

RESOLUTION NO. 2022-08-1236

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ANNA, TEXAS  
APPROVING AN INCENTIVE AGREEMENT FOR NEW ECONOMIC  
DEVELOPMENT WITH PALLADIUM EAST FOSTER CROSSING, LTD**

**WHEREAS**, the City of Anna, Texas (the "City") desires to waive a portion of Park Development and Park Land Dedication fees in support of a community development project that will create and retain jobs, and that will result in new capital investment within the corporate limits of the City of Anna, Texas; and

**WHEREAS**, the City is authorized to grant the waiver under Chapter 380 of the Texas Local Government Code;

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

**SECTION 1. Findings.** The findings set forth above are incorporated herein for all purposes as if set forth in full.

**SECTION 2. Approval of Project and Agreement**

The City Council of the City of Anna, Texas hereby approves the Incentive Agreement for New Economic Development with Palladium East Foster Crossing, Ltd. and the City of Anna, Texas ("Agreement") attached hereto as Exhibit 1, incorporated herein for all purposes, and authorizes the Mayor to execute the same on its behalf, subject to approval as to form by legal counsel for the City, said Agreement to be effective upon its passage and as set forth in said Agreement.

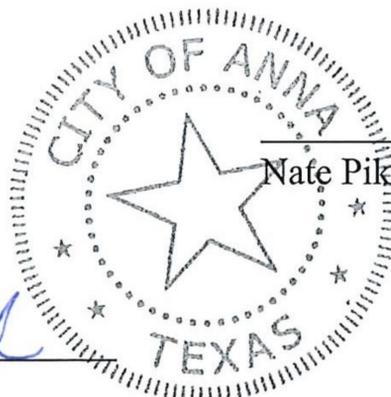
**SECTION 3. Administration**

The City hereby authorizes the City Manager or his designee to administer the Agreement.

**PASSED, APPROVED AND ADOPTED** by the City Council of the City of Anna, Texas, on this 23<sup>rd</sup> day of August 2022.

ATTEST:

Carrie L. Land  
Carrie L. Land, City Secretary



Nate Pike

Nate Pike, Mayor

## 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 Palladium East Foster Crossing, Ltd., a Texas limited partnership (“Developer”).

WHEREAS, Developer owns real property consisting of approximately 8.26 acres and described and depicted in further detail in the attached **Exhibit A** (the “Property”); and

WHEREAS, the Property is currently undeveloped and the Developer will develop the Property and use the Property solely as the site for a multifamily development with a minimum of 239 residential units, a clubhouse, and onsite recreational amenities (the “Apartment Project”); and

WHEREAS, the City recognizes the positive economic impact that 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 businesses, provision of housing affordable for the workforce, and the additional sales tax revenue from job growth; and

WHEREAS, as an incentive to develop the Apartment Project, the Developer has requested a partial waiver of certain development fees otherwise required to be paid to the City (the “Incentive Grant”) and the City is willing to allow the Incentive Grant under and subject to the terms and conditions of this Agreement.; and

WHEREAS, the City is authorized to grant the Incentive Grant 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 (2) Developer has duly executed this Agreement and delivered same to the City.

### **Section 2. Term and Termination.**

2.01 The term of this Agreement shall commence on the Effective Date, and it shall continue in effect until such time as the parties have fulfilled their obligations hereunder, unless terminated earlier under the provisions of this Agreement.

2.02 The City may, at its sole discretion, terminate this Agreement if Developer defaults by: (1) failing to timely commence construction of the Apartment Project in accordance with Section 4.01; (2) by failing to timely obtain a Certificate of Occupancy in accordance with Section 4.01; or (3) otherwise breaching its obligations or warranties under this Agreement. If this Agreement is terminated by the City, then the City shall have no obligation to allow the Incentive Grant to Developer and the Developer shall pay the City in the amount of \$310,700.00 and any amounts due under Section 8.09 within 15 business days of the date of termination and the obligation to pay said amount to the City shall survive the termination of this Agreement. The City may cause this Agreement to terminate by following the notice and cure provisions set forth in Section 8.08 and 8.09 of this Agreement.

