

## DEVELOPMENT AGREEMENT

This Development Agreement (this "Agreement") is entered effective as of May 24, 2022 ("Effective Date") between and among the City of Anna, Texas, a Texas home-rule municipality ("City") and Cross Point Church Anna ("Owner") as follows:

### RECITALS

**WHEREAS**, the Owner is the sole owner of 4.9± acres of real property depicted on Exhibit 1 (the "Property"); and,

**WHEREAS**, the Property is subject to City Regulations, including without limitation the City's zoning regulations; and,

**WHEREAS**, the current zoning classification of the Property is C-2 General Commercial (C-2) and SF-1 Single-Family Residential District (SF-1) (the "Original Zoning Classification"); and,

**WHEREAS**, the Owner has applied to rezone the Property to allow for Planned Development-I-1 Light Industrial (PD-I-1) zoning district to allow for a self-storage, mini-warehouse development with modified development standards (the "Zoning Change"); and,

**WHEREAS**, the City's Planning & Zoning Commission and City Council have given the requisite notices by publication and otherwise and have scheduled public hearings with respect to the rezoning of the Property as required by law; and,

**WHEREAS**, in the event that the Property is rezoned, the City and Owner desire to enter into a development agreement to establish development and design regulations to ensure that future self-storage, mini-warehouse development is appropriate for the area and fits in well with adjacent properties; and,

**WHEREAS**, it is the Parties' mutual intent that this agreement shall govern only the subject matter specifically set forth herein and shall supersede City Regulations only to the extent that any such City Regulations directly conflict with the terms of this development agreement; and,

**NOW, THEREFORE**, in consideration of the above recitals and the mutual consideration as reflected in the covenants, duties and obligations contained herein, the sufficiency of which is hereby acknowledged, the Parties hereto agree as follows, effective as of the Effective Date:

## **SECTION 1. RECITALS INCORPORATED.**

The recitals set forth above are incorporated herein as if set forth in full to further describe the Parties' intent under this development agreement and said recitals constitute representations by Owner and the City.

## **SECTION 2. DEVELOPMENT STANDARDS / BUILDING MATERIALS.**

- A. Development and use of the Property, including, without limitation, the construction, installation, maintenance, repair, and replacement of all buildings and all other improvements and facilities of any kind whatsoever on and within the Property, shall be in compliance with City Regulations unless expressly stated to the contrary in this Agreement or shown in Exhibit 1. City Regulations shall apply to the development and use of the Property unless expressly set forth to the contrary in this Agreement. It is expressly understood and the Parties agree that City Regulations applicable to the Property and its use and development include but are not limited to City Code provisions, ordinances, design standards, uniform codes, zoning regulations not affected by this Agreement, and other policies duly adopted by the City including without limitation any such regulations or requirements that were affected by the passage of Texas H.B. 2439, 86(R), codified as Chapter 3000 of the Texas Government Code ("Materials and Methods Regulations"), which are collectively incorporated herein as if set forth in full for all purposes; provided, however, to the extent of any conflict between the requirements of Materials and Methods Regulations and the requirements of this Agreement, this Agreement shall control. For purposes of this Agreement, "City Regulations" mean the City's applicable development regulations in effect on the Effective Date, including without limitation City Code provisions, ordinances (including, without limitation, all development fees), design standards, and other policies duly adopted by the City; provided, however, that as it relates to public infrastructure for any given phase of the Project, the applicable construction standards (including, without limitation, uniform building codes) shall be those that the City has duly adopted at the time of the filing of an application for a preliminary plat for that phase unless construction has not commenced within two years of approval of such preliminary plat in which case the construction standards shall be those that the City has duly adopted at the time that construction commences.
- B. With respect to all structures/development within the PD-I-1 Zoning District, Owner agrees to comply and/or to cause all other persons or entities to comply and any other successors or assigns to comply with all City Regulations and with the masonry material requirements and all other requirements of the Anna City Code of Ordinances, Article 9.04 Zoning Ordinance, Section 9.04.034 Supplementary District Regulations, Subsection (e) Architectural Design Standards, which are incorporated herein as if set forth in full for all purposes, and with the following standards (in the event of any conflict, the following listed standards shall govern). Notwithstanding the foregoing, a Subsequent Owner upon a Closing (as hereinafter defined) must agree in writing to assume Owner's responsibilities set forth herein. For purposes of this Agreement the term "Subsequent Owner" means any person or entity that acquires all or any part of the Property from Owner or Owner's successor in title to the Property or any part thereof.

