

**DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Metten Real Estate, L.P., a Texas Limited Partnership (“Owner”) (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**, Owner is developing an approximate 74.3-acre tract in the Town (the “Property”), a legal description of which is attached hereto as Exhibit A and incorporated by reference; and

**WHEREAS**, a portion of the foregoing Property (identified as Tract 2) was rezoned by the Town Council on or about April 27, 2021, 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 Owner’s reasonable investment-backed expectations in the Development, as may be amended, and as more fully described herein; and

**WHEREAS**, subject to the terms of this Agreement, Owner agrees and acknowledges that it will construct on the Property structures in accordance with the provisions and standards reflected in this Agreement; and

**WHEREAS**, subject to the terms of this Agreement, Owner further agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property any business enterprises engaging in those businesses referenced in Section 2 below.

**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 applicable requirements contained in Exhibit B, “Architectural Standards and Building Materials,” attached hereto and incorporated herein. 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. Certain Business Establishments Prohibited.** Owner 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; and (8) business entities which primarily utilize outdoor storage or displays. Additionally, as to Tract 2 of the Property (legally described on Exhibit A attached hereto), Owner 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.

**3. Cross Access Right-of-Way in Lakes of Prosper North; Fences.** The Parties agree and acknowledge that there exists public right-of-way extending from Waterview Drive in the Lakes of Prosper North to Tract 2 of the Property and since no cross access will be allowed from the Lakes of Prosper North to the Property, Owner has agreed to assist the Lakes of Prosper North Homeowners Association, or other responsible/affected parties, make application with the Town for the abandonment of said right-of-way, and pay the costs associated with such abandonment. Further, Owner shall endeavor to maintain an eight foot (8') fence, board-on-board, with a cap, on the north side of the Lakes of Prosper North subdivision.

**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 Owner 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 owners of the Property, regardless of whether this Agreement is expressly referenced therein.

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

**6. 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.

**7. 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.

**8. 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 Owner:               Metten Real Estate, L.P.  
                                  4872 Nashwood Lane  
                                  Dallas, Texas 75244  
                                  Attention: Christian Metten

**9. 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).

**10. 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.

**11. 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, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

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

13. **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.

14. **Rough Proportionality.** Owner hereby agrees that any land or property donated and/or dedicated pursuant to this Agreement, whether in fee simple or otherwise, to the Town relative to any development on the Property is roughly proportional to the need for such land and Owner hereby waives any claim therefor that it may have. Owner 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 Owner 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.

15. **Exactions/Infrastructure Costs.** Owner 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 Owner, regarding Owner's rights under Texas and federal law. Owner 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. Owner 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, Owner 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.

16. **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.

17. **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.

18. **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. Owner warrants and represents

that the individual executing this Agreement on behalf of Owner has full authority to execute this Agreement and bind Owner to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

**19. 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.

**20. 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.

**21. Notification of Sale or Transfer; Assignment of Agreement.** Owner 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 Owner under this Agreement, to any person or entity (an "Assignee") that is or will become an owner of any portion of the Property or that is an entity that is controlled by or under common control with Owner. Each assignment shall be in writing executed by Owner 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 owner 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 Owner shall release Owner from any liability that resulted from an act or omission by Owner that occurred prior to the effective date of the assignment. Owner shall maintain true and correct copies of all assignments made by Owner to Assignees, including a copy of each executed assignment and the Assignee's Notice information.

**22. 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.

**23. 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.

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

25. **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.

26. **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 owner of all or any part of the Property; however, the failure to provide such copies shall not affect the validity of any amendment.

27. **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.

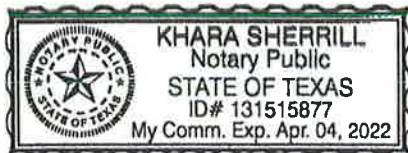
**TOWN:**


**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 27<sup>th</sup> day of May, 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: 4-4-2022

OWNER:

METTEN REAL ESTATE, L.P.

By: Metten Properties, Inc., a Texas Corporation, General Partner

By: C.T. Metten  
Name: Christian T. Metten  
Title: Managing Partner

STATE OF TEXAS        )  
                                  Dallas        )  
COUNTY OF ~~COLLIN~~        )

This instrument was acknowledged before me on the 20 day of May, 2021, by Christian Metten in his capacity as Managing Partner of Metten Properties, 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 Owner.

