PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7470

AUTHORIZING THE TERMS OF A DISPOSITION AND DEVELOPMENT AGREEMENT TO CONVEY APPROXIMATELY 4.4 ACRES OF PROSPER PORTLAND-OWNED PROPERTY IN THE RIVER DISTRICT TAX INCREMENT FINANCE DISTRICT

WHEREAS, on December 21, 1994, by Resolution No. 35350, the Portland City Council adopted the River District Strategic Investment Plan which, among other things, called for the acquisition of the property at 1362 NW Naito Parkway ("Centennial Mills", or "Property") for the purpose of removing existing structures and creating a public park;

WHEREAS, on February 17, 2000, by Resolution No. 5397, the Prosper Portland Board of Commissioners ("Board") authorized the purchase of the Centennial Mills property from ADM Milling Company in furtherance of the River District Urban Renewal Plan;

WHEREAS, on May 25, 2005, the City Council adopted Resolution No. 36320, instructing Prosper Portland to halt plans to demolish the structures, and directing Prosper Portland to work with the City of Portland Bureau of Planning, residents, and stakeholders to develop a comprehensive plan for the Centennial Mills site taking into consideration future development plans for the surrounding area;

WHEREAS, on December 13, 2006, the Prosper Portland Board approved Resolution No. 6422, adopting the Centennial Mills Framework Plan ("Framework Plan") as a statement of the public's interest and aspirations for the property;

WHEREAS, between 2007 and 2014, Prosper Portland solicited for and partnered with private developers to analyze and identify redevelopment scenarios to align with the Framework Plan and under each scenario, redevelopment was determined to require significant public investment beyond that available in the River District tax increment finance district budget;

WHEREAS, on December 11, 2014, the Prosper Portland Board, acting as the Local Contract Review Board, approved Resolution No. 7089, adopting findings in support of emergency status and an expedited process for selective demolition of the Property's most dangerous buildings due to substantial threat to property, public health, welfare, and safety;

WHEREAS, during the course of demolition, Prosper Portland staff openly marketed the Property for sale and received no acceptable offers and thereafter completed additional development feasibility analyses to understand the financial and community benefit implications of full site versus partial site redevelopment;

WHEREAS, on March 22, 2017, the City Council adopted Resolution No. 37275 endorsing Prosper Portland's recommendation to pursue full site redevelopment and directed Prosper Portland to review all options for maximizing affordable housing on the Property;

WHEREAS, in October 2017, Prosper Portland publicly marketed the Property, and following evaluation of fourteen offers, entered into a non-binding Letter of Intent with Lynd Opportunity Partners but ultimately did not proceed with the contemplated disposition and development;

WHEREAS, in 2019, Prosper Portland resumed marketing the property and evaluating offers, while also identifying opportunities to mitigate or reduce complexities that have posed challenges to redevelopment;

WHEREAS, in October 2021, Prosper Portland received an offer for acquisition of the Property and the Board authorized staff to proceed with the sale of the Property on the terms and conditions set forth in Exhibit A, attached to Resolution No. 7436, adopted by the Prosper Portland Board on November 10, 2021;

WHEREAS, due to unforeseen circumstances affecting the Property, which came to light following adoption of Resolution No. 7436, the negotiated terms of the disposition of the Property changed from those authorized in Resolution No. 7436, as reflected in the draft Disposition and Development Agreement ("DDA"), attached as Exhibit A to this resolution; and

WHEREAS, PacifiCorp has requested an easement under the Property for its Willamette River Crossing project, and the draft DDA requires the buyer identified therein to negotiate with PacifiCorp and to allow Prosper Portland to grant the easement once the buyer and PacifiCorp have come to an agreement regarding the impact of the requested easement on buyer's planned development.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to execute an agreement for the conveyance and redevelopment of the Property on the terms and conditions set forth in the draft DDA, with the buyers identified therein (or their assignees);

BE IT FURTHER RESOLVED, that the Executive Director is authorized to execute all documents as may be necessary to complete this transaction, including, without limitation, any easement agreement with PacifiCorp, as permitted by the terms of the draft DDA;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the terms of the conveyance from the draft DDA so long as such changes do not materially increase the risk to Prosper Portland, as determined by the Executive Director in consultation with Prosper Portland's General Counsel;

BE IT FURTHER RESOLVED, that with the affirmative vote of no less than four commissioners for this resolution, this resolution shall become effective immediately upon its adoption, and otherwise it will take effect thirty days after adoption.

Adopted by the Prosper Portland Commission on

December 14, 2022



DISPOSITION AND DEVELOPMENT AGREEMENT CENTENNIAL MILLS

EFFECTIVE DATE: December 14, 2022 (the "Effective Date")

BETWEEN: 1362 Centennial Mills, LLC, an Oregon limited liability company ("Developer")

AND: Prosper Portland, the economic development and

urban renewal agency of the City of Portland ("Prosper Portland")

RECITALS

- A. On February 17, 2000, by Resolution No. 5397, the Prosper Portland Board of Commissioners authorized the purchase of land from ADM Milling Company, commonly known as "Centennial Mills," located at 1362 NW Naito Parkway (the "Property"), in furtherance of the River District Urban Renewal Plan.
- B. On December 13, 2006, the Prosper Portland Board of Commissioners approved Resolution No. 6422, adopting the Centennial Mills Framework Plan ("<u>Framework Plan</u>") as a statement of the public's interest and aspirations for the Property and the primary criteria against which redevelopment proposals were to be judged.
- C. The Property, a former flour mill, has a long history and presence in a former industrial area along the Willamette River, is located at the edge of the Portland Harbor Superfund Site, and is subject to the U.S. Environmental Protection Agency 2017 Record of Decision for the Portland Harbor; further, the Property is enrolled in the Oregon Department of Environmental Quality ("DEQ") Voluntary Cleanup Program ("VCP") and is subject to a 2014 Record of Decision for the clean-up of the upland soils on the Property (the "2014 ROD"). The 2014 ROD is attached as Exhibit A to this Disposition and Development Agreement ("Agreement").
- D. Between 2007 and 2014, Prosper Portland worked with various developers to analyze and identify redevelopment scenarios to align with the Framework Plan. Under each scenario, redevelopment would require significant public investment beyond that available in the River District Urban Renewal Area budget.
- E. On December 11, 2014, the Prosper Portland Board of Commissioners, acting as the Local Contract Review Board, approved Resolution No. 7089, adopting findings in support of an emergency safety hazard, and approved an expedited process for selective demolition of the most dangerous buildings on the Property due to substantial threat to property, public health, welfare and safety.
- F. On July 8, 2015, Prosper Portland, the United States Corps of Engineers ("<u>USCE</u>") and the Oregon State Historic Preservation Officer ("<u>SHPO</u>"), entered into a Memorandum of Agreement (as amended and restated as of February 22, 2018, and on July 31, 2022), which memorandum includes a letter from the USCE dated August 9, 2022 and a form of "<u>Request for Permit Transfer</u>" (collectively, the "<u>Historic Preservation Agreement</u>"). The Historic Preservation Agreement sets forth the mutual

agreements concerning the historic interpretation of the flour mill and the Centennial Mills' site and is attached as **Exhibit B** to this Agreement.

- G. On March 22, 2017, the Portland City Council adopted Resolution No. 37275 endorsing Prosper Portland's recommendation to pursue full site redevelopment and directed Prosper Portland to review all options for maximizing affordable housing on the property.
- H. On December 14, 2022, the Prosper Portland Board of Commissioners ("Board") approved Resolution No. _____ authorizing execution of this Agreement.

AGREEMENT

In consideration of the foregoing and the mutual covenants of the parties set forth in this Agreement, the parties agree as follows:

SECTION 1 Agreement for Disposition and Development

- 1.1 <u>Disposition and Redevelopment</u>. Prosper Portland agrees to sell and convey the Property to Developer, and Developer agrees to purchase the Property from Prosper Portland and to develop the Property in accordance with the terms and conditions set forth in this Agreement.
- 1.2 The Property. The Property which is subject to this Agreement consists of the following: the land located at 1362 NW Naito Parkway, more particularly described as Lots 25 through 37, inclusive, and the Southeasterly 15.79 feet of Lot 38, Block 318, COUCH'S ADDITION TO THE CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon (the "Land"), together with (i) all rights, privileges, licenses, and easements appurtenant to the Land owned by Prosper Portland; and (ii) all improvements, equipment, fixtures and other personal property of every kind located on the Land, including, without limitation all buildings and structures presently located on the Land (which Land, together with the elements described above in (i), and (ii), is collectively referred to in this Agreement as the "Property"). The Property includes all rights of Prosper Portland in the adjacent submerged and submersible land and all improvements, equipment, fixtures or other personal property of any kind located on such submerged and submersible land, including Prosper Portland's rights and obligations under that certain Submerged and Submersible Land Lease (ML-8021), between Prosper Portland and the State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("DSL"), dated July 2, 2010 (as amended, the "DSL Lease"), which DSL Lease is attached as Exhibit C to this Agreement. Prosper Portland will assign and transfer to Developer at Closing. The Parties will work diligently to obtain DSL's approval of the transfer of the DSL Lease to Developer on or before the Closing Date, and thereafter.

SECTION 2 Purchase Price and Payment

2.1 <u>Purchase Price</u>. The purchase price of the Property (the "<u>Purchase Price</u>") is Eight Million Two Hundred and Fifty Thousand Dollars (\$8,250,000.00) and must be paid in cash by Developer at the Closing (defined in **Section 6.1**).

2.2 <u>Earnest Money</u>.

2.2.1 <u>Due Diligence Deadline</u>. Within fifteen (15) business days following the Effective Date, Developer will deposit cash in the amount of Two Hundred Thousand Dollars

(\$200,000.00) (the "Earnest Money") with Fidelity National Title (the "Title Company"), 900 SW 5th Ave, Attention: Lori Medak, Phone (503) 222-2424. If Developer does not deliver to Prosper Portland written notice terminating this transaction on or before the date that is sixty (60) days after the Effective Date (the "Due Diligence Deadline"), then the Earnest Money will be nonrefundable to Developer (except as otherwise provided herein). Developer may terminate this Agreement for any reason, in its sole and absolute discretion, on or before the Due Diligence Deadline by delivery of written notice to Prosper Portland, in which event the Earnest Money will be returned to Developer, and neither party will have any further obligations to the other, except to the extent such obligations survive the termination of this transaction.

- 2.2.2 <u>Earnest Money</u>. The Title Company will deposit the Earnest Money into a federally-insured account, and at Closing, the Earnest Money will be credited against the Purchase Price. The term "Earnest Money" excludes any Extension Payments made pursuant to **Section 6.2**, below.
- deposits, Developer desires the right, in Developer's sole discretion and at Developer's sole cost, to demolish the existing warehouse on the Property, and Prosper Portland is willing to allow Developer to demolish the warehouse, on the terms and conditions of this **Section 2.2.3**. If Developer elects to demolish the warehouse, it will submit an application for a demolition permit to the City (the "Demolition Permit") by no later than May 3, 2023, and will thereafter work diligently and expeditiously to obtain approval for the Demolition Permit. Within thirty (30) days after the City issues the Demolition Permit (and it is final, binding, and nonappealable), Developer will commence demolition and pursue it to completion, at Developer's sole cost, in accordance with and subject to the terms and conditions of the Permit of Entry attached to this Agreement as **Exhibit D**. Once Developer commences demolition, its obligation to complete the demolition survives termination of this Agreement. Developer is solely responsible for reusing, relocating or disposing of the items stored in the warehouse as of the Effective Date, in compliance with all laws, including any applicable provisions of the Historic Preservation Agreement.
 - 2.2.3.1 If Developer elects not to demolish the warehouse or if Developer fails to submit an application for a Demolition Permit by May 3, 2023, Developer will make additional earnest money deposits as follows: (a) Two Hundred Thousand Dollars (\$200,000.00) with the Title Company (the "Second Deposit") by no later than May 3, 2023; and (b) an additional Two Hundred Thousand Dollars (\$200,000.00) with the Title Company (the "Third Deposit") no later than July 31, 2023. The Second Deposit and the Third Deposit will be immediately nonrefundable (except as otherwise provided herein) and will be considered "Earnest Money" under this Agreement.
 - 2.2.3.2 If the City has not finally approved the Demolition Permit by the <u>later</u> of sixty (60) days after the date the City deems the application to be complete or July 31, 2023, then Prosper Portland may provide written notice to Developer that Prosper Portland requires an additional deposit of Earnest Money. Within ten (10) days after delivery of such notice, Developer will deposit the Third Deposit with the Title Company, with no obligation to deposit the Second Deposit. The Third Deposit will be immediately nonrefundable to

Developer (except as otherwise provided herein) and considered "Earnest Money" under this Agreement.

- 2.2.4 <u>Demolition of the Horse Barn</u>. Developer desires the right, in Developer's sole discretion and at Developer's sole cost, to demolish the existing horse barn on the Property, and Prosper Portland is willing to allow Developer to demolish the horse barn, on the terms and conditions of this **Section 2.2.4** and in accordance with the terms and conditions of the Permit of Entry attached to this Agreement as **Exhibit D**. Once Developer commences demolition, it shall pursue it to completion, and the obligation to complete demolition survives the termination of this Agreement. Developer is solely responsible for reusing, relocating or disposing of all material on the horse barn site in compliance with all laws, including any applicable provisions of the Historic Preservation Agreement.
- 2.2.5 <u>Termination Notices to Licensees</u>. In order to facilitate the timely demolition of the horse barn, Prosper Portland will provide written notice to the occupants ("<u>Licensees</u>") under the Just Bucket Staging Permit and the ReBuilding Center Permit (collectively, the "<u>Permits</u>") to terminate the Permits. Thereafter, Prosper Portland will ensure that Licensees have vacated the Property by April 1, 2023.
- 2.3 <u>Tanner Creek Sewer Work.</u> Prosper Portland will work diligently to obtain DEQ's written approval by the Due Diligence Deadline of the closure report documenting that Prosper Portland has completed all work on the Tanner Creek Sewer in full accordance with the Phase II Remedial Action Plan for the Tanner Creek Sewer ("Phase 2 RAP"). If Prosper Portland has not provided DEQ's written approval to Developer by the Due Diligence Deadline, then the Due Diligence Deadline will be extended until Developer has received DEQ's written approval of the closure report for the Phase 2 RAP work. In addition, prior to Closing, Prosper Portland, at its sole cost, will obtain an amendment to the Source Control Decision for Centennial Mills to acknowledge the satisfactory implementation and completion of the Phase 2 RAP. Prosper Portland will use good faith efforts to include representations in the amended Source Control Decision by DEQ that no further work is anticipated to be required to address potential groundwater contamination migrating through or around the Tanner Creek Sewer into the Willamette River. Prosper Portland will diligently pursue and take all necessary actions to obtain the amendment.

SECTION 3 Property Documents; Deliveries

3.1 <u>Title Report</u>. Within ten (10) days following the Effective Date, Prosper Portland will provide Developer a preliminary title report for the Property (the "<u>Title Report</u>") from the Title Company. Within thirty (30) days after Developer's receipt of the Title Report, Developer may disapprove of any exception listed in the Title Report by delivering written notice to Prosper Portland ("<u>Developer's Title Notice</u>") specifying each title defect or matter for which Developer is requesting a cure by Prosper Portland ("<u>Title Defect</u>"). Developer's failure to deliver Developer's Title Notice to Prosper Portland within the time period specified above will be a conclusive presumption that Developer has approved the Title Report; provided, however, Prosper Portland will be obligated to release the liens of any deeds of trusts or mortgages encumbering the Property by the Closing Date. Within fifteen (15) days after receiving Developer's Title Notice, Prosper Portland will deliver to Developer written notice ("<u>Prosper Portland's Title Notice</u>") of those Title Defects which Prosper Portland covenants and agrees to either eliminate or cure by the Closing Date. Prosper Portland's failure to deliver Prosper Portland's Title Notice to Developer within this time period will be deemed to constitute Prosper Portland's election not to eliminate or cure any such Title Defects. If Prosper Portland elects (or is deemed to have elected) not to eliminate or cure any Title Defects,

Developer will have the right, by written notice delivered to Prosper Portland within fifteen (15) days after delivery of Prosper Portland's Title Notice or within fifteen (15) days after the expiration of the time period during which Prosper Portland is entitled to deliver Prosper Portland's Title Notice, whichever occurs first, to either: (a) waive in writing its prior notice as to the Title Defects which Prosper Portland has elected not to cure, or (b) terminate this Agreement, in which case the Earnest Money will be returned to Developer (even if it is after the Due Diligence Deadline). Developer's failure to deliver any written notice within such fifteen (15) day period will be a conclusive presumption that Developer has approved the Title Defects that Prosper Portland has elected (or deemed to have elected) not to cure, and this Agreement will remain in full force and effect. All title and survey matters approved or deemed approved by Developer are referred to in this Agreement as the "Permitted Exceptions."

- 3.2 PacifiCorp Easement. PacifiCorp has requested an easement for an underground electric power transmission and communications line to be located under the Property (the "PacifiCorp Easement"). The PacifiCorp Easement would impact the type of foundation design that can be used for construction of a Vertical Project (defined in Section 4.2.1) on the site. Prosper Portland shall not record the PacifiCorp Easement or any similar encumbrance in favor of PacifiCorp unless Developer agrees to the recording of an easement and an amendment to this Agreement to allow it. Developer will negotiate in good faith with PacifiCorp on the terms of an agreement by which Developer would allow the recording of the PacifiCorp Easement. The terms of such an agreement may address, among other issues, site improvements to be made prior to installation of the power line to mitigate the impacts on the development of the site and the extent and estimated cost of alterations to the design of the building foundation to accommodate the impacts of the PacifiCorp Easement. If Developer and PacifiCorp come to such an agreement, which is also acceptable to Prosper Portland, then Developer and Prosper Portland will amend this Agreement as necessary to reflect the agreement with PacifiCorp and to allow Prosper Portland to record the PacifiCorp Easement as a Permitted Exception. Prosper Portland shall pay Developer's reasonable engineering expenses incurred in connection with the analysis of the impacts of the PacifiCorp Easement and preparation of design and cost estimates for improvements to mitigate the impacts ("Engineering Expenses"). Prosper Portland shall pay Developer the Engineering Expenses upon receipt of invoices documenting those expenses, plus a 20% management fee, up to a maximum total payment of \$120,000. Developer shall give Prosper Portland all work product prepared in connection with the analysis of the PacifiCorp Easement.
- 3.3 <u>Delivery of Documents</u>. Developer acknowledges receipt of the due diligence documents listed on the attached **Exhibit E**. Although Prosper Portland has agreed to make available to Developer this information regarding the Property, Prosper Portland and its agents will have no responsibility or liability for the completeness or accuracy of such information, Prosper Portland is making no representation with respect to such documents and information, Developer assumes and accepts the entire responsibility for interpreting and assessing the information provided, and Developer will rely solely on Developer's own judgment in making Developer's decision to purchase the Property.
- 3.4 <u>Developer's Due Diligence Documents</u>. If this Agreement terminates, with no warranty or representation as to their reliability, Developer will promptly deliver to Prosper Portland all environmental studies, geologic reports, engineering analyses, and surveys Developer has received, prepared or obtained pertaining to the Property, excluding any proprietary or proposed plans for redevelopment of the site.

