease, and (b) Senior Lender will remain entitled to a new lease as provided in this Lease, provided that Senior Lender timely requests that new lease pursuant to the terms of this Lease. If Landlord (as debtor in possession) or a trustee in bankruptcy, or any other similar representative for Landlord rejects this Lease in any bankruptcy proceeding affecting Landlord, then (i) Landlord will notify Senior Lender of any proposed Bankruptcy Sale of the Fee Estate, (ii) Tenant's consent to any Bankruptcy Sale will not be effective without Senior Lender's written consent, and (iii) Senior Lender will have standing to object to any Bankruptcy Sale. Landlord further acknowledges that, as between Landlord and Tenant, Landlord will not require Tenant to accept a money payment in lieu of Tenant's interest in the Lease. Landlord's rejection of this Lease pursuant to any bankruptcy proceeding without the prior written consent of Senior Lender will be a default under this Lease. The lien of any Permitted Leasehold Mortgage that existed before rejection of this Lease will extend to Tenant's continuing possessory and other rights under 11 U.S.C. §365(h) in the Premises and this Lease after that rejection, with the same priority as if that rejection had not taken place.

23.10 Further Assurances. Landlord, with the consent of Tenant, will amend this Lease as any current or prospective Senior Lender reasonably requires, provided that Tenant reimburses Landlord's reasonable attorneys' fees and expenses and that the amendment does not materially adversely affect Landlord or reduce any payment to Landlord under this Lease.

23.11 Landlord's Right to Notice and Cure of Default under Permitted Leasehold Mortgage. Prior to Senior Lender commencing any enforcement action under any Permitted Leasehold Mortgage, Senior Lender will provide written notice of the default which would permit Senior Lender to commence such enforcement action to Landlord, whether or not Senior Lender is obligated to give notice thereof to Tenant (each, a "**Mortgage Loan Default Notice**") and Landlord shall have the right, but not the obligation, to cure such default within thirty (30) days of the date of such Mortgage Loan Default Notice.

24. LIENS; RIGHT TO CONTEST.

24.1 Liens. The Premises will be a public facility within the meaning of the PFC Statute. Tenant shall, within ninety (90) days after it is filed or claimed, have released (by bonding, insuring over, or otherwise) any mechanics', materialman's or other lien filed against any or all of the Premises. Except for any Permitted Leasehold Mortgage and Permitted Encumbrances and except as otherwise provided in this Lease, Tenant has no authority, express or implied, to create or place

any lien or encumbrance of any kind or nature whatsoever upon, or in any manner to bind, the interest of Landlord in the Fee Estate. Except for any Permitted Leasehold Mortgage or unless otherwise approved by Landlord, Tenant will indemnify, save and hold Landlord, together with its board of directors, agents, employees, officers and representatives, individually and collectively, harmless from any and all loss, cost or expense, including without limitation reasonable attorney's fees, based on or arising out of asserted claims or liens created against the Fee Estate or against the right, title and interest of Landlord in the Fee Estate or under the terms of this Lease, in each case only to the extent caused by Tenant or at Tenant's direction.

24.2 Right to Contest Certain Claims. Notwithstanding the provisions of Section 24.1 of this Lease to the contrary, Tenant shall not be in default for failure to comply with any legal requirement or to pay or discharge any Tax, assessment, fine, claim, mechanic's or materialman's lien or other lien or encumbrance asserted against the Premises or the Fee Estate if, and so long as, Tenant shall diligently and in good faith contest the same by appropriate legal proceedings which shall operate to prevent the enforcement or collection of the same and the sale of the Premises or the Fee Estate or any part thereof, to satisfy the same. Upon the discharge and/or dismissal of all tax assessments, fines and liens covered by this Section 24.2, Landlord shall return any unexpended funds (if any) delivered to it by Tenant to fulfill its obligations under this Section 24.2.

25. MISCELLANEOUS.

25.1 Consent by Landlord/Tenant. Whenever in this Lease, Landlord's or Tenant's consent, permission or approval is required and has been properly requested, such consent, permission or approval will not be unreasonably withheld, delayed or conditioned, unless such right has been specifically reserved elsewhere in this Lease. It is acknowledged that, with respect to Landlord, such consent, permission or approval may require action or approval from the Board of Directors of the Anna Public Facility Corporation, as sole member of the Landlord (in which case Landlord will promptly request such action or approval from such governmental authority and use its reasonable efforts thereafter to obtain such action or approval).

25.2 Interpretation. The captions inserted in this Lease are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Lease, or any provision hereof, or in any way affect the interpretation of this Lease.

25.3 Binding Effect. Except as otherwise expressly provided in this Lease, the terms, provisions and covenants and conditions in this Lease apply to, inure to the benefit of and are binding upon the parties hereto and upon their respective successors and assigns.

25.4 Evidence of Authority. Each party hereto represents, covenants and warrants to the other that (i) it is a duly formed entity in accordance with the applicable requirements of the jurisdiction in which it has been formed and, if such jurisdiction is other than the jurisdiction in which the Premises is located, it is duly qualified in such jurisdiction to transact business (if required to be so qualified pursuant to the applicable requirements of such jurisdiction), (ii) it has the full right, power and authority to enter into this Lease, (iii) any and all corporate or other such action necessary to approve and ratify the entering into of this Lease has been taken (and each party hereto has provided evidence thereof to the other), and (iv) the person executing this Lease on its behalf has been empowered with all necessary authority to do so and thereby to bind the party for which it acts fully to all of the terms and conditions hereof.

25.5 Force Majeure. Neither the Landlord nor Tenant will be held responsible for delays in the performance of its obligations under this Lease (except for any monetary obligations under this Lease) when caused by the occurrence of any of the following (a “**Force Majeure**”), for the period of time, if any, that the performance of a party’s obligations under this Lease are actually delayed or prevented thereby: (a) acts of God, strikes, lock-outs, and acts of the public enemy; (b) the enactment, imposition or modification of any applicable law which occurs after the Lease Date and which prohibits or materially impedes the development or construction or operation of the Project; (c) confiscation or seizure by any governmental authority or condemnations by any governmental authority; (d) wars or war-like action (whether actual and pending or expected, and whether *de jure* or *de facto*) or arrests or other restraints of government (civil or military); (e) blockades, insurrections, riots, civil disturbances, acts of terrorism, epidemics, pandemics, other public health emergencies, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, wash-outs, or adverse weather conditions beyond those normally encountered (as to frequency or severity) in Collin County, Texas, and the effects and impacts thereof; (f) explosions, nuclear reaction or radiation, or radioactive contamination; (g) shortages in labor, supplies or materials; (h) the remediation of a Hazardous Substance contamination which was not caused by the party claiming the right to delay; (i) acts or the failure to act (including delays, disruptions or interferences resulting from actions or the lack of required actions) of any governmental authorities, owner associations, adjoining landowners or neighborhood groups; or (j) any other causes, whether of the kind herein enumerated or otherwise, which are not reasonably within the control of the party (or any Affiliate actually controlled by such party) claiming the right to delay performance on account of such occurrence. Notwithstanding anything herein to the contrary, Force Majeure shall not include (i) a Person’s financial inability to perform or (ii) the impact of weather conditions (other than hurricanes and storms) to the extent not beyond those normally encountered (as to frequency and severity) in the Collin County, Texas area. The foregoing does not subject any agent, employee, officer or representative to any personal liability.

25.6 Counterparts. This Lease may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Delivery of this Lease by Portable Document Format (PDF) by any party shall be a valid and binding execution and delivery of this Lease by such party and shall be effective as delivery of a manually executed original counterpart of this Lease.

25.7 Payments Constitute Rent. Notwithstanding anything in this Lease to the contrary, all amounts payable by Tenant to or on behalf of Landlord under this Lease, whether or not expressly denominated as Rent, will constitute Rent.

25.8 Estoppel Certificates. Each of Tenant and Landlord agrees, from time to time, within ten (10) days after written request, to deliver to the other party, Senior Lender, or a designee of any of them, an estoppel certificate and/or subordination and non-disturbance agreement stating, among other things, that this Lease is in full force and effect, the date to which rent has been paid, the unexpired term of this Lease, any defaults existing under this Lease (or the absence thereof) and any other factual or legal matters pertaining to this Lease as may be reasonably requested. It is understood and agreed that the obligation to furnish estoppel certificates in a timely fashion is a material inducement for the parties to enter into this Lease.

25.9 Entire Agreement. This Lease constitutes the entire understanding and agreement of Landlord and Tenant with respect to the subject matter of this Lease and contains all of the

covenants and agreements of Landlord and Tenant with respect thereto. Landlord and Tenant each acknowledge that no representations, inducements, promises or agreements, oral or written, have been made by Landlord or Tenant, or anyone acting on behalf of Landlord or Tenant, with respect to the subject matter of this Lease which are not contained in this Lease, and any prior agreements, promises, negotiations or representations not expressly set forth in this Lease are of no force or effect. EXCEPT AS SPECIFICALLY PROVIDED IN THIS LEASE, TENANT HEREBY WAIVES THE BENEFIT OF ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE PREMISES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY THAT THE PREMISES ARE SUITABLE FOR ANY PARTICULAR PURPOSE. THE PREMISES ARE HEREBY PROVIDED TO TENANT AND TENANT HEREBY ACCEPTS THE PREMISES AS-IS, WHERE-IS. Landlord's agents and employees do not and will not have authority to make oral exceptions, changes, or amendments to this Lease, or factual representations not expressly contained in this Lease. Under no circumstances will Landlord or Tenant be considered an agent of the other. This Lease may not be altered, changed or amended except by an instrument in writing signed by both parties hereto.

25.10 Severability of Terms. If any clause or provision of this Lease is illegal, invalid or unenforceable under present or future laws effective during the Term, then, in such event, it is the intention of the parties hereto that the remainder of this Lease will not be affected thereby, and it is also the intention of the parties to this Lease that in lieu of each clause or provision of this Lease that is determined to be illegal, invalid or unenforceable, there be added, as a part of this Lease, a clause or provision as similar in terms to the illegal, invalid or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

25.11 Effective Date. All references in this Lease to "the date hereof" or similar references refer to the Lease Date.

25.12 Broker's Commission. Each party represents and warrants to the other party that it has not dealt with any broker, real estate agent or similar person in connection with this Lease, and further agrees to indemnify and hold harmless the other party for, from, and against all losses, costs, damages and expenses (including, but not limited to reasonable legal fees and disbursements) incurred as a result of a breach of the foregoing representation by such party.

25.13 Ambiguity. Landlord and Tenant hereby agree and acknowledge that this Lease has been fully reviewed and negotiated by Landlord and Tenant and their respective legal counsel and, accordingly, in the event of any ambiguity in this Lease, each party waives the rule of construction that the ambiguity will be resolved against the party who prepared this Lease.

25.14 Third Party Rights. Nothing herein expressed or implied is intended, nor will be construed, to confer upon or give to any person or entity, other than Landlord, Tenant and Senior Lender, any right or remedy under or by reason of this Lease.

25.15 Exhibits and Attachments. All exhibits, attachments, riders and addenda referred to in this Lease, are incorporated into this Lease and made a part hereof for all intents and purposes as if fully set out in this Lease.

25.16 Applicable Law/Venue. This Lease has been executed in Collin County, Texas, and will be governed in all respects by the laws of the State of Texas. Venue for any action brought

under this Lease will be in Collin County, Texas, and nowhere else. It is the intent of Landlord and Tenant to conform strictly to all applicable state and federal usury laws. All agreements between Landlord and Tenant, whether now existing or hereafter arising and whether written or oral, are hereby expressly limited so that in no contingency or event whatsoever will the amount contracted for, charged or received by Landlord or Tenant for the use, forbearance or retention of money hereunder exceed the maximum amount which Landlord or Tenant (as applicable) is legally entitled to contract for, charge or collect under the applicable state or federal law. If, from any circumstance whatsoever, fulfillment of any provision hereof would result in exceeding the legal maximum rate of interest, then the obligation to be fulfilled will be automatically reduced to the legal maximum and, if from any circumstance, Landlord or Tenant ever receives as interest an amount in excess of the legal maximum, then that amount that would be excessive interest will be applied to the reduction of amounts due such party under this Lease and, if that amount that would be excessive interest exceeds the amounts then due, then that additional amount will be refunded to the payor party.

25.17 Time of Essence. Time is of the essence with respect to all of the rights and obligations of Landlord and Tenant hereunder.

25.18 Recording. On the Lease Date, the parties will execute in recordable form a memorandum of this Lease for the purpose of giving notice to third parties of the existence of this Lease, the identity of the Premises, the length of the Term and the rights of Tenant hereunder. The form of that memorandum of this Lease will be reasonably approved by Tenant and Landlord, and such memorandum shall be promptly filed in the real property records of Collin County, Texas.

25.19 Payment on Demand. Whenever used in this Lease, the phrase “payment on demand” means within thirty (30) days of receipt of a bona fide and reasonably documented invoice.

25.20 Days. Whenever used in this Lease, the term “days” means calendar days unless otherwise expressly indicated.

25.21 Attorney’s Fees. In the event that any action or proceeding is brought to enforce any term, covenant or condition of this Lease on the part of Landlord or Tenant, the prevailing party, in such litigation, including a party that is awarded merely declaratory or injunctive relief, will be entitled to reasonable attorney’s fees to be fixed by the court in such action or proceeding.

25.22 Exculpation.

(A) Notwithstanding anything to the contrary contained in this Lease or the Regulatory Agreement, (i) Landlord shall look solely to Tenant’s ownership interest in the Leasehold Estate for the payment of any claim or for any performance under or in connection with this Lease and (ii) neither any present or future Constituent Member (defined below) in Tenant nor any present or future direct or indirect shareholder, officer, director, employee, trustee, beneficiary, advisor, direct or indirect partner, general partner, member, principal, participant or agent of or in Tenant or of or in any person or entity that is or becomes a Constituent Member in Tenant shall have any personal liability, directly or indirectly, under or in connection with this Lease or the Regulatory Agreement, or any amendment or amendments to any of the foregoing made at any time or times hereafter and Landlord, on behalf of itself and its successors and assigns, hereby

waives any and all such personal liability. The term “**Constituent Member**”, as used herein, shall mean any direct or indirect partner, general partner, member, manager, personal representative, trustee, employee or shareholder in Tenant.

(B) Notwithstanding anything to the contrary contained in this Lease or the Regulatory Agreement, (i) Tenant shall look solely to Landlord’s ownership interest in the Fee Estate for the payment of any claim or for any performance under or in connection with this Lease and (ii) neither any present or future Constituent Member (defined below) in Landlord nor any present or future direct or indirect shareholder, officer, director, employee, trustee, beneficiary, advisor, direct or indirect partner, general partner, member, principal, participant or agent of or in Landlord or of or in any person or entity that is or becomes a Constituent Member in Landlord shall have any personal liability, directly or indirectly, under or in connection with this Lease or the Regulatory Agreement, or any amendment or amendments to any of the foregoing made at any time or times hereafter and Tenant, on behalf of itself and its successors and assigns, hereby waives an and all such personal liability. The term “**Constituent Member**”, as used herein, shall mean any direct or indirect partner, general partner, member, manager, personal representative, trustee, employee or shareholder in Landlord.

25.23 Waiver of Jury Trial. Each party to this Lease hereby waives, to the fullest extent permitted by law, any right to a jury trial of any claim, demand, action, or cause of action (a) arising under this Lease or (b) in any way connected with or related or incidental to the dealings of the parties hereto in respect of this Lease or any of the transactions related hereto, in each case whether now existing or hereafter arising, and whether in contract, tort, equity or otherwise. Each party to this Lease hereby agrees and consents that any such claim, demand, action or cause of action shall be decided by court trial without a jury and that the parties to this Lease may file an original counterpart or a copy of this Lease with any court as written evidence of the consent of the parties hereto to the waiver of their right to trial by jury.

25.24 Further Assurances. In connection with this Lease and the transactions contemplated hereby, each party hereto shall, at the request of the other party, execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Lease and those transactions.

25.25 Special Senior Lender Provisions. Notwithstanding anything in this Lease to the contrary, and only so long as there remains any indebtedness owing (or lending commitment outstanding) under the Senior Loan Documents:

(A) Tenant’s Early Termination Election, as provided in Section 4.1(B), shall be subject to any applicable restrictions set forth in the Senior Loan Documents.

(B) Tenant’s insurance, as provided in Section 11.1, must include any insurance required under the Senior Loan Documents.

(C) During the term of the Senior Loan, without limiting the discretion of Landlord with respect to required endorsements to insurance policies, all such policies for loss or damage to the Project will contain a standard mortgagee clause (without contribution) naming the Senior Lender as mortgagee with loss proceeds payable to the Senior Lender. All such policies also will provide that the coverage, validity and enforceability of such policies will not be reduced

or affected by, and the proceeds of such policies will be payable to the Senior Lender (to the extent required by the Senior Loan Documents) notwithstanding any (i) act, failure to act, or negligence of the insured, (ii) any violation of any warranty, declaration or condition contained in any such policy by the insured, (iii) the occupancy or use of the Project for purposes more hazardous than permitted by the terms of the policy, (iv) the exercise of the power of sale or any foreclosure or other action or proceeding taken by the Senior Lender pursuant to the Senior Loan Documents, or (v) any change in title to or ownership of the Project.

(D) Tenant's rights to terminate the Lease, as described in Section 12.1 or Section 12.2, shall be subject to any applicable restrictions set forth in the Senior Loan Documents.

(E) Notwithstanding anything in Section 12 to the contrary, the Senior Loan Documents will control the use and application of all casualty proceeds relating to the Improvements. In any event, Landlord (to the extent required herein), Tenant and the Senior Lender will participate in any proposed settlement relating to a casualty insurance claim, the parties will direct any applicable payor to remit the casualty proceeds to the Senior Lender (to the extent required pursuant to the Senior Loan Documents), and the Senior Lender (to the extent required pursuant to the Senior Loan Documents) may supervise and control the receipt of any casualty proceeds in accordance with the terms of the Senior Loan Documents.

(F) Notwithstanding anything in Section 12 to the contrary, Tenant will provide reasonable prior notice to the Senior Lender and Landlord of any proceeding for adjustment or adjudication of any material insurance or condemnation claim involving the Project and will permit the Senior Lender (to the extent required pursuant to the Senior Loan Documents) and Landlord (to the extent required herein) to participate therein as interested parties.

(G) The liability of the Senior Lender and its respective assigns hereunder is limited to the value of their respective interests in the Leasehold Estate and this Lease. Except as may be provided in Article 23 hereof, the Senior Lender shall not be liable for the performance or observance of any covenant or condition of Tenant arising under this Lease.

(H) Notwithstanding anything in Section 16.1 to the contrary, notice must also be provided to the Senior Lender prior to Landlord's ability to make repairs (as contemplated therein).

(I) Notwithstanding anything in Article 18 to the contrary, the Senior Loan Documents will control the use and application of all condemnation proceeds relating to the Project, and this Lease will not terminate except in accordance with the Senior Loan Documents. In any event, Landlord (to the extent required herein), Tenant and the Senior Lender (to the extent required pursuant to the Senior Loan Documents) will participate in any proposed settlement regarding condemnation proceeds relating to the Project, the applicable parties will direct any applicable payor to remit the condemnation proceeds to the Senior Lender (to the extent required pursuant to the Senior Loan Documents), and the Senior Lender will (to the extent required pursuant to the Senior Loan Documents) supervise and control the receipt of condemnation proceeds in accordance with the Senior Loan Documents.

(J) Tenant's right to surrender of the Premises pursuant to Section 22.3 will be subject to the Senior Lender's prior written consent (to the extent required).

(K) Tenant's right to terminate this Lease pursuant to Section 22.4 will be subject to the Senior Lender's prior written consent (to the extent required pursuant to the Senior Loan Documents).

(L) Notwithstanding anything in this Lease to the contrary, Landlord and Tenant, whether acting jointly or independently, will not modify, amend, terminate, cancel or accept a surrender of this Lease, nor shall Tenant waive any material rights under this Lease, without the prior written consent of the Senior Lender (to the extent required pursuant to the Senior Loan Documents). Any such modification, amendment, cancellation, surrender, waiver or termination (except as expressly permitted herein) without the prior written consent of the Senior Lender will be of no force or effect.

26. NOTICES.

26.1 Procedure for Notices. Each provision of this Lease with reference to the sending, mailing or delivering of notice or the making of any payment by Landlord to Tenant or with reference to the sending, mailing or delivering of any notice or the making of any payment by Tenant to Landlord will be deemed to be complied with when and if the following steps are taken:

(A) All Rent and other payments required to be made by Tenant to Landlord under this Lease will be payable to Landlord at the address for Landlord set forth in the Basic Terms and Definitions in Section 1 of this Lease or at any other address within the continental United States as Landlord may specify from time to time by written notice delivered in accordance with this Section 26.

(B) All payments required to be made by Landlord to Tenant under this Lease will be payable to Tenant at the address set forth in the Basic Terms and Definitions in Section 1 of this Lease or at any other address within the continental United States as Tenant may specify from time to time by written notice delivered in accordance with this Section 26.

(C) Except as expressly provided elsewhere in this Lease, any written notice or document required or permitted to be delivered under this Lease will be deemed to be delivered when received or, whether actually received or not, (i) when sent by electronic mail (confirmed by the sender's server that the transmission has been sent to the recipient without a reply indicating failure of delivery) or (ii) one (1) business day after being deposited with Federal Express for next business day delivery or (iii) three (3) days after being mailed in the United States mail, postage prepaid, certified or registered mail, return receipt requested addressed as shown in the Basic Terms and Definitions in Section 1 of this Lease.

Signature Pages Follow

DATED as of the date first above written.

TENANT:

JEFFERSON VILLAGES OF WATERS CREEK, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

LANDLORD:

APFC WATERS CREEK MEMBER, LLC, a Texas limited liability company

By: Anna Public Facility Corporation, a Texas public
facility corporation, its sole member

By: _____
Stan Carver, II

EXHIBIT A

PREMISES

The real property located at [_____], Anna, Texas, more particularly described as follows:

DEVELOPMENT MANAGEMENT AGREEMENT

BETWEEN

JEFFERSON VILLAGES OF WATERS CREEK, LLC

AND

JPI MULTIFAMILY DEVELOPMENT, LLC

TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE 1. DEFINITIONS</u>	1
<u>Section 1.1. Definitions</u>	1
<u>ARTICLE 2. DEVELOPER'S DUTIES</u>	4
<u>Section 2.1. General</u>	4
<u>Section 2.2. Asset Management Duties</u>	7
<u>Section 2.3. Limitation of Developer's Duties and Liability</u>	8
<u>ARTICLE 3. TERM OF AGREEMENT</u>	9
<u>Section 3.1. Term</u>	9
<u>ARTICLE 4. OWNER'S DUTIES</u>	9
<u>Section 4.1. General</u>	9
<u>Section 4.2. Cost of the Design Work</u>	10
<u>Section 4.3. Reimbursement</u>	10
<u>Section 4.4. Owner Approvals</u>	10
<u>ARTICLE 5. CONFIDENTIAL INFORMATION</u>	11
<u>Section 5.1. Confidentiality Agreement</u>	11
<u>ARTICLE 6. DEVELOPER'S FEE</u>	11
<u>Section 6.1. Developer's Fee</u>	11
<u>Section 6.2. Interest on Past Due Payments</u>	11
<u>Section 6.3. Payment From Project Account</u>	11
<u>Section 6.4. Asset Management Fee</u>	11
<u>Section 6.5. Disposition Fee</u>	11
<u>ARTICLE 7. INDEMNIFICATION</u>	12
<u>Section 7.1. Indemnities and Releases</u>	12
<u>Section 7.2. Developer's Indemnity</u>	13
<u>Section 7.3. Owner's Indemnity and Release</u>	13
<u>Section 7.4. Scope of Indemnities and Releases</u>	13
<u>Section 7.5. Releases of Subrogation</u>	13
<u>Section 7.6. Releases of Consequential Damages</u>	14
<u>Section 7.7. Survival</u>	14
<u>ARTICLE 8. INSURANCE</u>	14
<u>Section 8.1. Owner's Insurance</u>	14
<u>Section 8.2. Developer's Insurance</u>	14

Section 8.3.	<u>Evidence of Insurance; Cost of Insurance.</u>	14
<u>ARTICLE 9. DEFAULT AND TERMINATION</u>		14
Section 9.1.	<u>Events of Default.</u>	14
Section 9.2.	<u>Termination for Cause.</u>	15
Section 9.3.	<u>Developer's Termination for Convenience.</u>	15
Section 9.4.	<u>Effect of Termination or Expiration.</u>	16
Section 9.5.	<u>Books and Records upon Expiration or Termination.</u>	16
Section 9.6.	<u>Duty of Cooperation.</u>	16
Section 9.7.	<u>Waiver.</u>	16
<u>ARTICLE 10. MISCELLANEOUS</u>		17
Section 10.1.	<u>Entire Agreement; Modification.</u>	17
Section 10.2.	<u>Headings.</u>	17
Section 10.3.	<u>Governing Law.</u>	17
Section 10.4.	<u>Legal Costs.</u>	17
Section 10.5.	<u>Third Party Beneficiaries.</u>	17
Section 10.6.	<u>Binding Effect.</u>	17
Section 10.7.	<u>Notices.</u>	17
Section 10.8.	<u>Severability.</u>	19
Section 10.9.	<u>Performance.</u>	19
Section 10.10.	<u>Exhibits.</u>	19
Section 10.11.	<u>Relationship of Parties.</u>	19
Section 10.12.	<u>Survival.</u>	19
Section 10.13.	<u>Successors and Assigns.</u>	19
Section 10.14.	<u>WAIVER OF JURY TRIAL.</u>	19
Section 10.15.	<u>CONSENT TO MEDIATION AND ARBITRATION.</u>	20
Section 10.16.	<u>Limitation of Recourse.</u>	20
Section 10.17.	<u>Legal Services.</u>	20
Section 10.18.	<u>Counterparts.</u>	20
Section 10.19.	<u>Other Activities by Developer.</u>	20
Section 10.20.	<u>Ownership and Use of Contract Documents.</u>	20

EXHIBIT A - LEGAL DESCRIPTION OF THE LAND

DEVELOPMENT MANAGEMENT AGREEMENT

THIS DEVELOPMENT MANAGEMENT AGREEMENT (this **Agreement**) is made as of _____, 20____ (**Effective Date**), by JEFFERSON VILLAGES OF WATERS CREEK, LLC, a Delaware limited liability company (**Owner**), and JPI MULTIFAMILY DEVELOPMENT, LLC, a Texas limited liability company (**Developer**).

RECITALS:

- A. Owner wants to retain Developer to perform the Developer Services (defined below) with respect to the Project (defined below) described in this Agreement, consistent with and upon the terms and conditions set forth below; and
- B. Developer wants to accept the Owner's engagement.

AGREEMENT:

Developer and Owner agree as follows:

ARTICLE 1.

DEFINITIONS

Section 1.1. Definitions.

The following terms have the following meanings whenever and wherever used in this Agreement:

Agreement means this Development Management Agreement.

Architect means OMNIPLAN, or any other person or entity retained by Owner for the design of the Project, which design services include architectural design services and may include structural, MEP, landscape, civil and other design services.

Architect Agreement means the agreement between Owner or Developer and Architect relating to the design of the Project.

Asset Management Fee has the meaning ascribed to it in **Section 6.4**.

Asset Management Services has the meaning ascribed to it in **Section 2.2**.

Break-even Date means the first day of the first three consecutive calendar month period during which the Project generates sufficient aggregate cash flow from operations to cover its aggregate accrual expenses and debt service for the period, as determined in accordance with good real estate practices.

Construction Documents means complete and coordinated Drawings, Specifications and other design documents necessary for the performance of the Work, which Drawings and Specifications will be developed and completed by Architect and the Consultants and will be listed in the Construction Management Agreement.

Construction Management Agreement means the agreement between Owner and Contractor relating to the construction of the Project.

Consultant(s) means design professional(s) retained by Owner (or by Developer and approved by Owner) in connection with the design of the Project other than Architect.

Contractor means **APFC Waters Creek Contractor, LLC**, a Texas limited liability company, or its successors and assigns.

Cost of the Design Work has the meaning ascribed to it in **Section 4.2.1**.

Cost of the Work has the meaning ascribed to it in the Construction Management Agreement.

Defaulting Party has the meaning ascribed to it in **Section 9.1.1**.

Design Work means all work performed by Architect and other Consultants in connection with the design of the Project, whether before or after the Effective Date.

Developer means the person or entity identified as such in the preamble of this Agreement, its successors and assigns.

Developer Services means the services to be provided by Developer under this Agreement.

Developer's Fee has the meaning ascribed to it in **Section 6.1**.

Development Budget means the most recent budget prepared by Developer showing the projected costs of acquiring, developing, constructing, and operating the Project through the anticipated Break-even Date.

Disposition Fee has the meaning ascribed to it in **Section 6.5**.

Drawings means the graphic and pictorial portions of the Construction Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules and diagrams.

Equity LLCA means that certain Limited Liability Company Agreement of Jefferson Villages of Waters Creek Holdings, LLC, dated on or about the date hereof, as may be amended.

Event of Default has the meaning ascribed to it in **Section 9.1**.

Final Completion has the meaning ascribed to it in the Construction Management Agreement.

Insurance Program means all of the insurance policies and coverages maintained by Owner, Developer, or their respective affiliates (as applicable).

JPI Exit Event means the earliest to occur of either (a) a Leasehold Sale by the Owner to an unrelated third-party, (b) the termination of the Lease Agreement and the subsequent sale of the Project by the Owner to an unrelated third party, or (c) at any

time following Substantial Completion, any transfer of the direct or indirect ownership interests in the Owner resulting in neither Developer nor any of its Affiliates having a remaining majority and controlling ownership interest in the Owner.

Land means the real property more particularly described on **Exhibit A** attached hereto.

Lease Agreement means the Lease Agreement dated or to be dated on or about the date of this Agreement, between the Owner and APFC Waters Creek Member, LLC, a Texas limited liability company, in its capacity as landlord, as the same may be amended from time to time.

Leasehold Sale means a transfer of the Owner's leasehold estate in the Land with the Lease Agreement remaining in full force and effect.

Master Subcontract means the agreement between the Contractor and Subcontractor relating to construction of the Project.

Non-defaulting Party has the meaning ascribed to it in **Section 9.1.1**.

Owner means the person or entity identified as such in the preamble of this Agreement, its successors and assigns.

Permitted Investments means: (a) cash (insured at all times by the Federal Deposit Insurance Corporation or otherwise collateralized with obligations described in clause (b) below); (b) direct obligations of (including obligations issued or held in book entry form on the books of) the Department of the Treasury of the United States of America; (c) obligations of any federal agencies of the United States which obligations represent the full faith and credit of the United States of America; (d) commercial paper which is rated at the time of purchase "P 1" by Moody's and "A 1" or "A 1+" by S&P and which matures not more than 270 calendar days after the date of purchase; and (e) investments in money market funds rated on the date of purchase "AAm" or "AAm G" or better by S&P, and "Aa3" or better by Moody's. In the event a Permitted Investment is rated by more than one approved rating agency, the lowest rating will apply. While any investments of the type described in clauses (d) or (e) above are made in the Project Account, Developer shall monitor the ratings described in such clauses on a periodic basis (no less frequently than monthly) and if the requisite ratings are not maintained, shall cause the prompt substitution of other Permitted Investments.

Preliminary Plans means the preliminary (or final, as applicable) site plan, floor plans, if available, and elevation plans for the Project approved by Owner and provided to Developer.

Project means the residential apartment project to be constructed on the Land, generally consisting of approximately 325 apartment units, approximately parking stalls, and any other improvements, amenities and appurtenances associated therewith.

Project Account means a bank account in a federally insured financial institution approved by Owner and any lender providing financing for the Project into which all capital contributions of Owner and all loan proceeds will be deposited and against which checks will be drawn by Developer only for payment of (a) costs of labor, materials and services supplied for the design, construction and furnishing of the Project upon the

basis of the Development Budget, (b) the Developer's Fee, and (c) any other costs and expenses permitted to be paid under this Agreement. Any funds in the Project Account that are not required to be immediately expended by Developer hereunder will be invested in Permitted Investments.

Records has the meaning ascribed to it in **Section 9.5**.

Request for Payment has the meaning ascribed to it in the Construction Management Agreement.

Specifications means that portion of the Construction Documents consisting of the written requirements for materials, construction systems, standards, and workmanship for the Work and performance of related services.

Stabilization means the date the Project achieves 93% occupancy.

Subcontractor means **JPI Construction, LLC**, a Texas limited liability company, or its successors and assigns.

Substantial Completion has the meaning ascribed to it in **Subsection 8.3** of the General Conditions, attached as **Exhibit H** to the Construction Management Agreement.

Work has the meaning ascribed to it in the Construction Management Agreement.

ARTICLE 2.

DEVELOPER'S DUTIES

Section 2.1. General.

Developer shall act as Owner's representative for the Project, negotiate with and serve as coordinator of Architect, other Consultants, Contractor and Subcontractor in the design, construction, and furnishing of the Project, and perform the Developer Services. Except as set forth herein, Developer has no duties or responsibilities with respect to the Project.

2.1.1 Design Phase. Developer shall perform the following services during the design phase of the Project:

- 2.1.1.1. Negotiate, obtain, and maintain in the name of Owner an Architect Agreement with Architect for the design of the Project or assign to Owner any Architect Agreement previously entered into by Developer with Architect covering the design of the Project.
- 2.1.1.2. Negotiate, obtain, and maintain in the name of Owner agreements with all other Consultants Developer determines are necessary for the acquisition, design, construction, and furnishing of the Project.
- 2.1.1.3. Assign to Owner all contracts and agreements previously entered into by Developer with respect to the Project.

- 2.1.1.4. Coordinate the preparation of the Preliminary Plans by Architect and the other Consultants and the performance of their professional design services incidental thereto.
- 2.1.1.5. Coordinate the design and engineering of the Project in stages to provide conceptual pricing documents, preliminary pricing documents, permit pricing documents, and Construction Documents.
- 2.1.1.6. Review during each stage of the design phase the architectural, civil, mechanical, electrical, plumbing, hardscape, softscape, interior design, and structural Drawings and Specifications as they are developed.
- 2.1.1.7. Advise Owner and make recommendations with respect to such factors as construction feasibility, possible economies, availability of materials and services, time requirements for procurement and construction, and cost estimates.
- 2.1.1.8. Coordinate the preparation by Architect and the other Consultants of the final Construction Documents for the Project based upon the Preliminary Plans, any other requirements of this Agreement, and any modifications required by Developer.
- 2.1.1.9. Apply for and obtain in the name of Owner any change in the zoning designation of the Project required to construct the Project as shown in the Preliminary Plans or as reasonably required by Owner.
- 2.1.1.10. Apply for, obtain, and maintain in the name of Owner and provide to Contractor and Subcontractor all licenses and permits necessary for the Work and the development and construction of the Project.
- 2.1.1.11. Attend necessary meetings regarding the Project.
- 2.1.1.12. Obtain and provide to Owner, Contractor and Subcontractor ALTA surveys and flood hazard determinations, soils reports, and environmental reports covering the Land.
- 2.1.1.13. Negotiate, obtain, and maintain in the name of Owner the Construction Management Agreement and Master Subcontract.
- 2.1.1.14. Negotiate on behalf of Owner for the furnishing of all water, sewer, electricity, gas, telecommunications, and other utilities and services required for the construction and operation of the Project.
- 2.1.1.15. Prepare economic projections and other analyses of the Project.
- 2.1.1.16. Prepare the final Development Budget to submit to Owner.
- 2.1.1.17. Prepare and submit loan applications for any interim, mezzanine, permanent, or other financing for the Project.

- 2.1.1.18. Establish the Project Account.
- 2.1.1.19. Review and approve all applications for payment by Architect and the other Consultants.
- 2.1.2 Construction Phase. Developer shall perform the following services during the construction phase of the Project:
 - 2.1.2.1. Coordinate the services of Contractor, Subcontractor, Architect, and any consultant of Owner or Owner's lender.
 - 2.1.2.2. Visit the Project site at intervals appropriate to the stage of construction to become familiar with the progress and quality of the completed Work to determine in general if the Work is being performed in a manner indicating that the Work, when completed, will be in accordance with the Construction Management Agreement and Master Subcontract; but Developer is not required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work.
 - 2.1.2.3. Review and approve all Requests for Payment submitted by Contractor under the Construction Management Agreement and/or Subcontractor under the Master Subcontract.
 - 2.1.2.4. Submit all Requests for Payment from Contractor or Subcontractor to any applicable lender(s) (or Owner's consultant, if applicable) for the Project.
 - 2.1.2.5. Subject to availability of sufficient funds, promptly following deposit of any Owner capital contributions and loan proceeds by any lender into the Project Account, pay Contractor, Subcontractor, Developer, Architect, and any other design Consultants out of the Project Account.
 - 2.1.2.6. Make all decisions required to be made by Owner under the Construction Management Agreement and Master Subcontract that will not result in a decrease in the quality or value of the Project, including, but not limited to, approval of change orders and shop drawings, technical interpretations of the Construction Management Agreement and Master Subcontract, and determination of the date of Substantial Completion of the Project.
 - 2.1.2.7. Receive and review written guarantees and related documents assembled by Subcontractor with respect to the Project.
 - 2.1.2.8. Coordinate reviews and approvals by any consultant retained by Owner or Owner's lender.

2.1.3 All Phases. Developer shall perform the following services throughout the term of this Agreement:

- 2.1.3.1. On or about the first day of each calendar month, deliver to Owner a monthly and year-to-date statement for the Project that discloses the source and amount of all revenues deposited into the Project Account, the amount of expenditures incurred or paid, the parties to whom any payments were made as of the end of the month, a reconciliation of the payments to the Development Budget, and other information and supporting documentation reasonably required by Owner.
- 2.1.3.2. Keep all records relating to the Project required under this Agreement, including, but not limited to, correspondence, contracts, documents, and other records as needed, ownership of which records is vested in Owner. Owner may at any time inspect the records during Developer's normal business hours upon at least five business days' prior written notice. Developer will furnish to Owner, at Owner's cost, copies of any of the records on a timely basis as they may be requested and will deliver all Project records to Owner upon the termination of this Agreement. Developer, at its cost may retain copies of all Project records for its files.

Section 2.2. Asset Management Duties.

Among Developer's duties under this Agreement are generally to provide asset management services for the Project in accordance with the applicable business plan and the provisions of this Agreement. Developer shall use commercially reasonable efforts to perform the following services (collectively, the **Asset Management Services**) with respect to the Project:

- 2.2.1 Guide overall investment strategy including capitalization, property operations, hold/sell recommendations, etc.
- 2.2.2 Maintain/manage entity level documentation and procedures.
- 2.2.3 Prepare a business plan (including an Annual Budget and a CapEx Budget) for Owner's review and approval at least 45 days prior to commencement of each calendar year and making such changes thereto as Owner may approve, beginning with the calendar year in which substantial completion or initial leasing of the Project is reasonably anticipated to occur.
- 2.2.4 Within 30 days prior to each calendar year end, Developer shall deliver to Owner (i) a competitive property market report, and (ii) a Project valuation. These reports will be updated in short form within 15 days after the end of the first, second, and third calendar quarters of each year.
- 2.2.5 Make debt capitalization recommendations to Owner including financing levels, pricing terms, etc.
- 2.2.6 Identify equity capital sources and negotiate related documentation.
- 2.2.7 Implement financing and sale strategies.

- 2.2.8 Coordinate and facilitate the preparation of financial and operational reports, disclosures and statements required under the terms of any loan documents.
- 2.2.9 Advise and assist Owner in connection with compliance with Senior Lender and any other financing documents affecting the Project.
- 2.2.10 Monitor lender relationships.
- 2.2.11 Prepare distribution recommendations.
- 2.2.12 Develop leasing strategy for the Project.
- 2.2.13 Develop and maintain current rental pricing strategy for the Project.
- 2.2.14 Advise and assist in the implementation of an effective leasing and retention program.
- 2.2.15 Determine and recommend to Owner the most effective manner for property operations including internal management and third party property management.
- 2.2.16 Monitor, supervise, and direct the Property Manager with respect to the operations and performance of the Project in comparison with the approved business plan, Approved Annual Budget and CapEx Budget for the Project.
- 2.2.17 Periodically review the financial and physical condition of the Project.
- 2.2.18 Periodically review insurance coverages on the Project to be sure that the Project meets the requirements established for the Project in the applicable ownership documents, loan documents, (so long as complete copies thereof have been provided to Developer) and, if the Project's insurance coverage does not satisfy the applicable requirements, then promptly take steps to notify Owner or the Property Manager about the deficiencies.
- 2.2.19 Review, analyze, negotiate, and, as appropriate, cancel service contracts affecting the Project.
- 2.2.20 Review property tax assessments, payments in lieu of taxes (if any), rates and methodologies with outside ad valorem tax consultants engaged as approved within the applicable business plan (or as otherwise approved by Owner), Approved Annual Budget, and CapEx Budget, and periodically prepare internal valuations of the Project to facilitate tax administration strategy.
- 2.2.21 Review (in consultation with the Property Manager) the business plan, Approved Annual Budget, CapEx Budget, rent schedules, and marketing plans for the Project, make recommendations thereto to Owner. After approval by Owner, supervise the Property Manager's implementation and compliance therewith.
- 2.2.22 Reasonably coordinate and reasonably cooperate with Senior Lender to the extent reasonably requested by such lender from time to time.

Section 2.3. Limitation of Developer's Duties and Liability.

Except to the extent expressly set forth herein: (a) Developer is not in control or charge of and is not responsible for construction means, methods, techniques, sequences, or procedures, or for safety precautions and programs in connection with the Work and is not responsible for the failure of Contractor, Architect, or any other Consultant to perform its obligations in accordance with the Construction Management Agreement, the Architect Agreement, or any other agreements; (b) Developer has no control over or charge of and is not responsible for acts or omissions of Owner, Architect, Contractor, Owner consultant(s), consultant(s) retained by Owner's lender(s), other Consultants (other than Subcontractor), or their agents or employees, or of any other persons performing portions of the Work or any other work on the Project; (c) Developer is not liable for the results of any interpretation or decision rendered in good faith under this Agreement or for any of its acts taken within the scope of its authority under this Agreement; and (d) Developer is not obligated to (i) make any advances to or for the account of Owner or to pay any sums except from the Project Account and subject to availability of funds therein, (ii) enter into any agreements relating to the design, development, furnishing, and construction of the Project in its own name, or (iii) incur any liability or obligation for the account of Owner without assurance satisfactory to Developer, in its sole discretion, that the funds necessary for the discharge thereof will be provided by Owner.

ARTICLE 3.

TERM OF AGREEMENT

Section 3.1. Term.

The term of this Agreement commences on the Effective Date and continues, unless sooner terminated as herein provided, until Final Completion of the Project occurs.

ARTICLE 4.

OWNER'S DUTIES

Section 4.1. General.

Owner shall (i) proceed in good faith to develop the Project, (ii) furnish with reasonable promptness all necessary information and services with respect to the Project under Owner's control requested by Developer, (iii) promptly execute and deliver all documents requiring Owner's signature and otherwise cooperate with Developer in all matters relating to the development of the Project, including, but not limited to, applications for licenses, permits, and zoning changes or variances, and applications, commitments, and final documentation for any interim, mezzanine, permanent, or other financing, (iv) pay for the services of an Architect, civil engineer, electrical engineer, structural engineer, mechanical engineer, interior designer, environmental consultant, and soils engineer and other professionals and Consultants when the services are deemed necessary for the Project by Developer, (v) assume those obligations of Developer under any agreement assigned to Owner under this Agreement, which arise from and after the date of such assignment, and (vi) maintain sufficient funds in the Project Account at all times to enable Developer to make all payments required to be made hereunder, including, without limitation, the Developer's Fee.

Section 4.2. Cost of the Design Work.

- 4.2.1 Owner shall pay all third party costs to the Architect (or engineers or other design professionals approved by Owner and required under contracts between such engineer and Owner or approved by Owner) incurred in connection with the Design Work (**Cost of the Design Work**) within 25 days after receipt of each monthly request for design payment submitted by Developer. For clarification purposes, Cost of the Design Work does not include any markup by Developer for general administrative overhead costs, profit, or otherwise on third party costs. Developer is not entitled to any compensation for Design Work other than as expressly provided in **Section 4.3** and in this **Article 4**. Owner shall be liable for all costs associated with the development, construction, furnishing, and operation of the Project.
- 4.2.2 The fees for architectural Design Work will be allocated among the four design document preparation milestones, but Developer may bill Owner based on the percentage completion of each milestone. Progress payments for Design Work performed by all other Consultants will be based on the percentage completion of their respective portions of the Design Work.

Section 4.3. Reimbursement.

Subject to the following sentence, Owner shall reimburse Developer upon demand for any money or other property that Developer previously paid, or now or hereafter pays, for any reason whatsoever in connection with the design, development, furnishing, construction, financing, or sale of the Project, including, but not limited to, (i) all architectural, civil, MEP, structural, landscape, interior design, design management (whether third party or internal), and other consulting costs related to the Project, (ii) any amounts previously paid by Developer with respect to any contracts or agreements assigned to Owner pursuant to this Agreement, (iii) reasonable verifiable out-of-pocket expenses related to preparing for or obtaining financing on or the sale of the Project, including, but not limited to, all capital raise expenses, (iv) reasonable verifiable out-of-pocket expenses related to market research, the cost of appraisals of the Project, the costs of survey(s), soils report(s), and environmental report(s), and other similar expenses, and (v) legal fees and costs and expenses of litigation, arbitration or claims related to the Project. Owner will not reimburse Developer for any bookkeeping and accounting expenses relating to Developer's duties hereunder or any overhead expense of Developer not related solely and exclusively to the Project, including, but not limited to, salaries of Developer's employees (other than design managers), expenses incurred by Developer and not related solely and exclusively to the Project, charges for office supplies and equipment unrelated to the Project and any other expenses that are personal to Developer.

Section 4.4. Owner Approvals.

Owner shall approve or disapprove any matters submitted to it by Developer under this Agreement in writing within five (5) business days following written receipt of the matter from Developer. Any disapproval by Owner must be specific with respect to Owner's objections. If Owner does not approve or disapprove any matters submitted to it by Developer under this Agreement within the five (5) business day period, then Owner will be deemed to have approved the matters.

ARTICLE 5.

CONFIDENTIAL INFORMATION

Section 5.1. Confidentiality Agreement.

Owner and Developer shall, at all times after the execution thereof, comply with the terms of any confidentiality agreement between Owner and Developer and related to the Project.

ARTICLE 6.

DEVELOPER'S FEE

Section 6.1. Developer's Fee.