### **Self-Storage, Mini-Warehouse Buildings**

- A. Each building façade facing the right of way may not exceed a length of 160 feet without a break in the façade of a minimum depth of 2 feet for a minimum length of 10 feet.
- B. A minimum of 2 materials are required on each façade facing the right of way. This section only applies to building sections within 200' of the right of way.
- C. The two buildings within 200' of the right of way in Exhibit 1 will use only stone, brick, and/or split face concrete masonry units in the construction of the exterior facade on the front walls facing the right of way. The three rear self storage buildings will be constructed from non masonry metal panels.
- D. Where the function of an individual business, or the recognized identity of a brand dictates a specific style, image, or building material associated with that company, the masonry provision may be modified; however, the development shall maintain harmony in terms of overall project design and appearance, and such design shall be subject to approval by the city council after recommendation from the planning and zoning commission.

### **SECTION 3. NOTICES.**

Any and all notices required to be given by either of the parties hereto must be in writing and will be deemed delivered upon personal service, if hand-delivered, or when mailed in the United States mail, certified, return receipt requested, addressed as follows:

To City: City Manager  
City of Anna  
111 North Powell Parkway  
PO Box 776  
Anna, Texas 75409  
Attn: City Manager

To Owner: Cross Point Church Anna  
926 S. Powell Parkway  
Anna, TX 75409  
Attn: A Chris Jones

#### **SECTION 4. DEADLINES, MODIFICATIONS OR TERMINATION.**

- A. This Agreement may only be modified and/or terminated as follows: (a) by mutual written agreement of the City and Owner or, after a Closing (as hereinafter defined), by a Subsequent Owner instead of Owner; and/or (b) unilaterally by City upon default of the Owner or Subsequent Owner. 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 on or before the 24th day of May 2022. 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 any proposed rezoning of the Property.
- B. Owner or any Subsequent Owner shall be obligated under this Agreement to timely meet the following deadlines:
1. Within 90 days after City Council approval of the Zoning Change, Owner will have submitted a preliminary plat and tree preservation plan for the Property.
  2. Within 180 days after the City has approved the preliminary plat, Owner shall have submitted a site plan, landscaping plan, lighting plan, final plat (showing easements, fire lanes and utilities for the self-storage development), and civil plans.
  3. A preconstruction meeting between Owner and City staff shall occur within 60 days of final approval of the civil plans.
  4. Site construction pursuant to final approved civil plans must commence within 120 days after the preconstruction meeting and after all permits have been fully approved
  5. Owner must submit plans and specifications for the buildings and other improvements not part of the civil plans (the "Building Plans") no later than 120 days after civil plans are approved by the City. After the last to occur of (a) approval of the Building Plans by the City of Anna, (b) completion of all construction pursuant to civil plans, (c) acceptance of all civil construction and public improvements by the City of Anna, and (d) recordation of the multi-family development final replat, Owner must submit an application for a building permit within 60 days thereafter (including without limitation the payment of all fees due to the City as required to develop the Property).
  6. Recordation in the Official Records of Collin County, Texas of the self-storage,

mini-warehouse development final plat must occur within 180 days of commencement of site construction.

7. Vertical construction pursuant to the Building Plans for approved structures must commence within 60 days after the later to occur of the recordation of the self-storage, mini-warehouse final plat and obtaining a building permit.
- A. Not by way of limitation as to other material terms and conditions, the deadlines stated above are material terms and conditions of this Agreement and any failure to meet any of the deadlines above (each, a "Deadline Default") is a material default under this Agreement. In addition to all other remedies that the City may enforce under this Agreement or that is available to the City at law or in equity in the event of a Deadline Default, the City may in its sole discretion initiate and pursue a zoning case to change the zoning classification back to the Original Zoning Classification. In the event that the City initiates such a zoning case after a Deadline Default, the Owner shall not oppose the zoning case and shall be deemed to have fully and irrevocably released and waived any claim, cause of action, litigation or other challenge or proceeding to such zoning case on any legal basis or theory whatsoever.

## **SECTION 5. DEFAULT.**

If Owner, its heirs, successors or assigns or any Subsequent Owner of the Property or any part thereof fails to comply with any of the material terms and conditions included in this Agreement (such defaulting owner referenced herein as "Defaulting Owner"), the City will have the following non-exclusive and cumulative remedies.

- A. Withholding of utilities or withholding or revocation of permits and other approvals required for development and use of the portion of the Property that is the subject of the default (but no other portions of the Property) including without limitation building permits and certificates of occupancy.
- B. The Defaulting Owner shall be liable to pay to the City the sum of \$2,000 for each failure to materially comply with the development standards set forth of this Agreement. The Defaulting Owner shall be liable to pay the City said \$2,000 sum per day for each day that such failure to comply occurs. The sums of money to be paid for such failure(s) is not to be considered as a penalty, but shall be deemed, taken and treated as reasonable liquidated damages that accrue per day that such a failure shall exist or occur. The said amounts are fixed and agreed upon by the parties because of the impracticability and extreme difficulty of fixing and ascertaining the actual damages the City in such event would sustain; and said amounts are agreed to be the amounts of damages which the City would sustain. In the event of a breach that is not

timely cured as set forth below, the sum of liquidated damages shall be calculated to include each and every day of the occurrence of the breach beginning on the date that the City first provided written notice of such breach under this paragraph and the City shall not be required to provide any subsequent written notices as to subsequent dates or times during which such breach is repeated or continues to occur

- C. The non-defaulting party will additionally have any and all remedies available to it at equity or in law.

