

**DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS,
AND BBG INVESTMENTS, INC.**

THIS DEVELOPMENT AGREEMENT BETWEEN THE TOWN OF PROSPER, TEXAS, AND BBG INVESTMENTS, INC. (“Agreement”), is made and entered into this ___ day of November, 2020, by and between the Town of Prosper, Texas (“Prosper” or the “Town”), and BBG Investments, Inc. (“Developer”), collectively referred to as the “Parties.”

WITNESSETH:

WHEREAS, Developer is developing an urban-style, predominantly surface-parked, multifamily residential project in Downtown Prosper, consisting of 300 units, including 151 one-bedroom, 129 two-bedroom and 20 three-bedroom units (the “Project”), to be constructed in accordance with the exhibits attached hereto, and more fully described herein; and

WHEREAS, the legal description of the foregoing multifamily property in Downtown Prosper (“Property”) on which the Project shall be located is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, in this Agreement the Town and Developer wish to address a variety of issues related to this Project, including the construction of McKinley Street as well as the timing, construction and payment of associated costs related thereto, waiver of park dedication fees as well as water and wastewater impact fees, the undergrounding of electric utility lines, building construction materials and architectural standards, and dedications and easements, among others; and

WHEREAS, the Town and Developer acknowledge that the construction of the Project is desirable; however, both Parties recognize the capital costs associated with the proposed construction; and

WHEREAS, the Town and Developer have agreed to the construction of McKinley Street and related improvements, as depicted in attached Exhibit B and incorporated by reference, with construction cost estimates and roadway impact fee estimates for the Property described in attached Exhibit C, also incorporated by reference; and

WHEREAS, the Town has adopted a Roadway Capital Improvements Plan (“Roadway CIP”) as part of its impact fee ordinance, contained in Article 10.02 of Chapter 10 of the Town’s Code of Ordinances, as amended, all of which were adopted pursuant to the authority contained in Chapter 395 of the Texas Local Government Code, as amended; and

WHEREAS, in an effort to facilitate the construction of McKinley Street serving the Property, the Parties have agreed to the terms and provisions of this Agreement; and

WHEREAS, this Agreement clearly is in the best interests of the Town and Developer and it is deemed mutually beneficial to each that the construction of McKinley Street proceed uniformly; and

WHEREAS, Chapter 380 of the Texas Local Government Code provides that Texas municipalities may create programs to promote local economic development; and

WHEREAS, Chapter 378 of the Texas Local Government Code authorizes municipalities to establish Neighborhood Empowerment Zones, which Zones, in part, promote economic development, and the Town has availed itself of such statutory authority and has created Neighborhood Empowerment Zone No. 1 in the Town, and the Parties hereby acknowledge that the Property is located entirely within the boundaries of said Neighborhood Empowerment Zone No. 1; and

WHEREAS, the Town wishes to partner with Developer and provide incentives to Developer to assist in the continued economic development of the Property, particularly so since the Property and the Project are located in Downtown Prosper and will lead to further economic development in Downtown Prosper; and

WHEREAS, the Town has concluded and hereby finds that this Agreement clearly promotes economic development in the Town and, as such, meets the requisites under Chapter 380 of the Texas Local Government Code and further, is in the best interests of the Town and Developer; and

WHEREAS, Developer has applied to the Town for financial accommodations, including those which are described 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 Town and Developer covenant and agree as follows:

1. **Roadway Impact Fees and McKinley Street Construction.** Developer shall be subject to and shall pay the Town roadway impact fees, pursuant to applicable provisions of the Town's Code of Ordinances, as amended (which may include roadway impact fee credits, pursuant to Section 10.02.010 of the Town's Code of Ordinances, as amended). Specifically, the Parties agree that McKinley Street is an impact-fee eligible roadway which is identified on the Town's Roadway Capital Improvement Plan ("CIP") that Developer agrees and has agreed to construct, the extent of which construction is reflected in attached Exhibit B, incorporated by reference. For purposes of this Agreement, the term "construction" of McKinley Street also includes any existing portions of McKinley Street that may be reconstructed or require reconstruction during the development of the Project. The Parties agree and acknowledge that (1) a portion of the McKinley Street construction, as reflected on attached Exhibit B, shall be paid for by the Town; and (2) two (2) lanes of McKinley adjacent to the Goodwill Industries of Northeast Texas ("Goodwill") property may be constructed by Goodwill if such Goodwill property is developed prior to McKinley Street construction, as referenced herein. Further, if

Goodwill has not constructed its portion of McKinley Street prior to the commencement of McKinley Street construction by Developer, then Developer shall construct Goodwill's portion of McKinley Street and shall be eligible for reimbursement of construction costs pursuant to this Agreement.

