

TOWN OF PROSPER, TEXAS

ORDINANCE NO. 12-05

AN ORDINANCE AMENDING PROSPER'S ZONING ORDINANCE NO. 05-20 AND ORDINANCE NO. 00-12; REZONING A TRACT OF LAND CONSISTING OF 3.54 ACRES, MORE OR LESS, SITUATED IN THE JOHN R. TUNNEY SURVEY, ABSTRACT NO. 914, IN THE TOWN OF PROSPER, COLLIN COUNTY, TEXAS, HERETOFORE ZONED COMMERCIAL (C) IS HEREBY REZONED AND PLACED IN THE ZONING CLASSIFICATION OF PLANNED DEVELOPMENT-RETAIL (PD-R); DESCRIBING THE TRACT TO BE REZONED; PROVIDING FOR A PENALTY FOR THE VIOLATION OF THIS ORDINANCE; PROVIDING FOR REPEALING, SAVING AND SEVERABILITY CLAUSES; PROVIDING FOR AN EFFECTIVE DATE OF THIS ORDINANCE; AND PROVIDING FOR THE PUBLICATION OF THE CAPTION HEREOF.

WHEREAS, the Town Council of the Town of Prosper, Texas (the "Town Council") has investigated and determined that Zoning Ordinance No. 05-20 and Ordinance No. 00-12 should be amended; and

WHEREAS, the Town of Prosper, Texas ("Prosper") has received a request from Blue Star Land LP ("Applicant") to rezone 3.54 acres of land, more or less, situated in the John R. Tunney Survey, Abstract No. 914, in the Town of Prosper, Collin County, Texas; and

WHEREAS, the Town Council has investigated into and determined that the facts contained in the request are true and correct; and

WHEREAS, all legal notices required for rezoning have been given in the manner and form set forth by law, and public hearings have been held on the proposed rezoning and all other requirements of notice and completion of such zoning procedures have been fulfilled; and

WHEREAS, the Town Council has further investigated into and determined that it will be advantageous and beneficial to Prosper and its inhabitants to rezone this property as set forth below.

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS:

SECTION 1: Findings Incorporated. The findings set forth above are incorporated into the body of this Ordinance as if fully set forth herein.

SECTION 2: Amendments to Zoning Ordinance No. 05-20 and Ordinance No. 00-12. Zoning Ordinance No. 05-20 and Ordinance No. 00-12 is amended as follows: The zoning designation of the below-described property containing 3.54 acres of land, more or less, situated in the John R. Tunney Survey, Abstract No. 914, in the Town of Prosper, Collin County, Texas, (the "Property") and all streets, roads and alleyways contiguous and/or adjacent thereto is hereby rezoned as Planned Development-Retail

(PD-R). The property as a whole and the boundaries for each zoning classification are more particularly described in Exhibit "A" attached hereto and incorporated herein for all purposes as if set forth verbatim.

The development plans, standards, and uses for the Property in this Planned Development District shall conform to, and comply with 1) the statement of intent and purpose, attached hereto as Exhibit "B"; 2) the planned development standards, attached hereto as Exhibit "C"; 3) the concept plan, attached hereto as Exhibit "D"; 4) and the development schedule, attached hereto as Exhibit "E", which are incorporated herein for all purposes as if set forth verbatim. Except as amended by this Ordinance, the development of the Property within this Planned Development District must comply with the requirements of all ordinances, rules, and regulations of Prosper, as they currently exist or may be amended.

Three original, official and identical copies of the zoning exhibit map are hereby adopted and shall be filed and maintained as follows:

- a. Two (2) copies shall be filed with the Town Secretary and retained as original records and shall not be changed in any matter.
- b. One (1) copy shall be filed with the Building Official and shall be maintained up-to-date by posting thereon all changes and subsequent amendments for observation, issuing building permits, certificates of compliance and occupancy and enforcing the Zoning Ordinance. Reproduction for information purposes may from time-to-time be made of the official zoning district map.

Written notice of any amendment to this Planned Development District shall be sent to all property owners within two hundred feet (200') of the specific area to be amended.

SECTION 3: No Vested Interest/Repeal. No developer or property owner shall acquire any vested interest in this Ordinance or in any other specific regulations contained herein. Any portion of this Ordinance may be repealed by the Town Council in the manner provided for by law.