SECTION 4 Inspections; Land Use Approvals

- 4.1 <u>Permit of Entry</u>. From and after the Effective Date, Prosper Portland will give Developer a copy of the keys to all improvements on the Property and allow Developer and its authorized agents or representatives to enter upon the Property to make such investigations, studies, and tests as Developer deems necessary or advisable ("<u>Inspections</u>"), upon full execution of the Permit of Entry attached to this Agreement as **Exhibit D**.
- 4.2 <u>Land Use Approvals; Pursuit of Land Use Approvals and Demolition Permit.</u>
 - 4.2.1 From and after the Effective Date, Developer, at its expense, will pursue and work diligently and expeditiously to obtain all necessary approvals (collectively, the "Land Use Approvals") for developing one or more buildings on the Property as the zoning permits (each a "Vertical Project," and collectively, the "Vertical Projects"). Developer will submit an application to the City for the first Type III Land Use Review for design review for the first building (the "Land Use Application") within one-hundred eighty (180) days after the Effective Date and will take all reasonable actions to ensure that the Land Use Application is deemed complete by the City within one (1) year after the Effective Date. Thereafter Developer will use best efforts to promptly obtain approval for the Land Use Application and the Land Use Approvals.
 - 4.2.2 With respect to the Land Use Approvals, as well as any application for a Demolition Permit pursuant to Section 2.2.3, above, Developer will have the right to (a) enter into discussions and negotiations regarding the development of the Property with governmental authorities having jurisdiction, and (b) apply for, prosecute, participate in and cause to be issued and finally approved any permit, variance, site plan or other approval which may be required as part of the Vertical Project(s) or for the demolition of the warehouse or horse barn; provided, however, that with respect to the Land use Approvals, such approvals must (i) not be binding on or effective until Developer has Closed the acquisition of the Property; (ii) be consistent with the terms of this Agreement; and (iii) be capable of being withdrawn if Closing does not occur. Prosper Portland (at no cost, expense, or liability to Prosper Portland other than as specifically provided elsewhere in this Agreement) will reasonably cooperate with Developer in all respects in connection with obtaining the Demolition Permit and governmental approvals for the Vertical Projects under the City's Code, or under any applicable state or federal regulations, which cooperation may include the execution and delivery of any applications for approvals and permits, as may be requested by Developer, as well as meetings with City or other government officials. At Prosper Portland's request, Developer will participate in introductory meetings with key stakeholders, including but not limited to the Pearl District Neighborhood Association and Restore Oregon.

SECTION 5 Conditions Precedent to Closing

- 5.1 <u>General</u>. The party benefited by a condition may not unreasonably withhold, condition, or delay acknowledgment that the condition has been satisfied.
- 5.2 <u>Developer's Conditions Precedent</u>. The following conditions precedent must be satisfied before Developer is obligated to Close the purchase of the Property. These conditions are for Developer's benefit, and Developer has the right in its sole and absolute discretion to waive, by delivery of written notice to Prosper Portland, any of the conditions set forth in this **Section 5.2** at Developer's sole cost and risk.

- 5.2.1 DEQ has approved the Phase 2 RAP work and an amendment to the Source Control Decision for Centennial Mills in accordance with **Section 2.3**.
- 5.2.2 No litigation is pending that prevents Prosper Portland from performing its obligations under this Agreement.
- 5.2.3 Title Company is prepared to issue to Developer title insurance in the form required by Developer, subject only to the Permitted Exceptions.
- 5.2.4 Any material adverse change in the physical or legal condition of the Property that triggers the requirements of **SECTION 7**, below, have been resolved in accordance with **SECTION 7**.
 - 5.2.5 The Licensees have vacated the Property.
- 5.2.6 The City of Portland has determined that the Land Use Application is complete.
- 5.2.7 Prosper Portland will have timely delivered each item to be delivered by Prosper Portland pursuant to this Agreement, including (without limitation) the documents and materials described in **Section 6.3**.
- 5.3 <u>Prosper Portland's Conditions Precedent</u>. The following conditions precedent must be satisfied before Prosper Portland is obligated to Close the sale of the Property. These conditions are for Prosper Portland's benefit, and Prosper Portland has the right in its sole and absolute discretion to waive, by delivery of written notice to Developer, any of the conditions set forth in this **Section 5.3**, at Prosper Portland's sole cost and risk.
 - 5.3.1 No litigation is pending that prevents Developer from performing its obligations under this Agreement.
 - 5.3.2 Title Company is prepared to issue to Developer title insurance in the form required by Developer, subject only to the Permitted Exceptions, and to issue a corresponding seller's policy of title insurance to Prosper Portland.
 - 5.3.3 Developer will have timely delivered each item to be delivered by Developer pursuant to this Agreement, including (without limitation) the documents and materials described in **Section 6.4**.
- 5.4 <u>Elections upon Non-Satisfaction of Conditions</u>. If any condition is not fulfilled to the satisfaction of the benefited party by the Closing Date, then the benefited party may elect to:
 - 5.4.1 Terminate this Agreement by written notice to the other party in accordance with **Section 5.5**; or
 - 5.4.2 Waive in writing the benefit of that condition and proceed in accordance with the terms of this Agreement; or

5.4.3 Designate in writing a later date for Closing, to allow additional time for the condition to be satisfied, if the condition can be satisfied and the other party agrees in writing to the later date.

5.5 Termination Date; Effect of Termination.

- 5.5.1 If all of the conditions precedent to Closing set forth in this **SECTION 5** have not been satisfied or waived by the later of (a) the Closing Date or (b) such later date, if any, designated pursuant to **Section 5.4.3** then this Agreement will terminate five (5) business days after written notice from the party seeking termination unless the specified condition has been satisfied or waived in writing within such 5-day period.
- 5.5.2 Termination of this Agreement due to failure of a condition precedent that is caused by a breach by either party is governed by **SECTION 8**.

SECTION 6 Events of Closing

6.1 <u>Closing</u>. The disposition and purchase of the Property will be closed in escrow at the Title Company (the "<u>Closing</u>"). Subject to the satisfaction or waiver of the conditions set forth in **SECTION 5**, the time for Closing (the "<u>Closing Date</u>") will be the <u>earlier</u> of (a) sixty (60) days after the date the City of Portland has approved the Land Use Application and any appeal period has expired; or (b) two (2) years after the Effective Date.

6.2 <u>Extension of Closing Date</u>.

- 6.2.1 Developer may elect to extend the Closing Date by depositing an additional Fifty Thousand Dollars (\$50,000) with the Title Company (each, an "Extension Payment"). Each Extension Payment so deposited will extend the Closing Date for ninety (90) days after the previously scheduled Closing Date. Any Extension Payment made by Developer is immediately nonrefundable and is not considered "Earnest Money" under this Agreement. Developer may make a maximum of four (4) Extension Payments under this section, to extend the Closing Date by a maximum of one (1) year.
- 6.2.2 If an appeal of the Land Use Approvals is pending on the Closing Date, then Developer may elect to extend the Closing Date by depositing an additional Fifty Thousand Dollars (\$50,000) with the Title Company (each, an "Additional Earnest Money Deposit"). Each Additional Earnest Money Deposit so deposited will extend the Closing Date for ninety (90) days after the previously scheduled Closing Date. Any Additional Earnest Money Deposit made by Developer is immediately nonrefundable and will be considered "Earnest Money" under this Agreement.
- 6.3 <u>Prosper Portland's Deposits</u>. On or prior to the Closing Date, Prosper Portland will deliver the following to the Title Company:
 - 6.3.1 An executed and acknowledged statutory special warranty deed (the "<u>Deed</u>") conveying fee simple title to the Land to Developer, subject only to the Permitted Exceptions.

- 6.3.2 The Request for Permit Transfer, in the form included in **Exhibit B**, executed by Prosper Portland.
- 6.3.3 The Declaration of Post-Closing Covenants (defined in **Section 12.4**), executed and acknowledged by Prosper Portland.
- 6.3.4 A certification that Prosper Portland is not a "foreign person" as the term is defined in the Internal Revenue Code and the Treasury Regulations promulgated thereunder.
- 6.3.5 Such other documents and funds as the Title Company may require to complete the transaction contemplated by this Agreement, or as may be required at Closing pursuant to the terms and conditions of this Agreement.
- 6.4 <u>Developer's Deposits</u>. On or prior to the Closing Date, Developer will deliver to the Title Company, the following:
 - 6.4.1 The Purchase Price less any credits to Developer pursuant to this Agreement.
 - 6.4.2 The Request for Permit Transfer, executed by Developer.
 - 6.4.3 The Declaration of Post-Closing Covenants, executed and acknowledged by Developer.
 - 6.4.4 Such documents as the Title Company may require to establish the authority of Developer to acquire the Property and to issue title insurance in the form required by Developer.
 - 6.4.5 Such other documents and funds as the Title Company may require to complete the transaction contemplated by this Agreement, or as may be required at Closing pursuant to the terms and conditions of this Agreement.

6.5 <u>Prorations</u>.

- 6.5.1 <u>General</u>. The following items in this **Section 6.5** will be adjusted and prorated between Prosper Portland and Developer as of 12:01 a.m. on the Closing Date. Such adjustments and prorations will be calculated on the actual days of the applicable month and all annual prorations based upon a 365-day year.
- 6.5.2 <u>Taxes</u>. Real and personal property taxes and assessments for the current tax year levied or assessed against the Property. If the amount of taxes and assessments for the current tax year has not been fixed by the Closing Date, the proration will be based upon the taxes paid for the previous year and re-prorated at the time the amount of taxes and assessments for the current tax year has been fixed.
- 6.5.3 <u>Other Revenue and Expenses</u>. Except as otherwise provided in this Agreement, all other items to be prorated, including rents, operating expenses, utility charges, revenues, and other income, if any, will be prorated in accordance with **Section 6.5.1**. Developer

and Prosper Portland will each pay their own legal and professional fees of other consultants incurred by Developer and Prosper Portland, respectively.

- 6.6 <u>Closing Costs.</u> Prosper Portland will pay the premium for a standard form owner's policy of title insurance, the premium for its seller's policy, and one-half the escrow fee. Developer will pay for any upgrades to its title insurance policy to provide extended coverage or title endorsements. Developer will pay one-half the escrow fee and all recording fees.
- 6.7 <u>Deliveries to Developer at Closing</u>. Prosper Portland will deliver to Developer exclusive possession of the Property at Closing, subject only to the Permitted Exceptions, and keys to all improvements located on the Property, to the extent in Prosper Portland's possession.

SECTION 7 Risk of Loss

7.1 Damage.

- 7.1.1 <u>General</u>. If prior to the Closing Date, the Property, or any part thereof but <u>excluding</u> the original flour mill structure, is destroyed or suffers damage in excess of ten percent of the Purchase Price, Developer will have the right, exercisable by giving written notice of such decision to Prosper Portland within ten (10) business days after receiving written notice of such damage or destruction, to terminate this Agreement, in which event the Earnest Money will be returned to Developer and neither party will have any further obligation under this Agreement (except those obligations that survive termination of this Agreement). If the damage is less than ten percent of the Purchase Price or if Developer does not timely elect to terminate this Agreement, Developer will be deemed to accept the Property in its then condition, and all proceeds of insurance awards payable to Prosper Portland by reason of such damage or destruction will be paid or assigned to Developer.
- 7.1.2 Flour Mill. It is the parties' expectation that, after Closing, Developer will demolish the flour mill structure. Prosper Portland will reasonably support Developer's efforts to obtain the necessary approvals to be able to demolish the structure, in accordance with **Section 4.2.2.**, above. Prior to the Closing Date, if the flour mill structure collapses or is destroyed or otherwise suffers damage in excess of ten percent of the Purchase Price, Prosper Portland will consult Developer in any site stabilization or cleanup efforts, to obtain Developer's input as to actions that would best improve future developability of the Property.
- 7.2 New Groundwater Contamination. If, prior to Closing, only, and not after Closing, there is evidence of contaminated water around the Tanner Creek Sewer outfall, then Prosper Portland will investigate and determine whether it is a result of groundwater passing through or around the Tanner Creek Sewer backfill; and if so, Prosper Portland will take those measures required by DEQ under applicable law to address the contamination pathway. Prosper Portland will obtain DEQ's approval of that work. Prosper Portland's obligation under this Section to address the contamination pathway as required by DEQ, and to obtain DEQ's approval of that work, will survive Closing.
- 7.3 <u>Condemnation</u>. If after the Effective Date, and prior to the Closing Date, all or any substantial portion of the Property (where the value of the condemned Property is in excess of ten percent of the Purchase Price), is subjected to a bona fide threat of condemnation by a body having the power of eminent domain, or is taken by eminent domain or condemnation (or sale in lieu thereof), Developer may by written notice to Prosper Portland within ten (10) business days after receiving notice of such event, elect

to cancel this Agreement prior to the Closing Date, in which event the Earnest Money will be returned to Developer and neither party will have any further obligation under this Agreement (except those obligations that survive termination of this Agreement). If no such election is made, this Agreement will remain in full force and effect and at Closing, the purchase contemplated by this Agreement, less any interest taken by eminent domain or condemnation, will be completed, and the Purchase Price for the Property will not be reduced by the amount of any awards that have been or that may thereafter be made for the taking of the Property (and any condemnation award will be paid to Developer). This **Section 7.3** does not apply to any condemnation, threat of condemnation or any related action that arises in connection with the PacifiCorp Easement.

SECTION 8 Default; Remedies

- 8.1 Time of Essence. Time is of the essence of the parties' obligations under this Agreement.
- 8.2 Developer's Failure to Close. If Closing and the consummation of the transaction contemplated in this Agreement does not occur by reason of any default of Developer, and Developer fails to complete the purchase of the Property, Prosper Portland may terminate this Agreement by written notice to Developer. Developer and Prosper Portland agree that it would be impractical and extremely difficult to estimate the damages suffered by Prosper Portland as a result of Developer's failure to complete the purchase of the Property pursuant to this Agreement, and that under the circumstances existing as of the date of this Agreement, the liquidated damages provided for in this Section 8.2 represent a reasonable estimate of the damages which Prosper Portland will incur as a result of such failure. THEREFORE, DEVELOPER AND PROSPER PORTLAND HEREBY AGREE THAT A REASONABLE ESTIMATE OF THE TOTAL DAMAGES THAT PROSPER PORTLAND WOULD SUFFER IN THE EVENT THAT DEVELOPER DEFAULTS AND FAILS TO COMPLETE THE PURCHASE OF THE PROPERTY IS AN AMOUNT EQUAL TO THE DEPOSITED EARNEST MONEY AND ANY EXTENSION PAYMENTS. SUBJECT TO THE TERMS OF THE PERMIT OF ENTRY, WHICH REQUIRES COMPLETION OF ANY DEMOLITION ACTIVITIES (ONCE STARTED), SUCH EARNEST MONEY AND EXTENSION PAYMENTS WILL BE THE FULL, AGREED AND LIQUIDATED DAMAGES FOR THE BREACH OF THIS AGREEMENT BY DEVELOPER, AND AFTER PAYMENT THEREOF TO PROSPER PORTLAND, NEITHER PARTY WILL HAVE ANY FURTHER OBLIGATION TO OR RIGHTS AGAINST THE OTHER (EXCEPT THOSE OBLIGATIONS THAT SURVIVE TERMINATION OF THIS AGREEMENT).
- 8.3 <u>Prosper Portland's Failure to Close</u>. If Prosper Portland is obligated to convey the Property to Developer but fails to do so, then Developer will be entitled to seek specific performance of this Agreement or any other remedy at law or equity (excluding consequential damages). Without limiting the foregoing or Developer's other remedies, Developer shall receive a refund of its Earnest Money and Extension Payments in the event of termination of this Agreement prior to Closing due to default by Prosper Portland.

SECTION 9 Representations

9.1 Prosper Portland's Representations. Prosper Portland's representations contained in this **Section 9.1** are true and accurate in all material respects, and will be continuing and true and correct as of the Closing Date, with the same force and effect as if remade by Prosper Portland in a separate certificate at that time. Notwithstanding the foregoing, if Prosper Portland becomes aware after the Effective Date that any representation by Prosper Portland is untrue in any material respect, Prosper Portland may give Developer written notice of such change in Prosper Portland's representation. Thereafter, Developer will have seven (7) days to terminate this Agreement by written notice to Prosper Portland and receive a refund of the Earnest Money and any Extension Payment(s), which refund will not preclude Developer's

right to assert a claim for damages and any other remedy at law or equity. The failure of Developer to timely terminate this Agreement will be deemed a modification of such representation, and Prosper Portland will be deemed to remake such representation at Closing as so modified. All of Prosper Portland's representations are based on Prosper Portland's actual knowledge (which means the actual and present knowledge of Ember Breckenridge and Colin Polk, without investigation or inquiry). In no event will Ember Breckenridge nor Colin Polk have any personal liability under this Agreement.

- 9.1.1 Prosper Portland has full power and authority to enter into and perform this Agreement in accordance with its terms, and all requisite action has been taken by Prosper Portland in connection with the execution of this Agreement and the transactions contemplated hereby.
- 9.1.2 No hazardous waste, material, or substance, toxic substance, pollutant, oil, or contaminant, as defined by any federal, state, or local law, rule, order, ordinance, requirement, or regulation ("<u>Hazardous Substances</u>") has been stored or disposed of on the Property by Prosper Portland in violation of any applicable law, except as disclosed to Developer with the due diligence documents listed on **Exhibit E**.
- 9.1.3 There is no condemnation proceeding, litigation, action, suit, or proceeding pending, or threatened in writing within six (6) months prior to the date of this Agreement that affects the Property.
- 9.1.4 Prosper Portland is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1986, as amended.
- 9.1.5 Prosper Portland has not received any written notice of violation of any law or ordinance affecting the Property, except with respect to the DSL Lease and as disclosed to Developer with the due diligence documents listed on **Exhibit E**.

9.2 Developer's Representations.

- 9.2.1 Developer has full power and authority to enter into this Agreement.
- 9.2.2 Developer is an Oregon limited liability company qualified to do business in the state of Oregon.
- 9.2.3 All requisite action has been taken by Developer in connection with the execution of this Agreement and the transactions contemplated hereby.
- 9.2.4 Except as expressly set forth in **Section 9.1**, Developer acknowledges that no warranties, guarantees or representations have been or are being made by Prosper Portland or any agent or representative of Prosper Portland concerning the Property. Developer accepts the Property "AS IS, WITH ALL FAULTS," without any representations or warranties by Prosper Portland or any agent or representative of Prosper Portland, express or implied, except as set forth in **Section 9.1**. Developer acknowledges that Developer has ascertained for itself the value and condition of the Property, and except as set forth in **Section 9.1**, Developer is not relying on, nor has Developer been influenced by, any representation of Prosper Portland or any agent or representative of Prosper Portland regarding the value, condition, or any aspect of the Property. Developer agrees that Developer's payment of the Purchase Price is Developer's acknowledgment

that it has had every opportunity to conduct whatever inspection, test, or analysis of the Property that Developer deemed to be relevant to Developer's decision to purchase the Property. As part of Developer's agreement to purchase the Property "AS-IS, WITH ALL FAULTS," and not as a limitation on such agreement, Developer hereby unconditionally and irrevocably waives and releases any and all actual or potential rights Developer might have regarding any form of warranty, express or implied, of any kind or type, relating to the Property, except for Prosper Portland's warranties set forth in this Agreement. Such waiver is absolute, complete, total and unlimited in every way. Prosper Portland will not be responsible for any failure to investigate the Property on the part of Developer or except as expressly set forth in **Section 9.1**, for any representation or statement regarding the Property (including any representation or statement by any real estate broker or sales agent, or any other purported or acknowledged agent, representative, contractor, consultant or employee of Prosper Portland, or any third party). Effective upon Closing, Developer waives its right to recover from, and forever releases and discharges, the City of Portland's and Prosper Portland's commissioners, directors, officers, employees and agents of each of them, and their respective successors and assigns (collectively, "Prosper Related Parties") from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property including, without limitation, the environmental condition and history of the Property and Hazardous Substances on, under or about the Property. Notwithstanding the foregoing, Developer's release of the City of Portland and its commissioners, directors, officers, employees, agents, successors and assigns does not include claims against the City of Portland arising from future contamination that may migrate onto the Property after Closing from NW Naito Parkway or other off-Property sources, which claims are released and discharged with respect to Prosper Portland, and its commissioners, directors, officers, employees, agents, successors and assigns. The provisions of this Section 9.2 survive Closing and will be fully enforceable thereafter.

