

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Prosper Villages at Legacy LLC (“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 a limited liability company qualified to do business in the State of Texas; and

WHEREAS, Owner is developing property in the Town for single-family residential use (the “Development”); and

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

WHEREAS, this Agreement seeks to incorporate, in part, the negotiated and agreed upon materials construction and architectural standards for the Development and as contained in this Development Agreement, and to recognize Owner’s reasonable investment-backed expectations in the Development, as more fully described herein; and

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

1. **Architectural Standards and Building Materials.** For any structure built in the Development following the Effective Date, it shall comply with the applicable requirements contained in Exhibit B, “Architectural Standards and Building Materials,” attached hereto and incorporated by reference, and Owner agrees to construct those structures in compliance therewith. 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. **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.

3. **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.

4. **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.

5. **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.

6. **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: Prosper Villages at Legacy, LLC
10950 Research Road
Frisco, Texas 75035
Attention: Craig Curry

With a Copy to: Charles A. Poché, Jr.
POCHÉ LAW PC
5400 LBJ Freeway, Suite 1200
Dallas, Texas 75240

7. **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).

8. **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.

9. **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.

10. **Binding Agreement;** Counterparts. A scanned copy sent via electronic mail by either party of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each Party to the terms herein. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes.

11. **Authority to Execute.** This Agreement shall become a binding obligation on the Parties 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. 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.

12. **Mediation.** In the event of any disagreement or conflict concerning the interpretation of this Agreement, and such disagreement cannot be resolved by the Parties, the Parties agree to submit such disagreement to nonbinding mediation.

13. **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.

13. **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.

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

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

17. **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 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 Agreement, with respect to roadway or infrastructure requirements imposed by this Agreement.

18. **Waiver of Texas Government Code § 3000.001 et seq.** With respect to any structures or improvements constructed on the Property pursuant to this Agreement, Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, effective as of September 1, 2019.

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

20. **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.

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 Land; however, the failure to provide such copies shall not affect the validity of any amendment. This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Collin County, Texas.

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.

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: Harlan Jefferson

Title: Town Manager, Town of Prosper

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2020, by Harlan Jefferson, 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:

Prosper Villages at Legacy LLC

By: _____
Name: Craig Curry
Title: Manager

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of _____, 2020, by Craig Curry, in his capacity as Manager of Prosper Villages at Legacy LLC, 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)

BEING a tract of land situated in the L. Netherly Survey, Abstract No. 962 and the Collin County School Land Survey, Abstract No. 147, Denton County and Collin County, Texas, and being all of Lot 2R, Block D of Prosper Center, Lots 2R, 5, 6, 7 and 8, according to the Revised Conveyance Plat thereof recorded in Document No. 2019-455 of the Plat Records of Denton County, Texas, and also being a portion of Prairie Drive, a 90 foot wide right-of-way, as dedicated in the Revised Conveyance Plat of Block A, Lot 1R and Block D, Lot 1R, Prosper Center recorded in Document No. 2016-2248 of the Plat Records of Denton County, Texas, and in said Revised Conveyance Plat recorded in Document No. 2019-455 of the Plat Records of Denton County, Texas, and being more particularly described as follows:

BEGINNING a 5/8 inch iron rod with plastic cap stamped "KHA" found for the southwest corner of said Lot 2R, common to the southeast corner of Lot 3, Block D of Prosper Center, Block D, Lots 2, 3 and 4, according to the Revised Conveyance Plat thereof recorded in Document No. 2018-195 of the Plat Records of Denton County, Texas, same being on the northerly line of a called 5.45 acre tract of land described in a Special Warranty Deed to Prosper CJDR, LLC, as recorded in Instrument No. 2017-48505 of the Official Records of Denton County, Texas;

THENCE North 8°01'34" East, departing the northerly line of said 5.45 acre tract, along the westerly line of said Lot 2R and the easterly line of said Lot 3, passing at a distance of 618.05 feet a 5/8 inch iron rod with plastic cap stamped "KHA" found for the northwest corner of said Lot 2R, common to the northeast corner of said Lot 3, being on the southerly right-of-way line of Prairie Drive, a variable width right-of-way, and continuing along the same course, departing the southerly right-of-way line of said Prairie Drive and crossing said Prairie Drive, for a total distance of 663.05 feet to a point for corner in the centerline of said Prairie Drive, and at the beginning of a non-tangent curve to the left having a central angle of 26°39'35", a radius of 1100.00 feet, a chord bearing and distance of North 84°41'27" East, 507.22 feet;

THENCE along the centerline of said Prairie Drive, the following:

In a northeasterly direction, with said curve to the left, an arc distance of 511.83 feet to a point for corner;

North 71°21'39" East, a distance of 1112 .67 feet to a point for corner;

THENCE South 18°38'02" East, departing the centerline of said Prairie Drive and crossing said Prairie Drive, passing at a distance of 45.00 feet a 5/8 inch iron rod with plastic cap stamped "KHA" found for the northeast corner of said Lot 2R, common to the northwest corner of Lot 5, Block D of said Prosper Center, Lots 2R, 5, 6, 7 and 8, same being on the southerly right-of-way line of said Prairie Drive, and continuing along the same course and along the easterly line of said Lot 2R and the westerly line of said Lot 5, for a total distance of 183.42 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for corner;

