

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and SCSD-FINNELL, LTD., a Texas limited partnership ("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 in the Town a coffee restaurant/drive through on an approximate 0.8-acre tract of land generally located at the southwest corner of Preston Road and Broadway Street (the "Property"), and a legal description of the Property is attached hereto as Exhibit A and incorporated by reference; and

WHEREAS, the foregoing Property was rezoned by the Town Council on or about July 26, 2022, when the Town Council approved an amendment to Planned Development 93 for the Property, 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 the Development, as may be amended, and as more fully described herein.

NOW, THEREFORE, in consideration of the foregoing premises, and for other good and valuable consideration the receipt and adequacy of which are hereby acknowledged, the Parties to this Agreement agree as follows:

1. Development Standards. For any structure built on the Property following the Effective Date, it shall comply with the requirements contained in Exhibit B, "Building Façade/Elevation Plan," and Exhibit C, "Landscape Plan," all of which are 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. 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.

3. **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.

4. **Rough Proportionality.** Developer hereby agrees that any land or property donated and/or dedicated to the Town pursuant to this Agreement, whether in fee simple or otherwise, including any easements (as may be reflected in any Final Plat), 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.

5. **Exactions/Infrastructure Costs.** Both the Town and Developer have been represented by legal counsel in the negotiation of this Agreement and been advised or each has had the opportunity to have legal counsel review this Agreement and advise them, regarding Developer's and the Town's rights under Texas and federal law. Developer and the Town hereby waive any requirement that the other retain a professional engineer, licensed pursuant to Chapter 1001 of the Texas Occupations Code, to review and determine that the exactions 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 and any exemptions from impact fees under current or future law; however, notwithstanding the foregoing and to the extent permitted by law, 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.

6. **Default.** No Party shall be in default under this Agreement until notice of the alleged failure of such Party to perform has been given (which notice shall set forth in reasonable detail the nature of the alleged failure) and until such Party has been given a reasonable time to cure the alleged failure (such reasonable time determined based on the nature of the alleged failure, but in no event less than thirty (30) days after written notice of the alleged failure has been given). In addition, no Party shall be in default under this Agreement if, within the applicable cure period, the Party to whom the notice was given begins performance and thereafter diligently and continuously pursues performance until the alleged failure has been cured. If either Party is in default under this Agreement, the other Party shall have the right to enforce the Agreement in accordance with applicable law, provided, however, in no event shall any Party be liable for consequential or punitive damages.

7. **Venue**. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Collin County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Collin County, Texas.

8. **Notice**. Any notices required or permitted to be given hereunder (each, a "Notice") shall be given by certified or registered mail, return receipt requested, to the addresses set forth below or to such other single address as either party hereto shall notify the other:

If to the Town: The Town of Prosper
 250 W. First Street
 P.O. Box 307
 Prosper, Texas 75078
 Attention: Town Manager

If to Developer: SCSD-Finnell, Ltd.
 Attn: Cary Albert
 14114 Dallas Pkwy, Suite 670
 Dallas, Texas 75254

9. **Prevailing Party**. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

10. **Entire Agreement**. This Agreement contains the entire agreement between the Parties hereto with respect to development of the Property and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party.

11. **Savings/Severability**. In the event any provision of this Agreement shall be determined by any court of competent jurisdiction to be invalid or unenforceable, the Agreement shall, to the extent reasonably possible, remain in force as to the balance of its provisions as if such invalid provision were not a part hereof.

12. **Binding Agreement**. A telecopied facsimile of a duly executed counterpart of this Agreement shall be sufficient to evidence the binding agreement of each party to the terms herein, including without limitation a scanned copy sent via electronic mail by either Party.

13. **Authority to Execute**. This Agreement shall become a binding obligation on the Parties upon execution by all Parties hereto. The Town warrants and represents

that the individual executing this Agreement on behalf of the Town has full authority to execute this Agreement and bind the Town to the same. 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 Mayor of the Town to execute this Agreement on behalf of the Town.

14. Filing in Deed Records. This Agreement, and any and all subsequent amendments to this Agreement, shall be filed in the deed records of Collin County, Texas.

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

16. Notification of Sale or Transfer; Assignment of Agreement. Except with respect to a sale or transfer to a related entity of Developer, 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. Except with respect to a sale or transfer to a related entity of Developer, 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 and/or the building has been constructed on the Property as provided in this Agreement, the assigning party will be released from any rights and obligations under this Agreement as to the Property that is the subject of such assignment, effective upon such transfer. No assignment by 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.

17. Sovereign Immunity. The Parties agree that the Town has not waived its sovereign immunity from suit by entering into and performing its obligations under this Agreement.