As compensation for services rendered by Developer pursuant to this Agreement, Owner shall pay to Developer a fee (**Developer's Fee**) equal to 5.0% of the total budgeted costs for construction, which shall include (without limitation) the Cost of the Work (as defined in the Construction Management Agreement), fees for permits and licenses, and insurance costs. The Developer's Fee is payable at the office of Developer at 600 E. Las Colinas Blvd, Suite 1800, Irving, Texas 75039, and is payable as follows: (i) 25.0% of the Developer's Fee is payable upon the Effective Date, and (ii) the remainder of the Developer's Fee is payable in equal monthly installments to Developer throughout construction based upon the initial Construction Schedule (as defined in the Construction Management Agreement).

Section 6.2. Interest on Past Due Payments.

All past due payments from Owner to Developer of any amounts due under this Agreement will bear interest from the 6th day following the date due until paid at the lesser of 10% per annum or the maximum rate permitted by applicable state or federal law.

Section 6.3. Payment From Project Account.

Developer may pay the Developer's Fee directly out of the Project Account. If funds in the Project Account are at any time insufficient to pay the Developer's Fee, then Owner shall make the payment directly to Developer out of Owner's own account within three business days following the date the payment was due.

Section 6.4. Asset Management Fee.

Owner shall pay to Developer an annual fee, during and throughout the Term of this Agreement, as compensation for the Asset Management Services rendered by Developer for the Project, in an amount equal to 0.35% of the Total Project Costs per annum. The Asset Management Fee shall accrue from and after the Effective Date and shall be reduced to a maximum annual amount of \$150,000 per annum following Substantial Completion and Stabilization. The Asset management Fee is payable at the closing and funding of a JPI Exit Event.

Section 6.5. Disposition Fee.

Owner shall pay to Asset Manager a Disposition Fee equal to 0.50% of the gross sales proceeds from the sale of the Project, payable at the closing and funding of a JPI Exit Event.

Notwithstanding the foregoing, the Disposition Fee shall be subject and subordinate to the terms of the Equity LLCA.

ARTICLE 7.

INDEMNIFICATION

Section 7.1. Indemnities and Releases.

7.1.1 Definitions. The following terms have the respective meanings set forth below:

- 7.1.1.1. **Arise From** and **Arising From** means directly or indirectly, in whole or in part, (a) occurring in connection with or as a result of, (b) causing, (c) resulting in, or (d) based upon.
- 7.1.1.2. **Claims** means all claims, demands, actions, or proceedings, whether filed or threatened, relating to the subject matter of an indemnity or release and any resulting liabilities, damages (including actual, consequential, and punitive), expenses, Legal Costs, judgments, fines, or penalties of any nature or description.
- 7.1.1.3. The **Developer-related Persons** are: (a) Developer, (b) all consultants and other persons involved in performance of Developer's obligations that are required by this Agreement to be managed or supervised by Developer, (c) the shareholders, members, managers, partners, and affiliates of the persons described in items (a) and (b), and (d) the officers, managers, directors, employees, and agents of the persons described in items (b) through (c).
- 7.1.1.4. **Indemnify** means to (a) protect a person against the occurrence of a Claim, including defending or contesting on behalf of the indemnified person a Claim in litigation, arbitration, mediation, or other proceeding with counsel reasonably acceptable to the indemnified person and paying all Legal Costs associated with such defense or contest, and (b) compensate another person for a Claim actually incurred.
- 7.1.1.5. **Injury** means (a) harm to, impairment or loss of, property, or the use of property, or (b) harm to (including sickness or disease) or death of a natural person.
- 7.1.1.6. **Legal Costs** means court costs, attorneys' and paralegals' fees, experts' fees and other expenses incurred in investigating, preparing, prosecuting, or settling any legal action or proceeding or arbitration, mediation, or other method of alternative dispute resolution.
- 7.1.1.7. The **Owner-related Persons** are: (a) Owner, (b) all consultants retained by Owner in respect of the Project (other than Subcontractor), (c) the shareholders, members, managers, partners, and affiliates of the persons described in items (a) and (b), and (d) the officers, managers, directors, employees, and agents of the persons described in items (b) through (c).

7.1.1.8. **Release** means to waive or relinquish a right or release another person from liability in connection with a Claim.

Section 7.2. Developer's Indemnity.

To the fullest extent permitted by applicable law, Developer shall Indemnify all Owner-related Persons against all Claims Arising From, or alleged to Arise From, Developer's fraud against Owner, gross negligence, willful misconduct or material breach of this Agreement.

Section 7.3. Owner's Indemnity and Release.

To the fullest extent permitted by applicable law, Owner Releases and shall, for itself and its successors and assigns, Indemnify all Developer-related Persons against all Claims Arising From, or alleged to Arise From, the performance of Developer's obligations under this Agreement, unless Developer's act or omission constitutes fraud against Owner, gross negligence, willful misconduct, or a material breach of this Agreement. This Release and Indemnity includes any and all Claims Arising From the conversion of the Project from a for rent apartment project to a for-sale project involving condominium, co-op, or other form of common interest ownership, whether by Owner or any other subsequent owner of the Project. Owner shall give notice of the provisions of this **Section 7.3** to each subsequent owner of the Project and all subsequent owners will be bound by the provisions of this **Section 7.3**.

Section 7.4. Scope of Indemnities and Releases.

The Indemnities and Releases in this Agreement (a) are independent of, and will not be limited by each other or any insurance obligations in this Agreement (whether or not complied with), (b) become enforceable on the date this Agreement becomes effective, (c) **ARE NOT LIMITED BY DAMAGES PAID OR ANY "ONE-ACTION" RULE UNDER WORKERS' COMPENSATION OR SIMILAR EMPLOYEE BENEFIT ACTS OR ANY PROHIBITION AGAINST THE RIGHT OF CONTRIBUTION FROM JOINT TORTFEASORS UNDER COMPARATIVE NEGLIGENCE STATUTES**, and (d) survive the expiration or earlier termination of this Agreement until all related Claims are fully and finally barred by applicable law.

Section 7.5. Releases of Subrogation.

Each party Releases all Claims that arise, or may arise, in its favor against the other party, or anyone claiming through or under them, by way of subrogation or otherwise for all Injuries to its property, which Injuries are covered or coverable by the insurance policies that each party is required to carry under this Agreement, whether or not either party carries its required insurance. These Releases are in addition to, and not in limitation of, any other Release in this Agreement with respect to any loss or damage to property of the parties. **NO RELEASE CONTAINED IN THIS AGREEMENT WITH RESPECT TO PROPERTY DAMAGE WILL BE AFFECTED BY THE ACTIVE OR PASSIVE ORDINARY NEGLIGENCE OR SOLE, JOINT, CONCURRENT, OR COMPARATIVE ORDINARY NEGLIGENCE OF THE BENEFICIARY THEREOF, WHETHER OR NOT LIABILITY WITHOUT FAULT OR STRICT LIABILITY IS IMPOSED OR SOUGHT TO BE IMPOSED ON THE BENEFICIARY.** This **Section 7.5** may not be construed to require either party to Release a Claim for property damage against the other party that arose out of the gross negligence or willful misconduct of the other party. Since these mutual releases preclude the assignment of any claim by way of subrogation (or otherwise) to an insurance company (or any other person), each party shall, if necessary, immediately give each insurance company issuing its property policies written notice of the terms of these mutual Releases, and have the insurance policies properly endorsed, if

necessary, to prevent the invalidation of the insurance coverages by reason of these Releases. Developer and Owner intend and agree that the risk of loss or damage to property will be borne by the parties' respective insurance carriers. Each party shall look solely to, and seek recovery only from, its respective insurance carriers if a loss occurs for which property insurance is carried or is required under this Agreement.

Section 7.6. Releases of Consequential Damages.

Except in connection with third party claims covered by the indemnity provisions of this **Article 7**, neither Developer nor Owner will be liable to the other party for any lost profits or special, incidental, punitive, exemplary, or consequential damages in connection with this Agreement.

Section 7.7. Survival.

The provisions of this **Article 7** survive the expiration or earlier termination of this Agreement.

ARTICLE 8.

INSURANCE

Section 8.1. Owner's Insurance.

During the Term, Owner shall cause insurance coverages to be maintained for Owner in accordance with the applicable requirements of the Insurance Program. Such coverages will be commercially reasonable in all material respects, and will be consistent with the requirements of any applicable lenders or third party capital providers involved in financing the Project (pursuant to and in accordance with the applicable provisions of the loan or investment documents executed between such parties and Owner or Owner's applicable affiliates).

Section 8.2. Developer's Insurance.

During the Term, Developer shall cause insurance coverages to be maintained for Developer in accordance with the applicable requirements of the Insurance Program. Such coverages will be commercially reasonable in all material respects, and will be consistent with the requirements of any applicable lenders or third party capital providers involved in financing the Project (pursuant to and in accordance with the applicable provisions of the loan or investment documents executed between such parties and Owner or Owner's applicable affiliates).

Section 8.3. Evidence of Insurance; Cost of Insurance.

On the Effective Date of this Agreement and annually thereafter, Developer and Owner, respectively, shall each provide to the other party certificates of insurance or other proof evidencing its insurance coverage as required under this **Article 8**. Developer's expenses in fulfilling the requirements of this **Article 8** will not be reimbursed by Owner.

ARTICLE 9.

DEFAULT AND TERMINATION

Section 9.1. Events of Default.

The occurrence of any one or more of the following events is an event of default (**Event of Default**):

- 9.1.1 the breach, default, or noncompliance in any material respect by a party hereto (the **Defaulting Party**) with any covenants, obligations, or agreements to be performed by the party under this Agreement followed by detailed notice of such breach, default, or noncompliance from the other party (**Non-defaulting Party**) and failure of the Defaulting Party to remedy or correct the breach, default, or noncompliance within 10 days after receipt of such notice; but, if the breach, default, or noncompliance is other than payment of money and is also of a nature that it cannot reasonably be cured within the 10 day period, then the Defaulting Party will not be considered to be in default, and an Event of Default will not be deemed to occur, if the Defaulting Party commences the curing of the default within the 10 day period, pursues the completion thereof with diligence and continuity, and completes the cure within 90 days after receipt of the notice of default; or
- 9.1.2 if a party (i) is dissolved; (ii) applies for or consents to the appointment of a receiver, trustee or liquidator of all or a substantial part of its assets; (iii) files a voluntary petition in bankruptcy or otherwise voluntarily avails itself of any federal or state laws for the relief of debtors; (iv) admits in writing its inability to pay its debts as they become due; (v) makes a general assignment for the benefit of creditors; (vi) does not have dismissed within 90 days after filing, a petition seeking the involuntary declaration or adjudication of such party as a bankrupt or insolvent or seeking a receiver be appointed for all or a substantial part of its assets; or (vii) is the subject of an order, judgment, or decree entered by any court of competent jurisdiction, on the application of any one or more creditors of such party, adjudicating it a bankrupt or insolvent or approving a petition seeking reorganization or appointing a receiver, trustee, or liquidator of all or a substantial part of its assets, and such order, judgment, or decree shall become final.

Section 9.2. Termination for Cause.

If an Event of Default occurs under **Section 9.1** and is not cured, then this Agreement will terminate at the election of the Non-defaulting Party. Notice of termination pursuant to this **Article 9** may be given by the Non-defaulting Party at any time prior to the curing of the Event of Default, and the termination will be effective as of the date specified in the notice of termination, which date may not be less than 30 days or more than 60 days after the date of the notice.

Section 9.3. Developer's Termination for Convenience.

This Agreement may be terminated at any time, without cause, by Developer by providing Owner notice at least 30 days prior to the effective date of the termination.

Section 9.4. Effect of Termination or Expiration.

Owner's appointment of Developer terminates upon the termination or expiration of this Agreement. The termination or expiration of this Agreement for any reason will not affect any right, obligation, or liability that accrues under this Agreement prior to the effective date of such termination or expiration, including without limitation, any earned but unpaid fees.

Section 9.5. Books and Records upon Expiration or Termination.

Upon the expiration or upon any earlier, valid termination of this Agreement, Developer, as directed by Owner, will promptly deliver all documents, files, books, papers, and accounts relating to the Project (the **Records**) to Owner or Owner's designee at Owner's sole expense. Developer may, at its expense, make and maintain copies of the Records for its files.

Section 9.6. Duty of Cooperation.

Upon the expiration or any earlier, valid termination of this Agreement, Developer will cooperate with Owner for up to 30 days thereafter to effect an efficient and smooth transition of responsibility with respect to the Project.

Section 9.7. Waiver.

Acceptance by either party of any payment made by the other party does not constitute a waiver of the right of the recipient to contest whether or not the full amount due was paid nor a waiver of any other rights under this Agreement. Failure by either party to complain of any action, nonaction, noncompliance, default, or Event of Default of the other party does not constitute a waiver of any rights under this Agreement, nor does the waiver of any right occasioned by a default or Event of Default in any one or more instances constitute a waiver of any right occasioned by either a subsequent default or Event of Default of the same obligation or occasioned by any other default or Event of Default.

ARTICLE 10.

MISCELLANEOUS

Section 10.1. Entire Agreement; Modification.

This Agreement and all Exhibits attached hereto constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith. No covenant, representation, or condition not expressed in this Agreement affects (or is effective to interpret, change, or restrict) the express provisions of this Agreement. No change or modification of, or waiver under, this Agreement is valid unless it is in writing and signed by duly authorized representatives of Owner and Developer.

Section 10.2. Headings.

The Article and Section headings in this Agreement are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

Section 10.3. Governing Law.

This Agreement is governed by the laws of the state where the Project is located, without regard to choice of law provisions.

Section 10.4. Legal Costs.

If a dispute arises out of or concerning the terms of this Agreement, then the prevailing party in the dispute is entitled to recover its reasonable Legal Costs, whether at the trial or appellate level.

Section 10.5. Third Party Beneficiaries.

None of the provisions of this Agreement are for the benefit of or are enforceable by any party other than the parties to this Agreement.

Section 10.6. Binding Effect.

This Agreement and all of its terms and provisions is binding upon and inures to the benefit of the parties and their successors and assigns.

Section 10.7. Notices.

All notices, demands, requests, approvals, or other communications required or permitted under this Agreement must be in writing and, unless personal delivery is effected earlier, will be deemed delivered:

- 10.7.1 three business days after deposit in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, on a business day; or

- 10.7.2 one business day after delivery to any nationally-recognized overnight delivery service on a business day during business hours for prepaid delivery on the next business day; or
- 10.7.3 on the business day sent by e-mail prior to 3:00 p.m., Dallas, Texas time, with a confirming copy being sent by one of the other specified methods on the same business day;

in each case addressed as follows:

If to Owner to:

c/o JPI Companies
600 E. Las Colinas Blvd.
Suite 1800
Irving, Texas 75039
Attn: Payton Mayes
E-mail: payton.mayes@jpi.com

with a copy to:

c/o JPI Companies
600 E. Las Colinas Blvd.
Suite 1800
Irving, Texas 75039
Attn: Legal Department
Email: legal@jpi.com

and if to Developer to:

JPI Multifamily Development, LLC
600 E. Las Colinas Blvd.
Suite 1800
Irving, Texas 75039
Attn: Payton Mayes
E-mail: payton.mayes@jpi.com

with a copy to:

c/o JPI Companies
600 E. Las Colinas Blvd.
Suite 1800
Irving, Texas 75039
Attn: Legal Department
Email: legal@jpi.com

Any party may change its address and specify as its address for the purposes hereof any other address in the continental United States of America by giving the other party at least 15 days' notice. Notices given by counsel for any party are effective as notice given by the party.

Section 10.8. Severability.

If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties will be relieved of all obligations arising under the provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement will be deemed amended by modifying the provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

Section 10.9. Performance.

Time is of the essence in the performance of all duties, covenants and obligations hereunder.

Section 10.10. Exhibits.

All Exhibits attached to this Agreement are incorporated herein by reference.

Section 10.11. Relationship of Parties.

The relationship of Developer to Owner is that of an independent contractor only. Nothing in this Agreement, whether express or implied, nor any acts by Developer or Owner, nor any other circumstances may be construed to establish Developer as an agent or partner of Owner or to create a partnership or joint venture, or any general agency or fiduciary relationship, between Owner and Developer. Developer has no authority to bind or otherwise obligate Owner except as specified in this Agreement. Developer shall take reasonable steps in dealing with third parties to negate any inference that Developer is an agent or partner of Owner.

Section 10.12. Survival.

Any provisions that by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of this Agreement will, in fact, survive.

Section 10.13. Successors and Assigns.

Except as provided in the following sentence, Developer may not directly or indirectly assign or transfer, or permit the direct or indirect assignment or transfer of, this Agreement, any rights or benefits under this Agreement, or any interest in Developer without the prior written approval of Owner, which approval may be granted or withheld in Owner's discretion. Notwithstanding the preceding sentence, (i) Developer may make or permit a direct assignment or transfer if the assignee or transferee is controlled, directly or indirectly, by TDI Consolidated LLC, its successor or assigns (**TDI**) or BRB Consolidated LLC, its successor or assigns (**BRB**), and (ii) Developer may make or permit an indirect assignment or transfer if, after giving effect to the assignment or transfer, Developer is controlled, directly or indirectly, by TDI or BRB. Nothing in this Agreement restricts, or requires Owner's consent to, the pledge of an interest in TDI or BRB, or in any entity that has an ownership interest in TDI or BRB, to secure one or more extensions of credit.

Section 10.14. WAIVER OF JURY TRIAL.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION BETWEEN OR AMONG THE PARTIES OR ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE PROJECT. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. THIS WAIVER SURVIVES THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

Section 10.15. CONSENT TO MEDIATION AND ARBITRATION.

IN THE EVENT OF ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR A BREACH THEREOF, THE PARTIES HERETO SHALL FIRST ATTEMPT TO SETTLE THE DISPUTE BY MEDIATION, ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS CONSTRUCTION MEDIATION RULES. IF SETTLEMENT IS NOT REACHED WITHIN SIXTY DAYS AFTER SERVICE OF A WRITTEN DEMAND FOR MEDIATION, ANY UNRESOLVED CONTROVERSY OR CLAIM SHALL BE SETTLED BY ARBITRATION ADMINISTERED BY THE AMERICAN ARBITRATION ASSOCIATION UNDER ITS CONSTRUCTION ARBITRATION PROCEDURES. THE NUMBER OF ARBITRATORS SHALL BE ONE (1). THE PLACE OF ARBITRATION SHALL BE DALLAS COUNTY, TEXAS. LAWS OF THE STATE OF TEXAS SHALL APPLY. JUDGMENT ON THE AWARD RENDERED BY THE ARBITRATOR(S) MAY BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF.

Section 10.16. Limitation of Recourse.

There is no liability under this Agreement of, nor any recourse under this Agreement to, any officer, director, shareholder, beneficial owner, partner, employee, or agent of either party to this Agreement.

Section 10.17. Legal Services.

Developer is not required to perform legal services for Owner. Whenever the services of an attorney are useful or necessary in order for Developer to perform the Developer Services, Developer, at Owner's expense, shall use counsel designated or approved by Owner.

Section 10.18. Counterparts.

This Agreement may be executed in one or more counterparts with the same effect as if all signing parties had signed the same document. All counterparts will be construed together and constitute the same instrument. In making proof of this Agreement, it will not be necessary to account for more than one counterpart executed by the party against whom enforcement is sought. Each party is authorized to substitute a counterpart original signature page into their respective document.

Section 10.19. Other Activities by Developer.

Nothing in this Agreement limits or restricts in any manner Developer's right to provide services similar to the Developer Services to owners and operators of other projects similar to the Project or to conduct any other businesses of any kind.

Section 10.20. Ownership and Use of Contract Documents.

The plans and specifications and other documents, including those in electronic form, prepared on behalf of Owner, Architect, or any others shall, unless otherwise agreed to by Owner, be works for hire owned by Owner. Developer shall not own or claim a copyright in the plans and specifications and other documents prepared on behalf of Owner or any others.

[Signature page follows.]

EXECUTED as of the date and year first above written.

OWNER:

JEFFERSON VILLAGES OF WATERS CREEK,
LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

DEVELOPER:

JPI MULTIFAMILY DEVELOPMENT, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A
LEGAL DESCRIPTION OF THE LAND

Jefferson Villages of Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, TX 75039

[], 2022

APFC Waters Creek Development, LLC
120 W 7th Street
P.O. Box 776
Anna, Texas 75409
Attention: Jim Proce, City Manager
Email: jproce@annatexas.gov

Re: Jefferson Villages at Waters Creek Project – Co-Developer Fee Letter

Gentlemen:

Reference is hereby made to (i) that certain Operating Agreement of Jefferson Villages of Waters Creek, LLC, dated as of the date hereof (as amended or restated from time to time, the “**Operating Agreement**”), by and between Jefferson Villages of Waters Creek Holdings, LLC, a Delaware limited liability company (the “**Managing Member**”), and APFC Waters Creek Member, LLC, a Texas limited liability company (in such capacity, the “**Special Member**”), (ii) that certain Lease Agreement, dated as of the date hereof (as amended or restated from time to time, the “**Ground Lease**”), by and between APFC Waters Creek Member, LLC, a Texas limited liability company (in such capacity, the “**Landlord**”), and Jefferson Villages of Waters Creek, LLC, a Delaware limited liability company (the “**Tenant**”), and (iii) that certain Development Management Agreement, dated as of the date hereof (as amended or restated from time to time, the “**Development Agreement**”), by and between the Tenant and JPI Multifamily Development, LLC, a Texas limited liability company and an affiliate of the Managing Member (the “**Developer**”). The foregoing agreements relate to the development and construction of a multi-family, residential apartment project in Anna, Texas, generally consisting of approximately 325 apartment units, and related improvements, amenities and appurtenances, to be known initially as “Jefferson Villages at Waters Creek” (the “**Project**”). Capitalized terms used in this letter agreement and not otherwise defined herein will have the same meanings given to them in the Development Agreement.

Pursuant to the Development Agreement, the Tenant has agreed to pay to the Developer, among other things, a development fee equal to 5.0% of the total construction costs for the Project (including, without limitation, the Cost of the Work under the Construction Management Agreement, fees for permits and licenses and insurance costs) (collectively, the “**Developer’s Fee**”).

In consideration for certain development assistance to be provided from time to time by APFC Waters Creek Development, LLC, a Texas limited liability company and an affiliate of the Special Member and the Landlord (the “**Co-Developer**”) to the Tenant (at the Tenant’s reasonable request from time to time), the Tenant shall pay to the Co-Developer a one-time development fee on the date hereof equal to \$_____ (the “**Co-Developer’s Fee**”). [NOTE: Insert an amount equal to 20% of the pro forma Developer’s Fee.] The Co-Developer’s Fee is the fee described in Section 3.5(b) of the Operating Agreement. The Co-Developer’s Fee will be paid by the Tenant to the Co-Developer on the date hereof via check or wire transfer pursuant to wire transfer instructions provided by the Co-Developer to the Tenant. For the avoidance of doubt, the Co-Developer’s Fee payable to the Co-Developer will be in addition to the Developer’s Fee payable to Developer pursuant to the Development Agreement.

This letter agreement constitutes the full and complete agreement between the parties hereto regarding the subject matter hereof and supersedes all prior written agreements and all prior and contemporaneous oral agreements and understandings between the parties. No provision of this letter agreement may be varied or waived

except pursuant to a written instrument executed by the parties hereto and expressly citing this letter agreement.

Should any party hereto employ an attorney for the purpose of enforcing or construing this letter agreement, or any judgment based on this letter agreement, in any legal proceeding whatsoever, including insolvency, bankruptcy, arbitration, declaratory relief or other litigation, the prevailing party shall be entitled to receive from the other party or parties thereto reimbursement for all reasonable attorneys' fees and all costs, including but not limited to service of process, filing fees, court and court reporter costs, investigative costs, expert witness fees and the cost of any bonds, whether taxable or not, and such reimbursement shall be included in any judgment, decree or final order issued in that proceeding. The "prevailing party" means the party in whose favor a judgment, decree, or final order is rendered.

This letter agreement shall be construed and enforced in accordance with the laws of the State of Texas. Neither party may assign its rights or obligations under this letter agreement.

This letter agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument. Delivery of an executed counterpart signature page to this letter agreement, or executed signature page(s) to this letter agreement, may be effected by facsimile, electronic mail, or other means of electronic transmission. Any such counterpart or signature page delivered by electronic transmission shall be deemed to be an original for all purposes, and copies of this letter agreement containing one or more signature pages that have been delivered by electronic transmission shall constitute enforceable original documents.

[Signatures are on following page.]

Sincerely,

JEFFERSON VILLAGES OF WATERS CREEK, LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

AGREED AND ACCEPTED:

APFC WATERS CREEK DEVELOPMENT, LLC,
a Texas limited liability company

By: Anna Public Facility Corporation,
a Texas public facility corporation,
its sole member

By: _____
Name: Stan Carver II
Title: President

CONSTRUCTION MANAGEMENT AGREEMENT

BETWEEN

JEFFERSON VILLAGES OF WATERS CREEK, LLC

AND

APFC WATERS CREEK CONTRACTOR, LLC

TABLE OF CONTENTS

	<u>Page</u>
<u>ARTICLE 1. DEFINITIONS</u>	1
<u>Section 1.1. Definitions.</u>	1
<u>ARTICLE 2. THE CONTRACT DOCUMENTS</u>	5
<u>Section 2.1. The Contract Documents.</u>	5
<u>Section 2.2. Conflicts in Contract Documents.</u>	5
<u>ARTICLE 3. THE WORK</u>	6
<u>Section 3.1. General Covenants.</u>	6
<u>Section 3.2. General Description of the Work.</u>	6
<u>ARTICLE 4. CONTRACTOR'S DUTIES</u>	6
<u>Section 4.1. Contractor's Duties.</u>	6
<u>Section 4.2. Shop Drawings.</u>	6
<u>Section 4.3. Design Review.</u>	6
<u>ARTICLE 5. TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION</u>	7
<u>Section 5.1. Commencement and Completion Dates.</u>	7
<u>Section 5.2. Time.</u>	7
<u>ARTICLE 6. COST OF THE WORK, GUARANTEED MAXIMUM COST AND SAVINGS</u>	7
<u>Section 6.1. Payment of Cost of the Work.</u>	7
<u>Section 6.2. Guaranteed Maximum Cost.</u>	7
<u>Section 6.3. Excess Costs.</u>	8
<u>Section 6.4. Savings.</u>	8
<u>ARTICLE 7. CONTRACTOR'S FEE</u>	8
<u>Section 7.1. Contractor's Fee.</u>	8
<u>Section 7.2. Increases for Changes in the Work.</u>	8
<u>ARTICLE 8. CHANGES IN THE WORK</u>	8
<u>Section 8.1. Owner's Right to Make Changes in the Work.</u>	8
<u>Section 8.2. Increase in Contractor's Fee for Changes in the Work and Costs in Excess of Allowances.</u>	8
<u>Section 8.3. Calculation of Increases Due to Changes in the Work.</u>	9
<u>Adjustment(s) to GMC shall be made consistent with each of the above.</u>	9
<u>Section 8.4. Changes in Construction Schedule.</u>	9
<u>Section 8.5. Contractor's Reimbursable Conditions Costs.</u>	9
<u>Section 8.6. Adverse Events with Materials.</u>	9

<u>ARTICLE 9. COSTS TO BE REIMBURSED</u>	10
<u>Section 9.1. Cost of the Work Defined</u>	10
<u>ARTICLE 10. COSTS NOT TO BE REIMBURSED</u>	12
<u>Section 10.1. Specific Exclusion of Other Costs</u>	12
<u>ARTICLE 11. DISCOUNTS, REBATES AND REFUNDS</u>	12
<u>Section 11.1. Owner's Right to Discounts</u>	12
<u>ARTICLE 12. SUBCONTRACTS AND OTHER AGREEMENTS</u>	13
<u>Section 12.1. Letting Subcontracts</u>	13
<u>Section 12.2. Conformity of Subcontracts</u>	13
<u>Section 12.3. Use of Unit Prices</u>	13
<u>Section 12.4. Assignment of Subcontracts</u>	13
<u>ARTICLE 13. ACCOUNTING RECORDS</u>	13
<u>Section 13.1. Record Keeping and Owner's Access</u>	13
<u>ARTICLE 14. PAYMENT OF GUARANTEED MAXIMUM COST</u>	14
<u>Section 14.1. Requests for Payment</u>	14
<u>Section 14.2. Retainage</u>	15
<u>Section 14.3. Purchase of Materials</u>	15
<u>Section 14.4. Lien Waivers</u>	15
<u>Section 14.5. Lien Disputes</u>	15
<u>Section 14.6. Processing Requests for Payment</u>	16
<u>Section 14.7. Final Completion and Final Payment</u>	16
<u>Section 14.8. Final Lien Waivers</u>	16
<u>Section 14.9. Interest on Funds Properly Withheld</u>	17
<u>Section 14.10. Interest on Funds Improperly Withheld</u>	17
<u>Section 14.11. Owner's Right to Withhold Payment</u>	17
<u>Section 14.12. Application of Funds Disbursed to Contractor</u>	17
<u>Section 14.13. Subordination to Senior Lender</u>	17
<u>Section 14.14. Covenant to Pay Bills</u>	18
<u>Section 14.15. Owner's Failure to Make Payment</u>	18
<u>Section 14.16. Delay in Final Completion</u>	18
<u>ARTICLE 15. DEFAULTS BY CONTRACTOR AND TERMINATION BY OWNER</u>	18
<u>Section 15.1. Defaults</u>	18
<u>Section 15.2. Notice and Cure; Owner's Remedies</u>	19
<u>Section 15.3. Remedies Exclusive</u>	19

<u>Section 15.4.</u>	<u>Termination of Payments; Reimbursement of Sums in Excess of Guaranteed Maximum Cost.</u>	19
<u>Section 15.5.</u>	<u>Assumption of Obligations.</u>	20
<u>Section 15.6.</u>	<u>Possession of Materials.</u>	20
<u>Section 15.7.</u>	<u>Continuation of Warranties.</u>	20
<u>ARTICLE 16. DEFAULT BY OWNER</u>		20
<u>Section 16.1.</u>	<u>Default by Owner; Contractor's Remedies.</u>	20
<u>Section 16.2.</u>	<u>Termination by Contractor.</u>	21
<u>Section 16.3.</u>	<u>No Liability After Termination.</u>	21
<u>ARTICLE 17. MISCELLANEOUS PROVISIONS</u>		21
<u>Section 17.1.</u>	<u>Definitions.</u>	21
<u>Section 17.2.</u>	<u>Enumeration of Contract Documents.</u>	21
<u>Section 17.3.</u>	<u>Independent Contractor.</u>	22
<u>Section 17.4.</u>	<u>Inspections of the Work.</u>	22
<u>Section 17.5.</u>	<u>Lenders' Inspections of the Work.</u>	22
<u>Section 17.6.</u>	<u>Inspection Not a Waiver.</u>	22
<u>Section 17.7.</u>	<u>Entire Agreement; Modification.</u>	22
<u>Section 17.8.</u>	<u>Headings.</u>	22
<u>Section 17.9.</u>	<u>Governing Law.</u>	22
<u>Section 17.10.</u>	<u>Legal Costs.</u>	22
<u>Section 17.11.</u>	<u>Third Party Beneficiaries.</u>	23
<u>Section 17.12.</u>	<u>Binding Effect.</u>	23
<u>Section 17.13.</u>	<u>Notices.</u>	23
<u>Section 17.14.</u>	<u>Severability.</u>	24
<u>Section 17.15.</u>	<u>Performance.</u>	24
<u>Section 17.16.</u>	<u>Exhibits.</u>	24
<u>Section 17.17.</u>	<u>Relationship of Parties.</u>	24
<u>Section 17.18.</u>	<u>Survival.</u>	25
<u>Section 17.19.</u>	<u>Successors and Assigns.</u>	25
<u>Section 17.20.</u>	<u>MEDIATION AND ARBITRATION; WAIVER OF JURY TRIAL.</u>	25
<u>Section 17.21.</u>	<u>Limitation of Recourse.</u>	25
<u>Section 17.22.</u>	<u>Counterparts.</u>	25
<u>Section 17.23.</u>	<u>Compliance with Applicable Laws.</u>	26
<u>Section 17.24.</u>	<u>Contractor's Ability.</u>	26
<u>Section 17.25.</u>	<u>Waivers.</u>	26

Section 17.26.	Ownership and Use of Contract Documents	26
--------------------------------	---	----

<u>EXHIBIT A</u>	-	ALLOWANCES
<u>EXHIBIT B</u>	-	CONTRACT CLARIFICATIONS
<u>EXHIBIT C</u>	-	SCHEDULE OF VALUES
<u>EXHIBIT D</u>	-	LEGAL DESCRIPTION OF THE LAND
<u>EXHIBIT E</u>	-	LIST OF DRAWINGS AND SPECIFICATIONS
<u>EXHIBIT F</u>	-	CONSTRUCTION SCHEDULE (WITH WEATHER MATRIX)
<u>EXHIBIT G</u>	-	GMC BUDGET
<u>EXHIBIT H</u>	-	GENERAL CONDITIONS

CONSTRUCTION MANAGEMENT AGREEMENT
FOR
JEFFERSON VILLAGES OF WATERS CREEK
COST OF THE WORK PLUS A FEE
WITH A GUARANTEED MAXIMUM COST

THIS CONSTRUCTION MANAGEMENT AGREEMENT (this **Agreement**) is made as of _____, 2022, between JEFFERSON VILLAGES OF WATERS CREEK, LLC, a Delaware limited liability company (**Owner**), and **APFC WATERS CREEK CONTRACTOR, LLC**, a Texas limited liability company (**Contractor**).

RECITALS:

- A. Owner wants to retain Contractor to perform the Work (defined below) with respect to the Project (defined below) described in this Agreement, consistent with and upon the terms and conditions set forth below; and
- B. Contractor wants to accept the Owner's engagement.

AGREEMENT:

Contractor and Owner agree as follows:

ARTICLE 1.

DEFINITIONS

Section 1.1. Definitions.

The following terms have the following meanings whenever and wherever used in this Agreement:

Adverse Weather Delay has the meaning ascribed to it in Subsection 4.2.6.2 of the General Conditions.

Agreement means this Construction Management Agreement.

Allowance means estimated sums for particular segments of the Work and specific material or equipment, the cost of which cannot be accurately determined as of the execution of this Agreement. Costs subject to an Allowance will be adjusted after the costs are ascertained as provided in Section 3.7 of the General Conditions.

Architect means the firm of OMNIPLAN, or any replacement Architect selected by Owner.

Change Directive has the meaning ascribed to it in Section 6.3.1 of the General Conditions.

Change Order has the meaning ascribed to it in Section 6.2.1 of the General Conditions.

Changes in the Work has the meaning ascribed to it in **Section 8.1** of this Agreement.

Compensable Time Extension means a time extension for which Contractor is entitled to compensation for delays in construction under the Contract.

Construction Documents means complete and coordinated Drawings and Specifications and other design documents necessary for the performance of the Work.

Construction Oversight Fee means the amount specified in **Section 7.1** of this Agreement.

Construction Schedule means the schedule, together with all authorized adjustments thereto, attached as **Exhibit F** to this Agreement, including the Weather Matrix that is part of **Exhibit F**.

Contract means the agreement evidenced by the Contract Documents.

Contract Clarifications means the clarifications to the scope of the Work, if any, attached as **Exhibit B** to this Agreement.

Contract Documents means this Agreement, the General Conditions, the Drawings, the Specifications, and the Exhibits to this Agreement, and all Modifications and addenda issued after the date hereof.

Contract Sum means the sum of the Cost of the Work plus the Contractor's Fee.

Contract Time means the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

Contractor's Fee means the amount specified in **Section 7.1** of this Agreement.

Contractor's Reimbursable Conditions means the general conditions that are Costs of the Work identified in **Section 9.1.12** of this Agreement.

Cost of the Work has the meaning ascribed to it in **Section 9.1** of this Agreement.

Day means calendar day unless otherwise specified. Business days are all weekdays except Holidays.

Developer means JPI Multifamily Development, LLC, or its successors and assigns.

Drawings means the graphic and pictorial portions of the Construction Documents, wherever located and whenever issued, showing the design, location, and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams, as enumerated on **Exhibit E** attached to this Agreement.

Final Completion has the meaning ascribed to it in **Section 14.7** of this Agreement.

Final Payment has the meaning ascribed to it in **Section 14.7** of this Agreement.

Final Request For Payment has the meaning ascribed to it in **Section 14.7** of this Agreement.

Force Majeure Events means acts of God or acts of nature, Adverse Weather Delays, shortages of labor, shortages or slow deliveries of materials, volatile commodity prices (e.g., steel, lumber, concrete), wars, strikes, riots, terrorist acts, casualty damage, a pandemic, and other causes beyond Contractor's reasonable control (including, without limitation, uncontrollable public utility and jurisdictional approvals). Notwithstanding the foregoing, Contractor and Owner agree that the outbreak of the Coronavirus (COVID-19), which was identified by the World Health Organization as a Public Health Emergency of International Concern on January 30, 2020 (the **COVID-19 Outbreak**), shall be considered a Force Majeure Event for such period that the COVID-19 Outbreak (including disruptions in the supply of labor or materials, governmental proclamations, regulations, restrictions or closures or other effects occurring or arising after the date hereof and related to the COVID 19 Outbreak) delays the Work or receipt of any government approval.

General Conditions means the General Conditions for Construction Management Agreement attached as **Exhibit H** to this Agreement.

GMC Budget means the budget attached as **Exhibit G** to this Agreement.

Guaranteed Maximum Cost or **GMC** means the amount designated in **Section 6.2** of this Agreement, including authorized adjustments, as the total amount payable by Owner to Contractor for performance of the Work under the Contract Documents.

Hazardous Materials has the meaning ascribed to it in Subsection 9.1.11 of the General Conditions.

Holiday any weekday on which national banks or official county offices in the State and County in which the Project is located are authorized or required to be closed, along with the Friday following Thanksgiving Day.

Improvements means the apartment complex, related facilities, and infrastructure as described in the Drawings and Specifications.

Independent Consultant means the architect or engineer employed by Senior Lender, if any.

Interim Completion Dates means those dates specified in the Construction Schedule for completion of portions of the Work.

Land means the real property more particularly described on **Exhibit D** attached to this Agreement.

Lease Agreement means the Lease Agreement dated or to be dated on or about the date of this Agreement, between the Owner and APFC Waters Creek Member, LLC, a Texas limited liability company, in its capacity as landlord, as the same may be amended from time to time.

Legal Costs has the meaning ascribed to it in Subsection 3.17.1.7 of the General Conditions.

Materials means any and all materials, supplies, apparatus, appliances, equipment, fixtures, tools, implements, and other facilities necessary or desirable in connection with the construction, equipping of, or for inclusion or incorporation in, the Improvements.

Modification means a written amendment to the Contract signed by Owner and Contractor, a Change Order, or a Change Directive.

Notice to Proceed means the written notice delivered to Contractor by Owner directing Contractor to proceed with the Work.

Operating Agreement means that certain Operating Agreement of Owner by and between Jefferson Villages of Waters Creek Holdings, LLC, and APFC Waters Creek Member, LLC, dated of or about the same date as this Agreement.

Owner means the person or entity identified as such in the first paragraph of this Agreement (and, only for the purposes of administration of the Contract and any approvals required of or permitted by Owner, Developer).

Owner Delay has the meaning ascribed to it in Section 7.3 of the General Conditions.

Project means the total construction to be accomplished by the Work performed under the Contract Documents.

Project Manual means the volume assembled for the Work, which may include the bidding requirements, sample forms, Conditions of the Contract, and Specifications.

Request for Payment means a submittal by Contractor to Owner requesting payment for work performed.

Schedule of Values means the detailed schedule of values set forth on **Exhibit C** attached to this Agreement, which will serve as a basis for the progress payments to be made to Contractor.

Scheduled Completion Date means [REDACTED] months after the later of the date Owner's Notice to Proceed is actually received by Contractor or the date Contractor receives all required permits for the Work.

Senior Lender means Texas Capital Bank, N.A., its successors and assigns.

Services means any and all labor, supervision, transportation, utilities, storage, and other services necessary or desirable in connection with the construction of the Improvements.

Specifications means that portion of the Construction Documents consisting of the written requirements for materials, equipment, construction systems, standards, and workmanship for the Work and performance of related services, as enumerated on **Exhibit E** attached to this Agreement.

Subcontractor means JPI Construction, LLC, a Texas limited liability company, or a person or entity who has a direct contract with Contractor to perform a portion of the Work. The term Subcontractor is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term Subcontractor does not include a separate contractor or subcontractors of a separate contractor.

Substantial Completion has the meaning ascribed to it in Section 8.3.1 of the General Conditions.

Work means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by Contractor to fulfill Contractor's obligations under the Contract Documents.

ARTICLE 2.

THE CONTRACT DOCUMENTS

Section 2.1. The Contract Documents.

Unless specifically enumerated in this Agreement, the Contract Documents do not include other documents like bidding requirements, advertisements or invitations to bid, instructions to bidders, sample forms, Contractor's bid, or portions of addenda relating to bidding requirements. The Contract Documents form the Contract, and all are as fully a part of the Contract as if attached to this Agreement or repeated herein. An enumeration of the Contract Documents appears in Article 1 and **Section 17.2**.

Section 2.2. Conflicts in Contract Documents.

In resolving conflicts, if any, the following order of precedence of Contract Documents controls:

- 2.2.1. Change Orders, Change Directives, and any other Modifications, with later Modifications controlling over earlier Modifications.
- 2.2.2. Contract Clarifications attached as **Exhibit B**.
- 2.2.3. This Agreement.
- 2.2.4. Addenda issued prior to the execution of this Agreement, with the Addenda bearing the latest date taking precedence.
- 2.2.5. The Drawings, with stated measurements controlling over scaled measurements and large scaled plans controlling over smaller scaled plans.
- 2.2.6. The Specifications attached as **Exhibit E**.
- 2.2.7. Construction Schedule (with Weather Matrix) attached as **Exhibit F**.
- 2.2.8. General Conditions attached as **Exhibit H**.

Where any portion of the Contract Documents is silent and information appears elsewhere in the Contract Documents, the other portions of the Contract Documents control. If more than one standard applies in a given situation, the more stringent standard applies.

ARTICLE 3.

THE WORK

Section 3.1. General Covenants.

Contractor shall perform all Work required by the Contract Documents for the construction on the Land of the Improvements substantially as described in the Drawings and Specifications. Contractor shall provide and furnish, or cause to be provided or furnished, all Materials and Services as and when required in connection with the construction of the Improvements as reflected in the GMC Budget and the Contract Clarifications.

Section 3.2. General Description of the Work.

The Work consists generally (but without limitation) of the construction of an apartment complex and other facilities located in Anna, Texas, containing approximately 325 multifamily apartment units and approximately [REDACTED] parking stalls and related amenities, all as shown in the Drawings and Specifications.

ARTICLE 4.

CONTRACTOR'S DUTIES

Section 4.1. Contractor's Duties.

Contractor shall cooperate with the Independent Consultant and Developer in furthering the interests of Owner. Contractor shall use commercially reasonable efforts to perform its obligations under and satisfy the requirements of the Contract Documents, including furnishing efficient business administration and superintendence, furnishing at all times an adequate supply of Materials and Services, and performing the Work substantially in accordance with the Drawings and Specifications. Contractor shall prosecute the Work to completion in a diligent manner and in substantial accordance with the provisions of the Contract Documents (including the Scheduled Completion Date and Interim Completion Dates, if any), subject to Force Majeure Events and adjustments due to Changes in the Work.

Section 4.2. Shop Drawings.

As part of the Work and in accordance with Section 3.11 of the General Conditions, Contractor shall cause to be prepared, and shall review, all Shop Drawings prepared by Subcontractors and other parties required in the performance of Contractor's obligations hereunder.

Section 4.3. Design Review.

Contractor shall:

- 4.3.1. Review the architectural, civil, mechanical, electrical, hardscape, softscape, interior design, and structural plans and specifications as they are developed.

- 4.3.2. Advise and make recommendations with respect to factors like construction feasibility, possible economies, availability of Materials and Services, time requirements for procurement and construction, and cost estimates.
- 4.3.3. Advise and make recommendations with respect to any observed discrepancies between the information set forth in the Drawings and Specifications and the actual field conditions, and any observed errors or omissions in the Drawings and Specifications.
- 4.3.4. Assist in the coordination of all sections of the Drawings and Specifications, but without assuming any of Architect's or Owner's responsibilities for design.

ARTICLE 5.

TIME OF COMMENCEMENT AND SUBSTANTIAL COMPLETION

Section 5.1. Commencement and Completion Dates.

Contractor shall commence the Work within 10 days of the latter of the date of Contractor's actual receipt of (a) the Notice to Proceed and (b) the required permits. Subject to Force Majeure Events, Owner Delays, and adjustments to Contract Time due to Changes in the Work, Contractor shall perform the Work in accordance with the Construction Schedule and shall achieve Substantial Completion on or before the Scheduled Completion Date. The Contract Time will be adjusted as specified in **Section 8.4** of this Agreement and Subsection 4.2.6, Article 6, and Section 7.3 of the General Conditions.

Section 5.2. Time.

Time is of the essence in the completion of the Work.

ARTICLE 6.

COST OF THE WORK, GUARANTEED MAXIMUM COST AND SAVINGS

Section 6.1. Payment of Cost of the Work.

In consideration of the performance of the Work and all other obligations of Contractor hereunder, Owner shall pay Contractor for the Cost of the Work, which payment is in addition to the Contractor's Fee.

Section 6.2. Guaranteed Maximum Cost.

The Guaranteed Maximum Cost to Owner, including the Cost of the Work and the Contractor's Fee, will not exceed the sum of **[\$]**, but the Guaranteed Maximum Cost will be increased or decreased for Changes in the Work, Change Orders, Change Directives, and other Modifications as provided in **Article 8**, and will be increased for costs in excess of Allowances.

Section 6.3. Excess Costs.

If the Cost of the Work exceeds the GMC (as adjusted), then liability for and payment of the additional costs is the responsibility of Contractor, and Owner is not liable for same.

Section 6.4. Savings.

To the extent of any savings achieved under this Agreement, following Final Payment, 100% of such amount will run to the benefit of Contractor.

ARTICLE 7.

CONTRACTOR'S FEE

Section 7.1. Contractor's Fee.

In consideration of the performance of the Work, Owner shall pay Contractor a Contractor's Fee in an amount equal to 5.25% of the Cost of the Work as identified in the Request for Payment, but not less than [REDACTED]. The Contractor's Fee is payable at the office of Contractor at 600 E. Las Colinas Blvd, Suite 1800, Irving, Texas 75039, and is payable as follows: (i) 25.0% of the Contractor's Fee is payable upon the Effective Date, and (ii) the remainder of the Contractor's Fee is payable in monthly installments to Contractor based upon the percentage of construction of the improvements completed. Additionally, Owner shall pay to Contractor a Construction Oversight Fee equal to 1.0% of the Cost of the Work (excluding, among other things, the Contractor's Fee and the Construction Oversight Fee), payable as follows: (y) 50.0% of the Construction Oversight Fee on the Effective Date, and (z) 50.0% of the Construction Oversight Fee within 30 days following Substantial Completion.