Holly Robertson  
Notary Public, State of Texas  
My Commission Expires: 7/10/21



**EXHIBIT A**

**(Property Description)**





**EXHIBIT A-1**

**(Eastern Portion of Tract 2 of the Property)**

## EXHIBIT B

### ARCHITECTURAL STANDARDS AND BUILDING MATERIALS

- A. All exterior facades for a main building or structure, excluding glass windows and doors, shall be constructed of one hundred (100%) percent masonry. Masonry Construction constitutes clay fired brick, natural and manufactured stone, granite, and marble as exterior construction materials for all structures. Other permitted exterior construction materials for big box, institutional, and industrial structures are architectural concrete block, tilt wall concrete panels, sealed and painted split faced concrete block, and high impact exterior insulation and finish systems (EIFS). Stucco and High impact EIFS is only permitted when installed a minimum of nine feet (9') above grade at the base of the wall on which it is installed.
- B. Secondary materials used on the façade of a building are those that comprise a total of ten percent (10%) or less of an elevation area. Permitted secondary materials are all primary materials, aluminum or other metal, cedar or similar quality decorative wood, stucco and high impact exterior insulation and finish systems (EIFS).
- C. No single material shall exceed eighty percent (80%) of an elevation area. A minimum of twenty percent (20%) of the front façade and all facades facing public right-of-way shall be natural or manufactured stone. A minimum of ten percent (10%) of all other facades shall be natural or manufactured stone.
- D. All buildings with a footprint of less than ten thousand (10,000) square feet and located 100 feet or less from a residential zoning district shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof. All sloped roofs shall have a six (6) in twelve (12) inch minimum slope. All buildings with a footprint of less than ten thousand (10,000) square feet and located 100 feet or greater from a residential zoning district shall incorporate a pitched, gabled, mansard, hipped, or otherwise sloped roof, or a flat roof with an articulated parapet wall or cornice. Wood shingles are prohibited. Composition shingles are allowed provided they have architectural detail and a minimum 30-year life.
- E. All buildings with a footprint of ten thousand (10,000) square feet and greater shall incorporate sloped roof elements including, but not limited to pitched roofs on towers or arcades, sloped awnings, sloped parapets. Flat roofs are permitted with an articulated parapet wall or cornice in place of the required sloped roof elements. The sloped elements shall be provided along a minimum of sixty percent (60%) of each wall's length. All sloped roof elements shall have a six (6) in twelve (12) inch minimum slope. Wood shingles are prohibited. Composition shingles are allowed provided they have architectural detail and a minimum 30-year life.
- F. All buildings shall be designed to incorporate a form of architectural articulation every thirty feet (30'), both horizontally along each wall's length and vertically along each wall's height. Acceptable articulation may include the following:
- Canopies, awnings, or porticos;
  - Recesses/projections;
  - Arcades;
  - Arches;

- Display windows, including a minimum sill height of thirty inches (30”);
  - Architectural details (such as tile work and moldings) integrated into the building facade;
  - Articulated ground floor levels or base;
  - Articulated cornice line;
  - Integrated planters or wing walls that incorporate landscape and sitting areas;
  - Offsets, reveals or projecting rib used to express architectural or structural bays; or
  - Varied roof heights.
- G. All buildings shall be designed to incorporate a form of window articulation. Acceptable articulation may include the following:
- Detailed/patterned mullions
  - Glass depth from wall min. 8”
  - Projected awnings/sunshades
  - Water table in lieu of floor to ceiling glass
  - Articulated lintel (i.e. soldier course in brick or material change EIFS or cast stone with min. ½” projection)
  - Articulated sill (i.e. soldier course in brick or material change EIFS or cast stone with min. ½” projection)
  - Cast stone surrounds on entire window
- H. All buildings constructed primarily of brick shall incorporate a form of brick patterning. Acceptable patterning may include those represented below, or similar subject to approval by the Director of Development Services:
- I. All buildings shall be architecturally finished on all four (4) sides with same materials, detailing, and features except the rear if two (2) rows of trees are planted on the perimeter behind the building. In this case, the architectural finish must match the remainder of the building in color only. A double row of trees on offset fifty-foot (50’) centers in a fifteen-foot (15’) landscape edge, where fifty percent (50%) of the trees are canopy evergreen trees. This is for facades that are not visible from public streets and apply to anchor buildings and attached in line spaces only. This provision does not apply to “out” buildings or pad sites.
- J. Windows shall have a maximum exterior visible reflectivity of ten percent (10%). The intent of this provision is to prevent the safety hazard of light reflecting from the windows on to adjacent roadways.
- K. All retail/commercial buildings with facades greater than two hundred feet (200’) in length shall incorporate wall plane projections or recesses that are at least six feet (6’) deep. Projections/recesses must be at least twenty-five percent (25%) of the length of the facade. No uninterrupted length of facade may exceed one hundred feet (100’) in length. This requirement does not apply to building developed and occupied entirely for office uses.
- L. All buildings within a common development shall have similar architectural styles, materials, and colors.
- M. All primary and secondary exterior building materials (exclusive of glass) shall be of natural texture and shall be neutrals, creams, or other similar, non-reflective earth tone

colors. Bright, reflective, pure tone primary or secondary colors, such as red, orange, yellow, blue, violet, or green are not permitted.

- N. Corporate identities that conflict with the building design criteria shall be reviewed on a case-by-case basis and approved by the Director of Development Services or his/her designee.
- O. Exposed conduit, ladders, utility boxes, and drain spouts shall be painted to match the color of the building or an accent color. Natural metal finishes (patina) are an acceptable alternative to paint.



Filed and Recorded  
Official Public Records  
Stacey Kemp, County Clerk  
Collin County, TEXAS  
06/01/2021 12:48:36 PM  
\$74.00 NPRECELLA  
20210601001099590

A handwritten signature in cursive script that reads "Stacey Kemp".