

CITY OF ANNA, TEXAS

RESOLUTION NO. 2020-02-689

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANNA APPROVING AND AUTHORIZING AN INCENTIVE AGREEMENT FOR NEW ECONOMIC DEVELOPMENT WITH WAYPOINT LAND AND CAPITAL, LLC

WHEREAS, Waypoint Land and Capital, LLC, a Texas limited liability company, owns real property in the City of Anna consisting of approximately 14 acres (the "Property"); and

WHEREAS, the Property is currently undeveloped and the Developer plans to develop the Property and use the Property as a site for commercial development including but not limited to two four-story apartment buildings and associated amenities including a resort style swimming pool, workout facility, business center/ common area internet lounge area, dog park and green/open space (the "Apartment Project") as well as approximately 40,000 square feet of additional commercial space including retail, office space, and other space for services/medical; and

WHEREAS, the City currently lacks an establishment similar to the Apartment Project in the area of its proposed location to serve multifamily residential housing needs of the City; and

WHEREAS, the City Council recognizes the positive economic impact that the Apartment Project will bring to the City through development and diversification of the economy, reduction of unemployment and underemployment through the production of new jobs, the attraction of new and expanded businesses enterprise, and the additional tax revenue; and

WHEREAS, as an incentive to develop the Apartment Project, the Developer has requested that the City forego collection of impact fees and park fees applicable to the Property and the City is willing to grant that request under and subject to the terms and conditions of the Agreement;

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

Section 1. Recitals Incorporated

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

Section 2. Authority for Project, Agreement, and Expenditure

The City of Anna City Council hereby authorizes and approves the Incentive Agreement for New Economic Development (the "Agreement") attached hereto as EXHIBIT A,

incorporated herein for all purposes. The City Council further authorizes the Mayor to execute the Agreement to bind the City for the limited purposes expressly stated therein.

PASSED AND APPROVED by the City Council of the City of Anna this 25th day of February, 2020.

APPROVED: 

Nate Pike, Mayor



ATTEST: 

Carrie L. Land, City Secretary

INCENTIVE AGREEMENT FOR NEW ECONOMIC DEVELOPMENT

THIS INCENTIVE AGREEMENT FOR NEW ECONOMIC DEVELOPMENT (this "Agreement") is entered into by and between the City of Anna, Texas (the "City") and Waypoint Land and Capital, LLC, a Texas limited liability company, or assigns ("Developer").

WHEREAS, Developer owns real property consisting of approximately 14 acres and described and depicted in further detail in the attached Exhibit A, which description will change based on several factors including detention/retention areas, civil engineering plans, and City Regulations (the "Property"); and

WHEREAS, the Property is currently undeveloped and the Developer plans to develop the Property and use the Property as a site for commercial development including but not limited to all public improvements necessary to serve the Property, two four-story apartment buildings and associated amenities including a resort style swimming pool, workout facility, business center/ common area internet lounge area, dog park and green/open space (the "Apartment Project") as well as approximately 40,000 square feet of additional commercial space including retail, office space, and other space for services/medical; and

WHEREAS, Developer will develop the Apartment Project in two phases. In Phase I, Developer will construct one or more four-story apartment building(s) with approximately 150,000 square feet and 165 units as well as all other aspects of the Apartment Project referenced in the preceding paragraph (collectively, "Phase I") with the sole exception of two or more four-story apartment building(s) with a minimum of 140,000 square feet and 162 units, which will be constructed in Phase II ("Phase II"); and

WHEREAS, a proposed concept plan of the Property is attached hereto as Exhibit B, which sets forth the layout for public access, parking lots, traffic areas, fire lanes, buildings, amenities and other development aspects planned for development of the Property; and

WHEREAS, the City currently lacks an establishment similar to the Apartment Project in the area of its proposed location to serve multifamily residential housing needs of the City; and

WHEREAS, the City recognizes the positive economic impact that the Apartment Project, at a total estimated value of approximately \$35,000,000, will bring to the City through development and diversification of the economy, reduction of unemployment and underemployment through the production of new jobs, the attraction of new and expanded businesses enterprise, and the additional tax revenue; and

WHEREAS, as an incentive to develop the Apartment Project, the Developer has requested that the City forego collection of impact fees and park fees applicable to the Property and the City is willing to grant that request under and subject to the terms and conditions of this Agreement; and

WHEREAS, as a condition for the Apartment Project to commence, the Zoning Change will need to be adopted by the City Council; and

WHEREAS, this Agreement is a program under Chapter 380 of the Texas Local Gov't Code;

NOW, THEREFORE, in consideration of the covenants, promises, and conditions stated in this Agreement, the City and Developer agree as follows:

Section 1. Effective Date.

The Effective Date of this Agreement shall be the date that the last of the following events have occurred: (1) the City of Anna, Texas City Council ("City Council") has approved and adopted this Agreement and the Mayor has duly executed this Agreement; and (2) Developer has duly executed this Agreement.

Section 2. Term, Termination, and Forfeiture of Incentive Grant.

2.01 The term of this Agreement shall commence on the Effective Date and shall terminate upon full performance of the Parties' respective obligations under this Agreement.