SECTION 10 Property; Assignment of Agreements; and Post-Closing Construction Covenants

- Maintenance of the Property. Until this transaction is Closed or escrow is terminated, whichever comes earlier, Prosper Portland will operate and maintain the Property in a manner consistent with Prosper Portland's past practices, including providing 24-hour security for the Property.
- 10.2 <u>Historic Preservation Agreement; Voluntary Cleanup Program; DSL Lease</u>.
 - 10.2.1 Developer acknowledges that acquisition of the Property carries with it the obligation to address cleanup obligations. Except Prosper Portland's obligation to complete any work under the circumstances set forth in **Section 7.2**, as of the Closing, Prosper Portland will be deemed to have assigned and transferred to Developer, and Developer will have assumed and accepted transfer of, all of Prosper Portland's obligations, as owner of the Property, under DEQ's Voluntary Cleanup Program and the 2014 ROD, including without limitation the obligation to complete soil remediation in accordance with the 2014 ROD. Developer will be responsible for the cost of DEQ and consultant oversight for this work.
 - 10.2.2 As of the Closing, Prosper Portland will be deemed to have assigned and transferred to Developer, and Developer will have assumed and accepted transfer of, all of

Prosper Portland's obligations under the DSL Lease. In accordance with **Section 1.2**, Developer will work diligently to obtain DSL's approval of the substitution of Developer in the place of Prosper Portland with respect to all Prosper Portland's obligations under the DSL Lease. Such substitution may, in Developer's discretion, take the form of an assignment of the DSL Lease to Developer executed by DSL, a termination of the DSL Lease (after which Developer may elect to enter into a new lease with DSL), or otherwise. Prosper Portland will reasonably cooperate in these efforts. Developer's obligation to obtain DSL's approval of the substitution of Developer for Prosper Portland will survive Closing.

10.2.3 As of the Closing, Prosper Portland will be deemed to have assigned and transferred to Developer, and Developer will have assumed and accepted transfer of, all of Prosper Portland's obligations under the Historic Preservation Agreement. As of the Effective Date, it is the parties' understanding that, in order to complete the transfer of the Historic Preservation Agreement, the USACE will require the parties sign the Request for Permit Transfer, included as part of **Exhibit B** to this Agreement. Unless otherwise agreed by the parties, at Closing, the parties will execute the Request for Permit Transfer, and thereafter, Prosper Portland will provide the executed document to the USACE. The parties will cooperate to comply with any additional requirements of the USACE or SHPO to complete the transfer, which obligation will survive Closing.

10.2.4 After Closing, Developer will defend, indemnify and hold harmless the Prosper Related Parties from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any related professional consultant fees or attorney's fees) ("Claims") resulting in whole or in part from any act, omission, negligence, fault or violation of, or failure to comply with, the Historic Preservation Agreement, the 2014 ROD, and the DSL Lease by Developer, its employees, agents, contractors, sub-contractors, invitees, directors or officers; provided that such indemnity obligation shall not extend to the City of Portland for future Claims arising from any contamination that may migrate onto the Property after Closing from NW Naito Parkway or other off-Property sources. If Developer is required to defend the indemnitees, Developer may select the legal counsel used, subject to reasonable approval by Prosper Portland. If Developer refuses or fails to defend as required, the indemnitees may, at their sole option, settle or defend any Claims, and Developer must, upon demand, pay to indemnitees the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees. This indemnity provision will not apply to Claims resulting from the negligence or intentional misconduct of the indemnitees, and will survive Closing.

10.3 <u>Compliance with Prosper Portland Policies</u>. Developer hereby acknowledges and agrees that the development of the Vertical Projects pursuant to this Agreement is and will be subject to the Prosper Portland policies, as set forth in **Exhibit F** (collectively, the "<u>Policies</u>"). Within ninety (90) days after the Effective Date, Developer will provide Prosper Portland a list of all parties Developer has contracted to provide professional services to Developer in connection with work relating to **Sections 2.2.3**, **2.2.4**, **3.2**, and **4.2** (the "<u>Professional Services List</u>"). The Program Goal for utilizing Certified Firms for professional services for the Vertical Projects is modified to the extent Developer uses the parties on the Professional Services List.

SECTION 11 Assignment and Transfer

- 11.1 Restrictions on Transfer Prior to Closing. Prior to Closing, and except as provided in this **SECTION** 11, each entity or individual that comprises "Developer" (each, a "Developer Party") will not undertake a "Transfer" (defined in Section 11.5, below) or attempt a Transfer, without the prior written approval of Prosper Portland, which approval will not be unreasonably withheld, conditioned, or delayed if: (a) the proposed transfer is to a partnership, limited liability company, limited partnership, or corporation in which day-to-day decisions are directly or indirectly controlled by the Developer Party through ownership and/or management rights (each, a "Transferee"); (b) Developer is not in Default under this Agreement; and (c) the proposed Transferee has never been party to an arbitration or litigation proceeding with a city or redevelopment agency or been suspended, disciplined, debarred, or prohibited from contracting with any city or redevelopment agency. Any other attempted Transfer will be a Default by Developer.
- Approval Requests. Developer may request approval of a proposed Transfer no less than thirty (30) days before the scheduled closing or effective date of the Transfer. The request must include: (a) sufficient information for Prosper Portland to make the determination required in Section 11.1; and (b) a proposed form of assignment and assumption agreement meeting the requirements of Section 11.3, below. Within fifteen (15) days after a written request for approval of a proposed Transfer, Prosper Portland must either approve in writing the proposed Transfer or request reasonable additional information necessary to demonstrate the requirements of Section 11.1 have been satisfied. The requested Transfer will be deemed approved if Prosper Portland does not provide a timely written response as called for in the preceding sentence. If Prosper Portland requests additional information in a timely manner, Developer will provide the requested information in a timely manner so as to allow expeditious Prosper Portland review and approval. Approval by Prosper Portland will be given or not given within fifteen (15) days after the submission of the additional information that Prosper Portland has informed Developer in writing is sufficient for its decision making.
- Assignment and Assumption Agreement. Each Transfer approved by Prosper Portland pursuant to **Section 11.2** may be effectuated only by a recorded assignment and assumption agreement, executed by Developer and the approved Transferee, meeting the requirements of this **Section 11.3**. The assignment and assumption agreement must include: (a) a legal description of any real property being transferred; (b) a detailed description of the rights and obligations under this Agreement to be assigned to and assumed by Transferee, which must include all of the indemnifications and liability releases by Developer in this Agreement applicable to such rights and obligations; and (c) such other matters as are deemed appropriate by Developer and are approved by Prosper Portland.
- 11.4 <u>Effect of Transfer</u>. Upon any Transfer, all references to Developer in this Agreement will be deemed to mean the Transferee with respect to the Property or obligations so Transferred, except to the extent Developer is expressly not released from any obligations pursuant to the assignment and assumption agreement approved by Prosper Portland. Upon receipt of the recorded assignment and assumption agreement, Prosper Portland will provide Developer a written release from any such obligations under this Agreement that Prosper Portland agreed to release once expressly transferred to and assumed by the Transferee under the assignment and assumption agreement. The release will be provided within thirty (30) days after the effective date of such Transfer, in a form prepared and approved by Prosper Portland which is consistent with this Section.
- 11.5 <u>Definitions</u>. "<u>Transfer</u>" means (a) to make, permit, or attempt any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of this

Agreement or any of the rights, interests, or obligations either under this Agreement or in all or any portion of the Property; or (b) a Change in Control. "Change in Control" means any transfer, sale, pledge, encumbrance or other disposition, in any single transaction or cumulatively, of "control" of Developer through any or all of the following actions listed below, if, as the result of such action, one or more persons who are not in control of Developer on the Effective Date acquire such control:

- the transfer, sale, pledge, encumbrance or other disposition of interests in Developer existing as of the Effective Date, either by Developer or by any of the owners of interests in Developer as of the Effective Date;
- the creation of new ownership interests in Developer; or
- the surrender or liquidation of ownership interests in Developer.

The term "control" means the control of more than fifty percent (50%) in the aggregate of any and all of those interests in Developer that entitle the controller thereof to participate in its management. Following a Transfer permitted by this **SECTION 11**, the "Effective Date" referred to in this definition will be deemed to mean the effective date of such permitted Transfer for purposes of assessing whether there has been a Change of Control of such Transferee.

SECTION 12 Miscellaneous Provisions

Delivery of Notices. All notices given under this Agreement will be in writing and may be delivered, with all applicable delivery and postage charges prepaid, by: (a) personal delivery or messenger; (b) nationally recognized overnight courier service; (c) certified mail through the United States Postal Service, return receipt requested; or (d) e-mail, and addressed as follows:

Prosper Portland: Prosper Portland

Kimberly Branam, Executive Director 220 NW Second Ave., Suite 200

Portland OR 97209

Email: branamk@prosperportland.us

With a copy to: Prosper Portland

General Counsel

220 NW Second Ave., Suite 200

Portland OR 97209

Email: <u>LegalNotices@prosperportland.us</u>

Developer: Bachrach Law, P.C.

921 SW Washington St., Suite 320

Portland OR 97205

Email: jeffb@bachrachlaw.com

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof; provided that notices sent by email will be deemed given on the date received if and only if delivered prior to 6:00 p.m. Pacific Time and if, with respect to a breach, a Default or the exercise of a termination right, such notice is simultaneously sent by another means allowed hereunder. The addresses to which notices are to be delivered may be changed by giving notice of such change in

address in accordance with this notice provision. Notices may be given by counsel to a party on behalf of such party.

12.2 Brokers. Prosper Portland warrants that Prosper Portland is not required to pay any real estate commission or any other fee or similar charge (including, but not limited to, any selection fee, development fee, nonrecurring management fee, or any fee of a similar nature, however designated) to any person or entity in connection with this Agreement or the transaction contemplated thereby except for a commission due George N. Diamond and Nicholas G. Diamond, each of Capacity Commercial Group, who represents Prosper Portland, and Montero Team Brokerage, who represents Developer, which fees Prosper Portland will pay pursuant to a separate written agreement. Prosper Portland will defend, indemnify, and hold Developer harmless from and against any and all claims or demands with respect to any fees or other compensation asserted as a result of Prosper Portland's actions in connection with this Agreement. Developer warrants that Developer is not required to pay any real estate commission or any other fee or similar charge (including, but not limited to, any selection fee, development fee, nonrecurring management fee, or any fee of a similar nature, however designated) to any person or entity in connection with this Agreement or the transaction contemplated thereby. Developer will defend, indemnify, and hold Prosper Portland harmless from and against any and all claims or demands with respect to any fees or other compensation asserted as a result of Developer's actions in connection with this Agreement.

12.3 Confidentiality/Public Records.

- the Oregon Public Records Law, government audit requirements, and public review and oversight. Records of Prosper Portland may be required to be disclosed publicly unless exempted. Exemptions are few, narrowly tailored and often conditional. Prosper Portland will not voluntarily disclose confidential material to private third parties. Developer may inform Prosper Portland of the written materials it provides Prosper Portland that Developer considers confidential. However, such confidentiality will not guarantee that such material will not be subject to a public records request and subsequent disclosure. Prosper Portland will inform Developer of any and all public records requests that would involve material received from Developer related to the transaction contemplated by this Agreement, so that Developer may participate in seeking any available legal protection of the material. Confidential information does not include material, data or information that (a) was known to Prosper Portland prior to its receipt thereof from Developer, (b) is generally available to the public or that has been obtained from a third party having the right to disclose the same, or (c) is independently developed by or on behalf of a party without reference to any materials or information received from the other party.
- 12.3.2 If Prosper Portland receives a public records request for material that is considered confidential, Prosper Portland will notify Developer in writing before complying with such request and will provide Developer with a reasonable time within the statutorily-prescribed time period for public records responses, to assert to Prosper Portland and discuss with Prosper Portland's counsel legal arguments as to whether such records fall within an exemption to the Public Records Act. Prosper Portland will work cooperatively with Developer to protect confidential information to the extent that Prosper Portland reasonably believes an exemption to the Public Records Act applies.
- 12.3.3 Developer will maintain and retain all books, documents, papers, plans, records, electronic or otherwise necessary to document Developer's performance and

compliance with all requirements imposed on Developer under the terms of this Agreement for six (6) years following termination of this Agreement, or if Closing occurs, six (6) years following completion of the Vertical Project(s). Developer must maintain fiscal records in accordance with generally accepted accounting principles. Prosper Portland may inspect, examine or audit the such records at any time during the six-year period, upon reasonable notice. If the original records are located outside the boundaries of the greater Portland region or upon Prosper Portland's request, Developer will provide Prosper Portland with copies of the records Prosper Portland wishes to inspect.

- Covenants Run with the Land. This Agreement runs with the land as to all property benefited and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this Agreement bind, burden, and benefit Prosper Portland and Developer and their respective successors, assigns, lessees, mortgagees, and beneficiaries under any deeds of trust, subject to terms and conditions of this Agreement regarding Transfers. At the request of either party, the parties will execute a memorandum of this Agreement (the "Memorandum of Agreement"), substantially in the form of Exhibit G, and Prosper Portland will cause the Memorandum of Agreement to be recorded promptly thereafter. At Closing, the parties will record a Declaration of Post-Closing Covenants, substantially in the form of Exhibit H, which will be a Permitted Exception that runs with the land as to all property benefited and burdened thereby, including any partition or division of such property. The covenants contained in Exhibit H will bind, burden, and benefit Prosper Portland and any owner of the Property and their respective successors, assigns, lessees, mortgagees, and beneficiaries under any deeds of trust.
- No Waiver. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition inuring to its benefit under this Agreement will be considered a waiver of any other rights of the party making the waiver. No waiver by Prosper Portland or Developer of any provision of this Agreement or any breach thereof, will be of any force or effect unless in writing and no such waiver will be construed to be a continuing waiver.
- Compliance with Law. The parties to this Agreement will comply promptly and fully with (a) all laws, ordinances, notices, orders, rules, regulations and requirements of all federal, state and municipal governments and all departments, commissions, boards and officers thereof (collectively as "Legal Requirements"); and (b) the provisions of the Permitted Exceptions, all if and to the extent that any of the Legal Requirements or the said provisions relate to any or all of the Property, or the use or manner of use thereof, whether any of the foregoing are foreseen or unforeseen, or are ordinary or extraordinary.
- 12.7 <u>Headings</u>. Titles of the sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.
- 12.8 <u>Counterparts</u>. This Agreement may be executed in counterparts, each of which will be deemed to be an original, and such counterparts, when taken together, will constitute one and the same instrument. Electronic signatures will be valid for all purposes. However, upon request and within a reasonable time period, a party will deliver an original signature to the other party.
- Attorneys' Fees. If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing or non-defaulting party will be entitled to recover from the losing or defaulting

party its reasonable attorneys' and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by Law. This provision will cover costs and attorney fees related to or with respect to proceedings in U.S. Bankruptcy Court, including those related to issues unique to bankruptcy Law.

- 12.10 <u>Governing Law; Venue; Consent to Jurisdiction</u>. This Agreement will be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by a party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the *in personam* jurisdiction of said courts.
- 12.11 <u>Calculation of Time</u>. All periods of time referred to herein will include Saturdays, Sundays, and legal holidays in the state of Oregon or the City of Portland, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday, the period will be extended to include the next day which is not a Saturday, Sunday or legal holiday. Business days refers to all days except Saturdays, Sundays, and legal holidays in the state of Oregon and the City of Portland. <u>Construction</u>. In construing this Agreement, singular pronouns will be taken to mean and include the plural. "Including" means "including without limitation." "Will" and "shall" are synonymous and mean mandatory and imperative. <u>Severability</u>. If any term of this Agreement is held to be illegal, invalid or unenforceable, it will not affect the remainder of this Agreement, which will be construed as if the illegal, invalid, or unenforceable term had never been contained in this Agreement. Notwithstanding the foregoing, if an essential purpose of this Agreement would be defeated by the loss of the illegal, invalid, or unenforceable term, then the parties will seek in good faith to agree on replacing the removed term or condition with a valid provision that will most nearly and fairly approach the effect of the removed term and the intent of the parties in entering into this Agreement; provided, in no event will this Agreement be subject to termination as a result of any illegal, invalid, or unenforceable provision.
- 12.14 <u>Entire Agreement</u>. This Agreement and the exhibits attached hereto are the entire agreement between the parties with regard to the disposition and development of the Property. There is no other oral or written agreement between the parties with regard to this subject matter. There are no oral or written representations or warranties made by either party, implied or express, other than those contained in this Agreement.
- 12.15 <u>Amendments and Modifications</u>. Any modifications to this Agreement must be made in writing and executed by all parties, with the approval of the Prosper Portland Board of Commissioners, if required.
- 12.16 <u>Successors and Assigns</u>. Subject to the provisions of **SECTION 11** regarding transfers, the benefits conferred by this Agreement, and the obligations assumed hereunder, will inure to the benefit of and bind the successors and permitted assigns of the Parties.
- 12.17 <u>No Partnership</u>. Nothing contained in this Agreement or any acts of the parties hereby will be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties other than that of independent contracting parties.
- 12.18 <u>Non-waiver of Government Rights</u>. By making this Agreement and delivering the Deed, Prosper Portland is not obligating itself, the City, or any other federal, state or local governmental entity with respect to any discretionary or regulatory action relating to the disposition and development of the

Property and any vertical construction on a Lot, including, but not limited to, rezoning, variances, environmental clearances or any other governmental approvals which are or may be required, except as expressly set forth herein.

- 12.19 <u>No Third-Party Beneficiary Rights</u>. No person other than a party is an intended beneficiary of this Agreement, and no person other than a party will have any right to enforce any term of this Agreement.
- 12.20 STATUTORY WARNING. THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007, SECTIONS 2 TO 9 AND 17, CHAPTER 855, OREGON LAWS 2009, AND SECTIONS 2 TO 7, CHAPTER 8, OREGON LAWS 2010.

Signatures follow on next page.

IN WITNESS WHEREOF, Developer and Prosper Portland have executed this Agreement effective as of the Effective Date.