Notwithstanding the foregoing, a Defaulting Owner shall not be liable for the remedies under this section unless there is a breach of any material term or condition of this Agreement and such breach remains uncured after forty-five (45) calendar days following receipt of written notice from the City provided in accordance with this Agreement describing said breach in reasonable detail (or, if the cure of the breach has diligently and continuously been undertaken but reasonably requires more than forty-five (45) calendar days to cure, then such additional amount of time as is reasonably necessary to effect the cure, as determined by both Parties mutually and in good faith but in no event shall such additional period exceed 120 days unless agreed to in writing by the parties to this Agreement).

#### **SECTION 6. BINDING ON SUCCESSORS, AGREEMENT RUNS WITH THE LAND.**

This Agreement will be binding upon and inure to the benefit of the parties' respective successors, assigns and personal representatives. This Agreement runs with the land and is binding on all subsequent owners of the Property or any portions thereof. This section shall be construed liberally to ensure the Parties' intent that this Agreement shall be enforceable regardless of any change of ownership of or interest in the Property. Notwithstanding anything to the contrary in this Section 6 or elsewhere in this Agreement, if the Owner or a Subsequent Owner (the "Transferor") conveys, assigns, or transfers its entire interest in the Property or a part thereof (the "transferred Property") to a Subsequent Owner (the "Transferee") who assumes Transferor's obligations under this Agreement with respect to the transferred Property, the Transferor shall be automatically released from its obligations under this Agreement relating to the transferred Property subsequent to the date of transfer.

#### **SECTION 7. INDEMNIFICATION AND HOLD HARMLESS.**

THE OWNER OR ANY SUBSEQUENT OWNER OF THE PROPERTY IN THE EVENT OF A CLOSING (THE "INDEMNIFYING PARTY"), HEREBY COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY THE CITY AND ITS OFFICIALS, OFFICERS, AGENTS, SERVANTS AND EMPLOYEES, FROM AND AGAINST ALL THIRD-PARTY CLAIMS, SUITS, JUDGMENTS, DAMAGES, AND DEMANDS AGAINST THE CITY, WHETHER REAL OR ASSERTED INCLUDING WITHOUT LIMITATION

REASONABLE ATTORNEY'S FEES, RELATED EXPENSES, EXPERT WITNESS FEES, CONSULTANT FEES, AND OTHER COSTS (TOGETHER, "CLAIMS"), ARISING OUT OF THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF THE INDEMNIFYING PARTY, INCLUDING WITHOUT LIMITATION THE NEGLIGENCE OR OTHER WRONGFUL CONDUCT OF ANY OF ITS EMPLOYEES, CONTRACTORS, SUBCONTRACTORS, MATERIAL MEN, AND AGENTS, IN CONNECTION WITH THE DESIGN OR CONSTRUCTION OF ANY PUBLIC INFRASTRUCTURE, STRUCTURES, OR OTHER FACILITIES OR IMPROVEMENTS THAT ARE REQUIRED OR PERMITTED UNDER THIS AGREEMENT AND/OR CITY REGULATIONS AND/OR ANY APPLICABLE DEVELOPMENT STANDARDS AND/OR ANY OTHER GOVERNING REGULATIONS; AND IT IS EXPRESSLY UNDERSTOOD THAT SUCH CLAIMS SHALL, EXCEPT AS MODIFIED BELOW, INCLUDE CLAIMS EVEN IF CAUSED BY THE CITY'S OWN CONCURRENT NEGLIGENCE SUBJECT TO THE TERMS OF THIS SECTION. THE INDEMNIFYING PARTY SHALL NOT, HOWEVER, BE REQUIRED TO INDEMNIFY THE CITY AGAINST CLAIMS CAUSED BY THE CITY'S SOLE NEGLIGENCE OR BY THE CITY'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE. IF THE CITY INCURS CLAIMS THAT ARE CAUSED BY THE CONCURRENT NEGLIGENCE OF THE INDEMNIFYING PARTY AND THE CITY, THE INDEMNIFYING PARTY'S INDEMNITY OBLIGATION WILL BE LIMITED TO A FRACTION OF THE TOTAL CLAIMS EQUIVALENT TO THE INDEMNIFYING PARTY'S OWN PERCENTAGE OF RESPONSIBILITY. THE INDEMNIFYING PARTY FURTHER COVENANTS AND AGREES TO RELEASE, DEFEND, HOLD HARMLESS, AND INDEMNIFY, THE CITY AGAINST ANY AND ALL CLAIMS BY ANY PERSON CLAIMING AN OWNERSHIP INTEREST IN THE PROPERTY AS OF THE EFFECTIVE DATE WHO HAS NOT SIGNED THIS AGREEMENT IF SUCH CLAIMS RELATE IN ANY MANNER OR ARISE IN CONNECTION WITH: (1) THE CITY'S RELIANCE UPON ANY OF THE INDEMNIFYING PARTIES' REPRESENTATIONS IN THIS AGREEMENT; (2) THIS AGREEMENT OR OWNERSHIP OF THE PROPERTY; OR (3) THE CITY'S APPROVAL OF ANY TYPE OF DEVELOPMENT APPLICATION OR SUBMISSION WITH RESPECT TO THE PROPERTY.

