

## **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and Eric Walker ("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 1.12-acre tract (the "Property") generally located at the northwest corner of University Drive and Custer Road in the Town, and a legal description and a depiction of the Property is attached hereto as Exhibit A and incorporated by reference; and

**WHEREAS**, a specific use permit for a Restaurant with Drive-Through Service was approved by the Town Council on or about June 14, 2022, 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.

**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 requirements contained in Exhibit B, "Façade Plan," attached hereto and incorporated herein, including but not limited to building materials and elevations. 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. **Outdoor Trash Receptacle.** Owner shall endeavor to reposition the outdoor trash receptacle so that its opening faces in a northeasterly direction and is otherwisely screened from view along U.S. Highway 380.

3. **Removal of Billboard.** As of the Effective Date of this Agreement, there is a billboard located on the property. Within ninety (90) days of the Effective Date of this Agreement, the billboard shall be removed from the Property.

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:             WS Residential Investments, LLC  
                                  170 Westcott  
                                  Houston, Texas 77007  
                                  Attention: Eric Walker

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 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.

13. **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.

14. **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.

15. **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.

16. **Notification of Sale or Transfer; Assignment of Agreement.** Except with respect to a sale or transfer to a related entity of Owner, 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 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. Except with respect to a sale or

transfer to a related entity of Owner, 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 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 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.

17. **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.

18. **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.

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

20. **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.

21. **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.

22. **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.

**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 February, 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: \_\_\_\_\_

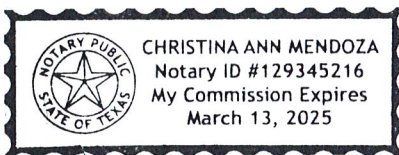
OWNER:


ERIC WALKER

By:   
Name: Eric Walker

STATE OF TEXAS       )  
                                  )  
COUNTY OF Harris    )

This instrument was acknowledged before me on the 2 day of February, 2022, by Eric Ealker in his capacity as Owner, 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: 3.13.2025



**EXHIBIT "A"**

**LEGAL DESCRIPTION OF THE LAND**

BEING a tract of land situated in the City of Prosper, Collin County, Texas out of the Jeremiah Horn Survey, Abstract No. 411 and being all of Lot 2, Block A, Prosper Plaza, according to the revised plat thereof recorded in Volume 2008, Page 564, Map Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at a 5/8" iron rod set with plastic cap stamped "R.P.L.S. 5199" in the north right of way line of U.S. Highway 380 (variable-width right of way), the southwest corner of said Lot 2, the southeast corner of Lot 3, of said Block A;

THENCE, departing said north right of way line, along the west line of said Lot 2, the east line of said Lot 3, North 00 degrees, 49 minutes, 56 seconds West, a distance of 258.14 feet to a 5/8" iron rod set with plastic cap stamped "R.P.L.S. 5199", the northwest corner of said Lot 2, lying in the south line of Lot 5 of said Block, A;

THENCE, along the north line of said Lot 2, the south line of said Lot 5, North 89 degrees, 10 minutes, 04 seconds East, a distance of 189.77 feet to a 5/8" iron rod set with plastic cap stamped "R.P.L.S. 5199";

THENCE, departing said common line, South 00 degrees, 49 minutes, 56 seconds East, a distance of 255.10 feet to a 5/8" iron rod set with plastic cap stamped "R.P.L.S. 5199" in said north right of way line;

THENCE, along said north right of way line, the south line of said Lot 2, South 87 degrees, 25 minutes, 28 seconds West, a distance of 99.95 feet to a 5/8" iron rod found;

THENCE, continuing along said common line South 89 degrees, 10 minutes, 04 seconds West, a distance of 89.87 feet to the POINT OF BEGINNING, and containing 48,835 square feet, or 1.1211 acres of land, more or less.