2.02 Notwithstanding the foregoing or any other provision of this Agreement, if Developer defaults by failing to timely submit an application for a building permit, timely Commence Construction, and/or timely construct or cause to be constructed, the Apartment Project, in accordance with the provisions of Section 4.01 of this Agreement the City will provide notice to cure to Developer pursuant to section 8.08.

2.03 If this Agreement is terminated by the City for Developer's failure to submit an application for building permit for Phase I or timely Commence Construction of Phase I, this Agreement shall terminate, Developer will not owe any of the Phase I Incentive Grant to the City, 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.

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 30-month 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 30-month 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 30-month 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.

2.05 If Developer commences construction of Phase I but abandons Phase I before completion, after notice to cure and completing the dispute resolution process in Section 8.10, and termination by the City of this Agreement, 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 Agreement—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 a reasonable time thereafter. The City may cause this Agreement to terminate under this paragraph by following the notice and cure provisions and dispute resolution process set forth in Section 8.08 and 8.10 of this Agreement. The Developer's obligation to immediately pay all impact fees and/or park fees under this paragraph shall survive the termination of this Agreement to the extent that this Agreement is terminated under this paragraph.

2.06 If this Agreement is terminated by the City for Developer's failure to submit an application for building permit for Phase II or timely Commence Construction of Phase II, this Agreement shall terminate, Developer will not owe any of the Phase II Incentive Grant the City, and both parties are relieved of any obligations related to Phase II hereunder including without limitation the City's obligation to forgo collection of any impact fees or park fees relating to Phase II or any other development of the Property (save and except Phase I).

2.07 If Developer fails to timely Complete Phase II Construction, after approval of financing for Phase II by its lender and commencement of 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 30-month 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 30-month 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 30-month 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.

2.08 If Developer commences construction of Phase II but abandons Phase II before completion, after notice to cure and completing the dispute resolution process in Section 8.10, and termination by the City of this Agreement, 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 Agreement—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 a reasonable time thereafter. The City may cause this Agreement to terminate under this paragraph by following the notice and cure provisions and dispute resolution process set forth in Section 8.08 and 8.10 of this Agreement. The Developer's obligation to immediately pay all impact fees and/or park fees under this paragraph shall survive the termination of this Agreement to the extent that this Agreement is terminated under this paragraph.

Section 3. Recitals Incorporated and Definitions.

3.01 The recitals in the preamble to this Agreement are hereby incorporated for all purposes.

3.02 The following words or phrases shall have the following meanings:

“Certificate of Occupancy” means one or more documents entitled “Certificate of Occupancy” which allow full occupancy of all buildings within a phase in accordance with City Regulations. A Certificate of Occupancy shall not include a certificate issued based on a misrepresentation of facts by Developer.

“City Code” means the Anna City Code of Ordinances.

“City Council” means the governing body of the City of Anna, Texas.

“City Regulations” mean City Code provisions, ordinances, design standards, uniform codes, and other City regulations and policies, including but not limited to the Development Standards set forth in Exhibit C.

“Commence Construction” as relates to any given phase of construction, means to commence the work of constructing any part of the site preparation of such phase pursuant to the applicable civil engineering plans for the Apartment Project.

“Complete Phase I Construction” means to complete the work of constructing

Phase I of the Apartment Project to the degree required to obtain a Certificate of Occupancy for all the units within the buildings required to be constructed in said phase.

“Complete Phase II Construction” means to complete the work of constructing Phase II of the Apartment Project to the degree required to obtain a Certificate of Occupancy for all the units within the building required to be constructed in said phase.

“Development” means the development of the Property including without limitation the construction of the buildings, public improvements and other improvements necessary to serve the Property the features shown on the concept plan Attached herein as **Exhibit B**, and the construction of the Apartment Project.

“Development Standards” mean those standards set forth in **Exhibit C**, which said standards shall be applicable to the Property and enforceable under this Agreement as relates to development of the Property regardless of whether any of said standards would be enforceable by the City in the absence of this Agreement.

“Phase I Incentive Grant” means the City’s conditional obligation to forego the collection of the following fees as relates to the Development of Phase I in the following maximum amounts: (1) roadway impact fees - \$277,744.50; water impact fees –\$90,202; sewer impact fees - \$68,111; and park fees - \$330,000, (which includes fees in lieu of dedication as well as park development fees).

“Phase II Incentive Grant” means the City’s conditional obligation to forego the collection of the following fees as relates to the Development of Phase II in the following maximum amounts: (1) roadway impact fees - \$272,694.50; water impact fees –\$90,202; sewer impact fees - \$68,111; and park fees - \$324,000, (which includes fees in lieu of dedication as well as park development fees).

“Parties” mean the City and Developer and their respective successors and assigns.

“Public Improvements” mean those certain utility, roadway, drainage and other improvements that Developer is required to construct/install and dedicate to the City.