### **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 a document entitled “Certificate of Occupancy” (or other similar title) issued by City upon substantial completion of the Apartment Project in accordance with applicable City Regulations that permits the Apartment Project to operate. A Certificate of Occupancy shall not include a certificate issued in error, mistake or misrepresentation of facts, and shall not include any temporary certificate of occupancy or other document authorizing temporary or conditional occupancy.

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

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

“City Manager” means the City Manager of the City of Anna, Texas.

“City Regulations” mean City Code provisions, ordinances, design standards, uniform codes, and other policies duly adopted by the City.

“Commence Construction” means to obtain a building permit from the City and commence the work of constructing any part of the vertical structure composing any part of the Apartment Project.

“Development” means the development of the Property including without limitation the construction of Public Improvements necessary to serve the Property and the construction of the Apartment Project.

“Effective Date” means the date described in Section 1 of this Agreement.

“Incentive Grant” means a fifty percent (50%) reduction of Park Development Fees and a fifty percent (50%) reduction in Park Land Dedication Fees that would otherwise be required to be paid to the City in relation to the Development as follows: Park Development Fees shall be reduced from \$478,000.00 to \$239,000.00 and Park Land Dedication Fees shall be reduced from \$143,400.00 to \$71,700.00.

“Parties” mean the City and Developer.

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

**Section 4. Developer Obligations.** Each and every obligation set forth in this Section 4 are conditions for the Developer to receive the Incentive Grant.

4.01. Construction, Location, and Operation of the Apartment Project. The Apartment Project shall be located within the Property. The Deadline for Developer to Commence Construction of the Apartment Project is 90 business days after the Effective Date. The Deadline for Developer to obtain a Certificate of Occupancy for the Apartment Project is December 1, 2024.

4.02. Public Improvements Generally. Developer shall provide or cause to be provided all Public Improvements, and any required or necessary public improvement not identified in this Agreement that are required by City Regulations in connection with Development, such as 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. 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.

4.03. Approval of Plats/Plans. 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.

#### 4.04. Insurance.

(a) Developer shall or shall cause the construction contractor(s) that will perform the construction work related to the Public Improvements and the Apartment Project 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 \$2,000,000.00. 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.

(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 the Public Improvements and the Apartment Project 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 business days prior to the cancellation, non-renewal or modification of same, the City shall receive written notice of such cancellation, non-renewal or modification.

4.05. Developer Pays All Fees and Costs. Developer shall 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, land clearing and grading costs, advertising and other bidding costs, amounts due under construction contracts, costs of labor and material, inspection fees, impact fees, insurance premiums, interest, carry cost, financing fees and all other fees, costs and expenses incurred in connection with the construction of the Public Improvements and the Apartment Project.

4.06. City Regulations. Developer acknowledges that Development must comply with all applicable City Regulations. 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.

### **Section 5. Incentive Grant.**

The reduction in Park Development Fees and Park Land Dedication Fees that constitute the Incentive Grant under this Agreement are contingent on Developer meeting all of its obligations under this Agreement and if the City terminates this Agreement then the Developer shall pay the City as described in Section 2.02.

#### **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, 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 50-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 limited partnership duly organized, validly existing, and in good standing under the laws of the State of Texas and is registered to do business in 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. Employment of Undocumented Workers. During the term of this Agreement, Developer agrees not to knowingly employ any undocumented workers and if convicted of a violation under 8 U.S.C. Section 1324a (f), Developer shall repay the amount of any Reimbursement Payment or other funds received by Developer from City from the date of this Agreement to the date of such violation within 120 days after the date Developer is notified by City of such violation, plus interest at the rate of 4%

compounded annually from the date of violation until paid. Developer is not liable for a violation of this section by a subsidiary, affiliate, or franchisee of Developer or by a person with whom Developer contracts.

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.

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.

7.08 No Boycotting Israel. Developer verifies that the Developer (including any wholly owned subsidiary, majority-owned subsidiary, parent company, or affiliate of the Developer) does not Boycott Israel and agrees that during the term of this Agreement will not Boycott Israel as that term is defined in Texas Government Code Section 808.001, as amended.