Prosper Portland:	
	Ву:
	Kimberly Branam, Executive Director
	Approved as to Form
	Prosper Portland Legal Counsel
1362 Centennial Mills, LLC:	
	By:
	Tim R. Ralston, Manager
	Ву:
	Lucas A. Ralston, Manager

Exhibits

Exhibit A: 2014 ROD

Exhibit B: Historic Preservation Agreement

Exhibit C: DSL Lease
Exhibit D: Permit of Entry

Exhibit E: Due Diligence Documents

Exhibit F-1: Business Equity Policy Specifications

Exhibit F-2: Green Building Policy

Exhibit F-3: Workforce Equity Policy Specifications Exhibit G: Form of Memorandum of Agreement

Exhibit H: Form of Declaration of Post-Closing Covenants

M



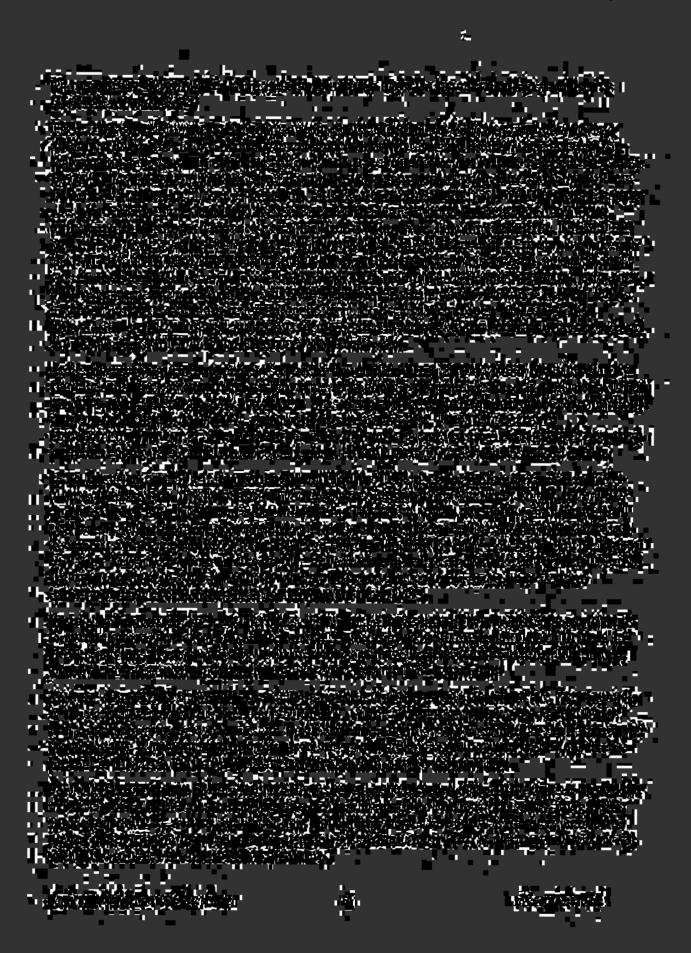
"我们就要这些时间,

Q

国总位区的证据基本地域的

1000年的中国中国中国共和国共和国共和国共和国共和

J



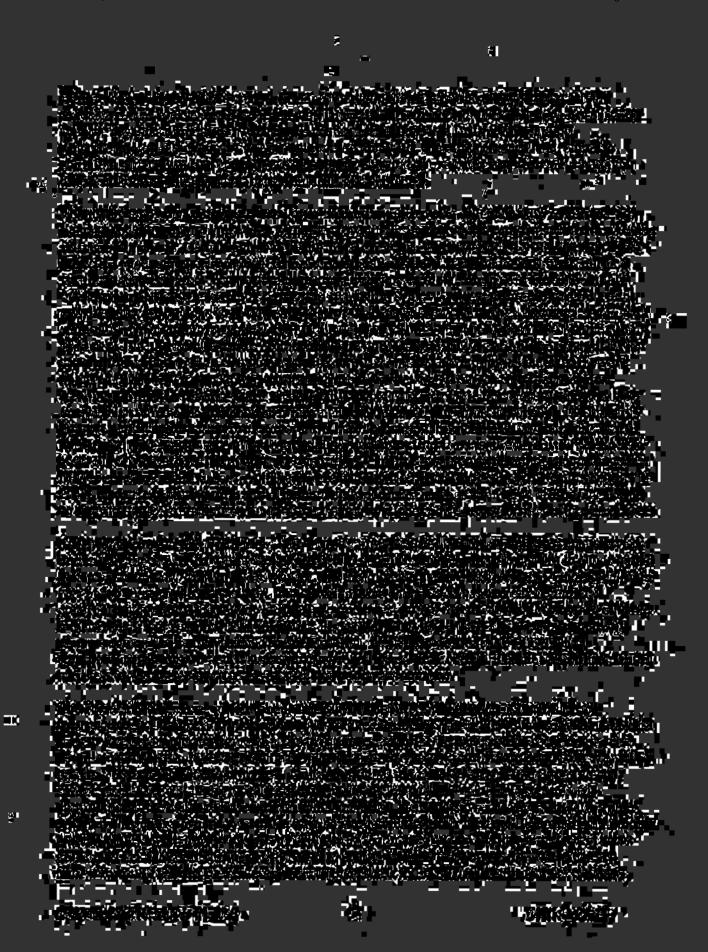
XI.



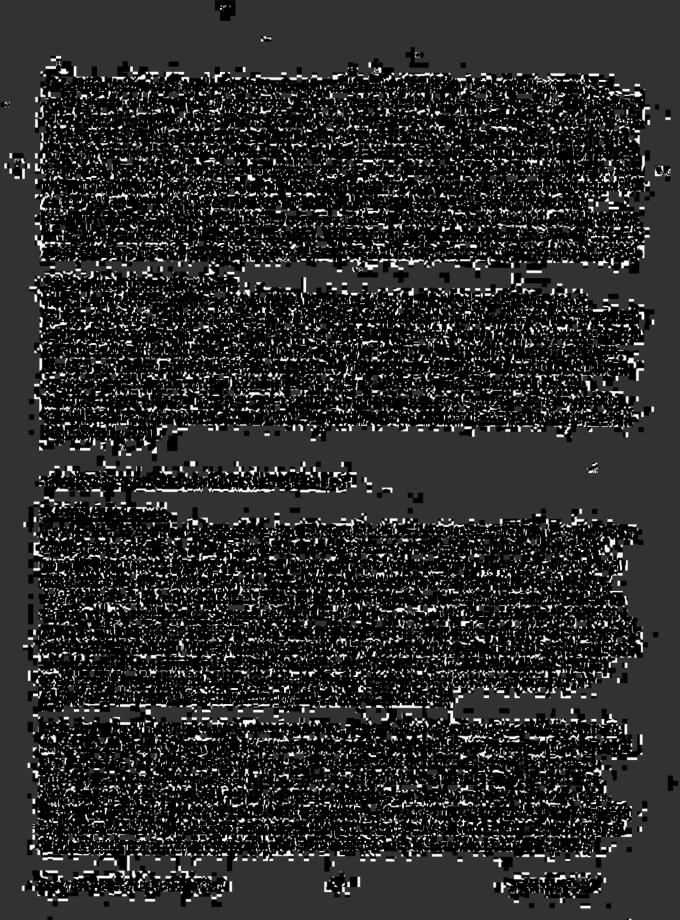
ž

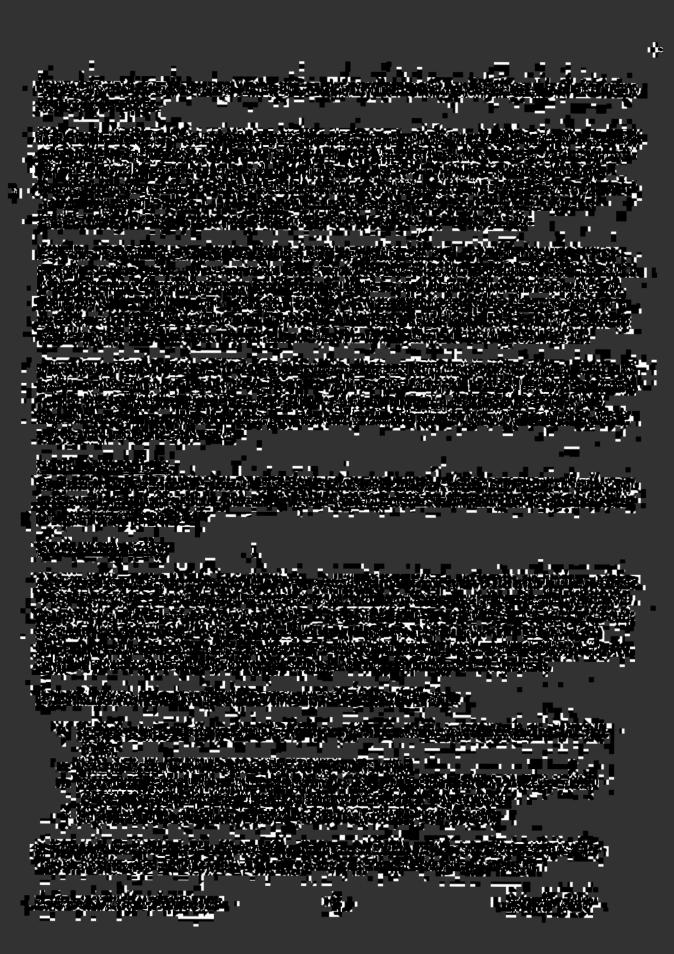
经验的

ullimentiko da Pila bitako esta kitan



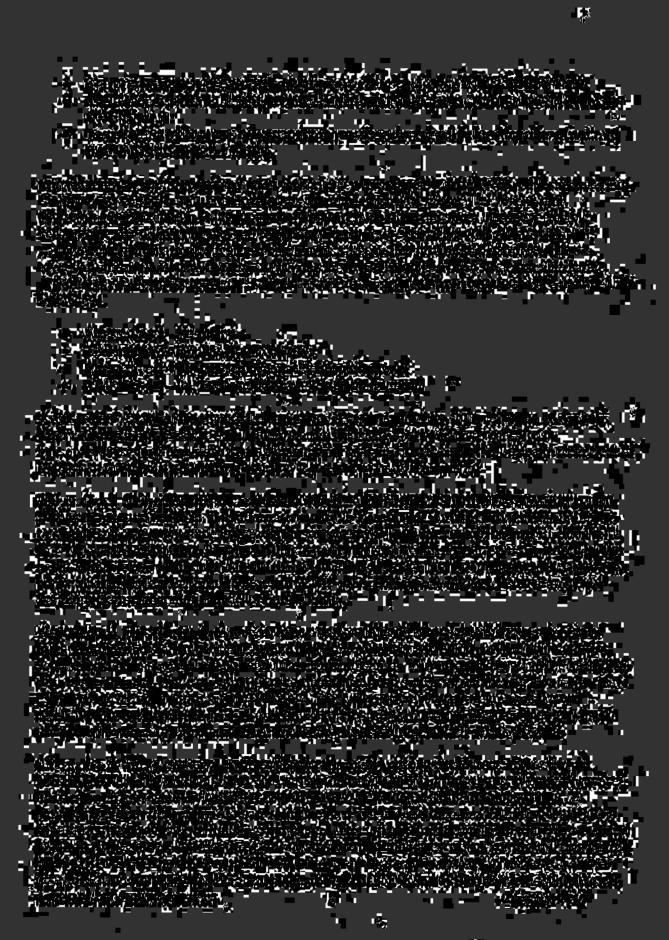


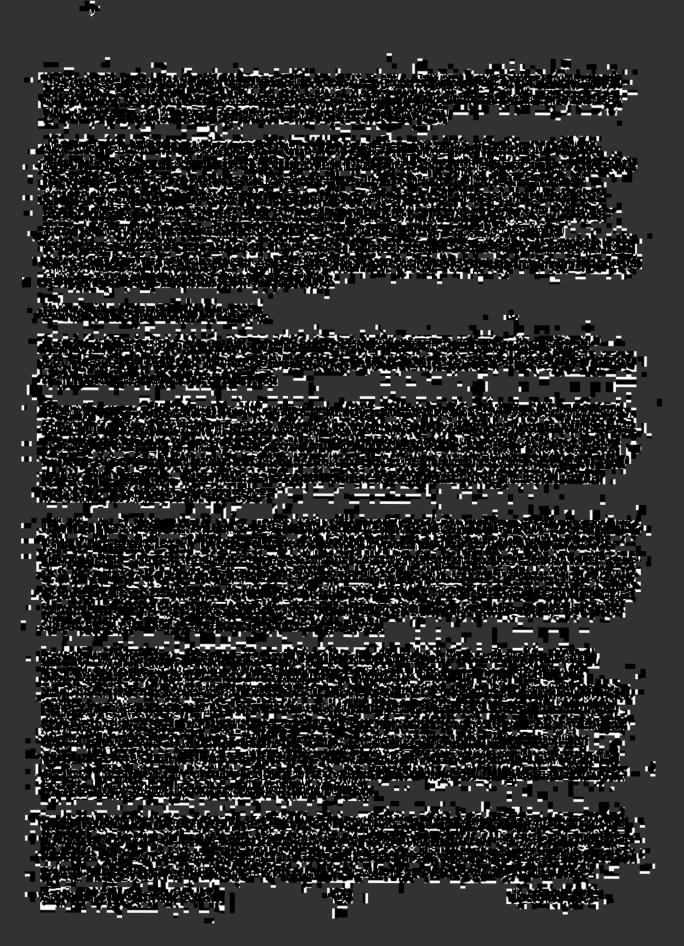




-81

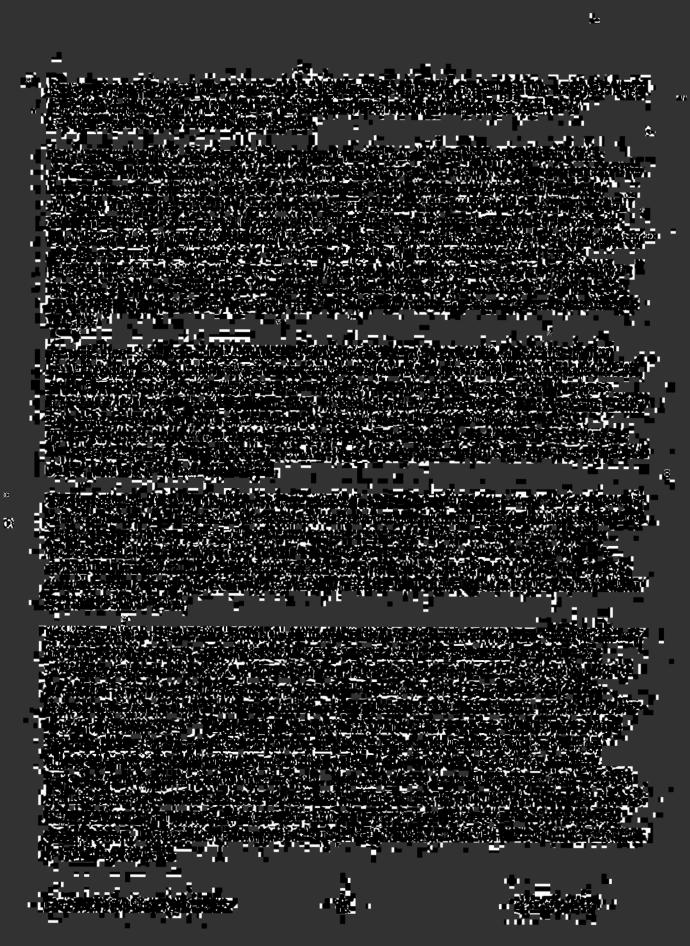
-64

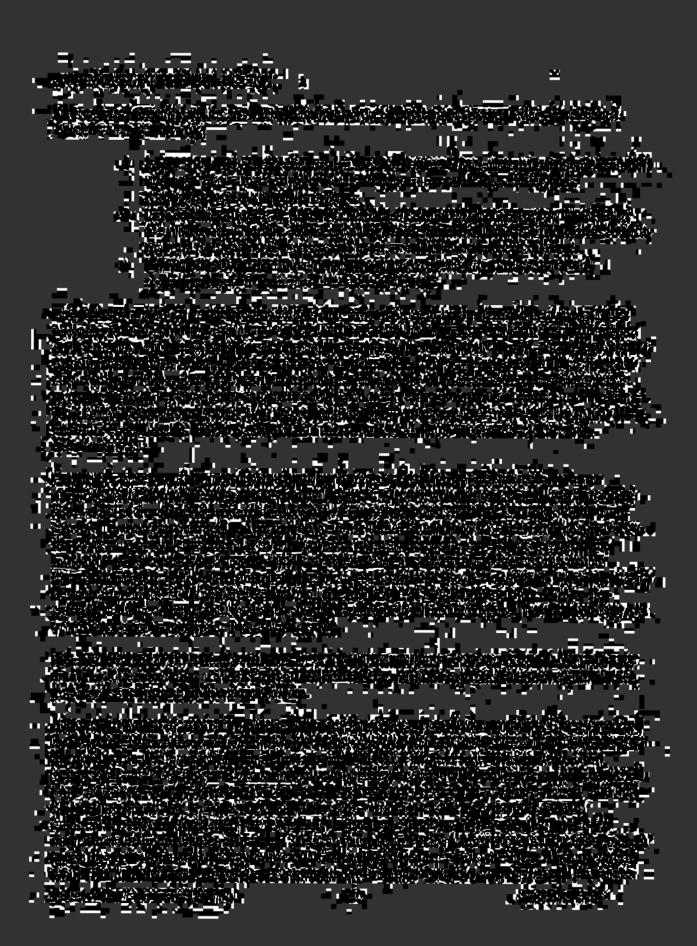




, s.l

Ę١







4

ш

14

S/D









12 22 0

5,

弧

В

 u^{m_i}

7

Tra

X.

þ.

NII

21

6.5

n

7

şı

10

3

a a

=

35

20,1

å

20

ķ

ш

.

į.

11

D8

4

'n,

g.



R

123

Ü

|s=1

, TO

181

Fair

S a

ġı

 \mathbf{M}_{i}

ХI

ž.

3

¥

831

<u>s</u>,

ř.

Hall

ķ

¥

L

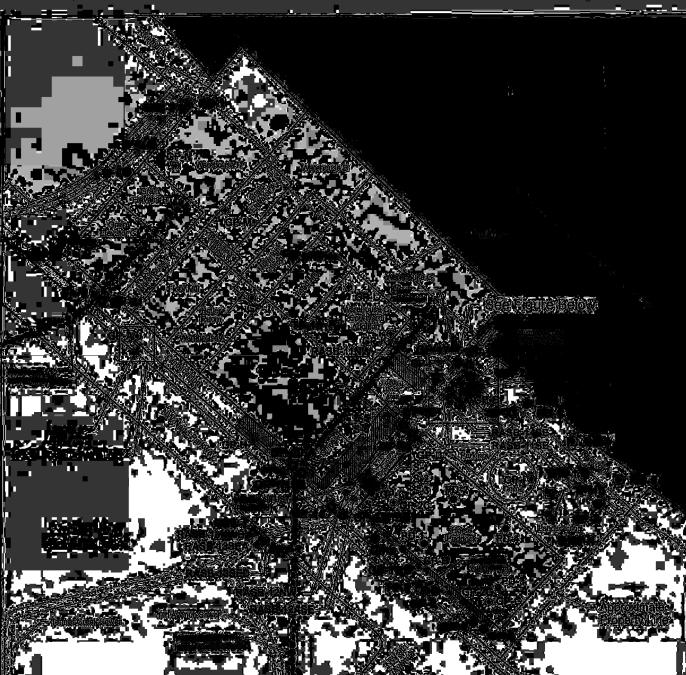
<u>.</u>



ā

€ #

ē

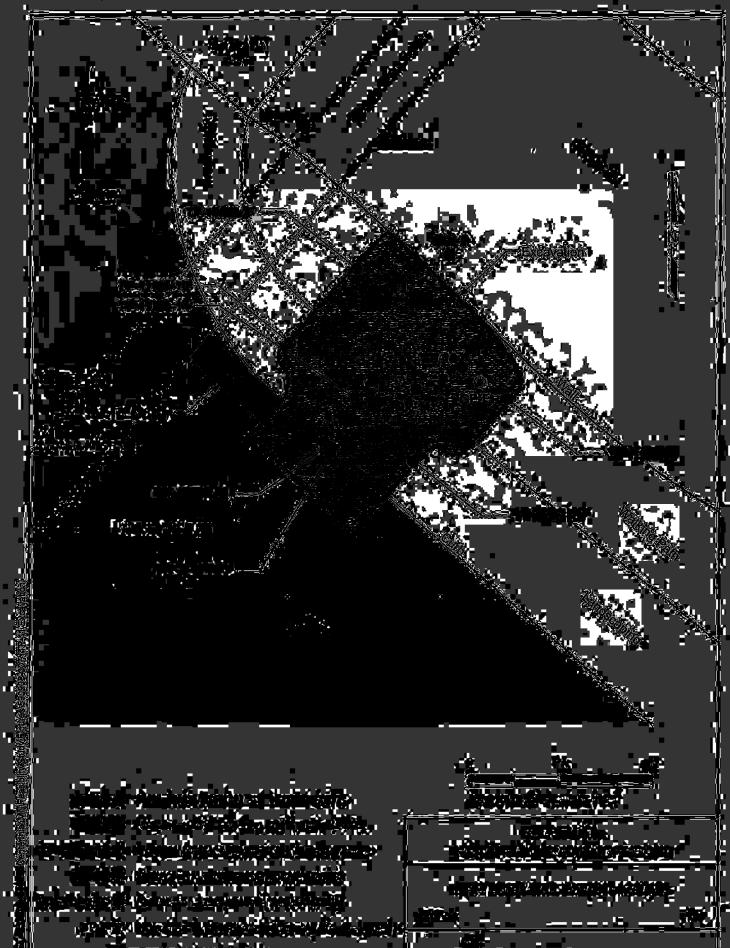


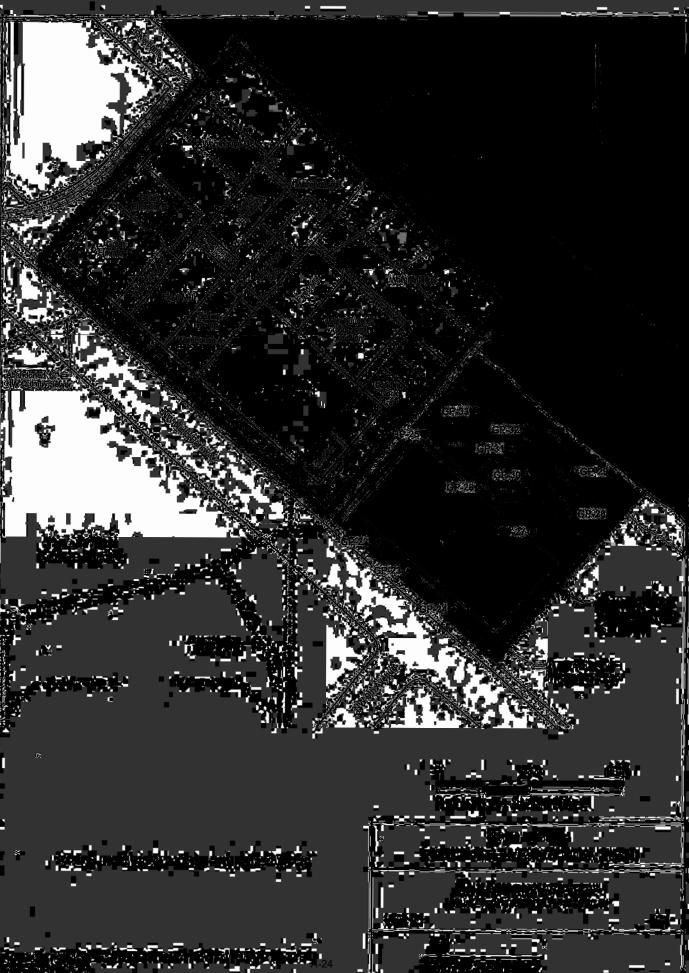
П



Ψ,

I RES





=

14

9

10

C

<u>.</u>

î

Ŋ

Ŀ

HV.

