

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 on September 24, 2019 (the “Effective Date”).

WHEREAS, the Town is a home-rule municipal corporation, located in both Collin County and Denton County, Texas, organized and existing under the laws of the State of Texas; and

WHEREAS, Owner is a Texas limited liability company qualified to do business in the State of Texas; and

WHEREAS, Owner owns three (3) tracts of land consisting of approximately 20.11 acres of land in Collin County, more particularly described and depicted in Exhibit A, attached hereto and incorporated by reference (the “Property”); and

WHEREAS, Owner desires to construct on the Property a collision repair business structure, an office building(s) and retirement housing structures, among other uses of the Property to be determined at a later date; and

WHEREAS, the elevations for the collision repair business (proposed for Block D, Lot 7 of Prosper Center) are attached hereto as Exhibit B and are incorporated by reference, and the elevations for the retirement housing structures (proposed for Block D, Lot 5 of Prosper Center) are attached hereto as Exhibit C and are incorporated by reference; and

WHEREAS, subject to the terms of this Agreement, Owner agrees and acknowledges that it will construct on the Property those structures depicted in attached Exhibits B and C, respectively, and substantially in accordance with the provisions, standards and notes reflected on the face of Exhibits B and C, respectively; and

WHEREAS, on or about August 27, 2019, the Town conducted public hearings on the underlying zoning cases for those structures reflected in attached Exhibits B and C, respectively; and

WHEREAS, on or about August 27, 2019, the Town also conducted a public hearing for the requested office zoning on a portion of Lot 2, Block D of Prosper Center, and Owner agreed to construct any buildings on said property consistent with the masonry and building materials standards referenced in this Agreement; and

WHEREAS, on September 24, 2019, the Town approved ordinances for the rezoning of the Property as well as authorized the execution of 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. Construction of Collision Repair Business Structure and Retirement Housing. When Owner constructs either the collision repair business structure or the retirement housing on the Property, Owner agrees to construct those structures in a substantially similar form as depicted in attached Exhibits B and C in accordance with said Exhibits, including those building materials reflected therein and thereon. Notwithstanding anything herein to the contrary, Owner has no obligation to construct said structures on the Property. If Owner elects to change such uses for the Property, Owner must obtain the Town's approval of the Owner's new proposed use for the applicable portion of the Property.

2. Construction of Office Structure(s) on Tract Zoned "O," Office Uses. Owner agrees to construct any office structures on the Tract zoned for office uses in accordance with the following standards: All exterior facades for a main building or structure, excluding glass windows and doors, shall be constructed using the following: (1) primary materials including clay fired brick, natural precast, and manufactured stone, granite, marble, stucco, architectural concrete block, split face concrete masonry unit, and architecturally finished concrete tilt wall; and (2) secondary materials that comprise a total of ten percent (10%) or less of an elevation including aluminum or other metal, cedar or similar quality wood, and high impact exterior insulation and finish systems (EIFS). High impact EIFS is only permitted a minimum of nine feet (9') above grade.

3. Applicability of Town Ordinances. When the Property is developed, Owner shall construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes, whether now existing or arising prior to such construction in the future.

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
 200 S. Main Street
 P.O. Box 307
 Prosper, Texas 75078
 Attention: Town Manager

If to Owner: Prosper Villages at Legacy LLC
 10950 Research Road
 Frisco, Texas 75033
 Attention: Craig Curry, Manager

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. 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.

11. 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. 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. 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.

13. 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.

14. Notification of Sale or Transfer; Assignment of Agreement. 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 with respect to the portion of the Property transferred to Assignee. If the Property is transferred or owned by multiple parties, this Agreement shall only apply to, and be binding on, such parties to the extent of the Property owned by such successor owner, and if the Owner or any Assignee is in default under this Agreement, such default shall not be an event of default for any non-defaulting Assignee which owns any portion of the Property separate from the defaulting Owner or Assignee. 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 with respect to the Property transferred to the successor owner, 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 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.

15. 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.

16. 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.

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

18. 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.

19. 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, if any, required by the Town in this Agreement 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, if any, imposed by this Agreement as of the Effective Date.

20. Waiver of Texas Government Code § 3000.001 et seq. With respect to the 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.

21. Rough Proportionality. Owner hereby waives any federal constitutional claims and any statutory or state constitutional takings claims under the Texas Constitution with respect to infrastructure requirements, if any, imposed by this Agreement as of the Effective Date. 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 infrastructure requirements, if any, imposed by this Agreement as of the Effective Date.

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

23. 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.

24. 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.

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.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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 September, 2019, 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,
a Texas limited liability company

By: _____
Craig Curry, Manager

STATE OF TEXAS)
)
COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of September, 2019, by Craig Curry in his capacity as Manager of Prosper Villages at Legacy 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 such limited liability company.