7.09 Verification Pursuant to Chapters 2252 and 2270 of the Texas Government Code. As of the Effective Date, the Developer represents that, to the extent this Agreement constitutes a "governmental contract" within the meaning of Section 2252.151 of the Texas Government Code, as amended, solely for purposes of compliance with Chapter 2252 of the Texas Government Code, and except to the extent otherwise required or permitted by or under applicable federal law, neither Developer nor any wholly owned subsidiary, majority-owned subsidiary, parent company or affiliate of the Developer is a company listed by the Texas Comptroller of Public Accounts under Sections 2270.0201 (as enacted by Acts 2017, 85th Leg., ch. 96, Senate Bill 253) or 2252.153 of the Texas Government Code.

7.10 Verifications Pursuant to Chapter 2274, Texas Government Code. (a) 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 Developer 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 Developer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification, "boycott energy companies," a term defined in Section 2274.001(1), Texas Government Code (as enacted by such Senate Bill) by reference to Section 809.001, Texas Government Code (also as enacted by such Senate Bill), 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.

(b) 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 Developer 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 Developer to comply with such Section and to the extent such Section does not contravene applicable Texas or federal law. As used in the foregoing verification and the following definitions, 'discriminate against a firearm entity or firearm trade association,' a term defined in Section 2274.001(3), Texas Government Code (as enacted by such Senate Bill), (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,' a term defined in Section 2274.001(6), Texas Government Code (as enacted by such Senate Bill), means a manufacturer, distributor, wholesaler, supplier, or retailer of firearms (defined in Section 2274.001(4), Texas Government Code, as enacted by such Senate Bill, as weapons that expel projectiles by the action of explosive or expanding gases), firearm accessories (defined in Section 2274.001(5), Texas Government Code, as enacted by such Senate Bill, as 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 (defined in Section 2274.001(1), Texas Government Code, as enacted by such Senate Bill, as a loaded cartridge case, primer, bullet, or propellant powder with or without a projectile) or a sport shooting range (defined in Section 250.001, Texas Local Government Code, as a business establishment, private club, or association that operates an area for the discharge or other use of firearms for silhouette, skeet, trap, black powder,

target, self-defense, or similar recreational shooting), and (c) 'firearm trade association,' a term defined in Section 2274.001(7), Texas Government Code (as enacted by such Senate Bill), means any 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.

## **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. Each Party shall use good faith, due diligence and reasonable care in the performance of its respective obligations under this Agreement, and time shall be of the essence in such performance; however, in the event a Party is unable, due to force majeure, to perform its obligations under this Agreement, then the obligations affected by the force majeure shall be temporarily suspended equal to the time period the Party was delayed, except that the obligation of any Party to make any payments required pursuant to this Agreement shall not be suspended by force majeure. The term "force majeure" shall include any delay due to any of the following acts or events: (a) wars, terrorism, civil disturbances, riots, insurrections, civil unrest, vandalism and sabotage; (b) transportation disasters, whether by sea, rail, air or land; (c) strikes, lockouts, work stoppage or slowdown or other labor disputes or material shortages; (d) adverse weather conditions, including rain of unusual duration or volume, hurricanes, lightning, tornadoes, earthquakes, floods or acts of God; (e) epidemics or pandemics (but not including the COVID 19 pandemic) or any governmental orders, actions, shut-downs, mandates, restrictions or quarantines, or any quasi-governmental orders, actions, shut-downs, mandates, restrictions or quarantines resulting from any epidemics or pandemics, and any public health emergencies, whether declared by local, state or federal governmental authorities or agencies; (f) labor shortages or moratoriums; (g) fire or other material casualty; (h) mechanical failure of equipment; (i) utility delays or interruptions; (j) any emergency event that threatens imminent harm to property or injury to persons; (k) any other causes of any kind whatsoever, whether similar to those enumerated or not, which