Section 7.2. Increases for Changes in the Work.

For Changes in the Work or costs in excess of Allowances, the Contractor's Fee will be increased by 5.25% of the Cost of the Work for additive changes, but will not be decreased for deductive changes; **provided, however, there will be no increase for additive changes nor any decrease for deductive changes for the Construction Oversight Fee.**

ARTICLE 8.

CHANGES IN THE WORK

Section 8.1. Owner's Right to Make Changes in the Work.

Owner may make changes in the scope of the Work (**Changes in the Work**) as provided in the Contract Documents. Owner shall pay Contractor for Changes in the Work and costs in excess of Allowances on the basis of the Cost of the Work.

Section 8.2. Increase in Contractor's Fee for Changes in the Work and Costs in Excess of Allowances.

The Contractor's Fee will increase for Changes in the Work, Change Orders, Change Directives, other Modifications, and costs in excess of Allowances as provided below.

Section 8.3. Calculation of Increases Due to Changes in the Work.

For changes that affect the Cost of the Work or Contract Time or for costs in excess of Allowances, the following form will be used:

<u>ITEM</u>	<u>ADDITIVE CHANGES/EXCESS COSTS</u>	<u>DEDUCTIVE CHANGES</u>
Contractor labor	Amount	Amount
Contractor materials	Amount	Amount
Subcontractor	Amount	Amount
Equipment	Amount	Amount
Sub-Total	Amount	Amount

<u>ITEM</u>	<u>ADDITIVE CHANGES/EXCESS COSTS</u>	<u>DEDUCTIVE CHANGES</u>
Contractor's Fee	5.25% of Above	<u>No change</u>

Adjustment(s) to GMC shall be made consistent with each of the above.

Section 8.4. Changes in Construction Schedule.

If the Contract Time is affected by Changes in the Work or as specified in Section 7.3 of the General Conditions, Contractor shall set forth the increase or decrease therein and calculate the new construction time, and shall modify the Construction Schedule accordingly, subject to Owner's approval, which approval may not be unreasonably withheld, conditioned, or delayed.

Section 8.5. Contractor's Reimbursable Conditions Costs.

In calculating an adjustment to the GMC for a Change in the Work, any change relating to Contractor's Reimbursable Conditions and the costs related thereto or resulting therefrom (see **Section 9.1.12** below) shall be based upon a per diem cost reasonably determined by Contractor.

Section 8.6. Adverse Events with Materials.

If, during the performance of this Agreement, the price of any raw lumber, or lumber materials or lumber-related items, increases through no fault of Contractor, then the Cost of the Work and GMC shall be equitably adjusted by an amount reasonably necessary to cover any such price increases. As used herein, a price increase shall mean any increase in price experienced by Contractor, whether as to one item or type of material covered hereby or in the aggregate considering multiple materials or items, measured from the date of the initial bid to the date that Contractor must order material to meet all or any portion of the Construction Schedule. Such price increases shall be documented through quotes, invoices, or receipts, upon Owner's request. Furthermore, where the delivery of any material is delayed, through no fault of the Contractor, as a result of the shortage or unavailability of the material, Contractor shall not be liable for any additional costs or damages associated with such delay(s), and the Contract Time, Cost of the Work and GMC will be equitably increased as applicable to account for same.

ARTICLE 9.

COSTS TO BE REIMBURSED

Section 9.1. Cost of the Work Defined.

Cost of the Work means costs necessarily incurred in the proper performance of the Work and paid or payable by Contractor and, except with Owner's prior approval, which approval may not be unreasonably withheld, conditioned, or delayed, shall include those items set forth below in this **Article 9** (but specifically excluding any items listed in **Section 10.1** below).

- 9.1.1. Wages paid (including bulk reimbursement of such wages) for labor in the direct employ of Contractor in the performance of the Work.
- 9.1.2. Salaries (including bulk reimbursement of such salaries) of Contractor's personnel at or below the level of construction manager (or for any person performing the duties of a construction manager, in whatever capacity employed) when working on this Project, including performing audits, scheduling, safety audits, estimating, related administrative functions, quality control checks, bulk purchasing of materials, and expediting production or transportation of materials or equipment; but, if the personnel are not stationed on-site at this Project, then only an appropriate pro rata part of their salaries and related costs will be allocated to the Project.
- 9.1.3. Cost of contributions, assessments, or taxes incurred during the performance of the Work for items like unemployment compensation and social security, insofar as the cost is based on wages, salaries or other remuneration paid to employees of Contractor and included in the Cost of the Work under **Subsections 9.1.1** and **9.1.2**.
- 9.1.4. The portion of reasonable travel and subsistence expenses of Contractor's officers and employees incurred while traveling in discharge of duties connected with the Work.
- 9.1.5. Cost of all Materials and Services.
- 9.1.6. Payments made by Contractor to Subcontractors/vendors for Work performed under subcontracts/purchase orders and costs of personnel involved in auditing their work.
- 9.1.7. Cost, including transportation and maintenance, of all materials, supplies, equipment, temporary facilities, and tools not owned by the workers consumed in the performance of the Work.
- 9.1.8. Rental charges of all necessary machinery and equipment, exclusive of hand tools, used at the site of the Work, whether rented from Contractor (on an arm's-length basis) or third parties, including installation, minor repairs, and replacements, dismantling, removal, transportation, and delivery costs thereof, at rental charges consistent with those prevailing in the area.

- 9.1.9. Cost of premiums for all insurance that Contractor or Subcontractors are required by the Contract Documents to purchase and maintain.
- 9.1.10. All permits, fees, royalties, damages for infringement of patents, and costs of defending suits, bonds and lien release bonds, and deposits lost for causes other than Contractor's negligence.
- 9.1.11. Losses and expenses, not compensated by insurance or otherwise, sustained by Contractor in connection with the Work, except to the extent resulting from breach or default of Contractor or other acts for which indemnification by Contractor shall be required hereunder. However, no such losses and expenses will be included in the Cost of the Work for the purpose of determining the Contractor's Fee; but, if any loss requires reconstruction and Contractor agrees to perform the reconstruction, then Owner shall pay Contractor for its services a fee proportionate to that stated in **Section 7.1**.
- 9.1.12. Costs and expenses incurred by Contractor in operating and maintaining a field office or in supporting work from Contractor's main office, including, but not limited to, costs and expenses for office trailers, office furniture, weather station, air conditioners, computers, local and long distance telephone service, cell phones, radios, wireless communications, copiers, cameras, facsimile machines, office supplies, postage and courier fees, telephones, photocopying, Shop Drawing reproduction, Contract Document reproduction, clerical, documentary, correspondence, mobilization, job and safety signs, temporary sheds, temporary toilets, drinking water, ice, heat, pick-up trucks and fuel, safety programs and fire protection, first aid and safety equipment including hard hats and rain gear, and reasonable petty cash expenses at the field office.
- 9.1.13. Cost of removal of all debris caused by the Contractor and/or Subcontractors in the performance of the Work.
- 9.1.14. Costs incurred due to an emergency affecting the safety of persons or property. Costs incurred in response to safety inspection(s) by OSHA and the defense of any litigation arising from such inspection(s) and audits, provided such costs are not incurred due to the fault of Contractor.
- 9.1.15. Costs incurred by Contractor in repairing damage to any portion of the Work caused by Owner, its separate contractors, subcontractors, agents, and employees, the Independent Consultant, anyone directly or indirectly employed by them, and others for whom Owner is responsible.
- 9.1.16. Taxes under Section 3.5 of the General Conditions.
- 9.1.17. Other reasonable costs incurred in the performance of the Work, including legal fees and costs and expenses of litigation, arbitration, or claims arising out of the Work.
- 9.1.18. Pre-construction and pre-development costs and expenses incurred by Contractor for the Project that occurred prior to the date of this Agreement.

- 9.1.19. Costs and expenses incurred by Contractor in conducting soil testing, concrete testing, water control testing and all other costs and expenses related to any similar testing performed by Contractor at the Project.

ARTICLE 10.

COSTS NOT TO BE REIMBURSED

Section 10.1. Specific Exclusion of Other Costs.

Cost of the Work does not include any of the items set forth below in this **Article 10**, except as may be expressly included in **Article 8** or **Article 9**:

- 10.1.1. Salaries or other compensation of Contractor's personnel at Contractor's principal office and branch offices.
- 10.1.2. Expenses of Contractor's principal and branch offices other than the field office used for the Work.
- 10.1.3. Any part of Contractor's capital expenses, including interest on Contractor's capital employed for the Work.
- 10.1.4. Overhead or general expenses of any kind.
- 10.1.5. Costs of repairing or correcting damaged or nonconforming Work executed by the Contractor, to the extent (1) such damaged or nonconforming Work was caused by the negligence of, or failure to fulfill a specific responsibility by, the Contractor, or (2) the cost of repair or correction is recovered by Contractor from insurance, sureties, Subcontractors, suppliers, or others.
- 10.1.6. Costs in excess of the Guaranteed Maximum Cost, if any, as set forth in **Article 6** and adjusted under **Article 8** of this Agreement and Subsection 3.7.2.3 and Article 6 of the General Conditions.

ARTICLE 11.

DISCOUNTS, REBATES AND REFUNDS

Section 11.1. Owner's Right to Discounts.

All cash discounts, trade discounts, rebates, and refunds taken, and all returns from sale of surplus materials and equipment, accrue to Owner, and, if Owner makes sufficient funds available to obtain same, Contractor shall secure them.

ARTICLE 12.

SUBCONTRACTS AND OTHER AGREEMENTS

Section 12.1. Letting Subcontracts.

All portions of the Work that Contractor's organization does not perform will be performed under subcontracts or by other appropriate agreements with Contractor and for which Contractor remains responsible and fully liable to Owner. Contractor shall request bids from subcontractors and make the bids available for Owner's inspection. Upon request of Owner, Contractor will attempt to obtain and deliver to Owner bids for each portion of the Work having an estimated cost of \$100,000 or greater from at least three subcontractors.

Section 12.2. Conformity of Subcontracts.

All subcontracts and purchase orders must conform substantially to the requirements of the Contract Documents.

Section 12.3. Use of Unit Prices.

All subcontracts must, so far as practicable, contain unit prices and other feasible formulae for use in the determination of the cost of Changes in the Work.

Section 12.4. Assignment of Subcontracts.

All subcontracts entered into by Contractor must be assignable to Owner and lender, or to the successor contractor in the event of Contractor's removal from the Project, without recourse against Contractor except for retainage being held by Contractor (but not Owner) with respect to the subcontract.

ARTICLE 13.

ACCOUNTING RECORDS

Section 13.1. Record Keeping and Owner's Access.

Contractor shall check all materials, equipment and labor entering into the Work and keep accounts necessary for proper financial management under this Agreement, using a system reasonably satisfactory to Owner. Owner shall be afforded access during normal business hours and upon reasonable prior notice to Contractor's records, books, correspondence, instructions, drawings, receipts, vouchers, memoranda, and similar data relating to the Contract. Contractor shall preserve those records for a period of four (4) years, or for any longer period required by law, after the Final Payment.

ARTICLE 14.

PAYMENT OF GUARANTEED MAXIMUM COST

Section 14.1. Requests for Payment.

- 14.1.1. If the Schedule of Values is not attached to this Agreement upon execution, Contractor shall submit the Schedule of Values to Owner no later than with Contractor's first Request for Payment. This Schedule of Values, if not objected to by Owner in a detailed notice to Contractor given within ten (10) Business Days from the date of Owner's receipt of same, will be attached to this Agreement as **Exhibit C**. If Owner raises objections, the parties shall negotiate in good faith to reach an agreement on the Schedule of Values hereunder as soon as is reasonably practicable.
- 14.1.2. On or about the 10th business day prior to the 1st business day of each month during the performance of the Work, Contractor shall submit to Owner for its reasonable approval a Request for Payment on AIA Form G-702, which shall set forth those items for which payment is to be made pursuant to the Schedule of Values. All items set forth in the Schedule of Values are to be paid on a percentage of completion basis and Contractor will be paid for the percentage of the line items that are complete (less prior payments therefor) as verified by the Independent Consultant; provided, however, that any items which relate to the General Conditions as set forth on the Schedule of Values shall not be paid on a percentage of completion basis but rather on a straight line basis of such items for that month compared to the total General Conditions items for the Construction Schedule. Additionally, on or about the 10th business day prior to the 15th day of each month during the performance of the Work, Contractor may submit for approval a Request for Payment for labor performed on and material incorporated into the Project for framing (including lumber), grading, utilities, concrete, rough and finish carpentry, drywall, electrical and cabinetry and other subcontracted work as Owner and Contractor may reasonably agree so long as such requests are for not less than \$100,000.00.
- 14.1.3. Following request from Owner, Contractor shall submit to Owner evidence reasonably required by Owner that establishes payment and satisfaction of all obligations of Contractor hereunder, like receipts, affidavits, releases, and waivers of liens from Subcontractors and suppliers arising out of or in connection with the Work, including, without limitation, those lien waivers as more fully described in **Section 14.4** below.
- 14.1.4. Contractor shall also make available to Owner, during normal business hours and upon reasonable prior notice, Contractor's files setting forth the names and addresses of all Subcontractors and suppliers, and all invoices and payment made relating thereto. Owner may make and retain copies of the same.
- 14.1.5. Contractor warrants to Owner that (a) title to all Work covered by a Request for Payment will pass to Owner no later than the time of payment and (b) upon submittal of a Request for Payment all Work for which payments have been received from Owner is, to the best of Contractor's knowledge, information, and belief, free and clear of liens, claims, security interests, or encumbrances in

favor of Contractor, Subcontractors, material suppliers, or other persons or entities making a claim by reason of having provided labor, materials and equipment relating to the Work.

Section 14.2. Retainage.

Owner shall withhold as retainage from each progress payment until the Final Payment (when, subject to Owner's right to withhold funds as set forth herein, all retainage shall be released) an amount equal to 10% of the Cost of the Work; however, Owner shall not withhold retainage with respect to the portion of the amount then due Contractor and attributable to (a) fees paid by Contractor for permits and other governmental approvals, (b) those Suppliers or portions of Subcontracts allocable to the costs of Materials, (c) the General Contractor's Fee, (d) General Conditions, or (e) final payment due to a Subcontractor who has performed all of the work required of such Subcontractor under such Subcontractor's Subcontract. Owner shall release the applicable portion of the retainage to Contractor upon a Subcontractor's completion of a portion of the Work, provided such Work has been satisfactorily performed, Contractor provides Owner with fully executed final lien and claim waivers from the Subcontractor showing that the Subcontractor has been or will be fully paid, and all other Work is progressing to Owner's reasonable satisfaction.

Section 14.3. Purchase of Materials.

Requests for Payment may include the purchase price for Materials (including equipment) stored off the Land, as long as stored and secured in accordance with the Senior Loan. Requests for Payment shall also be permitted for deposits on Materials (including equipment) to be purchased. Title to all equipment and Materials shall pass to Owner upon payment therefor, and Contractor shall prepare, execute and deliver to Owner all documents necessary to effect and perfect the transfer of title.

Section 14.4. Lien Waivers.

Following a request from Owner, Contractor shall furnish with each Request for Payment releases and waivers of lien and affidavits, for itself and for each of its Subcontractors, dated as of the effective date of the immediately preceding Request for Payment, and any other similar forms as required by Owner, Senior Lender or Owner's title insurer in order to evidence an effective waiver of mechanics' or materialmen's liens in compliance with the laws of the State where the Project is located.

Section 14.5. Lien Disputes.

If Contractor disputes the validity or amount of any mechanics' or materialmen's lien asserted with respect to the Work, then it may contest the validity of same. If the amount in dispute exceeds \$250,000 or if the posting of a lien is prohibited by the terms of any mortgage on the Project, Contractor shall post a bond reasonably acceptable to Owner in an amount reasonably acceptable to Owner (and any Senior Lender holding a mortgage on the Project) and naming Owner and Senior Lender as obligees thereunder. At Contractor's request, Owner shall grant Contractor a reasonable period of time, not to exceed 45 days, to post the bonds. The exercise by Contractor of its right to dispute liens does not, by itself, excuse Owner from its obligation to make payment to Contractor on an otherwise satisfactory Request for Payment; however, Owner has no obligation to make any further payments to Contractor for the amount of any lien(s) if Contractor does not within the 45-day period obtain the release, waiver, or removal of

the lien(s) or post appropriate bonds. No amount in dispute with any Subcontractor or supplier of materials may be included in any Request for Payment; however, if a bond reasonably satisfactory to Owner has been provided, the amount will be included in the Final Request for Payment.

Section 14.6. Processing Requests for Payment.

If requested by Senior Lender, then the Independent Consultant shall review each Request for Payment and shall make objections the Independent Consultant reasonably deems necessary or appropriate under the state of circumstances then existing. Within 25 calendar days after the submission of each Request for Payment to Owner, Owner shall make payment to Contractor in the amount approved by the Independent Consultant, subject to **Sections 14.7 and 14.12** below. The payment of any Request for Payment by Owner, including the Final Request for Payment, does not constitute approval of or acceptance of any Work covered by the Request for Payment.

Section 14.7. Final Completion and Final Payment.

Upon receipt by Owner of: (a) written notice from Contractor certifying to Owner that (i) all of the Work has been substantially completed under the Contract Documents (including the completion of all punch-list items), (ii) all other requirements for Final Payment contained in the Contract Documents have been fulfilled, (iii) the Work is ready for final inspection and acceptance (iv) at least a temporary certificate of occupancy (or equivalent) for the project has been issued by the city where the Project is located; and (v) Contractor has delivered a set of "as-built" plans and specifications certified as accurate by Contractor; and (b) a final Request for Payment (the **Final Request for Payment**), which sets forth all amounts due and remaining unpaid to Contractor (including the unpaid portion of Contractor's Fee and any retainage); Owner and Independent Consultant shall make such inspection within two business days. When Owner and Independent Consultant reasonably find the Work acceptable under the Contract Documents and the Contract fully performed (**Final Completion**), Owner shall make final payment for the Work (**Final Payment**) as herein provided.

Section 14.8. Final Lien Waivers.

Owner is not required to make the Final Payment until Contractor delivers to Owner: (a) an affidavit that payrolls, bills for materials and equipment, and other costs connected with the Work for which Owner or Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (b) consent of surety, if any, to Final Payment, and (c) complete conditional final lien waivers by Contractor, Subcontractors, and suppliers of all liens arising out of this Agreement and an affidavit that the conditional final lien waivers include and cover all Materials and Services for which a lien could be filed; but Contractor may, if any Subcontractor or supplier refuses to furnish a conditional final waiver in full, furnish a bond reasonably satisfactory to Owner and Senior Lender naming Owner and Senior Lender and title insurer(s) as obligees thereunder. All releases and waivers of liens will be conditional upon Contractor's receipt of Final Payment. Acceptance of Final Payment by Contractor or any Subcontractor or supplier shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of Final Request for Payment.

Section 14.9. Interest on Funds Properly Withheld.

No interest is payable by Owner to Contractor (unless required by applicable laws), any Subcontractor, or any other party on any of the sums properly withheld by Owner under the Contract Documents.

Section 14.10. Interest on Funds Improperly Withheld.

Any payments due and unpaid to Contractor in violation of this Agreement (other than payments Owner is authorized to withhold hereunder) will bear interest from the date due until paid by Owner at the lesser of 10% per annum or the maximum lawful rate payable under applicable law, which interest is due and payable at the same time as the payment to which it applies is paid.

Section 14.11. Owner's Right to Withhold Payment.

Any provisions hereof to the contrary notwithstanding, Owner is not obligated to make payment (except to the extent provided in **Subsections 14.11.1** and **14.11.2** below) to Contractor hereunder if any one or more of the following conditions exists:

- 14.11.1. Any part of the payment is attributable to Work that is materially defective or not performed in substantial accordance with the Drawings and Specifications; however, payment must be made as to the part thereof attributable to Work that is performed in substantial accordance with the Drawings and Specifications and is not defective;
- 14.11.2. Contractor fails to make payments within 15 days after the receipt of funds therefor from Owner to Contractor's Subcontractors or for Materials or Service used in the Work for which Owner has made payment to Contractor. Contractor may, however, in accordance with **Section 14.5**, contest any liens and any claims of Subcontractors and others for payment. If Contractor posts bonds in accordance with **Section 14.5**, then Owner may withhold only a reasonable sum in relation to the amount of claimant's demand, not the entire amount.

No partial payment made hereunder will be or be construed to be final acceptance or approval of that part of the Work to which the partial payment relates or relieve Contractor of any of its obligations hereunder with respect thereto.

Section 14.12. Application of Funds Disbursed to Contractor.

Except for the Contractor's Fee, Contractor shall use the sums advanced to it pursuant to this **Article 14** solely for the purpose of performance of the Work and the construction of the Improvements in accordance with the Drawings and Specifications. Owner is not required to see to the proper disposition or application of the monies paid to Contractor.

Section 14.13. Subordination to Senior Lender.

On or before the date of submission of the initial Request for Payment, Contractor shall furnish to Owner and Senior Lender an affidavit of commencement and any subordination and lien waiver agreement reasonably required by Senior Lender.

Section 14.14. Covenant to Pay Bills.

Contractor shall promptly pay all bills for Materials and Services by others in connection with the construction of the Improvements and the performance of the Work unless Contractor exercises its right to dispute the bills under **Section 14.5**.

Section 14.15. Owner's Failure to Make Payment.

If Owner, without cause or notice and subject to the provisions of **Section 14.11**, does not pay Contractor within five (5) days after the date established in the Contract Documents the amount requested in a Request for Payment, then Contractor may, upon five (5) additional days written notice to Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Guaranteed Maximum Cost shall be increased by the amount of the Contractor's reasonable costs of shut-down, delay, and start-up, which shall be accomplished as provided in Article 6 of the General Conditions.

Section 14.16. Delay in Final Completion.

If Final Completion of the Work is materially delayed through no fault of Contractor, its Subcontractors, or anyone for whom they are responsible, or by issuance of Change Orders affecting Final Completion, then Owner shall, upon application by Contractor, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted.

ARTICLE 15.

DEFAULTS BY CONTRACTOR AND TERMINATION BY OWNER

Section 15.1. Defaults.

Each of the following is a default (**Default**) by Contractor and a material breach of this Contract:

- 15.1.1. If Contractor does not (a) commence the Work in accordance with the provisions of this Agreement, or (b) prosecute the Work to completion in a diligent manner and in substantial accordance with the provisions of the Contract Documents (including the Scheduled Completion Date and Interim Completion Dates, if any), subject to Force Majeure Events, Owner Delay, and adjustments due to Changes in the Work, or (c) perform any of its material obligations under the Contract Documents, or (d) make prompt payments to its Subcontractors, materialmen, or laborers, subject to **Section 14.5**, or (e) substantially comply with laws, regulations, or orders of any public authority having jurisdiction over Contractor or any part of the Project or the Work;
- 15.1.2. If Contractor files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent, or files any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief for itself under the present or any future Federal Bankruptcy Act or any other present or future applicable federal, state or other statute or law relative to bankruptcy, insolvency, or other relief for debtors, or seeks or consents to or acquiesces in the filing of a petition against it under the Federal Bankruptcy Act or any similar applicable federal or state law, or consents to or acquiesces in the

appointment of any trustee, receiver, conservator, or liquidator of Contractor (for purposes hereof, the term **acquiesce** includes, but is not limited to, the failure to file a petition or motion to vacate or discharge any order, judgment, or decree providing for such appointment within 30 days after the appointment);

- 15.1.3. If Contractor presents or submits to Owner or the Independent Consultant any affidavit, release, or document of any nature that, to Contractor's actual knowledge, is false in any material respect; or
- 15.1.4. If a mechanics' or materialman's lien is filed by a Subcontractor, materialman, or supplier of Contractor or any person or entity claiming by, through, or under Contractor against the Land, or any part thereof or any Improvements thereon, and the lien is not removed or bonded in accordance with the provisions of **Section 14.5** within 45 days after filing.
- 15.1.5. If Contractor, or any of its affiliates, defaults under the Lease Agreement beyond any applicable notice and cure periods such that the Lease Agreement is terminated, or if the Operating Agreement is terminated due to a breach by Contractor, or any of its affiliates.

Section 15.2. Notice and Cure; Owner's Remedies.

If any Default by Contractor occurs, then Owner shall deliver written notice specifying the Default to Contractor. If Contractor does not cure the Default within 30 days after Contractor's actual receipt of the written notice or, if the Default cannot with reasonable diligence be cured within the 30-day period, Contractor does not commence curing the Default within the 30-day period and pursue the completion of the cure with diligence and continuity within an additional 30-day period, then an **Event of Default** will be deemed to have occurred and Owner shall have the right to, and is expressly authorized and empowered, at its option and election, as Owner's sole and exclusive remedy and subject to the last sentence of **Section 15.4**, Owner hereby waiving any other rights or remedies it may have at law or in equity:

- 15.2.1. Serve written notice upon Contractor of the termination and cancellation of this Contract and arrange with other contractors, Contractor's Subcontractors, laborers and materialmen, or other subcontractors, laborers, and materialmen, to correct the Default or complete this Contract for its own account; or
- 15.2.2. Arrange with other contractors, Contractor's Subcontractors, laborers, and materialmen, or other subcontractors, laborers, and materialmen, to correct such Default or complete this Contract for the account of Contractor.

Section 15.3. Remedies Exclusive.

The remedies and rights of Owner hereunder are exclusive of any other rights afforded at law or in equity.

Section 15.4. Termination of Payments; Reimbursement of Sums in Excess of Guaranteed Maximum Cost.

If Owner elects to correct any Event of Default or to have it corrected by others, for its own account or that of Contractor pursuant to **Section 15.2** above (and subject to the following

sentence), then Contractor is not entitled to receive any further payment under this Contract from the date of an uncured Event of Default until the Date of Final Completion, except that any progress payment that was due hereunder shall be paid by Owner after deducting a reasonable amount for the correction of the Event of Default and the completion of the Work. However, if Owner does elect to complete or cause the Work to be completed, then Owner shall pay to Contractor upon completion of the final audit after the Date of Final Completion of the Work an amount equal to the amount, if any, remaining unpaid hereunder for the amount of the Cost of the Work accrued on the date of termination that has been paid by Contractor and has not been reimbursed by Owner. Notwithstanding anything to the contrary, if the total of (a) all payments made to Contractor under this Contract and (b) the cost to Owner of completing all of the uncompleted Work (including, without limitation, all costs, expenses, damages, and attorneys' fees sustained by Owner as a result of the Event of Default) is in excess of the Guaranteed Maximum Cost, then Contractor shall pay to Owner the amount of the excess on the Date of Final Completion, and, if not timely paid, then Owner may pursue any and all remedies available to Owner to recover the amount.

Section 15.5. Assumption of Obligations.

In case of any termination of the Contract by Owner under this **Article 15**, Owner, at its election, may assume the obligations of Contractor under any or all of its subcontracts and purchase orders covering the unperformed parts of the Work and Owner shall indemnify, defend, and hold harmless Contractor from all liabilities arising from Work performed after the date of termination of this Contract. Upon request by Owner following the termination, Contractor shall execute and deliver all instruments and take all steps, including the legal assignment of its contractual rights, as Owner may reasonably require for the purpose of fully vesting in Owner all rights and benefits of Contractor under the obligations and commitments.

Section 15.6. Possession of Materials.

Owner, upon any termination of the Contract due to an Event of Default by Contractor, may, without liability for conversion or theft, take possession of all materials, supplies, equipment, and tools at the Project owned by Contractor and may use same for the purpose of finishing the Work by whatever method Owner may deem expedient. Owner shall thereafter utilize such items at its own risk.

Section 15.7. Continuation of Warranties.

If Owner terminates the Contract under this **Article 15**, then the warranties and obligations of Contractor set forth in the Contract as to the Work performed by Contractor will in no manner be altered, limited, or extinguished as a result of the termination, but the warranty covers only the Work completed up to the date of the notice of Event of Default.

ARTICLE 16.

DEFAULT BY OWNER

Section 16.1. Default by Owner; Contractor's Remedies.

An **Owner Event of Default** occurs if:

- 16.1.1. Owner defaults in making any payment under the Contract, Contractor gives written notice of the default to Owner and Senior Lender, and the default is not cured within 10 days after the date of the notice from Contractor.
- 16.1.2. Owner defaults in performing any of its material obligations under the Contract, Contractor gives Owner and Senior Lender written notice stating the nature of the default, the default is not cured default within 30 days after the date of the notice or, if the default cannot with reasonable diligence be cured within the 30-day period, Owner or Senior Lender does not commence curing the default within the 30-day period and diligently pursue the cure to completion.

Section 16.2. Termination by Contractor.

If an Owner Event of Default occurs, then Contractor may terminate the Contract by giving Owner and Senior Lender written notice of termination at any time while the Owner Event of Default remains uncured. Upon demand by Contractor following the termination, Owner shall pay Contractor for (a) the Cost of the Work performed to the date of termination, measured by the Schedule of Values, (b) any proven loss sustained upon any equipment, tools, construction equipment, and Materials, (c) reasonable demobilization costs, (d) any contractual liability, obligation, damage, or claims Contractor incurs in good faith in connection with the termination of the Contract through no fault of Contractor, and (e) any damages for lost profits Contractor may be entitled to recover. Contractor may also enforce any other remedy available to Contractor under applicable laws.

Section 16.3. No Liability After Termination.

If Contractor terminates the Contract under **Section 16.2**, then Contractor is not liable with respect to any portion of the Work performed before or after the date of the termination.

ARTICLE 17.

MISCELLANEOUS PROVISIONS

Section 17.1. Definitions.

Terms used in this Agreement that are not defined herein but are otherwise defined in the Contract Documents have the meanings designated in those Contract Documents.

Section 17.2. Enumeration of Contract Documents.

The Contract Documents, which constitute the entire agreement between Owner and Contractor, are listed in **Article 1** and, except for Modifications issued after execution of this Agreement, are enumerated as follows:

- 17.2.1. This Agreement and the Exhibits and attachments hereto.
- 17.2.2. The actual Drawings and Specifications identified or required under this Contract as enumerated in **Exhibit E**.

Section 17.3. Independent Contractor.

Contractor is an independent contractor and not an agent or employee of Owner.

Section 17.4. Inspections of the Work.

Owner and Contractor shall hold meetings on a regular basis to discuss the progress of the Work. Owner and Senior Lender and their respective representatives at all reasonable times will have access to the Work for inspection thereof, but are not obligated to conduct any inspection. If any of the Work is required to be inspected or approved by any public authority, Contractor shall cause the inspection or approval to be timely performed.

Section 17.5. Lenders' Inspections of the Work.

Senior Lender may require periodic inspections and certifications by the Independent Consultant. Consequently, Contractor shall make the site of the Work available at all reasonable times for inspection by the Independent Consultant, at its risk.

Section 17.6. Inspection Not a Waiver.

No inspection performed or not performed by Owner is or will be a waiver of any of Contractor's obligations hereunder or an approval or acceptance of the Work or any part thereof.

Section 17.7. Entire Agreement; Modification.

This Agreement and all Exhibits attached hereto constitute the entire agreement between the parties pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements and understandings of the parties in connection therewith. No covenant, representation, or condition not expressed in this Agreement affects (or is effective to interpret, change, or restrict) the express provisions of this Agreement. No change or modification of, or waiver under, this Agreement is valid unless it is in writing and signed by duly authorized representatives of Owner and Contractor.

Section 17.8. Headings.

The Article and Section headings in this Agreement are for convenience of reference only and are not intended to define, limit, or describe the scope or intent of any provision of this Agreement.

Section 17.9. Governing Law.

This Agreement is governed by the laws of the state where the Project is located, without regard to choice of law provisions.

Section 17.10. Legal Costs.

If a dispute arises out of or concerning the terms of this Agreement, then the prevailing party in the dispute is entitled to recover its reasonable Legal Costs, whether at the trial or appellate level.

Section 17.11. Third Party Beneficiaries.

None of the provisions of this Agreement are for the benefit of or are enforceable by any party other than the parties to this Agreement.

Section 17.12. Binding Effect.

This Agreement and all of its terms and provisions is binding upon and inures to the benefit of the parties and their successors and assigns.

Section 17.13. Notices.

All notices, demands, requests, approvals, or other communications required or permitted under the Contract must be in writing and, unless personal delivery is effected earlier, will be deemed delivered:

- 17.13.1. three business days after deposit in the United States Mail, postage prepaid, registered or certified mail, return receipt requested, on a business day; or
- 17.13.2. one business day after delivery to any nationally-recognized overnight delivery service on a business day during business hours for prepaid delivery on the next business day; or
- 17.13.3. on the business day sent by e-mail prior to 3:00 p.m., Dallas, Texas time, with a confirming copy being sent by one of the other specified methods on the same business day;

in each case addressed as follows:

If to Owner to:

JPI
c/o Jefferson Villages Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attn: Payton Mayes
E-mail: Payton.mayes@jpi.com

With a copy to:

JPI
c/o Jefferson Villages Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attn: Legal
E-mail: legal@jpi.com

and if to Contractor to:

APFC Waters Creek Contractor, LLC

With a copy to:

JPI Construction, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attention: Kyley Harvey
E-mail: Kyley.Harvey@jpi.com

with a copy to:

JPI Construction, LLC
600 E. Las Colinas Blvd.
Suite 1800
Irving, Texas 75039
Attn: Legal Department
E-mail: legal@jpi.com

Any party may change its address and specify as its address for the purposes hereof any other address in the continental United States of America by giving the other party at least 15 days' notice. Notices given by counsel for any party are effective as notices given by the party.

Section 17.14. Severability.

If any provision of this Agreement is declared or found to be illegal, unenforceable, or void, in whole or in part, then the parties will be relieved of all obligations arising under the provision, but only to the extent that it is illegal, unenforceable, or void, it being the intent and agreement of the parties that this Agreement will be deemed amended by modifying the provision to the extent necessary to make it legal and enforceable while preserving its intent or, if that is not possible, by substituting therefor another provision that is legal and enforceable and achieves the same objectives.

Section 17.15. Performance.

Time is of the essence in the performance of all duties, covenants and obligations hereunder.

Section 17.16. Exhibits.

All Exhibits attached to this Agreement are incorporated herein by reference.

Section 17.17. Relationship of Parties.

The relationship of Contractor to Owner is that of an independent contractor only. Nothing in this Agreement, whether express or implied, nor any acts by Contractor or Owner, nor any other circumstances may be construed to establish Contractor as an agent or partner of Owner or to create a partnership or joint venture, or any general agency or fiduciary relationship, between

Owner and Contractor. Contractor has no authority to bind or otherwise obligate Owner except as specified in this Agreement. Contractor shall take reasonable steps in dealing with third parties to negate any inference that Contractor is an agent or partner of Owner.

Section 17.18. Survival.

Any provisions that by their nature should, or by their express terms do, survive or extend beyond the termination or expiration of this Agreement will, in fact, survive.

Section 17.19. Successors and Assigns.

Except as provided in the following sentence, Contractor may not directly or indirectly assign or transfer, or permit the direct or indirect assignment or transfer of, this Agreement, any rights or benefits under this Agreement, or any interest in Contractor without the prior written approval of Owner, which approval may be granted or withheld in Owner's discretion. Notwithstanding the preceding sentence, (i) Contractor may make or permit a direct assignment or transfer if the assignee or transferee is controlled, directly or indirectly, by TDI Consolidated LLC, its successor or assigns (**TDI**), or BRB Consolidated, LLC, its successor or assigns (**BRB**), and (ii) Contractor may make or permit an indirect assignment or transfer if, after giving effect to the assignment or transfer, Contractor is controlled, directly or indirectly, by TDI or BRB. Nothing in this Agreement restricts, or requires Owner's consent to, the pledge of an interest in TDI or BRB, or in any entity that has an ownership interest in TDI or BRB, to secure one or more extensions of credit. All of the covenants, conditions and obligations contained in the Contract are binding upon and inure to the benefit of the respective successors and assigns of Owner and Contractor.

Section 17.20. MEDIATION AND ARBITRATION; WAIVER OF JURY TRIAL.

ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, OR A BREACH THEREOF, SHALL BE SUBJECT TO MEDIATION AND ARBITRATION AS DESCRIBED IN SECTION 4.3.1 OF THE GENERAL CONDITIONS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF THE PARTIES KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES THE RIGHT TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENT (WHETHER VERBAL OR WRITTEN), OR ACTION BETWEEN OR AMONG THE PARTIES OR ANY EXERCISE BY ANY PARTY OF ITS RESPECTIVE RIGHTS UNDER THIS AGREEMENT OR IN ANY WAY RELATING TO THE PROJECT. THIS WAIVER IS A MATERIAL INDUCEMENT FOR THE PARTIES TO ENTER INTO THIS AGREEMENT. THIS WAIVER SURVIVES THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

Section 17.21. Limitation of Recourse.

There is no liability under the Contract of, nor any recourse under the Contract to, any officer, director, shareholder, beneficial owner, partner, employee or agent of either party to the Contract.

Section 17.22. Counterparts.

This Agreement may be executed in one or more counterparts with the same effect as if all signing parties had signed the same document. All counterparts will be construed together and constitute the same instrument. In making proof of this Agreement, it will not be necessary to

account for more than one counterpart executed by the party against whom enforcement is sought. Each party is authorized to substitute a counterpart original signature page into their respective document.

Section 17.23. Compliance with Applicable Laws.

Contractor shall observe and abide by and perform all of its obligations hereunder in substantial accordance with all applicable laws, rules and regulations of all governmental authorities having jurisdiction, including the Federal Occupational, Safety and Health Act of 1970, as amended. Contractor warrants and represents that it shall use appropriately licensed Subcontractors to perform any and all portions of the Work for which applicable law requires performance thereof by licensed persons or entities.

Section 17.24. Contractor's Ability.

Contractor warrants and represents that it is financially solvent and that it is capable of performing the Work.

Section 17.25. Waivers.

No action or failure to act by Owner or Contractor constitutes a waiver of a right or duty afforded them under the Contract, nor does the action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

Section 17.26. Ownership and Use of Contract Documents.

The plans and specifications and other documents, including those in electronic form, prepared on behalf of Owner, Owner's contractors, or any others shall, unless otherwise agreed to by Owner, be works for hire owned by Owner. Contractor shall not own or claim a copyright in the plans and specifications and other documents prepared on behalf of Owner or any others.

[Signature page follows.]

EXECUTED as of the date and year first above written.

OWNER:

JEFFERSON VILLAGES OF WATERS CREEK,
LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

CONTRACTOR:

APFC WATERS CREEK CONTRACTOR, LLC,
a Texas limited liability company

By: Anna Public Facility Corporation,
a Texas public facility corporation,
its sole member

By: _____
Name: Stan Carver II
Title: President

EXHIBIT A

ALLOWANCES

If the terms, quantities, prices, or allowances herein differ from that given in the Specifications, the matters herein supersede and control over that stated in the Specifications.

EXHIBIT B

CONTRACT CLARIFICATIONS

The following are adjustments to the scope of Work:

[illegible]

EXHIBIT C
SCHEDULE OF VALUES

EXHIBIT D

LEGAL DESCRIPTION OF THE LAND

EXHIBIT E

LIST OF DRAWINGS AND SPECIFICATIONS

EXHIBIT F
CONSTRUCTION SCHEDULE
(With Weather Matrix)

I. Weather and Lost Days Guidelines

This document is intended to illustrate the determination of Anticipated Weather Delays and Adverse Weather Delays, and to complement the provisions of the Agreement and General Conditions. In the event of any inconsistency or difference between this document and the Agreement or General Conditions, the Agreement and General Conditions shall prevail over this document.

The Construction Schedule has been developed with calendars that include the weather anticipated for a given month in the applicable locale or region of the Project. The Weather Matrix is the basis for the Anticipated Weather Delay. At the end of each month, Contractor's project manager shall submit a "weather data sheet" (SF-31) with the date, site conditions, high/low temperatures, 24 hour rainfall, and affected activities. The lost days and affected activities are compared against the critical path of the Construction Schedule for each designated portion of the Work and the monthly Anticipated Weather Delay to determine the Adverse Weather Delay. Adverse Weather Delay exceeding the Anticipated Weather Delay may be submitted on a Change Order for an extension to the Contract Time as provided in Section 4.2.7 of the General Conditions.

A. Definitions

1. **Anticipated Weather Delay:** The Anticipated Weather Delay is the number of workdays anticipated to be lost due to inclement weather during each month of the course of construction. This anticipated amount is based on the historical data as collected and reported by NOAA (Nat'l Oceanographic & Atmospheric Administration) for each locale or region. The Anticipated Weather Delay is determined by the monthly average over a 30-year period and its impact on the weather sensitive activities within the critical path of the Project.
2. **Inclement Weather:** Severe weather (precipitation, cold, etc.) which stops or delays production of any activity.
3. **Adverse Weather Delay:** The Adverse Weather Delay is number of days when production was lost due to Inclement Weather which caused a direct impact to, and delayed an activity on, the critical path of the Construction Schedule.

B. Calculating Anticipated Weather Delays

The Anticipated Weather Delay information is based on the monthly averages published by NOAA (Nat'l Oceanographic & Atmospheric Administration) for each region over a 30-year period. The historical data utilized was based on the average number of days per month with 0.10" of precipitation or more and also days where the maximum temperature does not exceed 32 degrees Fahrenheit.

C. Actual Weather Delay or Lost Day Reporting

Contractor prepares monthly the "Weather Data Sheet" (SF-31). Contractor records each day any production of any activity is delayed by Inclement Weather or site conditions caused by Inclement Weather. This is recorded as an **Actual Weather Delay**, if such delayed activity is on the critical path of the Construction Schedule. The

activities that are delayed are listed on the updated Construction Schedule(s) provided to Owner.

The following information is required to be provided on the Weather Data Sheet (SF-31) submitted by Contractor:

- The date for each day of the previous week, whether there was Inclement Weather or not.
- The site conditions for each day. Describe if the site was dry, muddy, wet or frozen.
- The temperatures for each day. If it is a period of extreme cold, note both the low and the high temperatures for the day. Ex.: 14/26.
- The precipitation amount for the previous 24 hours.
- A brief list of the key activities, if any, affected by Inclement Weather. Any site conditions as a result of weather, is considered an inclement condition, i.e., mud, ice, or ground water as a result of flooding or high water table.
- If the day was totally lost or production was impacted due to the Inclement Weather or site conditions caused by Inclement Weather, and the activity was on the critical path of the Construction Schedule, Contractor will enter "LOST DAY" along with the activities that were affected. If Inclement Weather occurs or the site conditions are anything but "dry", and no activities are affected, enter "NO ACTIVITIES AFFECTED". This will eliminate any confusion as to whether activities were indeed impacted, but overlooked.

The scheduling department shall review this report and compare the list of affected activities to the list of critical path activities from the Construction Schedule. If the activities affected are on the critical path, this is recorded as an **Actual Weather Delay**.

If there is any question about the activities affected, they are confirmed by a phone call to the jobsite.

EXHIBIT G
GMC BUDGET

EXHIBIT H
GENERAL CONDITIONS

MASTER SUBCONTRACT

1 **Variable Defined Terms.** This master subcontract ("***Subcontract***") is made by Contractor and Subcontractor with reference to the following terms:

<i>"Project":</i>	The multifamily project, together with related amenities, located on the Land and known as of the date hereof as Jefferson Villages of Waters Creek
<i>"Subcontract Date":</i>	
<i>"Contractor":</i>	APFC Waters Creek Contractor, LLC
<i>"Contractor's Representative":</i>	
<i>"Subcontractor":</i>	JPI Construction, LLC
<i>"Subcontractor's Representative":</i>	Kyley Harvey
<i>"Owner":</i>	Jefferson Villages of Waters Creek, LLC
<i>"Property ":</i>	The land described in <u>Exhibit A.</u>
<i>"Prime Contract":</i>	Construction Management Agreement between Owner and Contractor dated on or about the date hereof (including incorporated General Conditions), a copy of which is attached as Exhibit B , and which has been made available for Subcontractor's review, together with all modifications and amendments thereto.
<i>"Work"</i>	As defined and described in the Prime Contract, as it may be modified from time to time in accordance with the Prime Contract and with Subcontractor approval of same.
<i>"Subcontract Price":</i>	The "Contract Sum" as defined in the Prime Contract, as it may be adjusted from time to time in accordance with the Prime Contract and with Subcontractor approval of same.

2. **Definitions, Cross-references.** Terms with initial capital letters are defined terms. Bold italicized print in quotations marks (e.g., "***Indemnify***") indicates the definition of a term. If a defined term is not expressly defined in this Subcontract, such defined term will have the same meaning as in the Prime Contract. A defined term has the same meaning throughout this Subcontract, may appear in this Subcontract before its definition, and applies to all grammatical variations of the term also shown with initial capital letters (e.g., the definition of the word "Indemnify" also applies to "***Indemnity***").

3. **Persons Referenced in this Subcontract.**

3.1 **Persons.** "***Person***" means a natural person, a trust or estate, or a corporation, partnership, limited liability company or other form of entity.

3.2 Parties. The “*Parties*” to this Subcontract are the Contractor and the Subcontractor. Subcontractor is an independent contractor of Contractor.

3.3 Representatives. The Parties’ respective Representatives are named in **Paragraph 1.** A Representative is authorized to act under the terms of this Subcontract on behalf of the Party appointing such Representative. A Party may change its Representative by 10 days’ written notice to the other Party.

3.4 Affiliate. An “*Affiliate*” of a Person is any other Person that directly or indirectly, through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Person. “*Control*” refers to the power to influence management decisions.

3.5 Sub-subcontractor. A “*Sub-subcontractor*” is a Person contracting with Subcontractor to perform a portion of the Work.

3.6 Supplier. A “*Supplier*” is a Person contracting with Subcontractor to furnish Materials or Equipment for the Work.

4. Duties.

4.1 General Obligations and Rights of Subcontractor. Except as specifically modified by this Subcontract, Subcontractor will (a) perform all of the covenants and obligations of Contractor under, and comply with all of the conditions imposed upon Contractor in, the Prime Contract in the manner, to the standards, and within the time limits set forth in the Prime Contract, (b) owe all of the same duties to Contractor as Contractor owes to Owner under the Prime Contract, and (c) have all of the same rights and remedies with respect to Contractor as Contractor has with respect to Owner in the Prime Contract. To the extent any provision of this Subcontract conflicts or creates ambiguity (latent or patent) with any provision of the Prime Contract, the Prime Contract shall control (provided that terms herein that are clearly intended to differ from those of the Prime Contract shall not be construed as being in conflict with the Prime Contract and shall control with respect to this Subcontract).

