

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Prosper RE Holdings LLC, a Texas limited liability company (“Developer”) (individually, a “Party” and collectively, the “Parties”) to be effective (the “Effective Date”) on the latest date executed by a Party.

WHEREAS, the Town is a home-rule municipal corporation, located in Collin County and Denton County, Texas, organized and existing under the laws of the State of Texas; and

WHEREAS, Developer is developing an office/retail building on an approximate 0.40-acre tract of land generally located on the northeast corner of S. Coleman Street and E. Third Street in the Town (the “Property”), and a legal description and depiction of the Property is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the foregoing Property was rezoned by the Town Council on or about November 14, 2023, when the Town Council approved a Planned Development consisting of office and retail uses for the Property, and this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in the underlying zoning ordinance, as may be amended, and/or this Development Agreement, to recognize Developer’s reasonable investment-backed expectations in the Development, as may be amended, and as more fully described herein.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. Development Standards. For any structure built on the Property following the Effective Date, it shall comply with the following elevations and building materials: (1) all construction shall have an approved façade plan before the issuance of a building permit by the Town; (2) the primary building material shall be clay-fired brick, and natural stones and other masonry materials are encouraged for architectural details and accents; (3) awnings and canopies shall be architectural materials that complement the building, such as metal flashing, wood trim or fabric, and vinyl shall not be permitted; and (4) the choice of color for the primary façade, various architectural elements or details shall be compatible with the overall visual qualities existing within the original downtown portion of the Town, and as reflected in Exhibit B, attached hereto and incorporated by reference. The Parties agree and acknowledge that the provisions of this Paragraph shall apply to any structure constructed subsequent to the execution of this Agreement. Nothing in this Agreement shall be deemed to modify or otherwise amend any zoning regulation duly adopted by the Town, previously or in the future.

2. Maintenance of Landscape Areas.

A. Developer agrees to maintain all Landscape Areas (including all vegetation) on the Property, as referenced and/or depicted in the applicable zoning ordinance, as amended, free of weeds, tall grass, rubbish, brush and other objectionable, unsightly or unsanitary matter, as defined in Article 6.03 of Chapter 6 of the Town's Code of Ordinances, as amended. Further, Developer agrees that landscape maintenance obligations referenced herein include mulching of Landscape Areas, prompt replacement of dead or dying vegetation with new vegetation, mowing of Landscape Areas, where required, and other routine and regular maintenance of plants and other vegetation.

B. In the event that any Landscape Area or plants or vegetation is/are not properly maintained in accordance with this Agreement, the Town may give written notice to Developer of such failure to maintain and Developer shall promptly address such failure, taking into account the type(s) and species of such plants and vegetation and applicable planting cycles of same. After such notice, and Developer's failure to address same, Developer agrees and acknowledges that the Town shall have the right to go onto Developer's property and replace, replant or otherwise address such failure to maintain any Landscape Area or plants or vegetation, with an invoice of costs incurred by the Town being promptly provided by the Town to Developer. In the event Developer does not pay such invoice within thirty (30) days of receipt by Developer, the Town may file a lien on the Property for the costs it incurred for the work done, including a reasonable administrative fee. Any failure to maintain any Landscape Area, plants or vegetation shall not be considered a default in accordance with Paragraph 7 of this Agreement, shall not be subject to the mediation requirement contained in Paragraph 16 and any obligations referenced in said Paragraphs shall not be applicable to this Paragraph 2.

C. Notwithstanding any provision in this Paragraph to the contrary, the Town specifically reserves the right to take enforcement action and/or file a complaint against Developer in the Town's municipal court (or other appropriate forum) relative to weeds, tall grass, rubbish, brush and other objectionable, unsightly or unsanitary matter on the Property, in accordance with Article 6.03 of Chapter 6 of the Town's Code of Ordinances, as amended.