SECTION 4: Unlawful Use of Premises. It shall be unlawful for any person, firm or corporation to make use of said premises in some manner other than as authorized by this Ordinance, and shall be unlawful for any person, firm or corporation to construct on said premises any building that is not in conformity with the permissible uses under this Zoning Ordinance.

SECTION 5: Penalty. Any person, firm, corporation or business entity violating this Ordinance or any provision of Prosper's Zoning Ordinance No. 05-20, or as amended, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined any sum not exceeding Two Thousand Dollars (\$2,000.00). Each continuing day's violation under this Ordinance shall constitute a separate offense.

The penal provisions imposed under this Ordinance shall not preclude Prosper from filing suit to enjoin the violation. Prosper retains all legal rights and remedies available to it pursuant to local, state and federal law.

SECTION 6: Severability. Should any section, subsection, sentence, clause or phrase of this Ordinance be declared unconstitutional or invalid by a court of competent jurisdiction, it is expressly provided that any and all remaining portions of this Ordinance shall remain in full force and effect. Prosper hereby declares that it would have passed this Ordinance, and each section, subsection, clause or phrase thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses and phrases be declared unconstitutional or invalid.

SECTION 7: Savings/Repealing Clause. Prosper's Zoning Ordinance No. 05-20 shall remain in full force and effect, save and except as amended by this or any other Ordinance. All provisions of any ordinance in conflict with this Ordinance are hereby repealed to the extent they are in conflict; but such repeal shall not abate any pending prosecution for violation of the repealed ordinance, nor shall the appeal prevent a prosecution from being commenced for any violation if occurring prior to the repealing of the ordinance. Any remaining portions of said ordinances shall remain in full force and effect.

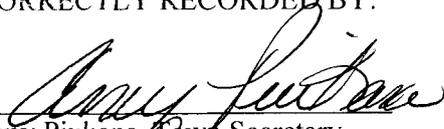
SECTION 8: Effective Date. This Ordinance shall become effective from and after its adoption and publications as required by law.

DULY PASSED AND APPROVED BY THE TOWN COUNCIL OF THE TOWN OF PROSPER, TEXAS ON THIS 14th DAY OF FEBRUARY, 2012, BY VOTE OF 5 TO 0.

APPROVED AS TO FORM:


Ray Smith, Mayor

ATTESTED TO AND
CORRECTLY RECORDED BY:


Amy Piukana, Town Secretary



DATE OF PUBLICATION: 2-22-12, Prosper Press

LEGAL DESCRIPTION
3.54 ACRES

BEING a tract of land situated in the JOHN R. TUNNEY SURVEY, ABSTRACT NO. 916, Town of Prosper, Collin County, Texas and being all of Lot 6, Block A of PRESTON 48 ADDITION, an Addition to the Town of Prosper, Collin County, Texas according to the Plat thereof recorded in Cabinet P, Slide 769, Map Record, Collin County, Texas and being more particularly described as follows:

BEGINNING at a 1/2 inch iron rod found with a yellow plastic cap stamped "ROOME" in the northeasterly line of PRESTON LAKES, an Addition to the Town of Prosper, Collin County, Texas according to the Plat thereof recorded in Cabinet O, Slide 135, Map Records, Collin County, Texas for the southwest corner of said Lot 6;

THENCE North 17 degrees 50 minutes 28 seconds East, with the common west line of said Lot 6 and said northeasterly line of PRESTON LAKES Addition, a distance of 256.38 feet to a 1/2 inch iron rod found with a yellow plastic cap stamped "ROOME" for corner at the beginning of a curve to the left having a central angle of 16 degrees 44 minutes 51 seconds, a radius of 460.00 feet and a chord bearing and distance of North 09 degrees 28 minutes 10 seconds East, 133.98 feet;

THENCE Northerly, continuing with said common line and with said curve to the left, an arc distance of 134.46 feet to a point in the south line of County Road No. 48, a variable width right-of-way, for the common most westerly northwest corner of the above mentioned Lot 6 and northeast corner of Lot 14, Block B of the above mentioned PRESTON LAKES Addition, from which point a 1/2 inch iron rod found with yellow plastic cap stamped "ROOME" bears South 71 degrees 16 minutes 05 seconds East, 0.17 feet;

THENCE South 89 degrees 53 minutes 26 seconds East, leaving said common line and with said south line, a distance of 44.72 feet to a point for the common most northerly northwest corner of said Lot 6 and the northwest corner of Lot 5, Block A of the above mentioned PRESTON 48 ADDITION, from which point an "X" found in concrete bears South 38 degrees 21 minutes 46 seconds East, 0.21 feet;

