

## **DEVELOPMENT AGREEMENT**

**THIS DEVELOPMENT AGREEMENT** ("Agreement") is entered into by and between the Town of Prosper, Texas ("Town"), and Alpha3 Prosper RI, LLC, a Texas limited liability company ("Developer"), collectively referred to as "Parties," to be effective on the date last executed by either of the Parties (the "Effective Date").

**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 on an approximate 64.501-acre tract of land generally located at the northeast corner of U.S. Highway 380 and FM 1385 in Denton County, more particularly described and depicted in Exhibit A, attached hereto and incorporated by reference (the "Property"); and

**WHEREAS**, a portion of the foregoing Property (identified as Lots 15 and 16) was rezoned by the Town Council on or about April 26, 2022, pursuant to Ordinance No. 2022-20, and this Agreement seeks to incorporate, in part, the negotiated and agreed upon development standards contained in said Ordinance, as may be amended, and/or this Development Agreement, to recognize Developer's reasonable investment-backed expectations in the development of Lots 15 and 16 and the Property, as may be amended, and as more fully described herein; and

**WHEREAS**, subject to the terms of this Agreement, Developer agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on the Property any business enterprises engaging in those businesses referenced in Paragraph 1, below.

**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. 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, as to Lots 15 and 16 of the Property (legally described on Exhibit A attached hereto), Developer agrees and acknowledges that it will not lease, sell or otherwise permit or authorize on Lots 15 and 16 of 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. 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 owners of the Property, regardless of whether this Agreement is expressly referenced therein.

**3. Applicability of Town Ordinances.** Developer shall construct all structures on Lots 15 and 16 of 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 Denton County, Texas. Exclusive venue for any action arising under this Agreement shall lie in Denton 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 Developer:      Alpha3 Prosper RI, LLC  
1700 Pacific Avenue, Suite 1850  
Dallas, Texas 75201  
Attention: Arzu Molubhoy

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. 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.

12.    **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.

13.    **Notification of Sale or Transfer; Assignment of Agreement.** 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

owner 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.

**14. 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.

**15. 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.

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

**17. 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.

**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. 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.

**20. 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: Harlan Jefferson

Title: Town Manager, Town of Prosper

**STATE OF TEXAS            )**

**)**

**COUNTY OF COLLIN        )**

      This instrument was acknowledged before me on the \_\_\_\_ day of \_\_\_\_\_, 2022, 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: \_\_\_\_\_

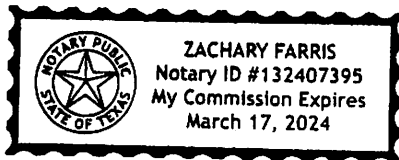
**DEVELOPER:**

**ALPHA3 PROSPER RI, LLC**, a Texas limited liability company

By: *Arzu Molubhoy*  
Arzu Molubhoy, Manager

STATE OF TEXAS     )  
                                  )  
COUNTY OF COLLIN    )

This instrument was acknowledged before me on the 26<sup>th</sup> day of May, 2022, by Arzu Molubhoy, in her capacity as Manager of Alpha3 Prosper RI, LLC, a Texas limited liability company, known to be the person whose name is subscribed to the foregoing instrument, and that she executed the same on behalf of and as the act of Developer.



*[Signature]*  
Notary Public, State of Texas  
My Commission Expires: MARCH 17, 2024

**EXHIBIT A**