2. McKinley Street Construction Costs and Reimbursement.

A. Provided Developer constructs, and the Town accepts, the construction of McKinley Street as contemplated by this Agreement, Developer shall be reimbursed impact fee-eligible costs for the construction costs associated with the construction of McKinley Street and related improvements. The phrase "construction costs" as used herein shall mean the actual construction costs, including design costs, construction costs, engineering costs, surveying costs and geotechnical materials testing associated with the construction of McKinley Street. The current estimated construction costs for the construction of McKinley Street are reflected in attached Exhibit C, incorporated by reference. No construction costs for the construction of McKinley Street shall be incurred by Developer until Developer submits the construction costs to the Town Engineer for review and written approval.

B. The Town shall pay Developer those construction costs associated with the construction of McKinley Street in excess of applicable roadway impact fees paid to the Town by Developer. Such payment shall be made by the Town to Developer upon Town's acceptance of McKinley Street and related improvements.

C. Developer agrees that no final inspection and no certificate of occupancy shall be issued by the Town for the multifamily residential structure on the Property until Developer has constructed McKinley Street and related improvements, and the Town has accepted McKinley Street and related improvements. It is a material term of this Agreement that a certificate of occupancy for said multifamily residential structure shall be issued by the Town no later than June 30, 2023, such certificate of occupancy not to be unreasonably withheld, and the failure by Developer to have obtained a certificate of occupancy by said date shall be deemed a breach of this Agreement.

D. The Parties acknowledge that it is reasonably anticipated that the construction of McKinley Street and related improvements as contemplated by this Agreement does not exceed the municipal participation limit referenced in Section 212.072(b)(2) of the Texas Local Government Code, as amended. In the event such construction costs exceed said municipal participation limit, then Developer shall bid the construction of McKinley Street and related improvements with three (3) qualified contractors and shall provide copies of the bids received for such items to the Town within five (5) business days of Developer's receipt of same. Developer shall provide to the Town the bids and the proposed contract(s) prices that Developer wishes to accept for the construction of McKinley Street and related improvements. Developer shall not proceed to award a contract(s) for the design and construction of McKinley Street and related improvements unless and until the Town provides written approval of said contract(s).

3. **Third Party Roadway Project Rights-of-Way.**

A. The Parties shall cooperate with each other in obtaining from third parties any and all rights-of-way ("Third Party Roadway Project Rights-of-Way") necessary for the construction of McKinley Street, as depicted in Exhibit B.

B. Developer shall be responsible for any and all costs and expenses associated with acquiring, by purchase or condemnation, all Third Party Roadway Project Rights-of-Way, including, but not limited to, title work, appraisals, expert fees, attorneys' fees and expenses, engineering fees and expenses, surveying fees and expenses, court costs, commissioner's fees and costs of appeal, if any ("Right-of-Way Acquisition Fees"). If requested by the Town, Developer shall, at its sole cost and expense, lead all right-of-way acquisition efforts for the Third Party Roadway Project Rights-of-Way, including, but not limited to, providing all necessary engineering and surveying support required to obtain the Third Party Roadway Project Rights-of-Way as required. Developer shall pay any and all Right-of-Way Acquisition Fees within twenty-one (21) calendar days of receiving a written request from the Town for the same.

C. The Town will, at Developer's sole cost and expense, provide, among any other assistance deemed reasonably necessary by the Town, technical, engineering, legal and administrative assistance, as selected by the Town, to acquire, by purchase or condemnation, the Third Party Roadway Project Rights-of-Way. The Town shall review and approve any and all documents associated with the Third Party Roadway Project Rights-of-Way required herein. If the Town determines, in its reasonable discretion, that condemnation proceedings are necessary to secure the Third Party Roadway Project Rights-of-Way, the Town shall have the right to, at Developer's sole cost and expense, take any and all steps the Town deems necessary to initiate said proceedings.