Consultant:

ARCHITECT OF RECORD



519 MAIN STREET, SUITE 300  
FORT WORTH, TEXAS 76102  
(817) 820-0433

SEAL



FACADE PLAN - 03/28/22

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REVISIONS

REVISIONS



Drawn: T. GRANDORF  
Checked: A. MORELAND  
Project No. ROGUE #22-0032

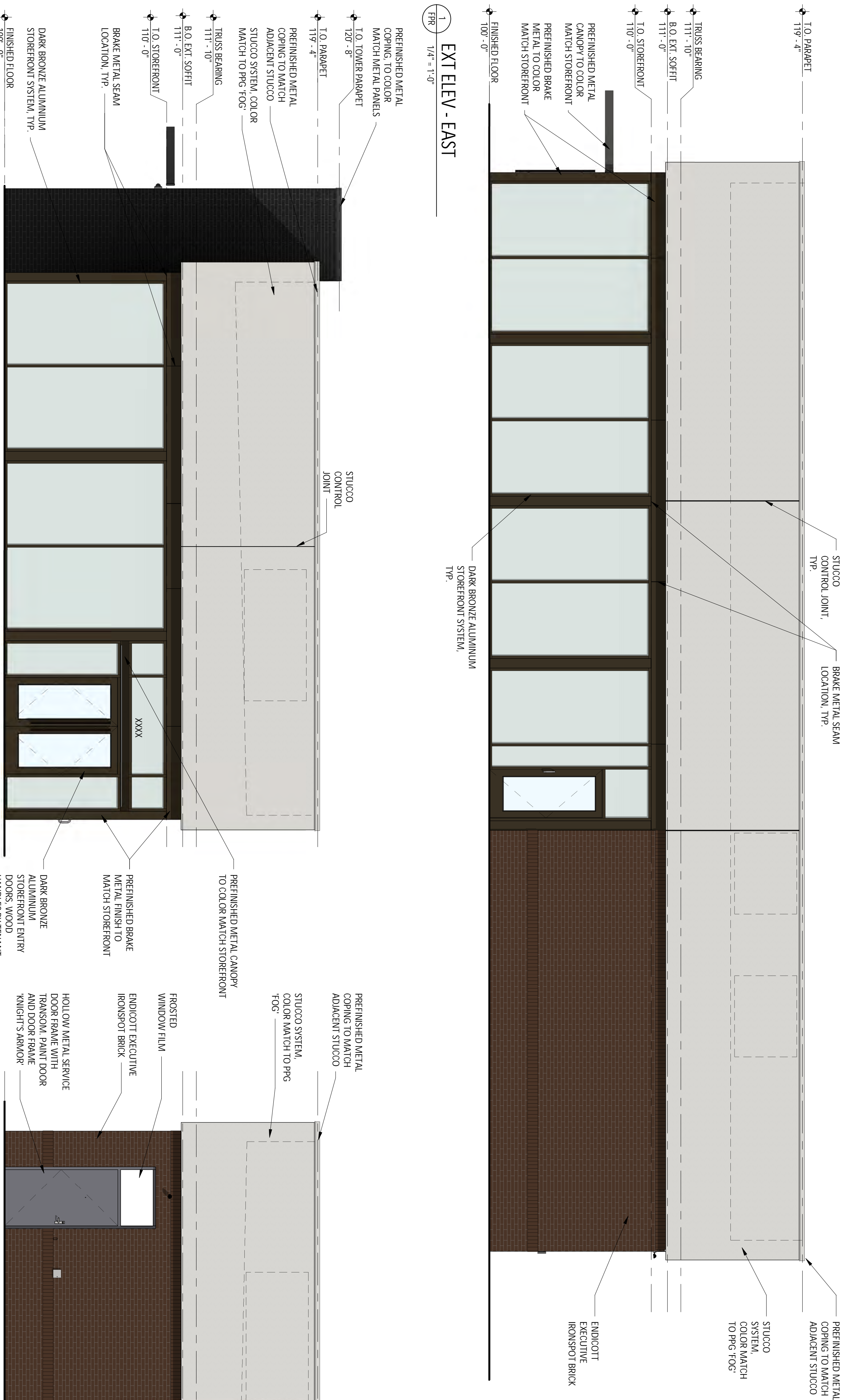
Comments:  
FACADE PLAN

FPR

MATERIAL CALCULATION									
MATERIAL	SOUTH		EAST		NORTH		WEST		TOTAL
	S.F.	%	S.F.	%	S.F.	%	S.F.	%	S.F.
TOTAL ELEVATION AREA	1395	100	881	100	1357	100	661	100	4294
NON-GLAZED DOORS AND WINDOWS	0	0%	0	0%	27	4%	0	0%	27
GLAZED DOORS AND WINDOWS	317	22%	378	29%	8	1%	140	12%	843
TOTAL (WITHOUT FENESTRATIONS)	1167		1291		650		1136		4244
BRICK (BROWN & IRONSPOT)	507	60%	287	31%	358	60%	492	49%	1644
STUCCO (3 STEP)	290	34%	561	62%	257	40%	464	47%	1512
METAL ACCENT	53	6%	65	7%	0	0%	40	4%	158

#### FINISH MATERIALS

BRICK 1	MT-01	
 ENDICOTT IRONSPOT EXECUTIVE IRONSPOT THIN BRICK		METAL PPG KNIGHTS ARMOR
BRICK 2	 ENDICOTT IRONSPOT MANGANESE IRONSPOT THIN BRICK	STRENT KAWNEER DARK BRONZE
STUCCO		NOTE: THREE COAT STUCCO IS APPLIED IN THREE LAYERS: .38- INCH THICK SCRATCH COAT, .38-INCH THICK BROWN COAT, AND APPROXIMATE .12-INCH THICK FINISH COAT. THE FINISH COAT SHALL BE APPLIED AFTER THE BROWN COAT IS APPLIED OVER AN APPROVED WEATHER-RESISTIVE BARRIER AND METAL LATH EITHER BY HAND USING A TROWEL OR BY MACHINE APPLICATION.