3. Certain Business Establishments Prohibited. Developer agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property any of the following business establishments: (1) credit access businesses, as defined in Texas Finance Code § 393.601, as amended, including but not limited to payday lending businesses, "cash for title" lenders, and credit services businesses, as defined in Texas Finance Code § 393.001, as amended); (2) body art facilities; (3) smoke or vape shops; (4) any business entity that sells drug paraphernalia; (5) any business establishment offering gaming or slot machines; (6) sex shops, including but not limited to business entities whose primary purpose is the sale of lewd merchandise; (7) pawn shops; (8) beauty shops; (9) nail shops/manicurist shops; (10) barbershops; and (11) business entities which primarily utilize outdoor storage or displays. Further, Developer agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property

a package liquor store, which for purposes of this Agreement is defined as any business entity that is required to obtain a Package Store Permit (P) from the Texas Alcoholic Beverage Commission for the off-premises consumption of alcohol. Nothing in this Agreement shall be deemed to modify or otherwise amend any zoning regulation duly adopted by the Town, previously or in the future.

4. Covenant Running with the Land. The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the Developer and its heirs, representatives, successors and assigns. This Agreement shall be deemed to be incorporated into each deed and conveyance of the Property or any portion thereof hereafter made by any other Developers of the Property, regardless of whether this Agreement is expressly referenced therein.

5. Applicability of Town Ordinances. Developer shall develop the Property, and construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes.

6. Rough Proportionality. Developer hereby agrees that any land or property donated and/or dedicated to the Town pursuant to this Agreement, whether in fee simple or otherwise, including any easements (as may be reflected in any Final Plat), relative to any development on the Property is roughly proportional to the need for such land and Developer hereby waives any claim therefor that it may have. Developer further acknowledges and agrees that all prerequisites to such a determination of rough proportionality have been met, and that any costs incurred relative to said donation are related both in nature and extent to the impact of the development referenced herein. Both Developer and the Town further agree to waive and release all claims one may have against the other related to any and all rough proportionality and individual determination requirements mandated by the United States Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), and its progeny, as well as any other requirements of a nexus between development conditions and the provision of roadway services to the Property.

7. Exactions/Infrastructure Costs. Both the Town and Developer have been represented by legal counsel in the negotiation of this Agreement and been advised or each has had the opportunity to have legal counsel review this Agreement and advise them, regarding Developer's and the Town's rights under Texas and federal law. Developer and the Town hereby waive any requirement that the other retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Developer specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code and any exemptions from impact fees under current or future law; however, notwithstanding the foregoing and to the extent permitted by law, Developer hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding

or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

8. Default. No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

9. Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.

10. Notice. Any notices required or permitted to be given hereunder (each, a "Notice") shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: The Town of Prosper
 250 W. First Street
 P.O. Box 307
 Prosper, Texas 75078
 Attention: Town Manager

If to Developer: Michael Bryant
 2929 N. Central Expressway, Suite 270
 Richardson, Texas 75080

11. Prevailing Party. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

12. Entire Agreement. This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

13. Savings/Severability. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

14. Binding Agreement. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein, including without limitation a scanned copy sent via electronic mail by either Party.

15. Authority to Execute. This Agreement shall become a binding obligation on the Parties upon execution by all Parties hereto. The Town warrants and represents that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Developer warrants and represents that the individual executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

16. Filing in Deed Records. This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Collin County, Texas.

17. Mediation. In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the signatories hereto, the signatories agree to submit such disagreement to nonbinding mediation.

18. Notification of Sale or Transfer; Assignment of Agreement. Except with respect to a sale or transfer to a related entity of Developer, Developer shall notify the Town in writing of any sale or transfer of all or any portion of the Property, within ten (10) business days of such sale or transfer. Developer has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this Agreement, in whole or in part, and including any obligation, right, title, or interest of Developer under this Agreement, to any person or entity (an "Assignee") that is or will become an Developer of any portion of the Property or that is an entity that is controlled by or under common control with Developer. Each assignment shall be in writing executed by Developer and the Assignee and shall obligate the Assignee to be bound by this Agreement. Except with respect to a sale or transfer to a related entity of Developer, a copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor Developer assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement and/or the building has been constructed on the Property as provided in this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon such transfer. No assignment by Developer shall release Developer from any liability that resulted from an act or omission

by Developer that occurred prior to the effective date of the assignment. Developer shall maintain true and correct copies of all assignments made by Developer to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

19. Sovereign Immunity. The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

20. Effect of Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

21. Consideration. This Agreement is executed by the parties hereto without coercion or duress and for substantial consideration, the sufficiency of which is forever confessed.

22. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original.

23. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor Developer of all or any part of the Property; however, the failure to provide such copies shall not affect the validity of any amendment.

24. Miscellaneous Drafting Provisions. This Agreement shall be deemed drafted equally by all 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.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date referenced herein.

TOWN:

THE TOWN OF PROSPER, TEXAS

By: _____

Name: Mario Canizares

Title: Town Manager

STATE OF TEXAS)

)

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2023, by Mario Canizares, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas

My Commission Expires: _____

DEVELOPER:

PROSPER RE HOLDINGS LLC, a Texas
limited liability company

By: _____

Name: Michael Bryant

Title: _____

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2023, by Michael Bryant in his capacity as _____ of Prosper RE Holdings LLC, a Texas limited liability company, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of Developer.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A

(Property Legal Description)

Legal Description for Tract 1:

BEING Lot 11 and 12, in Block 11, of Bryant's Addition to Prosper an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Volume 116, Page 162, of the Map Records of Collin County, Texas.

Legal Description for Tract 2:

BEING a 0.040 acre tract of lands situated in the Town of Prosper, Collin County, Texas, and being a portion of Lot 1, Block 11, of Bryant's Addition to Prosper, an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Volume 116, Page 162, of the Map Records of Collin County, Texas (M.R.C.C.T.), and being the same tract of land described by deed to the McGee Family Partners, Ltd., as recorded in Document No. 20170727000993550, of the Official Public Records of Collin County, Texas, and being more particularly described as follows:

COMMENCING from a ½ inch iron rod found for the northeast corner of Lot 9R, Block 11 & 12 of Bryant's #1 Addition, an addition to the Town of Prosper, Collin County, Texas, according to the Plat thereof recorded in Instrument No. 2015-458, M.R.C.C.T., same being in the south line of a 20 foot wide alley right-of-way, same from which ½ inch iron rod found for the northeast corner of said Lot 9R bears North 90 degrees 00 minutes 00 seconds East, a distance of 67.67 feet;

THENCE North 00 degrees 04 minutes 37 seconds West, traversing over and across said 20 foot wide alley, a distance of 20.00 feet to a point for the common south corner of Lots 3 and 4 of said Block 11;

THENCE South 90 degrees 00 minutes 00 seconds West, with the north line of said 20 foot wide alley and with the south lines of said Lot 3 and of Lot 2 of said Block 11, a distance of 100.00 feet to a ½ inch capped iron rod stamped "ARTHUR SURVEYING COMPANY" set (I.R.S.) for the southeast corner and POINT OF BEGINNING of the herein described tract, same being the southeast corner of said Lot 1;

THENCE South 90 degrees 00 minutes 00 seconds West, with the north line of said 20 foot wide alley, a distance of 50.00 feet to an I.R.S. for corner, same being in the east line of S Coleman Street (a 60 foot wide right-of-way);

THENCE North 00 degrees 04 minutes 37 seconds West, with the east line of said S Coleman Street, a distance of 35.00 feet to an I.R.S. for corner;

THENCE North 90 degrees 00 minutes 00 seconds East, traversing over and across said Lot 1, a distance of 50.00 feet to an I.R.S. for corner, same being in the west line of said Lot 2;

THENCE South 00 degrees 04 minutes 37 seconds East, with the west line of said Lot 2, a distance of 35.00 feet to the POINT OF BEGINNING and containing a total of 0.040 acres of land, more or less, and being subject to any an all easements that may affect.

EXHIBIT B

(Building Materials/Elevations)

The primary building material shall be clay fired brick. Natural stones and other masonry materials are encouraged for architectural details and accents. Awnings and canopies shall be architectural materials that complement the building such as metal flashing, wood trim, or fabric. Vinyl shall not be permitted. Choice of color for the primary façade, various architectural elements, or details shall be compatible with the overall visual qualities existing within the original downtown portion of the town.