“Zoning Change” means the change, if approved by the City Council, in the current Planned Development-765-2018 to allow for the additional use of MF-2, Multiple-Family Residential, High Density (“MF-2”) as set forth in Section 9.04.020 of the Anna City Code of Ordinances as recommended for modification and amendment by the City of Anna Planning and Zoning Commission (“P&Z”) acting on January 6, 2020 P&Z Meeting Agenda Item No. 9B, Applicant: Nathan McCartney with modified development standards as set forth in this Agreement and in the proposed zoning ordinance attached hereto as **Exhibit D**.

Section 4. Developer Obligations. The obligations set forth in this **Section 4** are conditions for the Incentive Grant.

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**.

Assuming that the Zoning Change is approved by the City Council, Developer shall submit an application for a building permit for Phase I within six months of said approval of the Zoning Change. Developer shall Commence Construction on Phase I on or before the expiration of three months after the building permits necessary to Commence Construction on Phase I are approved and issued by the City. Developer shall Complete Phase I Construction on or before the expiration of 30 months after the construction permit(s), excluding the grading permit, for Phase I are approved and issued by the City. If Phase II is approved by Developer's Lender, Developer shall submit an application 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.

4.02. Performance Bond, Payment Bond and Other Security. Developer shall include in every contract with a subcontractor that will work on any of the Public Improvements a clause that requires the subcontractor to execute or cause to be executed one or more valid performance bonds in favor of the City for the construction, work and materials necessary to complete the Public Improvements. Said bonds may be dual obligee bonds and shall be in accordance with Texas Government Code, Chapter 2253 and applicable City Regulations, except that the bonds shall be in an amount that is 110% of the contract price for each subcontractor's construction contract for any part of the Public Improvements and shall contain a provision that increases the amount of the bond to the extent that the contract price increases by change order. Developer shall further execute or cause to be executed a valid Maintenance Bond in accordance with applicable City Regulations that guarantees the costs of any repairs which may become necessary to any part of the construction work performed in connection with the Public Improvements, arising from defective workmanship or materials used therein, for a full period of two years from the date of final acceptance of the Public Improvements constructed under any such contract(s).

4.03. Public Improvements Generally. Developer shall provide or cause to be provided all Public Improvements as shown in the concept plan in **Exhibit B**, which includes the required streets, utilities, drainage, sidewalks, trails, street lighting, street signage, and all other required improvements, at no cost to the City and in accordance with City Regulations, and as approved by the City's engineer or his or her agent. Developer shall cause the timely installation of such improvements in accordance with the City Regulations unless otherwise approved herein. Developer shall provide engineering studies, plan/profile sheets, and other construction documents at the time of platting as required by City Regulations. Such plans must be approved by the City's engineer or his or her agent prior to approval of a final plat of any portion of the development of the Property. Construction of such improvements shall not be initiated until a preconstruction conference has been held regarding the proposed construction and City has issued a written notice to proceed. The City may not substantially increase the required Public Improvements from those shown in **Exhibit B**.

4.04. Approval of Plats/Plan. Approval by the City, the City's Engineer or other City employee or representative, of any plans, designs or specifications submitted by Developer pursuant to this Agreement or pursuant to City Regulations shall not constitute or be deemed to be a release of the responsibility and liability of Developer, its engineer, employees, officers or agents for the accuracy and competency of their design and specifications. Further, any such approvals shall not be deemed to be an assumption of such responsibility and liability by the City for any defect in the design and specifications prepared by Designer's engineer, his officers, agents, servants or employees.

4.05. Insurance.

(a) Developer shall contractually require all of its subcontractors that will perform any of the construction work related to the Public Improvements to acquire and maintain, during the period of time when any of the Public Improvements are under construction (and until the full and final completion of the Public Improvements and acceptance thereof by the City: (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 Public Improvements construction contracts, whether by Developer, a contractor, subcontractor, materialman, or otherwise. Developer is not responsible for the failure of any construction contractor to fail to perform pursuant to this paragraph unless Developer fails to contractually require and enforce the obligation of its subcontractors to obtain and maintain insurance in accordance with this Section 4.05.

(b) 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. Upon the execution of Public Improvement construction contracts, Developer 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 same, the City shall receive written notice of such cancellation, non-renewal or modification.

4.06. Developer Pays All Fees and Costs. After notice to cure and completing the dispute resolution process in 8.10, and termination by the City of this Agreement, the Incentive Grant shall consider to have been forfeited, if Developer fails to timely pay, without legal justification or a good faith dispute, its engineering, planning, accounting, architectural, legal fees and expenses, survey, testing, laboratory costs, license fees, development 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 Incentive

Grant is forfeited under this paragraph, Developer, within 30 days of termination under this paragraph, shall pay all impact fees and/or park fees that would have at the time of said forfeiture—in the absence of this Agreement—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 park fees under this paragraph shall survive the termination of this Agreement to the extent that this Agreement is terminated under this paragraph.

4.07. City Regulations. Developer acknowledges that development of the Property must comply with all applicable City Regulations, which shall be enforceable under this Agreement. Except to the extent this Agreement provides for stricter or more restrictive requirements than those in applicable City Regulations, the applicable City Regulations shall control. This Section 4.07 shall survive the termination of this Agreement.

4.08 Zoning Change. Notwithstanding the foregoing or any other provision of this Agreement, this Agreement shall terminate and be null and void if the City does not approve the Zoning Change. The parties acknowledge and agree that the rezoning of the Property is a legislative act and that this Agreement does not bind the City Council to approve the Zoning Change.

