

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7283

**AUTHORIZING AN OPTION TO SUBLEASE 13.7 ACRES
OF LEASED PROPERTY IN THE AIRPORT WAY URBAN
RENEWAL AREA TO TRAMMEL CROW PORTLAND
DEVELOPMENT INC.**

WHEREAS, on June 11, 1999, the Prosper Portland Board of Commissioners (“Board”) approved Resolution No. 5278, authorizing the Executive Director to enter into a comprehensive Development Agreement related to the development of Cascade Station, a 120-acre parcel of land owned by the Port of Portland;

WHEREAS, as part of the Cascade Station agreement, Prosper Portland provided urban renewal funding to assist in the extension of the MAX light rail line to Portland International Airport and to help fund public infrastructure within Cascade Station, including streets, sidewalks, drainage improvements, and lighting;

WHEREAS, on June 22, 2005, pursuant to Resolution No. 6263, the Prosper Portland Board authorized a restructure of the debt owed to Prosper Portland under the Development Agreement, consenting to take an assignment of development and lease rights to 36 acres of land within Cascade Station in lieu of debt repayment;

WHEREAS, Prosper Portland has, over the past ten years, disposed of approximately 13 acres of these assigned properties for i) the construction of the new Portland headquarters of the FBI, ii) construction of a hotel facility, and iii) construction of a corporate headquarters building;

WHEREAS, in February 2017 the Executive Director entered into a Letter of Intent with Trammell Crow Portland Development Inc. (“Trammell Crow”) to commence discussions with Prosper Portland to acquire a sublease interest (the “Sublease”) on approximately 13.7 acres known as Parcels D and E (the “Property”) for the purpose of constructing build-to-suit commercial office opportunities; and

WHEREAS, Prosper Portland and Trammell Crow have negotiated the terms and conditions of an Option to Sublease in the form attached hereto as Exhibit A (the “Option Agreement”); and

WHEREAS, the Option Agreement to Trammell Crow is deemed in the best interests of Prosper Portland and the City.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to execute an Option Agreement with Trammell Crow, in substantially the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED, that the Executive Director is further authorized to execute all Sublease documents as may be necessary to complete this transaction;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the Option Agreement and Sublease so long as such changes are not materially different from the terms contained in Exhibit A, as determined by the Executive Director in consultation with Prosper Portland's General Counsel; and

BE IT FURTHER RESOLVED, that this resolution shall become effective immediately upon its adoption.

OPTION AGREEMENT

THIS OPTION AGREEMENT is entered into as of the ____ day of _____ (the “Effective Date”), by and between PORTLAND DEVELOPMENT COMMISSION dba. PROSPER PORTLAND (“Optionor”) and TRAMMELL CROW PORTLAND DEVELOPMENT, INC. (“Optionee”), with reference to the following facts:

A. Optionor is the owner in leasehold under a ground lease from the Port of Portland (Port”) of that certain real property consisting of two (2) parcels (each, a “Parcel”) located in the County of MULTNOMAH, State of OREGON, more particularly described in Exhibit A attached hereto (the “Property”).

B. Optionor desires to grant to Optionee an option to sublease the Property upon the terms and conditions set forth herein, and Optionee desires to acquire such option. Optionee acknowledges that the Port must approve the form of any sublease of the Property (a “Sublease”).

NOW THEREFORE, IN CONSIDERATION of the mutual agreements herein set forth, and other valuable consideration, receipt of which is hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

GRANT OF OPTION

Optionor hereby grants to Optionee the exclusive option to sublease all, but not less than all, of either one or both Parcels upon all of the terms, covenants and conditions set forth herein (the “Option”).

ARTICLE II

TERM AND MANNER OF EXERCISE/TERMINATION

2.1 (a) The Option shall be exercisable as to either or both Parcels by Optionee at any time during the period commencing on the Effective Date of this Agreement and terminating at 4:00 PM on the last calendar day of the 36th month thereafter (the “Option Period”) only by Optionee (or an entity in which an affiliate of Optionee has an ownership or management interest (an “Optionee Affiliate”)) by delivering written notice of exercise to Optionor in the manner set forth in Section 12.8 hereof prior to the expiration of the Option Period. Once so exercised as to a Parcel, the exercise may not be rescinded as to that Parcel. If an Option has been exercised as to only one of the Parcels, so long as the Option Period has not yet expired, Optionee or an Optionee Affiliate may exercise its Option as to the remaining Parcel.

