

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and O E 6th 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/multifamily building on an approximate 0.380-acre tract of land generally located on the northeast corner of N. Coleman Street and E. Sixth 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 _____, 2024, when the Town Council approved a Planned Development consisting of multifamily, 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. Building Materials and Site Development Standards.

A. Building Materials. For any structure built on the Property following the Effective Date, it shall comply with the elevations and building materials reflected on the Façade Plan, attached hereto as Exhibit B and incorporated by reference. The use of masonry (clay fired brick, natural and manufactured stone, granite, marble) shall be at least 90 percent (90%) of the exterior surface of any structure constructed on the Property per elevation. The use of stucco shall be limited to no more than ten percent (10%) of the exterior surface of any structure constructed on the Property per elevation.

B. Fencing. The fencing along the east side of the Property, from the point where the south side of the alley intersects with east property line, southward along the east property line to the point where the east-west line of the southernmost parking space would intersect with the east property line if the east-west line of the parking space were extended eastward across the landscape buffer, as reflected on the Site Plan, attached hereto as Exhibit C, shall be board-on-board fencing. From that point southward along the east property line, only wrought iron fencing shall be utilized.

C. Parking areas. Parking spaces along the east property line, as reflected on the Site Plan, shall be designated for office and retail parking only during business hours. The multifamily parking component shall be designed as parking only with no storage permitted in said multifamily parking area, and such requirement shall be delineated in the property restrictions and covenants.

D. Coleman Street Façade. The Coleman Street façade shall be constructed in substantial compliance with the Coleman Street Façade Plan, attached hereto as Exhibit D and incorporated by reference.

E. Coleman Street Façade Signage. Any signage on the Property shall be limited to the Coleman Street side of the Property, and such signage shall be consistent with the Town sign ordinance.

F. Paving of Alleyway. Prior to the commencement of construction for any part of the Property, Developer shall pave in concrete that portion of the alleyway reflected on the Site Plan.

G. No Waiver or Amendment of Town Zoning Regulations. 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 8 of this Agreement, shall not be subject to the mediation requirement contained in Paragraph 17 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: Mosunmade Adepoju
 O E 6th LLC
 130 N. Preston Road
 Prosper, Texas 75078

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 _____, 2024, 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:

O E 6TH LLC, a Texas limited liability company

By: _____

Name: Mosunmade Adepoju

Title: _____

STATE OF TEXAS)

)

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2024, by Mosunmade Adepoju in his capacity as _____ of O E 6th 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: _____

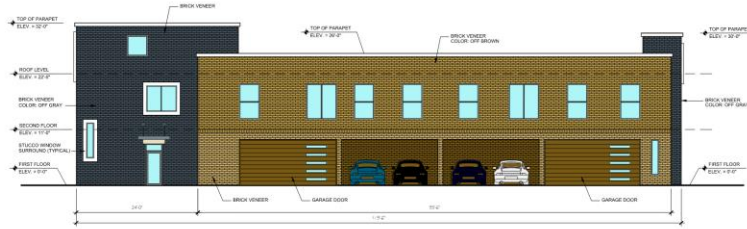
EXHIBIT A

(Property Legal Description)

BEING Lot 1 in Block 1 of Prosper Central Addition, an Addition to the Town of Prosper, Collin County, Texas, according to the Map or Plat thereof Recorded in Volume C, Page 643, of the Map Records of Collin County, Texas

EXHIBIT B

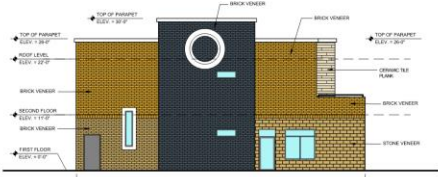
(Building Materials/Façade Plan)



