

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“**Town**”), and 310 Prosper, L.P., and 55 Prosper, L.P. (310 Prosper, L.P., and 55 Prosper, L.P., are collectively referred to as “**Owners**”), with the Town and Owners collectively referred to as “Parties,” to be effective on the date last executed by any of the Parties (the “**Effective Date**”).

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, 310 Prosper, L.P., owns approximately three and one-half (3.5) acres of property generally located north of U.S. Highway 380 and west of Custer Road in the Town, and the Parties have agreed that said Property is to be conveyed to the Town, said Property more particularly described and depicted in **Exhibit A**, attached hereto and incorporated by reference (the “**Property**”); and

WHEREAS, Owners agree to additionally dedicate to the Town a twenty foot (20’) wide permanent hike and bike trail easement to extend to and from the Property around the Soil Conservation Service Site No. 1-B reservoir on properties owned by Owners, and said easement is more particularly described and depicted in **Exhibit B**, attached hereto and incorporated by reference (the “**Easement**”); and

WHEREAS, in exchange for the dedication of the Property and the Easement to the Town at no cost to the Town, the Parties agree Owners shall receive a credit to apply toward the Town’s park dedication requirements; and

WHEREAS, the Parties acknowledge and agree that the value of the Property is One Million Five Hundred Twenty-Four Thousand Six Hundred Dollars and 00/100 (\$1,524,600.00) and the agreed value of the Easement is Two Hundred Thirty Thousand Dollars and 00/100 (\$230,000.00); and

WHEREAS, the resulting park dedication credit is 17.54 acres, which, based on the rate of one acre of land per thirty-five (35) residential units, results in a credit for six hundred fourteen (614) residential units.

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. Conveyance of Property and Easement; Park Dedication Fee Credit.
Upon the Effective Date of this Agreement by the Parties, Owners shall convey the Property by deed to the Town in fee simple, with the special warranty deed attached hereto as **Exhibit C** and incorporated by reference, and further, Owners shall convey the Easement to the Town with the Easement document attached hereto as **Exhibit B**. As of the date of the conveyance of the Property and the Easement, the Town shall provide

Owners with a credit of 17.54 acres to apply toward the park dedication requirements (the "**Park Dedication Credit**"), contained in Section 10.03.150, "Park Land Designs, Dedications, and Fees," of the Town's Code of Ordinances, as amended (the "**Park Dedication Requirements**"). The Park Dedication Credit shall be allocated to Owners as follows: 16.54 acres to 310 Prosper, L.P., and 1.00 acre to 55 Prosper, L.P. The Park Dedication Credit is only assignable to and may only be applied to the Park Dedication Requirements of other entities or properties that are physically located within the area of the Town bounded on the north by First Street, on the south by U.S. Highway 380, on the east by Custer Road, and on the west by Coit Road (the "**Park Dedication Credit Assignment Area**"), which is generally depicted on **Exhibit D**, attached hereto and incorporated by reference. The Town agrees to cooperate with any reasonable request by Owners to provide documentation to facilitate the assignment of all or any portion of the Park Dedication Credit to entities or properties located within the Park Dedication Credit Assignment Area.

2. **Capping of Park Dedication Requirements.** Park dedication requirements for all properties owned as of the effective date of this Agreement by 310 Prosper, L.P., 104 Prosper, L.P. or 55 Prosper, L.P., located in the Park Dedication Credit Assignment Area shall be fixed at the rate of one (1) acre of land per thirty-five (35) residential units regardless of any future amendments to the Town's Park Dedication Requirements (the "Park Dedication Cap"). The properties that are subject to the Park Dedication Cap are generally depicted in **Exhibit E**, attached hereto and incorporated by reference (the "**Park Dedication Cap Properties**").

3. **Use of the Property.** The Property will be used by the Town for park and recreation purposes. This provision in no way limits the Town's right to utilize the Property for auxiliary purposes including, but not limited to, recreation facilities, food services/trucks, event/entertainment venues, bathrooms, and similar purposes.

4. **Park and Hike / Bike Trail Concept Plan.** Owner shall prepare, at its sole expense, a Park and Hike/Bike Trail concept plan on behalf of the Town that generally shows the following park uses: open space, trail head (including parking), restrooms, covered outdoor pavilion, and a hike/bike trail with at least two (2) bench seating locations within the Easement described above (the "**Park Concept Plan**"). The Park Concept Plan shall be developed with input from the Town and shall be delivered to the Town in both hard copy and an editable digital format no later than ten (10) business days after the Effective Date of this Agreement.

5. **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 Owners and their 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.