are beyond the control of such Party in the performance of its obligations hereunder; provided, however, in all cases, only to the extent that the Party claiming force majeure (1) did not cause such force majeure condition, and (2) throughout the pendency of such force majeure condition, utilizes commercially reasonable efforts to minimize the impact and delays caused by such force majeure condition. If a Party is delayed due to force majeure, then such Party shall provide written notice of the delay and applicable extension of time periods to the other Party. In addition, a Party that has claimed the right to temporarily suspend its performance under this section shall provide written reports to the other Party at least once every week detailing: (i) the extent to which the force majeure event or circumstance continue to prevent the Party's performance; (ii) all of the measures being employed to regain the ability to perform; and (iii) the projected date upon which the Party will be able to resume performance, which projected date the Parties agree and acknowledge is only an estimate and not a binding commitment by the Party claiming force majeure.

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. The foregoing notwithstanding, any assignment of Developer's rights under this Agreement shall not release Developer from its obligations hereunder.

8.06. INDEMNITY. DEVELOPER COVENANTS TO FULLY INDEMNIFY, DEFEND, SAVE, AND HOLD HARMLESS THE CITY, AND ITS OFFICIALS, OFFICERS, 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 OFFICIALS, 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) The City reasonably and in good faith determines that any representation or warranty on behalf of Developer contained in this Agreement or in any financial statement, certificate, report, or opinion submitted to the City or the City in connection with this Agreement was incorrect or misleading in any material respect when made.
- (b) Any attachment or other levy against the Development or any portion thereof with respect to a claim, excluding mechanic's and materialman's liens, remains unpaid, undischarged, or not dismissed for a period of 120 business days.
- (c) Developer makes an assignment for the benefit of creditors.
- (d) Developer files a voluntary petition in bankruptcy or is adjudicated insolvent or bankrupt.
- (e) 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.
- (f) Developer fails to timely, fully and completely comply with any one or more of the deadlines, material requirements, obligations, duties, terms, conditions or warranties of this Agreement.

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 30 business days from the date of the notice ("Cure Period")

for Developer to cure the event of default; provided, however, in the event if such event of default is not able to be cured within such 30-day period, Developer shall be permitted additional time to effectuate such cure, provided, that in no event shall the Cure Period exceed 60 business days from the date of notice from the City. Should the City fail to timely, fully and completely comply with any one or more of its obligations under this Agreement, such failure shall be an act of default by the City and the City shall have sixty (60) business days to cure and remove the Default after receipt of written notice to do so from Developer.

8.09. Results of Uncured Default by Developer. After exhausting good faith attempts to address any default during the Cure Period, and taking into account any extenuating circumstances that might have occurred through no fault of Developer, as determined by the City, the Developer shall pay the City its reasonable attorney fees, related expenses, and costs of court to collect amounts due to enforce or terminate this Agreement. 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. 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.

8.11. Limitation of Remedies. Developer specifically agrees that the City shall not be liable to Developer for any actual or consequential damages, direct or indirect, interest, attorney fees or related expenses, or cost of court for any act of default by the City under the terms of this Agreement.

8.12. Notices. Any notice and/or statement required and permitted to be delivered under this Agreement shall be deemed delivered by 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 writing.

DEVELOPER:

Palladium East Foster Crossing, Ltd.  
13455 Noel Rd Ste 1000  
Dallas, Texas 75240-6814

CITY:

City of Anna  
Attn.: City Manager  
120 W. 7<sup>th</sup> Street  
Anna, Texas 75409

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.

8.13. 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

8.14. 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.

8.15. 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-venturer, 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 or 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.

8.16. 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.

8.17. 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.

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

8.19. 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.

8.20. 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.

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

8.22. 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.

8.23. 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.

8.24. Recording. The Parties agree that neither this Agreement, nor any memorandum or short form of this Agreement, shall be recorded.