4.2 General Obligations and Rights of Contractor. Except as specifically modified by this Subcontract, Contractor will (i) owe all of the same duties to Subcontractor as Owner owes to Contractor under the Prime Contract, and (ii) have all of the same rights and remedies with respect to Subcontractor as Owner has with respect to Contractor in the Prime Contract. In no event will the failure of Contractor to perform any obligation of Contractor under this Subcontract constitute a breach of this Subcontract if such failure is the result of Owner’s failure to perform Owner’s obligations under the Prime Contract following written notice of such failure from either Contractor or Subcontractor to Owner and the continuance of such Owner failure beyond the applicable opportunity to cure under the Prime Contract; provided, however, if an Owner default under Section 16.1 of the Prime Contract (“*Owner Default*”) exists, Contractor agrees either to (a) diligently pursue all remedies under the Prime Contract against Owner with respect to the Owner Default, or (b) to facilitate Subcontractor’s pursuit of all such rights and remedies under the Prime Contract with respect to the Owner Default. Without limitation on any of the foregoing, Contractor shall reasonably cooperate with Subcontractor, and shall not materially or unreasonably interfere with Subcontractor, in Subcontractor’s required performance and compliance under the Prime Contract.

4.3 Insurance. In addition to continuously maintaining in force all of the minimum insurance coverages and policy endorsements required to be maintained by Contractor under the Prime

Contract and delivering to Owner any certificates, policies or other proof of insurance in the form and at the times required by the Prime Contract, Subcontractor will add Contractor as an “additional insured” under all casualty (if applicable), liability and umbrella policies maintained by Subcontractor with respect to the Property and will simultaneously deliver to Contractor duplicate copies of any proof of insurance required to be delivered to Owner by Contractor under the Prime Contract. If required by any mortgagee of the Property, Subcontractor will procure additional insurance coverages, obtain other endorsements and/or increase the limit of any policy required under the Prime Contract.

4.4 Sub-subcontractor’s Insurance. Each Sub-subcontractor must maintain the insurance coverages and policy endorsements required to be maintained under the Prime Contract, unless Subcontractor permits such Sub-subcontractor to maintain less coverage. Subcontractor will be liable for any claim arising from reductions permitted by Subcontractor to the required insurance with respect to Sub-subcontractors. Subcontractor will maintain certificates, policies, and evidence of insurance from all Sub-subcontractors and make such certificates, policies, and evidence of insurance available to Contractor and Owner upon request.

5. Compensation for Work.

5.1 Payment. As full consideration for performance of the Work by Subcontractor, Contractor will pay to Subcontractor the Subcontract Price based upon applications for payment (“**Payment Requests**”) submitted to Contractor by Subcontractor. The Subcontract Price shall be allocated as follows: (a) [REDACTED] of the Subcontract Price shall be allocated to and payable for the skill and labor to be provided by Subcontractor (the “**Services**”), including fabrication, installation and any other labor performed by Subcontractor and/or its sub-subcontractors (the “**Services Payment**”), and (b) [REDACTED] of the Subcontract Price shall be allocated to and payable for all materials (the “**Materials**”) to be incorporated into the Project (the “**Materials Payment**”). The Materials Payment and Services Payment are based upon Subcontractor’s current good faith estimates, final total figures to be determined at the end of the Project. The Subcontract Price shall be subject to additions and deletions to the Materials Payment and/or the Services Payment as may be agreed to by Subcontractor, which Materials Payment and/or the Services Payment shall be increased or decreased in accordance with such additions and deletions to the Contract Sum effected in accordance with the Prime Contract with the consent of the Subcontractor. Contractor and Subcontractor shall jointly designate the portion of each such adjustment that is attributable to the Materials Payment and/or the Services Payment. Each Payment Request shall specify the portion of the application for payment that is allocated to a Materials Payment and that portion that is allocated to a Services Payment. Payment Requests will be submitted in the form required for Requests for Payment under the Prime Contract and otherwise administered in a manner consistent with the Request for Payment process under the Prime Contract, including (without limitation) the timing for any such payment in response to a Payment Request and the required supporting materials for same. Among other things, Contractor shall ensure that any Payment Request is concurrently remitted to Owner under the Prime Contract as a Request for Payment. Notwithstanding anything to the contrary herein, to the extent that Owner makes payment under the Prime Contract on all or any portion of a Request for Payment, whether it is a progress payment or final, then at the time of such payment by Owner, the corresponding Payment Request under this Subcontract shall be deemed approved and due for payment by Contractor to Subcontractor. However, for avoidance of doubt, Contractor will not be liable for a payment to Subcontractor under this Subcontract until such time as Contractor has received funds under the Prime Contract from Owner for the same Work or Materials. Subcontractor understands and agrees that such payment from Owner to

Contractor shall be an express condition precedent to Subcontractor's right to payment from Contractor. Payment to Subcontractor shall be from Owner directly to Subcontractor, in the form of an Electronic Funds Transfer (EFT) or ACH Payment or otherwise as approved by Subcontractor.

5.1.1 Partial Payments. Each calendar month during the performance of the Work, Subcontractor may submit to Contractor a fully completed and executed Payment Request for portions of the Work completed and unincorporated Materials in accordance with **Paragraph 5.1.3** ("***Partial Payment Request***"). Partial Payment Requests will be submitted on or before the dates and accompanied by the documentation set forth in the Prime Contract for Requests for Payment for progress payments, including, without limitation, the lien waivers as more fully described in **Paragraph 5.1.6** below, provided that each Partial Payment Request shall specify the portion of the Partial Payment that is allocated to a Materials Payment and Services Payment. Contractor will promptly pay to Subcontractor the amount of a Partial Payment Request, less any retainage or other amounts permitted to be withheld by Owner pursuant to the Prime Contract, in a manner consistent with the payment of progress payments under the Prime Contract. Among other things, Contractor acknowledges that retainage is not authorized on costs and fees for permits and other entitlements, supplies or materials, Subcontractor's fee or other profit from the Work, matters constituting general conditions, or payment on work of a Sub-subcontractor or Supplier who has fully performed. Notwithstanding the foregoing, Subcontractor may request bi-monthly progress payments for particular scopes of work where authorized by the Prime Contract or if otherwise agreed upon by Owner, Contractor, Subcontractor, and Owner's financing sources.

5.1.2 Fees. The Contractor's Fee as set forth in the Prime Contract shall be paid directly from Owner to Subcontractor and not through Contractor in the manner set forth in the Prime Contract. The Construction Oversight Fee as set forth in the Prime Contract shall be paid from Owner to Contractor in the manner as set forth in the Prime Contract, and Subcontractor shall have not rights to the Construction Oversight Fee, subject to that certain Operating Agreement of Owner by and between Jefferson Villages of Waters Creek Holdings, LLC, and APFC Waters Creek Member, LLC, dated of or about the same date as this Subcontract.

5.1.3 Savings. To the extent of any savings achieved under the Prime Contract, following Final Payment, notwithstanding the Section 6.4 of the Prime Contract, 100% of such amount will run to the benefit of Subcontractor.

5.1.4 Final Payment. Contractor will pay the entire unpaid balance of the Subcontract Price ("***Final Payment***") to Subcontractor on the date specified in the Prime Contract for payment of the final Request for Payment upon satisfaction of all conditions contained in the Prime Contract with respect to payment of the final Request for Payment, including, without limitation, the lien waivers as more fully described in **Paragraph 5.1.6** below.

5.1.5 Unincorporated Materials. Payment Requests may include the cost of Materials not incorporated in the Work to the extent that such payments are authorized by the Prime Contract or otherwise if such Materials have been delivered and suitably stored at a location in the manner provided in the Prime Contract and covered by Subcontractor's or Sub-subcontractor's property insurance.

5.1.6 Releases. Together with each Payment Request, whether partial or final, Subcontractor will deliver any releases of lien required by the Prime Contract in connection with the payments then requested and in form in compliance with the laws of the State of Texas.

5.1.7 Schedule of Values. Before the first Payment Request, Subcontractor will submit to Contractor a schedule of values allocated to various portions of the Work, consistent with the schedule of values utilized in connection with the Prime Contract. The schedule of values will not change during performance of the Work except as authorized under the Prime Contract or unless otherwise approved in writing by Owner, Contractor, Subcontractor, and Owner's financing sources (if approval of such parties is required under the Owner's financing documents).

5.1.8 Bonding Around Mechanics' Liens and Sub-subcontractors and Suppliers. So long as Contractor makes timely payment in accordance with this Subcontract, Subcontractor shall bond around a mechanics' or materialmen's lien filed by a Sub-subcontractor or Supplier to the extent Contractor is required to bond around such lien pursuant to the Prime Contract. Contractor and/or Owner reserve the right to issue payment then due to Subcontractor's Sub-subcontractors and/or Suppliers in connection with the Work as reasonably deemed necessary by Contractor and/or Owner after written notice to Subcontractor.

5.2 Withholding Payment. Contractor may withhold from a Payment Request any amount withheld by Owner under the Prime Contract from Contractor's Request for Payment.

5.3 Subcontractor's Records. Subcontractor will maintain for seven (7) years following Subcontractor's completion of the Work books and records pertaining to the Work in accordance with requirements of the Prime Contract. Subcontractor will, upon reasonable request, provide Contractor with copies of any expenses shown on any Payment Request and access to Subcontractor's books and records. Other than as required by applicable law or court order, Contractor agrees to hold such books and records in confidence on behalf of Subcontractor and not disclose same to any party without the prior written consent of Subcontractor.

5.4 Disposition of Payments. Contractor has no obligation with respect to the proper disposition or application of any monies paid by Contractor to Subcontractor in response to a Payment Request.

5.5 Contingent Assignment of Rights to Payment. In the event that the Subcontractor is not paid such sums that are due in accordance with the requirements of the Subcontract, Contractor hereby contingently assigns to Subcontractor its rights against the Owner to secure and collect such sums arising under the Prime Contract and applicable law, including its constitutional and statutory lien rights and its rights to bring an action directly against the Owner for collection of such sums due.

5.6 Subcontractor's Lien Rights. Notwithstanding any other term in the Prime Contract or this Subcontract, the Contractor acknowledges and agrees that, for purposes of Subcontractor's statutory and constitutional mechanic's lien rights, Subcontractor is an original contractor as defined in Section 53.001 et seq. of the Texas Property Code or the subsequent successor to same.

6. Suspension, Termination, and Default.

6.1 Suspension of Work and/or Delay. Subcontractor is authorized to suspend or delay the Work, only to the extent that Owner or Subcontractor (on behalf of Contractor as contemplated herein) has effected a suspension or delay in accordance with the Prime Contract and only to the extent that such suspension or delay is administered in accordance with the Prime Contract.

6.2 Contractor's Default. Contractor will be in default under this Subcontract if: (i) Contractor fails to perform any monetary obligation of Contractor under this Subcontract and such failure continues for more than 3 business days after notice from Subcontractor to Contractor regarding same; (ii) Contractor breaches or fails to perform any other term, condition, duty or obligation under this Subcontract in a material respect and such failure continues for more than 21 days after notice from Subcontractor to Contractor regarding same; or (iii) Contractor otherwise takes any action (or omits from taking any action otherwise required of Contractor) and such action or omission causes or reasonably could thereafter cause Owner to have the right to terminate the Prime Contract; *except, however*, for purposes of this **Paragraph 6.2**, any duties and/or obligations delegated to and accepted by Subcontractor under this Subcontract shall not be included in the acts or omissions of Contractor. If a Contractor default occurs, then in addition to any rights or remedies available at law or equity or elsewhere in this Subcontract, Subcontractor may thereafter terminate this Subcontract upon written notice to Contractor. Upon such a termination, promptly after payment of any of same by Owner, Contractor shall cause the payment to Subcontractor of (a) the Contract Sum allocable to Work performed to the date of termination, measured in accordance with the Prime Contract, (b) any proven loss sustained upon any equipment, tools, construction equipment, and materials, (c) reasonable demobilization costs, (d) any contractual liability, obligation, damage, or claims Subcontractor incurs in good faith in connection with the termination but through no fault of Subcontractor, (e) any damages for lost profits that Subcontractor may be entitled to recover, and (f) any other amounts to which Contractor would otherwise be entitled under the Prime Contract in connection with the respective termination. Upon such a termination, automatically and without further action by any party, Contractor hereby assigns to Subcontractor all of its rights against the Owner to secure and collect such sums, including its constitutional and statutory lien rights and its rights to bring an action directly against the Owner for collection of such sums.

6.3 Subcontractor's Default. Subcontractor will be in default under this Subcontract if Subcontractor breaches or fails to perform any term, condition, duty or obligation under this Subcontract in a material respect and such failure continues for more than 30 days after notice from Contractor to Subcontractor regarding same (or, if the default cannot with reasonable diligence be cured within the 30-day period, Subcontractor does not commence curing the default within the 30-day period and pursue the completion of the cure with diligence and continuity within an additional 30-day period); provided, however, a default will be deemed to have occurred only at such time that Owner is authorized to pursue one or more remedies for Default under the Prime Contract in light of such matter and enforces the respective remedy accordingly. If a Subcontractor default occurs, then Contractor may thereafter terminate this Subcontract upon written notice to Subcontractor. Subject to any express rights or remedies available to Contractor elsewhere in this Subcontract in relation to the circumstances giving rise to the default at issue, such termination is Contractor's sole and exclusive remedy for Subcontractor default hereunder.

6.4 Termination for Bankruptcy. If Subcontractor becomes subject to a proceeding under the United States Bankruptcy Code ("**Bankruptcy**") and, in the reasonable opinion of Contractor, is unable to fulfill its obligations under this Subcontract because of the Bankruptcy, Contractor will notify Subcontractor in writing. If Subcontractor is unable to provide adequate assurance of future performance reasonably satisfactory to Contractor within 10 days after receiving Contractor's notice, Subcontractor agrees that this Subcontract should be rejected and/or terminated and will take no action which would impede the efforts of Contractor to have this Subcontract rejected and/or terminated by a Bankruptcy court or other court or arbitrator. If Contractor becomes subject to a Bankruptcy proceeding and, in the reasonable opinion of Subcontractor, is unable to fulfill its

obligations under this Subcontract because of the Bankruptcy, Subcontractor will notify Contractor in writing. If Contractor is unable to provide adequate assurance of future performance reasonably satisfactory to Subcontractor within 10 days after receiving Subcontractor's notice, Contractor agrees that this Subcontract should be rejected and/or terminated and will take no action which would impede the efforts of Subcontractor to have this Contract rejected and/or terminated by a Bankruptcy court or other court or arbitrator.

7. Indemnities and Releases.

7.1 TO THE FULLEST EXTENT PERMITTED BY LAW, SUBCONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE CONTRACTOR AND OWNER, AND EACH OF THEIR RESPECTIVE PARTNERS, TRUSTEES, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, SHAREHOLDERS, ADMINISTRATORS, LENDERS, INVESTORS, ASSIGNS AND SUCCESSORS (COLLECTIVELY THE "INDEMNIFIED PARTIES") FROM AND AGAINST ALL CLAIMS (INCLUDING THIRD PARTY CLAIMS), DAMAGES, LOSSES, COSTS AND EXPENSES ARISING OUT OF OR IN CONNECTION WITH THE WORK OR THIS SUBCONTRACT, BUT ONLY TO THE EXTENT THAT CONTRACTOR IS REQUIRED TO INDEMNIFY OWNER AND THE OWNER-RELATED PERSONS FROM AND AGAINST SAME UNDER THE PRIME CONTRACT OR SUCH MATTER IS CAUSED BY A MATERIAL SUBCONTRACTOR DEFAULT UNDER THIS SUBCONTRACT. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, AND FOR THE AVOIDANCE OF DOUBT, SUBCONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT EXTEND TO ANY MATTERS TO THE EXTENT ARISING OUT OF OR RESULTING FROM THE NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF CONTRACTOR OR ANY OF ITS AFFILIATES OR ANY PARTY THEN ACTING BY, THROUGH, UNDER, FOR OR ON BEHALF OF CONTRACTOR OR ITS AFFILIATES OR FROM ANY CONTRACTOR DEFAULT UNDER THIS SUBCONTRACT.

7.2 TO THE FULLEST EXTENT PERMITTED BY LAW, CONTRACTOR SHALL DEFEND, INDEMNIFY, AND HOLD HARMLESS THE SUBCONTRACTOR AND EACH OF ITS INDEMNIFIED PARTIES FROM AND AGAINST ALL CLAIMS (INCLUDING THIRD PARTY CLAIMS), DAMAGES, LOSSES, COSTS AND EXPENSES ARISING OUT OF OR IN CONNECTION WITH THE WORK OR THIS SUBCONTRACT, BUT ONLY TO THE EXTENT THAT OWNER IS REQUIRED TO INDEMNIFY CONTRACTOR AND THE CONTRACTOR-RELATED PERSONS FROM AND AGAINST SAME UNDER THE PRIME CONTRACT OR SUCH MATTER IS CAUSED BY A MATERIAL CONTRACTOR DEFAULT UNDER THIS SUBCONTRACT. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, AND FOR THE AVOIDANCE OF DOUBT, CONTRACTOR'S OBLIGATIONS UNDER THIS SECTION SHALL NOT EXTEND TO ANY MATTERS TO THE EXTENT ARISING OUT OF OR RESULTING FROM THE NEGLIGENT ACTS OR WILLFUL MISCONDUCT OF SUBCONTRACTOR OR ANY OF ITS AFFILIATES OR ANY PARTY THEN ACTING BY, THROUGH, UNDER, FOR OR ON BEHALF OF SUBCONTRACTOR OR ITS AFFILIATES OR FROM ANY SUBCONTRACTOR DEFAULT UNDER THIS SUBCONTRACT.

7.3 SCOPE OF INDEMNITIES AND RELEASES. THE INDEMNITIES

AND RELEASES IN THIS SUBCONTRACT ARE INDEPENDENT OF, AND WILL NOT BE LIMITED BY, EACH OTHER OR ANY INSURANCE OBLIGATIONS IN THIS SUBCONTRACT (WHETHER OR NOT COMPLIED WITH) OR WORKERS' COMPENSATION OR OTHER EMPLOYEE BENEFIT PROGRAMS OR LAWS.

7.4 LIMITATION ON DAMAGES. EXCEPT IN CONNECTION WITH THIRD-PARTY CLAIMS COVERED BY THE INDEMNITY PROVISIONS HEREIN OR AS OTHERWISE EXPRESSLY PROVIDED ELSEWHERE IN THIS SUBCONTRACT, NEITHER CONTRACTOR NOR SUBCONTRACTOR WILL BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL (DIRECT OR INDIRECT), PUNITIVE OR SPECIAL DAMAGES ARISING OUT OF, RESULTING FROM, OR IN ANY WAY RELATED TO THE PERFORMANCE UNDER THIS SUBCONTRACT.

7.5 Operation of Law. It is agreed with respect to any legal limitations now or hereafter in effect and affecting the validity or enforceability of the indemnification obligation in this Section 7, such legal limitations are made a part of the indemnification obligation and shall operate to amend the indemnification obligation to the minimum extent necessary to bring the provision into conformity with the requirements of such limitations, and as so modified, the indemnification obligation shall continue in full force and effect.

8. Hazardous Substances.

8.1 Definition. A "*Hazardous Substance*" means all hazardous or toxic substances, wastes or materials, any pollutants or contaminants (including, without limitation, petroleum, petroleum-based products, asbestos and raw materials which include hazardous constituents, radon or urea formaldehyde), and any other similar substances, or materials which are included or regulated by any local, state, or federal law, rule or regulation pertaining to environmental regulation, contamination, clean-up or disclosure, including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act of 1980, the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Federal Insecticide Fungicide and Rodenticide Act, each as amended.

8.2 General Covenants. Subcontractor will immediately notify Contractor of any Hazardous Substances contamination or unlawful spillage arising from the activities of Subcontractor and, within 30 days after receipt of an invoice therefor, reimburse Contractor for all expenses reasonably incurred by Contractor in connection with the clean up or other remediation of such Hazardous Substances.

9. Contractor's Liability and Interest of Contractor.

9.1 Interest of Contractor. The term "Contractor" means only a Person which is the holder of Contractor's interest in this Subcontract at the time in question.

9.2 Contractor's Liability. Immediately upon conveyance by Contractor of its interest in this Subcontract, the conveying Person will be released from all obligations of "Contractor" thereafter arising and accruing under this Subcontract, and Subcontractor will look solely to the new Contractor for performance of such obligations.

10. General Provisions.

10.1 Entire Contract. This Subcontract and any other agreements or contracts referenced in this Subcontract constitute the entire agreement between the Parties. No oral statements or prior written proposals or agreements which are not specifically incorporated into this Subcontract will be effective. The Parties will not be bound by any purported consent, approval or modification of this Subcontract or deemed to have waived or released any provision of this Subcontract, unless such consent, approval, modification, waiver, or release is in writing and signed by the Parties. No amendment to this Subcontract or request by Contractor for changes in the Work or additional Work will be effective unless such amendment or request is in writing and executed by Owner and Subcontractor.

10.2 Governing Law; Venue. This Subcontract will be governed by, construed in accordance with, and enforced under Texas law. Proper venue for any legal action brought under this Subcontract will be in Dallas County, Texas.

10.3 Interpretation. All headings in this Subcontract are for convenience of reference only and not part of this Subcontract. No construction or inference will be derived from the headings. This Subcontract may be executed in any number of counterparts, each of which will be deemed an original and all of which taken together will be deemed one and the same document. Each Party has reviewed, and had an opportunity to have legal counsel review, this Subcontract; therefore, the rule of construction that any ambiguities are to be resolved against the drafting Party will not be employed to interpret this Subcontract. The word "including" does not exclude items not listed. Unless the context otherwise requires, singular includes the plural and plural the singular, and masculine, feminine and neuter genders are interchangeable. Unless expressly provided otherwise, the word "day" refers to a calendar day.

10.4 Conformity with Applicable Law. All applicable law affecting the legality, validity or enforceability of any provision of this Subcontract, including indemnity or release, is made a part of such provision and will operate to amend such provision to the minimum extent necessary to bring the provision into conformity with applicable law and cause the provision, as modified, to continue in full force and effect. If any provision of this Subcontract is held to be illegal, invalid or unenforceable under applicable law, notwithstanding the foregoing provision for reformation of same, then such provision will be deemed removed from this Subcontract and this Subcontract will be reformed to carry out the Parties' intent to the maximum extent practicable under Applicable Law.

10.5 Successors and Assigns. This Subcontract benefits and binds the respective legal representatives, successors, and permitted assigns of Contractor and Subcontractor. Owner is a third party beneficiary to this Subcontract, and without any limitation of the foregoing, it is expressly agreed that Owner may enforce against Subcontractor all obligations of Subcontractor under this Subcontract and the Prime Contract.

10.6 Transfer. Neither Contractor nor Subcontractor may Transfer its interest in this Subcontract without the prior written consent of the other party. "***Transfer***" means any voluntary or involuntary, direct or indirect, assignment or encumbrance, including a pledge, a change of control of ownership interests, a liquidation, dissolution, merger or consolidation of a Party, or a delegation of any obligations under this Subcontract. Notwithstanding the foregoing, (i) Subcontractor may make or permit a direct assignment or transfer if the assignee or transferee is controlled, directly or indirectly, by TDI or BRB (each as defined in the Prime Contract), and (ii) Subcontractor may make

or permit an indirect assignment or transfer if, after giving effect to the assignment or transfer, Subcontractor is controlled, directly or indirectly, by TDI or BRB. Nothing in this Subcontract restricts or limits the pledge of an interest in TDI or BRB or in any entity that owns or controls or is owned or controlled by TDI or BRB, or the collateral assignment of Subcontractor's rights hereunder, to secure one or more extensions of credit. Notwithstanding anything to the contrary, Contractor and Subcontractor acknowledge that this Subcontract may be assigned pursuant to Section 12.4 of the Prime Contract.

10.7 No Waiver. No waiver of compliance with any provisions or conditions of this Subcontract on one occasion will be deemed to be a waiver of similar or dissimilar provisions or conditions of this Subcontract, and the failure to demand full compliance with this Subcontract will not constitute a release of any obligation herein. Except as otherwise provided in this Subcontract or the Prime Contract, Subcontractor's obligations under this Subcontract will not be diminished or released by reason of any consent, approval or payment by Owner or Contractor.

10.8 Survival of Provisions. The termination or expiration of this Subcontract will not affect (i) any right or obligation of either Party which accrued or vested prior to such termination or expiration, or (ii) any related provisions necessary to interpret and continue such rights, obligations, liabilities or responsibilities.

10.9 Time of Essence. Time is of the essence in the performance of this Subcontract and every provision and term of this Subcontract.

10.10 Effective Date. This Subcontract will become effective only after its full execution and delivery by both Parties. Unless the Subcontract Date has been left blank, the Subcontract Date will be prima facie evidence as to the date when this Subcontract becomes effective.

10.11 Notice. All Subcontractor notices must be in writing even though some, but not all, provisions in this Subcontract refer to written notice(s)" or "notice(s) in writing." All notices must be delivered in a manner authorized under the Prime Contract, and notices will be deemed to be effective as prescribed in the Prime Contract. All notices, including all inquiries, requests, instructions, authorizations and communications will be made to the appropriate Representative.

10.12 Warranties and Work Product. Contractor hereby assigns, transfers and conveys to Owner any guarantees or warranties given by the Subcontractor, Sub-subcontractors or Suppliers in connection with the Work, including any materials or equipment incorporated therein, and all of Contractor's rights, title and interest in and to any work product prepared by, through or under Subcontractor, Sub-subcontractors or Suppliers in connection with the Work.

10.13 Dispute Resolution Procedures. Any dispute or claim arising under this Subcontract shall be subject to and decided by the procedures required under the Prime Contract for the resolution of disputes or claims under the Prime Contract. FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES TO THIS AGREEMENT HEREBY AGREE TO WAIVE THE RIGHT TO TRIAL BY JURY FOR ANY DISPUTE ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT. If any legal action or alternative dispute resolution proceeding is brought by either Party to enforce the terms of this Subcontract, the prevailing party in such action or proceeding will be entitled to recover from the other party its reasonable legal fees and costs pertaining to the respective claim or action. If a written settlement offer is rejected and the judgment

or award finally obtained is equal to or more favorable to the offeror than an offer made in writing to settle, the offeror is deemed to be the prevailing party from the date of the offer forward.

10.14 Prime Contract. Subcontractor is hereby authorized by Contractor, in the capacity as an agent of Contractor where necessary for same, to take all actions and provide all reviews, approvals and directions that are contemplated or required of Contractor under the Prime Contract, including (without limitation) any change orders, budget reallocations, plan modifications, materials substitutions or contingency applications, subject in each instance to Subcontractor's approval of same. Promptly upon request from Subcontractor from time to time, Contractor will take such further actions and execute and deliver such documents as are reasonably necessary or appropriate from time to time in furtherance of Subcontractor's performance or action under the Prime Contract or the pursuit or enforcement of the rights or remedies under the Prime Contract that are delegated or assigned to Subcontractor hereunder. Contractor shall not terminate, amend, modify or assign the Prime Contract, in whole or in part, or otherwise effect any approval, objection, waiver or release thereunder, without in each instance obtaining the prior written consent of Subcontractor to such action.

10.15 Separated Contract. It is the intent of the Contractor and Subcontractor that this Subcontract constitutes a separated contract for purposes of the rules of the Texas Comptroller of Public Accounts located at 34 Texas Administrative Code Section 3.291(a)(13).

10.16 Notices. Addresses for notice are as follows: (a) If to Contractor then [REDACTED], with a copy to 600 E. Las Colinas Blvd., Suite 1800, Irving, Texas 75039, Attn: Katie Willis; and (b) if to Subcontractor then 600 E. Las Colinas Blvd., Suite 1800, Irving, Texas 75039, Attn: Katie Willis, with a copy to JPI Legal Department at 600 E. Las Colinas Blvd., Suite 1800, Irving, Texas 75039. Methods for notice are as stipulated in the Prime Contract.

[SIGNATURES FOLLOW]

Executed to be effective as of the Subcontract Date.

SUBCONTRACTOR:

CONTRACTOR:

JPI CONSTRUCTION, LLC,
a Texas limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

EXHIBIT A
PROPERTY DESCRIPTION

EXHIBIT B
PRIME CONTRACT

NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT CONVEYS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS**

By: *JEFFERSON VILLAGES OF WATERS CREEK, LLC
Grantor,

to TIM STORMS,
Trustee,

for the benefit of

TEXAS CAPITAL BANK, AS ADMINISTRATIVE AGENT,
as beneficiary

*** _____, 2022**

TABLE OF CONTENTS

	Page
SECTION I DEFINITIONS	1
1.1 Definitions	1
1.2 Additional Definitions; Interpretive Provisions	9
SECTION II GRANT	9
2.1 Grant	9
SECTION III REPRESENTATIONS AND WARRANTIES	10
3.1 Organization and Power	10
3.2 Validity of Loan Documents	10
3.3 Information	10
3.4 Title and Lien	11
3.5 Business Purposes	11
3.6 Taxes	11
3.7 Mailing Address	11
3.8 Relationship of Grantor, Agent and Lenders.....	11
3.9 Control Persons	12
3.10 Experience; No Reliance on Agent and Lenders.....	12
3.11 No Litigation	12
3.12 ERISA	12
3.13 Employees	13
3.14 Labor Relations	13
3.15 No Bankruptcy	13
3.16 Compliance with Legal Requirements	13
3.17 Separate Tax Parcel; Legal Lot	13
3.18 Utilities; Access.....	13
3.19 Money Laundering; Anti-Terrorism Laws	14
3.20 No Foreign Person.....	14
3.21 No-Defaults	14
3.22 Non-contravention.....	14
3.23 Consents, Approvals and Filings, Etc.	14
3.24 Contracts and Agreements.....	14
3.25 No Investment Company.....	14
3.26 No Margin Stock	15
3.27 Financial Statements.....	15
3.28 Single Purpose Entities; Nature of Grantor	15
3.29 No Commencement	15
3.30 Leases Effective	15
SECTION IV AFFIRMATIVE COVENANTS	16
4.1 Payment and Performance.....	16
4.2 Existence	16
4.3 Compliance with Legal Requirements	16
4.4 First Lien Status.....	16

4.5	Payment of Impositions	16
4.6	Maintenance and Repair	16
4.7	Intentionally Deleted	17
4.8	Inspection	17
4.9	Intentionally Deleted.	17
4.10	Intentionally Deleted.	17
4.11	Leases.	17
4.12	Payment for Labor and Materials	18
4.13	Further Assurances and Corrections.....	18
4.14	Tax on Deed of Trust.....	18
4.15	Statement of Unpaid Balance	19
4.16	Expenses	19
4.17	Address	19
4.18	Disclosures	19
4.19	ERISA	20
4.20	Delivery of Contracts	20
4.21	Sources and Uses of Funds.....	20
4.22	Surveys	21
4.23	Personalty and Fixtures	21
4.24	Management Agreement	21
SECTION V NEGATIVE COVENANTS		21
5.1	Use Violations	21
5.2	Waste; Alterations	21
5.3	Replacement of Fixtures and Personalty	22
5.4	Change in Zoning	22
5.5	No Drilling	22
5.6	No Subordinate Mortgages.....	22
5.7	Additional Debt.	22
5.8	Encumbrances	23
5.9	New Construction.....	23
5.10	Mergers or Dispositions	23
5.11	Acquisitions.....	23
5.12	Intentionally Omitted	23
5.13	Investments.....	23
5.14	Transactions with Affiliates	23
5.15	Defaults on Other Obligations.....	23
5.16	Prepayment of Debt.....	23
5.17	Pension Plans.....	24
5.18	Subordinate Debt.....	24
5.19	No Further Negative Pledges	24
5.20	Accounts Receivable	24
5.21	No License Restrictions.....	24
5.22	Hedge Agreements	24
SECTION VI EVENTS OF DEFAULT		24
SECTION VII REMEDIES.....		24
7.1	Agent's Remedies Upon Default.....	24
7.2	Other Rights of Agent	32

7.3	Possession After Foreclosure	32
7.4	Application of Proceeds	32
7.5	Abandonment of Sale; Dismissal of Suit	33
7.6	Payment of Fees	33
7.7	Miscellaneous.....	33
7.8	Intentionally Omitted.....	35
7.9	Waiver of Benefits of Deficiency Statute.....	35
7.10	General Partner Liability.....	36
SECTION VIII SPECIAL PROVISIONS.....		36
8.1	Intentionally Deleted	36
8.2	Intentionally Deleted.....	36
8.3	Intentionally Deleted	36
8.4	INDEMNITY	36
8.5	Grantor's Waiver of Subrogation.....	38
8.6	Grantor's Waiver of Setoff.....	38
8.7	Agent's Setoff.....	38
8.8	Consent to Disposition	39
8.9	Consent to Subordinate Mortgage.....	39
8.10	Payment After Acceleration	39
8.11	Intentionally Deleted	40
8.12	Maximum Interest	40
SECTION IX ASSIGNMENT OF RENTS		41
9.1	Present Assignment	41
9.2	Application of Rents.....	41
9.3	Reliance Upon Lease Rent Notice.....	41
9.4	Collection of Rent	42
9.5	Texas Assignment of Rents Act	42
SECTION X SECURITY AGREEMENT		43
10.1	Security Interest.....	43
10.2	Financing Statements	43
10.3	No Changes	43
10.4	Fixture Filing and Construction Mortgage.....	44
SECTION XI CONCERNING TRUSTEE		44
11.1	No Required Action.....	44
11.2	Certain Rights.....	44
11.3	Retention of Money	45
11.4	Successor Trustees	45
11.5	Perfection of Appointment	45
11.6	Succession Instruments	45
11.7	No Representation by Trustee or Agent	45
11.8	Indemnity of Trustee	46
SECTION XII MISCELLANEOUS		46
12.1	Release.....	46
12.2	Performance at Grantor's Expense.....	46
12.3	Survival of Obligations	47

12.4	Recording and Filing	47
12.5	Intentionally Deleted	47
12.6	Covenants Running with the Land	47
12.7	Successors and Assigns	47
12.8	No Waiver; Severability	47
12.9	Counterparts	48
12.10	Waiver of Fraudulent Inducement.....	48
12.11	Governing Law; Venue; Service of Process.....	48
12.12	Waiver of Consequential, Punitive and Speculative Damages	49
12.13	Controlling Agreement.....	49
12.14	Subrogation	49
12.15	Payments	49
12.16	Exceptions to Covenants	49
12.17	Reliance	49
12.18	Headings	50
12.19	Entire Agreement	50
12.20	Amendment	50
12.21	WAIVER OF JURY TRIAL	50
12.22	Counting of Days.....	50
12.23	No Merger of Estates.....	50
12.24	USA Patriot Act Notice.....	51
SECTION XIII ground lease provisions		51
13.1	No Merger	51
13.2	Representations, Warranties and Covenants	51
13.3	Bankruptcy Provisions	54

EXHIBIT A - Land Description

When recorded, return to:

Holland & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201-2533
Attention: Matthew H. Swerdlow

**LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT
AND ASSIGNMENT OF RENTS**

THIS LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF RENTS (this “***Deed of Trust***”), is entered into as of *_____, 2022 (the “***Effective Date***”), by *JEFFERSON VILLAGES OF WATERS CREEK, LLC, a *Delaware limited liability company, as Grantor, whose mailing address for notice hereunder is at 600 E. Las Colinas Blvd., Suite 1800, Irving, Texas 75039, Attention: Blake Taylor, to **TIM STORMS**, Trustee, whose address is 2000 McKinney Avenue, Suite 700, Dallas, Texas 75201, for the benefit of the hereinafter described Agent (as defined below) in its capacity as administrative agent under the Loan Agreement referenced below, for the benefit of itself and the Lenders (as defined in the Loan Agreement), with joinder by **APFC WATERS CREEK MEMBER, LLC**, a Texas limited liability corporation (“***Fee Owner***” or “***Ground Lessor***”). For good and valuable consideration, including the extension of credit from Lenders to Grantor, the receipt and sufficiency of which are acknowledged, Grantor is executing this Deed of Trust.

Grantor is the owner of the leasehold estate in certain real property described in ***Exhibit A*** attached hereto and made a part hereof, together with the improvements now or hereafter erected thereon (the “***Ground Lease Estate***”) pursuant to that certain Lease Agreement between Grantor and Ground Lessor more particularly described on ****Exhibit B*** attached hereto and made a part hereof (the “***Ground Lease***”).

**SECTION I
DEFINITIONS**

1.1 Definitions. As used herein, the following terms shall have the following meanings:

“***Agent***” means TEXAS CAPITAL BANK, a Texas state bank, whose address for notice hereunder is 2000 McKinney Avenue, Suite 700, Dallas, Texas 75201, Attention: Tim Harrigan, Executive Vice President, or any successor agent pursuant to the terms of the Loan Agreement, in its capacity as administrative agent for the Lenders.

“***Anti-Terrorism Laws***” means any and all present and future judicial decisions, statutes, rulings, rules, regulations, permits, certificates, orders, and ordinances of any Governmental Authority relating to terrorism or money laundering, including, without limiting the generality of the foregoing, the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Pub. L. No. 107-56); the Trading with the Enemy Act (50 U.S.C.A. App. 1 *et seq.*); the International Emergency Economic Powers Act (50 U.S.C.A. § 1701-06); Executive Order No. 13224 on Terrorist Financing, effective September

Leasehold Deed of Trust

24, 2001 (relating to “Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism”) and the United States Treasury Department’s Office of Foreign Assets Control list of “Specifically Designated National and Blocked Persons” (as published from time to time in various mediums, including, without limitation, at <http://www.treas.gov/ofac/t11sdn.pdf>).

“**CGL**” means the broadest available form of commercial general liability insurance (utilizing the then prevailing ISO form or an equivalent form acceptable to Agent in its sole discretion).

“**Constituent Party**” means any (a) general partner, sole member or managing member of Grantor or (b) any signatory to this Deed of Trust that signs on Grantor’s behalf that is a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, or other type of business organization.

“**Contracts**” means all of the right, title, and interest of Grantor, including equitable rights, in, to, and under all: (a) contracts for the purchase or sale of all or any portion of the Mortgaged Property, whether such contracts are now or at any time hereafter existing, including without limitation, all earnest money or other deposits escrowed or to be escrowed or letters of credit provided or to be provided by the purchasers under the contracts, including all amendments, supplements, and restatements thereof, and together with all payments, earnings, income, profits, and all other sums due or to become due arising from the sale of any portion of the Mortgaged Property or from the contracts, and together with any and all earnest money, security, letters of credit, or other deposits under any of the contracts; (b) contracts, licenses, permits, and rights relating to living unit equivalents or other entitlements for water, wastewater, and other utility services whether executed, granted, or issued by a private person or entity or a governmental or quasi-governmental agency, which are directly or indirectly related to the development, ownership, maintenance, or operation of the Mortgaged Property, whether such contracts, licenses, and permits are now or hereafter existing, including without limitation, all rights of living unit equivalents or other entitlements with respect to water, wastewater, and other utility services, certificates, licenses, zoning variances, permits, and no-action letters from each Governmental Authority required (i) to evidence compliance by Grantor and all improvements constructed or to be constructed on the Mortgaged Property with all Legal Requirements applicable to the Mortgaged Property, and (ii) to develop and/or operate the Mortgaged Property as a residential project; (c) contracts for construction or supplying of Improvements to the Mortgaged Property; and (d) other contracts which in any way relate to the use, enjoyment, occupancy, operation, maintenance, repair, management, or ownership of the Mortgaged Property (save and except the Leases), including without limitation maintenance and service contracts and management agreements.

“**Debt**” means as of any applicable date of determination, all items of indebtedness, obligation, or liability of a Person, whether matured or unmatured, liquidated or unliquidated, direct or indirect, absolute or contingent, joint or several, including, without limitation, all items that should be classified as liabilities under GAAP. In the case of Grantor, the term “**Debt**” shall include, without limitation, the Indebtedness and the Obligations.

“**Default Rate**” has the meaning set forth in the Loan Agreement.

“Disposition” means any sale, lease (other than pursuant to Leases), exchange, assignment, mortgage, conveyance, transfer, trade, or other disposition of (a) all or any portion of the Mortgaged Property (or any interest therein) or (b) all or any part of the legal or beneficial ownership interest in Grantor or Guarantor (if Grantor or Guarantor is a corporation, partnership, general partnership, limited partnership, joint venture, trust, or other type of business association or legal entity), in either case, except for any Permitted Disposition expressly permitted under the Loan Documents.

“Environmental Indemnity Agreement” means the Environmental Indemnity Agreement of even date herewith, executed by Grantor and Guarantor in favor of Agent as it may from time to time be amended, supplemented, or restated.

“Environmental Laws” has the meaning set forth in the Environmental Indemnity Agreement.

“Equipment” has the meaning set forth in the UCC together with all of the following to the extent, if any, the same are not included within such definition: all machinery, equipment, furniture, furnishings, fixtures, and other tangible personal property including, without limitation, data processing hardware and software, licenses, motor vehicles, aircraft, dies, tools, jigs, and office equipment, as well as all of such types of property that are leased and all rights and interests with respect thereto under such leases and licenses to the extent that any such lease or license does not prohibit or require a consent to the creation of a Lien in favor of the Agent and Lenders (including, without limitation, options to purchase) together with all present and future additions and accessions thereto, replacements therefor, component and auxiliary parts and supplies used or to be used in connection therewith, and all substitutes for any of the foregoing, and all manuals, drawings, instructions, warranties and rights with respect thereto wherever any of the foregoing is located to the extent that any of the foregoing are now owned or hereafter acquired by the Grantor and to the extent that any other Person now or hereafter grants or purports to grant a Lien upon all or any of the foregoing as security for all or any portion of the Indebtedness.

“ERISA” means the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 *et seq.*, as amended, and all successor statutes thereof.

“Event of Default” has the meaning set forth in **Section VI**.

“Fee Owner” has the meaning set forth in the first paragraph of this Deed of Trust.

“Fixtures” means all materials, supplies, equipment, systems, apparatus, and other items now owned or hereafter acquired by Grantor and now or hereafter attached to, installed in, or used in connection with (temporarily or permanently) any of the Improvements or the Land, including without limitation, all partitions, dynamos, window screens and shades, draperies, rugs and other floor coverings, awnings, motors, engines, boilers, furnaces, pipes, call and sprinkler systems, alarm and security systems, intercom systems, fire extinguishing apparatus and equipment, water tanks, swimming pools, heating, ventilating, refrigeration, plumbing, laundry, lighting, generating, cleaning, waste disposal, transportation systems (of people or things, including without limitation stairways, elevators, escalators, and conveyors), incinerating, air

conditioning and air cooling equipment and systems, gas and electric machinery, appurtenances, and equipment, disposals, dishwashers, refrigerators, ranges, recreational equipment and facilities of all kinds, lighting, traffic control, raw and potable water, gas, electrical, storm and sanitary sewer, telephone and cable television facilities, and all other utilities whether or not situated in easements, together with all accessions, appurtenances, replacements, betterments, and substitutions for any of the foregoing and the proceeds thereof.

"Grantor" means the individual or entity (or individuals or entities, if more than one) described as Grantor in the initial paragraph of this Deed of Trust and the successors, assigns, heirs, and legal representatives therefor, and all subsequent owners of all of any part of the Mortgaged Property (without hereby implying Agent's consent to any Disposition of all or any part of the Mortgaged Property).

"Ground Lease" has the meaning set forth in the second paragraph of this Deed of Trust.

"Ground Lease Estate" has the meaning set forth in the second paragraph of this Deed of Trust.

"Ground Lease Property" means all of Grantor's interest in the Ground Lease Estate in the Land and the Improvements, and any fee simple interest in the Land and Improvements hereafter owned by Grantor, together with (i) all estates, title interests, title reversion rights, remainders, increases, issues, profits, rights of way or uses, additions, accretions, servitudes, strips, gaps, gores, liberties, privileges, water rights, water courses, alleys, passages, ways, vaults, licenses, tenements, franchises, hereditaments, appurtenances, easements, rights-of-way, rights of ingress or egress, parking rights, timber, crops, mineral interests and other rights, now or hereafter owned by Grantor and belonging or pertaining to the Ground Lease Estate, the Land, or Improvements; (ii) all claims whatsoever of Grantor with respect to the land, the Ground Lease Estate, or Improvements, either in law or in equity, in possession or in expectancy; (iii) all estate, right, title and interest of Grantor in and to all streets, roads and public places, opened or proposed, now or hereafter adjoining or appertaining to the Ground Lease Estate, the Land, or Improvements; and (iv) all options to purchase the Land, the Ground Lease Estate, or Improvements, or any portion thereof or interest therein, and any greater estate in the Land, the Ground Lease Estate, or Improvements, and all additions to and proceeds of the foregoing.

"Ground Lessor" has the meaning set forth in the first paragraph of this Deed of Trust.

"Impositions" means: (a) all real estate and personal property taxes, charges, assessments, standby fees, excises, and levies and any interest, costs, or penalties with respect thereto, general and special, ordinary and extraordinary, foreseen and unforeseen, of any kind and nature whatsoever which at any time before or after the execution hereof may be assessed, levied, or imposed upon the Mortgaged Property or the ownership, use, occupancy, or enjoyment thereof, or any portion thereof, or the sidewalks, streets, or alleyways adjacent thereto; and (b) assessments and charges arising under any subdivision, condominium, planned unit development, or other declarations, restrictions, regimes, or agreements affecting the Mortgaged Property.

“Improvements” means any and all buildings, covered garages, air conditioning towers, open parking areas, structures, and other improvements of any kind or nature, and any and all additions, alterations, betterments, or appurtenances thereto, now or at any time hereafter situated, placed, or constructed upon the Land or any part thereof.

“Indebtedness” means (i) the principal of, interest on, or other sums evidenced by the Loan Documents, including any protective advances or other amounts advanced by Agent and Lenders pursuant to the Loan Documents; (ii) any other amounts, payments, or premiums payable under the Loan Documents; (iii) such additional or future sums (whether or not obligatory), with interest thereon, as may hereafter be borrowed or advanced from Agent and Lenders and their successors or assigns, by the then record owner of the Mortgaged Property, when evidenced by a promissory note which, by its terms, is secured hereby, it being contemplated by Grantor, Agent and Lenders that such future indebtedness may be incurred; (iv) all Hedge Obligations of Grantor or any other Loan Party under and in connection with any Secured Hedge Agreement related to the Loan, (v) any and all other indebtedness, obligations, and liabilities of any kind or character of Grantor to Agent and Lenders, now or hereafter existing, absolute or contingent, due or not due, arising by operation of law or otherwise, direct or indirect, primary or secondary, joint, several, joint and several, fixed or contingent, secured or unsecured by additional or different security or securities, including indebtedness, obligations, and liabilities to Agent and Lenders of Grantor as a member of any partnership, joint venture, trust or other type of business association, or other group, and whether incurred by Grantor as principal, surety, endorser, guarantor, accommodation party or otherwise, and (vi) any and all renewals, modifications, amendments, restatements, rearrangements, consolidations, substitutions, replacements, enlargements, and extensions thereof, it being contemplated by Agent, Lenders and Grantor that Grantor may hereafter become indebted to Agent and Lenders in further sum or sums. Notwithstanding the above, the term **“Indebtedness”** shall not include (i) any Excluded Rate Contract Obligations or (ii) any other loan, advance, Debt, obligation, or liability with respect to which Agent or Lenders are by applicable law prohibited from obtaining a Lien on real estate, nor shall this definition operate or be effective to constitute or require any assumption or payment by any person of any Debt or obligation of any other Person if it would violate or exceed the limit provided in any applicable usury or other law.