D. The Third Party Roadway Project Rights-of-Way shall be filed and recorded prior to the commencement of construction of McKinley Street or any portion thereof, unless a Right of Entry is secured, a condemnation award is tendered with the registry of the court and/or a right of possession by any other means is obtained on an earlier date.

E. If the Third Party Roadway Project Rights-of-Way are not obtained, or Developer has not secured the right to possess, in a form reasonably acceptable to the Town, the land made the subject of the Third Party Roadway Project Rights-of-Way, within ninety (90) days after the execution hereof on terms acceptable to the Town, then the Town shall commence, and thereafter diligently pursue to completion, condemnation proceedings to obtain such Third Party Roadway Project Rights-of-Way as soon as reasonably possible. Notwithstanding anything to the contrary herein, the Town and Developer agree that the Town may initiate condemnation proceedings prior to the expiration of the ninety (90) days referred to in this Paragraph.

F. The Parties agree and acknowledge that certain expenses incurred by Developer may be subject to roadway impact fee credits, pursuant to Article 10.02 of Chapter 10 of the Town's Code of Ordinances, as amended.

4. **Assessed Values and Water/Wastewater Impact Fee Credits.**

A. Developer covenants and agrees to construct, or cause to be constructed, on the Property a multifamily residential structure with a combined square footage of not less than _____ square feet (+/- 5,000 square feet) consisting of at least Three Hundred (300) individual rental units, which shall have a minimum ad valorem taxable value (including all land and improvements) of not less than \$36 Million and No/100 Dollars (\$36,000,000.00) after the issuance of the certificate of occupancy for the multifamily residential structure on the Property.

B. Developer covenants and agrees that for ten (10) years following the issuance of the certificate of occupancy for the multifamily residential structure on the Property, to maintain and keep, or cause to be maintained and kept, the multifamily residential structure on the Property operating and open for business. For purposes of this Agreement, the "Term" of this Agreement shall be ten (10) years from the first day of operation of the multifamily residential structure.

C. Developer covenants and agrees that all ad valorem taxes for the Property due to the Town shall be paid by January 31 of each tax year for the Property, unless being protested in accordance with Texas law or unless circumstances require a later delinquency date under the provisions of the Texas Tax Code.

D. For Developer to receive any water or wastewater impact fee credits, as more fully described below, Developer covenants and agrees that it shall maintain an ad valorem taxable value of at least \$36,000,000.00 for the Property, and the failure to do so shall be deemed a material breach of this Agreement.

E. The Town agrees to waive seventy-five percent (75%) of the water and wastewater impact fees for the Project, as defined in and adopted by the Town pursuant to Chapter 395 of the Texas Local Government Code, as amended and therefore, Developer shall be responsible for payment of twenty-five percent (25%) of the water and wastewater impact fees for the Project, payable to the Town upon issuance of a building permit.

F. It is a material term of this Agreement, and the Parties intend, that (i) the Property shall be used for multifamily residential purposes; (ii) such use shall be maintained for at least ten (10) years from the first day of occupancy; and (iii) there shall be no change in use during said ten (10) year period. If any of the foregoing conditions (i) – (iii) are not met, then, pursuant to the terms of Section (H) below, all outstanding prorated impact fees that are subject to waiver shall be due and owing the Town, and if not paid within thirty (30) days of demand, the Town may file a lien for same, with statutory interest, in the Collin County real property records. Moreover, if a building permit for the

multifamily residential structure is not issued by the Town for the Project on or before December 31, 2021, then Developer shall be in default and all obligations of the Town as referenced in this Agreement shall immediately cease.

G. The combined water and wastewater impact fees for the Project total approximately Two Hundred Sixty-Nine Thousand and Seven Hundred Dollars (\$269,700.00). The Town and Developer agree and acknowledge that said amount is an estimate of the actual combined water and wastewater impact fees that will be charged, and that the amount so charged by the Town shall be determined upon the issuance of a building permit by the Town, and said actual amount charged to Developer shall be deemed part of this Agreement and shall be waived pursuant to the terms hereof.