THENCE Southerly and Easterly, with the common northeasterly line of said Lot 6 and westerly and southerly line of said Lot 5, the following four (4) courses and distances:

South 00 degrees 16 minutes 20 seconds West, leaving the above mentioned south line of County Road No. 48, a distance of 115.68 feet to a point for corner from which point an "X" found in concrete bears North 63 degrees 47 minutes 03 seconds East, 0.14 feet;

South 89 degrees 43 minutes 40 seconds East, a distance of 17.37 feet to a 5/8 inch iron rod found with a yellow plastic cap stamped "COX RPLS NO. 4577" for corner;

South 00 degrees 16 minutes 20 seconds West, a distance of 114.87 feet to a 1/2 inch iron rod found with a yellow plastic cap stamped "ROOME" for corner;

South 89 degrees 53 minutes 26 seconds East, passing at a distance of 196.81 feet an "X" found in concrete for the common southeast corner of the above mentioned Lot 5 and the southwest corner of Lot 4, Block A of the above mentioned PRESTON 48 ADDITION, and continuing with the common north line of the above mentioned Lot 6 and south line of said Lot 4 in all for a total distance of 212.41 feet to a 1/2 inch iron rod with a yellow plastic cap stamped "DAA" set for corner;

THENCE North 88 degrees 56 minutes 51 seconds East, with said common north line of Lot 6 and south line of said Lot 4, a distance of 183.19 feet to a 1/2 inch iron rod set with a yellow plastic cap stamped "DAA" for the common most easterly northeast corner of said Lot 6, southeast corner of said Lot 4, southwest corner of Lot 3, Block A of the above mentioned PRESTON 48 ADDITION and northwest corner of Lot 2, Block A of the above mentioned PRESTON 48 ADDITION;

THENCE South 06 degrees 11 minutes 13 seconds West, leaving said common line and with the common east line of said Lot 6 and west line of said Lot 2, a distance of 169.78 feet to a 1/2 inch iron rod found with a yellow plastic cap stamped "ROOME" for the common southwest corner of said Lot 2 and northwest corner of Lot 1, Block A of the above mentioned PRESTON 48 ADDITION;

THENCE South 54 degrees 57 minutes 29 seconds West, leaving said common line and with the common east line of said Lot 6 and west line of said Lot 1, a distance of 7.50 feet to a 1/2 inch iron rod found with a yellow plastic cap stamped "ROOME" for corner;

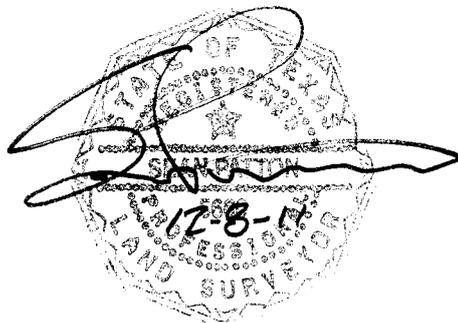
THENCE South 13 degrees 09 minutes 26 seconds West, continuing with said common line, a distance of 165.00 feet to a point for the common southeast corner of said Lot 6 and southwest corner of said Lot 1, from which point a 1/2 inch iron rod found with a yellow plastic cap stamped "ROOME" bears North 00 degrees 44 minutes 45 seconds East, 0.24 feet;

THENCE Northwesterly, with the common south line of said Lot 6 and northerly line of the above mentioned PRESTON LAKES Addition, the following three (3) courses and distances:

North 76 degrees 50 minutes 34 seconds West, leaving the above mentioned common east line of said Lot 6 and west line of said Lot 2, a distance of 277.44 feet to a 1/2 inch iron rod found for a corner at the beginning of a curve to the right having a central angle of 19 degrees 00 minutes 15 seconds, a radius of 300.00 feet and a chord bearing and distance of North 67 degrees 20 minutes 27 seconds East, 99.05 feet;

Northwesterly, with said curve to the right, an arc distance of 99.51 feet to a 1/2 inch iron rod found with a yellow plastic cap stamped "DAA" for corner;

North 57 degrees 50 minutes 21 seconds West, a distance of 157.81 feet to the **POINT OF BEGINNING** and containing 3.54 acres of land, more or less.



