

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Northeast 423/380 Pads LP (“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 intends to develop an approximate 0.602 acre parcel of land to be known as "Lot 15" (hereinafter referred to as "Lot 15"), a legal description of which is attached hereto as Exhibit A-1 and incorporated by reference, and an approximate 0.965 acre parcel of land to be known as "Lot 16R" (hereinafter referred to as "Lot 16R"), a legal description of which is attached hereto as Exhibit A-2 and incorporated by reference, both of which are currently part of a larger 16.9 acre tract of land, all being part of the property which is currently subject to Planned Development-40, in the Town (Lot 15 and Lot 16R may be collectively referred to as the “Property”); and

WHEREAS, the foregoing Property was rezoned by the Town Council on or about August 10, 2021, to facilitate the development and construction of a drive-through restaurant on Lot 15 and a drive-through restaurant on Lot 16R, 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 Agreement, to recognize Developer’s reasonable investment-backed expectations in the Planned Development-40, as may be amended, and as more fully described herein; and

WHEREAS, subject to the terms of this Agreement, Developer acknowledges that Developer intends to develop and construct a drive-through restaurant on Lot 15 and a drive-through restaurant on Lot 16R of the Property and if Developer so develops Lot 15 and Lot 16R, Developer agrees to construct such drive-through restaurants in accordance with the provisions and standards reflected in this Agreement.

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. The drive-through restaurant to be constructed on Lot 15 following the Effective Date shall comply with the applicable requirements, including building materials and elevations, contained in Exhibit B-1, “Façade Plan for Lot 15,” attached hereto and incorporated by reference, and the drive-through restaurant to be constructed on Lot 16R following the Effective Date shall comply with the applicable requirements, including building materials and elevations, contained in Exhibit B-2, “Façade Plan for Lot 16R,” attached hereto and incorporated by reference. The Parties

agree and acknowledge that the provisions of this Paragraph shall apply to either structure constructed subsequent to the execution of this Agreement.

2. No Amendment to Zoning Requirements. 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.

3. Covenant Running with the Land. The terms, conditions, rights, obligations, benefits, covenants and restrictions set forth in this Agreement shall run with the land and shall burden Lot 15 and Lot 16R and shall be binding upon Developer and the Town, as the case may be, and shall 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 Lot 15 and Lot 16R or any portion thereof hereafter made by any other developers of the Property, regardless of whether this Agreement is expressly referenced therein.

4. Applicability of Town Ordinances. All structures on Lot 15 and Lot 16R shall be developed and constructed in accordance with all applicable Town ordinances and building/construction codes.

5. 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.

6. 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 Denton County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Denton County, Texas.

7. 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: Robert Dorazil, Manager
7001 Preston Road, Suite 410
Dallas, Texas 75205
Attn.: Robert Dorazil, Manager

With a copy to: Condon Tobin Sladek Thornton Nerenberg PLLC
8080 Park Lane, Suite 700
Dallas, Texas 75231
Attn.: David N. Condon, Esq.

8. Prevailing Party. In the event any Party 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 attorneys' fees (including its reasonable costs and attorney's fees on any appeal) from the unsuccessful Party or Parties.

9. 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.

10. Waiver of Texas Government Code § 3000.001 et seq. With respect to any and all Structures to be constructed on the Property pursuant to this Agreement, Developer hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

11. Time. Time is of the essence in the performance by the Parties of their respective obligations under this Agreement.

12. Third-Party Beneficiaries. Nothing in this Agreement shall be construed to create any right in any third-party not a signatory to this Agreement, and the Parties do not intend to create any third-party beneficiaries by entering into this Agreement.

13. Rough Proportionality. 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.

14. Exactions/Infrastructure Costs. Developer has been represented by legal counsel in the negotiation of this Agreement and been advised or has had the

opportunity to have legal counsel review this Agreement and advise Developer, regarding Developer's rights under Texas and federal law. Developer hereby waives any requirement that the Town retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions required by the Town 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; however, notwithstanding the foregoing, 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.

15. 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.

16. 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.

17. 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.

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

19. 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.

20. Notification of Sale or Transfer; Assignment of Agreement. 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. 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, 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 receipt of the assignment by the Town. 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.

21. 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.

22. 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.

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

24. 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.

25. 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.

26. 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: Harlan Jefferson
Title: Town Manager, Town of Prosper

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2021, by Harlan Jefferson, 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:

NORTHEAST 423/380 PADS LP,
a Texas limited partnership

By: Northeast Corner, LLC,
a Texas limited liability company,
its General Partner

By: _____
Robert V. Dorazil, Manager

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2021, by Robert V. Dorazil, Manager, of Northeast Corner, LCL, general partner of Northeast 423/380 Pads LP, on behalf of said entities.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A-1

(Lot 15 Property Description)

EXHIBIT A-2

(Lot 16R Property Description)

EXHIBIT B-1

(Façade Plan for Lot 15)

[See attached]

EXHIBIT B-2

(Façade Plan for Lot 16R)

[See attached]