31

R

đ

- 18

Ū

s,

#1

las!

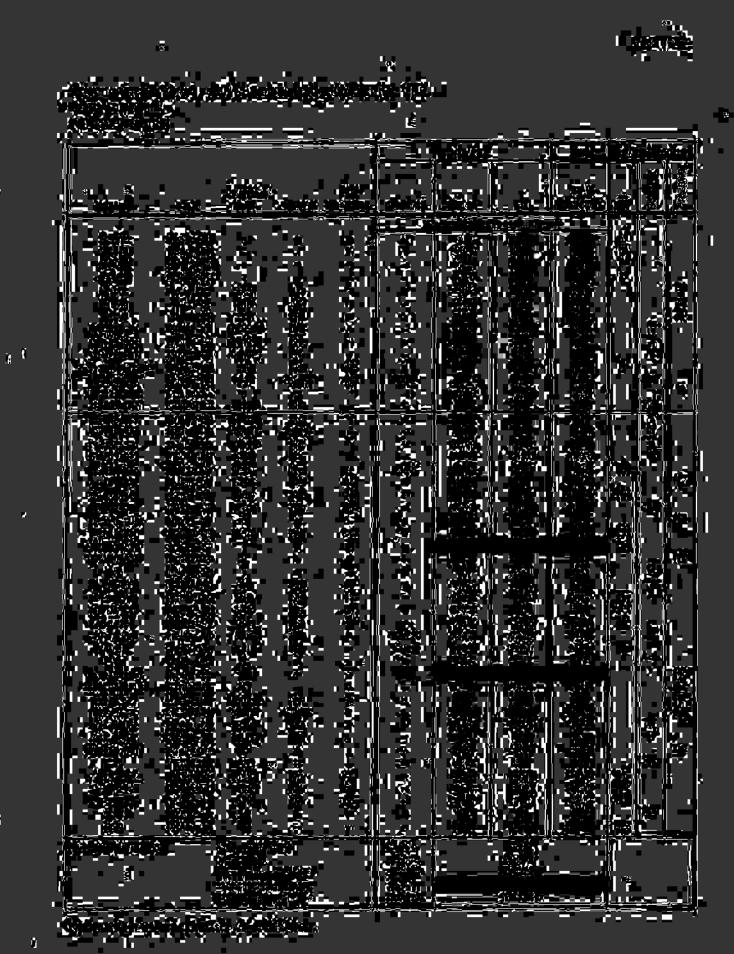
=

á

ï

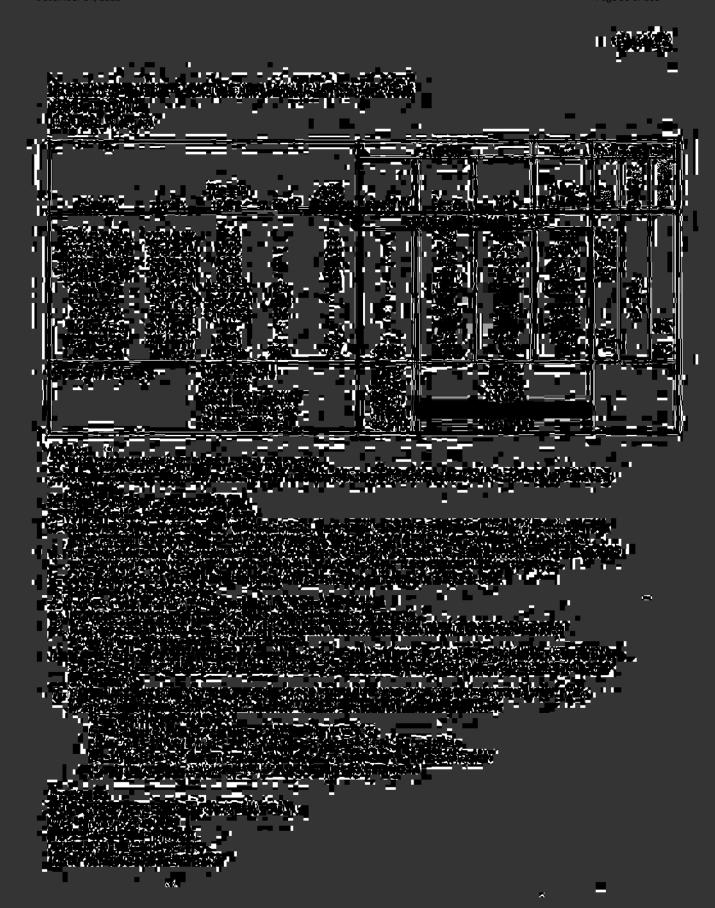
₽.

M



П

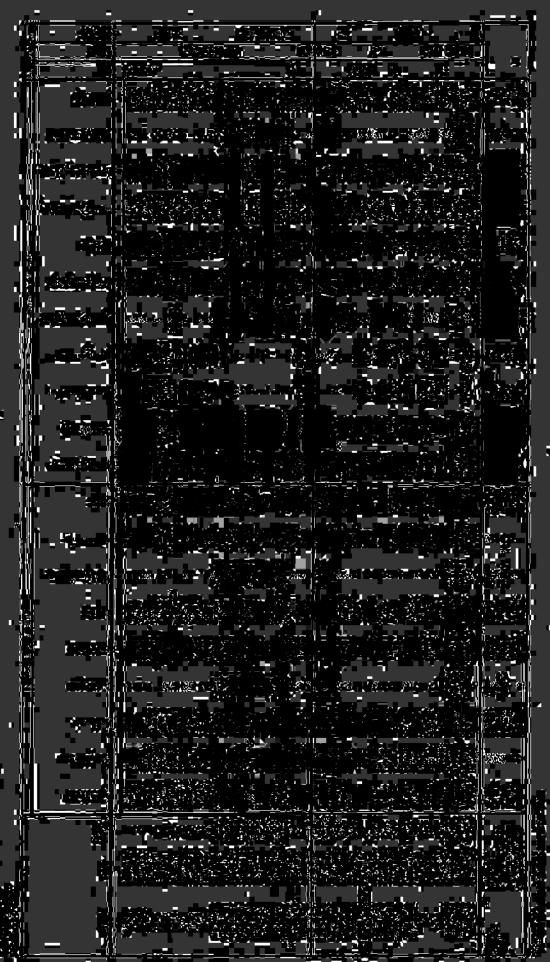
r



m.l

89

il.





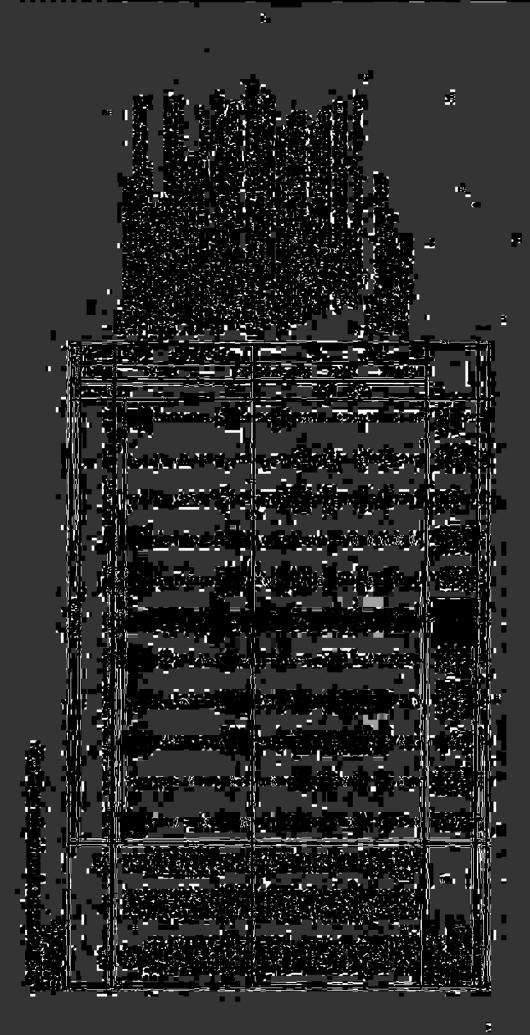






ĸ

ď



Y

u

IGI

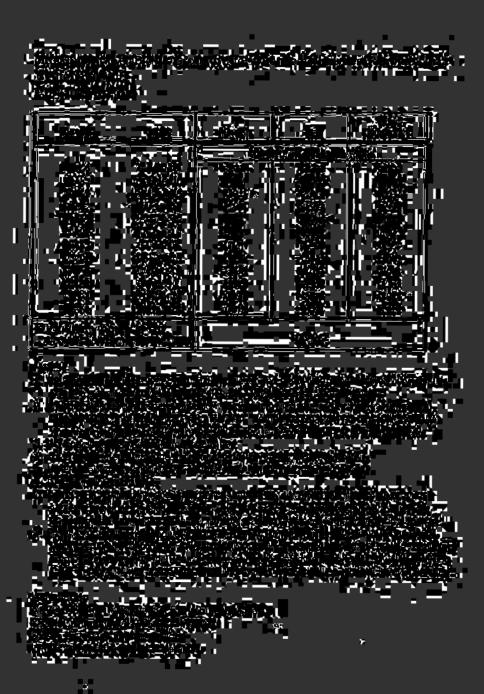
ш

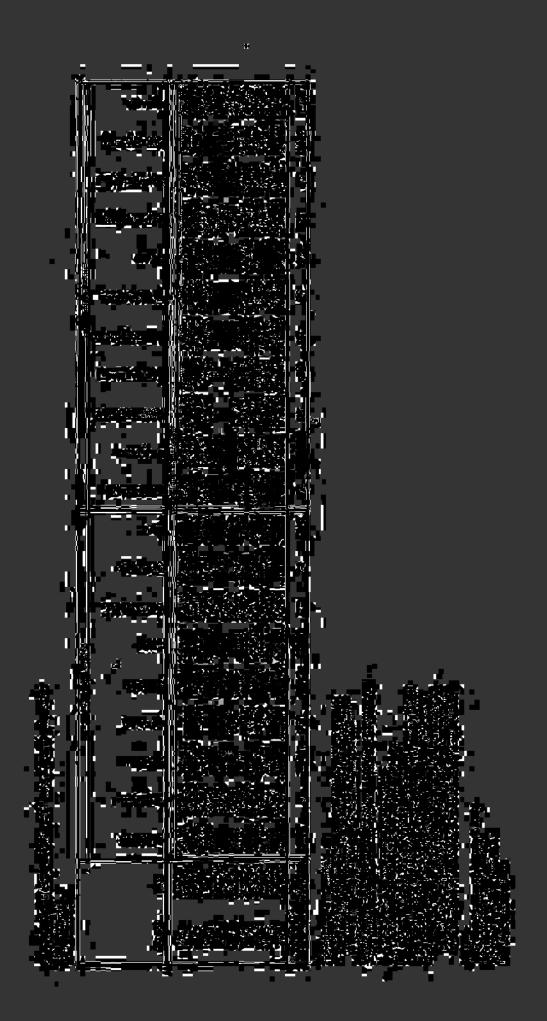
Ā

::

y: -

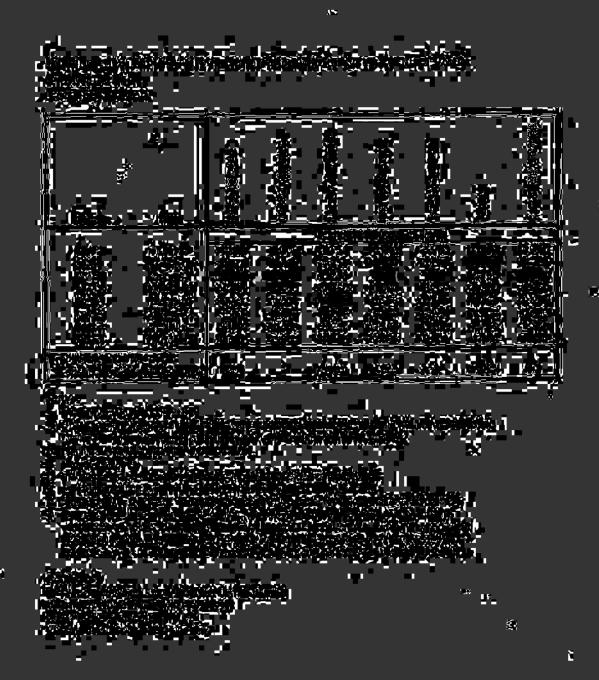
ĸ

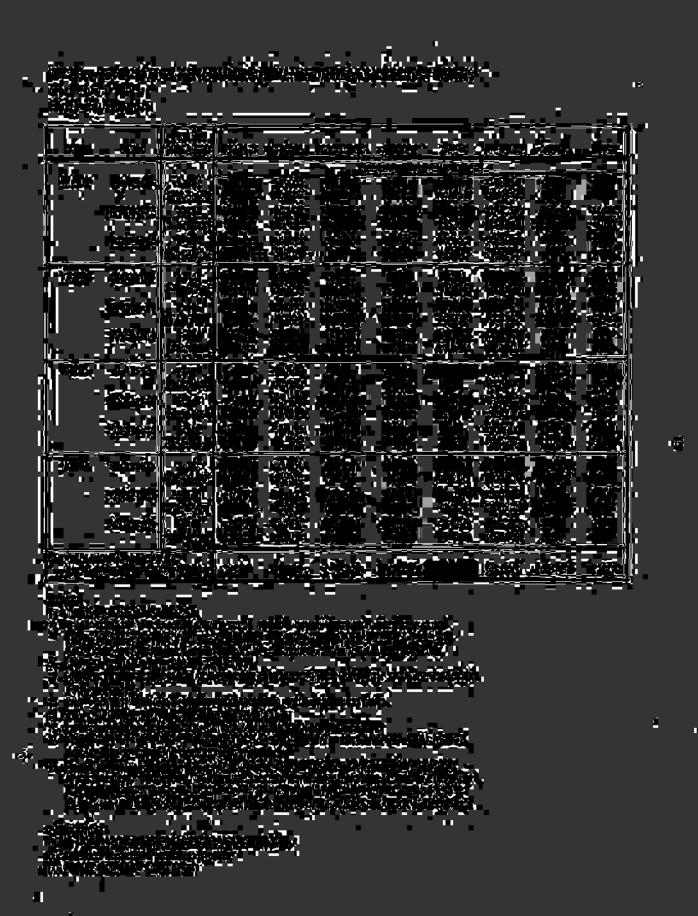




ijij.

o





<u>ķ</u>

Ě٠

L

į.

100

1

ı.

(O)

0.5

ģ

ħ

ngi

₫

. ≅

W

Ē

P¥.

1

Ę.

 $\underline{\mathbf{J}}_{j,t}$

Ļ,

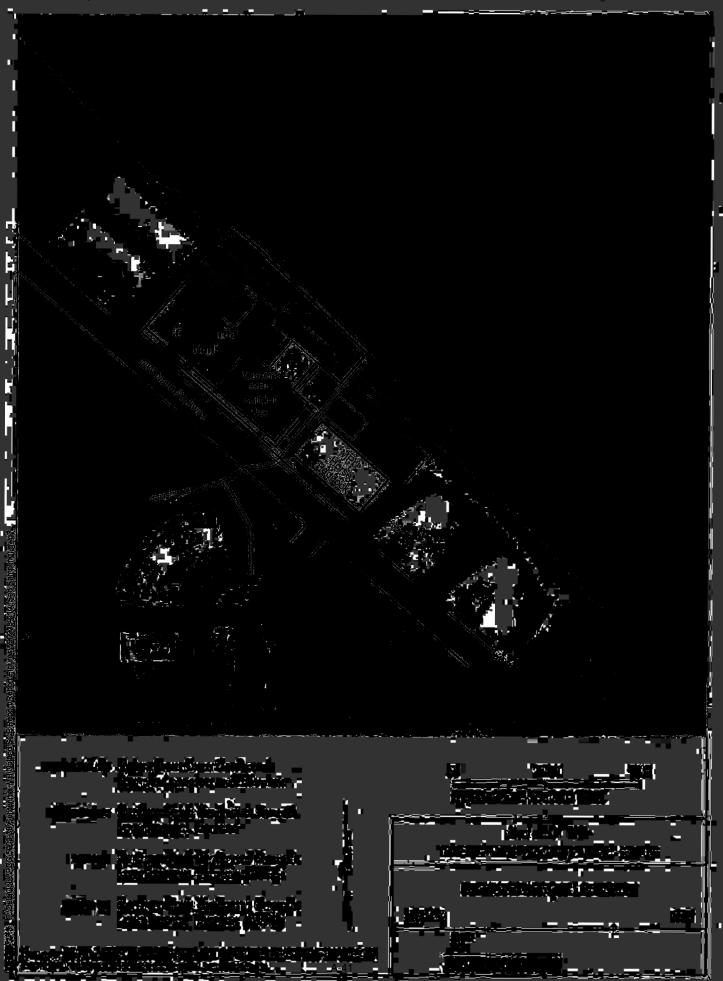
¥ I

ķ

25

Ť

 $\xi_{\rm L}$



8 6

21

5,1

W.

ŝ

×

x.

93 I

No.

STZE III

ŧ

1 s

g

ā

ji

PA.