Preston 48 addition, Block A, Lot 6

(1140 E. Prosper Trail)

Statement of Intent and Purpose

This tract is located within an existing commercial development on the south side of Prosper Trail just west of Preston Road in Prosper, Texas. The tract is formally described as Lot 6, Block A of the Prosper 48 Addition and is approximately 3.5 acres in size.

This specific development is a partially completed mini-warehouse development. It is generally located in the southwest corner of the aforementioned existing commercial development. It is situated on the north and east behind neighborhood type commercial uses, such as, a convenience store with fuel sales, automobile lube facility, strip retail buildings and along the south and west sides of Lot 6 there is a single-family residential neighborhood, the Preston Lakes Addition. In general the existing mini-warehouse buildings are separated by a 10-15 foot open space buffer from the rear lot lines of those lots within Preston Lakes immediately adjacent to Lot 6, more specifically Block B, Lots 14-25 of the Preston Lakes Addition.

Currently, this existing mini-warehouse development has never been completed and has never been in operation. The existing buildings are in disrepair, the additional interior 1-story buildings have not been constructed and the perimeter open space areas have not been completed and are not capturing storm water appropriately. Blue Star Land would like to purchase this defunct mini-warehouse development from the financial institution that currently owns it and retrofit this development into a functioning and reputable "use" that fulfills a need in the community provided it can successfully rezone Lot 6 to a Planned Development under the terms and conditions outlined within the PD.

The purpose for this Planned Development is to define a new set of development parameters that will resolve both the zoning and development standard violations that exist today. These changes would allow Blue Star Land to purchase the property, bring the development up to standards, repair the existing building, complete the perimeter open space areas, construct the remaining/proposed 1-story interior buildings and change a defunct mini-warehouse development from a source of frustration and concern into a successful conforming use.

Preston 48 addition, Block A, Lot 6 (1140 E. Prosper Trail)

Planned Development Regulations

1.0 General Regulations:

- 1.1 Except as otherwise set forth in these Planned Development Regulations, the property shall develop under the Retail District (R) standard in the Town's Zoning Ordinance No. 05-20 as it currently exists or may be amended.
- 1.2 Definitions used herein shall be the same as those found in the Zoning Ordinance for the Town of Prosper, Texas as it currently exist or may be amended.

2.0 Permitted Uses:

- 2.1 Proposed land uses followed with an "(S)" are permitted with a Specific Use Permit and uses followed by a "(C)" are permitted subject to the conditional development standards set forth in the Towns' Zoning Ordinance. The allowable land uses within this Planned Development are as follows:

- | | |
|---|---|
| 1. Accessory Building; | 21. Locksmith / Security System Company; |
| 2. Administrative, Medical, or Professional Office; | 22. Mini-warehouse with caretaker's residence (Public Access between 6 am-8pm) |
| 3. Antique Shop and Used Furniture | 23. Massage Therapy, Licensed; |
| 4. Artisan's Workshop; | 24. Museum /Art Gallery; |
| 5. Bank, Savings and Loan, or Credit Union; | 25. Municipal Uses (operated by Prosper) |
| 6. Beauty Salon/Barber shop; | 26. Nursery, Minor; |
| 7. Building Material and Hardware Sales, Minor; | 27. Park or Playground; |
| 8. Business Service; | 28. Print Shop, Minor; |
| 9. Commercial Amusement, indoor; | 29. Private Club (S); |
| 10. Community Center; | 30. Private Recreation Center; |
| 11. Dry Cleaning, Minor; | 31. Retails Stores and Shops; |
| 12. Day Care, Child, (C); | 32. Retail/Services Incidental Uses; |
| 13. Furniture, Home Furnishing and Appliance Store; | 33. Restaurant or Cafeteria, (C); |
| 14. Governmental Office; | 34. School, Private or Parochial; |
| 15. Gymnastics/Dance Studio; | 35. School, Public; |
| 16. Homebuilder Marketing Center; | 36. Theater, Neighborhood; |
| 17. Health/Fitness Center; | 37. Veterinarian Clinic and/or Kennel, Indoor; |
| 18. Hospital; | |
| 19. House of Worship; | |
| 20. Insurance Office; | |

3.0 Area Regulations:

3.1 Minimum Yard Requirements:

- a. *Min. Front Yard Setback:* Thirty (30) feet
- b. *Min. Side Yard Setback:*
 - Five (5) feet adjacent to non-residential districts. The minimum side yard setback may be reduced between retail buildings on separate lots as shown on an approved site plan. Building 10 shall have a one (1) foot set-back.
 - Ten (10) feet for a 1 story building adjacent to a residential district.
- c. *Min. Rear Yard Setback:*
 - Ten (10) feet to a residential district.