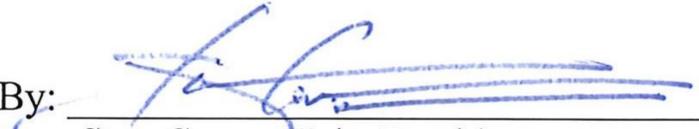
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EXECUTED BY THE PARTIES:

**PALLADIUM EAST FOSTER CROSSING, LTD.**, a Texas limited partnership

By: Palladium East Foster Crossing GP, LLC, a Texas limited liability company,  
its general partner

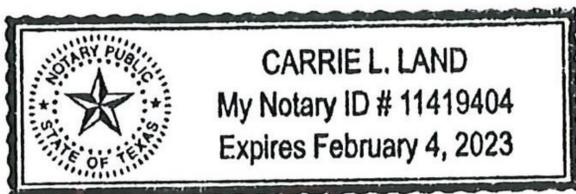
By: Anna Public Facility Corporation, a Texas public facility  
corporation

By:   
Stan Carver II, its President

State of Texas  
County of Collin

Before me, on this day personally appeared Stan Carver II, 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 Public Facility Corporation in its capacity as member of Palladium East Foster Crossing GP, LLC, in its capacity as general partner of Palladium East Foster Crossing, Ltd. for the purposes and consideration therein expressed and on behalf of said partnership.

Given under my hand and seal of office this 23<sup>rd</sup> day of August 2022.



  
Notary – State of Texas

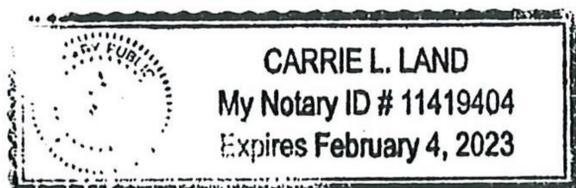
**CITY OF ANNA, TEXAS**

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 23<sup>rd</sup> day of August 2022.



  
Notary – State of Texas

Exhibit A

Legal Description of the Property

SITUATED in the City of Anna, in the Granderson Stark Survey, Abstract No. 798 of Collin County, Texas and being all of that certain called 1.324 acre tract of land described in a Special Warranty Deed to East Foster LLC., dated April 13, 2021 and recorded in Document No. 20210426000829880, Deed Records, Collin County, Texas (D.R.C.C.T.) and also being all of that certain called 6.932 acre tract of land described as "Tract B" in a Special Warranty Deed to East Foster LLC, dated April 13, 2021 and recorded in Document No. 20210426000829900, D.R.C.C.T. and the consolidation of the two said tracts being more particularly described by metes & bounds as follows:

BEGINNING at a 5/8 inch iron rod, topped with a plastic cap, stamped "RPLS 4838" (hereinafter referred to as "with cap"), found at the southeast corner of the above described 1.324 acre East Foster LLC tract and an inside ell corner for that certain called 2.762 acre tract of land described in a Special Warranty Deed to Anna Crossing 40PGE, Ltd., recorded in Document No. 20210524001039830, D.R.C.C.T. and said point being on the future north right-of-way line of E. Foster Crossing Road (formerly known as County Road 421 – variable width public right-of-way);

THENCE: North 89 deg. 11 min. 45 sec. West, along the future north right-of-way line of said E. Foster Crossing Road, at a distance of 145.03 feet, passing the southwest corner of said 1.324 acre tract and same being the southeast corner of the above described 6.932 acre East Foster LLC tract and continuing along the future north right-of-way line of E. Foster Crossing Road and the south line of said 6.932 acre tract for a total distance of 789.33 feet to a 5/8 inch iron rod with cap, found for the southwest corner of said 6.932 acre tract, at the intersection of the future north right-of-way line of E. Foster Crossing Road and the future east right-of-way line of Vail Lane (proposed 50' wide public right-of-way);

THENCE: Departing from the future north right-of-way of E. Foster Crossing Road, along the west line of said 6.932 acre tract and the future east right-of-way line of Vale Lane as follows:

North 44 deg. 11 min. 45 sec. West, a distance of 27.38 feet to a point for corner;

North 00 deg. 48 min. 56 sec. East, a distance of 166.85 feet to a point for corner at the beginning of a curve to the left, having a radius of 325.00 feet, a central angle of 23 deg. 19 min. 32 sec. and a chord that bears North 10 deg. 50 min. 50 sec. West - 131.40 feet;