(b) Optionee may terminate the Option as to either or both Parcels of Property by providing written notice to Optionor.

(c) If Optionee provides written notice of termination or if Optionee fails to exercise the Option on or before the last date of the Option Period, the Option and this Agreement shall be null and void and of no further force or effect as to any remaining Parcel not previously the subject of an exercise of the Option. If Optionee or an Optionee Affiliate timely exercises the Option, and Port approval of the form of sublease is granted, the parties shall execute and deliver the Sublease with respect to the applicable Parcel and the sublease commencement date shall be deemed to be the date of mutual execution of such Sublease.

ARTICLE III

OPTION PAYMENTS

3.1 Commencing as of the first (1st) day of the seventh (7th) month after the Effective Date of this Agreement and until the earlier of: (i) the expiration of the Option Period,

(ii) the earlier termination of this Agreement, or (iii) the exercise of the Option as to a given Parcel (but subject to the next succeeding paragraph of this Section 3.1), Optionee shall pay to Optionor on the first (1st) day of each month in consideration for the rights granted to Optionee during the Option Period, Option Payments according to the following payment schedule:

Months 7-12: FOUR THOUSAND DOLLARS (\$4,000.00) per month

Months 13-24: EIGHT THOUSAND DOLLARS (\$8,000.00) per month

Months 25-36: TEN THOUSAND DOLLARS (\$10,000.00) per month

There shall be no proration of an Option Payment if the Option is exercised or the Option Period is terminated on a day other than the last day of a calendar month.

Notwithstanding anything to the contrary set forth herein, if Optionee exercises the Option as to only one of the Parcels or terminates this Agreement as to only one Parcel, the Option Payment amounts above shall be adjusted proportionately, based upon the acreage of the Parcel for which Optionee has exercised its Option or has not terminated this Agreement, as applicable.

Optionee shall not be in default so long as the Option Payment is received by the tenth (10th) day of the month. If Optionee has not already exercised the Option as to either or both Parcels or if Optionee has not provided Optionor with written notice of termination of the Option, there shall be a five percent (5%) late fee for Option Payments received after the tenth (10th) of the month.

So long as Optionee pays the late fee, this Agreement shall not be terminated by Optionor for the failure to pay an Option Payment within ten (10) days of the date that such Option Payment is due.

3.2 In the event the Option is exercised as to a Parcel, the Option Payments shall not be credited against the sublease rent for such Parcel. If the Option is not timely exercised, Optionor shall be entitled to retain the entire Option Payments paid up to that date

together with copies of whatever third party prepared due diligence materials pertaining to the physical condition of the Property (“Feasibility Work Product”) Optionee may have provided to Optionor. Such Feasibility Work Product is provided without any representation or warranty regarding the accuracy or completeness of such Feasibility Work Produce. Feasibility Work Produce is further defined in Exhibit B.

ARTICLE IV

TERMS OF SUBLEASE

In the event the Option is exercised as to a Parcel and subject to obtaining approval from the Port as to its form, Optionee, an Optionee Affiliate or an assignee approved in accordance with Section 10, shall commence renting and Optionor shall commence subleasing such Parcel on the terms of the executed and delivered Sublease which will be substantially in the form set forth in Exhibit C attached hereto, but subject to such commercially reasonable changes as may be agreed to by the Port. If Port approval of the form of Sublease has not already been obtained when the Option is exercised, the parties shall promptly submit the sublease form to the Port for its approval. Optionee shall bear all costs associated with obtaining the Port’s approval to the form of Sublease.

ARTICLE V

TITLE

5.1 Attached hereto as Exhibit D is a preliminary title report (the “Title Report”) provided by Chicago Title Insurance Company of Oregon (“Title Company”) showing the current state of title of the Property. Optionee shall have ninety (90) days after the Effective Date of this Agreement to notify Optionor in writing if Optionee objects to any items in the Title Report. Those items to which Optionee does not object shall be deemed “Permitted Exceptions.” If Optionee objects to any item, the Optionor shall have fifteen (15) days after receiving

Optionee's written objection to notify Optionee in writing of Optionor's intention to remove or not remove the objected exceptions to title on or before the date of Option Exercise. If Optionor expresses it is unable or unwilling to remove the objected exception, Optionee must elect within fifteen (15) days of such notice from Optionor to terminate the Option as to the Parcel or Parcels to which such objected to exception pertains, or to accept the objected matter as a Permitted Exception. An ALTA survey of the Property (the "Survey") may be prepared by Optionee at its sole cost (with a copy provided to Optionor) and all matters disclosed thereby shall be deemed acceptable by Optionee at the time the Option is exercised.