Section 5. Incentive Grant.

The City hereby agrees to provide the Incentive Grant to the Developer as conditioned under the terms of this Agreement.

Section 6. Buy Local Provision.

6.01. Developer agrees to use its commercially reasonable efforts to give preference and priority to local manufacturers, suppliers, contractors, and labor that have a proven track record of successful experience in similar multifamily construction, of this size and quality, and have good references from similar projects, except where not reasonably possible to do so without added expense, substantial inconvenience, or sacrifice in operating efficiency in the normal course of business.

6.02. For the purposes of this section, the term "local" as used to describe manufacturers, suppliers, contractors, and labor includes firms, businesses, and persons who reside in or maintain an office within a 75-mile radius of Collin County.

Section 7. Warranties. The accuracy of the warranties set forth in this Section 7 are conditions for the Incentive Grant to continue to be in effect. Developer shall notify the City if and when any of the following warranties are no longer accurate. The failure to so notify the City is a material breach of this Agreement. Developer warrants and represents to the City the following:

7.01. Developer is a Texas limited liability company duly organized, validly existing, and in good standing under the laws of the State of Texas. Developer has all corporate power and authority to carry on its business as presently conducted in the State

of Texas.

7.02. Developer has the authority to enter into and perform, and will perform, the terms of this Agreement to the best of its ability.

7.03. Developer has timely filed and will timely file all local, State, and Federal tax reports and returns required by law to be filed and all taxes, assessments, fees, and other governmental charges related to the Development, including applicable ad valorem taxes, have been timely paid, and will be timely paid, during the term of this Agreement.

7.04. Any entity(ies)/individual(s) executing this Agreement on behalf of Developer are duly authorized to execute this Agreement on behalf of Developer.

7.05. In accordance with Chapter 2264 of the Texas Government Code, Developer certifies that neither it, nor a branch, division, or department of Developer, will ever knowingly employ an undocumented worker and that if, after receiving any public subsidies under this Agreement, Developer, or a branch, division, or department of Developer, is convicted of a violation under 8 U.S.C. §1324a(f), as amended or recodified, Developer shall repay the total amount of all public subsidies and/or incentives theretofore received under this Agreement with interest at two percent (2%) per annum not later than the 120th day after the date the City notifies Developer in writing of the violation. The Developer does not boycott Israel and will not boycott Israel during the term of this Agreement.

7.06. No litigation or governmental proceeding is pending or, to the knowledge of Developer and its general partner and officers, is threatened against or affecting Developer, or the Development or the Property, that may result in any material adverse change in Developer's business, properties or operation. Notwithstanding anything to the contrary, to the extent that the Developer assigns its rights and obligations hereunder, the assigning Developer is released of its duties under this paragraph.

7.07. Developer shall not be in breach of any other contract by entering into and performing this Agreement. Developer shall amend or enter into any other contract that may be necessary for Developer to fully and timely perform its obligations under this Agreement.

Section 8. Miscellaneous.

8.01. Compliance with Laws. Developer shall observe and obey all applicable laws, ordinances, regulations, and rules of the Federal, State, county, and city governments related to the Development.

8.02. Non-Discrimination. Developer covenants and agrees that Developer will not discriminate nor permit discrimination against any person or group of persons, with regard to employment and the provision of services for the Development on the grounds of race, religion, national origin, marital status, sex, age, disability, or in any manner prohibited by the laws of the United States or the State of Texas.

8.03. Time Periods. Time is of the essence in the performance of this Agreement.

8.04. Force Majeure. If the City or Developer are prevented, wholly or in part, from fulfilling their respective obligations under this Agreement, by reason of any act of God, unavoidable accident, acts of enemies, fires, floods, governmental restraint or regulation, war, riot, civil commotion, insurrection, inclement weather, floods, shortages of labor or materials, strikes, other events of force majeure, or by reason of circumstances beyond its control, then the obligations of the City, the City or Developer are temporarily suspended during continuation of the force majeure. If either party's obligation is affected by any of the causes of force majeure, the party affected shall promptly notify the other party in writing, giving full particulars of the force majeure as soon as possible after the occurrence of the cause or causes relied upon.

8.05. Assignment. Except as provided below, Developer may not assign all or part of its rights and obligations under this Agreement to a third party without prior written approval of City Council and the City, which approval will not be unreasonably withheld or delayed. The City agrees, however, that Developer may assign all or part of its rights and obligations under this Agreement to any entity affiliated with Developer by reason of controlling, being controlled by, or being under common control with Developer or to a third-party lender advancing funds for the construction or operation of Public Improvements. The City expressly consents to any assignment described in the preceding sentence and agrees that no further consent of City Council or the City to such an assignment will be required. Developer agrees to provide the City with written notice of any such assignment. Any assignment of Developer's rights under this Agreement shall release Developer from its obligations hereunder to the extent such obligations are assigned.