1 REAR (EAST) ELEVATION
SCALE: 1/8"=1'-0"



2 FRONT (WEST) COLEMAN ST. ELEVATION
SCALE: 1/8"=1'-0"



3 LEFT (NORTH) ELEVATION
SCALE: 1/8"=1'-0"



4 RIGHT (SOUTH) ELEVATION
SCALE: 1/8"=1'-0"

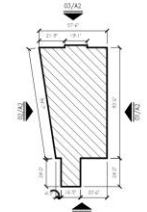
MATERIALS LEGEND

	BRICK VENEER
	STONE VENEER
	STUCCO

- NOTES**
1. THESE FACADE PLANS ARE CONCEPTUAL. ALL BUILDING PLANS REQUIRE REVISIONS AND APPROVAL FROM THE BUILDING DEPARTMENT.
 2. ALL MECHANICAL EQUIPMENT SHALL BE LOCATED AND APPROVED BY THE BUILDING DEPARTMENT. MECHANICAL EQUIPMENT SHALL BE LOCATED BY A PARTY OTHER THAN THE ARCHITECT. MECHANICAL EQUIPMENT SHALL BE SPECIFIED BY THE OWNER OR OWNER'S AGENT.
 3. MECHANICAL EQUIPMENT SHALL BE LOCATED AND APPROVED BY THE BUILDING DEPARTMENT.
 4. ALL SIGNAGE AREAS AND LOCATIONS AND SIGNAGE REQUIREMENTS SHALL BE APPROVED BY THE BUILDING DEPARTMENT.
 5. MECHANICAL EQUIPMENT SHALL BE LOCATED AND APPROVED BY THE BUILDING DEPARTMENT.
 6. ANY DEVIATION FROM THE APPROVED FACADE PLANS REQUIRES PRE-APPROVAL BY THE OWNER OF PROPERTY.

BUILDING 1 - MATERIALS CALCULATION

DESCRIPTION	ELEVATION			
	NORTH	SOUTH	EAST	WEST
TOTAL SURFACE AREA	1438 SF	1513 SF	2084 SF	2507 SF
MATERIALS SQUARE FOOTAGE & PERCENTAGE				
BRICK	1100 SF = 76%	1100 SF = 73%	1100 SF = 53%	1100 SF = 44%
STONE	110 SF = 8%	110 SF = 7%	110 SF = 5%	110 SF = 4%
STUCCO	228 SF = 16%	228 SF = 15%	228 SF = 11%	228 SF = 9%
GLAZING AREA	143 SF = 10%	143 SF = 9%	143 SF = 7%	143 SF = 6%



5 KEY PLAN
SCALE: N.T.S.

PRELIMINARY FACADE PLAN
CITY PROJECT NO.
NORTH COLEMAN AND EAST 8TH STREET
BLOCK 1, LOT 1, PROSPER CENTRAL ADDITION
CITY OF PROSPER, COLLIN COUNTY, TEXAS

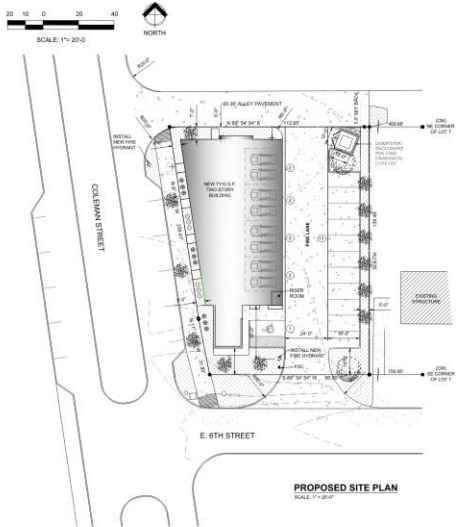
OWNER
MAGNAMA DEVELOPMENT
8 E 8TH, LLC, 130 N. PRESTON ROAD, PROSPER,
TEXAS 75076, PH: (512) 818-8111
EMAIL: mag@magnumdev.com

APPLICANT
DAVID WILSON
R.T. CHANG ARCHITECTS, INC.
5834 WENDLER LANE, DALLAS, TEXAS 75252
PH: (972) 900-6000
EMAIL: info@rtchang.com

ARCHITECT
R.T. CHANG ARCHITECTS, INC.
5834 WENDLER LANE, DALLAS, TEXAS 75252
PH: (972) 900-6000
EMAIL: rchang@gmail.com

EXHIBIT C

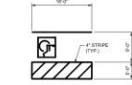
(Site Plan)



ZONING
SINGLE FAMILY RESIDENTIAL (SFR-1S)
PLANNED DEVELOPMENT (COMM/TRANS/URBANCE)