6. Default. No Party shall be in default under this Agreement until written 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 thirty (30) days to cure the alleged failure; provide that if such default is not curable within such 30-day period, 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 any Party is in default under this Agreement, any 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: 250 W. First Street
P.O. Box 307
Prosper, Texas 75078
Attention: Town Manager

If to 310 Prosper, L.P.: 5850 Granite Parkway, Suite 100
Plano, Texas 75024
Attention: Jim Williams
Douglas C. Mousel

If to 55 Prosper, L.P.: 3794-C Highway 67 West
Glen Rose, Texas 76043
Attention: B.F. Hill

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. 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.

12. Binding Agreement. A telecopied facsimile or pdf of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein.

13. Authority to Execute. This 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 Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. Owners warrant and represent that the individual executing this Agreement on behalf of each Owner has full authority to execute this Agreement and bind each Owner to the same. The Town Council hereby authorizes the Mayor of the Town to execute this Agreement on behalf of the Town.

14. 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 non-binding mediation.

15. Notification of Sale or Transfer; Assignment of Agreement. Owners have 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 any 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 said 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 any Owner shall release said Owner from any liability that resulted from an act or omission by said Owner that occurred prior to the effective date of the assignment. Each Owner shall maintain true and correct copies of all assignments made by said Owner to any Assignee, including a copy of each executed assignment and the Assignee's Notice information.

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 Agreement.

17. **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.

18. **Consideration.** This 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 Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile or pdf signature will also be deemed to constitute an original.

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

21. **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.

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

23. **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.

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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: Ron K. Patterson

Title: Interim Town Manager

STATE OF TEXAS)

)

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2022, by Ron K. Patterson, Interim Town Manager, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas

My Commission Expires: _____

OWNERS:

310 PROSPER, L.P., a Texas limited partnership

By: Texas Land Management, L.L.C., a Texas limited liability company, its General Partner

By: _____
Jim Williams, Jr., Chairman

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, 2022, by Jim Williams, Jr., Chairman of Texas Land Management, L.L.C., a Texas limited liability company, General Partner of 310 Prosper, L.P., a Texas limited partnership, for and on behalf of said limited partnership.

Notary Public, State of Texas
My Commission Expires: _____

55 PROSPER, L.P., a Texas limited partnership

By: One Prosper Holdings, L.L.C., a Texas limited liability company, its General Partner

By: _____
B.F. Hill, President

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, 2022, by B.F. Hill, President of One Prosper Holdings, L.L.C., a Texas limited liability company, General Partner of 55 Prosper, L.P., a Texas limited partnership, for and on behalf of said limited partnership.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A
(Property Description)

PLACEHOLDER ONLY



EXHIBIT B
(Easement Document)

AFTER RECORDING, RETURN TO:

**TOWN OF PROSPER
P.O. Box 307
Prosper, Texas 75078**

HIKE AND BIKE TRAIL EASEMENT

**STATE OF TEXAS)
)
COUNTY OF COLLIN)**

KNOW ALL MEN BY THESE PRESENTS:

That **310 PROSPER, L.P., and 55 PROSPER, L.P.**, collectively hereinafter referred to as "Grantor," for and in consideration of the sum of TEN AND NO/100 DOLLARS (\$10.00) and other good and valuable consideration to Grantor in hand paid by the **TOWN OF PROSPER**, a Texas municipal corporation, hereinafter referred to as "Grantee," the receipt and sufficiency of which are hereby acknowledged, does hereby GRANT, GIVE, and CONVEY unto the said Grantee the right to construct, reconstruct, and perpetually maintain public access to and over, and repair hike and bike trail facilities and related incidental improvements (collectively, "Facilities") in, upon, across, and under the following real property:

Being ___ square feet or ___ acres of land and being part of Parcel ___, in the _____ Survey, Abstract No. ___, Collin County, Texas, and being more particularly described in Exhibit A and depicted on Exhibit B, attached hereto and made a part hereof.

And it is further agreed that in consideration of the benefits above set out, Grantee, its agents, employees, workmen and representatives shall have rights of ingress, egress, and regress in, upon, across, and under said premises for the purpose of making improvements on and repairs to the said Facilities or any part thereof.

Grantee further agrees to maintain, at its expense, and keep in force at all times, a policy of comprehensive general public liability insurance, including a contractual liability endorsement, and personal injury liability coverage, through its insurer Texas Municipal League Intergovernmental Risk Pool (the "Insurer"), which shall include coverage against claims for any injury, death, or damage to persons or property occurring on, in, or about the said Facilities with a combined single limit of not less than \$2,000,000 with respect to the Facilities and Grantee's use therein. Grantor shall be provided an Indemnification Under Contract Endorsement (EL217) through its Insurer. Prior to making any entry onto the said Facilities, Grantee shall furnish to Grantor: (a) a certificate of insurance evidencing the foregoing coverages, and providing that such insurance policy may not be cancelled on less than thirty (30) days prior written notice to Grantor; and (b) proof of payment of the insurance premium.

