

FIRST AMENDED DEVELOPMENT AGREEMENT

THIS FIRST AMENDED DEVELOPMENT AGREEMENT (“First Amended Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Alpha3 Prosper RI LLC, a Texas limited liability company, 1385 Prosper LLC, a Texas limited liability company, Westside Prosper LLC, a Texas limited liability company, SSSS Holdings LLC, a Texas limited liability company (Alpha3 Prosper RI, 1385 Prosper, Westside Prosper and SSSS Holdings, collectively, are “Owner”) (the Town and Owner are each sometimes referred to individually as a “Party” and collectively as 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 property in the Town known as WestSide (“WestSide”), the zoning for which development was approved by the Town on or about December 11, 2018, in Ordinance No. 18-108, as amended by Ordinance No. 2022-20 and Ordinance No. 2023-26, such development also known as Planned Development 94 (“PD-94”); and

WHEREAS, a legal description of the property for WestSide is more particularly described in Exhibit A, attached hereto and incorporated by reference (the “Property”); and

WHEREAS, on or about February 25, 2020, a Development Agreement (“2020 Development Agreement”) was executed relative to the phasing of development as well as the adoption of architectural standards and building materials for structures constructed on the Property; and

WHEREAS, on or about June 28, 2022, a Development Agreement (“2022 Development Agreement”) was executed relative to the prohibition of certain business establishments on Lots 15 and 16 of the Property; and

WHEREAS, this First Amended Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in PD-94, as amended, to recognize Owner’s reasonable investment-backed expectations in PD-94, and to clarify issues related to the development, as more fully described herein; and

WHEREAS, subject to the terms of this First Amended Agreement, Owner agrees and acknowledges that any structures on the Property will be constructed in accordance with the provisions, standards and notes reflected in this First Amended 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 First Amended Agreement agree as follows:

1. **Architectural Standards and Building Materials.** With the exception those architectural standards and building materials approved for Lots 15 and 16, as reflected in the 2020 Development Agreement, any structure built on the Property following the Effective Date shall comply with the applicable requirements contained in Exhibit B, "Architectural Standards, Building Materials and Elevations," attached hereto and incorporated by reference, including without limitation any accessory gasoline pumps, any landscaping on Lot 1R, and any solid fencing along the north side of the Property. If and to the extent of any of the requirements in Exhibit B are amended by an amendment to PD-94, the amended requirements in PD-94 shall control with respect to any structure built on the Property following the effective date of such amendment to PD-94.

2. **Certain Business Establishments Prohibited.** With the exception of Lots 15 and 16, which are subject to applicable provisions of the 2022 Development Agreement, 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, as defined in Texas Health and Safety Code § 481.002(17), as amended; (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; however, subpart (8) of the Paragraph shall not apply to sales, displays or other activities by third parties in connection with a Costco Wholesale membership warehouse, such as Christmas trees or similar short-term outdoor sales. Nothing in this First Amended 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 of the provisions of this First Amended 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 First Amended 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 First Amended Agreement is expressly referenced therein.

4. **Applicability of Town Ordinances.** The Property shall be developed, and all structures constructed on the Property shall be constructed, in accordance with all applicable Town ordinances and building/construction codes.

5. **Default.** No Party shall be in default under this First Amended 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

If to SSSS Holdings: SSSS Holdings LLC
8668 John Hickman Parkway, Suite 907
Frisco, Texas 75034
Attention: Shiva Kondru

8. 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 First Amended 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).

9. Entire Agreement. This First Amended 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 First Amended Agreement shall be construed as a whole and not strictly for or against any Party.

10. Savings/Severability. In the event any provision of this First Amended Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the First Amended 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.

11. Binding Agreement. A telecopied facsimile of a duly executed counterpart of this First Amended 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.

12. Authority to Execute. This First Amended Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. The Town warrants and represents that the individual executing this First Amended Agreement on behalf of the Town has full authority to execute this First Amended Agreement and bind the Town to the same. Owner warrants and represents that any individual executing this First Amended Agreement on behalf of Owner has full authority to execute this First Amended Agreement and bind Owner to the same. The Town warrants and represents to Owner that the Town Council has approved and authorized the Town Manager of the Town to execute this First Amended Agreement on behalf of the Town.

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

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

15. Notification of Sale or Transfer; Assignment of First Amended Agreement. Owner 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. Owner has the right (from time to time without the consent of the Town, but upon written notice to the Town) to assign this First Amended Agreement, in whole or in part, and including any obligation, right, title, or interest of Owner under this First Amended 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 First Amended Agreement. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Whether or not Owner assigns this First Amended Agreement to a subsequent owner of the Property or any portion thereof (a "Subsequent Owner"), each Subsequent Owner shall be bound by the provisions of this First Amended Agreement with respect to the portion of the Property owned by such Subsequent Owner. Upon transfer of the Property or any portion thereof to a Subsequent Owner (whether such transfer is made by Owner or a Subsequent Owner), the transferring party will be released from any rights and obligations under this First Amended Agreement as to the Property that is the subject of such transfer, effective upon recordation of the deed to such portion of the Property in the Real Property Records of the County in which the applicable portion of the Property is located. No assignment or transfer by Owner or any Subsequent Owner shall release the transferor from any liability that resulted from an act or omission by the transferor that occurred prior to the effective date of the transfer. 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. In no event shall Owner be responsible for the default, acts or omissions of any Assignee, Subsequent Owner or other third party.

16. 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 First Amended Agreement.

17. Effect of Recitals. The recitals contained in this First Amended Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this First Amended 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 First Amended Agreement. In the event it becomes necessary to interpret any provision of this First Amended 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 First Amended Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this First Amended Agreement.

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

19. Counterparts. This First Amended 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.

20. Exactions/Infrastructure Costs. Owner has been represented by legal counsel in the negotiation of this First Amended Agreement and been advised or has had the opportunity to have legal counsel review this First Amended 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 First Amended Agreement.

21. Rough Proportionality. Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to roadway or infrastructure requirements imposed by this First Amended Agreement. 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 projected impact of the terms of this First Amended Agreement, with respect to roadway or infrastructure requirements imposed by this First Amended Agreement.

22. Waiver of Texas Government Code § 3000.001 et seq. With respect to any structures or improvements constructed on the Property pursuant to this First Amended Agreement, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

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

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

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

26. Miscellaneous Drafting Provisions. This First Amended Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this First Amended 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, Town of Prosper

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: _____

OWNER:

ALPHA3 PROSPER RI LLC, a Texas limited liability company

By: _____
Perwez Molubhoy, Manager

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ___ day of _____, 2022, by Perwez Molubhoy, in his capacity as Manager of Alpha3 Prosper RI, 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 Owner.

Notary Public, State of Texas
My Commission Expires: _____

OWNER:

WESTSIDE PROSPER LLC,
a Texas limited liability company

By: _____
Printed Name: _____
Title: _____

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2023, by _____, in his capacity as _____ of Westside Prosper 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 Owner.

Notary Public, State of Texas
My Commission Expires: _____

OWNER:

1385 PROSPER LLC,
a Texas limited liability company

By: _____
Printed Name: _____
Title: _____

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2023, by _____, in his capacity as _____ of 1385 Prosper 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 Owner.

Notary Public, State of Texas
My Commission Expires: _____

OWNER:

SSSS HOLDINGS LLC,
a Texas limited liability company

By: _____
Printed Name: _____
Title: _____

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me on the ____ day of _____, 2023, by _____, in his capacity as _____ of SSSS 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 Owner.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A
(Property Description)

EXHIBIT B
(Architectural Standards, Building Materials and Elevations)