

## DEVELOPMENT AGREEMENT

**THIS DEVELOPMENT AGREEMENT** (“Agreement”) is entered into by and between the Town of Prosper, Texas (“Town”), and Monte Kauffman (“Owner”) (individually, a “Party” and collectively, the “Parties”) to be effective (the “Effective Date”) on the latest date executed by a Party.

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

**WHEREAS**, Owner owns property located at 208 E. First Street in the Town, consisting of approximately 0.65 acres of land in Collin County, more particularly described and/or depicted in Exhibit A, attached hereto and incorporated by reference (the “Property”); and

**WHEREAS**, Owner desires to auction, sell, demolish or otherwise remove an existing residential structure (“Existing Structure”) on the Property, approximately 672 square feet in size, and construct on the Property a new single-family residence (“Proposed Structure”); and

**WHEREAS**, the Town and Owner have agreed to certain conditions related to Owner occupying the Existing Structure during the construction of the Proposed Structure, as more fully described herein; and

**WHEREAS**, both the Town and Owner agree and acknowledge that the Proposed Structure shall be constructed in accordance with the provisions and standards reflected in this Agreement; and

**WHEREAS**, this Agreement seeks to incorporate the negotiated and agreed upon development and exterior materials construction standards and to recognize Owner’s reasonable investment-backed expectations.

**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. Exterior Building Materials for Proposed Structure.** The Proposed Structure shall be constructed one hundred percent (100%) of masonry (*i.e.*, brick and stone only) and for purposes of this Agreement, cementitious fiberboard is considered masonry, but may only constitute fifty percent (50%) of stories other than the first story. 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. Conditions Related to Construction and Occupancy.** The Parties hereby agree to the following provisions: (1) the Existing Structure shall be auctioned, sold, demolished or otherwise removed from the Property prior to a final electric release on the

Property; (2) at no time shall the Property have more than one (1) water meter; one (1) electric meter; or one (1) sewer connection; (3) the personal effects and contents in the Existing Structure may be secured in a rental storage pod on the Property between the date of auction, sale, demolition or removal of the Existing Structure and the final approval by the Town of the Proposed Structure; (4) no personal effects or contents in the Existing Structure may be stored or placed in the Proposed Structure until the final approval by the Town of the Proposed Structure; (5) if the Existing Structure is demolished, prior to the commencement of demolition Owner shall obtain a demolition permit from the Town, and an asbestos survey/inventory shall be required as part of the demolition permit application; and (6) Owner shall construct any and all structures on the Property (including any accessory structures) in accordance with all applicable Town ordinances and building/construction codes.

**3. 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.

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

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

If to Owner:               Mr. Monte Kauffman  
                                  208 E. First Street  
                                  Prosper, Texas 75078

**5. 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).

**6. Entire Agreement.** This Agreement contains the entire agreement between the Parties hereto with respect to 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.

**7. 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.

**8. 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.

**9. 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 has full authority to execute this Agreement and bind any and all Owners of the Property to the same.

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

**11. 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.

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

**13. Effect of Recitals.** The recitals contained in this Agreement: (a) are true and correct as of the Effective Date; (b) form the basis upon which the Parties negotiated and entered into this Agreement; (c) are legislative findings of the Town; 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.

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

**15. 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.

**16. Waiver of Texas Government Code § 3000.001 et seq.** With respect to the Proposed Structure to be constructed on the Property pursuant to this Agreement,

Owner hereby waives any right, requirement or enforcement of Texas Government Code §§ 3000.001-3000.005, as amended.

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

**18. 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.

**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 required by the Town are roughly proportional or roughly proportionate to the proposed development's anticipated impact. Owner specifically reserves its right to appeal the apportionment of municipal infrastructure costs in accordance with § 212.904 of the Texas Local Government Code; however, notwithstanding the foregoing, Owner hereby releases the Town from any and all liability under § 212.904 of the Texas Local Government Code, as amended, regarding or related to the cost of those municipal infrastructure requirements imposed by this Agreement.

**20. Amendment.** This Agreement shall not be modified or amended except in writing signed by the Parties.

**21. 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.

**(Remainder of Page Intentionally Left Blank)**

**TOWN:**

**THE TOWN OF PROSPER, TEXAS**

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

Name: Harlan Jefferson

Title: Town Manager, Town of Prosper

**STATE OF TEXAS        )**

**)**

**COUNTY OF COLLIN     )**

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

Notary Public, State of Texas

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

**OWNER:**

By: \_\_\_\_\_  
Printed Name: Monte Kauffman

**STATE OF TEXAS        )**  
                                  )  
**COUNTY OF COLLIN    )**

This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2020, by Monte Kauffman, known to be the person whose name is subscribed to the foregoing instrument, and that he executed the same on behalf of and as the act of Owner.

Notary Public, State of Texas  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**(Property Description/Depiction)**

All that certain lot, tract or parcel of land lying and being situated in the County of Collin, State of Texas and being in the Collin County School Land Survey, Abstract No. 147, Survey No. 12 being a resurvey of the lot described in a Deed from Lee Gilmer, et ux, to Price Stark and wife, Altha Stark dated April 13, 1976 recorded in Vol. 997, Pg. 794, Colling County Deed Records, being more fully described as follows:

BEGINNING at the Northwest corner of said Stark lot, a point on the South edge of First Street at the North extension of an established fence from the South;

THENCE East 95.0 feet with the South side of First Street to an iron pin set for a corner;

THENCE South 300.0 feet to an iron pin set for a corner in an East-West established fence;

THENCE West 95.0 feet to an existing iron pint set on the West side of a corner post for a corner;

THENCE North 300.0 feet with the West line of said Stark lot and with said established fence to the place of beginning, containing 0.654 acre.

This is the same tract of land that was conveyed to Joe Templin by Judy Boatright in Deed recorded in Vol. 1173, Pg. 161 of the Deed Records of Collin County, Texas, and the same land conveyed by Bernhart B. Schlachter to James Barton Tims, and wife, Judith Ann Tims by deed recorded in Vol. 1371, Pg. 798, Deed Records, Collin County, Texas.