8.06. INDEMNITY. DEVELOPER COVENANTS TO FULLY INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE CITY AND ITS OFFICERS, OFFICIALS, EMPLOYEES, REPRESENTATIVES, AND AGENTS FROM AND AGAINST ANY AND ALL CLAIMS OR SUITS FOR PROPERTY DAMAGE OR LOSS AND/OR PERSONAL INJURY, INCLUDING WITHOUT LIMITATION DEATH, TO ANY AND ALL PERSONS, OF WHATSOEVER KIND OR CHARACTER, WHETHER REAL OR ASSERTED (INCLUDING, WITHOUT LIMITATION, REASONABLE FEES AND ASSOCIATED EXPENSES OF ATTORNEYS, EXPERT WITNESSES AND OTHER CONSULTANTS) ARISING OUT OF OR IN CONNECTION WITH, DIRECTLY OR INDIRECTLY, THE NEGLIGENT OR OTHERWISE WRONGFUL ACTS OR OMISSIONS OF DEVELOPER, ITS AGENTS, SERVANTS, CONTRACTORS, SUBCONTRACTORS, MATERIAL MEN OR EMPLOYEES THAT RELATE IN ANY MANNER TO DEVELOPER'S PERFORMANCE OF THIS AGREEMENT OR TO THE DESIGN, CONSTRUCTION OR INSTALLATION OF THE PUBLIC IMPROVEMENTS AND ANY OTHER IMPROVEMENTS OR CONSTRUCTION RELATED TO THE DEVELOPMENT, INCLUDING WITHOUT LIMITATION INJURY OR DAMAGE TO PUBLIC PROPERTY. THE INDEMNITY PROVIDED FOR ABOVE SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE SOLE NEGLIGENCE OR FAULT OF CITY, ITS OFFICERS, AGENTS, EMPLOYEES OR SEPARATE CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRING

NEGLIGENCE OR FAULT OF CITY AND DEVELOPER, RESPONSIBILITY AND INDEMNITY, IF ANY, SHALL BE APPORTIONED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT WAIVING ANY GOVERNMENTAL IMMUNITY AVAILABLE TO CITY UNDER TEXAS LAW AND WITHOUT WAIVING ANY DEFENSES OF THE PARTIES UNDER TEXAS LAW. DEVELOPER'S OBLIGATIONS UNDER THIS SECTION 8.06 SHALL SURVIVE THE TERM OF THIS AGREEMENT.

8.07. Events of Default by Developer. In addition to other events of default by Developer set forth in this Agreement, each of the following events constitute a default of this Agreement by Developer:

- (a) Developer makes an assignment for the benefit of creditors.
- (b) Developer files a voluntary petition in bankruptcy or is adjudicated insolvent or bankrupt.
- (c) If taxes owed to the City by Developer become delinquent, and Developer fails to timely and properly follow the legal procedures for protest or contest.
- (d) Developer fails to timely, fully and completely comply with any one or more of the material requirements, obligations, duties, terms, conditions or warranties of this Agreement, including without limitation City Regulations.

8.08. Notice of Default. Should the City determine that Developer is in default according to the terms of this Agreement, 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.

8.09. Results of Uncured Default by Developer. If any default—other than a default under paragraphs 4.01 of 2.02 herein, and subject to the dispute resolution paragraph herein—by Developer persists beyond the Cure Period and the completion of the dispute resolution procedure and the City terminates this Agreement, the Developer shall pay the City the amount of the Incentive Grant to the extent that the same would have at the time of said termination—in the absence of this Agreement—been due and subject to collection in connection with the development of the Property. If the City acts to collect any amounts due hereunder or Developer contests the termination, the prevailing party is entitled to collect its attorneys' fees and related expenses. Upon full payment by Developer of all sums due, the City and Developer shall have no further obligations to one another under this Agreement. Neither the City nor Developer may be held liable for any special or consequential damages.

8.10 Dispute Resolution. For any disputes between the Developer and the City as specified herein, before City terminates this Agreement for an alleged default or filing a lawsuit against Developer, the parties shall endeavor to resolve the dispute between

them by nonbinding mediation. A request for mediation shall be made in writing and delivered in accordance with the notice provisions sated herein. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in Collin County, Texas.

8.11. No Waiver. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, constitutes a waiver of any subsequent breach of the covenant or condition of this Agreement. No waiver of any covenant or condition, or the breach of any covenant or condition of this Agreement, justifies or authorizes the nonobservance on any other occasion of the covenant or condition or any other covenant or condition of this Agreement. Any waiver or indulgence of Developer's default may not be considered an estoppel against the City. It is expressly understood that if at any time Developer is in default in any of its conditions or covenants of this Agreement, the failure on the part of the City to promptly avail itself of the rights and remedies that the City may have, will not be considered a waiver on the part of the City, but the City may at any time avail itself of the rights or remedies or elect to terminate this Agreement on account of the default.

8.12. Limitation of Remedies. The parties hereto specifically agree that neither party shall be liable to the other party for any actual or consequential or incidental damages, direct or indirect, or interest for any act of default under the terms of this Agreement.

8.13. Notices. Any notice and/or statement required and permitted to be delivered under this Agreement shall be deemed delivered depositing the same in the United States mail, certified with return receipt requested, proper postage prepaid, addressed to the appropriate party at the following addresses, or at such other addresses provided by the Parties in in accordance with this provision.