“Land” means all of that certain real property or interest therein described in **Exhibit A**, together with all right, title, interest, and privilege of Grantor in and to: (a) all streets, ways, roads, alleys, easements, rights-of-way, licenses, rights of ingress and egress, vehicle parking rights, and public places, existing or proposed, abutting, adjacent, used in connection with, or pertaining to such real property or the improvements thereon; (b) any strips or gores of real property between such real property and abutting or adjacent properties; (c) all air rights, all water and water rights, sands, gravel, rocks and soil, timber and crops pertaining to such real property; and (d) all other appurtenances, reversions, and remainders in or to such real property.

“Lease Rent Notice” means a notice from Agent to any Lessee instructing each such Lessee under a Lease to pay all current and future Rents under the Leases directly to Agent, and attorn in respect of all other obligations thereunder directly to Agent.

“Leases” means all leases, master leases, subleases, licenses, concessions, Resident Agreements or other agreements (whether written or oral or now or hereafter in effect) which

grant to third parties a possessory interest in and to, or the right to use or occupy, all or any part of the Mortgaged Property, together with all security deposits and other deposits or payments made in connection therewith.

“Lease Guaranties” means, collectively, all claims and rights under all lease guaranties, letters of credit, and any other credit given to Grantor or any predecessor or successor of Grantor by any guarantor in connection with any of the Leases.

“Lender’s Agent” means Grantor, solely for the purpose of collecting Rents and applying Rents as set forth herein, which agency shall never be deemed to be that of trustee and beneficiary or fiduciary for any purpose, and which agency relationship cannot be terminated by Grantor so long as the Loan Documents are in effect.

“Lessee” means individually or collectively, a lessee or tenant under any of the Leases.

“Lien” means any valid and enforceable interest in any property securing an indebtedness, obligation, or liability owed to or claimed by any Person other than the owner of that property, whether that indebtedness is based on the common law, statute, or contract, including, without limitation, liens created by or pursuant to a security interest, pledge, deed to secure debt, deed of trust, mortgage, assignment, conditional sale, trust receipt, lease, consignment, or bailment for security purposes.

“Loan” means the loan made by Agent and Lenders to Grantor, evidenced by the Note or otherwise arising under the Loan Documents and secured by this Deed of Trust and other Loan Documents.

“Loan Agreement” means that certain Construction Loan Agreement of even date herewith among Grantor, Agent and Lenders.

“Losses” has the meaning set forth in **Section 8.4**.

“Maximum Rate” has the meaning set forth in the Loan Agreement.

“Minerals” means all substances in, on, under, or above the Land owned by Grantor which are now, or may become in the future, intrinsically valuable (that is, valuable in themselves) and which now or may be in the future enjoyed through extraction or removal from the property, including without limitation oil, gas, and all other hydrocarbons, coal, lignite, carbon dioxide, and all other non-hydrocarbon gases, uranium and all other radioactive substances, and gold, silver, copper, iron, and all other metallic substances or ores.

“Mortgaged Property” means the Land, Minerals, Fixtures, Improvements, Personalty, Contracts, Leases, Plans, if any, the Ground Lease Property, Grantor's leasehold interest under the Ground Lease, and any interest of Grantor now owned or hereafter acquired therein, together with an interest in the Rents, and all other security and collateral of any nature now or hereafter given for the payment of the Indebtedness and the performance and discharge of the Obligations. Where the context permits or requires, the term **“Mortgaged Property”** means all or any portion of the above.

“Note” means one or more promissory notes dated of even date herewith, secured by, among other things, this Deed of Trust, executed by Grantor in the aggregate stated principal sum of \$51,667,000.00, each payable to the order of a Lender and bearing interest as therein specified, containing an attorneys’ fee clause, evidencing the Loan and maturing on * _____, 2026 (subject to possible extension as set forth in the Loan Agreement), as it may from time to time be amended, supplemented, restated, renewed, extended or increased.

“Obligations” means any and all of the covenants, conditions, warranties, representations, and other obligations including all Hedge Obligations of Grantor or any other Loan Party under and in connection with any Secured Hedge Agreement and all Erroneous Payment Subrogation Rights (but excluding any obligation to repay any Indebtedness) made or undertaken by Grantor, Guarantor, or any other Person to the Loan Documents to Agent, Lenders, Trustee, or others as set forth in the Loan Documents, in any Secured Hedge Agreement, the Leases, and in any deed, lease, sublease, or other form of conveyance, or any other agreement pursuant to which Grantor is granted a possessory interest in the Mortgaged Property, but excluding any Excluded Rate Contract Obligations.

“Operating Expenses” means all expenses related to the ownership, operation, management, repair, and leasing of the Land and Improvements, including Mortgaged Property insurance charges and premiums, ad valorem taxes and other Impositions, waste prevention costs, ordinary repairs and maintenance costs, environmental audit costs, property management fees, security fees, accountant fees, marketing and promotional expenses, legal expenses, Lease obligation costs, and Governmental Authority compliance costs.

“PBGC” means the Pension Benefit Guaranty Corporation, and any successor to all or any of the Pension Benefit Guaranty Corporation’s functions under ERISA.

“Pension Plan” means the employee benefit pension plans of Grantor and any Subsidiaries in effect from time to time (if any), as the term is defined in ERISA.

“Permitted Exceptions” means the liens, easements, restrictions, security interests, and other matters (if any) described on Schedule B of the Title Policy insuring the lien of this Deed of Trust, the liens and security interests created by the Loan Documents and any other such matters approved by Agent in Agent’s sole discretion in writing from time to time.

“Person” means any individual, corporation, partnership (general or limited), joint venture, limited liability company, association, trust, unincorporated association, joint stock company, government, municipality, political subdivision, political agency, or other entity.

“Personalty” means all of the right, title, and interest of Grantor in and to: (a) furniture, furnishings, Equipment, machinery, and goods (including, without limitation, crops, farm products, timber and timber to be cut, and as-extracted collateral); (b) general intangibles, money, insurance proceeds, accounts (including without limitation the Operating Account and Special Account (each as defined in the Loan Agreement)), contract and subcontract rights, Contracts, trademarks, trade names, copyrights, chattel paper, instruments, investment property, letter of credit rights, and inventory; (c) all cash funds, fees (whether refundable, returnable, or reimbursable), deposit accounts, or other funds or evidences of cash, credit, or indebtedness

deposited by or on behalf of Grantor with any governmental agencies, boards, corporations, providers of utility services, public or private, including, without limitation, all refundable, returnable, or reimbursable tap fees, utility deposits, commitment fees, development costs, any awards, remunerations, reimbursements, settlements, or compensation heretofore made or hereafter to be made by any Governmental Authority pertaining to the Land, Improvements, Fixtures, Contracts, or other personalty, including, but not limited to, those for any vacation of, or change of grade in, any streets affecting the Land or the Improvements and those for municipal utility district or other utility costs incurred or deposits made in connection with the Land; (d) the Plans, and (e) all other personal property of any kind or character as defined in and subject to the provisions of the UCC (Article 9 - Secured Transactions); any and all of which are now owned or hereafter acquired by Grantor, and which are now or hereafter situated in, on, or about the Land or the Improvements, or used in or necessary to the complete and proper planning, development, construction, financing, use, occupancy, or operation thereof, or acquired (whether delivered to the Land or stored elsewhere) for use in or on the Land or the Improvements, together with all accessions, replacements, and substitutions thereto or therefor and the proceeds thereof.

“Prohibited Person” means any person or entity that (a) is specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (b) is owned or controlled by, or acting for or on behalf of any person or entity specifically named or listed in, or otherwise subject to, any Anti-Terrorism Laws, (c) beneficiary is prohibited from dealing with, or engaging in any transaction with, pursuant to any Anti-Terrorism Laws, or (d) is affiliated with any person or entity described in clauses (a) through (c) above.

“Property” means the Mortgaged Property.

“Rents” means all rents, revenues, royalties, income, issues, proceeds, bonus monies, profits (including all oil and gas or other mineral royalties and bonuses), accounts, security deposits and other types of deposits (after Grantor acquires title thereto), and other benefits paid or payable by parties (other than Grantor) to the Leases for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying the Mortgaged Property.

“Resident Agreements” means any and all contracts and agreements executed by, or on behalf of, any resident of the Mortgaged Property in favor of, or with, Grantor.

“Subordinate Mortgage” means any mortgage, deed of trust, pledge, lien (statutory, constitutional, or contractual), security interest, encumbrance, charge, conditional sale agreement, or other title retention agreement covering all or any portion of the Mortgaged Property executed and delivered by Grantor, the lien of which is subordinate and inferior to the lien of this Deed of Trust.

“Tax Code” means the U.S. Internal Revenue Code of 1986, as amended, any and all U.S. Department of Treasury Regulations issued pursuant thereto in temporary or final form, and any and all federal, state, county, municipal and city rules and rulings, notices, requirements, statutes, regulations or laws governing or relating to taxes and/or taxation, and any and all successor statutes thereof.

“**Trustee**” means the Person described as Trustee in the initial paragraph of this Deed of Trust, or, upon appointment, any substitute trustee appointed pursuant to **Section 11.4**.

“**UCC**” means the Uniform Commercial Code, as amended from time to time, in effect in the state in which the Mortgaged Property is located.

1.2 Additional Definitions; Interpretive Provisions. All capitalized terms not otherwise defined in this Deed of Trust shall have the same meaning given to those terms in the Loan Agreement. As used herein, the following terms shall have the following meanings:

- (a) “**hereof**,” “**hereby**,” “**hereto**,” “**hereunder**,” and similar terms mean of, by, to, under, and with respect to, this Deed of Trust;
- (b) “**heretofore**” means before, “**hereafter**” means after, and “**herewith**” means concurrently with, the date of this Deed of Trust;
- (c) “**including**” means including without limitation;
- (d) words of any gender shall include the other gender where appropriate;
- (e) all terms used herein, whether or not defined in **Section 1.1**, and whether used in singular or plural form, shall be deemed to refer to the object of such term whether such is singular or plural in nature, as the context may suggest or require; and
- (f) all references to a particular **Section** shall refer to a **Section** in this Deed of Trust, unless otherwise specifically stated.

SECTION II GRANT

2.1 Grant. To secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, Grantor hereby GRANTS, BARGAINS, SELLS and CONVEYS, unto Trustee, in trust, with the power of sale, the Mortgaged Property, subject only to the Permitted Exceptions, TO HAVE AND TO HOLD the Mortgaged Property unto Trustee forever, and Grantor hereby binds itself, its successors, and assigns to WARRANT AND FOREVER DEFEND the title to the Mortgaged Property unto Trustee against every Person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise; *provided, however*, that if Grantor shall pay (or cause to be paid) the Indebtedness as and when the same shall become due and payable and shall fully perform and discharge (or cause to be fully performed and discharged) the Obligations on or before the date same are to be performed and discharged, then the liens, security interests, estates, and rights granted by the Loan Documents shall terminate, in accordance with the provisions hereof, otherwise same shall remain in full force and effect. A certificate or other written statement executed on behalf of Trustee or Agent confirming that the Indebtedness has not been fully paid or the Obligations have not been fully performed or discharged shall be sufficient evidence thereof for the purpose of reliance by third parties on such fact. Grantor acknowledges and agrees that this Deed of Trust grants a lien on the leasehold

interest in and to the Land and Improvements granted by the Ground Lease, and a lien on fee title to the Mortgaged Property, as applicable.

SECTION III REPRESENTATIONS AND WARRANTIES

Grantor hereby represents and warrants to Agent and Lenders, as of the date hereof and at all times during the term of this Deed of Trust, as follows:

3.1 Organization and Power. If Grantor or any Constituent Party is a corporation, limited liability company, general partnership, limited partnership or other entity, then Grantor and any Constituent Party, if any, (a) is either a corporation duly incorporated, a limited liability company duly organized with a legal status separate from its Affiliates, or a partnership or other entity duly organized, validly existing, and with its right to do business intact under the laws of the state of its formation or existence; (b) has complied with all conditions prerequisite to its doing business in the state in which the Mortgaged Property is located; and (c) has all requisite power and all governmental certificates of authority, licenses, permits, qualifications, and documentation to own, lease, and operate its properties and to carry on its business as now being, and as proposed to be, conducted.

3.2 Validity of Loan Documents. The execution, delivery, and performance by Grantor of and under the Loan Documents (other than the Guaranty) (a) if Grantor, or any signatory who signs on its behalf, is a corporation, general partnership, limited partnership, limited liability company or other entity, are within Grantor's and each Constituent Party's powers and have been duly authorized by Grantor's and each Constituent Party's board of directors, shareholders, partners, members, managers or other necessary parties, and all requisite actions for such authorization have been taken, (b) have received all requisite prior governmental approvals, if any, in order to be legally binding and enforceable, and (c) does not violate, conflict with, result in a breach of, or constitute (with due notice, lapse of time, or both) a default under or violation of any Legal Requirement or result in the creation or imposition of any lien, charge, or encumbrance of any nature upon any of Grantor's and any Constituent Party's or Guarantor's property or assets, except as contemplated by the Loan Documents. The Loan Documents constitute the legal, valid, and binding obligations of Grantor, Guarantor, and others obligated under the Loan Documents, enforceable pursuant to their respective terms.

3.3 Information. All information, financial statements, reports, papers, and data given or to be given to Agent regarding Grantor, each Constituent Party, any Guarantor, others obligated under the terms of the Loan Documents, or the Mortgaged Property are, or at the time of delivery will be, accurate, complete, and correct in all material respects. Since the date of the financial statements of Grantor, any Constituent Party, any Guarantor, or any other party liable for payment of the Indebtedness or performance of the Obligations or any part thereof previously furnished to Agent, no Material Adverse Event has occurred (which statement shall be deemed made by Grantor only on the date of this Deed of Trust and on the date of each Request for Advance by Grantor), and except as previously disclosed in writing to Agent, neither Grantor, any Constituent Party, any Guarantor, or any other such party has incurred any material liability, direct or indirect, fixed or contingent. Grantor acknowledges and understands that Agent may be required, and hereby authorizes Agent, to obtain, verify, and record information that identifies

Grantor, each Constituent Party, and/or Guarantor that may include the names and addresses of such parties and other information that will allow Agent to identify such parties in accordance with the requirements of Anti-Terrorism Laws. Grantor has no material guarantees, contingent liabilities and liabilities for taxes, or any long-term leases or unusual forward or long-term commitments, or any Hedge Agreement or other transaction or obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph.

3.4 Title and Lien. Grantor has good and indefeasible leasehold interest in the Ground Lease and good and indefeasible title to the Improvements (in fee simple), and good and marketable title to the Fixtures and Personalty, in each case free of any Liens, charges, rights of first refusal or first offer, encumbrances, claims, easements, restrictions, options, leases (other than the Leases), covenants and other rights, titles or estates of any nature, except for the Permitted Exceptions. This Deed of Trust constitutes a valid, subsisting first lien on Grantor's leasehold interest under the Ground Lease, the Land, the Improvements, the Leases, Minerals, and the Fixtures; a valid, subsisting first priority security interest in and to the Personalty, Contracts, and Leases (to the extent that the term Leases include items covered by the UCC); and a valid, subsisting second priority security interest in and to the Rents; all in accordance with the terms hereof, and all subject to the Permitted Exceptions.

3.5 Business Purposes. The loan evidenced by the Note is solely for the purpose of carrying on or acquiring a business of Grantor, and is not for personal, family, household, or agricultural purposes. The Mortgaged Property forms no part of any property owned, used, or claimed by Grantor as a residence or business homestead and is not exempt from forced sale under the laws of the State in which the Mortgaged Property is located. Grantor disclaims and renounces all claims to all or any portion of the Mortgaged Property as a homestead.

3.6 Taxes. Grantor, each Constituent Party, and Guarantor (a) have filed on or before their respective due dates all federal, state, county, municipal, city income, and other tax returns required to have been filed by them, including, without limitation, those required under the Tax Code, (or have obtained extensions for filing those tax returns), (b) are not delinquent in filing those returns or extensions, if any, and (c) have paid all taxes and related liabilities that are due pursuant to those returns or pursuant to any assessments received by that party to the extent those taxes have become due. Neither Grantor, any Constituent Party, nor Guarantor knows of any basis for any additional assessment regarding any such taxes and related liabilities. Grantor, each Constituent Party, and Guarantor believe that their respective tax returns properly reflect the income and taxes of Grantor, each Constituent Party, and Guarantor for the periods covered thereby, subject only to reasonable adjustments required by the Internal Revenue Service or other applicable tax authority upon audit.

3.7 Mailing Address. Grantor's mailing address, as set forth in the opening paragraph hereof or as changed pursuant to the provisions hereof, is true and correct.

3.8 Relationship of Grantor, Agent and Lenders. Notwithstanding any prior business or personal relationship between Grantor, Agent and the Lenders or any officer, director, or employee of Agent or Lenders, the relationship between Grantor on the one hand, and Agent and Lenders on the other hand, is solely that of debtor and creditor. Agent and

Lenders have no fiduciary or other special relationship with Grantor, and vice versa. Grantor, Agent and Lenders are not partners or joint venturers and nothing contained in the Loan Documents shall be construed to suggest that the relationship between Grantor on the one hand, and Agent and Lenders on the other hand, is other than that of debtor and creditor.

3.9 Control Persons. Grantor is not, and no Person having "control" (as that term is defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of Grantor is, an "executive officer," "director," or "person who directly or indirectly or in concert with one or more persons, owns, controls, or has the power to vote more than 10% of any class of voting securities" (as those terms are defined in 12 U.S.C. §375b or in regulations promulgated pursuant thereto) of Agent or any Lender, of a holding company of which Agent or any Lender is a subsidiary, or of any other subsidiary of a holding company of which Agent or any Lender is a subsidiary, of any bank at which Agent or any Lender maintains a correspondent account, or of any bank which maintains a correspondent account with Agent or any Lender.

3.10 Experience; No Reliance on Agent and Lenders. Grantor is experienced in the ownership and operation of properties similar to the Mortgaged Property. Grantor, Agent and Lenders are relying upon Grantor's expertise and business plan in connection with the ownership and operation of the Mortgaged Property. Grantor is not relying on Agent's or Lenders' expertise or business acumen regarding the Mortgaged Property. In its transactions with Agent and Lenders, Grantor and its principals have been represented by (or have had the opportunity to be represented by) legal counsel independent of Agent and Lenders and independent of counsel for Agent and Lenders.

3.11 No Litigation. Except as disclosed in writing to Agent, there are no (a) judicial, administrative, mediation, or arbitration actions, suits, or proceedings, at law or in equity, before any Governmental Authority or arbitrator pending or to Grantor's knowledge, threatened against or affecting Grantor, Guarantor, any Constituent Party, or the Mortgaged Property; (b) outstanding or unpaid judgments against Grantor, any Guarantor, any Constituent Party, or the Mortgaged Property; or (c) defaults by Grantor with respect to any order, writ, injunction, decree, or demand of any Governmental Authority or arbitrator.

3.12 ERISA. Grantor (a) does not maintain or contribute to any employee benefit plan subject to Title IV of ERISA, (b) has not incurred any accumulated funding deficiency within the meaning of ERISA, and (c) has not incurred any liability to the PBGC in connection with any employee benefit plan established or maintained by Grantor. Grantor is not and shall not be (i) an "employee benefit plan," as defined in Section 3(3) of ERISA, (ii) a "governmental plan" within the meaning of Section 3(32) of ERISA, or (iii) a "plan" within the meaning of Section 4975(e) of the Tax Code. The assets of Grantor do not and shall not constitute "plan assets" within the meaning of the United States Department of Labor Regulations set forth in Section 2510.3-101 of Title 29 of the Code of Federal Regulations. Transactions by or with Grantor are not and shall not be subject to state statutes applicable to Grantor regulating investments of fiduciaries with respect to governmental plans. Grantor shall not engage in any transaction that would cause any Obligation or any action taken or to be taken hereunder (or the exercise by Agent and/or Lenders of any of their rights under this Deed of Trust or any of the other Loan Documents) to be a non-exempt (under a statutory or administrative class exemption) prohibited transaction under ERISA or Section 4975 of the Tax Code. Grantor agrees to deliver to Agent

such certifications or other evidence of compliance with the provisions of this **Section 3.12** as Agent may from time to time request.

3.13 Employees Each of Grantor, each Guarantor, and any Constituent Party have duly complied with and their respective facilities, business assets, property, leaseholds and equipment are in compliance, in all material respects, with the provisions of the Federal Occupational Safety and Health Act and all rules and regulations thereunder and all similar state and local laws, rules and regulations, to the extent required thereby. There are no outstanding citations, notices or orders of non-compliance issued to Grantor, any Guarantor, or any Constituent Party or relating to their respective businesses, assets, property, leaseholds or equipment under any such laws, rules or regulations, or with respect to the Mortgaged Property.

3.14 Labor Relations. Grantor is not a party to any collective bargaining agreement.

3.15 No Bankruptcy. No bankruptcy or insolvency proceedings are pending or contemplated by Grantor or, to the best knowledge, information, and belief of Grantor, against Grantor or by or against any endorser, cosigner, or guarantor of the Note.

3.16 Compliance with Legal Requirements. The Land and the Improvements and the intended use thereof by Grantor comply in all material respects with all applicable Legal Requirements, including, without limitation, all applicable restrictive covenants, zoning ordinances, subdivision and building codes, handicap or disability legislation, flood disaster laws, applicable health and environmental laws and regulations, and all other ordinances, orders or requirements issued by any state, federal, or municipal authorities having or claiming jurisdiction over the Mortgaged Property. Grantor and any Constituent Party have complied in all material respects with all Legal Requirements applicable to Grantor, any Constituent Party, or the Mortgaged Property, including, without limitation, Environmental Laws.

3.17 Separate Tax Parcel; Legal Lot. The Mortgaged Property is taxed (or will be prior to the date on which the next installments of ad valorem taxes are due with respect to the Mortgaged Property) separately without regard to any other real estate and each parcel contained within the Land constitutes a legally subdivided lot under all applicable Legal Requirements (or, if not subdivided, no subdivision or platting of the Land is required under applicable Legal Requirements), and for all purposes may be mortgaged, conveyed, or otherwise dealt with as an independent parcel.

3.18 Utilities; Access. All utility services necessary and sufficient for the full use, occupancy, operation and disposition of the Land and the Improvements for their intended purposes are available at the boundary of the Mortgaged Property, including water, storm sewer, sanitary sewer, gas, electric, cable and telephone facilities, through public rights-of-way or duly recorded perpetual private easements; all streets, roads, highways, bridges and waterways necessary for access to and full use, occupancy, operation and disposition of the Land and the Improvements have been or will be completed, and dedicated to and accepted by the appropriate municipal authority and are or will be open and available to the Land and the Improvements without further condition or cost to Grantor; all curb cuts, driveways and traffic signals shown on the survey delivered to Agent prior to the execution and delivery of this Deed of Trust will be completed and will be fully approved by the appropriate Governmental Authority.

3.19 Money Laundering; Anti-Terrorism Laws.

(a) No funds for the purchase or operation of the Mortgaged Property have been or will be derived from sources that are described in 18 U.S.C.A. §§ 1956 and 1957 as funds or property derived from “specified unlawful activity.”

(b) None of Grantor, any Constituent Party nor Guarantor (nor any person or entity owning an interest in Grantor, any Constituent Party or Guarantor) (i) is a Prohibited Person, or (ii) has violated any Anti-Terrorism Laws. No Prohibited Person holds or owns any interest of any nature whatsoever in Grantor, any Constituent Party or Guarantor, as applicable, and none of the funds of Grantor, any Constituent Party or Guarantor have been derived from any activity in violation of Anti-Terrorism Laws.

3.20 No Foreign Person. Neither Grantor, any Constituent Party nor Guarantor is a “foreign person” within the meaning of §1445(f)(3) of the Tax Code.

3.21 No-Defaults. There exists no default (or event that, with the giving of notice or passage of time, or both, would result in a default) under the provisions of any instrument or agreement evidencing, governing, securing, or otherwise relating to any Debt of Grantor or any Guarantor or any of the Permitted Exceptions where that default would result in a Material Adverse Event.

3.22 Non-contravention. The execution, delivery, and performance by Grantor, any Constituent Party, and any Guarantor of the Loan Documents to which that Person is a party or otherwise bound are not in contravention of the terms of any indenture, agreement, or undertaking to which that Person is a party or bound, unless those terms have been waived or the failure to comply with those terms would not result in a Material Adverse Event.

3.23 Consents, Approvals and Filings, Etc. Except as previously obtained or expressly provided in this Deed of Trust, no authorization, consent, approval, license, qualification, or formal exemption from, nor any filing, declaration, or registration with, any Governmental Authority and no material authorization, consent, or approval from any other Person, is required in connection with the execution, delivery, and performance by Grantor, any Constituent Party, and Guarantor of any Loan Document to which it is a party. All authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations, and registrations that have previously been obtained or made are in full force and effect and are not the subject of any attack, or, to the best knowledge of Grantor, any threatened attack, in any material respect, by appeal, direct proceeding, or otherwise.

3.24 Contracts and Agreements. Neither Grantor nor any Guarantor is in default (beyond any applicable period of grace or cure) under any material contract, agreement, indenture, or instrument to which it is a party or by which it or any of its properties or assets are bound, where that default would result in a Material Adverse Event.

3.25 No Investment Company. Neither Grantor nor any Constituent Party or any Guarantor are an “investment company” within the meaning of the Investment Company Act of 1940, as amended, nor are any of them “controlled” by an “investment company” within the meaning of the Investment Company Act of 1940, as amended.

3.26 No Margin Stock. Neither Grantor nor any Constituent Party or any Guarantor are engaged principally, or as one of their important activities, directly or indirectly, in the business of extending credit for the purpose of purchasing or carrying margin stock, and none of the proceeds of the Note shall be used, directly or indirectly, to purchase or carry any margin stock or made available by Grantor, any Constituent Party or any Guarantor in any manner to any other Person to enable or assist that Person in purchasing or carrying margin stock, or shall be otherwise used or made available for any other purpose that might violate the provisions of Regulations G, T, U, or X of the Board of Governors of the Federal Reserve System.

3.27 Financial Statements. The Financial Statements previously furnished to Agent have been prepared under GAAP. The Financial Statements fairly present the financial condition of Grantor and, as applicable, the consolidated financial condition of Grantor and those other Person(s) that the Financial Statements purport to present, and the results of their respective operations as of the dates and for the periods covered by those Financial Statements. Since the date(s) of the Financial Statements, there has been no material adverse change in the financial condition of Grantor or any other Person covered by the Financial Statements. Neither Grantor nor any Constituent Party, any Guarantor, or other Person has any material contingent obligations, liabilities for taxes, long-term leases, or long-term commitments not disclosed by, or reserved against in, those Financial Statements. Each Grantor, any Constituent Party, and any Guarantor is solvent, able to pay its respective debts as they mature, has capital sufficient to carry on its business, and has assets whose fair market value exceed its liabilities. Neither Grantor nor any Constituent Party, or any Guarantor shall be rendered insolvent, under-capitalized, or unable to pay debts generally as they become due by the execution or performance of any Loan Document to which it is a party or by which it is otherwise bound.

3.28 Single Purpose Entities; Nature of Grantor. Grantor is a single purpose entity the only business of which is the financing, ownership, maintenance and operation of the Mortgaged Property and whose only asset is the Mortgaged Property and other assets directly related to the operation of the Mortgaged Property.

3.29 No Commencement. As of the date of this Deed of Trust, no construction has been commenced on the Land, including, without limitation, steps to clear or otherwise prepare the Land for construction or the delivery of material for use in construction, that would give rise to a Lien having priority equal to or greater than the liens and security interests of this Deed of Trust; and no contract or other agreement for construction on the Land has been entered into, for furnishing materials for that construction or for any other purpose, the performance of which by the other party to it would give rise to a Lien.

3.30 Leases Effective. All Leases for the Mortgaged Property (if any) are in full force and effect. There are no defaults under any Leases, and all conditions to the effectiveness or continuing effectiveness of all Leases have been satisfied.

SECTION IV AFFIRMATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Agent and Lenders, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged, as follows:

4.1 Payment and Performance. Grantor shall pay the Indebtedness as and when specified in the Loan Documents, and shall perform and discharge all of the Obligations, in full and on or before the dates same are to be performed.

4.2 Existence. Grantor shall and shall cause each Constituent Party to (a) preserve and maintain its existence and preserve and maintain those rights, licenses, and privileges as are material to the business and operations conducted by it, (b) qualify and remain qualified to do business in each jurisdiction in which the Land is located and where that qualification is material to its business and operations or ownership of its properties, (c) continue to conduct and operate its business substantially as conducted and operated during the present calendar year, and (d) at all times maintain, preserve, and protect all of its franchises and trade names and preserve all the remainder of its property and keep it in good repair, working order, and condition.

4.3 Compliance with Legal Requirements. Grantor shall promptly and faithfully comply with, conform to, and obey all Legal Requirements, whether the same shall necessitate structural changes in, improvements to, or interfere with the use or enjoyment of, the Mortgaged Property. Grantor shall apply for, obtain, and maintain in effect all authorizations, consents, approvals, licenses, qualifications, exemptions, filings, declarations, and registrations (whether with any Governmental Authority, securities exchange, or otherwise) that are necessary in connection with the execution, delivery, or performance by Grantor, any Constituent Party or Guarantor under the Loan Documents.

4.4 First Lien Status. Grantor shall protect and preserve the first lien and security interest status of this Deed of Trust and the other Loan Documents and shall not permit to be created or to exist concerning the Mortgaged Property or any part thereof any lien or security interest on a parity with, superior to, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.5 Payment of Impositions. Subject to *Section *11.9* of the Loan Agreement, Grantor shall duly pay and discharge, or cause to be paid and discharged when due all Impositions not later than the earlier to occur of (a) the due date thereof, (b) the date any fine, penalty, interest, or cost may be added thereto or imposed thereon or (c) the date before any lien may be filed for the nonpayment thereof (if such date is used to determine the due date of the respective item), and Grantor shall deliver to Agent, a written receipt evidencing the payment of each Imposition.

4.6 Maintenance and Repair. Grantor shall keep the Mortgaged Property in good order and condition and shall make all repairs, replacements, renewals, additions, betterments, improvements, and alterations thereof and thereto, interior and exterior, structural and nonstructural, ordinary and extraordinary, foreseen and unforeseen, that are necessary or

reasonably appropriate to keep same in such order and condition. Grantor shall use commercially reasonable efforts to prevent any act, occurrence, or neglect which would materially impair the value or usefulness of the Mortgaged Property for its intended use. If repairs, replacements, renewals, additions, betterments, improvements, or alterations are required in and to the Mortgaged Property on an emergency basis to prevent loss, damage, waste, or destruction thereof, then Grantor shall proceed to repair, replace, add to, better, improve, or alter same, or cause same to be repaired, replaced, added to, bettered, improved, or altered, notwithstanding anything to the contrary contained in **Section 5.2** hereof; *provided, however*, that if such emergency measures are required, then Grantor shall notify Agent in writing of the commencement of same and the measures to be taken, and, when same are completed, the completion date and the measures actually taken.

4.7 Intentionally Deleted.

4.8 Inspection. Grantor shall permit Trustee and Agent, and their respective agents, representatives, and employees, to inspect the Mortgaged Property at all reasonable times, with or without prior notice to Grantor; provided, all inspections shall be conducted diligently so as to reasonably minimize the impact on Grantor's operations and will be subject to the rights of tenants under their Leases.

4.9 Intentionally Deleted.

4.10 Intentionally Deleted.

4.11 Leases.

(a) Grantor shall utilize the form of tenant lease approved by Agent prior to the date hereof in leasing all or any part of the Land or Improvements, subject only to non-material changes made on a lease-by-lease basis (the current Texas Apartment Association form being hereby approved).

(b) Grantor shall (i) use commercially reasonable efforts to lease the Mortgaged Property on market terms and conditions, (ii) duly and punctually perform and comply with any and all representations, warranties, covenants, and agreements expressed as binding upon the lessor under any Lease, (iii) except in the ordinary course of business of owning and operating a first-class apartment complex in a reasonable and prudent manner, maintain each of the Leases in full force and effect during the term thereof, subject to termination as a result of defaults by tenants, (iv) except in the ordinary course of business of owning and operating a first-class apartment complex in a reasonable and prudent manner, appear in and defend any action or proceeding in any manner connected with any of the Leases, and (v) upon the written request of Agent, but not more often than once each calendar year (unless an Event of Default has occurred and is existing), deliver to Agent true, correct, and complete copies of all Leases so requested. Grantor shall allow Agent, on behalf of the Lenders, from time to time to inspect all Leases and to make and take away copies of Leases; provided, all such inspections shall be conducted diligently so as to reasonably minimize the interference with Grantor's operations.

(c) Without Agent's prior written consent, Grantor shall not (i) do or knowingly permit to be done anything to impair the value of any of the Leases (except as permitted in clause (iv) below), (ii) except for security or similar deposits, collect any of the Rents more than two (2) months in advance of the time when the same becomes due under the terms of any Lease, (iii) discount any future accruing Rents, (iv) except in the ordinary course of business of owning and operating a first-class apartment complex in a reasonable and prudent manner and so long as no Event of Default is then existing, amend, modify, rescind, conceal, surrender, assign, or terminate any of the Leases, or (v) lease more than five percent (5%) of all units to a single tenant or an Affiliate thereof.

4.12 Payment for Labor and Materials. Subject to certain contest rights contained in *Section *11.9* of the Loan Agreement, Grantor shall promptly pay all bills for labor, materials, and specifically fabricated materials incurred in connection with the Mortgaged Property and shall not permit to exist in respect of the Mortgaged Property or any part thereof any lien or security interest, even though inferior to the liens and security interests hereof, for any such bill, and in any event never permit to be created or exist in respect of the Mortgaged Property or any part thereof any other or additional lien or security interest on a parity with, superior, or inferior to any of the liens or security interests hereof, except for the Permitted Exceptions.

4.13 Further Assurances and Corrections. From time to time, at the reasonable request of Agent, Grantor shall (a) promptly correct any defect, error or omission which may be discovered in the contents of this Deed of Trust or in any other Loan Document or in the execution or acknowledgment thereof, (b) execute, acknowledge, deliver, record, and/or file such further instruments (including, without limitation, further deeds of trust, pledges, mortgages, lien instruments, security agreements, consents, acknowledgments, subordinations, financing statements, continuation statements, and assignments of rents) and perform such further acts and provide such further assurances as may be reasonably necessary, in Agent's opinion, to carry out the purposes of this Deed of Trust and the Loan Documents and to subject to the absolute assignments, liens, and security interests hereof and thereof any property intended by the terms hereof or thereof to be covered hereby or thereby, including, without limitation, any renewals, additions, substitutions, replacements, or appurtenances to the Mortgaged Property, (c) execute, acknowledge, deliver, procure, file, and/or record any document or instrument (including, without limitation, any financing statement) deemed advisable by Agent in Agent's reasonable discretion to protect the liens and the security interests herein granted against the rights or interests of third persons, (d) promptly deliver to Agent any certification or other evidence reasonably requested by Agent confirming compliance by Grantor, each Constituent Party and Guarantor with all Anti-Terrorism Laws, and confirming that none of Grantor, any Constituent Party, Guarantor or to the knowledge of Grantor, any person or party owning any interest of any nature whatsoever in Grantor, any Constituent Party or Guarantor, is a Prohibited Person, and (e) pay all actual, out-of-pocket costs connected with any of the foregoing.

4.14 Tax on Deed of Trust. If at any time any law shall be enacted imposing or authorizing the imposition of any tax upon this Deed of Trust, or upon any rights, titles, liens, or security interests created hereby, or upon the Indebtedness or any part thereof (whether pursuant to the Tax Code or otherwise), Grantor shall immediately pay all such taxes, *provided that*, if such law as enacted makes it unlawful for Grantor to pay such tax, Grantor shall not pay nor be obligated to pay such tax, but shall reimburse Agent therefor to the extent permitted under

applicable law. Nevertheless, if a law is enacted making it unlawful for Grantor to pay (or reimburse Agent) such taxes, then Grantor shall prepay the Indebtedness in full within sixty (60) days after Agent demands such prepayment.

4.15 Statement of Unpaid Balance. At any time and from time to time, Grantor shall furnish promptly, upon the request of Agent, a written statement, in form reasonably satisfactory to Agent, stating the unpaid balance of the Indebtedness and that there are no offsets or defenses against full payment of the Indebtedness and the terms hereof, or if there are any such offsets or defenses, specifying them.

4.16 Expenses. Subject to the provisions of *Section 8.12* hereof and *Section *2.14* of the Loan Agreement, Grantor shall pay on demand all reasonable and bona fide out-of-pocket costs, fees, expenses, and other expenditures, including, without limitation, title insurance fees, examination charges, survey costs, insurance premiums, filing and recording fees, loan broker fees, out-of-pocket expenses incurred by Agent and/or any Lender, for reasonable visits by Agent's and/or any Lender's employees and agents to inspect the Mortgaged Property, and reasonable attorneys' fees and expenses, paid or incurred by Agent, any Lender or Trustee to third parties incident to this Deed of Trust or any other Loan Document (including, without limitation, reasonable attorneys' fees and expenses in connection with the negotiation, preparation, and execution hereof and of any other Loan Document and any amendment hereto or thereto, any release hereof, any consent, approval, or waiver hereunder or under any other Loan Document, the making of any advance under the Note, and any suit to which Agent, any Lender or Trustee is a party involving this Deed of Trust or the Mortgaged Property) or incident to the enforcement of the Indebtedness or the Obligations or the exercise of any right or remedy of Agent or any Lender under any Loan Document.

4.17 Address. Grantor shall give written notice to Agent and Trustee of any change of address of Grantor at least five (5) business days prior to the effective date of such change of address. Absent such official written notice of a change in address for Grantor, Agent and Trustee shall be entitled for all purposes under the Loan Documents to rely upon Grantor's address as set forth in the initial paragraph of this Deed of Trust, as same may have been theretofore changed in accordance with the provisions hereof.

4.18 Disclosures. If at any time Grantor shall become aware of the existence or occurrence of any Material Adverse Event, Grantor shall promptly notify Agent of the existence or occurrence thereof and of Grantor's opinion as to what effect such event may have on the Mortgaged Property or Grantor. Grantor shall also give prompt notice to Agent of (a) any litigation or dispute, threatened in writing or pending against or affecting Grantor, the Mortgaged Property or Guarantor which constitutes (or which is reasonably likely to constitute) a Material Adverse Event, (b) any known Event of Default, (c) any default by Grantor or any acceleration of any indebtedness owed by Grantor under any contract to which Grantor is a party which constitutes (or which is reasonably likely to constitute) a Material Adverse Event; and (d) any default by Guarantor or any acceleration of any indebtedness owed by any Guarantor under any contract to which Guarantor is a party which constitutes (or which is reasonably likely to constitute) a Material Adverse Event, and any change in the character of Grantor's business as it existed on the date hereof. If at any time Grantor obtains knowledge that Grantor, any Constituent Party, or Guarantor is, or becomes, a Prohibited Person or are indicted, arraigned or

custodially detained on charges or allegations involving or relating to any Anti-Terrorism Laws, Grantor shall immediately notify Agent in writing of same.

4.19 ERISA. If and to the extent that Grantor is obligated under any plan governed by or subject to ERISA, Grantor shall (a) fully discharge and satisfy all of its obligations and funding requirements under such plan, ERISA, and the Tax Code, (b) comply in all material respects with any and all applicable provisions of ERISA and the Tax Code and shall not incur or permit to exist any unfunded liabilities to the PBGC or to such plan under ERISA or the Tax Code, (c) as soon as possible but in any event not later than thirty (30) days after Grantor knows of an occurrence of a “reportable event” or “prohibited transaction” within the meaning of ERISA, or that the PBGC has instituted or shall institute proceedings under ERISA to terminate that plan, Grantor shall deliver to Agent a certificate of a responsible officer of Grantor setting forth details as to such reportable event and the action which Grantor or an Affiliate of Grantor (as defined under ERISA), as the case may be, proposes to take with respect to same, together with a copy of any notice of such reportable event that may be required to be filed with the PBGC, or any notice delivered by the PBGC evidencing its intent to institute those proceedings or any notice to the PBGC that the plan is to be terminated, as the case may be, and (d) furnish to Agent (or cause the plan administrator to furnish to Agent) a copy of the annual return (including all schedules and attachments) for each pension plan covered by ERISA and filed with the Internal Revenue Service, not later than thirty (30) days after the report has been filed. For all purposes of this **Section 4.19**, Grantor is deemed to have all knowledge of all facts attributable to the plan administrator under ERISA.

4.20 Delivery of Contracts. Grantor shall deliver to Agent a true, correct, and complete copy of each Contract involving an amount of \$50,000 or more promptly after the execution of same by all parties thereto, and upon the written request of Agent, Grantor will promptly deliver to Agent copies of any other Contracts (regardless of the amount). Within twenty (20) days after a request by Agent, Grantor shall prepare and deliver to Agent a complete listing of all Contracts, showing date, term, parties, subject matter, concessions, whether any defaults exist, and any other information reasonably specified by Agent, regarding each of those Contracts.

4.21 Sources and Uses of Funds. Grantor has taken, and shall continue to take until the Obligations are satisfied in full, such measures that are required by any and all Anti-Terrorism Laws to assure that the funds invested in Grantor and/or used to make payments on the Indebtedness or the Obligations are derived from (a) transactions and sources that do not violate any Anti-Terrorism Laws or, to the extent such funds originate outside the United States, do not violate the laws of the jurisdiction from which they originated, and (b) permissible sources under Anti-Terrorism Laws or, to the extent such funds originate outside the United States, under the laws of the jurisdiction from which they originated. If Agent reasonably believes that Grantor, Guarantor, any Constituent Party, or any Affiliate of any such party has breached any of the representations, warranties, or covenants set forth in this Deed of Trust or the other Loan Documents relating to any Anti-Terrorism Laws or the identity of any Person as a Prohibited Person, then, Agent shall have the right, with or without notice to Grantor, to (i) notify the appropriate Governmental Authority and to take such action as such governmental authority or applicable Anti-Terrorism Laws may direct; (ii) withhold Loan advances and segregate the assets constituting the Loan or any of Grantor’s funds or assets deposited with or otherwise controlled

by Agent pursuant to the Loan Documents; (iii) decline any payment (or deposit such payment with an appropriate United States Governmental Authority) or decline any prepayment or consent request; and/or (iv) declare an Event of Default and immediately accelerate the Indebtedness in connection therewith. Grantor agrees that none of Grantor, Guarantor, or any Constituent Party shall assert any claim (and hereby waives, for itself and on behalf of such other Persons, any claim that they may now or hereafter have) against Agent or any of its affiliates, successors, assigns, representatives, or agents for any form of damages as a result of any of the foregoing actions, regardless of whether or not Agent's reasonable belief is ultimately demonstrated to be accurate.

4.22 Surveys. Grantor shall furnish to Agent, at any time and from time to time, upon Agent's request and at Grantor's expense, a survey of the Land and Improvements. All surveys must be in form and substance reasonably acceptable to Agent. Grantor shall only be required to provide a survey in connection with the closing of the Loan, a foundation survey, an as-built survey upon completion of the Improvements and a survey if any new Improvements are constructed or if material modifications are made to the Improvements.

4.23 Personalty and Fixtures. Upon the written request of Agent, Grantor will deliver to Agent copies of any contracts, bills of sale, statements, receipted vouchers, or agreements under which Grantor claims title to any Equipment, Fixtures, or other items of personal property incorporated into the Improvements or subject to the lien of this Deed of Trust or other security agreement that secures the Obligations.

4.24 Management Agreement. Grantor shall manage the Mortgaged Property directly or shall enter into a management agreement in form and substance, and with a manager, acceptable to Agent, in Agent's discretion, and, if the latter, shall execute and cause that manager to execute a subordination agreement in form and substance reasonably acceptable to Agent, subordinating the management agreement and any fees payable under such management agreement to the Loan Documents and to the rights of Agent under the Loan Documents.

SECTION V NEGATIVE COVENANTS

Grantor hereby unconditionally covenants and agrees with Agent and Lenders that, until the entire Indebtedness shall have been paid in full and all of the Obligations shall have been fully performed and discharged:

5.1 Use Violations. Grantor shall not use, maintain, operate, or occupy, or knowingly allow the use, maintenance, operation, or occupancy of, the Mortgaged Property in any manner that (a) violates any Legal Requirement, (b) may be dangerous to tenants or the public, unless safeguarded as required by law and/or appropriate insurance, (c) constitutes a public or private nuisance, or (d) makes void, voidable, or cancelable, or materially increases the premium of, any insurance then in force regarding the Mortgaged Property.

5.2 Waste; Alterations. Grantor shall not intentionally or knowingly commit or permit any waste of the Mortgaged Property and shall not (subject to the provisions of **Sections 4.3** and **4.6** hereof or as otherwise contemplated by or permitted under the Loan

Documents), without the prior written consent of Agent, make or consent to be made any alterations or additions to the Mortgaged Property of a material nature.

5.3 Replacement of Fixtures and Personalty. Grantor shall not, without the prior written consent of Agent, remove or permit any of the Fixtures or Personalty to be removed at any time from the Land or Improvements unless (a) such item is removed temporarily for maintenance and repair or (b) if removed permanently, such item is replaced by an article of equal suitability and value, owned by Grantor, free of any lien or security interest except as may be reasonably approved in writing by Agent.

5.4 Change in Zoning. Without Agent's prior written consent, Grantor shall not (a) seek or acquiesce in a zoning reclassification, zoning variance, or special exception to zoning of all or any portion of the Mortgaged Property, (b) grant or consent to any easement, dedication, plat, or restriction (or allow any easement to become enforceable by prescription), or (c) seek or acquiesce to any imposition of any addition of a Legal Requirement or any amendment or modification thereof, covering all or any portion of the Mortgaged Property.

5.5 No Drilling. Grantor shall not, without the prior written consent of Agent, consent to any drilling or exploration for any Minerals or any extraction, removal, or production of any Minerals from the surface or subsurface of the Land regardless of the depth thereof or the method of mining or extraction thereof, subject to the rights of any third parties who own or lease any Minerals not owned by Grantor (provided, further, Grantor shall not in any event consent to any of the foregoing where Grantor's consent is required for any of the foregoing activities).

5.6 No Subordinate Mortgages. Grantor shall not create, place, or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain any Subordinate Mortgage regardless of whether such Subordinate Mortgage is expressly subordinate to the liens or security interests of the Loan Documents with respect to the Mortgaged Property, other than the Permitted Exceptions.

