

## **PRADERA DEVELOPMENT AGREEMENT**

**THIS PRADERA DEVELOPMENT AGREEMENT** ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and Orion RE Capital ("Developer"), 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**, Developer is developing a project in the Town known as Pradera ("Property"), a legal description of which Property is attached hereto as Exhibit A and incorporated by reference; and

**WHEREAS**, the Property was rezoned by the Town Council on or about August 8, 2023, 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 Developer's reasonable investment-backed expectations in said 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, "Building Materials," attached hereto and incorporated herein. 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. Maintenance of Landscape Areas.**

A. Developer agrees to maintain all Landscape Areas (including all vegetation) on the Property, as referenced and/or depicted in the applicable zoning ordinance, as amended, free of weeds, tall grass, rubbish, brush and other objectionable, unsightly or unsanitary matter, as defined in Article 6.03 of Chapter 6 of the Town's Code of Ordinances, as amended. Further, Developer agrees that landscape maintenance obligations referenced herein include mulching of Landscape Areas, prompt replacement of dead or dying vegetation with new vegetation, mowing of Landscape Areas, where required, and other routine and regular maintenance of plants and other vegetation.

B. In the event that any Landscape Area or plants or vegetation is/are not properly maintained in accordance with this Agreement, the Town may give written notice to Developer of such failure to maintain and Developer shall promptly address such failure, taking into account the type(s) and species of such plants and vegetation and applicable planting cycles of same. After such notice, and Developer's failure to address same, Developer agrees and acknowledges that the Town shall have the right to go onto Developer's property and replace, replant or otherwise address such failure to maintain any Landscape Area or plants or vegetation, with an invoice of costs incurred by the Town being promptly provided by the Town to Developer. In the event Developer does not pay such invoice within thirty (30) days of receipt by Developer, the Town may file a lien on the Property for the costs it incurred for the work done, including a reasonable administrative fee. Any failure to maintain any Landscape Area, plants or vegetation shall not be considered a default in accordance with Paragraph 7 of this Agreement, and any obligations referenced in said Paragraph shall not be applicable to this Paragraph 2.

C. Notwithstanding any provision in this Paragraph to the contrary, the Town specifically reserves the right to take enforcement action and/or file a complaint against Developer in the Town's municipal court (or other appropriate forum) relative to weeds, tall grass, rubbish, brush and other objectionable, unsightly or unsanitary matter on the Property, in accordance with Article 6.03 of Chapter 6 of the Town's Code of Ordinances, as amended.

**3. Periodic Review of the Property's Zoning by the Town Council.** The Town Council reserves the right to periodically review the progress and/or scope of development of the Property pursuant to the terms of any zoning regulations applicable to the Property, and in the event any amendment(s) or revision(s) to said zoning regulations are deemed reasonably appropriate and have the written approval of the Developer, the Town may provide appropriate notices for Town consideration of same, pursuant to the provisions of Chapter 211 of the Texas Local Government Code, as amended, and the Town's Zoning Ordinance, as amended.

**4. Certain Business Establishments Prohibited.** Developer agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property any of the following business establishments: (1) credit access businesses, as defined in Texas Finance Code § 393.601, as amended, including but not limited to payday lending businesses, "cash for title" lenders, and credit services businesses, as defined in Texas Finance Code § 393.001, as amended; (2) body art facilities; (3) smoke or vape shops; (4) any business entity that sells drug paraphernalia; (5) any business establishment offering gaming or slot machines; (6) sex shops, including but not limited to business entities whose primary purpose is the sale of lewd merchandise; (7) pawn shops; and (8) business entities which primarily utilize outdoor storage or displays. Additionally, Developer agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property a package liquor store, which for purposes of this Agreement is defined as any business entity that is required to obtain a Package Store Permit (P) from the Texas Alcoholic Beverage Commission for the off-premises consumption of alcohol.

5. **Covenant Running with the Land.** The terms, conditions, rights, obligations, benefits, covenants and restrictions of the provisions of this Agreement shall be deemed covenants running with the land, and shall be binding upon and inure to the benefit of the Developer 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 Developers of the Property, regardless of whether this Agreement is expressly referenced therein.

6. **Applicability of Town Ordinances.** Developer shall develop the Property, and construct all structures on the Property, in accordance with all applicable Town ordinances and building/construction codes.

7. **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.

8. **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.

9. **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  
                              Prosper, Texas 75078  
                              Attention: Town Manager

If to Developer: Orion RE Capital  
5 Cowboys Way St. 300  
Frisco, TX 75034  
Attention: Prasanna Kumar

With copy to:  
Cornerstone Projects Group  
4770 Bryant Irvin Court, Suite 200  
Fort Worth, Texas 76107  
Attention: Nolan Bradshaw

**10. 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).

**11. 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.

**12. 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.

**13. 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.

**14. 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. Developer warrants and represents that the individual executing this Agreement on behalf of Developer has full authority to execute this Agreement and bind Developer to the same. The Town Council hereby authorizes the Town Manager of the Town to execute this Agreement on behalf of the Town.

**15. 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.

**16. 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.

**17. 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 Developer 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 Developer assumes the liabilities, responsibilities, and obligations of the assignor under this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon receipt of the assignment by the Town. No assignment by 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.