DEVELOPER:

Waypoint Land and Capital, LLC
Nathan McCartney
1999 Bryant Street, Suite 900
Dallas, Texas 75201

CITY:

City of Anna
Attn.: City Manager
P.O. Box 776,
Anna, Texas 75409-0776

Clark McCoy
Wolfe, Tidwell & McCoy, LLP
2591 Dallas Parkway, Suite 300
Frisco, Texas 75034

Notice is effective upon deposit in the United States mail in the manner provided above.

8.14. Incorporation of Other Documents. The Exhibits referenced in this Agreement and attached hereto are incorporated herein as if set forth in full for all purposes. Said Exhibits include the following:

- Exhibit A – Legal Description of the Property
- Exhibit B – Concept Plan
- Exhibit C – Development Standards
- Exhibit D – Proposed Zoning Ordinance

8.15. Amendments or Modifications. No amendments or modifications to this Agreement may be made, nor any provision waived, unless in writing signed by a person duly authorized to sign Agreements on behalf of each party.

8.16. Relationship of Parties. In performing this Agreement, both the City and Developer will act in an individual capacity, and not as agents, representatives, employees, employers, partners, joint-venturers, or associates of one another. The employees or agents of either party may not be, nor be construed to be, the employees or agents of the other party for any purpose. At no time shall the City have any control over or charge of Developer's design, construction or installation of any of the infrastructure or public improvements that are the subject of this Agreement, nor the means, methods, techniques, sequences or procedures utilized for said design, construction or installation. This Agreement does not create a joint enterprise between the City and Developer.

8.17. Captions. The captions in this Agreement are for convenience only and are not a part of this Agreement. The captions do not in any way limit or amplify the terms and provisions of this Agreement.

8.18. Severability. If for any reason, any section, paragraph, subdivision, clause, provision, phrase or word of this Agreement or the application of this Agreement to any person or circumstance is, to any extent, held illegal, invalid, or unenforceable under present or future law or by a final judgment of a court of competent jurisdiction, then the remainder of this Agreement, or the application of the term or provision to persons or circumstances other than those as to which it is held illegal, invalid, or unenforceable, will not be affected by the law or judgment, for it is the definite intent of the Parties to this Agreement that every section, paragraph, subdivision, clause, provision, phrase, or word of this Agreement be given full force and effect for its purpose. To the extent that any clause or provision is held illegal, invalid, or unenforceable under present or future law effective during the term of this Agreement, then the remainder of this Agreement is not affected by the law, and in lieu of any illegal, invalid, or unenforceable clause or provision, 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, will be added to this Agreement automatically.

8.19. Venue. Venue for any legal action related to this Agreement is in Collin County, Texas.

8.20. Interpretation. The Parties have been represented by counsel of their choosing in the negotiation and preparation of this Agreement. This Agreement was drafted equally by the Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

8.21. Sole Agreement. This Agreement constitutes the sole agreement between the City and Developer as relates to the Development. Any other prior agreements, promises, negotiations, or representations related to the Development, verbal or otherwise, not expressly stated in this Agreement, are of no force and effect.

8.22. Third Party Beneficiaries. This Agreement is not intended to confer any rights, privileges or causes of action upon any third party.

8.23. Binding Agreement. This Agreement shall be binding on and inure to the benefit of the Parties to it and their respective heirs, executors, administrators, legal representatives, successors, and permitted assigns.

8.24. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and the binding agreement of each Party to the terms herein, but all of which together will constitute one and the same instrument.

8.25. Recording. The Parties agree that this Agreement and any memorandum or short form of this Agreement may be recorded and that this Agreement shall run with the land.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.]

EXECUTED BY THE PARTIES:

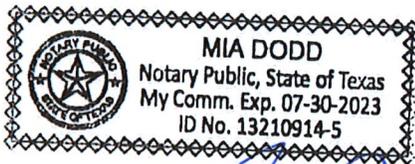
WAYPOINT LAND AND CAPITAL, LLC, a Texas limited liability company

By: *Nathan J. McCartney*
Nathan McCartney, its Manager

State of Texas
County of Collin

Before me, on this day personally appeared Nathan McCartney, 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 Waypoint Land and Capital, LLC for the purposes and consideration therein expressed.

Given under my hand and seal of office this 20 day of February 2020.



Mia Dodd
Notary – State of Texas

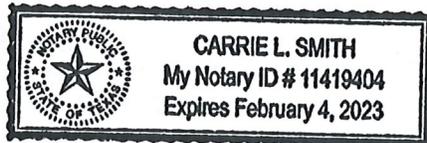
CITY OF ANNA, TEXAS

By: *Nate Pike*
Nate Pike, Mayor

State of Texas
County of Collin

Before me, on this day personally appeared Nate Pike 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 Mayor of the City of Anna, Texas.

Given under my hand and seal of office this 25th day of February 2020.