TO HAVE AND TO HOLD unto the Grantee for the purposes herein set forth, Grantor hereby binds Grantor, its heirs, executors, administrators, and assigns, to warrant and forever defend the easement and rights granted herein unto the said Grantee, Grantee's successors, and assigns forever against every person whomsoever lawfully claiming or attempting to claim the same or any part thereof.

WITNESS THE GRANTOR'S HAND effective as of the ____ day of _____, 2022.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

310 PROSPER, L.P., a Texas limited partnership

By: Texas Land Management, L.L.C., a Texas limited liability company, its General Partner

By: _____
Jim Williams, Jr., Chairman

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, 2022, by Jim Williams, Jr., Chairman of Texas Land Management, L.L.C., a Texas limited liability company, General Partner of 310 Prosper, L.P., a Texas limited partnership, for and on behalf of said limited partnership.

Notary Public, State of Texas
My Commission Expires: _____

55 PROSPER, L.P., a Texas limited partnership

By: One Prosper Holdings, L.L.C., a Texas limited liability company, its General Partner

By: _____
B.F. Hill, President

STATE OF TEXAS)
)
COUNTY OF _____)

This instrument was acknowledged before me, the undersigned authority, on the ____ day of _____, 2022, by B.F. Hill, President of One Prosper Holdings, L.L.C., a Texas limited liability company, General Partner of 55 Prosper, L.P., a Texas limited partnership, for and on behalf of said limited partnership.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A to Easement
(Legal Description of Easement)

**EXHIBIT B to Easement
(Depiction of Easement)**

PLACEHOLDER

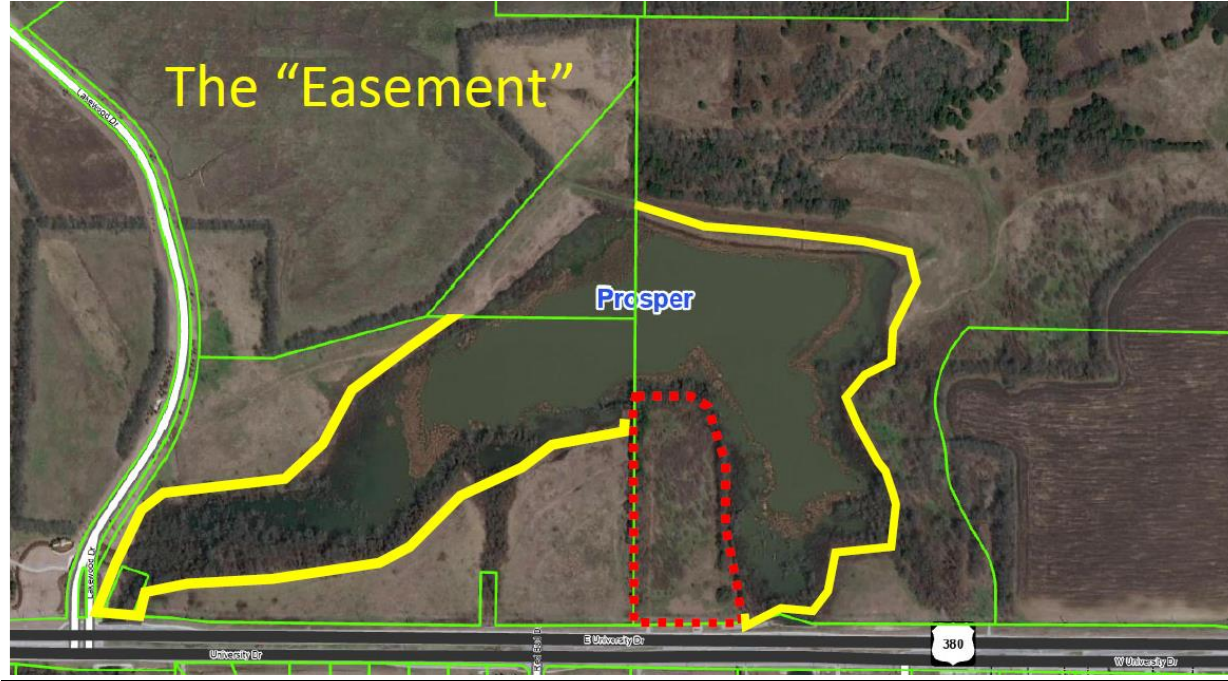


EXHIBIT C
(Special Warranty Deed with attached Exhibits A and B)

AFTER RECORDING RETURN TO:

Republic Title of Texas, Inc.
2626 Howell Street, 10th Floor
Dallas, Texas 75204
Attention: Russell Dickson



NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.