18. Effect of Recitals. The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town Council; and (d) reflect the final intent of the Parties with regard to the subject matter of this Agreement. In the event it becomes necessary to interpret any provision of this Agreement, the intent

of the Parties, as evidenced by the recitals, shall be taken into consideration and, to the maximum extent possible, given full effect. The Parties have relied upon the recitals as part of the consideration for entering into this Agreement and, but for the intent of the Parties reflected by the recitals, would not have entered into this Agreement.

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

20. Counterparts. This Agreement may be executed in a number of identical counterparts, each of which shall be deemed an original for all purposes. A facsimile signature will also be deemed to constitute an original.

21. Amendment. This Agreement shall not be modified or amended except in writing signed by the Parties. A copy of each amendment to this Agreement, when fully executed and recorded, shall be provided to each Party, Assignee and successor Developer of all or any part of the Property; however, the failure to provide such copies shall not affect the validity of any amendment.

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

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: David F. Bristol

Title: Mayor

STATE OF TEXAS)

)

COUNTY OF COLLIN)

This instrument was acknowledged before me on the ____ day of August, 2022, by David F. Bristol, Mayor of the Town of Prosper, Texas, on behalf of the Town of Prosper, Texas.

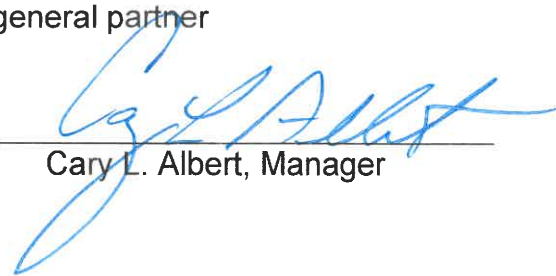
Notary Public, State of Texas

My Commission Expires: _____

DEVELOPER:

SCSD – FINNELL, LTD.,
a Texas limited partnership

By: SCSD-FINNELL MGMT, LLC,
a Texas limited liability company,
its general partner

By: 
Cary L. Albert, Manager

STATE OF TEXAS

COUNTY OF DALLAS

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§
§

This instrument was acknowledged before me on August 2nd, 2022, by Cary L. Albert, Manager of SCSD-FINNELL MGMT, LLC, a Texas limited liability company, as general partner of SCSD – FINNELL, LTD, a Texas limited partnership, on behalf of said limited partnership.



Notary Public, State of Texas

(NOTARY SEAL)

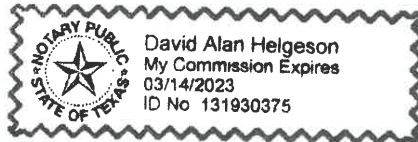
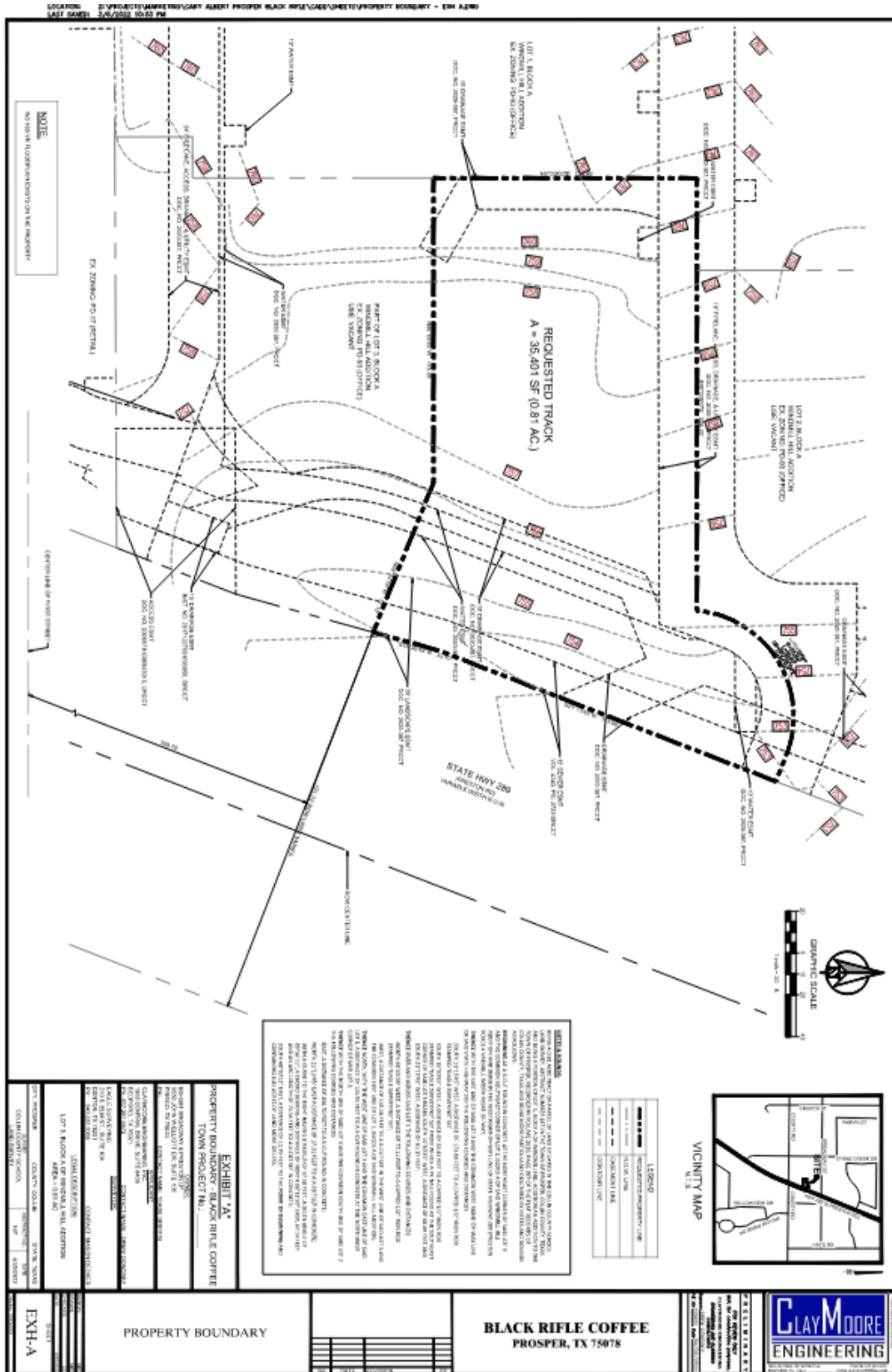