3.2 Minimum Lot Requirements:

- a. Minimum Lot Area: Ten Thousand (10,000) square feet.
- b. Minimum Lot Width: Forty (40) feet
- c. Minimum Lot Depth: One hundred (100) feet.

3.3 Maximum Building Height:

- a. Buildings , except for Building 1 as shown on Exhibit D, shall be a maximum of one (1) story or Thirty (30) feet in height. Building 1 on Exhibit D shall be a maximum of two (2) stories, no greater than forty (40) feet in height.

3.4 Maximum Lot Coverage: Fifty (50) percent for buildings and accessory structures.

3.5 Floor Area Ratio: Maximum 0.5:1.

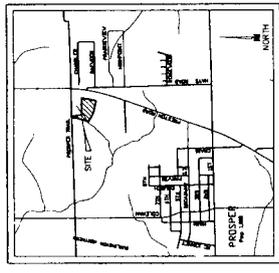
4.0 Exterior Building Materials:

The existing buildings are 100% masonry (clay fired brick) exclusive of windows and doors. Any future buildings shall be comprised of brick of similar color to provide a compatible and homogenous appearance with the existing masonry buildings.

5.0 Screening Regulations:

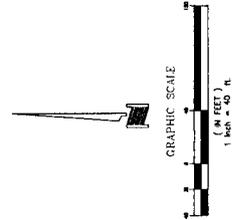
5.1 Land Use Screening:

- a. A solid masonry wall on the west and south line of Lot 6, Block A of the Prosper 48 Addition is not required.
- b. Along the west line of Lot 6, for Lots 14-17 within the Preston Lakes Addition, the private wood fences shall be extended to the existing rear building wall and the existing 10 –foot buffer shall be landscaped with shrub and turf.
- c. Along the south line of Lot 6, for Lots 18-25 within the Preston Lakes Addition, the developer shall plant a minimum of 1-6-foot, eastern red cedar on staggered twenty foot centers along the south line of lot 6 to create a solid green screen and the remainder of the open space north of the green screen shall be turf or native grasses to provide a landscaped buffer between residential and non-residential uses.
- d. Landscape Islands – internal landscape islands and trees at the terminus of parking aisles internal to the mini-warehouse development are not required.
- e. Along the north and east line of Lot 6, for Preston 48 Addition Lots 1-5 the 5-foot landscape buffer shall remain as existing turf.