SPECIAL WARRANTY DEED

STATE OF TEXAS §
 § KNOW ALL MEN BY THESE PRESENTS:
COUNTY OF COLLIN §

That 310 PROSPER, L.P., a Texas limited partnership ("**Grantor**"), for and in consideration of the sum of Ten and No/100 Dollars (\$10.00) and other valuable consideration to the undersigned paid by the TOWN OF PROSPER, a Texas home rule municipality ("**Grantee**"), whose address is 250 W. First Street, Prosper, Texas 75078, the receipt of which is hereby acknowledged, has GRANTED, SOLD and CONVEYED, and by these presents does GRANT, SELL and CONVEY unto Grantee, that certain tract of real property located in Collin County, Texas, containing [redacted] acres of land, more or less, as more particularly described on **Exhibit A** attached hereto and incorporated herein by reference, together with all rights of Grantor whatsoever relating to such tract of real property, including (i) all of Grantor's right, title, and interest in and to adjacent streets, alleys, rights-of-way, privileges, easements, interests and appurtenances thereto, and (ii) any improvements situated thereon (hereinafter collectively referred to as the "**Property**").

Notwithstanding anything contained herein to the contrary, Grantor RETAINS and RESERVES from conveyance all oil, gas, and other minerals in, on, and under the Property that are owned by Grantor; provided that Grantor forever expressly releases and waives, on behalf of itself and its successors and assigns, all rights of ingress and egress to enter upon the surface of the Property for purposes of exploring for, developing, drilling, producing, transporting, mining, treating, storing or any other purposes incident to the development or production of the oil, gas and other minerals reserved to Grantor (or owned or held by any other persons or entities owned or controlled, directly or indirectly, by Grantor) in, on, and under the Property. Grantor and its contractors, agents and

affiliated entities shall have the limited right to enter the subsurface of the Property with a subsurface horizontal or directional wellbore in an effort to explore for and develop oil and gas under the Property, provided that any drilling beneath the surface of the Property shall be at a depth of at least 500 feet beneath the surface of the Property and any subsurface production shall be at least 2,000 feet beneath the surface of the Property.

This conveyance is made and accepted subject to the exceptions, items and matters described on **Exhibit B** attached hereto, and incorporated herein by reference, to the extent the same are valid and subsisting and affect title to the property conveyed hereby (collectively, the "**Permitted Exceptions**").

No part of the Property shall be used for any purpose other than for park and recreation purposes. This restrictive covenant in no way limits the Town's right to use the Property for auxiliary uses including, but not limited to, recreation facilities, food services/trucks, event/entertainment venues, bathrooms, and similar purposes. This restrictive covenant may be removed only by a written release agreement executed by Texas Land Management, L.L.C., the general partner of Grantor, or its successors or assigns. This restrictive covenant shall run with the land.

TO HAVE AND TO HOLD the Property, together with all and singular the rights and appurtenances thereto in anywise belonging, unto the said Grantee, its successors and assigns forever; and Grantor does hereby bind itself and its successors and assigns, to WARRANT and FOREVER DEFEND, subject to the Permitted Exceptions, all and singular the Property unto the said Grantee, its successors and assigns, against every person whomsoever lawfully claiming or to claim the same or any part thereof, by, through or under Grantor, but not otherwise.

THE CONVEYANCE OF THE PROPERTY AS PROVIDED FOR HEREIN IS MADE ON AN "AS IS WHERE IS" AND "WITH ALL FAULTS" BASIS, AND GRANTEE EXPRESSLY ACKNOWLEDGES THAT, FOR THE CONSIDERATION RECITED HEREIN, EXCEPT FOR THE SPECIAL WARRANTY OF TITLE SET FORTH HEREIN, GRANTOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION, WARRANTY OR GUARANTY WITH RESPECT TO THE PROPERTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION OR WARRANTY AS TO THE PROPERTY'S CONDITION, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, FREEDOM FROM DEFECTS OR CONTAMINATION (WHETHER OR NOT DETECTABLE BY INSPECTION), COMPLIANCE WITH ZONING OR OTHER LEGAL REQUIREMENTS OR AS TO THE AVAILABILITY OR EXISTENCE OF ANY UTILITY OR OTHER GOVERNMENTAL OR PRIVATE SERVICES OR AS TO THE AMOUNT OF TAXES ASSESSED TO THE PROPERTY. GRANTEE, ON BEHALF OF ITSELF AND ALL FUTURE OWNERS AND OCCUPANTS OF THE PROPERTY, HEREBY WAIVES AND RELEASES GRANTOR FROM ANY CLAIMS FOR RECOVERY OF COSTS ASSOCIATED WITH CONDUCT OF ANY VOLUNTARY ACTION OR ANY REMEDIAL RESPONSES, CORRECTIVE ACTION OR CLOSURE UNDER ANY APPLICABLE FEDERAL, STATE OR LOCAL ENVIRONMENTAL LAWS.