EXHIBIT A **(Property Legal Description)**



(Building/Façade Elevation Plan)

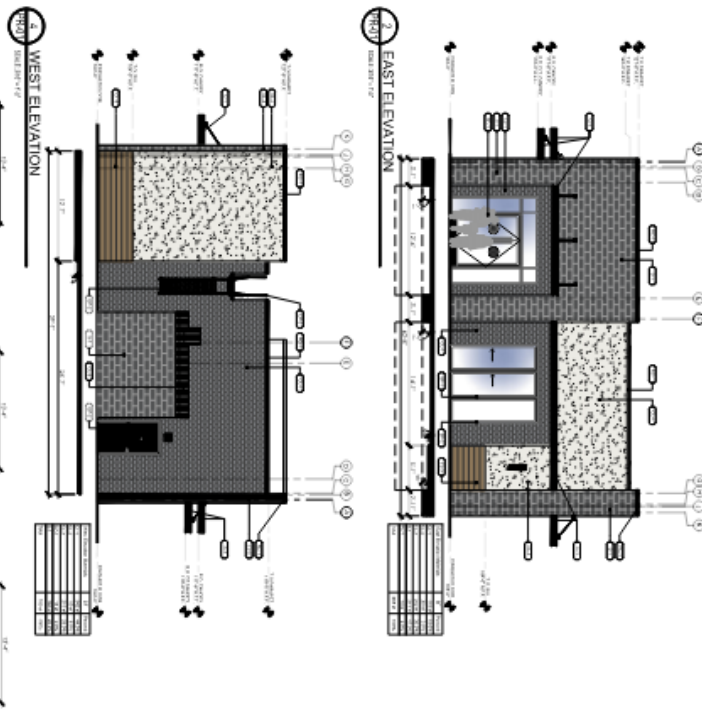

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Figure 1 displays 16 micrographs of various surface textures, arranged in a 4x4 grid. Each micrograph is labeled with a number (1-16) and a description of the texture. The textures range from smooth to highly textured, including granular, fibrous, and layered structures.

Micrograph	Description
1	Smooth
2	Granular
3	Fibrous
4	Layered
5	Smooth
6	Granular
7	Fibrous
8	Layered
9	Smooth
10	Granular
11	Fibrous
12	Layered
13	Smooth
14	Granular
15	Fibrous
16	Layered




ENCLOSURE ELEVATIONS

JOB#	220-220	SCALE	AS NOTED	DATE	6/26/22
DRAWN BY	gpr	CHECKED BY	MS		



DIMENSION
INCORPORATED
10000 W. 10th Avenue, Suite 100
Denver, CO 80202
Tel: 303.751.1100
Fax: 303.751.1101
www.dimensioninc.com



BLACK RIFLE COFFEE COMPANY 10000 W. 10th Avenue Suite 100 Denver, CO 80202	SHEET: _____ BUILDING ELEVATION FOR PROJECT NO. 220-220 PREPARED BY: _____ DATE: _____
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(Landscape Plan)