**18. 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.

**19. 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.

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

**21. 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.

**23. Miscellaneous Drafting Provisions.** This Agreement shall be deemed drafted equally by all Parties hereto. The language of all parts of this Agreement shall be construed as a whole according to its fair meaning, and any presumption or principle that the language herein is to be construed against any Party shall not apply.

**TOWN:**

By: \_\_\_\_\_  
Name: Mario Canizaares  
Title: Town Manager, Town of Prosper

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Mario Canizares, Town Manager of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

6

**DEVELOPER:**

**Orion RE Capital**

By: \_\_\_\_\_

Name: Prasanna Kumar

Title: CEO / Partner

**STATE OF TEXAS        )**

**)**

**COUNTY OF COLLIN    )**

      This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2023, by Prasanna Kumar on behalf of Orion RE Capital, 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 Developer.

\_\_\_\_\_  
Notary Public, State of Texas

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**(Property Depiction)**

BEING a 40.065 acre tract of land situated in the Collin County Land Survey, Abstract Number 147, Collin County, Texas and being all of that called 34.709 acre tract of land described by deed to AABVC-DNT-West-FRT, LP, recorded in County Clerk's File Number 2021082001693210, Deed Records, Collin County, Texas and all of that called 5.368 acre tract of land described by deed to Collin County, recorded in Volume 5949, Page 2222, Deed Records, Collin County, Texas and being more particularly described by metes and bounds as follows:

BEGINNING at a ½ inch iron rod with cap stamped "PRESTON TRAIL" found at the southeast corner said called 34.709 acre tract, said iron rod also being the southwest corner of said called 5.386 acre tract and being in the north line of that called 40.066 acre tract of land described by deed to Cothran Malibu, LP, recorded in County Clerk's File Number 20150105000009000, Deed Records, Collin County, Texas;

THENCE South 87 degrees 52 minutes 23 seconds West, 1108.44 feet along the south line of said called 34.709 acre tract and said north line of the called 40.066 acre tract to a 5/8 inch iron rod with cap stamped "MANHARD" set at the northwest corner of said called 40.066 acre tract;

THENCE North 89 degrees 57 minutes 32 seconds West, 43.17 feet, continuing along said south line of the called 34.709 acre tract to a 5/8 inch iron rod with cap stamped "MANHARD" set at the southwest corner of said called 34.709 acre tract;

THENCE North 00 degrees 45 minutes 11 seconds West, 1324.66 feet along the west line of said called 34.709 acre tract to a 1/2 inch iron rod with cap stamped "PRESTON TRAIL" found at the northwest corner of said called 34.709 acre tract, said iron rod also being the southwest corner of that called 34.557 acre tract of land described by deed to Urban Heights at Frontier LLC, recorded in County Clerk's File Number 2022000131196, Deed Records, Collin County, Texas;

THENCE North 89 degrees 22 minutes 58 seconds East, 1146.49 feet along the north line of said called 34.709 acre tract and the south line of said called 34.557 acre tract to a 1/2 inch iron rod with cap stamped "PRESTON TRAIL" found at the northeast corner of said called 34.709 acre tract, said iron rod also being the southeast corner of said called 34.557 acre tract and the northwest corner of the aforementioned called 5.386 acre tract;



THENCE North 89 degrees 26 minutes 22 seconds East, 187.36 feet along the north line of said called 5.386 acre tract to a 1/2 inch rod found at the northeast corner of said called 5.386 acre tract;

THENCE South 00 degrees 43 minutes 44 seconds East, 1290.88 feet along the east line of said called 5.386 acre tract to a 1/2 inch iron rod found at the southeast corner of said called 5.386 acre tract, said iron rod also being in the north line of the aforementioned called 40.066 acre tract;

THENCE South 87 degrees 50 minutes 46 seconds West, 182.07 feet along the south line of said called 5.386 acre tract and said north line of the called 40.066 acre tract to the POINT OF BEGINNING and containing 1,745,218 square feet or 40.065 acres of land, more or less.

**EXHIBIT B**  
**(Building Materials)**

**Highway Subdistrict:**

1. Brick, natural and manufactured stone, curtain wall and window wall glazing, and cementitious panel system shall be considered primary materials. Primary materials shall comprise of at least seventy-five percent (75%) of each elevation, exclusive of doors and windows. Where cementitious panel is applied, it shall be limited to no more than 50% of a building's material. Non-primary, or secondary materials, may include stucco and metal panel systems. Where Multifamily is concerned, primary materials shall be limited to brick, natural and manufactured stone, and cementitious panel system.

2. Only primary building materials are allowed on the first floor with the exception of cementitious panels. For purposes of this section, the first floor shall be at least fourteen (14) feet high and, at minimum, 90% shall be constructed of masonry cladding.

**Neighborhood Subdistrict:**

1. Brick, natural and manufactured stone, curtain wall and window wall glazing, and cementitious panel system shall be considered primary materials. Primary materials shall comprise at least seventy-five percent (75%) of each elevation, exclusive of doors and windows. Townhomes shall be constructed of no less than 75% brick masonry, calculated from the aggregate of the front, rear and side elevations.

2. Only primary building materials are allowed on the first floor excluding cementitious panel systems, exclusive of doors, windows, and their accompanying frames. For purposes of this section, the first floor shall be at least nine (9) feet high.