Carrie L. Smith
Notary – State of Texas

Exhibit A
Legal Description of the Property

LEGAL DESCRIPTION

BEING a tract of land situated in the W. S. Rattan Survey, Abstract No. 752, City of Anna, Texas, and being part of a tract of land described in deed to One Anna Two, Ltd., recorded in Instrument Nos. 20070201000151600 & 20070201000151610, Official Public Records, Collin County, Texas and being more particularly described as follows:

BEGINNING at a point at the southeast end of a right-of-way corner clip located at the intersection of the south right-of-way line of Suzie Lane (a 30-foot wide right-of-way) with the west right-of-way line of U.S. Highway No. 75 (a variable width right-of-way);

THENCE with said west right-of-way line, South 7°37'00" West, a distance of 848.16 feet to a point for corner;

THENCE departing said west right-of-way line, South 89°13'59" West, a distance of 659.32 feet to a point for corner in the east right-of-way line of Standridge Boulevard (a variable width right-of-way);

THENCE with said east right-of-way line, the following courses and distances:

North 0°46'01" West, a distance of 664.47 feet to a point at the beginning of a tangent curve to the right having a central angle of 1°48'11", a radius of 620.03 feet, a chord bearing and distance of North 0°08'05" East, 19.51 feet;
 In a northeasterly direction, with said curve to the right, an arc distance of 19.51 feet to a point for corner at the southwest end of a right-of-way corner clip located at the intersection of said east right-of-way line of Standridge Boulevard with said south right-of-way line of Suzie Lane;

THENCE with said right-of-way corner clip, North 50°48'21" East, a distance of 39.85 feet to a point for corner at the northeast end of said right-of-way corner clip;

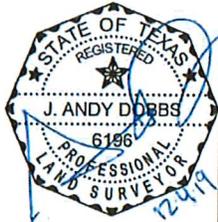
THENCE with the south right-of-way line of said Suzie Lane, the following courses and distances:

South 80°48'39" East, a distance of 12.54 feet to a point at the beginning of a tangent curve to the left having a central angle of 57°41'07", a radius of 230.00 feet, a chord bearing and distance of North 70°20'47" East, 221.91 feet;
 In a northeasterly direction, with said curve to the left, an arc distance of 231.56 feet to a point for corner;
 North 41°30'14" East, a distance of 110.79 feet to a point at the beginning of a tangent curve to the right having a central angle of 56°06'46", a radius of 170.00 feet, a chord bearing and distance of North 69°33'37" East, 159.92 feet;
 In a northeasterly direction, with said curve to the right, an arc distance of 166.49 feet to a point for corner;
 South 82°23'00" East, a distance of 281.75 feet to a point for corner at the northwest end of said right-of-way corner clip located at the intersection of said Suzie Lane with said U.S. Highway No. 75;

THENCE with said right-of-way corner clip, South 37°23'00" East, a distance of 42.43 feet to the **POINT OF BEGINNING** and containing ±14 acres of land.

This document was prepared under 22 TAC §663.21, does not reflect the results of an on the ground survey, and is not to be used to convey or establish interests in real property except those rights and interests implied or established by the creation or reconfiguration of the boundary of the political subdivision for which it was prepared.

J. ANDY DOBBS
 REGISTERED PROFESSIONAL
 LAND SURVEYOR NO. 6186
 13455 NOEL ROAD
 TWO GALLERIA OFFICE TOWER
 SUITE 700
 DALLAS, TEXAS 75240
 PH. (972) 770-1300
 ANDY.DOBBS@KIMLEY-HORN.COM