At no time shall the City have any control over or charge of the design, construction or installation of any of the improvements to the Property or related work or undertakings, nor the means, methods, techniques, sequences or procedures utilized for the design, construction or installation related to same. This Agreement does not create a joint enterprise or venture between the City and any of the Indemnified Parties. This section shall survive the termination of this Agreement.

#### **SECTION 8. RECORDATION.**

This document, including all Exhibits, may be recorded in the Official Records of Collin County, Texas.

#### **SECTION 9. ENTIRE AGREEMENT.**

This Agreement is the entire agreement of the parties regarding the subject matter hereto.

#### **SECTION 10. RECITALS AND EXHIBITS.**

The recitals herein and exhibits attached hereto are hereby incorporated by reference.

#### **SECTION 11. AUTHORITY.**

Owner represents and warrants to the City that the Owner owns the Property and that this Agreement is binding and enforceable on the Property. Owner may sell the Property or a part thereof to a person or entity (the "Closing") prior to commencement of site construction on the property sold, and in such event the Subsequent Owner shall be required to acknowledge and assume all obligations, liabilities and indemnifications under this Agreement.

#### **SECTION 12. INVALID PROVISIONS.**

If any provision of this Agreement is held not valid, such provision will be deemed to be excised there from and the invalidity thereof will not affect any of the other provisions contained herein.

#### **SECTION 13. ESTOPPEL.**

On or before 15 days after receipt of a written request from an owner of the Property that desires to transfer its interest in the Property or borrow money secured by a mortgage or deed of trust against the Property or a prospective transferee of an owner's interest or an existing or prospective mortgagee, the City will execute and deliver an estoppel certificate stating that, to the best of the City's knowledge: (i) the transferring or borrowing owner is not in default under this Agreement; and (ii) this Agreement is in full force and effect and whether there are any amendments thereto.

#### **SECTION 14. FORCE MAJEURE.**

Whenever a period of time is prescribed in this Agreement for a Party (the "Acting Party") to take an action (other than a payment obligation), the Acting Party will not be liable or responsible for, and there will be excluded from the computation of any such time period, the period of time (the "Force Majeure Period") of delays caused by strikes, riots, acts of God, pandemic, enemy action, shortages of labor or materials, war, acts of terrorism, flood, fire, explosion, unavoidable casualty, or any other causes that are beyond the reasonable control of the Acting Party or any of its employees, agents, or contractors, but not any economic hardship, changes in market conditions, and insufficiency of funds ("Force Majeure"). However, a date will only be extended by a Force Majeure Period if the Acting Party gives notice to the other Party of the occurrence

or commencement of the event that constitutes Force Majeure within ten days after the Acting Party knows of the existence or commencement of such event, and claims (in such notice) that such event constitutes Force Majeure. 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.

## **SECTION 15. EFFECTIVE DATE.**

This Agreement will be effective upon the Effective Date first stated herein.

[signature page follows]

DRAFT

**CITY OF ANNA**

By: \_\_\_\_\_  
Jim Proce, City Manager

IN WITNESS WHEREOF:  
STATE OF TEXAS  
COUNTY OF COLLIN

Before me, the undersigned notary public, on the \_\_\_\_\_ day of May 2022, appeared Jim Proce, known to me (or proved 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.

\_\_\_\_\_  
Notary Public, State of Texas

**Cross Point Church Anna**

By: \_\_\_\_\_  
A Chris Jones, Crosspoint Church Anna

IN WITNESS WHEREOF:  
STATE OF TEXAS  
COUNTY OF COLLIN

Before me, the undersigned notary public, on the \_\_\_\_ day of May 2022, appeared Chris Jones known to me (or proved to me) to be the person whose name is subscribed to the foregoing instrument, and acknowledged to me and verified under oath that he/she executed the same in his/her capacity as Pastor of Cross Point Church Anna.

\_\_\_\_\_  
Notary Public, State of Texas

**EXHIBIT "1"**  
**DEPICTION OF THE PROPERTY**

DRAFT