5.2 Upon exercise of the Option and execution of the Sublease, Optionee may elect, at Optionee's sole expense, to have Optionee's leasehold title to the Property insured by a policy of title insurance containing such endorsements acceptable to Optionee subject only to:

- (a) Non-delinquent real property taxes and special assessments, if any;
- and
- (b) Such other matters disclosed in the Title Report and the Survey.

5.3 Such real estate taxes and assessments are subject to proration as provided herein. Optionor agrees that it will not create any encumbrance, lien or other matter which would affect or encumber title to the Property during the term of this Option Agreement without first securing the written consent of Optionee (which consent may be withheld by Optionee in its sole discretion), except that Optionor may create leases, licenses or other minor possessory interests in the Property so long as such interests are extinguished as of the commencement of the Sublease. The Parties acknowledge the Optionor is not responsible for and cannot prevent the exercise of powers to encumber the Property that are reserved to the Port under the terms of the Ground Lease between the Port and Optionor.

ARTICLE VI

INSPECTIONS; ZONING MATTERS

6.1 From and after the date of this Agreement, after having executed and in compliance with Optionor's standard form of entry permit but subject to any commercially reasonable changes agreed to by Optionee and Optionor, Optionee shall have the right at Optionee's sole cost and expense to enter onto the Property (either through its employees or designated agents and representatives) for the purpose of making such inspections as Optionee deems necessary in connection with this Agreement; provided that Optionee, if requested by Optionor, be accompanied by Optionor's employees in connection with any inspection of the Property, and Optionee shall not make any physical alteration to the Property (such as a Phase II Environmental Site Assessment or Geotechnical Assessment) without first securing the written consent of Optionor. Optionor shall not unreasonably withhold or delay its consent to such right of entry and inspection activity. Optionee agrees to provide Optionor with copies of any final investigative third party prepared reports it obtains with regard to physical condition of the Property.

6.2 Within thirty (30) days of the Effective Date, Optionor shall deliver to Optionee all information, documentation and reports, which to the best of the knowledge of Lisa Abuaf, exists in Optionor's possession or control pertaining to the Property, including, without limitation, the following: (a) all plans, drawings, specifications, soils reports, engineering and architectural studies, zoning studies or reports, hazardous waste studies, geotechnical reports, hydrology reports, wetland studies, topographical maps, boundary and ALTA surveys, environmental reports, grading plans, and similar data relating to the Property; and (b) all permits, entitlement documents, mitigation agreements with any governmental agency, and any traffic studies for the Property or surrounding properties, and all correspondence related thereto.

6.3 Optionee shall have one hundred eighty (180) days after the date of this Agreement to notify Optionor, in writing, if Optionee objects to any physical or environmental condition of the Property. If no written objection is timely provided by Optionee, Optionee shall be deemed to have accepted the physical and environmental condition of the Property as is. If Optionee objects to any physical or environmental condition, Optionor shall have fifteen (15) days after receiving Optionee's written objection to notify Optionee in writing of Optionor's intention to correct the objected condition on or before the expiration of the Option Period or the date of Option Exercise, whichever first occurs. If Optionor expresses it is unable or unwilling to correct the objected condition, Optionee must elect within fifteen (15) days of such notice from Optionor to terminate the Option as to the Parcel or Parcels to which such objected to exception pertains, or to accept the condition of the Property.

6.4 Upon request, Optionor will cooperate with Optionee in any applications to governmental authorities for modifications to land use regulations that Optionee deems are reasonably commercially necessary for Optionee's intended use of the Property. Optionee shall pay all expenses incurred in connection therewith and shall keep Optionor apprised of any such efforts. If Optionor reasonably disapproves of the land use modifications being sought, Optionor shall so notify Optionee. Optionee must elect within fifteen (15) days of such notice to terminate the Option or alter its application request to satisfy Optionor's objections. If Optionee elects to terminate the Option because of Optionor's disapproval of land use modifications, Optionee shall be entitled to a refund of any Option Payments previously made applicable to the Parcel involved.