H. Upon payment by Developer at the time of issuance of a building permit for the Project in the amount of twenty-five percent (25%) of the water and wastewater impact fees for the Project (estimated to be \$67,425.00), the Town will provide prorated impact fee credits each year (in the amount of ten percent (10%) credit per year) of the remaining unpaid combined water and wastewater impact fees provided that the performance measures referenced herein are met, and failure to meet them will result in a forfeiture of all waived water and wastewater impact fees thereafter. For purposes of clarification, and by way of example, if in 2022 and 2023 Developer meets ad valorem valuation requirements and fails to meet such requirements in 2024, then in such event, ten percent (10%) of the impact fees credited pursuant to this Agreement shall be waived for 2022 and ten percent (10%) shall be waived for 2023; however, due to a default in 2024, the full amount of remaining impact fees (80% of the amount waived, which is 80% of \$202,275.00, or \$161,820.00) shall be due and owing the Town.

5. Credit of Park Dedication Fees.

A. Pursuant to the provisions of the Town's Neighborhood Empowerment Zone #1, the Town hereby consents to a credit of any park dedication fees for the Project, subject to Section (E) below. In doing so, the Town specifically finds that the Project will greatly promote and enhance economic development in Downtown Prosper and finds that such economic development will significantly inure to the benefit of the Town and its residents.

B. If a building permit for the multifamily residential structure is not issued by the Town for the Project on or before December 31, 2021, then Developer shall be in default and all obligations of the Town as referenced in this Agreement shall immediately cease.

C. For Developer to receive any park dedication fee credits, as more fully described below, Developer covenants and agrees that it shall maintain an ad

valorem taxable value of at least \$36,000,000.00 for the Property, and the failure to do so shall be deemed a material breach of this Agreement.

D. The estimated park dedication fee for the Project is Two Million Two Hundred Thirty Thousand and Six Hundred Dollars (\$2,230,600.00). The Town and Developer agree and acknowledge that said amount is an estimate of the actual park dedication fee and that the amount so charged by the Town shall be determined upon the issuance of a building permit by the Town, and said actual amount charged to Developer shall be deemed part of this Agreement and shall be waived pursuant to the terms hereof.

E. After the issuance of a certificate of occupancy for the multifamily residential structure, the Town will provide prorated park dedication fee credits each year (in the amount of ten percent (10%) credit per year) of the park dedication fee provided that the performance measures referenced in this Agreement are met, and failure to meet them will result in a forfeiture of any waived park dedication fee thereafter. For purposes of clarification, and by way of example, if in 2022 and 2023 Developer meets ad valorem valuation requirements and fails to meet such requirements in 2024, then in such event, ten percent (10%) of the park dedication fee credited pursuant to this Agreement shall be waived for 2022 and ten percent (10%) shall be waived for 2023; however, due to a default in 2024, the full amount of remaining credited park dedication fee (80% of the total park dedication fee amount waived, which amount is \$1,784,480.00) shall be due and owing the Town.

6. **Undergrounding of Oncor Electric Lines on the Property.** The Parties acknowledge and agree that certain Oncor electric lines currently traverse, or will traverse, the Property. Developer agrees that all such electric lines shall be placed underground at no cost to the Town and further, no overhead electric lines shall be permitted on the Property unless otherwise specifically authorized by the Town. The Parties agree and acknowledge, however, electric lines may be placed overhead in the right-of-way along the east side of the Property, as reflected in attached Exhibit E, attached hereto and incorporated by reference. No building permit for any structure on the Property shall be issued until Developer has submitted to the Town a site plan and final plat, and the Town has approved such site plan and final plat, reflecting all electric lines placed underground except to the extent noted herein.