THENCE South 00°00'00" West, continuing along the easterly line of said Lot 2R and the westerly line of said Lot 5, a distance of 443.02 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" set for the northerly southeast corner of said Lot 2R, common to the southwest corner of said Lot 5, being on the northerly line of Lot 8, Block D of said Prosper Center, Lots 2R, 5, 6, 7 and 8;

THENCE along the southerly and easterly lines of said Lot 2R and the northerly and westerly lines of said Lot 8, the following:

North 89°40'36" West, a distance of 93.95 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for corner;

South 26°21'39" West, a distance of 116.44 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for corner;

South 71°21'39" West, a distance of 369.27 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for corner;

South 0°02'42" East, a distance of 217.60 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" found for the southerly southeast corner of said Lot 2R, common to the northerly southwest corner of said Lot 8, being on the northerly line of a called 7.242 acre tract of land described in a deed to a called 7.242 acre tract of land described in a deed to Remington Prosper, LLC, as recorded in Instrument No. 20181218001536140 of the Official Public Records of Collin County, Texas;

THENCE along the southerly line of said Lot 2R and the northerly and westerly lines of said 7.242-acre tract, the following:

South 89°57'27" West, a distance of 643.31 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for corner;

South 85°45'46" West, a distance of 54.95 feet to a 1/2 inch iron rod found for corner; South 85°50'43" West, a distance of 54.69 feet to a 1/2 inch iron rod found for corner; South 85°50'19" West, a distance of 55.01 feet to a 1/2 inch iron rod found for corner;

South 85°59'20" West, a distance of 56.37 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" set for corner;

South 87°29'46" West, a distance of 53.65 feet to a 1/2 inch iron rod found for the northwest corner of said 7.242 acre tract;

South 1°22'51" East, a distance of 0.55 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for an ell corner of said Lot 2R, common to the northeast corner of aforesaid 5.45-acre tract;

THENCE departing the westerly line of said 7.242-acre tract, continuing along the southerly line of said Lot 2 and along the northerly line of said 5.45-acre tract, the following:

North 87°30'08" West, a distance of 5.35 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" found for corner South 89°21'32" West, a distance of 58.66 feet to a 5/8 inch iron rod with plastic cap stamped "KHA" found for corner;

North 88°43'44" West, a distance of 58.65 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for corner;

North 86°49'20" West, a distance of 58.65 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for corner;

North 84°54'57" West, a distance of 58.65 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for corner;

North 83°00'34" West, a distance of 58.64 feet to the **POINT OF BEGINNING** and containing 27.418 acres (1,194,328 square feet) of land, more or less.

EXHIBIT B

ARCHITECTURAL STANDARDS AND BUILDING MATERIALS

Single-Family Residential Structures

- A. The exterior facade of a residential building or structure, excluding glass windows and doors, shall comply with the following requirements:
1. The exterior facades shall be constructed of one hundred percent (100%) masonry, unless otherwise specified in this agreement.
 2. Exterior materials shall be 100% masonry (brick, cast stone and stone) on all walls facing any street.
 3. Cementitious fiber board is considered masonry but may only constitute fifty percent (50%) of stories other than the first story.
 4. Cementitious fiber board may not be used as a façade cladding material for portions of upper stories that are in the same vertical plane as the first story.
 5. Any portion of an upper story, excluding windows and architectural features identified in this agreement, that faces a street, public or private open space, public or private parks, or hike and bike trails, shall be 100% masonry and shall not be comprised of cementitious fiber board.
 6. The exterior cladding of chimneys shall be brick, natural or manufactured stone, or stucco.
 7. Cementitious fiber board may be used for architectural features, including window box-outs, bay windows, roof dormers, garage door headers, columns, or other architectural features approved by the Building Official.
 8. A minimum of fifty percent (50%) of the front elevation of each structure shall have a minimum plate height of 10 feet on the first floor.
 9. All front doors shall be a minimum of eight (8) feet in height.
 10. All windows on the front facades shall have divided lights.
 11. All residences shall have a masonry address plaque clearly visible from a public right-of-way.
 12. All garage doors shall either have a cedar cladding or be metal with stamped reveals/texture with carriage type hardware.
- B. The roof pitches of any building or structure, including garages, shall meet the following roof pitch standards:
1. A minimum of sixty-five percent (65%) of the surface area of composition roofs shall maintain a minimum roof pitch of 8:12.

2. A minimum of seventy-five percent (75%) of the surface area of clay tile, cement tile, slate or slate products, or metal roofs shall maintain a minimum roof pitch of 3:12.
3. Wood roof shingles are prohibited.

NOTE: For purposes of this Agreement, “masonry” shall mean natural and manufactured stone, granite, marble, stucco, brick, tile, and architectural concrete block, or any similar material approved by the Town’s Director of Development Services.

EXHIBIT B



EXHIBIT B



EXHIBIT B



EXHIBIT B