#### EXT ELEV - EAST

#### EXT ELEV - SOUTH

#### EXT ELEV - NORTH

#### GENERAL NOTES

- THIS FACADE PLAN IS FOR CONCEPTUAL PURPOSES ONLY. ALL BUILDING PLANS REQUIRE REVIEW AND APPROVAL BY DEVELOPMENT SERVICES.
- ALL MECHANICAL UNITS SHALL BE SCREENED FROM PUBLIC VIEW AS REQUIRED BY THE ZONING ORDINANCE.
- PANTRY, REFRIGERATION, AND FREEZERS SHALL BE LOCATED OUTSIDE THE BUILDING.
- ALL SIGNAGE AREAS AND LOCATIONS ARE SUBJECT TO APPROVAL BY DEVELOPMENT SERVICES.
- AN ON-SITE MOCKUP OF THE BUILDING MATERIALS TO BE USED ON THE FACADE SHALL BE PROVIDED TO THE PLANNING DIVISION. MATERIALS SHALL NOT BE PLACED ON THE STRUCTURE UNTIL A GREEN TAG IS RECEIVED BY THE PLANNING DIVISION.
- AN APPROVED FACADE PLAN SHALL BE POSED ON-SITE AT ALL TIMES.

## RESTAURANT WITH DRIVE-THRU PROSPER PLAZA TRACT 1, BLOCK A, LOT 2

FACADE PLAN: #SC22-0002  
SUBMITTAL DATE: 03/28/2022

ARCHITECT:  
ROGUE ARCHITECTS  
519 MAIN STREET, SUITE 300  
FORT WORTH, TX 76102  
CONTACT: ASHLEY MORELAND  
T: (817) 820-0433

OWNER:  
WVS RESIDENTIAL INVESTMENTS, LLC  
519 MAIN STREET, SUITE 300  
FORT WORTH, TX 76102  
CONTACT: ERIC WALKER  
T: (281) 816-6550

SURVEYOR  
LANDPOINT  
6410 SOUTHWEST BLVD, STE 127  
FORT WORTH, TX 76109  
CONTACT: JEFFREY WALKER  
T: (817) 554-1885

## Exhibit B

#### EXT ELEV - WEST