7. **Drainage of the Property.** The Parties agree and acknowledge there is a Downtown Drainage Study that currently depicts a detention pond on the Property, Although detailed drainage plans have not yet been finalized by the Parties, the Town agrees to relocate the detention requirements west of the railroad tracks, the right-of-way of which railroad tracks are adjacent to the west side of the Property, ultimately draining onto the Town's current Public Works Facility site. Developer shall design and construct at its cost all drainage facilities associated with the Property, including design and construction of any culverts or pipes to be located under the existing BNSF railroad tracks to allow 1,037 cfs of drainage to be conveyed to the west. The Town agrees that it shall design and construct at its cost the drainage basin as well as any channel improvements west of the BNSF railroad tracks' right-of-way. Further, the Town agrees that it shall work

cooperatively with Developer for Developer to obtain any necessary approvals from BNSF Railway Company for the drainage culverts or pipes to be located under the existing BNSF railroad tracks. This cooperative work shall include sharing of engineering designs for said drainage culverts or pipes, all drainage improvements, all channel improvements and any detention pond and related facilities.

8. **Building Materials and Architectural Standards.** Following the execution of this Agreement by the Parties, for any structure built on the Property, Developer shall comply with the applicable building construction materials and architectural standards contained in the elevations reflected in Exhibit D, attached hereto and incorporated by reference. The Parties specifically 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.

9. **Fencing Along Railroad Right-of-Way.** The site plan shall identify the type and height of fencing, approved by Town staff, along all BNSF Railway Company right-of-way adjoining the Property along its western perimeter. Prior to the issuance by the Town of a certificate of occupancy or building final for the multifamily residential structure on the Property, Developer agrees that it shall install Town-approved fencing along all BNSF Railway Company right-of-way adjoining the Property along its western perimeter.

10. **Notification of Sale or Transfer; Assignment of Agreement.** 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 owner 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. A copy of each assignment shall be provided to the Town within ten (10) business days after execution. Provided that the successor Assignee assumes the liabilities, responsibilities, and obligations of the Developer 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 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. Further, this Agreement shall be filed in the real property records of Collin County, Texas.

11. **Default.** If Developer fails to comply with any provision of this Agreement after receiving fifteen (15) days' written notice to comply from the Town or such longer period as may be reasonably necessary provided that Developer commences to cure the default or breach within the 15-day period and proceeds with reasonable diligence thereafter to complete such cure, then so long as such default continues and is not cured, the Town shall have the following remedies, in addition to the Town's other rights and remedies:

(a) to refuse to accept any public improvements as to the applicable portion of the Project to which the default relates; and/or

(b) to construct and/or complete McKinley Street or other Project public improvement and to recover any and all costs and expenses associated with the construction and/or completion of same, including, but not limited to, any and all reasonable attorney's fees and costs associated therewith; and/or

(c) to seek specific enforcement of this Agreement; and/or

(d) declare Developer in default of this Agreement and pursue any remedy authorized by law; and/or

(e) For any amount of fees waived in whole or in part by the Town pursuant to this Agreement (for example, park dedication fees, water impact fees and/or sewer impact fees), the Town may file a lien on the Property for same, with statutory interest, in the Collin County real property records

In the event Town fails to comply with the terms and conditions of this Agreement, Developer may seek specific enforcement of this Agreement and/or bring suit to recover any amounts due and owing hereunder (but not consequential or punitive damages) as its sole and exclusive remedies.

12. **Other Applicable Development Ordinances.** Unless otherwise expressly stipulated in this Agreement, nothing herein shall relieve Developer from responsibilities for the construction of other public improvements under applicable development ordinances of the Town.

13. **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. Venue for any action arising under this Agreement shall lie in Collin County, Texas.

14. **Notices.** Any notices required or permitted to be given hereunder 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, Texas
P.O. Box 307
Prosper, Texas 75078
Attn: Town Manager's Office

If to Developer: BBG Investments, Inc.
P.O. Box 120
Prosper, Texas 75078
Attn: Trevor Wood

15. **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).

16. **Sovereign Immunity.** The parties agree that Town has not waived its sovereign immunity by entering into and performing its obligations under this Agreement; however, for purposes of enforcement of this Agreement, Town agrees that it has waived its sovereign immunity, and to that extent only.

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 signature will also be deemed to constitute an original if properly executed.

20. **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto 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.

21. **Savings/Severability.** Invalidation of any one of the provisions of this document by judgment or court order shall in no way affect any of the other provisions,

which shall remain in full force and effect. 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.