EXECUTED TO BE EFFECTIVE as of the _____ day of _____, 2022.

GRANTOR:

310 PROSPER, L.P., a Texas limited partnership

By: Texas Land Management, L.L.C., a Texas limited liability company, its General Partner

By: _____
Jim Williams, Chairman

ACKNOWLEDGMENT

STATE OF TEXAS §
 §
COUNTY OF COLLIN §

This instrument was acknowledged before me, the undersigned authority, this _____ day of _____, 2022, by Jim Williams, Jr, Chairman of Texas Land Management, L.L.C., a Texas limited liability company, General Partner of 310 PROSPER, L.P., a Texas limited partnership, for and on behalf of said limited partnership.

Notary Public, State of Texas

My Commission Expires: _____

EXHIBIT A to Deed
(Legal Description)

EXHIBIT B to Deed
(Permitted Exceptions)

EXHIBIT D
(Park Dedication Credit Assignment Area)

PLACEHOLDER

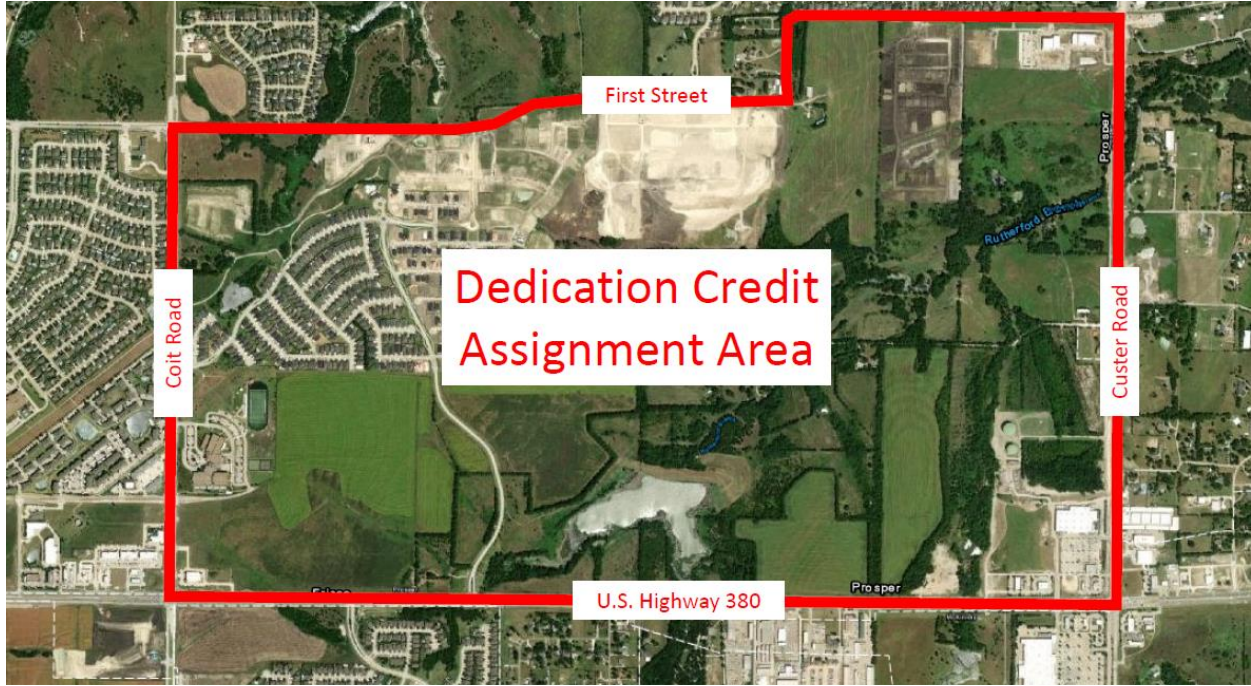


EXHIBIT E
(Park Dedication Cap Properties)

PLACEHOLDER

