

**FIRST AMENDMENT TO ROADWAY CONSTRUCTION  
REIMBURSEMENT AGREEMENT**

**THIS FIRST AMENDMENT TO ROADWAY CONSTRUCTION REIMBURSEMENT AGREEMENT** (“First Amendment”) is made and entered into by and between the Town of Prosper, Texas (“Prosper” or the “Town”), and MSW Prosper 380 II, LP, a Texas limited partnership (“Developer”), collectively referred to as the “Parties.”

**WITNESSETH:**

**WHEREAS**, previously the Town and Developer entered into an Agreement entitled “MSW Prosper 380 II, L.P., Roadway Construction Reimbursement Agreement” (“Agreement”) relative to the construction by Developer of a portion of Mahard Parkway and a portion of Prairie Road (such portions are collectively referred to as “the Roadways”), as more fully described in the Agreement; and

**WHEREAS**, pursuant to Paragraph 1 of the Agreement, the Roadways and related improvements, as described in Exhibit A to the Agreement, were required to have been accepted by the Town within two (2) years of the date of execution of this Agreement; and

**WHEREAS**, the last date of execution of the Agreement by a party was April 12, 2022; and

**WHEREAS**, Developer as of April 12, 2024, had not completed its construction obligations under the Agreement and therefore, the Town had not accepted the Roadways by such date; and

**WHEREAS**, Developer has requested an extension of time to complete its construction obligations under the Agreement; and

**WHEREAS**, the Parties have agreed to the following terms and conditions through this First Amendment.

**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 agree as follows:

**1. Substantial Completion of the Roadways and Penalty for Failure to Substantially Complete the Roadways.** Beginning on April 13, 2024, Developer agrees and acknowledges that it shall be liable for a late penalty of One Thousand Dollars (\$1,000.00) per day until the Roadways are substantially complete. For purposes of this First Amendment, “substantially complete” shall mean the date on which the Roadways have progressed to the point where, in the reasonable opinion of the Town Engineer, the construction of the Roadways is sufficiently complete, in accordance with all Town specifications and requirements, so that the Roadways may be utilized by and are open

for traffic thereon. Town determination of substantial completion for the purposes of this Section 1 shall not be unreasonably withheld or delayed. Any late penalty assessed Developer shall be deducted from any eligible reimbursements to Developer from the funds of the Town's Tax Increment Reinvestment Zone No. 2.

**2. Final Acceptance by the Town of All Improvements and Penalty for Developer's Failure to Timely Complete All Improvements.**

A. The Parties agree that all Improvements referenced in the Agreement (median landscaping and irrigation and streetlights, except where streetlights are not authorized by Atmos) shall be finally accepted by the Town on or before August 30, 2024. For purposes of this First Amendment, "final acceptance" shall mean the date on which the Town formally accepts all Improvements referenced in the Agreement. Final acceptance by the Town shall not be unreasonably withheld or delayed.

B. Beginning on August 31, 2024, Developer agrees and acknowledges that it shall be liable for a late penalty of One Thousand Dollars (\$1,000.00) per day until all Improvements referenced in the Agreement (median landscaping and irrigation and streetlights, except where streetlights are not authorized by Atmos) are finally accepted by the Town. Any late penalty assessed Developer shall be deducted from any eligible reimbursements to Developer from the funds of the Town's Tax Increment Reinvestment Zone No. 2.

**3. Force Majeure.** Notwithstanding anything herein to the contrary, Developer shall not be liable for any failure or delay in fulfilling or performing its obligations herein if Developer's completion of the Roadways or Improvements is delayed due to any to the following force majeure events ("Force Majeure Events"): (a) acts of God; (b) flood, fire, earthquake, tornados, weather events, or other environmental disasters; (c) war, invasion, hostilities, terrorist threats or acts, riot, or other civil unrest; (d) government order, law, or action; (e) national or regional emergency; or (f) delays caused by the Town. In the event of a Force Majeure Event, within two (2) business days of the start of any Force Majeure Event, Developer shall provide written notice to the Town Engineer stating the period of time the Force Majeure Event commenced and how long such event is expected to continue. Each day that such Force Majeure event continues must be timely reported to the Town Engineer. The failure of Developer to timely report such Force Majeure event to the Town Engineer shall result in such time periods not being included as a Force Majeure Event. Developer shall use diligent efforts to end the delay and ensure the effects of such Force Majeure Event are minimized. Developer shall resume performance of its obligations as soon as reasonably practicable after the removal of the Force Majeure Event. During any such Force Majeure Event, the imposition of any late penalties set forth herein shall be suspended and not resumed until the removal of the Force Majeure Event.

**4. Effect of the Agreement.** Except to the extent referenced herein, all other terms and conditions contained in the Agreement shall remain in full force and effect and apply to this First Amendment unless specifically otherwise provided herein.

**IN WITNESS WHEREOF**, the parties hereto have caused this document to be executed as of the date listed below.

**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 \_\_\_\_\_, 2024, by Mario Canizares, Town Manager for the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

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

**MSW PROSPER 380 II, LP, a Texas limited partnership**

By: 

Name: Adam Miller

Title: Vice President

**STATE OF TEXAS** )

)

**COUNTY OF DENTON** )

Before me, the undersigned authority, on this day personally appeared Adam Miller, Vice of President of MSW Prosper 380 II, LP, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capacity therein stated, on behalf of such entity.

Given under my hand and seal of office this 25<sup>th</sup> day of April, 2024.





Notary public in and for the State of Texas

My commission expires: 4/1/2027