5.7 Additional Debt.

(a) Guaranties. Grantor shall not guarantee, endorse, or otherwise become contingently liable in connection with any Debt of any other Person, except guaranties in favor of and satisfactory to Agent and Lenders and endorsements for deposit or collection in the ordinary course of business.

(b) Debt. Grantor shall not create or incur any additional Debt, whether contingent or non-contingent, with respect to either Grantor or the Mortgaged Property, except (a) the Indebtedness and other debt from time to time outstanding and owing to Agent and Lenders under the Loan Documents, (b) current unsecured trade, utility, or non-extraordinary accounts payable arising in the ordinary course of business, (c) Debt subordinated to the prior payment in full of the Indebtedness on terms and conditions approved in writing by Agent, (d) Debt outstanding as of the date of this Deed of Trust that is shown on the Financial Statements previously delivered to Agent, (e) Hedge Obligations existing or arising under Hedge Agreements permitted by **Section 5.22**, and

(f) any other Debt that is specifically allowed or contemplated under the Loan Documents. Other provisions of the Deed of Trust are not intended to permit Grantor to incur Debt prohibited under this **Section 5.7**.

5.8 Encumbrances. Grantor shall not create, incur, assume, or (subject to certain contest rights under **Section *11.9** of the Loan Agreement) suffer to exist any Lien on the all or any part of the Mortgaged Property, except for the Permitted Exceptions.

5.9 New Construction. Except as expressly contemplated by the Loan Agreement and the other Loan Documents, Grantor shall not undertake to construct any building or other significant Improvement on the Land without the prior written consent of Agent.

5.10 Mergers or Dispositions. Except for any Permitted Dispositions, Grantor shall not and no Constituent Party (or direct or indirect owner of a Constituent Party) or Guarantor shall (a) enter into any merger or consolidation, whether or not that Person shall be the surviving entity, or (b) make a Disposition of all, substantially all, or any material part of the Mortgaged Property (whether in a single transaction or in a series of transactions).

5.11 Acquisitions. Grantor shall not (a) purchase, acquire, or become obligated for the purchase of all or substantially all of the assets or business interests of any Person or any ownership interests of any Person, or (b) in any other manner effectuate or attempt to effectuate an expansion of its present business by acquisition.

5.12 Intentionally Omitted.

5.13 Investments. Grantor shall not make or allow to remain outstanding any investment in (whether that investment is of the character of investment in shares of stock, evidences of indebtedness, other securities, or otherwise) any loans, advances, or extensions of credit to any Person other than any investment in direct obligations of the United States of America, any agency of the United States of America, or in certificates of deposit; *provided, however,* that no investment shall mature more than ninety (90) days after the date when made or issued.

5.14 Transactions with Affiliates. Other than as expressly contemplated by transactions described in the Loan Documents, Grantor shall not enter into any transaction with any of its stockholders, officers, employees, partners, members or any of its Affiliates, except under transactions in the ordinary course of business and on terms not less favorable than would be usual and customary in similar transactions between Persons dealing at arm's length.

5.15 Defaults on Other Obligations. Grantor shall not fail to duly perform, observe, or comply with any covenant, agreement, or other obligation to be performed, observed, or complied with by Grantor, any Constituent Party, or any Guarantor, subject to any applicable grace periods, which failure is reasonably likely to result in a Material Adverse Event.

5.16 Prepayment of Debt. Grantor shall not prepay any Debt (or take any actions that impose an obligation to prepay any Debt), except for prepayment of the Indebtedness subject to the terms of the Loan Documents and payment of unsecured trade, utility, or other accounts payable arising in the ordinary course of business.

5.17 Pension Plans. Except in compliance with the Loan Documents, Grantor shall not enter into, maintain, or make any contribution to, directly or indirectly, any pension plan that is subject to ERISA.

5.18 Subordinate Debt. Grantor shall not subordinate any Debt due to Grantor from any Person to Debt of other creditors of that Person.

5.19 No Further Negative Pledges. Grantor shall not enter into or become subject to any agreement (other than the Loan Documents) that (a) prohibits Grantor, any Constituent Party, or any Guarantor from guaranteeing any obligations, (b) prohibits the creation or assumption of any Lien on the properties or assets of Grantor, any Constituent Party, or any Guarantor, whether now owned or later acquired; or (c) requires an obligation to become secured (or further secured) if another obligation is secured or further secured.

5.20 Accounts Receivable. Grantor shall not sell or assign any account (as defined in the UCC), account receivable, note or trade acceptance, except to Agent.

5.21 No License Restrictions. Grantor shall not permit any restriction in any license or other agreement that restricts Grantor or any Constituent Party from granting a Lien to Agent on any such parties' rights under that license or agreement.

5.22 Hedge Agreements. No Hedge Agreement entered into by Grantor may be secured by any lien on the Mortgaged Property or any other collateral for the Loan, except for Hedge Agreements entered into with Agent (for the ratable benefit of the Lenders).

SECTION VI EVENTS OF DEFAULT

The term "***Event of Default***," as used in this Deed of Trust and in the other Loan Documents, shall mean the occurrence or happening, at any time and from time to time, of any "Event of Default," as defined in the Loan Agreement.

SECTION VII REMEDIES

7.1 Agent's Remedies Upon Default. Upon the occurrence of an Event of Default, Agent may, at Agent's option and on behalf of Lenders, and by or through Trustee, by Agent itself, or otherwise, do any one or more of the following:

(a) Right to Perform Grantor's Covenants. If Grantor has failed to keep or perform any covenant contained in this Deed of Trust or the other Loan Documents, Agent may, but shall have no obligation to, perform or attempt to perform said covenant, and any payment made or expense incurred in the performance or attempted performance of any such covenant shall constitute part of the Indebtedness, and Grantor promises, upon demand, to pay to Agent, at the place where the Note is payable, all sums so advanced or paid by Agent and any Lender, with interest at the Default Rate from the date when paid or incurred by Agent or Lenders. No performance or payment by Agent or Lenders shall constitute a waiver of any Event of Default. In addition to the liens and

security interests hereof, Agent or Lenders shall be subrogated to all rights, titles, liens, and security interests securing the payment of any debt, claim, tax, or assessment for which Agent or Lenders makes any payment or advance.

(b) Right of Entry. Agent may, before or after the institution of any foreclosure proceedings, enter upon the Mortgaged Property and take exclusive possession of the Mortgaged Property and all related books, records, and accounts and may exercise, without interference from Grantor, all rights of Grantor regarding the management, possession, operation, protection, or preservation of the Mortgaged Property, including, without limitation, the rights to lease the same for the account of Grantor and to apply the Rents as set forth in this Deed of Trust. All actual, out-of-pocket costs, expenses, and liabilities incurred by Agent in collecting such Rents and in managing, operating, maintaining, protecting, or preserving the Mortgaged Property, if not paid out of Rents as set forth herein, shall be added to the Indebtedness and shall bear interest at the Default Rate from the date of expenditure until paid. If necessary to obtain the possession provided for above, Agent may invoke all legal remedies to dispossess Grantor, including, without limitation, one or more actions for forcible entry and detainer, trespass to try title, and restitution. In connection with any action taken by Agent pursuant to this subsection, (i) neither Agent nor Lenders shall be liable for any loss sustained by Grantor resulting from any failure to lease the Mortgaged Property, or any part thereof, or from any other act or omission of Agent in managing the Mortgaged Property, **REGARDLESS OF ANY NEGLIGENCE OR ALLEGED NEGLIGENCE OR STRICT LIABILITY OF AGENT AND/OR ANY LENDER, BUT EXCLUDING AGENT'S OR ANY LENDER'S GROSS NEGLIGENCE AND WILLFUL MISCONDUCT**, unless such loss is caused by the gross negligence or willful misconduct of Agent, and (ii) Agent shall not be obligated to perform or discharge any obligation, duty, or liability under any Lease, any Lease Guaranty or this Deed of Trust, or to exercise any rights or remedies hereunder. **GRANTOR SHALL INDEMNIFY AGENT AND LENDERS FOR, AND DEFEND AND HOLD AGENT, LENDERS AND TRUSTEE HARMLESS FROM, ALL LIABILITY, LOSS, OR DAMAGE, THAT AGENT, LENDERS OR TRUSTEE MAY INCUR UNDER ANY SUCH LEASE FROM THE EXERCISE OF RIGHTS OR REMEDIES HEREUNDER, AND FROM ALL CLAIMS AND DEMANDS THAT MAY BE ASSERTED AGAINST AGENT OR LENDERS BY REASON OF ANY ALLEGED OBLIGATIONS OR UNDERTAKINGS ON ITS PART TO PERFORM OR DISCHARGE ANY OF THE TERMS, COVENANTS, OR AGREEMENTS CONTAINED IN ANY SUCH LEASE OR ANY LEASE GUARANTY EVEN IF RESULTING FROM AGENT'S OWN NEGLIGENCE OR ARISING IN STRICT LIABILITY. THE FOREGOING INDEMNITY SHALL NOT APPLY TO THE EXTENT OF LOSSES ARISING FROM AGENT'S OR ANY LENDER'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Deed of Trust. Should Agent or Lenders incur any such liability, the amount thereof, including, without limitation, all costs, expenses, and reasonable attorneys' fees, together with interest at the Default Rate from the date of expenditure until paid, shall be added to the Indebtedness, and Grantor shall reimburse Agent and Lenders therefor promptly upon demand. Nothing in this subsection shall impose any duty, obligation, or responsibility

upon Agent or Lenders for the control, care, management, leasing, or repair of the Mortgaged Property, nor for the performance of any of the terms and conditions of any such Lease or Lease Guaranty; nor shall it operate to make Agent or Lenders responsible or liable for any waste committed on the Mortgaged Property by the tenants or by any other parties, or for any Hazardous Substance in, on or under the Mortgaged Property, or for any dangerous or defective condition of the Mortgaged Property **OR FOR ANY NEGLIGENCE OR STRICT LIABILITY (OTHER THAN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT) IN THE MANAGEMENT, LEASING, UPKEEP, REPAIR, OR CONTROL OF THE MORTGAGED PROPERTY RESULTING IN LOSS, INJURY, OR DEATH TO ANY TENANT, LICENSEE, EMPLOYEE, OR STRANGER.** Grantor hereby ratifies, confirms, and agrees with all actions that Agent takes under this subsection with respect to the Mortgaged Property.

The remedies in this subsection are in addition to other remedies available to Agent and the exercise of the remedies in this subsection shall not be deemed to be an election of non-judicial or judicial remedies otherwise available to Agent. The remedies in this **Section VII** are available under and governed by the real property laws of Texas and are not governed by the personal property laws of Texas, including, without limitation, the power to dispose of personal property in a commercially reasonable manner under Section 9.610 of the UCC. No action by Agent, taken pursuant to this subsection, shall be deemed to be an election to retain personal property under Section 9.620 of the UCC. Any receipt of consideration received by Agent pursuant to this subsection shall be immediately credited against the Indebtedness (in the inverse order of maturity) and the value of said consideration shall be treated like any other payment against the Indebtedness.

(c) Right to Accelerate. Agent may declare the entire unpaid balance of the Indebtedness under the Loan Documents immediately due and payable, without notice, demand, presentment, notice of nonpayment or nonperformance, protest, notice of protest, notice of intent to accelerate, notice of acceleration, or any other notice or any other action, all of which are hereby waived by Grantor and all other parties obligated in any manner on the Indebtedness. Upon such declaration, the entire unpaid balance of the Indebtedness shall be immediately due and payable. The failure to exercise any remedy available to Agent shall not be deemed to be a waiver of any rights or remedies of Agent or Lenders under the Loan Documents, at law, or in equity. Notwithstanding the foregoing, in the case of an Event of Default under **Section *8.5** of the Loan Agreement and/or **Section *8.6** of the Loan Agreement, and notwithstanding the lack of any notice, demand or declaration by Agent, the entire Indebtedness remaining unpaid and outstanding shall automatically become due and payable in full, and any commitment by Agent or Lenders to make any further Advances under the Loan Agreement shall be automatically and immediately terminated without any requirement of notice or demand by Agent or Lenders upon Grantor or any other Person, all of which are expressly waived by Grantor.

(d) Foreclosure-Power of Sale. Agent may request Trustee to proceed with foreclosure under the power of sale as set forth below:

(i) Public Sale. Upon request of Agent, Trustee is authorized and empowered, and it shall be Trustee's special duty, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of the Mortgaged Property. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.002 of the Texas Property Code or other applicable law governing sales of Texas real property under powers of sale conferred by deeds of trust.

(ii) Right to Require Proof of Financial Ability and/or Cash Bid. At any time prior to or during the bidding, Trustee may require a bidding party, as conditions for submitting bids at the foreclosure sale, (A) to disclose its full name, state and city of residence, occupation, specific business office location, and the name and address of the principal who the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the bidding party's principal). If any such bidding party (the "**Questioned Bidder**") declines to comply with the above conditions, or if such Questioned Bidder does respond but Trustee, in Trustee's sole and absolute discretion, deems the responses to be inadequate, then Trustee may continue the bidding with reservation. If the Trustee continues the bidding with reservation, then (1) Trustee may caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to Trustee, all bids by the Questioned Bidder shall be void. Trustee may, in Trustee's sole and absolute discretion, determine that a credit bid is in the best interest of Grantor and Lenders, and elect to sell the Mortgaged Property for credit or for a combination of cash and credit; *provided, however*, that Trustee shall have no obligation to accept any bid except an all-cash bid. If Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by Trustee, but in no event later than 3:45 p.m., Dallas, Texas time, on the day of sale, then such sale shall be void, the bidding process may be recommenced, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(iii) Sale Subject to Unmatured Indebtedness. In addition to the rights and powers of sale granted above, if an Event of Default exists, then Agent, at Agent's option and on behalf of the Lenders, immediately or at any time thereafter while any matured installment remains unpaid, without declaring the entire Indebtedness to be due and payable, may orally or in writing direct Trustee to enforce this trust and to sell the Mortgaged Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner under the power of sale as set forth above. Sales made under this **Section 7.1(d)(iii)** shall not exhaust or affect in any way Trustee's power of sale and shall not affect the unmatured balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

(iv) Partial Foreclosure. Trustee, under the power of sale granted in this **Section 7.1(d)**, after any request or direction by Agent, (A) may sell the Ground

Lease Property, Land, Improvements, Fixtures, Personalty, and other interests constituting a part of the Mortgaged Property, as a unit and as part of a single sale, or (B) may sell at any time or from time to time any part or parts of the Mortgaged Property separately from the remainder of the Mortgaged Property. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, and sales may be made from time to time until the Obligations are performed and discharged in full. It shall not be necessary to have present or to exhibit any of the Mortgaged Property at any sale.

(v) Trustee's Deeds. After any sale under this **Section 7.1(d)**, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser(s) thereunder in the name of Grantor, conveying the Mortgaged Property or any part thereof so sold to the purchaser(s) with special warranty of title by Grantor. In any deeds, assignments, or other conveyances given by Trustee, all statements of fact or other recitals therein made regarding the identity of Agent or Lenders, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms, and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute Trustee, and any other action by or on behalf of Agent, Lenders or Trustee shall be taken by all courts of law and equity as *prima facie* evidence that such statements or recitals are true, correct, and complete and are to be accepted without further question, and Grantor does hereby ratify and confirm all acts that Trustee may lawfully do in the premises by virtue hereof.

(e) Agent's Judicial Remedies. Agent, or Trustee, upon written request of Agent, may proceed by suit or suits, at law or in equity, to enforce the payment of the Indebtedness and the performance and discharge of the Obligations pursuant to this Deed of Trust, the Note, and the other Loan Documents, to foreclose the liens and security interests of this Deed of Trust against all or any part of the Mortgaged Property, and to have all or any part of the Mortgaged Property sold under the judgment or decree of a court of competent jurisdiction. This remedy shall be cumulative of any other non-judicial remedies available to Agent or Lenders with respect to the Loan Documents. Proceeding with a request or receiving a judgment for legal relief shall not be or be deemed to be an election of remedies or bar any available non-judicial remedy of Agent.

(f) Agent's Right to Appointment of Receiver. Agent (for the benefit of Lenders), as a matter of right and without (i) regard to the sufficiency of the security for repayment of the Indebtedness and the performance and discharge of the Obligations, (ii) notice to Grantor or any other party, (iii) any showing of insolvency, fraud, or mismanagement on the part of Grantor, and (iv) the necessity of filing any judicial or other proceeding other than a proceeding for appointment of a receiver, shall be entitled to the appointment of a receiver or receivers of the Mortgaged Property or any part thereof, and of the Rents from the Mortgaged Property, and Grantor irrevocably consents to the appointment of a receiver or receivers. Any such appointed receiver shall have the usual powers and duties of receivers in such matters. This section will not deprive Agent of any other right, remedy or privilege it may have under applicable law to have a receiver appointed for the Mortgaged Property. Additionally, during the pendency of a receivership for all or a portion of the Mortgaged Property, Grantor consents to any

proceeding commenced by Agent which seeks to enforce another right or remedy of Agent under the Loan Documents or applicable law, including without limitation, the commencement of a foreclosure of the Mortgaged Property. Any money advanced by Agent or Lenders in connection with any such receivership will constitute a demand obligation owing by Grantor and shall bear interest from the date of expenditure until paid at the Default Rate, all of which shall constitute a portion of the Indebtedness. This section is made an express condition upon which the Loan is made.

(g) Agent's Uniform Commercial Code Remedies. Agent may exercise its rights of enforcement with respect to Fixtures and Personalty under the UCC, and in conjunction with, in addition to, or in substitution for the rights and remedies under the UCC:

(i) Agent may, without demand or notice to Grantor, enter upon the Mortgaged Property to take possession of, assemble, receive, and collect the Personalty, or any part thereof, or to render it unusable;

(ii) Agent may require Grantor to assemble the Personalty and make it available at a place Agent designates which is mutually convenient to allow Agent to take possession or dispose of the Personalty;

(iii) reasonable written notice shall be delivered to Grantor as provided herein at least ten (10) days before (A) the date of public sale of the Personalty or (B) the date after which a private sale of the Personalty will be made;

(iv) any sale of Personalty made pursuant to this **Section 7.1(g)** shall be deemed to have been a public sale conducted in a commercially reasonable manner if held contemporaneously with the sale of the other Mortgaged Property under power of sale as provided herein upon giving the same notice with respect to the sale of the Personalty or Fixtures hereunder as is required for such sale of the other Mortgaged Property under power of sale, and such sale shall be deemed to be pursuant to a security agreement covering both real and personal property under Section 9.604(a) of the UCC;

(v) if a foreclosure sale occurs, whether made by Trustee under the power of sale, or under judgment of a court, the Personalty and the other Mortgaged Property may, at the option of Agent, be sold as a whole;

(vi) it shall not be necessary that Agent take possession of the Personalty, or any part thereof, prior to the time that any sale pursuant to the provisions of this subsection is conducted, and it shall not be necessary that the Personalty or any part thereof be present at the location of such sale;

(vii) after notice to Grantor, Agent may sell, lease, or otherwise dispose of the Personalty, or any part thereof, in one or more parcels at public or private sale or sales, at Agent's offices or elsewhere, for cash, on credit, or for future delivery. Grantor shall be liable for all actual, out-of-pocket expenses of retaking, holding, preparing for sale or lease, selling, leasing, and the like, and all attorneys' fees, legal expenses, and all other costs and expenses incurred by Agent in connection with the collection of the

Indebtedness and the enforcement of Lenders' rights under the Loan Documents. Agent shall apply the proceeds of the sale of the Personalty against the Indebtedness in accordance with the provisions of **Section 7.4**. Grantor shall remain liable for any deficiency if the proceeds of any sale or disposition of the Personalty are insufficient to pay the Indebtedness in full. Grantor waives all rights of marshalling in respect of the Personalty;

(viii) all statements of fact or other recitals made in any bill of sale or assignment or other instrument evidencing any foreclosure sale hereunder regarding the nonpayment of the Indebtedness, the occurrence of any Event of Default, Agent having declared all or a portion of such Indebtedness to be due and payable, the notice of time, place, and terms of sale and of the properties to be sold having been duly given, or any other action by Agent, shall be taken as *prima facie* evidence of the truth of the facts so stated and recited;

(ix) Agent may dispose of the Personalty or Fixtures "as-is", has no duty to repair or clean the Personalty or Fixtures before sale, and may disclaim warranties of title, possession, quiet enjoyment, and the like with respect to the Personalty or Fixtures, all without affecting the commercial reasonableness of the sale;

(x) Agent may appoint or delegate any one or more Persons as agent to perform any act or acts necessary or incident to any sale held by Agent, including sending notices and conducting the sale, but in the name and on behalf of Agent; and

(xi) Agent shall have the right at any time to enforce Grantor's rights against account debtors and obligors.

(h) Rights Relating to Rents. Grantor has, pursuant to this Deed of Trust, assigned to Agent, and granted a security interest to Agent (for the benefit of Lenders) in and to, all existing and future Rents under each of the Leases covering all or any portion of the Mortgaged Property to secure the Indebtedness and Obligations. Grantor hereby agrees that Agent shall have the right (in its sole discretion), during the existence of an Event of Default, to enforce the assignment of Rents in accordance with Chapter 64 of the Texas Property Code. Upon the occurrence of an Event of Default, the Grantor's relationship as Lender's Agent to collect Rents shall automatically terminate without any further action by Agent and Agent may (in its sole discretion), then give the Lease Rent Notice to Lessees and direct the Lessees to pay directly to Agent the Rents due and to become due under the Leases and attorn in respect of all other obligations thereunder directly to Agent, or Trustee on Agent's behalf, without any obligation on the part of Lessee to determine whether an Event of Default does in fact exist or has in fact occurred. All Rents collected by Agent, or Trustee acting on Agent's behalf, shall be applied as provided for in **Section 9.3**, *provided, however*, that if the actual, out-of-pocket costs, expenses, and reasonable attorneys' fees shall exceed the amount of Rents collected, the excess shall be added to the Indebtedness, shall bear interest at the Default Rate, and shall be immediately due and payable. The entrance upon and possession of the Mortgaged Property, the collection of Rents by or on behalf of Agent, and the application thereof as set forth above shall not cure or waive any Event of Default or

notice of default, if any, hereunder nor invalidate any action pursuant to such notice. Failure or discontinuance by Agent, or Trustee on Agent's behalf, at any time or from time to time, to collect said Rents shall not in any manner impair the subsequent enforcement by Agent, or Trustee on Agent's behalf, of the right, power, and authority herein conferred upon it. Nothing contained herein, nor the exercise of any right, power, or authority herein granted to Agent, any Lender, or Trustee on Agent's behalf, shall be, or shall be construed to be, an affirmation by it of any tenancy, lease, or option, nor an assumption of liability under, nor the subordination of, the lien or charge of this Deed of Trust, to any such tenancy, lease, or option, nor an election of judicial relief, if any such relief is requested or obtained as to Leases or Rents, with respect to the Mortgaged Property or any collateral given by Grantor to Agent (for the benefit of Lenders). In addition, from time to time, Agent may elect, and notice hereby is given to each Lessee of such right, to subordinate the lien of this Deed of Trust to any Lease by unilaterally executing and recording an instrument of subordination, and upon such election, the lien of this Deed of Trust shall be subordinate to the Lease identified in such instrument of subordination; *provided, however*, in each instance, such subordination will not affect or be applicable to (and will expressly exclude) any lien, charge, encumbrance, security interest, claim, easement, restriction, option, covenant, and other rights, titles, interests, or estates of any nature regarding all or any portion of the Mortgaged Property to the extent that the same may have arisen or intervened during the period between the recordation of this Deed of Trust and the execution of the Lease identified in such instrument of subordination.

(i) Other Rights. Agent (i) may surrender the insurance policies, or any part thereof, maintained pursuant to **Section *6.7** of the Loan Agreement, and upon receipt shall apply the unearned premiums as a credit on the Indebtedness, in accordance with the provisions of **Section 7.4**, and, in connection therewith, Grantor hereby appoints Agent as agent and attorney-in-fact (which is coupled with an interest and is therefore irrevocable) for Grantor to collect such premiums; (ii) may apply the reserve for Impositions and insurance premiums, if any, required under this Deed of Trust, toward payment of the Indebtedness; and (iii) shall have and may exercise all other rights and remedies which Agent may have at law or in equity, or by virtue of any Loan Document or under the UCC, or otherwise.

(j) Agent as Purchaser. Agent may be the purchaser of the Mortgaged Property or any part thereof, at any sale thereof, whether such sale be under Trustee's power of sale, upon any other foreclosure of the liens and security interests hereof, or otherwise, and Agent shall, upon any such purchase, acquire good title to the purchased Mortgaged Property, free of the liens and security interests hereof, unless the sale was made subject to an unmatured portion of the Indebtedness. Agent, as purchaser, shall be treated in the same manner as any third party purchaser and the proceeds of Agent's purchase shall be applied to the Indebtedness pursuant to **Section 7.4**. Agent shall have the right to become the purchaser at any sale held by any Trustee or substitute or successor or by any receiver or public officer, and if Agent purchases at any such sale, Agent shall have the right to credit upon the amount of bid made therefor, to the extent necessary to satisfy such bid, the Indebtedness owing to Agent.

7.2 Other Rights of Agent. Should any part of the Mortgaged Property come into the possession of Agent, whether before or after default, Agent may (for itself or by or through other Persons) hold, lease, manage, use, or operate the Mortgaged Property for such time and upon such terms as Agent may deem prudent under the circumstances (making any repairs, alterations, additions, and improvements thereto and taking any other action that Agent may from time to time deem necessary or desirable) for the purpose of preserving the Mortgaged Property or its value, pursuant to the order of a court of competent jurisdiction, or pursuant to any other rights held by Agent regarding the Mortgaged Property. Grantor covenants to promptly reimburse and pay to Agent on demand, at the place where the Note is payable, the amount of all reasonable expenses (including without limitation the cost of any insurance, Impositions, or other charges) incurred by Agent in connection with Agent's custody, preservation, use, or operation of the Mortgaged Property, together with interest at the Default Rate from the date incurred by Agent; and all such expenses, costs, taxes, interest, and other charges shall constitute a part of the Indebtedness. The risk of loss or damage to the Mortgaged Property, however, is on Grantor, and neither Agent nor Lenders shall have any liability for a decline in value of the Mortgaged Property, for failure to obtain or maintain insurance, or for failure to determine whether the insurance in force is adequate in amount or for the risks insured. Possession by Agent shall not be deemed an election of judicial relief, if any such possession is requested or obtained, regarding any Mortgaged Property or collateral not in Agent's possession.

7.3 Possession After Foreclosure. If the liens or security interests in this Deed of Trust are foreclosed by Trustee's power of sale, by judicial action, or otherwise, the purchaser at any such sale shall receive, as an incident to purchaser's ownership, immediate possession of the purchased property, and if Grantor or Grantor's successors shall hold possession of said property or any part thereof subsequent to foreclosure, Grantor and Grantor's successors shall be considered as tenants at sufferance of the purchaser at foreclosure sale (without limitation of other rights or remedies, at a reasonable rental per day, due and payable daily, based upon the value of the portion of the Mortgaged Property so occupied and sold to such purchaser), and anyone occupying such portion of the Mortgaged Property after demand is made for possession thereof shall be guilty of forcible detainer and shall be subject to eviction and removal, forcible or otherwise, with or without process of law, and all damages by reason thereof are hereby expressly waived.

7.4 Application of Proceeds. The proceeds from any sale, lease, or other disposition made pursuant to this **Section VII**, or the proceeds from the surrender of any insurance policies pursuant to the Loan Documents, or any Rents collected by Agent from the Mortgaged Property (following any application of such Rents in accordance with **Section 9.3** hereof), or the reserve for Impositions and insurance premiums, if any, required by the provisions of the Loan Documents, or condemnation proceeds received pursuant to **Section *11.1** of the Loan Agreement and/or **Section *11.2** of the Loan Agreement, or insurance proceeds which Agent elects to apply to the Indebtedness pursuant to **Section *11.3** of the Loan Agreement, shall be applied by Trustee, or by Agent and Lenders, as the case may be, to the Indebtedness in such order as Agent (on behalf of Lenders) may elect in its sole discretion and Grantor waives any right to direct the application of such proceeds. If such waiver is not enforceable under applicable law or applicable law requires that this Deed of Trust specify the order of the proceeds, then such proceeds shall be applied to the Indebtedness in the following order and priority: (a) to the payment of all expenses of advertising, selling, leasing, and conveying all or

any part of the Mortgaged Property, and/or prosecuting or otherwise collecting rents, proceeds, premiums, or other sums including reasonable attorneys' fees and a reasonable fee or commission to Trustee, not to exceed one percent (1%) of the proceeds thereof or sums so received; (b) to the remainder of the Indebtedness as follows: first, to the remaining accrued but unpaid interest, second, to the matured portion of principal of the Indebtedness, third, to the payment of Hedge Obligations, if any, under any Secured Hedge Agreement and fourth, to the prepayment of the unmatured portion, if any, of principal of the Indebtedness applied to installments of principal in inverse order of maturity; (c) the balance, if any and to the extent applicable, remaining after the full and final payment of the Indebtedness and full performance and discharge of the Obligations to the holder or beneficiary of any inferior liens covering the Mortgaged Property, if any, in order of the priority of such inferior liens (*provided that* Trustee and Agent are entitled to rely exclusively upon a commitment for title insurance or abstractor's certificate issued to determine such priority); and (d) the cash balance, if any, to Grantor. The application of proceeds of sale or other proceeds as otherwise provided herein shall be deemed to be a payment of the Indebtedness like any other payment. The balance of the Indebtedness remaining unpaid, if any, shall remain fully due and owing in accordance with the terms of the Note or other Loan Documents.

7.5 Abandonment of Sale; Dismissal of Suit. If Trustee commences a foreclosure sale pursuant to **Section 7.1(d)**, then Trustee may, at any time before completion of the sale, abandon such sale and Agent may then institute a suit for the collection of the Indebtedness and for the foreclosure of the liens and security interests in this Deed of Trust and the other Loan Documents. Alternatively, if Agent institutes a suit for the collection of the Indebtedness and for a foreclosure of the liens and security interests, then Agent may, at any time before the entry of a final judgment, dismiss the suit and require Trustee to sell all or any part of the Mortgaged Property in accordance with the terms of this Deed of Trust.

7.6 Payment of Fees. If the Note or any other part of the Indebtedness is collected by, or if any of the Obligations are enforced by, legal proceedings in a probate or bankruptcy court or otherwise, or is placed in the hands of an attorney for collection after maturity, whether matured by the expiration of time or by an option given to Agent to mature same, or if Agent or Lenders become a party to any suit in which this Deed of Trust or the Mortgaged Property or any part thereof is involved, then Grantor shall pay Agent and Lenders' attorneys' fees and expenses incurred, and such fees shall be added to the Indebtedness and shall bear interest at the Default Rate from the date such costs are incurred.

7.7 Miscellaneous.

(a) Discontinuance of Remedies. If Agent invokes any right, remedy, or recourse permitted under the Loan Documents, then Agent may discontinue or abandon same for any reason and Grantor and Agent and Lenders shall be restored to their former positions regarding the Indebtedness, the Loan Documents, the Mortgaged Property, or otherwise, and the rights, remedies, recourses, and powers of Agent shall continue as if they had never been invoked.

(b) Other Remedies. In addition to the remedies set forth in this *Section VII*, upon the occurrence of an Event of Default, Agent and Trustee shall have all other remedies available at law or in equity.

(c) Remedies Cumulative; Non-Exclusive; Etc. All rights, remedies, and recourses of Agent granted in the Note, this Deed of Trust, the other Loan Documents, any other pledge of collateral, or otherwise available at law or equity (including, without limitation, those granted by the UCC and applicable to the Mortgaged Property or any portion thereof): (i) are cumulative and concurrent; (ii) may be pursued separately, successively, or concurrently against Grantor, the Mortgaged Property, or any one or more of them, at the sole discretion of Agent; (iii) may be exercised as often as occasion therefor shall arise, and the exercise or failure to exercise any of same shall not be construed as a waiver or release thereof or of any other right, remedy, or recourse; (iv) are nonexclusive; (v) are not conditioned upon Agent or Lenders exercising or pursuing any remedy in relation to the Mortgaged Property before bringing suit to recover the Indebtedness or suit on the Obligations; and (vi) if Agent elects to bring suit on the Indebtedness and/or the Obligations and obtains a judgment against Grantor before exercising any remedies in relation to the Mortgaged Property, then all liens and security interests, including the lien of this Deed of Trust, shall remain in full force and effect and may be exercised at Agent's option.

(d) Partial Release; Change of Security; Etc. Agent may release from time to time any part of the Mortgaged Property, regardless of consideration, without impairing, subordinating, or affecting in any way the lien, security interest, and other rights hereof against the remainder of the Mortgaged Property, and without affecting the obligations of Grantor or any other party to perform and discharge the Obligations. The taking of additional collateral, or the amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall not release or impair the lien, security interest, and other rights granted in this Deed of Trust, or affect the liability of any endorser or guarantor, or improve the right of any junior lien holder, and all collateral shall be considered taken and held as cumulative. This Deed of Trust, as well as any instrument given to secure any amendment, extension, renewal, or rearrangement of the Indebtedness or Obligations, or any part thereof, shall be and remain a first and prior lien, except as otherwise provided herein, on all of the Mortgaged Property not expressly released until the Indebtedness is indefeasibly paid in full and the Obligations are fully performed and discharged. Agent may resort to any collateral, in such order and manner as Agent may elect, for payment of the Indebtedness.

(e) Waiver and Release by Grantor. Grantor irrevocably and unconditionally waives and releases: (i) all benefits that Grantor might accrue under any present or future law exempting the Mortgaged Property from attachment, levy, or sale on execution or providing for any appraisal, valuation, stay of execution, exemption from civil process, redemption, or extension of time for payment; (ii) all notices of any Event of Default or of Trustee's exercise of any right, remedy, or recourse provided for under the Loan Documents (unless such notice is expressly required under any of the Loan Documents); and (iii) any right to a marshaling of assets or a sale in inverse order of alienation.

(f) No Implied Covenants. There are no, nor shall there be any, implied covenants of good faith and fair dealing or other similar covenants or agreements in this Deed of Trust and the other Loan Documents. All agreed contractual duties are set forth in this Deed of Trust, the Note, and the other Loan Documents.

(g) Real Property Laws Govern. If Agent elects to proceed as to the Fixtures and Personalty together with the other Mortgaged Property, then the remedies in this **Section VII** shall be available under and governed by the real property laws of Texas and not the personal property laws of Texas.

7.8 Intentionally Omitted.

7.9 Waiver of Benefits of Deficiency Statute.

(a) Waiver. If an interest in all or any of the Mortgaged Property is foreclosed upon pursuant to a judicial or non-judicial foreclosure sale, Grantor agrees that, notwithstanding the provisions of Sections 51.003, 51.004, and 51.005 of the Texas Property Code (as the same may be amended from time to time), and to the extent permitted by law, Agent, on behalf of Lenders, is entitled to seek a deficiency judgment from Grantor and any other party obligated on the Note equal to the difference between the amount owing on the Note and the amount for which the Mortgaged Property is sold pursuant to the foreclosure sale. Grantor expressly recognizes that this **Section 7.9** constitutes a waiver of the right provided in Sections 51.003, 51.004 and 51.005 of the Texas Property Code for Grantor and other persons against whom recovery of deficiencies is sought or Guarantor independently (even absent the initiation of deficiency proceedings against them) to present competent evidence of the fair market value of the Mortgaged Property as of the date of the foreclosure sale and offset against any deficiency the amount by which the foreclosure sale price is less than fair market value as determined by the trier of fact. Further, this waiver creates an irrebuttable presumption that the foreclosure sale price is equal to the fair market value of the Mortgaged Property for purposes of calculating deficiencies owed by Grantor, Guarantor, and others against whom recovery of a deficiency is sought.

(b) Alternative to Waiver. Alternatively, if the waiver provided for in **subsection (a)** above is determined by a court of competent jurisdiction to be unenforceable, the following shall be the basis for the fact finder's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value, including, without limitation, brokerage commissions, title insurance, survey costs, tax prorations, attorneys'

fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes, and assessments (to the extent not accounted for in (iii) above), and other maintenance, operational, and ownership expenses; and (v) any expert opinion testimony regarding a determination of the fair market value must be given by persons having at least five (5) years experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property which includes a specification of the appraiser's consideration of the factors set forth above.

7.10 General Partner Liability. If Grantor is a partnership or limited partnership which is or becomes subject to Section 152.306 of the Texas Business Organizations Code, Grantor agrees that Agent is not required to comply with Section 152.306 of the Texas Business Organizations Code with respect to the enforcement of the liability of Grantor hereunder or under the other Loan Documents against any general partner of Grantor.

SECTION VIII SPECIAL PROVISIONS

8.1 Intentionally Deleted.

8.2 Intentionally Deleted.

8.3 Intentionally Deleted.

8.4 INDEMNITY. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT, AND HOLD HARMLESS AGENT, EACH LENDER AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST ALL LIABILITY, DAMAGE, LOSS, ACTUAL, OUT-OF-POCKET COST, OR EXPENSE (INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM, OR DISPUTE INCURRED OR SUFFERED BY THE FOREGOING PARTIES SO INDEMNIFIED **WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OF ANY PARTY SO INDEMNIFIED AND EVEN IF ARISING IN STRICT LIABILITY**, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED (COLLECTIVELY, "**LOSSES**"), REGARDING THE FOLLOWING: **(A)** ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER LOAN DOCUMENTS, OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR, AGENT OR ANY LENDER THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR, AGENT OR ANY LENDER, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT; **(B)** ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF GRANTOR IF GRANTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS, OR MANAGERS OF GRANTOR

IF GRANTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES, OR OTHER RESPONSIBLE PARTIES IF GRANTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY; (C) ANY ACTION TAKEN OR NOT TAKEN BY AGENT, ANY LENDER OR TRUSTEE THAT IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER LOAN DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES, OR OTHERWISE IN CONNECTION WITH THE LOAN DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST, OR OTHER RIGHT, REMEDY, OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS; AND (D) ANY ACTION BROUGHT BY ANY OF THE INDEMNIFIED PARTIES AGAINST GRANTOR UNDER THIS DEED OF TRUST OR THE OTHER LOAN DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON-APPEALABLE JUDGMENT.

AGENT, ANY LENDER AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTEST OR ENFORCE ITS RIGHTS, REMEDIES, AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS, AND TO ADVISE AND DEFEND AGENT, LENDERS AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE AGENT, LENDERS AND/OR TRUSTEE FOR THEIR RESPECTIVE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY AGENT, ANY LENDER AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS *SECTION 8.4* SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY GRANTOR OF ANY OF ITS RIGHT, TITLE, AND INTEREST IN OR TO THE MORTGAGED PROPERTY, AND THE EXERCISE BY AGENT AND/OR ANY LENDER OF ALL REMEDIES SET FORTH HEREIN OR IN THE LOAN DOCUMENTS. THE FOREGOING INDEMNITY SHALL NOT APPLY TO THE EXTENT OF LOSSES (Y) ARISING FROM AGENT'S, ANY LENDER'S, TRUSTEE'S OR ANY OTHER INDEMNIFIED PERSON'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OR (Z) ARISING FROM LITIGATION BETWEEN AGENT, ANY LENDER OR TRUSTEE (OR ANY OTHER INDEMNIFIED PERSON) AND GRANTOR IN WHICH GRANTOR IS THE PREVAILING PARTY PURSUANT TO A NON-APPEALABLE, FINAL JUDGMENT AS DETERMINED BY A COURT OF COMPETENT JURISDICTION TO THE EXTENT SUCH LOSSES ARE INCURRED IN CONNECTION WITH SUCH LITIGATION AND ARE DIRECTLY RELATED TO THE ISSUE IN WHICH THE GRANTOR PREVAILED.

8.5 Grantor's Waiver of Subrogation. Grantor waives all right to claim, recover, or subrogation that arises or may arise in its favor against Agent and Lenders or their respective officers, directors, employees, agents, attorneys, or representatives for all loss or damage to Grantor, the Mortgaged Property, Grantor's property, or the property of others under Grantor's control from any cause insured against or required to be insured against by the Loan Documents. This waiver is in addition to, and not in limitation or derogation of, any other waiver or release contained in this Deed of Trust regarding any loss or damage to the parties' property. Because the above waivers preclude the assignment of any claim by way of subrogation (or otherwise) to an insurance company (or any other person), Grantor shall immediately give to each insurance company that has issued Grantor an insurance policy (whether or not such policy is required by the Loan Documents) written notice of the terms of the above waivers, and to have all insurance policies properly endorsed, if necessary, to prevent the invalidation of insurance coverage because of the above waivers.

8.6 Grantor's Waiver of Setoff. Grantor shall pay the Indebtedness, or any part thereof, without, except as expressly provided in this Deed of Trust or in any other Loan Document, notice, demand, counterclaim, setoff, deduction, or defense and without abatement, suspension, deferment, diminution, or reduction by reason of: (a) any damage to, destruction of, or any condemnation or similar taking of the Mortgaged Property; (b) any interference with any use of the Mortgaged Property; (c) any title defect or encumbrance or any eviction from the Mortgaged Property by superior title or otherwise; (d) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation, or other like proceeding relating to Trustee, Agent, any Lender or Grantor, or any action taken under this Deed of Trust by any trustee or receiver of Agent, Lenders or Grantor, or by any court, in any such proceeding; (e) any claim that Grantor has or might have against Trustee or Agent and/or Lenders; (f) any default or failure on the part of Agent to perform or comply with this Deed of Trust, the Loan Documents, or any other agreement with Grantor; or (g) any other occurrence, whether similar or dissimilar to the foregoing, whether or not Grantor has notice or knowledge of any of the foregoing. Except as expressly provided herein, Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution, or reduction of the Indebtedness.

8.7 Agent's Setoff. Grantor hereby grants to Agent, for the benefit of Lenders, a Lien on and security interest in, and assigns to Agent, for the benefit of Lenders, all deposits (general or special, time or demand, provisional or final) at any time held by Grantor and other indebtedness at any time owing by Agent or any Lender to or for the credit or for the account of Grantor, and any property of Grantor from time to time in the possession or control of Agent or any Lender. Agent, for the benefit of Lenders, shall be entitled to exercise both the rights of setoff and banker's lien, if applicable, against the interest of Grantor in and to each and every account and other property of Grantor that are in the possession of Agent to the full extent of the outstanding balance of the Indebtedness. No Lien or right of setoff shall be deemed to have been waived by any act or conduct on the part of Agent and/or any Lender, or by any neglect to exercise such right of setoff or to enforce such Lien, or by any delay in so doing, and every right of setoff and Lien shall continue in full force and effect until such right of setoff or Lien is specifically waived or released by an instrument in writing executed by Agent.

8.8 Consent to Disposition. Agent may base its decision to grant or withhold consent to a Disposition (other than a Permitted Disposition) on such terms and conditions as Agent may require, in its sole discretion, including, without limitation, (a) consideration of the creditworthiness of the proposed transferee and its management ability with respect to the Mortgaged Property; (b) consideration of whether the security for repayment of the Indebtedness and the performance and discharge of the Obligations, or Agent's ability to enforce its rights, remedies, and recourses with respect to such security, will be impaired in any way by the proposed Disposition; (c) an increase in the rate of interest payable under the Note or any other change in the terms and provisions of the Note and other Loan Documents; (d) reimbursement of Agent for all actual, out-of-pocket expenses incurred by Agent and/or any Lender in investigating the creditworthiness and management or consulting ability of the proposed transferee and in determining whether Agent's and/or any Lender's security will be impaired by the proposed Disposition; (e) payment to Agent of a transfer fee to cover the reasonable cost of documenting the Disposition in its records; (f) payment of Agent's reasonable attorneys' fees in connection with such Disposition; (g) the express assumption of payment of the Indebtedness and performance and discharge of the Obligations by the transferee (with or without the release of Grantor from liability for the Indebtedness and such Obligations, such release, if any, to be in Agent's sole discretion); (h) the execution of assumption agreements, modification agreements, supplemental loan documents, and financing statements, satisfactory in form and substance to Agent; (i) endorsements (to the extent available under applicable law) to any existing loan title insurance policies insuring Agent's liens and security interests covering the Mortgaged Property; and (j) requiring additional security for the payment of the Indebtedness and performance and discharge of the Obligations.

8.9 Consent to Subordinate Mortgage. If Agent consents to the granting of a Subordinate Mortgage, or if Agent's right to declare the Indebtedness to be immediately due and payable upon the granting of a Subordinate Mortgage without the prior written consent of Agent is determined by a court of competent jurisdiction to be unenforceable under the provisions of any applicable law, then Grantor shall not execute or deliver any Subordinate Mortgage unless (a) it shall contain express covenants to the effect that: (i) the Subordinate Mortgage is in all respects unconditionally subject and subordinate to the lien and security interest evidenced by this Deed of Trust and each term and provision hereof; (ii) if any judicial or non-judicial action or proceeding shall be instituted to foreclose the Subordinate Mortgage, then no tenant of any portion of the Mortgaged Property will be named as a party defendant, nor will any action be taken with respect to the Mortgaged Property which would terminate any occupancy or tenancy of the Mortgaged Property without the prior written consent of Agent; (iii) the rents and profits, if collected through a receiver or by the holder of the Subordinate Mortgage, shall be applied first to the Indebtedness, next to the payment of the Impositions, and then to the performance and discharge of the Obligations; and (iv) if any judicial or non-judicial action or proceeding shall be brought to foreclose the Subordinate Mortgage, then written notice of the commencement thereof (including, without limitation, contemporaneous delivery of copies of notices thereof) will be given to Agent contemporaneously with the commencement of such action or proceeding; and (b) Grantor shall deliver a copy thereof to Agent not less than ten (10) days prior to the date of the execution of such Subordinate Mortgage.

8.10 Payment After Acceleration. If, after an Event of Default, and after any or all of the Indebtedness is accelerated, but before a foreclosure sale of the Mortgaged Property, and

Grantor tenders to Agent the payment of an amount sufficient to satisfy the accelerated Indebtedness, then such tender shall be deemed a voluntary prepayment of the Indebtedness and accordingly, Grantor, to the extent permitted by applicable law, shall also pay to Agent, for the benefit of the Lenders, any Funding Loss incurred by Agent and/or any Lender on account of such prepayment, if any, then required under the Note or other Loan Documents to exercise the prepayment privilege contained therein.