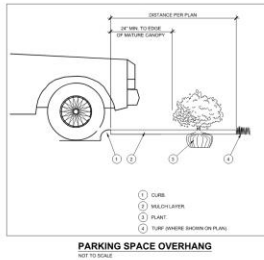
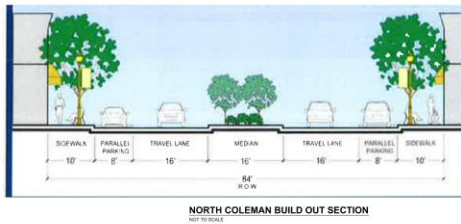
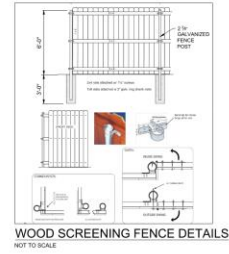
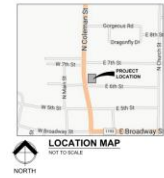
BUILDING
TOTAL NEW BUILDING AREA 1110 SQ FT
PROPOSED USE: RESIDENTIAL
PROPOSED HEIGHT: 30 FT
PROPOSED FOOTPRINT: 100' x 110'

PARKING
RESIDENTIAL PARKING: 24 SPACES + 3 SPACES
RESIDENTIAL PARKING: 8 SPACES



LEGEND

- PA: SIDE FREEWAY
- DM: GAS METER
- GW: GAS METER
- MF: METAL FENCE
- LP: LIGHT POLE
- PP: POWER POLE
- SDM: SANITARY SEWER MANHOLE
- TCS: TRAFFIC SIGN
- SS: SANITARY SEWER
- CS: CLEAN OUT
- WM: WATER METER
- GRASS
- CONCRETE
- TRAFFIC DIRECTION
- PAYMENT SLOPE
- OVERHEAD POWER LINE
- PROPERTY LINE
- CHARLIE FENCE
- METAL PRIVACY FENCE
- WOODEN FENCE
- GAS LINE
- EXISTING TREE
- NEW SHADE TREE
- NEW ORNAMENTAL TREE
- NEW SHRUB



NOTE
THIS DOCUMENT HAS BEEN PREPARED ON PART BASED UPON BOUNDARY INFORMATION OBTAINED FROM THE SURVEYOR RECORDS. THE APPLICABLE BOUNDARY INFORMATION HAS BEEN CHECKED FOR ACCURACY AND CORRECTED WHERE NECESSARY BY CROSS CHECKING AND OTHER DATA SOURCES PROVIDED BY OTHERS AND THE ENGINEER HAS NOT CONDUCTED ANY FIELD SURVEYING. THIS DOCUMENT IS PROVIDED AS INFORMATION FOR THE ARCHITECT'S USE. THE ARCHITECT HAS BEEN ADVISED BY THE ENGINEER THAT THE INFORMATION PROVIDED IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE USED FOR CONSTRUCTION OR FOR ANY OTHER PURPOSES. YOU ARE ADVISED TO OBTAIN ADDITIONAL FIELD VERIFICATION OF THE INFORMATION ACCURACY BEFORE APPLYING IT FOR ANY PURPOSES.



EXHIBIT D: CONCEPTUAL PLAN	
PROPER CENTRAL ADDITION BLOCK 1 LOT 1	
ZONE: 25-0209	
PROPOSED SITE PLAN	
EAST 6TH STREET MASS USE FACILITY	
WOODBURN E 6TH STREET ADDRESS: TRUMB 10016	
THOMAS DESIGN TECHNOLOGIES	
ENGINEER: THOMAS DESIGN TECHNOLOGIES	
PROJECT MANAGER: THOMAS DESIGN TECHNOLOGIES	
DATE: 02/06/24	
BY: THOMAS DESIGN TECHNOLOGIES	
DATE: 02/06/24	23-036
SCALE: AS SHOWN	C-2
REV: NONE	DATE: 02/06/24
REV: NONE	DATE: 02/06/24
REV: NONE	DATE: 02/06/24

EXHIBIT D

(Coleman Street Façade Plan)



2 **FRONT (WEST) COLEMAN ST. ELEVATION**
A2 SCALE: 1/8"=1'-0"