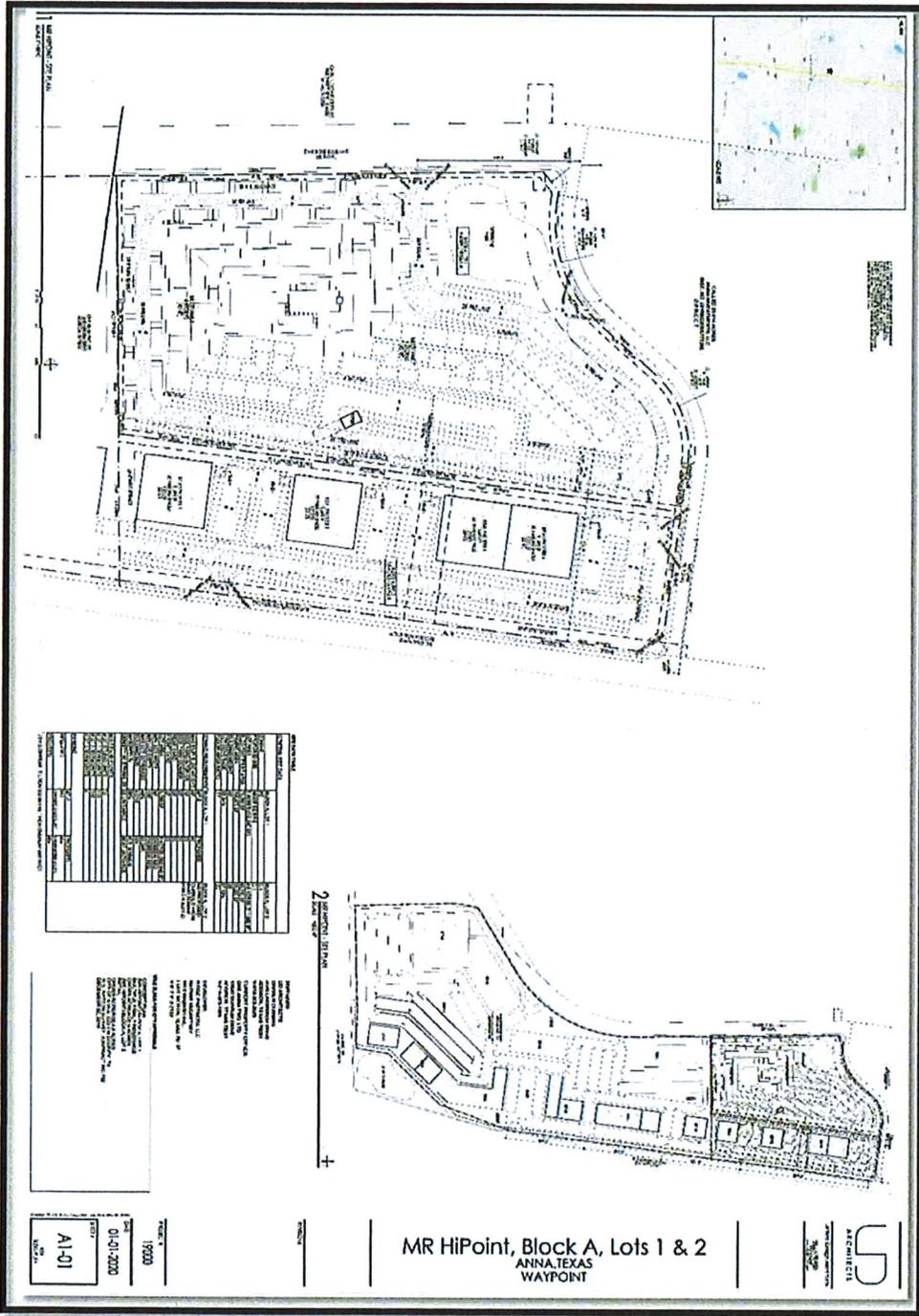


Kimley»Horn

13455 Noel Road, Two Galleria Office Tower, Suite 700, Dallas, Texas 75240 FIRM # 10115500 Tel. No. (972) 770-1300 Fax No. (972) 239-3020

Scale	Drawn by	Checked by	Date	Project No.	Sheet No.
N/A	MTC	JAD	DEC. 2019	063222305	1 OF 1

**Exhibit B
Concept Plan**



NO.	DESCRIPTION	AMOUNT	DATE
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10-01
 01-01-2020
 19200

MR HiPoint, Block A, Lots 1 & 2
 ANNA, TEXAS
 WAYPOINT



Exhibit C
Development Standards

The Developer shall comply and shall cause all contractors, subcontractors, builders other persons and any successors or assigns to comply with the following:

- A. All multi-family buildings and structures shall have at least thirty percent (30%) of the total exterior walls above grade level, excluding doors and windows, and recessed balcony areas (should be allowed as plane break), constructed of manufactured stone or brick with no more than thirty percent (30%) consisting of Stucco, no more than thirty percent (30%) consisting of fiber cement siding and no more than ten percent (10%) consisting of metal panel.
 - 1.
- B. Roof materials for buildings and structures must be architectural roof shingles, TPO type roofing materials and/or parapet.
 - 2.
- C. Accessory buildings shall use similar building and roofing materials as those used on the primary buildings.
- D. Border fencing of stone, iron, or masonry construction of not less than six feet in height and not more than eight feet in height shall be installed along the property line on any perimeter not abutting a public street. The stone, iron, or masonry wall shall have stone or masonry columns at a maximum distance of 50-foot centers. Fencecrete, iron, tubular steel may be permitted with stone or masonry columns at a maximum distance of 30-foot centers with approval by the City Council.
- E. Refuse containers shall be screened from view on 3sides by a wall of masonry not less than eight feet in height or by an enclosure within a building. Solid metal gates of an equal height to the screening must be provided for all openings.
- F. A covered entry area shall be designed at the main entry to each building.
- G. Four architectural design features are required on facades facing public streets, parking and common areas. Acceptable architectural design features may include but is not limited to:
 - 1) Articulation of building façade
 - 2) Extensions to the building through covered porches, bay or box windows, and other similar features projecting out from the façade
 - 3) A horizontal change in building materials between stories of a building
 - 4) Variation in building materials between vertical intervals
 - 5) Variations in window placement
 - 6) Architectural features such as shutters, awnings, balconies, verandas, railings, dormers, chimneys, decorative moldings or ornamental details
 - 7) Other similar design features
- H. Architectural detailing, horizontal off-sets and other features shall be provided on all sides of the building to avoid blank walls and large, monolithic masses.
- I. No building façade may exceed a length of 100 feet without a break in the façade of a minimum depth of 2 feet for a minimum length of 10 feet.
- J. Roof height, pitch, ridgelines and materials shall be varied to create visual interest and avoid repetition.

Exhibit D
Proposed Zoning Ordinance

1033200-v1/15841-002000