8.11 Intentionally Deleted.

8.12 Maximum Interest. It is the intent of Grantor, Agent and Lenders at all times to comply strictly with the applicable Texas law governing the maximum non-usurious rate or non-usurious amount of interest payable on the Note or the Related Indebtedness (or applicable United States federal law to the extent that it permits Agent and Lenders to contract for, charge, take, reserve, or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount (a) contracted for, charged, taken, reserved or received pursuant to the Note, any other Loan Documents, or any other communication or writing by or between Grantor, Agent and Lenders related to the Indebtedness or to the transaction or transactions that are the subject matter of the Loan Documents; (b) contracted for, charged, taken, reserved, or received by reason of Agent's and/or Lenders' exercise of the option to accelerate the maturity of the Note and/or the Related Indebtedness; or (c) Grantor has paid or Agent has received by reason of any voluntary prepayment by Grantor of the Note and/or the Related Indebtedness, then it is Grantor's, Agent's and Lenders' intent that all amounts charged in excess of the Maximum Rate shall be automatically canceled, *ab initio*, and all amounts in excess of the Maximum Rate that have been collected by Agent and/or Lenders shall be credited on the principal balance of the Note and/or the Related Indebtedness (or, if the Note and all Related Indebtedness have been or would thereby be paid in full, refunded to Grantor), and that the provisions of the Note and the other Loan Documents immediately be deemed reformed to reduce the amounts thereafter collectible under the Note and other Loan Documents, without the necessity of the execution of any new document, to comply with the applicable law, but to permit the recovery of the fullest amount otherwise called for; *provided, however*, if the Note has been paid in full before the end of the stated term of the Note, then Agent and Lenders shall, with reasonable promptness after Agent discovers or is advised by Grantor that interest was received in an amount in excess of the Maximum Rate, either refund such excess interest to Grantor and/or credit such excess interest against any Related Indebtedness then owing by Grantor to Agent and Lenders. As a condition precedent to any claim seeking usury penalties against Agent and/or any Lender, Grantor agrees that it shall provide written notice to Agent and any applicable Lender, advising Agent and any applicable Lender in reasonable detail of the nature and amount of the violation, and Agent and Lenders shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Grantor or crediting such excess interest against the Note and/or the Related Indebtedness then owing by Grantor to Agent and/or Lenders. All sums contracted for, charged, taken, reserved, or received by Agent or any Lender for the use, forbearance, or detention of any debt evidenced by the Note and/or the Related Indebtedness shall, to the extent permitted by applicable law, be amortized or spread, using the actuarial method, throughout the stated term of the Note and/or the Related Indebtedness (including all renewal and extension periods) until payment in full so that the rate or amount of interest on account of the Note and/or the Related Indebtedness does not exceed the Maximum Rate from

time to time in effect and applicable to the Note and/or the Related Indebtedness for so long as debt is outstanding. The provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) shall not apply to the Note and/or the Related Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Agent or Lenders to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

SECTION IX ASSIGNMENT OF RENTS

9.1 Present Assignment. Grantor hereby assigns to Agent, and grants a security interest to Agent (for the benefit of Lenders) in and to, all existing and future Leases and Rents, to secure the payment and performance of the Indebtedness and the Obligations, subject only to the Permitted Exceptions; *provided, however*, that upon the delivery and recording of a release, satisfaction, or discharge of this Deed of Trust duly executed by Agent, this assignment shall terminate. During the existence of an Event of Default, Agent or Agent's representative, or a receiver may, in Agent's sole and absolute discretion at any time, without notice to Grantor except as required by law, enforce the assignment of Rents contained in this Section all pursuant to and in accordance with Chapter 64 of the Texas Property Code. Notwithstanding the foregoing, to the maximum extent permitted by applicable law, no action taken by Agent to collect any Rent will make Agent a "mortgagee-in-possession" of the Mortgaged Property, unless Agent personally or by authorized agent enters into actual possession of the Mortgaged Property. Possession by a court-appointed receiver will not be considered possession by Agent.

9.2 Application of Rents. Grantor shall receive all Rents and hold the same on behalf of Agent and the Lenders as Lender's Agent, and will apply the Rents so collected first to the payment of the Operating Expenses then due, next to the payment of the Indebtedness then due (including without limitation, any escrow payments required under the Loan Documents) and next, to the performance and discharge of the Obligations then due. Thereafter, Grantor may use the balance of the Rents collected in any manner consistent with the Loan Documents. Neither this assignment nor the receipt of Rents by Agent (except to the extent, if any, that Agent actually receives and applies such Rents to the Indebtedness) shall effect a *pro tanto* payment of the Indebtedness. Rents actually received by Agent shall be applied by Agent (on behalf of Lenders) as provided in **Section 9.3**. Agent shall not be deemed to have received Rents or to have applied Rents to the Indebtedness until the money is actually received by Agent at its principal office in Dallas, Texas, or at such other place as Agent shall designate in writing upon at least ten (10) days' prior written notice. Agent shall not apply Rents to the Indebtedness after foreclosure or any other transfer of all or any part of the Mortgaged Property to Agent or any third party.

9.3 Reliance Upon Lease Rent Notice. Upon receipt from Agent of a Lease Rent Notice, each Lessee is authorized and directed to pay directly to Agent all Rents thereafter accruing, and the receipt of Rents by Agent shall be a release of such Lessee to the extent of all amounts so paid. The receipt by a Lessee of a Lease Rent Notice shall be sufficient authorization for such Lessee to make all future payments of Rents directly to Agent and each such Lessee shall be entitled to rely on the Lease Rent Notice and shall have no liability to Grantor for any

Rents paid to Agent after receipt of the Lease Rent Notice. Rents so received by Agent for any period prior to foreclosure under this Deed of Trust or acceptance of a deed in lieu of such foreclosure shall be applied by Agent (on behalf of Lenders) to the payment of the following (in such order and priority as Agent shall determine): (a) all Operating Expenses; (b) all actual, out-of-pocket expenses incident to taking and retaining possession of the Mortgaged Property and/or collecting Rent as it becomes due and payable; and (c) the Indebtedness and Obligations. The Indebtedness and Obligations will not be reduced under this **Section 9.3** except to the extent, if any, that Agent actually receives and applies any Rents to the Indebtedness or Obligations in accordance with the preceding sentence. Without impairing its rights hereunder, Agent may (on behalf of Lenders), at its option, at any time and from time to time, release to Grantor any Rents so received by Agent. The Lease Rent Notice is intended solely for the benefit of the Lessees and shall never inure to the benefit of Grantor or any Person claiming through or under Grantor, other than a Lessee who has not received such Lease Rent Notice. It shall never be necessary for Agent to institute legal proceedings of any kind whatsoever to enforce the provisions of this Deed of Trust with respect to Rents. **GRANTOR SHALL HAVE NO RIGHT OR CLAIM AGAINST ANY LESSEE FOR THE PAYMENT OF ANY RENTS TO AGENT HEREUNDER AND GRANTOR SHALL INDEMNIFY, DEFEND, AND HOLD FREE AND HARMLESS EACH LESSEE FROM AND AGAINST ALL LIABILITY, LOSS, COST, DAMAGE, OR EXPENSE SUFFERED OR INCURRED BY SUCH LESSEE BY REASON OF SUCH LESSEE'S COMPLIANCE WITH ANY LEASE RENT NOTICE.**

9.4 Collection of Rent. At any time during which Grantor is receiving Rents directly from any of the Lessees, Grantor shall, upon receipt of written direction from Agent, make demand and/or sue for all Rents due and payable under one or more Leases, as directed by Agent, as it becomes due and payable, including Rents that are past due and unpaid. If Grantor fails to take such action, or at any time during which Grantor is not receiving Rents directly from Lessees, or during the existence of an Event of Default and the enforcement of Agent's rights under TARA (as hereinafter defined), Agent may (on behalf of Lenders), without obligation, demand, collect, and sue for, in its own name or in the name of Grantor, all Rents due and payable under the Leases, as they become due and payable, including Rents that are past due and unpaid.

9.5 Texas Assignment of Rents Act. Notwithstanding anything to the contrary contained herein, Agent is entitled to all the rights and remedies of an assignee set forth in Chapter 64 of the Texas Property Code, the Texas Assignment of Rents Act ("TARA"). The assignment of Leases and Rents provided in this Deed of Trust shall constitute and serve as a security instrument under TARA. Agent (on behalf of Lenders) shall have the ability to exercise its rights related to the Leases and Rents, in Agent's sole discretion and without prejudice to any other remedy available, as provided in this Deed of Trust or any other Loan Document or as otherwise allowed by applicable law, including, without limitation, TARA. Notwithstanding anything to the contrary contained in this Deed of Trust or the other Loan Documents, to the extent this Deed of Trust or any of the other Loan Documents contain any notice or cure period, the date enforcement of Agent's rights under TARA begins shall not be affected, extended or otherwise modified by reason of such periods.

SECTION X

SECURITY AGREEMENT

10.1 Security Interest. This Deed of Trust (a) shall be construed as a deed of trust on real property, and (b) shall also constitute and serve as a “Security Agreement” on personal property within the meaning of the UCC, and (c) until terminated pursuant to **Section II**, shall constitute a first and prior security interest under the UCC as to property within the scope thereof. To this end, Grantor GRANTS, BARGAINS, CONVEYS, ASSIGNS, TRANSFERS, and SETS OVER, unto Trustee and Agent (on behalf of Lenders), a first and prior security interest in all of Grantor’s right, title, and interest in, to, under, and with respect to the Personalty, Fixtures, Contracts, Leases and Rents to secure the full and timely payment of the Indebtedness and the full and timely performance and discharge of the Obligations, subject to the Permitted Exceptions. It is the intent of Grantor, Agent and Trustee that this Deed of Trust encumber all Leases and that all items contained in the definition of “Leases” that are governed by the UCC be covered by the security interest granted in this **Section X**; and all items contained in the definition of “Leases” that are not governed by the UCC be covered by the provisions of **Section II**. Grantor shall cooperate with Agent in obtaining control with respect to portions of the Personalty that are deposit accounts.

10.2 Financing Statements. Grantor shall execute and deliver to Agent, in form and substance satisfactory to Agent, such “Financing Statements” and such further assurances as Agent may, from time to time, reasonably consider necessary to create, perfect, and preserve Agent’s security interest herein granted, and Agent may cause such statements and assurances to be recorded and filed, at such times and places as may be required or permitted by law to create, perfect, and preserve such security interest. Grantor irrevocably authorizes Agent at any time and from time to time to file, on behalf of Lenders, without the signature of Grantor, in any jurisdiction, any amendments to existing financing statements and any initial financing statements and amendments thereto that (a) indicate the Mortgaged Property (i) as “all assets of Grantor and all proceeds thereof, and all rights and privileges with respect thereto” or words of similar effect, regardless of whether any particular asset comprised in the Mortgaged Property falls within the scope of Article/Chapter 9 of the UCC, or (ii) as being of an equal or lesser scope or with greater detail; (b) contain any other information required by subchapter E of Article/Chapter 9 of the UCC for the sufficiency or filing office acceptance of any financing statement or amendment, including whether Grantor is an organization, the type of organization and any organization identification number issued to Grantor; and (c) are necessary to properly effectuate the transactions described in the Loan Documents, as determined by Agent in its discretion. Grantor waives any right under the UCC or any other applicable law to receive notice and/or copies of any filed or recorded financing statements, amendments thereto, continuations thereof or termination statements and releases and excuses Agent from any obligation under the UCC or any other applicable law to provide notice or a copy of any such filed or recorded documents.

10.3 No Changes. Grantor shall not change its principal place of business or chief executive office, or change the state of its organization or registration, or change its name, without the prior written consent of Agent, which consent shall not be unreasonably withheld or delayed. Agent’s consent will, however, be conditioned upon, among other things, the execution and delivery of additional financing statements, security agreements, and other instruments that

may be necessary to effectively evidence or perfect Agent's security interest in the Mortgaged Property as a result of such changes.

10.4 Fixture Filing and Construction Mortgage. This Deed of Trust secures future advances to be used for construction of improvements on the Land. Accordingly, this Deed of Trust constitutes a "construction mortgage" under the UCC. This Deed of Trust shall also constitute a "fixture filing" under the UCC. This Deed of Trust shall also be effective as a financing statement covering as-extracted collateral and is to be filed for record in the real estate records of the county where the Mortgaged Property is situated. All or part of the Mortgaged Property may be or become fixtures; information concerning the security interest herein granted may be obtained from the debtor (Grantor) at the address set forth in the first paragraph of this Deed of Trust and from the secured party (Agent) at the address set forth in *Section I*.

SECTION XI CONCERNING TRUSTEE

11.1 No Required Action. Trustee shall not be required to take any action toward the execution and enforcement of the trust created in this Deed of Trust or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested to do so by a written instrument signed by Agent unless Trustee is tendered security and indemnity satisfactory to Trustee against all cost, expense, and liability arising therefrom. Trustee is not responsible for the execution, acknowledgment, or validity of the Loan Documents, for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation regarding such matters or regarding the rights, remedies, and recourses of Agent.

11.2 Certain Rights. With the approval of Agent, Trustee may take any or all of the following actions: (a) select, employ, and advise with counsel (who may be, but need not be, counsel for Agent) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Loan Documents, and Trustee shall be fully protected in relying on the advice of counsel regarding such legal matters; (b) execute any of the trusts and powers hereof and perform any duty hereunder either directly or through its agents or attorneys; (c) select and employ, regarding the execution of its duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care, or for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances, except for Trustee's gross negligence or bad faith; and (d) all other lawful action that Agent may instruct Trustee to take to protect or enforce Agent's and Lenders' rights hereunder. If Trustee, or anyone under Trustee's powers, enters upon the Mortgaged Property, then Trustee shall not be personally liable for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee may rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for expenses incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for services rendered

by Trustee. Grantor shall, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

11.3 Retention of Money. Until used or applied as herein provided, all moneys received by Trustee shall be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except as required by applicable law) and Trustee has no liability for interest on any moneys received by Trustee hereunder.

11.4 Successor Trustees. Trustee may resign by giving written or verbal notice of resignation to Agent. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Agent shall prefer to appoint a substitute trustee or multiple substitute trustees, or successive substitute trustees or successive multiple substitute trustees, to act instead of Trustee, then Agent has the full power to appoint any such substitute trustees that shall succeed to all the estates, rights, powers, and duties of Trustee. Such appointment may be executed by any authorized agent of Agent, and if such Agent be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms all acts that Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute trustees are appointed, each of such multiple substitute trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute trustees, whenever any action or undertaking of such substitute trustee is requested or required pursuant to this Deed of Trust or applicable law.

11.5 Perfection of Appointment. Should any deed, conveyance, or instrument of any nature be required from Grantor by Trustee or substitute trustee to more fully and certainly vest in and confirm to Trustee or substitute trustee such estates, rights, powers, and duties of Trustee, then, upon request by Trustee or substitute trustee, Grantor shall make, execute, acknowledge, deliver, and cause to be recorded and/or filed all such deeds, conveyances, and instruments.

11.6 Succession Instruments. Any substitute trustee appointed as Trustee pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Agent or the substitute trustee, the trustee ceasing to act shall execute and deliver any instrument transferring to such substitute trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the trustee so ceasing to act, and shall duly assign, transfer, and deliver any of the property and moneys held by such trustee to the substitute trustee so appointed in such trustee's place.

11.7 No Representation by Trustee or Agent. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Agent pursuant to the Loan Documents, including without limitation any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Agent shall be deemed to have warranted, consented to, or affirmed the sufficiency,

legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Agent.

11.8 Indemnity of Trustee. Trustee shall not be liable for any error of judgment or act done by Trustee in good faith, or be otherwise responsible or accountable under any circumstances whatsoever **(INCLUDING TRUSTEE'S STRICT LIABILITY, NEGLIGENCE OR CLAIMS OF NEGLIGENCE), EXCEPT FOR TRUSTEE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.** Trustee shall have the right to rely on any instrument, document or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by law), and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder. Grantor will reimburse Trustee for, and indemnify and save Trustee harmless against, any and all liability and expenses (including reasonable attorneys' fees and legal expenses) which may be incurred by Trustee in the performance of Trustee's duties hereunder or on account of or in connection with any bodily injury or death or property damage occurring in or upon or in the vicinity of the Mortgaged Property through any cause whatsoever or asserted against Trustee on account of any act performed or omitted to be performed hereunder or on account of any transaction arising out of or in any way connected with the Mortgaged Property or with any Loan Document **(INCLUDING ANY LIABILITY AND EXPENSES RESULTING FROM TRUSTEE'S OWN STRICT LIABILITY, NEGLIGENCE OR CLAIMS OF NEGLIGENCE BUT NOT INCLUDING ANY LIABILITY OR EXPENSES DUE TO TRUSTEE'S GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT).** The foregoing indemnity shall not terminate upon release, foreclosure or other termination of this Deed of Trust.

MISCELLANEOUS

12.1 Release. If the Indebtedness is paid in full pursuant to this Deed of Trust, the Note, and the other Loan Documents, and if Grantor shall perform all of the Obligations to be performed and discharged pursuant to this Deed of Trust, the Note and the other Loan Documents, then this conveyance shall become void and be released at Grantor's request and expense. Upon release of this Deed of Trust, all obligations, if any, of Agent to make advances under this Deed of Trust or the other Loan Documents shall terminate.

12.2 Performance at Grantor's Expense. Subject to the maximum interest provisions of *Section 8.12* hereof and *Section *2.14* of the Loan Agreement, Grantor shall (a) pay all reasonable legal fees incurred by Agent and Lenders in connection with the preparation of the Loan Documents (including any amendments thereto or consents, releases, or waivers granted thereunder); (b) reimburse Agent and Lenders, promptly upon demand, for all actual amounts expended, advanced, or incurred by Agent or Lenders to satisfy any obligation of Grantor under the Loan Documents, including, without limitation, all court costs, attorneys' fees (including, without limitation, fees for trial, appeal, or other proceedings), fees of auditors and accountants and other investigation expenses reasonably incurred by Agent or Lenders in connection with any such matters in connection with the Loan Documents; and (c) pay all other expenses of performing or complying with the Obligations. Except for the expenses that are

included within the definition of "Indebtedness," the payment of any expenses, including, without limitation, those set forth above, shall not be credited against any installment on or portion of the Indebtedness. Notwithstanding the foregoing, Grantor shall have no liability pursuant to this **Section 12.2** for expenses arising from litigation between Grantor and Agent in which Grantor is the prevailing party pursuant to a non-appealable, final judgment as determined by a court of competent jurisdiction to the extent such expenses are incurred in connection with such litigation and are directly related to the issue in which the Grantor prevailed.

12.3 Survival of Obligations. The Obligations shall survive the execution and delivery of the Loan Documents and the consummation of the loan called for therein and shall continue in full force and effect until the Indebtedness has been paid in full; *provided, however*, that any Obligations that expressly survive the full payment of the Indebtedness shall continue in full force and effect until otherwise terminated.

12.4 Recording and Filing. Grantor shall cause the Loan Documents requested by Agent and any amendments, supplements, and restatements thereof to be recorded, filed, re-recorded, and refiled in such manner and in such places that Trustee or Agent shall reasonably request, and Grantor shall pay all recording, filing, re-recording and refiling taxes, documentary stamp taxes, fees, and other charges.

12.5 Intentionally Deleted.

12.6 Covenants Running with the Land. All Obligations contained in this Deed of Trust and the other Loan Documents are intended by Grantor, Agent, and Trustee to be, and shall be construed as, covenants running with the Mortgaged Property until the lien of this Deed of Trust has been fully released by Agent.

12.7 Successors and Assigns. Subject to the provisions of **Sections *8.8** and ***8.9** of the Loan Agreement and the provisions regarding assignability as set forth in the Loan Agreement, all of the terms of the Loan Documents shall apply to, be binding upon, and inure to the benefit of the parties thereto, their successors, assigns, heirs, and legal representatives, and all other persons claiming by, through, or under them.

12.8 No Waiver; Severability. Any failure by Trustee or Agent to insist, or any election by Trustee or Agent not to insist, upon strict performance by Grantor or others of any of the terms, provisions, or conditions of the Loan Documents shall not be deemed to be a waiver of same or of any other terms, provisions, or conditions thereof, and Trustee or Agent (on behalf of Lenders) shall have the right at any time or times thereafter to insist upon strict performance by Grantor or others of all such terms, provisions, and conditions. No Potential Default or Event of Default shall be waived by Agent except by written instrument specifying the scope and terms of that waiver, signed by an authorized officer of Agent. Any written waiver shall be effective only for the purpose(s) and time(s) given. No waiver shall extend to any other or further event or circumstance. Grantor expressly agrees that this **Section 12.8** may not be waived or modified by Agent or Lenders by course of performance, estoppel or otherwise. The Loan Documents are intended to be performed in accordance with, and only to the extent permitted by, all applicable Legal Requirements. If any provision of any of the Loan Documents or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or

unenforceable, then neither the remainder of the instrument in which such provision is contained, nor the application of such provision to other persons or circumstances, nor the other instruments referred to herein shall be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.9 Counterparts. To facilitate execution, this Deed of Trust may be executed in as many counterparts as may be convenient or required. It shall not be necessary that the signature and acknowledgment of, or on behalf of, each party, or that the signature and acknowledgment of all Persons required to bind any party, appear on each counterpart. All counterparts shall collectively constitute a single instrument. It shall not be necessary in making proof of this Deed of Trust to produce or account for more than a single counterpart containing the respective signatures and acknowledgment of, or on behalf of, each of the parties hereto. Any signature and acknowledgment page to any counterpart may be detached from such counterpart without impairing the legal effect of the signatures and acknowledgments thereon and thereafter attached to another counterpart identical thereto except having attached to it additional signature and acknowledgment pages.

12.10 Waiver of Fraudulent Inducement. Neither Agent or Lenders nor any Affiliate of Agent or Lenders, have made any representation, warranty, or statement to Grantor to induce Grantor to execute this Deed of Trust. Grantor expressly waives any claim of fraudulent inducement to execute this Deed of Trust and further disclaims any reliance on statements or representations of Agent or Lenders in waiving such claim.

12.11 Governing Law; Venue; Service of Process. THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS; *PROVIDED THAT* AGENT AND LENDERS SHALL RETAIN ALL RIGHTS UNDER FEDERAL LAW. THIS DEED OF TRUST HAS BEEN ENTERED INTO IN DALLAS COUNTY, TEXAS, AND IS PERFORMABLE FOR ALL PURPOSES IN DALLAS COUNTY, TEXAS. THE PARTIES HEREBY AGREE THAT ANY LAWSUIT, ACTION, OR PROCEEDING THAT IS BROUGHT (WHETHER IN CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS, THE TRANSACTIONS CONTEMPLATED THEREBY, OR THE ACT, CONDUCT, OR OMISSION OF AGENT, LENDERS OR ANY OF THEIR AGENTS IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT OF ANY OF THE LOAN DOCUMENTS SHALL BE BROUGHT IN A STATE OR FEDERAL COURT OF COMPETENT JURISDICTION LOCATED IN DALLAS COUNTY, TEXAS. GRANTOR HEREBY IRREVOCABLY AND UNCONDITIONALLY (A) SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS, (B) WAIVES ANY OBJECTION IT MAY NOW OR HEREAFTER HAVE AS TO THE VENUE OF ANY SUCH LAWSUIT, ACTION, OR PROCEEDING BROUGHT IN ANY SUCH COURT, AND (C) FURTHER WAIVES ANY CLAIM THAT IT MAY NOW OR HEREAFTER HAVE THAT ANY SUCH COURT IS AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO AGREE THAT SERVICE OF PROCESS UPON IT MAY BE MADE BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED AT THE ADDRESS FOR NOTICES CONTAINED IN THE RECITALS HEREOF, AS PROVIDED IN ***SECTION *12.5*** OF THE LOAN AGREEMENT.

12.12 Waiver of Consequential, Punitive and Speculative Damages. In connection with any action, suit, or proceeding relating to or arising out of this Deed of Trust or any other Loan Documents, Grantor, Agent and Lenders each mutually waive to the fullest extent permitted by applicable law any claim for consequential, punitive, or speculative damages.

12.13 Controlling Agreement. The terms of the Loan Agreement shall control over any conflicting provision of this Deed of Trust. Except as provided in the preceding sentence, if this Deed of Trust conflicts with any of the other Loan Documents, then this Deed of Trust shall control. The parties acknowledge that they were represented by competent counsel in connection with the negotiation, drafting, and execution of the Loan Documents and that the Loan Documents shall not be subject to the principle of construing their meaning against the drafting party.

12.14 Subrogation. If any of the proceeds of the Note are used to extinguish, extend, or renew any previous indebtedness against the Mortgaged Property, then Agent, to the extent of such funds so used, shall be subrogated to all of the rights, claims, liens, titles, and interests existing against the Mortgaged Property previously held by, or in favor of, the holder of such indebtedness and such former rights, claims, liens, titles, and interests, if any, are not waived but rather continue in full force and effect in favor of Agent (on behalf of Lenders) and shall merge with the lien and security interest created herein as cumulative security for the performance and discharge of the Obligations.

12.15 Payments. Payment of any part of the Indebtedness other than of the required amount in immediately available funds at the place where the Note is payable shall not, regardless of any receipt or credit issued therefor, constitute payment until the required amount is actually received by Agent or any Lender in immediately available funds at the place where the Note is payable (or such other place that Agent (on behalf of the Lenders), in Agent's sole discretion, has established by delivery of written notice thereof to Grantor) and shall be made and accepted subject to the condition that any check or draft may be handled for collection in accordance with the practice of the collecting bank or banks. Acceptance by Agent or any Lender of any payment in an amount less than the amount then due shall be deemed an acceptance on account only, and the failure to pay the entire amount then due shall be and continue to be an Event of Default.

12.16 Exceptions to Covenants. Grantor shall not be permitted to take any action or to fail to take any action with regard to any particular covenant or condition contained herein or in any of the Loan Documents if the action or omission would result in the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Agent, nor shall Agent be deemed to have consented to any such act or omission if the same would provide cause for acceleration of the Indebtedness as a result of the breach of any other covenant or condition contained herein or in any of the Loan Documents which has not been specifically waived or consented to by Agent.

12.17 Reliance. Grantor acknowledges (a) that Agent and Lenders, by entering into the loan transaction evidenced by the Loan Documents and by accepting this Deed of Trust, are expressly and primarily relying on the truth and accuracy of the foregoing warranties and representations set forth in the Loan Documents, without any obligation to investigate the

Mortgaged Property and notwithstanding any investigation of the Mortgaged Property that may have been conducted by Agent or Lenders; (b) that Agent and Lenders have relied on such warranties and representations before entering into this Deed of Trust; (c) that such warranties and representations are a material inducement to Agent and Lenders in making the loan evidenced by the Loan Documents and accepting this Deed of Trust; and (d) that Agent and Lenders would not be willing to make the loan evidenced by the Loan Documents and accept this Deed of Trust in the absence of any of such warranties and representations.

12.18 Headings. The Section and Subsection headings in this Deed of Trust are inserted for convenience of reference only and shall in no way alter, modify, or define, or be used in construing the text of such Sections or Subsections.

12.19 Entire Agreement. THIS DEED OF TRUST AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

12.20 Amendment. The provisions hereof and of the other Loan Documents may be amended or waived only by an instrument in writing signed by Grantor and Agent.

12.21 WAIVER OF JURY TRIAL. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, GRANTOR HEREBY (AND AGENT AND EACH LENDER BY THEIR ACCEPTANCE OF THIS DEED OF TRUST) IRREVOCABLY AND EXPRESSLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM (WHETHER BASED UPON CONTRACT, TORT, OR OTHERWISE) ARISING OUT OF OR RELATING TO ANY OF THE LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY OR THE ACTIONS OF AGENT AND/OR ANY LENDER IN THE NEGOTIATION, ADMINISTRATION, OR ENFORCEMENT THEREOF. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS **SECTION 12.21**.

12.22 Counting of Days. The term “*days*” when used herein shall mean calendar days. If any time period ends on a Saturday, Sunday or other day not a business day, the period shall be deemed to end on the next succeeding business day. The term “*business day*” or “*Business Day*” when used herein shall mean a weekday, Monday through Friday, except a legal holiday or a day on which banking institutions in Dallas, Texas are authorized by law to be closed.

12.23 No Merger of Estates. So long as any part of the Indebtedness and the Obligations secured hereby remain unpaid and unperformed or undischarged, the fee and leasehold estates to the Mortgaged Property shall not merge but rather shall remain separate and

distinct, notwithstanding the union of such estates either in Grantor, Agent, Lenders, any lessee, or any third party purchaser or otherwise.

12.24 USA Patriot Act Notice. Agent (on behalf of the Lenders) hereby notifies Grantor that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the “Act”), Agent (on behalf of the Lenders) is required to obtain, verify and record information that identifies Grantor, which information includes the name and address of Grantor and other information that will allow Agent (on behalf of the Lenders) to identify Grantor in accordance with the Act.

SECTION XIII GROUND LEASE PROVISIONS

13.1 No Merger. In the event of the acquisition by Grantor at any time of the fee estate or any part of the fee estate in the real property or improvements of which the Ground Lease Estate is a part, there shall be no merger of such fee estate with the Ground Lease Estate, and the Ground Lease shall remain in full force and effect in accordance with its terms as separate and distinct estates in the Mortgaged Property (unless all persons, including the Agent, having an interest in the Ground Lease after such acquisition shall consent thereto in writing), but the lien of this Deed of Trust shall extend and attach to, and shall constitute an encumbrance upon, the fee simple estate in such Mortgaged Property so acquired by Grantor, and prior to any such acquisition of the fee estate, Grantor shall execute a supplemental deed of trust, in form and substance satisfactory to Agent evidencing the lien on such fee simple estate and, at the reasonable request of Agent, Grantor shall supply Agent with a survey, appraisal, and loan policy of title insurance covering any such fee simple estate. Notwithstanding the foregoing, if Agent, a Lender or any other purchaser acquires title to the Mortgaged Property as a result of foreclosure or a deed-in-lieu of foreclosure under this Deed of Trust (each a “**Foreclosure Event**”, and Agent, a Lender or any such other purchaser in such a Foreclosure Event being herein referred to as a “**Foreclosure Purchaser**”), in the sole discretion of Foreclosure Purchaser, the Ground Lease, and all of Ground Lessor’s and Grantor’s rights and privileges thereunder, may terminate automatically without the need for further action. In such event, Foreclosure Purchaser shall succeed to all rights and obligations of Grantor as landlord under all Leases; provided that Ground Lessor and Grantor agree to execute such instruments of assignment as Foreclosure Purchaser may reasonably request to assure that all such rights and obligations of Grantor as landlord under all such Leases shall vest in Foreclosure Purchaser. In no event shall Agent or Foreclosure Purchaser have any obligation or liability whatsoever to Ground Lessor or Grantor by reason of the termination of the Ground Lease pursuant to or as a result of a Foreclosure Event.

13.2 Representations, Warranties and Covenants. With respect to the Ground Lease, Grantor hereby represents, warrants, covenants, and agrees that:

- (a) There is no default by Grantor under the Ground Lease; to the best of Grantor’s knowledge, there is no default on the part of the Ground Lessor under the Ground Lease; the Ground Lease is in full force and effect; and Grantor has paid all sums payable, and performed all obligations required to be performed by Grantor thereunder.

(b) Grantor will (a) subject to any grace, notice and/or cure periods, pay on or before the due dates thereof all rents and other amounts payable under the Ground Lease; (b) subject to any grace, notice and/or cure periods, timely and fully observe and perform all of the material terms, covenants, agreements and conditions of the Ground Lease required to be observed and performed by Grantor; and (c) deliver to Agent a copy of any notice of default sent or received by Grantor under the Ground Lease within five (5) days after sending or receiving such notice.

(c) Any default by Grantor as tenant under the Ground Lease that extends beyond applicable notice and cure periods expressly set forth therein shall constitute an Event of Default under the Loan Documents. For purposes of determining whether a default exists under the Ground Lease, Agent shall be entitled to rely on, and accept as correct, any notice of default delivered by the Ground Lessor. In the event that Grantor fails to promptly cure any default under the Ground Lease, or fails to cure any default within two (2) days prior to the expiration of any cure period, if there is a cure period under the Ground Lease, Agent shall have the right (but shall not be obligated to) take any action to prevent or to cure any such default by Grantor under the Ground Lease, and any reasonable sums of money advanced by Agent to cure any such default shall become part of the Indebtedness, shall bear interest at the Default Rate until repaid by Grantor, and shall be repayable by Grantor to Agent promptly upon demand.

(d) Grantor will not, whether or not in accordance with the Ground Lease, do or permit anything to be done, the doing of which, or refrain from doing anything, the omission of which, will terminate or impair the security for this Deed of Trust, or will be grounds for terminating the Ground Lease prior to its stated termination date (including voluntarily terminating the Ground Lease) or declaring a default thereunder or a forfeiture thereof.

(e) Grantor will not exercise any rights of termination under the Ground Lease without first obtaining the written consent of Agent, such consent not to be unreasonably withheld, conditioned, or delayed.

(f) If Agent elects, pursuant to the terms of the Loan Documents, to make any payments or do any act or thing required to be paid or done by Grantor, Agent shall, in addition to all other remedies of Agent herein, be fully subrogated to any and all rights of the party to whom such payment is made or for which such performance is made.

(g) Grantor will not surrender any of its rights, title or interest under the Ground Lease, nor terminate or cancel the Ground Lease prior to its stated termination date (whether voluntarily or otherwise), and Grantor will not, without the express written consent of Agent, modify, change, supplement, alter or amend the Ground Lease, either orally or in writing, or enter into any agreement modifying, supplementing or amending the Ground Lease; provided, however, Grantor shall be permitted to enter into minor, non-substantive, administrative type amendments to the Ground Lease (e.g., an amendment changing the notice provisions) without Agent's consent but with subsequent notice to Agent.

(h) Except as otherwise expressly provided herein, Grantor hereby assigns to Agent all of its rights, privileges and prerogatives under the Ground Lease to renew, extend, modify, change, supplement, alter or amend the Ground Lease, and any such renewal, extension, modification, change, supplement, alteration or amendment of the Ground Lease without the prior written consent thereof by Agent, shall be void and of no force and effect; provided, however, Agent shall not exercise such rights except during the occurrence of an Event of Default.

(i) No release or forbearance of any obligations of Grantor under the Ground Lease, pursuant to the Ground Lease or otherwise, shall release Grantor from any of its obligations under the Loan Documents.

(j) Grantor shall not sublease or assign any of its rights under the Ground Lease, without the prior written consent of Agent and Ground Lessor to the extent required under the Ground Lease. Grantor shall not subordinate the Ground Lease or its leasehold estate to any mortgage, deed of trust or other encumbrance of, or lien on, the fee interest of any owner of the Mortgaged Property. Any such attempted subordination shall be void and of no force or effect.

(k) Grantor will not, in any manner that could reasonably be expected to be adverse to Agent or the Mortgaged Property, waive, excuse, condone or in any way release or discharge Ground Lessor of or from the material obligations, covenants and agreements by Ground Lessor to be done and performed.

(l) All residential leases and other subleases entered into by Grantor with respect to all or any portion of the Mortgaged Property (and all existing residential leases or other subleases modified or amended by Grantor) after the date hereof shall be deemed to provide that if Agent forecloses under this or any other Deed of Trust encumbering the property or enters into a new lease with Ground Lessor pursuant to the provisions for a new lease contained in the Ground Lease or any agreement between Ground Lessor and Agent related thereto, the residential tenant or other subtenant shall attorn to Agent or its assignee, and the residential lease or other sublease shall remain in full force and effect in accordance with its terms notwithstanding the termination of the Ground Lease.

(m) To the extent permitted by applicable law, Grantor hereby assigns to Agent a security interest in any and all prepaid rents and security deposits and all other security which the Ground Lessor now or hereafter holds for the performance of Grantor's obligations thereunder.

(n) Promptly upon written demand by Agent, but not more often than once during any twelve-month period, Grantor shall use reasonable efforts to obtain from Ground Lessor and furnish to Agent an estoppel certificate stating the date through which rent has been paid, whether or not there are any defaults under the Ground Lease, the specific nature of any claimed defaults, and such other matters as may be reasonably requested by Agent.

(o) Grantor shall notify Agent promptly in writing of any request made by either party to the Ground Lease for arbitration or appraisal proceedings relating to the Ground Lease and of the institution of any such arbitration or appraisal proceeding, as well as of all proceedings thereunder, and shall promptly deliver to Agent a copy of the determination of the arbitrators in any such proceeding. During the existence of an Event of Default, Agent shall have the right (but not the obligation), following delivery of written notice to Grantor, to participate in the appointment of any arbitrator or appraiser to be appointed by Grantor and (to the extent permitted under the Ground Lease) to participate in such arbitration or appraisal proceedings in association with Grantor or on its own behalf as an interested party. Grantor shall notify Agent of any legal proceedings involving obligations under the Ground Lease, and Agent may, during the existence of an Event of Default, intervene in any such legal proceeding and be made a party. Grantor shall promptly provide Agent with a copy of any decision rendered in any such proceeding.

(p) Without the prior written consent of Agent, which consent shall not be unreasonably withheld so long as no Event of Default then exists and Grantor simultaneously pledges the fee interest to Agent, Grantor will not exercise any purchase option under the Ground Lease (if any), which consent will not be unreasonably withheld and if granted shall be subject to such terms and conditions as may reasonably be imposed by Agent.

13.3 Bankruptcy Provisions. With respect to the Ground Lease, Grantor, to the fullest extent permitted by applicable law, hereby warrants, represents, covenants, and agrees that:

(a) The lien of this Deed of Trust hereby attaches to any and all of Grantor's rights, interests, and remedies arising now or hereafter under or pursuant to Section 365(h) of the Federal Bankruptcy Code, including, without limitation, all of Grantor's rights to remain in possession of the Mortgaged Property.

(b) Grantor shall not, without first obtaining Agent's written consent, elect to terminate the Ground Lease under Section 365(a) or 365(d) of the Federal Bankruptcy Code or elect to treat the Ground Lease as terminated under Section 365(h)(1) of the Federal Bankruptcy Code, or any other similar provision of law. Any such election made without first obtaining Agent's prior written consent will be void.

(c) Grantor hereby unconditionally assigns, transfers and sets over to Agent, as additional security for the Indebtedness and Obligations all of Grantor's claims and rights to the payment of damages arising from any rejection by Ground Lessor under the Federal Bankruptcy Code. Agent, during the existence of an Event of Default, shall have the right to proceed in its own name or in the name of Grantor in respect of any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case relating to Ground Lessor under the Federal Bankruptcy Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights and

remedies provided that Grantor is hereby granted a license to exercise the foregoing claims, rights and remedies so long as no Event of Default exists, and shall continue in effect until all of the Indebtedness and Obligations are satisfied and discharged in full; and any amount received by Agent as damages arising out of rejection or out of exercising or enforcing its rights or remedies under this Section shall be applied first to all costs and expenses of Agent (including, without limitation, reasonable attorneys' fees) and then applied to the payment of the Indebtedness and Obligations in such order and manner as Agent, in its sole discretion, may elect.

(d) If any action, proceeding, motion or notice is commenced or filed with respect to Ground Lessor or the Mortgaged Property in connection with any case under the Federal Bankruptcy Code, Agent shall have the option, if an Event of Default exists, exercisable upon written notice from Agent to Grantor, to conduct and control any such litigation with counsel of Agent's choice; Agent may proceed in its own name or in the name of Grantor in connection with any such litigation, and Grantor agrees to execute any and all powers, authorizations, consents or other documents required by Agent in connection therewith; any expenditures or payments made or incurred by Agent in connection with the prosecution or conduct of such litigation shall be secured by the lien of this Deed of Trust, shall bear interest at the Default Rate from the date of such advance, and shall, at the option of Agent, be repayable immediately upon demand; and in any such litigation Grantor shall not seek to offset any damages caused by a lack of performance by Ground Lessor against the rent payable under the Ground Lease without the prior written consent of Agent, which consent shall not be unreasonably withheld.

(e) If pursuant to subsection 365(h)(2) of the Federal Bankruptcy Code, Grantor shall seek to offset against the rent reserved in the Ground Lease the amount of any damages caused by the nonperformance by Ground Lessor under the Ground Lease of any of Ground Lessor's obligations under the Ground Lease after the rejection by Ground Lessor of the Ground Lease under the Federal Bankruptcy Code, Grantor shall, prior to effecting such offset, notify Agent of its intent so to do, setting forth the amounts proposed to be so offset and the basis therefor. During the existence of an Event of Default, Agent shall have the right to object to all or any part of such offset, and, in the event of such objection, Grantor shall not effect any offset of the amounts so objected to by Agent. If Agent shall have failed to object as aforesaid within ten (10) days after notice from Grantor in accordance with the first sentence of this paragraph, Grantor may proceed to effect such offset in the amounts set forth in Grantor's notice. Neither Agent's failure to object as aforesaid nor any objection or other communication between Agent and Grantor relating to such offset shall constitute an approval of any such offset by Agent. Grantor shall pay and protect Agent, and indemnify and save Agent harmless from and against any and all claims, demands, actions, suits, proceedings, damages, losses, costs and expenses of every nature whatsoever (including, without limitation, attorneys' fees) arising from or relating to any offset by Grantor against the rent reserved in the Ground Lease.

(f) If an Event of Default has occurred and is continuing, Grantor shall not commence any action, suit, proceeding or case, or file any application or make any

motion, with respect to the Ground Lease in any such case under the Federal Bankruptcy Code without first obtaining the prior written consent of Agent.

(g) Grantor shall promptly after obtaining knowledge thereof give written notice of any filing by or against Ground Lessor of a petition under the Federal Bankruptcy Code to Agent, setting forth any information available to Grantor as to the date of such filing, the court in which such petition was filed, and the relief sought therein; and shall promptly deliver to Agent any and all notices, summonses, pleadings, applications and other documents received by Grantor in connection with any such petition and proceedings relating thereto.

(h) If there is filed by or against Grantor a petition under the Federal Bankruptcy Code, and Grantor shall determine to reject the Ground Lease pursuant to Section 365(a) of the Federal Bankruptcy Code, Grantor shall give Agent prior written notice of the date on which Grantor shall apply to the bankruptcy court for authority to reject the Ground Lease. Such date of application by Grantor shall not be less than ten (10) days from the date of filing of the petition. Agent shall have the right, but not the obligation, to serve upon Grantor within such ten (10) day period a written notice stating that Agent demands that Grantor assume and assign the Ground Lease to Agent, pursuant to Section 365 of the Federal Bankruptcy Code, that Agent covenants to cure or provide adequate assurance of prompt cure of all defaults and provide adequate assurance of future performance under the Ground Lease. If Agent serves upon Grantor such written notice, Grantor shall not seek to reject the Ground Lease and shall comply with Agent's demand within thirty (30) days after such written notice has been given subject to the performance by Agent of Agent's covenant to cure or provide adequate assurance.

(i) Effective upon the entry of any order for relief with respect to Grantor under the Federal Bankruptcy Code, Grantor hereby assigns and transfers to Agent, a non-exclusive right to apply to the bankruptcy court for an order extending the period during which the Ground Lease may be rejected or assumed.

**REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURE PAGE FOLLOWS.**

EXECUTED as of the date first above written.

NOTICE OF INDEMNIFICATION:

GRANTOR HEREBY ACKNOWLEDGES AND AGREES THAT THIS DEED OF TRUST CONTAINS CERTAIN INDEMNIFICATION PROVISIONS (INCLUDING, WITHOUT LIMITATION, THOSE CONTAINED IN *SECTIONS 7.1(b) AND 8.4* HEREOF) WHICH, IN CERTAIN CIRCUMSTANCES, COULD INCLUDE AN INDEMNIFICATION BY GRANTOR OF AGENT AND LENDERS FROM CLAIMS OR LOSSES ARISING IN STRICT LIABILITY OR AS A RESULT OF AGENT'S AND/OR ANY LENDER'S OWN NEGLIGENCE.

GRANTOR:

JEFFERSON VILLAGES OF WATERS CREEK,
LLC
a Delaware limited liability company

By: JEFFERSON VILLAGES OF WATERS
CREEK HOLDINGS, LLC
A Delaware limited liability company
Its Managing Member

By: _____
Name: _____
Title: _____

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

The foregoing instrument was ACKNOWLEDGED before me this ____ day of _____, 2022, by _____, the _____ of Jefferson Villages of Waters Creek Holdings, LLC, the managing member of JEFFERSON VILLAGES OF WATERS CREEK, LLC, a Delaware limited liability company, on behalf of said limited liability company.

[S E A L]

My Commission Expires:

Notary Public, State of Texas

Printed Name of Notary Public

List of Attachments:

Exhibit A - Land Description

Leasehold Deed of Trust
Signature Page

EXHIBIT A
LAND DESCRIPTION

*

EXHIBIT B

GROUND LEASE

Lease Agreement entered into by and between Anna Public Facility Corporation, a Texas public facility corporation, as landlord, and *Jefferson Villages of Waters Creek, LLC, a Delaware limited liability company, as tenant. A memorandum of the Ground Lease is being recorded on the date hereof in the real property records of Collin County, Texas.

**FEE OWNER ADDENDUM AND JOINDER TO
LEASEHOLD DEED OF TRUST, SECURITY AGREEMENT AND ASSIGNMENT OF
RENTS**

This Fee Owner Addendum and Joinder to Leasehold Deed of Trust, Security Agreement and Assignment of Rents (this “*Addendum*”) is made as of *_____, 2022, by **APFC WATERS CREEK MEMBER, LLC**, a Texas limited liability corporation (“*Fee Owner*”), as grantor, to **TIM STORMS** (“*Trustee*”), for the benefit of the Agent (as defined in the Deed of Trust) in its capacity as administrative agent under the Loan Agreement, for the benefit of itself and the Lenders (as defined in the Deed of Trust).

WHEREAS, this Addendum is attached to and made a part of that certain Leasehold Deed of Trust, Security Agreement and Assignment of Rents (the “*Deed of Trust*”) made by ***JEFFERSON VILLAGES OF WATERS CREEK, LLC**, a *Delaware limited liability company (“*Grantor*”), as grantor, to Trustee for the benefit of Agent and Lenders.

WHEREAS, Fee Owner is the owner of fee simple title to the real property more particularly described on Exhibit A attached to the Deed of Trust and made a part hereof (the “*Land*”) and the improvements located on the Land (the “*Improvements*”). The Land and the Improvements are collectively referred to in this Addendum as the “*Project*”.

WHEREAS, Fee Owner, as landlord, leased the Project to Grantor, as tenant, under the Ground Lease.

WHEREAS, as a condition precedent to the Lenders making the Loan to Grantor, Agent and Lenders have required that Fee Owner join in the execution and delivery of the Deed of Trust for the purpose of subjecting the fee title to the Project and the landlord’s interest in the Ground Lease to the lien of the Deed of Trust.

WHEREAS, Fee Owner has agreed to execute and deliver this Addendum in favor of Agent and Lenders in order to induce the Lenders to make the Loan to Grantor and to further secure the payment and performance by Grantor of all its obligations secured by the Deed of Trust.