6.5 Optionee shall indemnify and hold Optionor harmless from any loss, liability, expense or damage (including reasonable attorneys' fees) in connection with any such land use modification applications.

ARTICLE VII

"AS-IS" PROPERTY

Optionee acknowledges that except as otherwise expressly provided herein, Optionor makes no representation, either express or implied, with respect to the Property, its present condition or its fitness or suitability for any particular purpose and that the Property is to be leased, if at all, in its "as is" condition. In this respect, Optionee confirms that it will conduct all investigations, inspections, studies, tests, and analyses that it wishes to conduct with respect of the Property. In entering into this Agreement and the contemplated Sublease, if so executed, Optionee is relying solely upon its own investigation of the present condition of the Property and all governmental laws and ordinances which might affect its use and development. Optionee is assuming the risk that adverse physical, economic, or other conditions or circumstances may not be revealed by its investigations and, if the contemplated Sublease be executed by Optionee, Optionee shall accept the sublease interest in the Property "AS IS," "WHERE IS," and "WITH ALL FAULTS." If so requested by Optionor, Optionee shall acknowledge such acceptance of the condition of the Property in writing to the Port.

ARTICLE VIII

REPRESENTATIONS

8.1 As an inducement to Optionor to enter into this Agreement, Optionee represents that it is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation; that it has the corporate power and authority to enter into this Agreement, and to consummate the transaction herein contemplated; and that the execution and

delivery hereof and the performance by Optionee of its obligations hereunder will not violate or constitute an event of default under the terms or provisions of any agreement, document or instrument to which Optionee is a party or by which Optionee is bound.

8.2 As an inducement to Optionee to enter into this Agreement, Optionor represents that: (a) Optionor is a public agency, duly organized, validly existing and in good standing under the laws of Oregon; and it has the requisite power and authority to (i) enter into this Option Agreement, and, in accordance with the terms of Optionor's ground lease, (ii) sublease the Property pursuant to this Agreement, (b) the execution and delivery hereof and the performance by Optionor of its obligations hereunder will not violate or constitute an event of default under the terms and provisions of any agreement, document or instrument to which Optionor is a party or by which Optionor is bound, (c) there is no action in the nature of litigation, claim, investigation or other proceeding pending or threatened against or affecting the Property or the use thereof which may become a lien against the Property, (d) Optionor has not committed nor obligated itself in any manner whatsoever to sublease the Property to any person other than Optionee and no right of first refusal regarding the Property exists, and (e) there are no leases or service contracts affecting the Property that are not terminable as of the Closing. All of Optionor's representations shall be true, correct and complete as of the Closing. Optionee's rights to enforce such representations, warranties and covenants shall survive the Closing and such rights to enforce shall not be merged into any documents delivered by Optionor at Closing.

ARTICLE IX

COMMISSIONS

Optionor and Optionee each hereby represent to the other that it has not dealt with any broker or finder or any other person who might be entitled to a fee in connection with this Option or the sublease of the Property and that no fee or commission is due to any broker, finder or other

person in connection with this Agreement or the Sublease contemplated thereby. Optionor and Optionee each hereby indemnify the other and agree to hold the other harmless from and against any and all claims, demands, liabilities, losses, judgments, costs and expenses (including, without limitation, reasonable attorneys' fees) arising directly or indirectly out of any claim for a fee or commission due to any broker or finder arising out of facts which contravene the representations herein stated. These representations shall survive the commencement of the Sublease. Notwithstanding the foregoing, Optionee, at its discretion, may engage a broker to market the Property to prospective users during the Option Period, it being understood that Optionor shall not be responsible for any fees or commissions.

ARTICLE X

ASSIGNMENT

Optionee may not assign this Agreement or any of their rights hereunder for any purpose whatsoever without the written consent of Optionor (which consent shall not be unreasonably withheld) and any purported assignment shall be absolutely void and of no force or effect; provided, however, Optionee may assign its interest in this Agreement to an Optionee Affiliate without the prior written consent of Optionor.