135

1#1

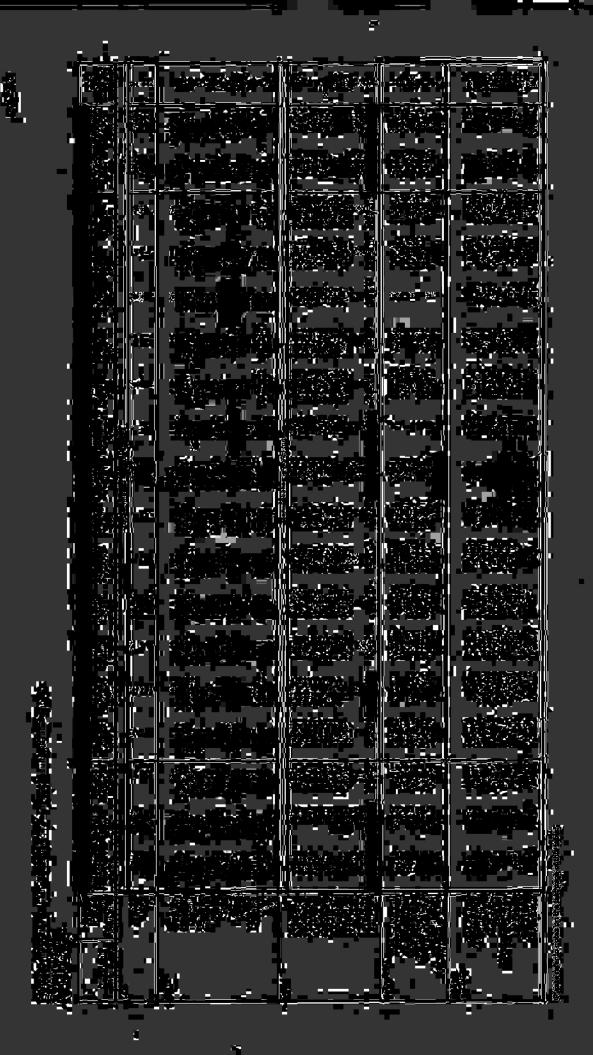
472

5

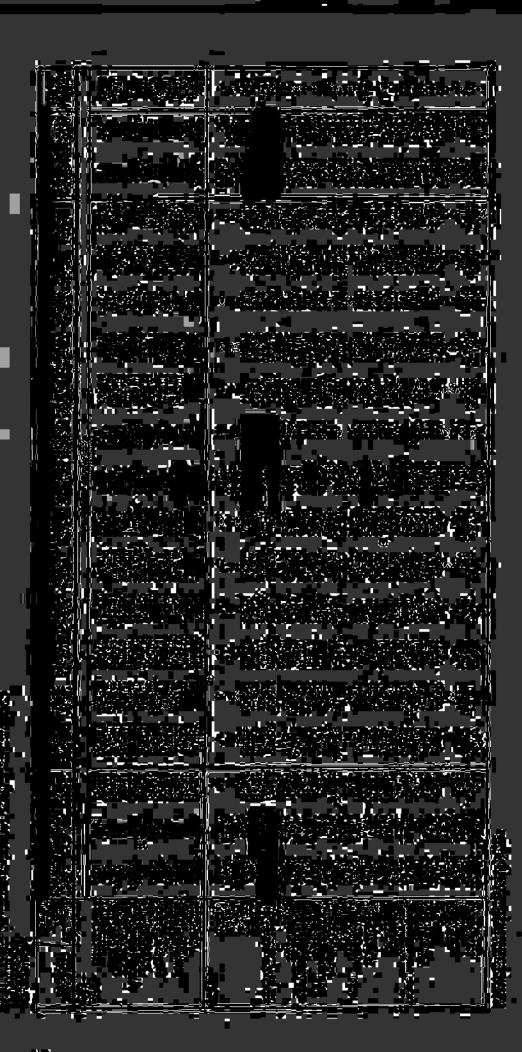
3

۶ı

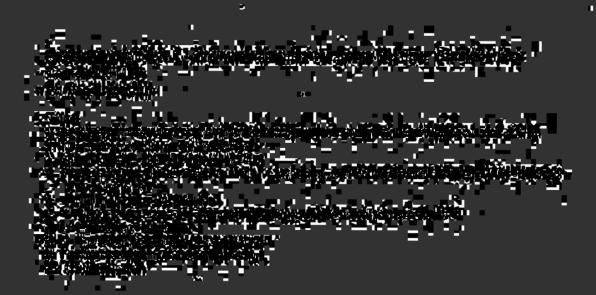
W



<u>"</u>I



瓜



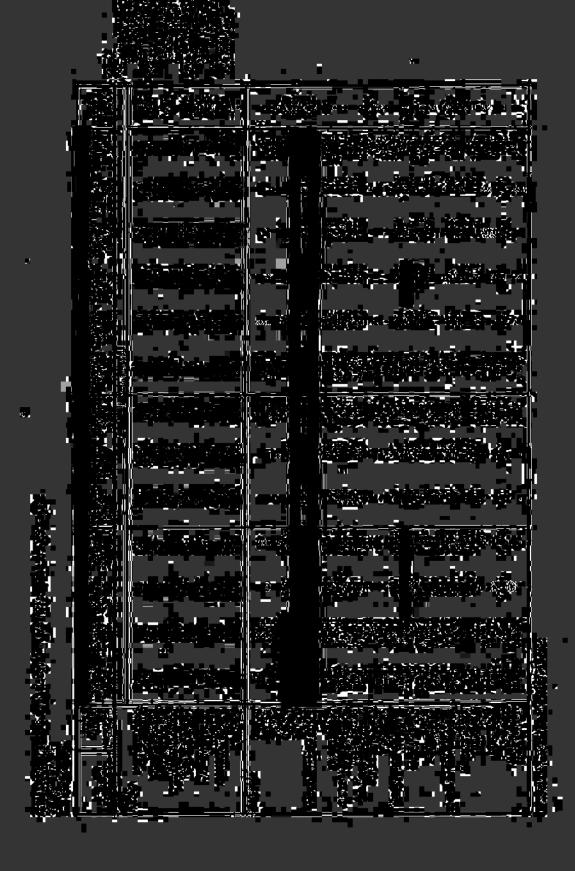
43

 \overline{M}



A

П



빏

1.28

Ē

ş

Œ.

7

∎ ĝ

ÿ1

e,

25

6

3

2

. VS

筵*

100

~

CI.

ş

'**恋**

.

- 58

J.

F.

Į.

15

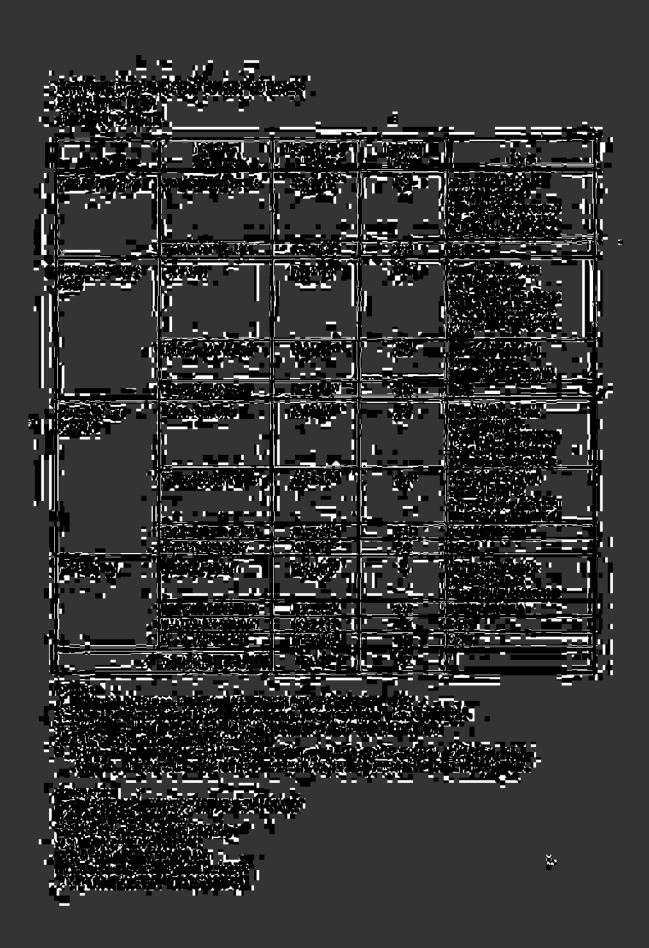
k

**

338

-şı

Ü



 \overline{g}^{a}

(5)

5 8

ų

139

ы

21

3

5

*1

•

⊒δ

ā

2

12

Ň

Ų

ķ

-5€ I

 \mathfrak{p}

P

W.

9

951

ř

¥ J

 a_{h}

82

能

9



= 2

į

P.66

3+

Ĭ

髮

1020

·М

E

ā,

8

rşi

300

24.

ŀ

∎A.

ı İn

3



MEMORANDUM OF AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT, THE OREGON STATE HISTORIC PRESERVATION OFFICER, AND PROSPER PORTLAND

SUBJECT: NWP 2010-540, Adverse Effects to the Centennial Mills Complex, Multnomah County, Oregon

WHEREAS, the United States Army Corps of Engineers, Portland District (USACE) issued a Letter of Permission (NWP-2010-540) on July 17, 2015, to Prosper Portland (formerly known as the Portland Development Commission), the Applicant, for the removal of multiple structures at the Centennial Mills Complex pursuant to Section 10 of the Rivers and Harbors Act, 33 U.S.C. § 403; and

WHEREAS, the USACE, in consultation with the Oregon State Historic Preservation Officer (SHPO) and the Applicant, defined the undertaking's area of potential effects (APE) as the areas where demolition and ground disturbance will occur (Attachment A); and

WHEREAS, the USACE determined, and the Oregon State Historic Preservation Officer concurred (SHPO Case #15-0328), that Centennial Mills is eligible for listing in the National Register of Historic Places, and that the undertaking, being the selective demolition of multiple buildings on the property, will result in direct impacts constituting an adverse effect to the property; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), USACE previously notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP chose not to participate in the consultation pursuant to 36 CFR § 800.6(a)(1)(iii); and

WHEREAS, a Memorandum of Agreement (MOA) among the USACE, the SHPO, and the Applicant to resolve adverse effects to the historic Centennial Mills Complex was executed July 8, 2015, with the duration of the MOA identified as three years (Attachment B); and

WHEREAS, the MOA was amended and restated on February 21, 2018, to include additional mitigation for the unavoidable demolition of the Feed Mill building and an additional duration of three years (Attachment C); and

WHEREAS, since July 8, 2015, when Applicant, SHPO and the USACE entered into the MOA, Applicant has completed Stipulations 13(a), 13(b), 13(d), and 13(e) of the 2018 MOA to the satisfaction of the other parties; and

WHEREAS, subsequent delays in the sale of the real property within the proposed Centennial Mills development have prevented the fulfillment of Stipulations 13(c) and 13(f) of the MOA (which are now restated below as Stipulations II(A) and (B); and

WHEREAS, the MOA executed on February 21, 2018 expired on February 21, 2021; and

WHEREAS, the USACE, the SHPO, and the Applicant agree that a new MOA is necessary to resolve adverse effects to the historic Centennial Mills Complex in accordance with Section 106 of the NHPA; and

WHEREAS, the USACE consulted with the Architectural Heritage Center, Society for Architectural Historians, Architecture Foundation of Oregon, American Institute of Architects (Portland), Neighbors West/Northwest, Oregon Cultural Trust, Oregon Historical Society, Pearl District Neighborhood Association, Portland Landmarks, and Restore Oregon, sought their views on the effects to the Centennial Mills Complex, and provided them with documentation of the effects and proposed mitigation measures, including review of this MOA; and

NOW, THEREFORE, the USACE, the SHPO, and the Applicant agree that the undertaking shall be implemented in accordance with the stipulations listed below to take into account the effect of the undertaking on historic properties, mitigating the adverse effect on historic properties, and satisfactorily completing USACE's Section 106 responsibilities.

STIPULATIONS

The USACE shall ensure that the following stipulations are implemented and are included as conditions to the Department of the Army Permit Number NWP 2010-540 and any subsequent permit issued for this undertaking:

I. Site Interpretation:

A. The Applicant will develop an interpretative display documenting the history and development of the Centennial Mills property for public benefit. This display will be located in a publicly accessible portion of the property or at some other publicly accessible location within view of the site, subject to SHPO/USACE review and approval. An illustrated interpretative panel (minimum size 24 inches by 60 inches) of high-quality durable materials suitable for outdoor display will be developed to include history of the property and its uses, including the significance of flour milling on the Portland Waterfront during the 20th century. Graphic design and content will be submitted for review to Oregon SHPO and USACE prior to fabrication for comment or approval. SHPO and USACE will provide any comments within 30 days of receipt of draft. The Applicant will address any comments within the limits of the financial and physical limits of the project and submit a final draft for approval. Photographic

documentation of the completed site interpretation installation will be provided to SHPO/USACE and complete this stipulation. The display will be installed in conjunction with development of the site.

B. The Applicant will, in consultation with Restore Oregon and Portland Historic Landmarks Commission, develop and install on site, a series of not less than four (4) additional interpretive displays, including artifacts salvaged from the demolished buildings. Associated interpretative displays (minimum size 24 inches by 60 inches) shall be of high-quality materials suitable for the outdoors. The displays will tell a comprehensive "Farm to Table" story of grain production in the Pacific Northwest and the role the Crown Mill played in the production of grain and its distribution to the world. The exhibits shall incorporate pertinent information and history that results from the work done in stipulation "A" above. Graphic design and content will be submitted for review to Oregon SHPO and USACE prior to fabrication for comment or approval. SHPO and USACE will provide any comments within 30 days of receipt of draft. The Applicant will address any comments within the limits of the project and submit a final draft for approval. Photographic documentation of the completed installation will be provided to SHPO/USACE and complete this stipulation. The displays will be installed in conjunction with development of the site.

II. Evidence of Completion

Evidence of completion of Stipulations A and B will be provided to the USACE and the SHPO within twelve (12) years after the date of execution of this MOA. Upon receipt, SHPO will provide USACE and the Applicant with official acknowledgment of receipt and concurrence that mitigation stipulations have been fulfilled.

III. Costs

The Applicant is responsible for all costs required for the successful completion of Stipulations A and B.

IV. Effective Date and Duration

The effective date of this MOA shall be the date of the last signature by a Signatory. This MOA will expire if its terms are not carried out within twelve (12) years from the date of the execution of this Amended and Restated MOU. Prior to such time, USACE may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VII, below. If this agreement expires without amendment prior to completion of the Stipulations above, it shall be considered terminated according to Stipulation VIII, below.

V. Monitoring and Reporting

Each year following the execution of this MOA until it expires or is terminated, USACE shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms on the anniversary of the MOA's execution date. Such report shall include any scheduling changes proposed, any problems

encountered, and any disputes and objections received in USACE's efforts to carry out the terms of this MOA.

VI. Dispute Resolution

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, USACE shall consult with such party to resolve the objection. If USACE determines that such objection cannot be resolved, USACE will:

- A. Forward all documentation relevant to the dispute, including the USACE's proposed resolution, to the ACHP in accordance with 36 CFR 800.2(b)(2). The ACHP shall provide USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response. USACE will then proceed according to its final decision.
- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of such written response. The USACE decision will be final.
- C. USACE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

VII. Amendments

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VIII. Termination

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other parties to attempt to develop an amendment per Paragraph 7, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories. Once the MOA is terminated, and prior to work continuing on the undertaking, USACE must either:

A. Execute an MOA pursuant to 36 CFR § 800.6; or

B. Request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. USACE shall notify the signatories as to the course of action it will pursue.

Execution and implementation of this MOA by the USACE, SHPO, and the Applicant is evidence that USACE has afforded the ACHP and all concerned parties the opportunity to comment on the effects of this undertaking on historic properties and has satisfied the requirements of Section 106 of the National Historic Preservation Act (54 U.S.C. 306108) and applicable implementing regulations.

Signatory Parties:

U.S. Army Corps of Engineers, Portland District

HELTON.MICHAEL.DON.113121 Digitally signed by

021 LELTON.MICHAEL.DON.1131216021

Michael D. Helton Colonel, Corps of Engineers District Commander Date

Oregon State Historic Preservation Officer

M .	N		· ·
<i> </i>	(L	د ا مشہوری	i.
The second second	-	and the same	

July 13, 2022

Chrissy Curran

Deputy State Historic Preservation Officer Oregon State Historic Preservation Office _ 0.00

Prosper Portland

Kimberly Branam

Digitally signed by Kimberly Branam Ste: 2022.07.12 12.3 .14 -07'00'

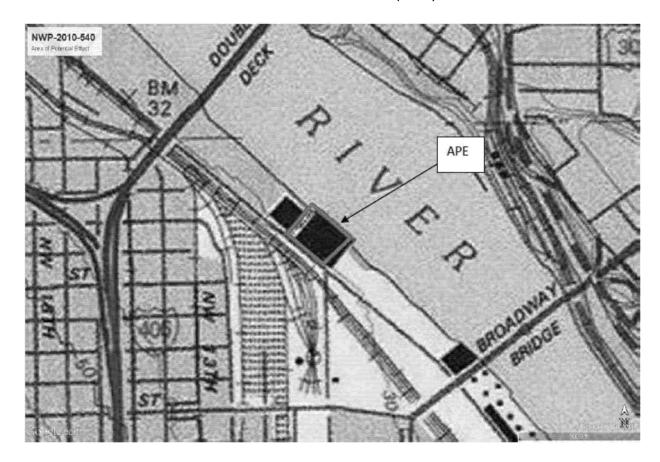
July 12, 2022

Kimberly Branam Executive Director

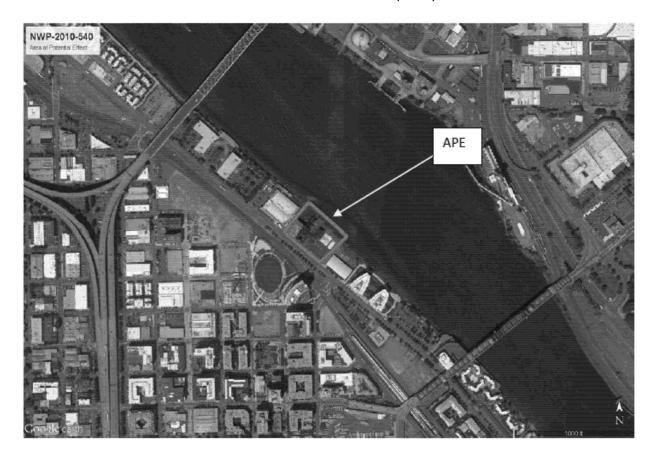
Prosper Portland

Date

ATTACHMENT A – AREA OF POTENTIAL EFFECT (APE)



ATTACHMENT A – AREA OF POTENTIAL EFFECT (APE)



М.

F4

П

MEMORANDUR DE MERTENTALIT METALEN DE METALEN ARMY DORLES DE ENGINEERS NO THE LINETED STATES ARMY DORLES DE ENGINEERS NO THE METALEN DE MEMORIE PARTIEN ATTOM OFFICER SAND THE PERTLEND DEVEL PROFEST STANDERS

EUBUECT: NVC 2010-540_Representations (de l'Artigentale) Mile Centrée. Militeration de la grande

T. BiffEleggying United System Array Buyer of Employers (USACE) administration in National Employers and Humber from Style (U.S.).