NOW THEREFORE, in consideration of the Loan and other valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, Fee Owner agrees as follows:

1. **Ratification of Recitals; Definitions.** The foregoing recitals are hereby ratified and confirmed by Fee Owner as being true and correct and are hereby incorporated into the body of this Addendum by reference. Capitalized terms used but not defined in this Addendum shall have the meanings given in the Deed of Trust and Loan Agreement.
2. **Conveyance of Fee Simple Title.** Fee Owner irrevocably GRANTS, CONVEYS, ASSIGNS, BARGAINS, and SELLS and has by these presents GRANTED, CONVEYED, ASSIGNED, BARGAINED, and SOLD the Project to Trustee, in trust for the benefit of Agent (on behalf of the Lenders), each of their successors and assigns, with power of sale and right of entry and possession, TO HAVE AND TO HOLD the Project

unto Trustee, forever, to the same extent as if Fee Owner had been the named grantor in the Deed of Trust.

3. **Representations and Warranties.** Fee Owner represents and warrants to Agent that (a) Fee Owner has the power, authority and right to execute this Addendum as an accommodation grantor, (b) Fee Owner possesses an unencumbered fee simple absolute estate in the Land and owns the Land and, to the extent not owned in fee by Grantor, the Improvements, free and clear of all liens, encumbrances and charges except for those otherwise approved by Agent, (c) Fee Owner is lawfully seized of the Project, and (d) Fee Owner has the right, power and authority to mortgage, grant, warrant, convey, bargain, sell, and assign the Project and Fee Owner's right, title and interest in and to the Project and to keep and observe all of the terms of this Addendum to be performed by Fee Owner.

4. **Fee Owner Joinder.**

- a. By its execution and delivery of this Addendum, Fee Owner joins in the Deed of Trust with the same intent and consequence as if Fee Owner were originally a party to the Deed of Trust, for the purpose of (i) imposing the lien of the Deed of Trust on the fee estate owned by Fee Owner, and (ii) acknowledging the agreements, covenants and obligations set forth in the Deed of Trust as may be applicable to Fee Owner.
- b. Fee Owner acknowledges all of the following:
 - i. Agent has not made any representations or warranties to Fee Owner with respect to the creditworthiness of Grantor or the prospects of repayment of the Indebtedness or Obligations.
 - ii. Fee Owner assumes full responsibility for keeping informed with respect to Grantor's business operations, if any, and financial condition to the extent Fee Owner wishes to do so.
 - iii. Neither Agent nor any Lender will have any duty to disclose or report to Fee Owner any information now or later known to Agent or Lenders with respect to Grantor, including any information relating to any of Grantor's business operations or financial condition.
 - iv. The Loan Agreement, the Deed of Trust, and other Loan Documents may be extended, modified or amended from time to time without Fee Owner's consent, and the Loan amount may be increased or decreased without Fee Owner's consent.
- c. Fee Owner acknowledges and agrees that, upon the occurrence of an Event of Default, Agent and/or Lenders may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against Grantor, Fee Owner,

and in and to the Project, to the fullest extent under the terms of the Deed of Trust, the Loan Agreement, and the other Loan Documents.

- d. Neither Fee Owner nor any officer, director, or trustee of Fee Owner has any personal liability for the repayment of the Indebtedness or Obligations or for the performance of any of Grantor's obligations under the Loan Documents and neither Agent nor any Lender has recourse for personal liability against Fee Owner, and Fee Owner's liability under this Addendum and the Deed of Trust is expressly limited to its interest in the Project. However, nothing in this Addendum limits the liability or obligations of Fee Owner as landlord under the Ground Lease.
5. **Waivers.** Fee Owner acknowledges and agrees that it has, pursuant to this Addendum, granted a lien on the Project to secure the Indebtedness and Obligations owed by Grantor to Agent and Lenders. Therefore, Fee Owner is a non-borrower grantor or mortgagor under the Deed of Trust and hereby agrees to the following additional covenants and agreements:
- a. Fee Owner waives any defense that Fee Owner may have by reason of the failure of Agent to provide Fee Owner with any material facts about Grantor, including any information respecting the financial condition of Grantor, Grantor's ability to perform the Loan obligations or the sufficiency of Agent's security.
 - b. Fee Owner waives any defense that may arise by reason of the incapacity, lack of authority, death or disability of any other Person, or the failure of Agent and/or any Lender to file or enforce a claim against the estate (in administration, bankruptcy or any other proceeding) of any other Person or Persons.
 - c. Fee Owner waives all rights and defenses that Fee Owner may have because the Indebtedness and Obligations are secured by real property. This means, among other things:
 - i. Agent (on behalf of Lenders), as creditor, may foreclose on the fee estate owned by Fee Owner without first foreclosing on any real or personal property collateral pledged by Grantor.
 - ii. If Agent (on behalf of Lenders), as creditor, forecloses on any real property collateral pledged by Grantor: (A) the amount of the debt may be reduced only by the price for which that collateral is sold at the foreclosure sale, even if the collateral is worth more than the sale price; and (B) Agent may foreclose on the fee estate owned by Fee Owner even if Agent, by foreclosing on Grantor's real property collateral, has destroyed any right Fee Owner may have to collect from Grantor.
6. **Fee Owner Consent to Leasehold Financing.** Fee Owner hereby consents to the hypothecation, pledge and assignment of Grantor's interest in the Ground Lease by means of the Deed of Trust. In addition:

- a. Fee Owner hereby represents and warrants that (i) the Ground Lease is unmodified and in full force and effect; (ii) neither Grantor nor Fee Owner is in default under any of the terms, covenants or conditions contained in the Ground Lease nor, to Fee Owner's knowledge upon the date the Ground Lease becomes effective, has any event occurred which would, with the giving of notice, constitute a default under any of the terms, covenants or conditions contained in the Ground Lease; (iii) Fee Owner has no knowledge of any assignment, hypothecation or pledge of Grantor's interest in the Ground Lease or any rentals thereunder, other than to Agent; (iv) Fee Owner has not assigned, conveyed, transferred, sold, encumbered or mortgaged its interest in the Ground Lease or the Project and there are no mortgages, deeds of trust or other security interests encumbering Fee Owner's fee interest in the Project; and (v) Fee Owner has not received written notice of any pending eminent domain proceedings or other governmental actions or any judicial actions of any kind against Fee Owner's interest in the Project.
- b. Fee Owner hereby agrees that until the time, if any, that the Indebtedness and Obligations shall be satisfied or Agent shall give Fee Owner written notice that the Indebtedness and Obligations have been satisfied, (i) the Deed of Trust shall constitute a ***"Permitted Leasehold Mortgage"** under the terms of the Ground Lease; (ii) Agent and Lenders shall be a ***"Permitted Leasehold Mortgagee"** under the terms of the Ground Lease; (iii) Agent and Lenders shall be a beneficiary of and entitled to each of the protections and provisions of the Ground Lease benefitting a ***"Permitted Leasehold Mortgagee"** and/or **"Senior Lender"**, including, without limitation, Section * _____ (***Lienholders' Rights in Proceeds**), Section * _____ (***Permitted Transfers**), Section * _____ (***Mortgagees' notice and Cure Rights**), and Section * _____ (***Leasehold Mortgage Requirements**) of the Ground Lease, all of which are incorporated into the Deed of Trust by reference and are restated and confirmed by Fee Owner for the benefit of Agent; provided, however, in addition to ***Permitted Leasehold Mortgagee**, or its nominee or designee, any other Person which is a purchaser upon a ***Foreclosure Event (as defined in the Ground Lease)** or whose title derives from a ***Permitted Leasehold Mortgagee** shall be entitled to the same protections and provisions of the Ground Lease upon a Foreclosure Event; and (iv) the execution of this Addendum by Fee Owner satisfies all notice and consent requirements for Agent to obtain and maintain status as a ***"Permitted Leasehold Mortgagee"** under the Ground Lease.
- c. At any time after Fee Owner receives notice of an Event of Default under any of the Loan Documents from Agent, Fee Owner has the right (but under no circumstances shall such right be considered an obligation) to make any payment, perform any obligation and take any other action that Grantor would have the right to pay, perform or take under this Addendum which Fee Owner deems, in its sole discretion, necessary or desirable to cure the Event of Default.
- d. With respect to Fee Owner, the Deed of Trust shall constitute a valid, subsisting, first lien on the Project, and a valid, subsisting, exclusive, perfected and prior

security interest in and to the Project, all in accordance with the terms thereof, subject to the Permitted Exceptions.

- e. Without Agent's prior written consent, Fee Owner will not permit the fee estate in and to the Project and the Ground Lease and the leasehold estate created by the Ground Lease to merge and the fee and leasehold estates will remain separate and distinct, notwithstanding the union of such estates in Fee Owner, Grantor or any third party by purchase, assignment or otherwise.
 - f. *NTD: add any consents required for the assignment of the PFC Development Agreement, if applicable.
7. **Assignment By Agent and/or any Lender.** Agent and/or any Lender may assign their respective rights under this Deed of Trust in whole or in part and, upon any such assignment, all the terms and provisions of the Deed of Trust and this Addendum shall inure to the benefit of such assignee to the extent so assigned. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors and assigns of such parties.
8. **Rights and Remedies of Agent and Lenders.** In the event of the occurrence and continuance of any Event of Default by Grantor, Agent shall provide notice thereof to Fee Owner concurrently with notice to Grantor and shall accept a cure of such default by Fee Owner or by Grantor, provided that such cure shall occur within the cure periods set out in any and all of the Loan Documents. Fee Owner acknowledges it has executed and delivered this Addendum to secure the obligations of Grantor to Agent and Lenders under the Deed of Trust, and upon the occurrence and continuance of an Event of Default, Agent and Lenders shall be entitled to pursue all of their respective rights and remedies thereunder, including, without limitation, the commencement of an action to foreclose the Deed of Trust against Fee Owner's fee simple interest in the Project and/or Grantor's leasehold interest in the Mortgaged Property.
9. **Successors and Assigns.** All of the provisions contained in this Addendum are binding upon Fee Owner and its successors and assigns and such provisions will run with the Land and be binding on all successors in ownership of all or any part of the Project.
10. **Grantor Defaults; No Indemnity By Fee Owner; No Personal Liability.** Notwithstanding anything to the contrary contained in this Addendum or the Deed of Trust, Fee Owner joins herein for the purpose of authorizing a lien on the fee title to the Project, but Fee Owner shall not be personally liable for the breach of any representations, warranties, or covenants by the Grantor under the Deed of Trust; provided, however, that any and all such breaches or defaults shall still be breaches and defaults under the terms of the Deed of Trust, Addendum and the other Loan Documents; and provided further, Fee Owner will in no event be responsible for any indemnification provisions in the Deed of Trust; and provided further, neither Fee Owner nor any officer, director or trustee of Fee Owner shall have any personal liability for the payment or performance of any of the obligations secured by the Deed of Trust or liabilities of Grantor, or requirements to be paid or obligations to be performed by Grantor pursuant to

the Deed of Trust or any other Loan Document, and Agent shall have no recourse for personal liability against Fee Owner or any officer, director or trustee of Fee Owner with respect to the foregoing nor shall Fee Owner nor any officer, director or trustee of Fee Owner be subject to any liability or claim based thereon.

11. **Incorporation of Terms into Deed of Trust.** The terms of this Addendum are hereby incorporated as an Addendum to the Deed of Trust.

12. **Miscellaneous Provisions.**

- a. **WAIVER OF RIGHT TO TRIAL BY JURY.** TO THE EXTENT PERMITTED BY APPLICABLE STATE LAW, EACH PARTY TO THIS ADDENDUM, AND AGENT AND LENDERS, BY THEIR ACCEPTANCE HEREOF, HEREBY EXPRESSLY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION (A) ARISING UNDER THE LOAN DOCUMENTS, INCLUDING, WITHOUT LIMITATION, ANY PRESENT OR FUTURE MODIFICATION THEREOF OR (B) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN DOCUMENTS (AS NOW OR HEREAFTER MODIFIED) OR ANY OTHER INSTRUMENT, DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION HERewith, OR THE TRANSACTIONS RELATED HERETO OR THERETO, IN EACH CASE WHETHER SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION IS NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT OR TORT OR OTHERWISE; AND EACH PARTY AND AGENT HEREBY AGREES AND CONSENTS THAT ANY PARTY TO THIS ADDENDUM MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO, AGENT AND LENDERS TO THE WAIVER OF ANY RIGHT THEY MIGHT OTHERWISE HAVE TO TRIAL BY JURY.
- b. **Integration; Interpretation.** The Loan Documents, including this Addendum, contain or expressly incorporate by reference the entire agreement of the parties with respect to the matters contemplated therein and supersede all prior negotiations or agreements, written or oral. The Loan Documents shall not be modified except by written instrument executed by all parties thereto. Any reference to the Loan Documents includes any amendments, renewals or extensions now or hereafter approved by Agent in writing.

(Signature Page Follows)

IN WITNESS WHEREOF, Fee Owner has executed this Addendum to the Deed of Trust as of the date of the acknowledgment below, but to be effective as of the Effective Date.

FEE OWNER:

APFC WATERS CREEK MEMBER, LLC,
a Texas limited liability company

By: Anna Public Facility Corporation,
a Texas public facility corporation,
its sole member

By: _____
Name: Stan Carver II
Title: President

STATE OF TEXAS)
) SS
COUNTY OF COLLIN)

I, _____, a Notary Public, do hereby certify that Stan Carver II, personally known to me to be the same person whose name is, as President of the Anna Public Facility Corporation, sole member of APFC Water Creek Member, LLC, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he, being thereunto duly authorized, signed, and delivered the said instrument as the free and voluntary act of said entity and as his own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this ____ day of November, 2022.

Notary Public in and for the State of Texas

(SEAL)
My commission expires: _____

COLLATERAL ASSIGNMENT OF CONSTRUCTION MANAGEMENT AGREEMENT

This **COLLATERAL ASSIGNMENT OF CONSTRUCTION MANAGEMENT AGREEMENT** (this “**Agreement**”) is made and entered into as of *, 2022, by and among ***JEFFERSON VILLAGES OF WATERS CREEK, LLC**, a *Delaware limited liability company (“**Borrower**”), **TEXAS CAPITAL BANK**, a Texas state bank, as Administrative Agent for itself and for such other lenders a party to the Loan Agreement (as hereinafter defined) (being hereinafter referred to as “**Administrative Agent**”; and the lenders and their assignees, if any, being hereinafter collectively referred to as the “**Lenders**”), and **APFC Waters Creek Contractor, LLC**, a Texas limited liability company (“**Contractor**”). All capitalized terms utilized herein and not otherwise defined herein shall, unless the context otherwise indicates, have the meaning ascribed to such capitalized terms in the Loan Agreement, as hereinafter defined. Unless otherwise expressly set forth herein, Administrative Agent shall be deemed in all respects to be acting in the capacity of Administrative Agent for itself and all of the Lenders, as set forth in, and in accordance with, the Loan Agreement.

RECITALS:

A. Lenders have made a loan to Borrower in the amount of up to \$51,667,000.00 (the “**Loan**”). The Loan is secured, among other things, by a Leasehold Deed of Trust, Security Agreement and Assignment of Rents executed by Borrower in favor of the Trustee named therein for the benefit of Administrative Agent, on behalf of the Lenders, encumbering property in Collin County, Texas (the “**Security Instrument**”), upon which has been or will be constructed a multifamily project (the “**Project**”).

B. Borrower and Contractor have entered or intend to enter into that certain Construction Management Agreement (the “**Construction Agreement**”) for the construction of the Project.

C. Borrower has agreed to assign its rights under the Construction Agreement to Administrative Agent, for the benefit of the Lenders, as additional security for the Loan.

D. Contractor is willing to consent to the assignment and to attorn to Administrative Agent upon a default by Borrower under the documents evidencing and securing the Loan, and perform its obligations under the Construction Agreement for Administrative Agent and Lenders, or their successors in interest, or to permit Administrative Agent to terminate the Construction Agreement without liability.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Administrative Agent and Contractor agree as follows:

1. Borrower hereby collaterally transfers, assigns and sets over to Administrative Agent, for the benefit of the Lenders, all right, title and interest of Borrower in and to the Construction Agreement. Contractor hereby consents to the foregoing assignment. The foregoing assignment is being made by Borrower to Administrative Agent, for the benefit of the Lenders, as additional security for the full payment and performance by Borrower of all Indebtedness and

Obligations (as defined in the Construction Loan Agreement dated of even date herewith executed by and among Borrower, Administrative Agent and Lenders, the “**Loan Agreement**”) under all documents evidencing and securing the Loan. However, except during the continuance of an Event of Default, as defined in the Loan Agreement (an “**Event of Default**”), Borrower may exercise all rights as owner of the Project and under the Construction Agreement. The foregoing assignment shall remain in effect as long as the Loan, or any part thereof, remains unpaid, but shall automatically terminate upon the release of the Security Instrument.

2. Borrower and Contractor represent and warrant to Administrative Agent and the Lenders that (i) the Construction Agreement is unmodified from the executed version delivered to Administrative Agent and in full force and effect, (ii) the Construction Agreement is a valid and binding agreement enforceable against the parties in accordance with its terms, and (iii) to each party’s knowledge, neither party is in default in performing any of its obligations under the Construction Agreement beyond applicable notice and cure periods. As long as the Loan is outstanding and unpaid, neither Borrower nor Contractor shall make any material change in the Construction Agreement without Administrative Agent’s written consent, which consent shall not be unreasonably withheld. As long as the Loan or any portion thereof is outstanding and unpaid, neither Borrower nor Contractor shall terminate the Construction Agreement without Administrative Agent’s written consent not to be unreasonably withheld; provided, however, that (x) so long as prior written notice is delivered to Contractor in accordance with the terms of the Construction Agreement, and simultaneously provided to Administrative Agent, Borrower may terminate the services of the Contractor pursuant to the terms of the Construction Agreement if Contractor defaults thereunder in any material respect and Borrower retains the services of a replacement contractor acceptable to Administrative Agent on terms reasonably acceptable to the Administrative Agent, and (y) so long as at least ninety (90) days prior written notice is delivered to the Administrative Agent, Contractor may terminate the Construction Agreement pursuant to the terms of the Construction Agreement if Borrower defaults thereunder, and (i) Borrower fails to cure such default within any applicable grace or cure period; (ii) Administrative Agent does not exercise its rights to cure such default hereunder; and (iii) such termination is not otherwise prohibited pursuant to the terms of this Agreement or the Construction Agreement.

3. Upon receipt by Contractor of written notice from Administrative Agent that an Event of Default has occurred and is continuing, Administrative Agent shall have the right to exercise all rights as owner of the Project under the Construction Agreement so long as Administrative Agent is performing all obligations of Borrower thereunder.

4. After the occurrence and during the continuance of an Event of Default, Administrative Agent (or its nominee) shall have the right at any time thereafter to terminate the Construction Agreement, without cause and without liability, by giving written notice to Contractor of its election to do so (the “**Lender Notice**”). The Lender Notice shall specify the date of termination, which shall not be less than 30 days after the date of such notice; provided however, if Administrative Agent forecloses on its lien under the Security Instrument, Administrative Agent may immediately provide the Lender Notice without any restriction on the date of termination (i.e., the Construction Agreement may be immediately terminated upon the date of the Lender Notice).

5. On the effective date of termination of the Construction Agreement, if any of the following in this section 5 exist in Contractor's exclusive possession Contractor shall turn over to Administrative Agent all books and records relating to the Project (copies of which may be made and retained by Contractor, at Contractor's expense), together with such authorizations and letters of direction addressed to tenants, suppliers, employees, banks and other parties as Administrative Agent may reasonably require; *provided however*, Contractor shall not be responsible for providing any such documents and records possessed or maintained by Subcontractor and/or Developer (each as defined in the Construction Agreement) and/or Borrower. Contractor shall reasonably cooperate with Administrative Agent in the transfer of management responsibilities to Administrative Agent or its designee. A final accounting of unpaid fees (if any) due to Contractor under the Construction Agreement shall be made within 30 days after the effective date of termination, but neither Administrative Agent nor Lenders shall have any liability or obligation to Contractor for unpaid fees or other amounts payable under the Construction Agreement which accrue before the date of the Lender Notice.

6. Contractor's address for notice is 120 W 7th Street, PO Box 776, Anna, Texas 75409, Attn: Jim Proce, City Manager. All notices to be given by Administrative Agent to Contractor shall be given in the same manner as notices to Borrower pursuant to the notice provisions contained in the Loan Agreement between Borrower and Administrative Agent.

7. Contractor agrees that, during the existence of an Event of Default, all contractor fees payable to Contractor by Borrower under the Construction Agreement shall be subordinated to payments due upon the Loan provided Contractor may terminate the Construction Agreement if Contractor is not timely paid in accordance with the terms of the Loan Agreement, subject to Administrative Agent's cure rights provided herein.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Borrower, Administrative Agent and Contractor have signed this Agreement as of the day and year first above written.

BORROWER:

JEFFERSON VILLAGES OF WATERS CREEK, LLC
a Delaware limited liability company

By: JEFFERSON VILLAGES OF WATERS CREEK
HOLDINGS, LLC
A Delaware limited liability company
Its Managing Member

By: _____
Name: _____
Title: _____

CONTRACTOR:

APFC Waters Creek Contractor, LLC

By: Anna Public Facility Corporation, a Texas public facility
corporation, its sole member

By: _____
Name: Stan Carver II
Title: President

ADMINISTRATIVE AGENT:

TEXAS CAPITAL BANK, a Texas state bank,
as Administrative Agent for the Lenders

By: _____

Name: Tim Harrigan

Title: Executive Vice President

AGREEMENT WITH PFC MEMBER

This AGREEMENT WITH PFC MEMBER (this “**Agreement**”) is entered into as of *_____, 2022, by and among **APFC WATERS CREEK MEMBER, LLC** a Texas limited liability company (“**Special Member**”), ***JEFFERSON VILLAGES OF WATERS CREEK, LLC**, a *Delaware limited liability company (“**Borrower**”), and **TEXAS CAPITAL BANK**, a Texas state bank (“**Agent**”), for itself and as administrative agent on behalf of the other Lenders that are a party to that certain Construction Loan Agreement between Agent, Lenders, and Borrower, dated as of the date hereof (the “**Loan Agreement**”).

RECITALS

A. Special Member, in its capacity as landlord, (“**Landlord**”) is the owner of certain real property located in Collin County, Texas described in Exhibit A attached hereto (the “**Premises**”), and is the landlord under that certain Lease Agreement dated on or about the date hereof by and between Landlord and Borrower, as tenant, relating to the Premises (the “**Ground Lease**”).

B. Special Member is a special member of Borrower under the terms of the Operating Agreement of Borrower dated *_____, 2022 (the “**Operating Agreement**”).

C. Borrower desires to obtain a loan from the Lenders (as defined in the Loan Agreement) in the aggregate principal amount of \$51,667,000.00 (the “**Loan**”), and to encumber its leasehold interest under the Ground Lease as security for the Loan pursuant to that certain Leasehold Deed of Trust, Security Agreement and Assignment of Rents, dated as of the date hereof, for the benefit of Agent (the “**Deed of Trust**”).

D. Lenders are willing to make the Loan to Borrower secured by, among other things, Borrower’s leasehold interest under the Ground Lease, provided that Special Member agrees to the provisions of this Agreement.

AGREEMENT:

NOW THEREFORE, in consideration of the premises and other mutual valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto agree as follows:

1. Until the lien of the Deed of Trust has been released and Borrower has paid all amounts under the Loan owing with respect to such release, the parties agree that if a Foreclosure Event (as defined in the Ground Lease) occurs, Special Member shall, within thirty (30) days after written request by Agent to Special Member, execute and deliver a new lease agreement relating to the leasehold ownership and operation of the Premises with Agent (or Agent’s designee as foreclosure purchaser), pursuant to Section 23 of the Ground Lease.

2. Special Member agrees that the terms and provisions of Section 1 shall inure solely to the benefit of Agent (on behalf of the Lenders party to the Loan Agreement) and no other party.

3. Any notice or demand required or given hereunder shall be in writing and shall be delivered by hand or overnight courier service, or mailed by certified or registered mail, addressed to the parties as follows:

Special Member:

APFC Waters Creek Member, LLC
120 W 7th Street
PO Box 776
Anna, Texas 75409
Attn: Jim Proce, City Manager

With a copy to:

Chapman and Cutler, LLC
320 South Canal Street, 27th Floor
Chicago, Illinois 60606
Attn: Ryan Bowen

Borrower:

Jefferson Villages of Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attn: Blake Taylor

With a copy to:

Jefferson Villages of Waters Creek, LLC
600 E. Las Colinas Blvd., Suite 1800
Irving, Texas 75039
Attn: Legal Department

Agent:

Texas Capital Bank
2000 McKinney Avenue, Suite 700
Dallas, Texas 75201
Attn: Tim Harrigan

With a copy to:

Holland & Knight LLP
1722 Routh Street, Suite 1500
Dallas, Texas 75201
Attn: Matthew H. Swerdlow

Notices sent by hand shall be deemed to have been given upon delivery, notices sent by overnight courier service shall be deemed to have been given upon the first to occur of actual receipt or the next business day following deposit with such courier services, and notices mailed by certified or registered mail shall be deemed to have been given upon the first to occur of actual receipt or 3 business days following deposit with the U.S. Postal Service. Such addresses may be changed by notice to the other parties given in the same manner as provided herein, such changes to be effective only upon receipt of notice thereof.

4. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

5. This Agreement may be executed in any number of counterparts and each of the counterparts shall be considered an original and all counterparts shall constitute but one and the same instrument.

6. This Agreement and the exhibits hereto, which are incorporated herein by this reference, shall constitute the entire agreement between the parties with respect to the subject matter hereof. This Agreement may not be changed or modified orally or in any manner other than by any agreement in writing signed by the parties hereto. No waiver of any of the terms or conditions of this Agreement and no waiver of any default or failure of compliance shall be effective unless in writing and no waiver furnished in writing shall be deemed to be a waiver of any other term or provision or any future condition of this Agreement.

7. This Agreement shall be governed by the laws of the State of Texas.

8. In the event of any litigation arising out of any dispute or controversy concerning this Agreement, the party or parties not prevailing in such dispute shall pay any and all costs and expenses incurred by the prevailing party or parties, including, without limitation, reasonable attorneys' fees and expenses, which shall include fees and expenses of in-house attorneys.

9. Time is of the essence of this Agreement and the performance of each of the covenants and agreements herein.

10. In the case of a conflict between the terms of the Operating Agreement and the terms of this Agreement, the terms of this Agreement shall control.

(End of Text - Signature Pages Follow)

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

SPECIAL MEMBER:

APFC Waters Creek Member, LLC,
a Texas limited liability company

By: Anna Public Facility Corporation, a Texas public
facility corporation, its sole member

By: _____
Name: Stan Carver II
Title: President

BORROWER:

JEFFERSON VILLAGES OF WATERS CREEK, LLC
a Delaware limited liability company

By: JEFFERSON VILLAGES OF WATERS CREEK
HOLDINGS, LLC
A Delaware limited liability company
Its Managing Member

By: _____
Name: _____
Title: _____

AGENT:

TEXAS CAPITAL BANK, a Texas state bank, as
administrative agent

By:_____

Name: Tim Harrigan

Title: Executive Vice President

Exhibit A

Legal Description

*

ASSIGNMENT OF DEVELOPMENT AGREEMENT

This Assignment of Development (this **Assignment**) is made as of _____, 2022, by Anna 51 Joint Venture, a Texas limited partnership (**Assignor**), and APFC Waters Creek Member, LLC, a Texas limited liability company (**Assignee**).

BACKGROUND

A. Assignor is the owner of that certain tract of land described in on **Exhibit A** attached hereto and made apart hereof (the **Property**).

B. Assignor, as Owner, entered into that certain Amended and Restated Development Agreement between Assignee, as Owner, and the City of Anna, Texas, as the City, a copy of which is recorded as Document No. 2022000095699 in the Real Property Records of Collin County, Texas (the **Development Agreement**).

C. Assignor is simultaneously herewith conveying the Property to Assignee.

D. In accordance with Section 6 of the Development Agreement, Assignor wants to assign all of its interest in the Development Agreement to Assignee and Assignee wants to accept the assignment.

E. Capitalized words not defined in this Assignment shall have the meaning set forth in the Development Agreement.

AGREEMENT

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in further consideration of the provisions, covenant and agreements set forth, it is agreed as follows:

1. Assignor hereby sells, transfers, and conveys to Assignee all of Assignor's right, title and interest in and to the Development Agreement, and to the extent the Development Agreement expressly relates to the Property, including all of Assignor's rights, responsibilities and obligations under the Development Agreement relating to the Property (the "**Assigned Interests**").

2. Assignee hereby accepts the assignment of the Assigned Interests and agrees to assume, discharge and be bound by, in accordance with the terms of the Development Agreement, all of Assignor's duties and obligations under the Development Agreement relating in any way to the Property and the Assigned Interests from and after the date hereof and all, of the terms of the Development Agreement, in their entirety as the Development Agreement relates to the Property and the Assigned Interests, including all of the Assignor's rights, responsibilities and obligations under the Development Agreement relative to the Property.

3. This instrument may be executed in multiple counterparts. Each counterpart is an original, but multiple counterparts taken together constitute a single instrument. Facsimiles of original signatures, whether delivered by email or fax or otherwise, are binding as originals.

[SIGNATURES FOLLOW]

EXECUTED, by the undersigned to be effective of as of the first date set forth above.

ASSIGNOR:

ANNA 51 JOINT VENTURE,
a Texas limited partnership

By: Collins Commercial Realty, Inc.,
its general partner

By: _____
Name: Don Collins
Title: President

EXECUTED, by the undersigned to be effective of as of the first date set forth above.

ASSIGNEE:

APFC WATERS CREEK MEMBER, LLC,
a Texas limited liability company

By: Anna Public Facility Corporation,
a Texas public facility corporation,
its sole member

By: _____

Name: Stan Carver II

Title: President

EXHIBIT A

PROPERTY DESCRIPTION

BEING THAT CERTAIN TRACT OF LAND SITUATED IN THE THOMAS RATTAN SURVEY, ABSTRACT NUMBER 782, COLLIN COUNTY, BEING A PORTION OF THAT TRACT OF LAND TO ANNA 51 JOINT VENTURE RECORDED IN INSTRUMENT NUMBER 20150120000064460 OF THE OFFICIAL PUBLIC RECORDS, COLLIN COUNTY, TEXAS BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING AT 1/2 INCH IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID ANNA 51 TRACT;

THENCE N 01° 14' 51" W, 1,289.39 FEET ALONG THE EAST LINE OF SAID ANNA 51 TRACT, FROM WHICH A 1/2 INCH IRON ROD WITH CAP STAMPED "CARTER" FOUND BEARS N 01° 14' 51" W, 758.24 FEET TO THE NORTHWEST CORNER OF A TRACT OF LAND TO OAK HOLLOW ESTATES PHASE 3 RECORDED IN VOLUME 5535, PAGE 4805 OF SAID COUNTY RECORDS;

THENCE S 88° 45' 09" W, 306.69 FEET DEPARTING SAID EAST LINE TO THE **POINT OF BEGINNING** AND BEING THE BEGINNING OF A CURVE TO THE RIGHT;

THENCE WITH SAID CURVE TO THE RIGHT, AN ARC DISTANCE OF 413.36 FEET, THROUGH A CENTRAL ANGLE OF 53° 25' 04", HAVING A RADIUS OF 443.37 FEET, AND A LONG CHORD WHICH BEARS S 24° 31' 11" W, 398.56 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PELTON" SET;

THENCE S 51° 09' 54" W, 187.55 FEET TO THE BEGINNING OF A CURVE TO THE LEFT;

THENCE WITH SAID CURVE TO THE LEFT, AN ARC DISTANCE OF 240.55 FEET, THROUGH A CENTRAL ANGLE OF 32° 25' 45", HAVING A RADIUS OF 425.00 FEET, AND A LONG CHORD WHICH BEARS S 34° 57' 02" W, 237.35 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PELTON" SET;

THENCE N 88° 20' 08" W, 100.11 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PELTON" SET;

THENCE S 54° 58' 49" W, 77.41 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PELTON" SET;

THENCE S 18° 25' 59" W, 60.11 FEET TO THE CENTERLINE OF A CREEK;

THENCE GENERALLY ALONG SAID CREEK CENTERLINE THE FOLLOWING BEARINGS AND DISTANCES:

N 76° 49' 58" W, 73.89 FEET;

N 27° 05' 57" W, 152.42 FEET;

N 18° 56' 09" E, 167.46 FEET;

N 61° 02' 52" E, 130.41 FEET;

S 47° 55' 09" E, 94.88 FEET;

N 42° 04' 51" E, 66.58 FEET;
N 47° 55' 09" W, 72.00 FEET;
N 34° 50' 37" E, 210.65 FEET;
N 49° 37' 58" W, 75.26 FEET;
S 68° 30' 56" W, 128.89 FEET;
N 63° 56' 21" W, 118.69 FEET;
N 01° 19' 14" W, 93.41 FEET;
N 37° 18' 33" W, 104.11 FEET;
N 16° 24' 27" E, 121.76 FEET;
S 36° 40' 04" E, 139.19 FEET;
N 74° 51' 07" E, 51.10 FEET;
N 04° 12' 33" E, 154.20 FEET;
N 38° 35' 50" E, 86.18 FEET;
N 00° 46' 12" W, 209.10 FEET;
N 57° 42' 35" W, 97.54 FEET;
S 58° 55' 58" W, 133.56 FEET;
N 53° 43' 38" W, 177.43 FEET;
N 04° 34' 01" E, 219.33 FEET;
S 71° 16' 56" E, 44.16 FEET;
N 47° 14' 17" E, 111.12 FEET;
N 85° 08' 47" E, 94.60 FEET;

THENCE S 28° 35' 15" E, 108.57 FEET DEPARTING SAID CREEK CENTERLINE TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PELTON" SET;

THENCE N 88° 13' 31" E, 555.70 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PELTON" SET AND BEING THE BEGINNING OF A NON-TANGENT CURVE TO THE RIGHT;

THENCE WITH SAID NON-TANGENT CURVE TO THE RIGHT, AN ARC DISTANCE OF 126.86 FEET, THROUGH A CENTRAL ANGLE OF 07° 33' 03", HAVING A RADIUS OF 962.61 FEET, AND A LONG CHORD WHICH BEARS S 05° 57' 52" E, 126.77 FEET TO A 5/8 INCH IRON ROD WITH YELLOW PLASTIC CAP STAMPED "PELTON" SET;

THENCE S 02° 11' 21" E, 658.66 FEET TO THE POINT OF BEGINNING AND CONTAINING 851,262 SQUARE FEET OR 19.542 ACRES MORE OR LESS.



Item No. 7.f.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Joey Grisham

AGENDA ITEM:

Acting as the Anna Public Facility Corporation Board of Directors, Consider/Discuss/Action on a resolution as sole member of APFC Waters Creek Member, LLC and APFC Waters Creek Contractor, LLC, to take certain actions and enter into certain documents relating to the financing of the Jefferson Villages at Waters Creek multifamily affordable housing development. (Director of Economic Development Joey Grisham)

SUMMARY:

As the PFC Board will recall, the Villages of Waters Creek is a Class A Multifamily project being developed by JPI, who is also doing the Parmore Senior Living project in Anna Town Square. The Anna PFC Board approved an MOU for this project earlier this year. This item approves the necessary documents for the partnership structure. 50% of the units will be targeted for those who earn 80% AMI, while the remaining 50% will be market rate units.

FINANCIAL IMPACT:

N/A

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 1: Growing Anna Economy

Goal 2: Sustainable Anna Community Through Planned Managed Growth

STAFF RECOMMENDATION:

Approve the resolution.

ATTACHMENTS:

1. Sole Member Resolution (GP) - Transaction

APPROVALS:

Joey Grisham, Director Economic Development
Jim Proce, City Manager

Created/Initiated - 11/16/2022
Final Approval - 11/17/2022

ANNA PUBLIC FACILITY CORPORATION

The undersigned officer of Anna Public Facility Corporation (the “*Sole Member*”), sole member of APFC Waters Creek Member, LLC (the “*Special Member*”), hereby certifies that he is the duly elected qualified and acting President of the Sole Member, and hereby certifies that true, correct and complete copies of certain resolutions adopted by the Board of Directors of the Sole Member at its November 22, 2022 meeting are attached hereto (the “*Resolutions*”). The Resolutions have not been amended or revoked and are now in full force and effect.

Dated: November 22, 2022

By _____
Stan Carver II
President

ANNA PUBLIC FACILITY CORPORATION

**RESOLUTION OF THE SOLE MEMBER OF
APFC WATERS CREEK MEMBER, LLC**

November 22, 2022

ANNA PUBLIC FACILITY CORPORATION, a nonprofit public facility corporation duly organized and validly existing under the laws of the State of Texas (the “*Member*”), the sole member of APFC WATERS CREEK MEMBER, LLC (the “*Special Member*”), the special member of JEFFERSON VILLAGES OF WATERS CREEK, LLC, a Texas limited liability company (the “*Company*”) hereby adopts the following resolutions:

1. LEASE OF REAL PROPERTY

WHEREAS, Anna Public Facility Corporation, a Texas nonprofit public facility corporation (the “*Member*”), is the sole member of the Special Member;

WHEREAS, Stan Carver II, an individual, is the President of the Member (the “*President*”);

WHEREAS, the Special Member, in its capacity as landlord, will acquire certain real property located in Anna, Texas (the “*Real Property*”) on which a 325-Unit multifamily project is to be constructed, developed and operated, to be known as “Jefferson Villages at Waters Creek” (the “*Apartment Complex*”); and

WHEREAS, the Special Member will enter into (a) a Lease Agreement (the “*Lease Agreement*”) with the Company pursuant to which the Special Member will lease the Real Property to the Company for a 99-year term; and (b) various documents as may be required in connection therewith ((a) and (b) collectively, the “*Lease Documents*”).

RESOLVED, that the prior actions of the President (or any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member, with respect to the lease of the Real Property, including but not limited to the execution of the Lease Agreement, are hereby ratified and approved.

RESOLVED, that (a) the Special Member, acting on its own behalf, is hereby authorized to execute and deliver the Lease Documents and to do all things necessary or desirable to facilitate the lease of the Real Property and the construction, development and operation of the Apartment Complex thereon; (c) the Member, acting on behalf of the Special Member is hereby authorized to execute and deliver the Lease Documents and to do all things necessary or desirable to facilitate the lease of the Real Property and the construction, development and operation of the Apartment Complex thereon; and (d) the President (or in his absence, any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member is hereby individually authorized to (i) execute and deliver the Lease Documents, with such changes as the President in his discretion believes to be necessary or desirable, and such other documents and instruments in connection therewith as may be necessary or desirable and (ii) do all things necessary or desirable to facilitate

the lease of the Real Property and the construction, development and operation of the Apartment Complex thereon.

2. COMPANY DOCUMENTATION

WHEREAS, in connection with its admission to the Company, the Special Member will enter into (a) an Operating Agreement of the Company (the “*Operating Agreement*”) between Special Member, as special member, and Jefferson Villages of Waters Creek Holdings, LLC, a Delaware limited liability company, as managing member; and (b) various documents as may be required in connection with such Company admission (collectively, the “*Company Documents*”).

RESOLVED, that (a) the Special Member, acting on its own behalf, is authorized to execute and deliver the Company Documents and do all things necessary and desirable to facilitate the admission to the Company; (b) the Member, acting on behalf of the Special Member, acting on its own behalf, is hereby authorized to execute and deliver the Company Documents and do all things necessary to facilitate the admission to the Company; and (c) the President (or in his absence, any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member is hereby individually authorized to (i) execute and deliver the Company Documents, with such changes as the President in his discretion believe to be necessary or desirable, and such other documents and instruments in connection therewith as may be necessary or desirable and (ii) do all things necessary or desirable to facilitate the admission to the Company and perform the obligations thereunder.

3. CONSTRUCTION CONTRACT

WHEREAS, APFC WATERS CREEK CONTRACTOR, LLC, a Texas limited liability company, will serve as general contractor (in such capacity, the “*General Contractor*”) in connection with the construction and development of the Apartment Complex; and

WHEREAS, in connection with such role, the General Contractor will enter into a Construction Management Agreement with the Company (the “*Construction Contract*”) and a Master Subcontract with JPI Construction, LLC (the “*Master Subcontract*”).

RESOLVED, that the President (or in his absence, any officer of the Member), is hereby individually authorized to (i) execute and deliver the Construction Contract and the Master Subcontract, with such changes as the President in his discretion believes to be necessary or desirable, and such other documents and instruments in connection therewith as may be necessary or desirable and (ii) do all things necessary or desirable to cause the Member to perform the Member’s obligations thereunder.

4. AUTHORIZATION/RATIFICATION.

RESOLVED, that the President (or in his absence, any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member, acting on its own behalf, is individually authorized to (a) sign, certify to, acknowledge, deliver, accept, file, and record any

and all instruments, resolutions and documents, and (b) take, or cause to be taken, any and all such action, in the name and on behalf of the Member and the Special Member, as such person shall deem to be necessary, desirable, or appropriate in order to effect the purposes of the foregoing resolutions.

FURTHER RESOLVED, that any and all action taken by the President (or in his absence, any officer of the Member), acting on behalf of the Member, acting on behalf of the Special Member, acting on its own behalf, prior to the date this consent is actually executed in effecting the purposes of the foregoing resolutions is hereby approved, ratified, and adopted in all respects.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



Item No. 7.g.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Gregory Peters

AGENDA ITEM:

Consider/Discuss/Act on an Ordinance re-naming Throckmorton Boulevard to Buddy Hayes Boulevard. (Director of Public Works Greg Peters, P.E.)

SUMMARY:

This item is to officially change the name of Throckmorton Boulevard to Buddy Hayes Boulevard. Throckmorton Boulevard requires a name change due to a road with the same name being located just south of Anna. In addition, this is an opportunity to celebrate the life of one of Anna's most distinguished neighbors.

There is an existing road in the City of Melissa named Throckmorton Road, which has an exit on US 75. As Anna continues to develop, Throckmorton Boulevard will be a commercial corridor. The Melissa exit is likely to cause confusion and make it more difficult for motorists to find Anna's businesses on the correct street. AN exhibit showing the two streets is included as an attachment (Exhibit "A").

Distinguished Anna Neighbor Edwin E. (Buddy) Hayes passed away peacefully on October 17, 2022. He was born on January 29, 1935 in Weston, Texas. As a young man he served in the United States Army and was honorably discharged as a Specialist 5th Class. He lived in Anna for many years with his wife Juanita, raising a family and being a significant contributor to our community.

Buddy served in the community banking industry in the Anna area for 69 years, including at First National Bank of Anna from 1956 to 2001. Buddy served on the Anna City Council for 21 years and as a Trustee of the Anna Independent School District for 6 years. He also taught an Adult Sunday School Class at the Anna United Methodist Church for over 30 years.

Changing the name of Throckmorton Boulevard to Buddy Hayes Boulevard will honor the contributions of Mr. Hayes, his wife Juanita, and his family to the Anna community.

FINANCIAL IMPACT:

None.

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:

Goal 3: Anna – Great Place to Live

STAFF RECOMMENDATION:

Staff recommends approval.

ATTACHMENTS:

1. Ord Renaming Throckmorton 0302920220816CR1
2. Exhibit A - Throckmorton Map
3. Buddy Hayes Photo

APPROVALS:

Gregory Peters, Director of Public Works
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS, RENAMING THROCKMORTON BOULEVARD; PROVIDING A SAVINGS, SEVERABILITY AND REPEALING CLAUSE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Anna, Texas (the “City”) is a home-rule municipality; and

WHEREAS, Section 311.001 of the Texas Transportation Code grants home-rule municipalities control over their streets and the Texas Department of Transportation recognizes that this control extends to assigning street names to highways within a municipality’s jurisdiction; and

WHEREAS, Throckmorton Boulevard is a street in the City’s corporate limits that the City maintains; and

WHEREAS, after holding a public hearing on the matter, the City Council has found that the name “Throckmorton Boulevard” is problematic with respect to traffic and navigation as there is a similarly named street in a nearby community that has exit signage on U.S. 75 and said similarly named street does not connect to Throckmorton Boulevard in the City of Anna, which can cause confusion to the traveling public and potentially cause disruption to commerce as well as safety issues; and

WHEREAS, after holding a public hearing on the matter, the City Council has found that the street previously known as “Throckmorton Boulevard” in the City of Anna should be changed to “Buddy Hayes Boulevard”;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS:

SECTION 1. RECITALS. The recitals set forth above are incorporated herein as if set forth herein in full.

SECTION 2. RENAMING STREET. The street previously known as “Throckmorton Boulevard” in the City of Anna is hereby changed to “Buddy Hayes Boulevard”.

SECTION 3. ADDITIONAL ACTIONS. The Director of Public Works is hereby directed to: (1) remove any City-managed existing signs to the contrary and erect appropriate street signs with the new name as set forth in Section 2; (2) send a copy of this ordinance to TxDOT; and (3) notify the United States Postal Service, existing public utilities, all property owners abutting such segment of street, and all other appropriate persons of the name change enacted hereby.

SECTION 4. SAVINGS, SEVERABILITY AND REPEALING CLAUSES.

That should any word, sentence, paragraph, subdivision, clause, phrase or section of this ordinance be adjudged or held to be void or unconstitutional, the same shall not affect the validity of the remaining portions of said ordinance, which shall remain in full force and effect.

SECTION 5. EFFECTIVE DATE

That this ordinance shall become effective immediately from and after its passage.

APPROVED AND ADOPTED by the City Council of the City of Anna, Texas on this the _____ day of _____, 2022.

ATTESTED:

APPROVED:

City Secretary Carrie L. Land

Mayor Nate Pike

Exhibit A – Throckmorton Locations



Edwin E. (Buddy) Hayes
January 29, 1935 – October 17, 2022



Photo from tributearchive.com



Item No. 7.h.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Carrie Land

AGENDA ITEM:

Consider/Discuss/Action to fill an EDC/CDC Boards vacancy. (City Secretary Carrie Land)

SUMMARY:

Shane Williams, Place 1 has submitted his resignation. The vacancy is a partial term, expiring May 2023.

FINANCIAL IMPACT:

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Appoint and fill the vacancy.

ATTACHMENTS:

APPROVALS:

Carrie Land, City Secretary
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022



Item No. 7.i.

City Council Agenda
Staff Report

Meeting Date: 11/22/2022
Staff Contact: Carrie Land

AGENDA ITEM:

Consider/Discuss/Action to fill a BOA vacancy. (City Secretary Carrie Land)

SUMMARY:

Place 1A is currently vacant. The term is a partial term, expiring May 2023.

FINANCIAL IMPACT:

STRATEGIC CONNECTIONS:

This item supports the City of Anna Strategic Plan, specifically advancing:
Goal 4: High Performing, Professional City

STAFF RECOMMENDATION:

Appoint and fill vacancy.

ATTACHMENTS:

APPROVALS:

Carrie Land, City Secretary
Jim Proce, City Manager

Created/Initiated - 11/17/2022
Final Approval - 11/17/2022