RAEWOOD ON PRESTON
VOL. H, PAGE 781
ZONED RESIDENTIAL

CHANDLER CIRCLE



Z11-0018 EXHIBIT 'D'
CONCEPT PLAN

BLUE STAR STORAGE - 3.5 ACRES
TOWN OF PROSSER
COMAL COUNTY, TEXAS

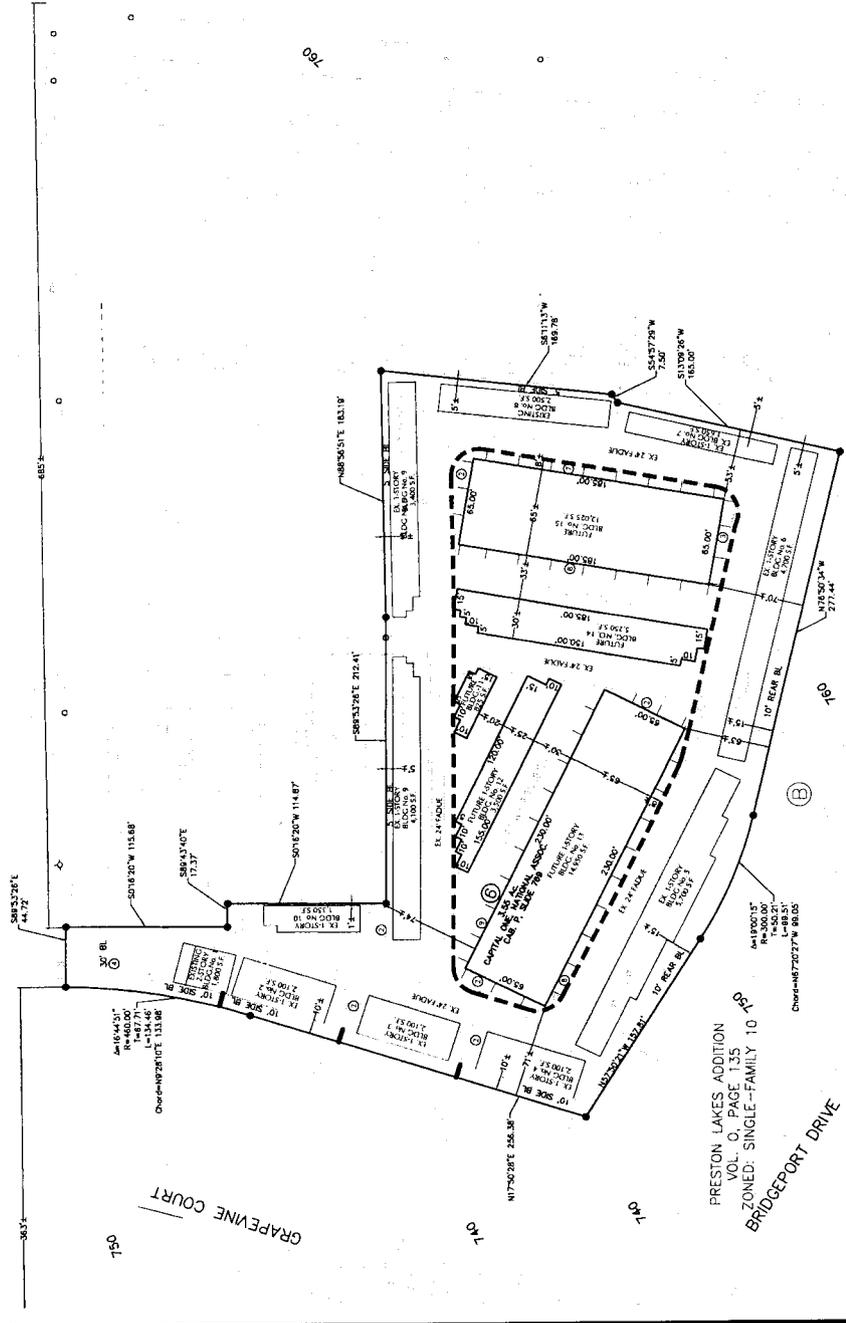
DOWDEY, ANDERSON & ASSOCIATES, INC.
5225 Village Court, Suite 200 Pflug, Texas 79981 979.211.0694

DATE	DATE	SCALE	SHEET
11-14-01	11-14-01	1"=40'	1

PLATE NO.:

PROSPER TRAIL (4-LANE DIVIDED THROUGHFARE)

PRESTON ROAD (FUTURE 6-LANE DIVIDED THROUGHFARE)



PRESTON LAKES ADDITION
VOL. O, PAGE 1.35
ZONED: SINGLE-FAMILY 10 T80

DEVELOPMENT DATA SUMMARY

EX ZONING	COMMERCIAL (C)
PROPOSED ZONING	INDUSTRIAL (I)
PROPOSED LAND USE	INDUSTRIAL/COMMERCIAL
EX. BLDG. AREA	31,500 SF
PROP. BLDG. AREA	18,000 SF
TOTAL BLDG. AREA	50,000 SF
MAX. BLDG. HEIGHT	15 FT. (EXCEPT FOR BLDG. 1)
PARKING PROVIDED	51 SPACES
LOT COVERAGE	41.5%
LAAS	0.41

NO.	DATE	BY	REVISION

OWNER: CAPITAL ONE NATIONAL ASSOCIATION
C/O DEBORAH D. POTTER
1001 ORLEANS LA 70118
ATLANTA, GA 30318
BLUES STAR LPH LP
C/O DOWDEY ANDERSON & ASSOCIATES, INC.
5225 VILLAGE COURT, SUITE 200
PFLUG, TX 79981
(979) 211-0694
KHARRINGTON@DOWDEYANDASSOCIATES.COM

NOTE: THIS PLAN IS TO BE USED IN CONJUNCTION WITH THE SITE PLAN.

Exhibit "E"

Preston 48 addition, Block A, Lot 6
(1140 E. Prosper Trail)
Schedule

While the precise development schedule has not been fully defined, the tentative development schedule for the subject tract at this time is as follows:

1. Purchase the property and begin renovations in the Spring of 2012
2. Complete renovations and open for Business in the Fall of 2012
3. Any future buildings construction will be based on market demand

However, this schedule is subject to market conditions and demands.