Notary Public, State of Texas
My Commission Expires: _____

EXHIBIT A
(Property Description)

Tract 1

BEING a tract of land situated in the Collin County School Land Survey, Abstract No. 147, Town of Prosper, Collin County, Texas and being a portion of Lot 2, Block D, Prosper Center, Block D, Lots 2, 3 and 4, an Addition to the Town of Prosper, according to the plat thereof recorded in Document No. 2018-195, Plat Records, Denton County, Texas, and Volume 2018, Page 308, Plat Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at an X cut in concrete found for the northwest corner of Lot 1, Block A, GST Prosper, an Addition to the Town of Prosper, according to the plat thereof recorded in Volume 2018, Page 257, said Plat Records (Collin County), same being on the southerly line of said Lot 2;

THENCE North 0°26'44" East, departing the southerly line of said Lot 2 and crossing said Lot 2, a distance of 200.00 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for the POINT OF BEGINNING of the herein described tract of land;

THENCE continuing across said Lot 2 the following courses and distances:

North 89°40'36" West, a distance of 285.86 feet to a point for corner;

North 0°00'00" East, a distance of 443.02 feet to a point for corner;

North 18°38'02" West, a distance of 138.42 feet to a point for corner;

North 71°21'39" East, a distance of 181.05 feet to a point at the beginning of a tangent curve to the right having a central angle of 18°57'45", a radius of 1055.00 feet, a chord bearing and distance of North 80°50'32" East, 347.57 feet;

In a northeasterly direction, with said curve to the right, an arc distance of 349.16 feet to a point for corner;

South 89°40'36" East, a distance of 190.11 feet to a point for corner;

South 85°51'44" East, a distance of 10.02 feet to a point for corner;

South 0°26'47" West, a distance of 689.33 feet to a point for corner;

North 89°40'36" West, a distance of 379.34 feet to the POINT OF BEGINNING and containing 10.274 acres (447,523 sq. ft.) of land, more or less.

Tract 2

BEING a tract of land situated in the Collin County School Land Survey, Abstract No. 147, Town of Prosper, Collin County, Texas and being a portion of Lot 2, Block D, Prosper Center, Block D, Lots 2, 3 and 4, an Addition to the Town of Prosper, according to the plat thereof recorded in

Document No. 2018-195, Plat Records, Denton County, Texas, and Volume 2018, Page 308, Plat Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

COMMENCING at a 5/8-inch iron rod with plastic cap stamped "KHA" found for the easternmost southeast corner of said Lot 2, common to the northeast corner of a called 0.940-acre Right-of-Way dedication to the Town of Prosper, Texas, recorded in Volume 2015, Page 674, said Plat Records (Collin County);

THENCE North 89°40'36" West, along the southerly line of said Lot 2 and the northerly line of said Right-of-Way dedication, a distance of 40.00 feet to the northwest corner of said Right-of-Way dedication, common to the northeast corner of Lot 1, Block A, GST Prosper, an Addition to the Town of Prosper, according to the plat thereof recorded in Volume 2018, Page 257, said Plat Records (Collin County);

THENCE North 0°26'47" East, departing the southerly line of said Lot 2 and crossing said Lot 2, a distance of 200.00 feet to the POINT OF BEGINNING of the herein described tract of land;

THENCE continuing across said Lot 2 the following courses and distances:

North 89°40'36" West, a distance of 300.00 feet to a point for corner;

North 0°26'47" East, a distance of 689.33 feet to a point for corner;

South 85°51'44" East, a distance of 140.29 feet to a point for corner;

South 89°40'36" East, a distance of 125.00 feet to a point for corner;

South 44°36'48" East, a distance of 35.32 feet to a point for corner;

South 0°26'47" West, a distance of 125.00 feet to a point for corner;

South 3°22'06" East, a distance of 150.31 feet to a point for corner;

South 0°26'47" West, a distance of 380.00 feet to the POINT OF BEGINNING and containing 4.639 acres (202,091 sq. ft.) of land, more or less.

Tract 3

BEING a tract of land situated in the Collin County School Land Survey, Abstract No. 147, Town of Prosper, Collin County, Texas and being a portion of Lot 2, Block D, Prosper Center, Block D, Lots 2, 3 and 4, an Addition to the Town of Prosper, according to the plat thereof recorded in Document No. 2018-195, Plat Records, Denton County, Texas, and Volume 2018, Page 308, Plat Records, Collin County, Texas, and being more particularly described by metes and bounds as follows:

BEGINNING at an X cut in concrete found for the northwest corner of Lot 1, Block A, GST Prosper, an Addition to the Town of Prosper, according to the plat thereof recorded in Volume 2018, Page 257, said Plat Records (Collin County), same being on the southerly line of said Lot 2;

THENCE North 0°26'44" East, departing the southerly line of said Lot 2 and crossing said Lot 2, a distance of 200.00 feet to a 5/8-inch iron rod with plastic cap stamped "KHA" found for corner;

THENCE South 89°40'36" East, continuing across said Lot 2, a distance of 679.34 feet to a point for corner;

THENCE South 0°26'47" West, continuing across said Lot 2, a distance of 200.00 feet to a point for corner on the common line of said Lot 2 and said Lot 1;

THENCE North 89°40'36" West, along said common line, a distance of 679.34 feet to the POINT OF BEGINNING and containing 3.119 acres (135,868 sq. ft.) of land, more or less.

EXHIBIT B
(Elevations-Collision Repair Business Structure)

EXHIBIT C
(Elevations-Retirement Housing Structures)