Northwesterly, along said curve to the left, an arc distance of 132.31 feet to a point for corner at the end of said curve and the beginning of a reverse curve to the right, having a radius of 275.00 feet, a central angle of 22 deg. 19 min. 55 sec. and a chord that bears North 11 deg. 20 min. 38 sec. West - 106.51 feet;

Northwesterly, along said curve to the right, an arc distance of 107.19 feet to a point for corner at the end of said curve;

North 00 deg. 10 min. 41 sec. West, a distance of 58.30 feet to a 5/8 inch iron rod with cap, found for the northwest corner of said 6.932 acre tract, on the south line of that certain called 19.882 acre tract of land described in a Special Warranty Deed With Vendor's Lien to Anna Crossing 40PGE, Ltd, recorded in Document No. 20190114000044870, D.R.C.C.T.;

THENCE: North 89 deg. 49 min. 19 sec. East, departing from the future east right-of-way line of Vail Lane, along the common line of said 6.932 acre tract and said 19.882 acre Anna Crossing 40PGE tract, a distance of 514.65 feet to a 5/8 inch iron rod with cap, found for the most northerly northeast corner of said 6.932 acre tract and same being the northwest corner of that certain called 0.578 acre tract of land described as "Tract B" in a Special Warranty Deed to Anna Crossing 40PGE, Ltd, recorded in Document No. 20210524001039820, D.R.C.C.T.;

THENCE: Departing from the south line of said 19.882 acre Anna Crossing 40PGE tract, along the common line of said 6.932 acre tract and said 0.578 acre Anna Crossing 40 PGE tract as follows:

South 02 deg. 07 min. 59 sec. West, a distance of 64.76 feet to a point for an angle corner;

South 30 deg. 39 min. 41 sec. East, a distance of 47.85 feet to a point for an angle corner;

South 00 deg. 14 min. 58 sec. East, a distance of 23.04 feet to a point for corner at the beginning of a curve to the left, having a radius of 11.00 feet, a central angle of 89 deg. 57 min. 12 sec. and a chord that bears South 45 deg. 13 min. 48 sec. East - 15.55 feet;

Southeasterly, along said curve to the left, an arc distance of 17.27 feet to a point for corner at the end of said curve;

North 89 deg. 47 min. 21 sec. East, a distance of 117.40 feet to a point for corner at the beginning of a curve to the left, having a radius of 11.00 feet, a central angle of 38 deg. 48 min. 49 sec. and a chord that bears North 70 deg. 22 min. 50 sec. East - 7.31 feet;

Northeasterly, along said curve to the left, an arc distance of 7.45 feet to a point for corner at the end of said curve;

North 50 deg. 58 min. 19 sec. East, a distance of 20.10 feet to a point for corner at the beginning of a curve to the right, having a radius of 4.00 feet, a central angle of 38 deg. 50 min. 28 sec. and a chord that bears North 70 deg. 25 min. 33 sec. East - 2.66 feet;

Northeasterly, along said curve to the right, an arc distance of 2.71 feet to a point for corner:

THENCE: North 89 deg. 52 min. 47 sec. East, at a distance of 15.39 feet, passing the southeast corner of said 0.578 acre tract and same being the northerly southwest corner of the above described 2.762 acre Anna Crossing 40PGE, Ltd. tract and the northwest corner of the above described 1.324 acre East Foster LLC tract and continuing along the common line of said 1.324

acre tract and said 2.762 acre tract for a total distance of 131.51 feet to a point for corner at the beginning of a curve to the right, having a radius of 4.00 feet, a central angle of 44 deg. 58 min. 38 sec. and a chord that bears South 67 deg. 37 min. 54 sec. East - 3.06 feet;

THENCE: Continuing along the common line of said 1.324 acre East Foster LLC tract and said 2.762 acre Anna Crossing 40PGE Ltd. tract as follows:

Southeasterly, along said curve to the right, an arc distance of 3.14 feet to a point for corner at the end of said curve;

South 45 deg. 04 min. 23 sec. East, a distance of 21.74 feet to a point for corner at the beginning of a curve to the left, having a radius of 11.00 feet, a central angle of 44 deg.