22. **Authority to Execute.** The 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. This Agreement is and shall be binding upon Developer, its successors, heirs, assigns, grantees, vendors, trustees, representatives, and all others holding any interest now or in the future.

23. **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 mediation.

24. **Indemnification.** From the Effective Date of this Agreement to the date on which all work with respect to the construction of McKinley Street and all public improvements, as contemplated herein, have been accepted by the Town, Developer, individually and on behalf of its respective officers, directors, partners, employees, representatives, agents, successors, assignees, vendors, grantees and/or trustees, does hereby agree to release, defend, indemnify and hold harmless the Town and its elected and appointed officials, officers, employees and agents from and against all damages, injuries (including death), claims, property damages (including loss of use) losses, demands, suits, judgments and costs, including reasonable attorney's fees and expenses (including attorney's fees and expenses incurred in enforcing this indemnity), caused by the negligent, grossly negligent, and/or intentional act and/or omission of the applicable developer, its officers, directors, partners, employees, representatives, agents, or any other third parties for whom such developer is legally responsible, in its/their performance of this Agreement, including but not limited to, the construction of McKinley Street contemplated herein (hereinafter "claims"). Developer is expressly required to defend the Town against all such claims arising under this Agreement, and the Town is required to reasonably cooperate and assist Developer in providing such defense.

25. **Approval of Counsel.** In its reasonable discretion, the Town shall have the right to approve counsel to be retained by Developer in fulfilling its obligation hereunder to defend and indemnify the Town. The Town reserves the right to provide a portion or all of its' own defense, at its sole cost; however, the Town is under no obligation to do so. Any such action by the Town is not to be construed as a waiver of Developer's obligation to defend the Town or as a waiver of Developer's obligation to indemnify the Town pursuant to this Agreement. Developer shall retain Town-approved defense counsel within seven (7) business days of the Town's written notice that the Town is invoking its right to indemnification under this Agreement.

26. **Survival.** Paragraph 24, "Indemnification," shall survive the termination of this Agreement.

27. **Waiver of Texas Government Code § 3000.001 et seq.** With respect to any and all Structures to be constructed on the Property pursuant to this Agreement, Developer hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

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

29. **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.

30. **Rough Proportionality.** Developer hereby agrees that any land or property donated and/or dedicated pursuant to this Agreement, whether in fee simple or otherwise, to the Town 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.

31. **Exactions/Infrastructure Costs.** Developer 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 Developer, regarding Developer's rights under Texas and federal law. Developer 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. Developer 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, 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.

32. **Miscellaneous Drafting Provisions; Interpretation.** 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. Moreover, in the event of any conflict between any term or provision

contained in this Agreement and any applicable Town ordinances related to non-zoning development standards for the Project, the terms or provisions of this Agreement shall apply.

33. **No 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.

IN WITNESS WHEREOF, the parties hereto have caused this document to be executed as of the date first above written.

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THE TOWN OF PROSPER, TEXAS

By: _____

Name: Harlan Jefferson

Title: Town Manager

STATE OF TEXAS)

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of November, 2020, by Harlan Jefferson, Town Manager for the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

Notary Public, State of Texas

BBG INVESTMENTS, INC., a Texas corporation

By: _____
Trevor Wood
Title: _____

STATE OF TEXAS)
)
COUNTY OF COLLIN)

Before me, the undersigned authority, a notary public in and for the State of Texas, on this day personally appeared Trevor Wood, the _____ of BBG Investments, Inc., a Texas corporation, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purpose and consideration expressed, and in the capacity therein stated, on behalf of such entity.

Given under my hand and seal of office this ____ day of November, 2020.

Notary public in and for the State of Texas
My commission expires: _____

EXHIBIT A
(Property Legal Description)

EXHIBIT B
(McKinley Street Improvements to be Constructed by Developer)

EXHIBIT C
(Anticipated McKinley Street Cost Projections and Anticipated Impact Fees)

EXHIBIT D
**(Building Elevations, Building Construction Materials and
Architectural Standards)**

EXHIBIT E
(Overhead Electric Line Location)