483. and:

2. At HEBE (27th), the Porthins | Depoleting to Copyright (A) | Albert Copyright (A) | Albe

S. WHERE'S in presented a committee of the clamping of making distributions of the clamping of the committee of the clamping o

4. 44-ENEAS, LEMETERANIEM THE LIBERTANCE SE PART WITHIN LIBERTAL AND ARREST (APE) on the streets that will indust gradual districtions so part within Limens alkings (Atlandance of A.), and

d 14/160/160-de provincy bown is Children in the complete of the little in the complete of the little in the complete of the c

2. WHERES, the USACE untermined, and the Origin State historia frequencies of the property of the property of the Comment of the Comment of the property of the Comment of

T. WELLERS, the MANCE of BALLON SERVED FOR BOTH TOP For the debute of the unitarity of the particles of the unitarity of the particles of the unitarity of the Mance of the unitarity of the particles of the unitarity of the uni

(). WHEREAS, in intermediate faith (S.C.F. III) Contact of 1. USAC is noticed that participally countries of the property of the contact of the conta

D. NASA THEREFORE, USACE on the OPPO agree that the unsterlisting simple in the unsterlisting simple in an investigation of the confer a new line action of the confer and the confer of the conf

TO: UTIPULATIONS: Compliance with the procedure procedure in Standard heats, b. 4, d. e., that I sales, will be entire topolar deposits the Army Petrological Standard Standar

a. Legermentation: The Contential Mac property, including all relative bibliograms of 1-1407-5016, will be exclusively by superficial for such rights to the Helicate American Building Survey (History by a sport that permission on the engine on the Helicate developments and physical developments and physical developments and physical developments and physical developments and such that appropriate development in the first development by the property of the permitted property of the permitted and the property of the permitted physical physical property of the permitted physical physi

Charles for an experience of the submitted to proper a product of the flat of

It sources the Food (completed by Anglithman of the Anglithman of the Food (completed by 1.50%) and Figure bill (complete of the little by which stated as the learner of the content of t

(1). He cally and suggestate metallicly from the foul-diagram and the state of the

Topicione, timbero and other distant elemento from the removed totalings, it is the Applicants intention (1994), it is the Applicants intention (1994), it is the Applicant distributed for improved the Applicant distributed for improved the Applicant distributed for improved the Applicant distributed for premovable and preservable attituded to patient that they have an interest and preservable attituded to patient the Improved and Interest the Improved to the Improved t

- (2) The part of the selecte provided for Applicant stead properties (5), with being topics, (it in interface properties by selected and enterprise (5). We will not the selected and enterprise (5). We will not the selected and extended a selected to the enterprise of the selected and the selected for the selected and the selecte
- A. Ofte interpretation. The Applicant of devicing on interpretative display decision desired by the play of the present of the
- 4. Internal Interpretation: The Applicant will, in optical polytical this is required to the interpretation of the Company of the Property of the Interpretation of the Company of the Company of the Interpretation of the
- e Burganus of Newploton of வில்கிறை a through of கி. நகுந்து முறிம் http://philip.com/n aired (தி. நில்கு விரிய ரிடிய ஆரவிட்டு மி. மி. மிருகரிதார், Upon நகருந்த போர் விருக்கை (கி.CE நிற ம்க ஆரந்தின் இரு நின்கிக்கிருந்து நிறியில் நகையுக்கின் விருந்துக்கம்
- is The Applicant its responding for the armined for the account is completion.

П

J

- 11. [PURETER]. This MDA paliticapinal is referred or corrigal out of the exemple of the terms of the REPLANT Animal in a grant of the Public of the
- 12. Technorum and the Post that seem your labeling the exclusion of this wide the This Black one is the product that provide all paying the exclusion of this wide is unusually report the table of the exclusion burning to be summared to be summared to the exclusion of the exclusion with the exclusion of the excl
 - 13. DRIPLITE RESOLUTION. Element any signaturing orthonologic organization in the formation of the Market or the main labels for terms of the MARCE frequency of the Labels of the Community of the Market or the Ma
 - II. I Period of a superiod in relation to the language in the language in the USAGE's appropriate interesting the USAGE's the Albert in the management of the distribution of the Albert in the management of the distribution of
 - (3.0) Continue provide, USA/E may make a final distriction the distriction of the contract provided contract of the distriction - ழு, பிருந்திகோளைகள்கிற மழுந்து முறிந்திகள் வநிறையத்திருக்குகின்னை விரிப்ப [இதன்றுந்து நடித்துத்து இரிப்படுத்துக்கு நடித்துக்கு முறிந்த முறிந்த முறிந்துக்கு இத
 - "14. ANT NEW TOTAL THE MICKLESS IN A SAME SHOP SHOW THE PROPERTY OF A SAME SHOW THE SA
 - 48. TERRITATION. Comparison for the MOA determined this form will not us distributed by the second color of the second colo

i in might at time period by repli to by all eigned in the reflection is the reflection of the reflect

- p. Remissi takenik noontill. See respond by the souther of the ASHPS for its OFA & 5007. USAC E shall notify the religious south to the separate pattern that it property.
- 18. EREPLIEN AND RESEARCH THE PROPERTY OF THE

Light Control Color of Engineers

Considera

នាបានមានការ ដោមតែនិង្គា និងខ្លែង សមានការបានការបានការបានការបានការបានការបានការបានការបានការបានការបានការបានក្នុង។ - បើពេទ្ធវិទី១

Note: By distinguished beaut you again that he mineral conditions the solid.



ď

8

CONTINUE - Intel[®] INVESTIGATION OF THE STATE OF THE ACTION OF THE CONTINUE O

Pater Citablica file decident, per autorio all'inflame in il problem difficulti. Pri migliori filomoria di la primanta.

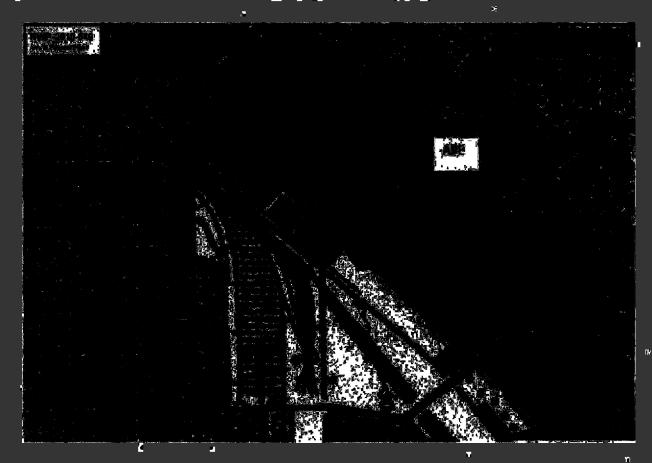
PALLE

ĸ.

Portugal Designational Generalization

м

yaThadilden yalisanda (emilika in emilika in



ķ

NATIONAL MENT AND AREASON POTENTIAL DEPOSIT (APRE)



м

AMENDED AND RESTATED MEMORANDUM OF AGREEMENT AMONG THE UNITED STATES ARMY CORPS OF ENGINEERS AND THE OREGON STATE HISTORIC PRESERVATION OFFICER AND PROSPER PORTLAND

SUBJECT: NWP 2010-540, Adverse Effects to the Centennial Mills Complex, Multnomah County, Oregon

- 1. WHEREAS, the United States Army Corps of Engineers (USACE) administers issuance of permits pursuant to Section 10 of the Rivers and Harbors Act, 33 U.S.C. □ 403, and;
- 2. WHEREAS, the Portland Development Commission (PDC) (the permit Applicant and now doing business as Prosper Portland) proposed construction-related work that required work over a navigable waterway, an action that requires a permit pursuant to Section 10 of the Rivers and Harbors Act, which constitutes an undertaking under Section 106 of the National Historic Preservation Act, and;
- 3. WHEREAS, the undertaking consists of the demolition of multiple structures at the Centennial Mills property that the City of Portland Building Department and City of Portland Fire Marshall deemed dangerous, and;
- 4. WHEREAS, USACE defined the undertaking's area of potential effects (APE) as the areas that will incur ground disturbance as part of this undertaking (Attachment A), and;
- 5. WHEREAS, the property known as Centennial Mills consists of multiple built resources related to the history and development of Portland, Oregon industry and architecture, and;
- 6. WHEREAS, the USACE determined, and the Oregon State Historic Preservation Officer (SHPO) concurred (SHPO Case □15-0328), that Centennial Mills is eligible for listing in the National Register of Historic Places and that the undertaking, being the selective demolition of multiple buildings on the property, will result in direct impacts constituting an adverse effect to the property, and consulted with the SHPO pursuant to 36 C.F.R. part 800, on the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. □ 306108), and;
- 7. WHEREAS, the USACE consulted with the Applicant regarding the effects of the undertaking on historic properties and invited them to sign a Memorandum of Agreement (MOA) as a signatory, and;

B-17

- 8. WHEREAS, in accordance with 36 C.F.R. \square 800.6(a)(1), USACE previously notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination with specified documentation and the ACHP chose not to participate in the consultation pursuant to 36 CFR \square 800.6(a)(1)(iii),
- 9. WHEREAS, since July 8, 2015 when PDC, SHPO and the USACE entered into the MOA, PDC has completed Stipulations 13 a, b, and d to the satisfaction of the other parties.
- 10. WHEREAS, it was the original intent of the PDC to preserve the Feed Mill (completed in 1928). However, as the buildings surrounding and supporting the Feed Mill were removed, unforeseen conditions were revealed including shallow footings adjacent to the river, failing hollow clay tiles and interior wooden structural failure. These unforeseen conditions were reported by the structural team of KPFF Engineers, and the Feed Mill was ultimately removed.
- 11. WHEREAS, due to the additional building removal, the PDC agreed to amend the MOA to include additional stipulations and thus this MOA amends and replaces the original July 8, 2015 MOA.
- 12. NOW, THEREFORE, USACE and the SHPO agree that the undertaking shall be implemented in accordance with the stipulations listed below in Paragraph 13 in order to resolve the adverse effect of the undertaking on the historic property.
- 13. STIPULATIONS. Compliance with the measures presented in Stipulations a, b, c, d, e, and f below, will become Special Conditions to the Department of the Army Permit Number NWP 2010-540 and the Applicant will be responsible for ensuring compliance with those conditions:
- a. Documentation: The Centennial Mills property, including all extant buildings as of 1-May-2015, will be documented for submittal to the Historic American Building Survey (HABS) by a qualified professional meeting NPS Standards (36 CFR Part 61). Documentation will include a detailed narrative on the historic development and physical design of the resources (subject to the limitations of access and availability related to hazardous conditions), a mixture of high-resolution digital and film-based photographs, including a minimum forty (40) digital color images of the entire Centennial Mills complex in sufficient quantity to accurately document its character and twenty (20), four inch by five inch black and white negatives and twenty (20) eight inch by ten inch black and white prints of the Feed and Flour mill buildings all prepared in compliance with HABS standards. Additional materials, including available historic images, as-built and historic plans, and other materials as appropriate, will be included to support the documentation. No new blueprints or plans will be created as part of this project.

Draft documentation will be submitted to Oregon SHPO/USACE and the National Park Service (NPS) for review and approval. The Applicant will assure that any required

modifications or revisions necessary for NPS approval of the HABS submittal are accomplished in a timely manner. Once NPS has reviewed and accepted the final documentation, it will be duplicated in either digital or hardcopy as preferred and supplied for addition to the public record to NPS, SHPO, University of Oregon, Allied Arts and Architecture Library, and the Oregon Historical Society. Final documentation will also be hosted on the Applicant website for a period of not less than two years. Proof of submittal of the NPS-approved HABS documentation to each of the above repositories will be provided to SHPO/USACE and complete this stipulation.

- b. Salvage: It is the intent of the Applicant to preserve the Feed (completed in 1928) and Flour Mill (completed in 1910) buildings, which includes the iconic elements of the site and contain the most objects related to the operation of the facility, for incorporation into the future redevelopment of the site. The Applicant will, prior to the initiation of the removal of select buildings:
- (1) Identify salvageable materials from the buildings slated for demolition, which can be used as part of any future reuse of the site. Salvage may include equipment, objects, timbers and other similar elements from the removed buildings. It is the Applicant in to retain in sufficient quantity to allow for interpretative uses as part of any future redevelopment. The Applicant acknowledges the importance to make materials available for preservation purposes. As such the Applicant will notify via email known governmental agencies and preservation-oriented organizations that may have an interest in salvaged materials for preservation related projects that the Applicant has salvage materials available from Centennial Mills. The majority of structural timber and other material of value will be sold for reuse off-site to help reduce the Applicant redevelopment costs.
- (2) As part of the salvage process, the Applicant shall prepare a list, with photographs, of materials proposed for salvage and submit to SHPO/USACE for review and comment. If necessary a final list of salvaged elements, with modifications due to unanticipated issues during the removal process, will be submitted to SHPO/USACE. The Applicant shall store the items selected for retention in a secure area(s) for potential incorporation and use in/on any future development of the site.
- c. Site Interpretation: The Applicant will develop an interpretative display documenting the history and development of the Centennial Mills property for public benefit. This display will be located in a publicly accessible portion of the property or at some other publicly accessible location within view of the site, subject to SHPO/USACE review and approval. An illustrated interpretative panel (minimum size 24 inches by 60 inches) of high-quality durable materials suitable for outdoor display will be developed to include history of the property and its uses, including the significance of flour milling on the Portland Waterfront during the 20th century. Graphic design and content will be submitted for review to Oregon SHPO and USACE prior to fabrication for comment or approval. SHPO and USACE will provide any comments within 30 days of receipt of draft. The Applicant will address any comments within the limits of the financial and physical limits of the project, and submit a final draft for approval. Photographic

documentation of the completed site interpretation installation will be provided to SHPO/USACE and complete this stipulation. The display will be installed in conjunction with development of the site.

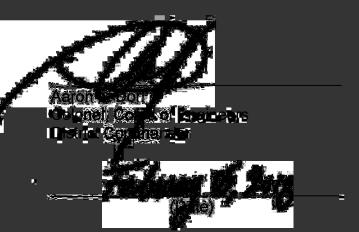
- d. Internet Interpretation: The Applicant will, in cooperation with the Oregon Encyclopedia, develop an on-line entry on the history and significance of the Crown-Centennial Mill operation in Portland, including information on the role of flour milling in the city's early waterfront development. Content will be submitted to SHPO/USACE for review and approval prior to submittal to the Oregon Encyclopedia for its own internal editorial process. Proof of Oregon Encyclopedia approval of the submitted material will be submitted to SHPO/USACE and complete this stipulation.
- e. PDC will be responsible for carrying out additional research on other mills, terminals, and ports that are, or were previously, located on the adjacent waterfront between the Fremont Bridge and the Broadway Bridge. More specifically, this research should be focused on Portland shipping and wheat trade of the early 1900s so as to provide a broader context for the Centennial Mills complex. This research will be used to develop a 20-25 page historic context that is organized by geography, historical theme, and time period. The historic context shall include appropriate citations and include research from primary and secondary sources and be developed consistent with NPS white paper entitled "The Components of a Historic Context". The historic context will be submitted for review to Oregon SHPO and USACE prior to finalizing the document. SHPO and USACE will provide any comments within 30 days of receipt of draft. The Applicant will address any comments within the financial limits of the project, and submit a final draft for approval. The final document will be duplicated in either digital or hardcopy as preferred and supplied for addition to the public record to the University of Oregon Special Collections and the Oregon Historical Society. The final document will also be hosted on the Applicants website for a period of not less than two years. Proof of completed research and submittal to the above repositories will be submitted to SHPO/USACE and complete this stipulation.
- f. The Applicant will, in consultation with Restore Oregon and Portland Historic Landmarks Commission, develop and install on site, a series of not less than four (4) additional interpretive displays, including artifacts salvaged from the demolished buildings. Associated interpretative displays (minimum size 24 inches by 60 inches) shall be of high-quality materials suitable for the outdoors. The displays will tell a comprehensive Farm to Table story of grain production in the Pacific Northwest and the role the Crown Mill played in the production of grain and its distribution to the world. The exhibits shall incorporate pertinent information and history that results from the work done in stipulation eabove. Graphic design and content will be submitted for review to Oregon SHPO and USACE prior to fabrication for comment or approval. SHPO and USACE will provide any comments within 30 days of receipt of draft. The Applicant will address any comments within the limits of the project and submit a final draft for approval. Photographic documentation of the completed installation will be provided to SHPO/USACE and complete this stipulation. The displays will be installed in conjunction with development of the site.

- g. Evidence of Completion of Stipulations: a through f will be provided to the SHPO/USACE within three (3) years of the final signature to this amended agreement. Upon receipt, SHPO will provide USACE and the Applicant with official acknowledgment of the completion of mitigation.
- h. The Applicant is responsible for all costs required for the successful completion of Stipulations a, b, c, d, e and f.
- 14. DURATION. This MOA will expire if its terms are not carried out within three (3) years from the date of the execution of this Amended and Restated MOU. Prior to such time, USACE may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Paragraph 14, below. If this agreement expires without amendment prior to completion of the Stipulations above, it shall be considered terminated according to Paragraph 15, below.
- 15. MONITORING AND REPORTING. Each year following the execution of this MOA until it expires or is terminated, USACE shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms on the anniversary of the MOAs execution date. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in USACE's efforts to carry out the terms of this MOA.
- 16. DISPUTE RESOLUTION. Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, USACE shall consult with such party to resolve the objection. If USACE determines that such objection cannot be resolved, USACE will:
- a. Forward all documentation relevant to the dispute, including the USACE'S proposed resolution, to the ACHP in accordance with 36 CFR 800.2(b)(2). The ACHP shall provide USACE with its advice on the resolution of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, USACE shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP and signatories, and provide them with a copy of this written response. USACE will then proceed according to its final decision.
- b. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, USACE may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, USACE shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories to the MOA, and provide them and the ACHP with a copy of such written response. The USACE decision will be final.
- c. USACE's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remains unchanged.

13. ក្នុងអាស៊ីបានទៅពេល This MoA metal-s grassial-ministration នៅក្រោះប្រាស់នៃការ is a mail នៅការប្រាស់ ស្តែក្តៅនៅព្រះស៊ីបាន Translation លើ គ្នាប់ ប្រែការប្រាស់ទេ១។ កែនាន់ទៅមានប្រាស់ មន្ត្រាជ្រៅ ស្ត្រីស្ត្រីហើយ នៅខែការប្រាស់ទី នៅដើម្បី Mail ដែលសំពី មិន សំពី ម៉ា

8

- 18- Talk 4.6 Pai (Ant. If the plant which it is in the content of the interpretation of
 - To Exception on MEM pleasure to the CER property for
- La Propriet the first propriet was also because the first first that the first propriet is a second to be a sec
- 19. Proposition of a supplement in the particular particular of the particular of the particular of the particular particular of the parti



成長まます。 時期に関われる 540 Actions I file があったがあったがある。 Mile in its in i

J

District By stricting this distriction of hypersects in the terms and considerable first in The strict benefit of hypersects.

ĸ.

п

- n

Christille Cuiran

Anterior Sepully State, Islands Procedure Circus

Oregon State Historian pe eAvit on Original

i _{Is}

SUBJECT: NWP 2010-540, Adverse Effect to Centennial Mills, Multnomah County, Oregon

Note: By signing this document, you agree to all the terms and conditions outlined in the subject Memorandum of Agreement.