ARTICLE XI

CONDEMNATION

If prior to the commencement of the Sublease all or any material portion of the Property is taken or threatened to be taken by eminent domain, Optionor shall so notify Optionee. Optionor shall be entitled to the entirety of any award for any taking or payment made in lieu of exercise of such power of eminent domain, regardless of the basis of computation for such award. In such event, Optionee may elect (i) to retain its rights under this Agreement as to the

Parcels or portion of the Parcels remaining with a proportional adjustment to the amount of the Option Payments due thereafter, or (ii) to terminate this Agreement without further liability to either party hereto, in which case Optionee shall have no further interest whatever in the Property except that all Option Payments shall be returned to Optionee. If condemnation is threatened or commenced after the commencement of the Sublease of a Parcel, the provisions of the Sublease shall control the respective rights of the parties hereto as to that Parcel.

ARTICLE XII

MISCELLANEOUS

12.1 Entire Agreement. This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior or contemporaneous written or oral agreement or understanding pertaining to any such matter shall be effective for any purpose.

12.2 Attorneys' Fees. Should any action be brought arising out of this Agreement, including without limitation any action for declaratory or injunctive relief, the prevailing party shall be entitled to reasonable attorneys' fees and costs and expenses of investigation incurred in appellate proceedings or in any action or participation in, or in connection with, any case or proceeding under Chapter 7, 11 or 13 or the Bankruptcy Code or any successor statutes, and any judgment or decree rendered in any such actions or proceeding shall include an award thereof.

12.3 Binding Effect. The provisions of this Agreement shall inure to the benefit of and be binding upon Optionor and Optionee and their respective successors and permitted assigns.

12.4 No Waiver. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any

waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.

12.5 Further Acts. Each party shall, at the request of the other, execute, acknowledge (if appropriate) and deliver whatever additional documents, and do such other acts, as may be reasonably required in order to accomplish the intent and purposes of this Agreement.

12.6 Counterparts. This Agreement may be executed in counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute but one and the same agreement.

12.7 Amendments. This Agreement may not be changed or modified except by an instrument in writing executed by the party asserted to be bound thereby.

12.8 Optionor Default. In the event that Optionor defaults under this Agreement, Optionee shall be entitled to pursue any remedy available to Optionee, including without limitation: (i) a return of the Option Payments (ii) specific performance of this Agreement, or (iii) an action for damages.

12.9 Notices. All communications, notices and demands of any kind which either party may be required or may desire to give to or serve upon the other, shall be made in writing and delivered by personal service to any designated representative of the other party or sent by registered mail, postage paid, return receipt requested, to the following addresses:

To Optionor: PDC dba. Prosper Portland
Attn: Development & Investment
222 NW 5th Avenue
Portland, OR 97209

With a Copy to: PDC dba. Prosper Portland
Attn: General Counsel
222 NW 5th Avenue
Portland, OR 97209

To Optionee: Trammell Crow Company
Attn: Kirk Olsen
1300 SW 5th Avenue, #3050
Portland, OR 97201

With a Copy to: Brix Law LLP
Attn: Brad Miller
75 SE Yamhill, Suite 202
Portland, OR 97214

Any such notice sent by mail shall be presumed to have been received by the addressee 72 hours after posting in the United States mail. Either party may change its address by giving the other party written notice of its new address as herein provided.

12.10 Headings. Any headings in this Agreement are solely for the convenience of the parties and are not part of this Agreement.

12.11 Governing Law. This Agreement and the transaction herein contemplated shall be construed in accordance with and governed by the laws of the State of Oregon.

12.12 Recording. A Short Form of Option Agreement referring to this Option Agreement shall be executed and delivered and recorded in the Office of the County Recorder of Multnomah County, Oregon. In the event that Optionee elects not to exercise the option herein granted prior to the expiration date, it shall immediately deliver to Optionor a duly acknowledged quitclaim deed of all of its interests in the Property under this Option Agreement.

IN WITNESS WHEREOF, Optionor and Optionee have executed this Agreement on the
day and year first above written.

“OPTIONEE”

By: _____

Name: _____

Title: _____

“OPTIONOR”

By: _____

Name: _____

Title: _____

OPTIONOR LEGAL COUNSEL

By: _____

Exhibits|

TO BE PROVIDED AS PART OF FINAL DOCUMENT