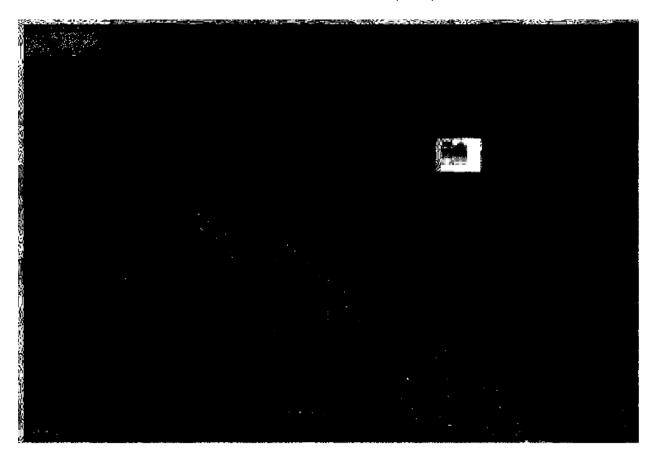
Kimberly Branam

Executive Director

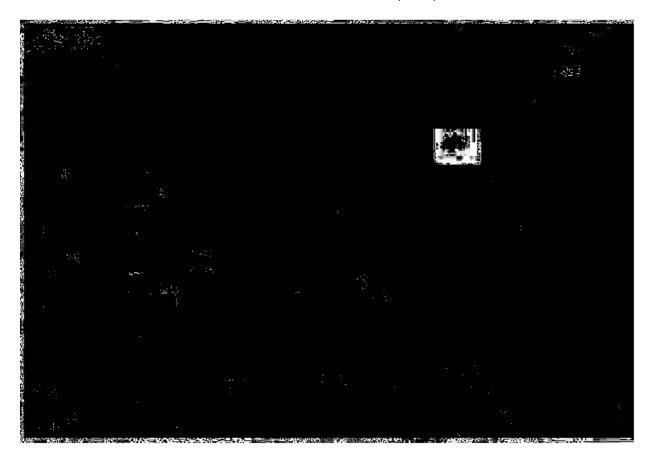
Portland Development Commission dba Prosper Portland

8

ATTACHMENT A \square AREA OF POTENTIAL EFFECT (APE)



ATTACHMENT A \square AREA OF POTENTIAL EFFECT (APE)





DEPARTMENT OF THE ARMY U.S. ARMY CORPS OF ENGINEERS, PORTLAND DISTRICT P.O. BOX 2946 PORTLAND, OR 97208-2946

August 9, 2022

Regulatory Branch Corps No. NWP-2010-540

Ms. Kimberly Branam
Prosper Portland
220 NW Second Ave., Suite 200
Portland, OR 97209-3943
branamk@prosperportland.us

Dear Ms. Branam:

The U.S. Army Corps of Engineers (Corps) received your request to modify your Department of the Army (DA) permit, Corps No. NWP-2010-540, dated December 7, 2021. This project is located within the Willamette River at 1362 NW Naito Parkway in Portland, Multnomah County, Oregon at Latitude/Longitude: 45.534039°, -122.679891°.

You propose to modify the MOA by extending the supplemental mitigation completion date by 12 years to 31 July 2034. The Corps considers this change minor and hereby modifies your permit.

The original permit has been amended to include the above description and the enclosed MOA (Enclosure). In addition, the Corps has amended the permit by adding the following supplemental special condition:

k. The Memorandum of Agreement (MOA), entitled "Memorandum of Agreement Among the United States Army Corps of Engineers, Portland District, the Oregon State Historic Preservation Officer, and Prosper Portland" with the subject line, "NWP-2010-540, Adverse Effects to the Centennial Mills Complex, Multnomah County, Oregon", dated 31 July 2022, and signed by these entities, shall be implemented in its entirety. The Corps has been designated the lead federal agency responsible for implementing and enforcing the Memorandum of Agreement as signed. If you fail to comply with the implementation and associated enforcement of the MOA, the Corps may determine you are out of compliance with the conditions of the Department of the Army permit and suspend the permit. Suspension may result in modification or revocation of the authorized work.

All other terms and conditions of the original permit remain in full force and effect. This letter must be attached to the original permit.

- 2 -

If you have any questions regarding this permit modification, please contact Mr. Rafael Orozco at the letterhead address, by telephone at (503) 808-4959, or email at rafael.s.orozco@usace.army.mil.

FOR THE COMMANDER, MICHAEL D. HELTON, PMP, COLONEL, CORPS OF ENGINEERS, DISTRICT COMMANDER:

Melody J. *White* For: William D. Abadie

Chief, Regulatory Branch

Enclosure

CC:

Flowing Solutions (Andrew Jansky, Andrew@flowingsolutions.com)
Oregon Department of State Lands (Katie Blauvelt, katie.blauvelt@dsl.oregon.gov)
Oregon Department of Environmental Quality (401applications@deq.oregon.gov)

Corps ID No: NWP-2010-540

REQUEST FOR PERMIT TRANSFER

When the structures or work authorized by this permit are still in existence at the time the property is transferred, and/or a new party obtains this permit verification, the terms and conditions of this permit will continue to be binding on the new permittee. The new permittee should sign and date below to accept the liabilities associated with complying with the terms and conditions of this permit verification, and to validate its transfer.

PERMIT TRANSFEREE: Signature DATE Name (Please print) Street Address City, State, and Zip Code NEW OWNER (if applicable): Signature DATE Name (Please print) Street Address City, State, and Zip Code

STATE OF OREGON DEPARTMENT OF STATE LANDS SUBMERGED AND SUBMERSIBLE LAND LEASE

ML-8021 APP#16644

The State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("State"), hereby leases to the person(s) herein named ("Lessee"), the following described lands on the terms and conditions stated herein (the "Lease"):

NAME of LESSEE:

ADDRESS:

City of Portland by and through the Portland Development Commission

222 NW Fifth Avenue

Portland OR 97209-3859

Legal classification of Lessee is a Municipal Corporation,

Lands situated in Multnomah County more fully described as follows:

A tract of land located in the Northwest ¼ Northwest ¼ Section 34, Township 1 North, Range 1 East, Willamette Meridian, adjoining Lots 30 through 37 and a portion of Lot 29 of Block 318, COUCH'S ADDITION TO CITY OF PORTLAND, in the City of Portland, County of Multnomah, State of Oregon, more particularly described as follows:

Commencing at the Southwest corner of Lot 37, thence North 39°33'00" East along the Northwesterly line of Lot 37, a distance of 286.52 feet to the line of Ordinary Low Water and the TRUE POINT OF BEGINNING;

thence North 39°33'00" East along the Northwesterly line of Lot 37, extended, a distance of 37.0 feet to the Harbor Line:

thence South 47°26'33" East along the Harbor Line a distance of 409.81 feet to the Northwesterly edge of the Tanner Creek sewer;

thence 48.40 feet Southwesterly along the Northwesterly edge of the Tanner Creek sewer to the line of Ordinary Low Water;

thence Northwesterly along the line of Ordinary Low Water to the Point of Beginning.

Containing approximately 17,460 square feet, more or less, and as shown in the attached Exhibit "A".

Total number of acres: 0.4008 acres, more or less.

Hereinafter referred to as the "Leasehold".

SECTION 1 - LEASE TERM; RENEWAL; TERMINATION

- 1.1 <u>Term</u>: This Lease will continue for a period of 15 years commencing on August 1, 2010, the month and date of which will be known as the "Lease Anniversary Date," and expiring on July 31, 2025, unless terminated earlier as provided under Section 1.4 or Section 7.2 below.
- 1.2 <u>Renewal</u>: Lessee may apply to renew this Lease for successive 15 year terms by submitting a completed lease renewal application form to State not less than 180 days prior to the expiration of the current term. Upon receipt of the application, State shall renew this Lease unless:
 - 1.2.1 State determines, in its sole discretion, that Lessee has not complied with the terms of this Lease, the applicable statutes or Oregon Administrative Rules; or
 - 1.2.2 Lessee is no longer the preference right holder as provided in ORS 274.040(1) and defined in OAR 141-082-0020; or
 - 1.2.3 State determines that the renewal of this Lease for all or any portion of the Leasehold would be contrary to local, state, or federal law, or would be inconsistent with the policies set forth in OAR 141-082-0010.
- 1.3 Notice of Intent Not to Renew. Except as otherwise provided in this Lease, State shall provide written notice to Lessee two years in advance if State intends not to renew this Lease for all or any portion of the Leasehold. If State determines not to renew this Lease, but less than two years remain in the Lease term, State shall, at Lessee's request, extend the term of this Lease to complete the two year notice period, within which time Lessee shall vacate that portion of the Leasehold upon which the Lease is not being renewed and relocate any sublessees in an orderly fashion.
- 1.4 <u>Termination Upon Mutual Consent</u>: This Lease may be terminated by mutual written consent of Lessee and State.
- 1.5 Holdover: If Lessee does not vacate the Leasehold at the expiration or upon termination of the Lease, State may treat Lessee as a tenant from month to month, subject to all of the provisions of this Lease except the provisions for term, renewal, and Rent. State may unilaterally establish a new Rent for the month-to-month tenancy, payable monthly in advance. If a month-to-month tenancy results from holdover by Lessee under this Section, the tenancy will be terminable at the end of any monthly rental period upon Notice from State given not less than 30 days prior to the termination date specified in the Notice.

SECTION 2 – RENT; OTHER ASSESSMENTS

2.1 <u>Initial Annual Rent</u>: The rental payment to be paid by Lessee to State (the "Rent") for the first year of the Lease is \$8,471.59, based on the following Flat Rate. Receipt of the first year's Rent is hereby acknowledged.

Use Class	Area (square ft.) 17,460 square feet	Rate Choice	Annual Rent
Non-Marine Use		Flat Rate	\$8,471.59
		TOTAL	\$8,471.59

- 2.2 <u>Annual Rent Adjustment:</u> The Rent will be adjusted annually in accordance with the provisions of OAR 141-082-0100 in effect at the time. Each payment is due on the Lease Anniversary Date established in Section 1.1.
- 2.3 <u>Address for Rent Payments:</u> Until State provides notice of a change in address (using a method described in Section 10.4), Lessee shall deliver all Rent payments to the following address:

Department of State Lands Unit 18 PO Box 4395 Portland, OR 97208-4395

- 2.4 <u>Assessments</u>: Lessee shall pay all taxes or assessments, or both, that are levied against the Leasehold, whether or not such taxes or assessments, or both, have been levied in the past against the Leasehold or State by the assessing agency.
- 2.5 <u>Liens</u>: With the exception of mortgages or other security interests authorized by State under Section 6, Lessee shall immediately cause to be discharged any lien or other charge placed on the Leasehold or its Improvements, arising directly or indirectly out of Lessee's actions. State may terminate this Lease if Lessee fails to discharge any lien or charge or provide State with a sufficient bond covering the full amount of the lien after ten days Notice to do so by State. Lessee shall pay and indemnify State for all costs, damages or charges of whatsoever nature, including attorney's fees, necessary to discharge such liens or charges whether the costs, damages or charges are incurred prior or subsequent to any termination of this Lease.
- 2.6 <u>Late Charges and Interest</u>: Late payments by Lessee of Rent and other charges due under the Lease will cause State to incur costs and other damages not otherwise addressed in this Lease, the exact amount of which will be difficult to ascertain, including costs associated with administrative processing and accounting. In recognition of the foregoing, the parties agree that, notwithstanding other remedies permitted under the Lease and in addition to these remedies, if Lessee has not made full payment of amounts due within 20 days of the date payment is due, Lessee shall pay an additional charge equal to five percent of the amount of the late Rent or other charge. In addition, all

amounts due and owing under this Lease, including late charges, will bear interest at the lower of: (a) the highest interest rate allowable by law, or (b) 12% per year.

SECTION 3 - USE AND RESTRICTIONS ON USE

3.1 <u>Authorized Use</u>: This Lease grants to Lessee the right to use the Leasehold for the specific purpose(s) described below in accordance with the Lease terms and conditions, applicable local (including local comprehensive land use planning and zoning ordinances), state and federal laws and the applicable Oregon Administrative Rules.

Existing Warehouse Building

- 3.2 Restrictions on Use: Lessee shall:
 - 3.2.1 comply with all applicable local, state and federal laws and regulations affecting the Leasehold and its use, including local comprehensive land use planning and zoning ordinances, and correct at Lessee's own expense any failure of compliance created through Lessee's fault or by reason of Lessee's use;
 - 3.2.2 dispose of all waste in a proper manner and not allow debris, garbage or other refuse to accumulate within the Leasehold, and, if Lessee allows debris, garbage or other refuse to accumulate within the Leasehold, allow State to remove the debris, garbage and other refuse, and collect the cost of such removal from Lessee:
 - 3.2.3 not cut, destroy or remove, or permit to be cut, destroyed or removed, any vegetation that may be upon the Leasehold except with written permission of State, and promptly report to State the cutting or removal of vegetation by other persons;
 - 3.2.4 conduct all operations within the Leasehold in a manner which conserves fish and wildlife habitat, protects water quality, and does not contribute to soil erosion or the growth of noxious weeds;
 - 3.2.5 maintain all buildings, docks, pilings, floats, gangways, similar structures, or other improvements (each an "Improvement") in a good state of repair; and
 - 3.2.6 not unreasonably interfere with the public's trust rights of commerce, navigation, fishing or recreation.
- 3.3 <u>Condition of Leasehold and Improvements:</u> Lessee represents that it has inspected the Leasehold and Improvements, if any, and accepts the Leasehold and all Improvements in their present condition, AS IS. State has made no oral

- or written representations concerning the condition of the Leasehold or its Improvements, if any, nor their fitness or suitability for any purpose.
- Leasehold any Improvements: Lessee may not construct or place upon the Leasehold any Improvement that exceeds \$15,000 in cost or value unless Lessee has first obtained the prior written authorization of State or the Improvement is exempt under OAR 141-082-0030(4). State shall not unreasonably withhold or delay its approval for Improvements consistent with the purposes of this Lease. All Improvements must be consistent with the authorized use(s) of this Lease stated in Section 3.1 and in compliance with all applicable laws, regulations, and ordinances as stated in Section 3.2.1.
- 3.5 <u>Disposition of Unauthorized Improvements or Structures</u>: Lessee shall remove all unauthorized Improvements from the Leasehold upon receiving Notice from State, unless State elects to remove the Improvements at Lessee's cost and expense.
- 3.6 Removal of Authorized Improvements: Lessee shall remove all authorized Improvements within 90 days after the termination or expiration of the Lease or modification of the Lease under Section 4.2, unless otherwise agreed by the parties or the Improvement is exempt under OAR 141-082-0030(4). Lessee is responsible for any damage done to the Leasehold as a result of the removal of any Improvement. Any Improvement remaining on the Leasehold after the 90 days will at the option of State become the property of State, unless otherwise agreed by the parties.
- 3.7 <u>Liability</u>: Lessee shall defend, indemnify and hold State harmless from and against all claims, demands, actions, suits, judgment, losses, damages, penalties, fines, costs, and expenses (including expert witness fees and costs and attorney's fees in an administrative proceeding, at trial, or on appeal) arising from or attributable, in whole or in part, to the Lease or any operations conducted or allowed by Lessee on the Leasehold. As used in this Section 3.7 only, "State" means the State of Oregon and its boards, commissions, agencies, officers, employees, contractors, and agents.
- 3.8 <u>Waste Water Disposal</u>: In addition to any other applicable laws and regulations, Lessee shall obtain any permits required by state or local authorities and shall comply with Oregon Department of Environmental Quality and Oregon State Marine Board requirements for sewage collection and waste water disposal for boats and floating structures.

3.9 Hazardous Substances:

3.9.1 Lessee shall not use, store, or dispose of, or allow the use, storage, or disposal within the Leasehold of any material that may pose a threat to human health or the environment, including without limitation, hazardous substances, pesticides, herbicides, or petroleum products (a "Hazardous Substance") except in strict compliance with applicable laws, regulations and

manufacturer's instructions, and Lessee shall take all necessary precautions to protect human health and the environment and to prevent the release of any Hazardous Substance on or from the Leasehold.

- 3.9.2 Lessee shall keep and maintain accurate and complete records of the amount of all Hazardous Substances stored or used on the Leasehold, and shall immediately notify State of any release or threatened release of any Hazardous Substance on or from the Leasehold or otherwise attributable to operations or activities on the Leasehold.
- 3.9.3 If any Hazardous Substance is released, and the release arises from or is attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold, Lessee shall promptly and fully remediate the release in accordance with state and federal regulations and requirements. If Lessee fails to so remediate, State may remove and remediate any release of a Hazardous Substance on or from the Leasehold or attributable to operations or activities conducted or allowed by Lessee on the Leasehold and collect the cost of removal or remediation from Lessee either as additional Rent or as damages.
- 3.9.4 In addition to any duty to indemnify specified elsewhere in this Lease, Lessee shall indemnify State to the fullest extent allowed by Oregon law against any claim or costs arising from or related to a release of a Hazardous Substance arising from or attributable, in whole or in part, to any operations conducted or allowed by Lessee on the Leasehold.
- 3.10 <u>Weed Control</u>: Lessee shall control plant pests and diseases and noxious weeds, including aquatic weeds, within the Leasehold as directed by the local county weed control district, the Oregon Department of Agriculture or any other governmental authority which has authority for the prevention or control, or both, of noxious weeds, plant pests or diseases, or as may be authorized or directed by State.

SECTION 4 - MODIFICATION OF LEASEHOLD AREA OR USE

- 4.1 <u>Change of Leasehold Area or Use:</u> Lessee may request that State amend the Lease to expand or reduce the size, or change the authorized use, of the Leasehold using a form provided by State. However, no such amendment will be effective unless authorized in writing by State. State shall process and review requests to amend the Lease in the same manner as a new lease application.
- 4.2 Special Conditions Applicable to Reductions in Leasehold Area. This Lease may be amended to reduce the Leasehold area only if the portion of the Leasehold to be removed from the Lease does not contain any Improvement. If the amendment results in a reduction of Rent due under the Lease, the reduction will be effective commencing on the Lease Anniversary Date that falls at least 12 months after the later of: (a) the date of the reduction in the Leasehold area; or (b) the date on which the amendment is fully executed.

4.3 <u>Lessee Liable for Violations</u>. Notwithstanding any reduction in the Leasehold area under this section, Lessee shall remain liable for any violation of Section 3.8 or 3.9 occurring on lands removed from the Leasehold prior to the amendment removing such lands.

SECTION 5 – RESERVATIONS

- 5.1 Access: State reserves a right of access to the Leasehold, which, subject to any applicable provisions of the Oregon Residential Landlord and Tenant Act, ORS chapter 90, the State may exercise at all reasonable times to inspect and manage the State's interest in the Leasehold and to evaluate and ensure compliance with the terms and conditions of this Lease. State may examine pertinent records of Lessee for the purpose of ensuring compliance with the Lease.
- 5.2 <u>Minerals</u>: State reserves all rights to coal, oil, gas, geothermal resources and other minerals, and all deposits of clay, stone, gravel and sand valuable for building, mining, or commercial purposes including, without limitation, the right to explore, mine, develop, produce and remove such minerals and other deposits, along with the right of ingress and egress for these purposes, and to terminate this Lease as to all or any portion of the Leasehold when required for these purposes with 120 days prior written notice to Lessee or as otherwise provided by law.
- 5.3 <u>Easements</u>: State reserves the right at any time to grant easements across the Leasehold for tunnels, telephone and fiber optic cable lines, pipelines, power lines, or other lawful purpose, along with the right of ingress and egress for these purposes, subject to the inclusion in any such grant of easement of a requirement that the easement holder take all reasonable precautions to ensure that exercise of their easement rights does not unreasonably interfere with Lessee's use(s) authorized in the Lease.
- 5.4 Public Access and Recreational Use: All state-owned submerged and submersible land must remain available and open to the public for commerce, navigation, fishing and recreation unless restricted or closed by State to public entry pursuant to the provisions of applicable Oregon Administrative Rules.

 Lessee may request State, but State is not obligated, to close the Leasehold to public entry or restrict recreational use by the public on all or portions of the Leasehold to protect persons or property from harm arising from or in connection with Lessee's activities.

This reservation does not grant the public any right to use or occupy, without Lessee's permission, Lessee-owned property or structures authorized under this Lease.

5.5 Other: State reserves all other rights not expressly granted to Lessee under this Lease.

SECTION 6 - ASSIGNMENTS; SUBLEASES

6.1 Assignment and Sublease:

- 6.1.1 Except as provided in Section 6.2, Lessee may not assign this Lease or sublease the Leasehold or any portion of the Leasehold nor enter into any third party agreement respecting the Lease or the Leasehold without first obtaining the prior written consent of State pursuant to the requirements of the applicable Oregon Administrative Rules. Requests must be in writing using an application form prescribed by State. The application must be received by State at least 30 calendar days prior to the proposed effective date of the sublease or assignment. State shall make a good faith effort to complete its review of Lessee's application within 30 days following receipt. If the application is incomplete, or if State requests additional information concerning the proposed assignment or sublease, the time period for reviewing applications may be extended and the proposed sublease or assignment may be delayed pending the completion of such review.
- 6.1.2 State reserves the right to condition its consent to an assignment or sublease as State deems reasonably prudent, including the right to require changes to the terms of this Lease. Each assignee, sublessee, and third party interest will be required to comply with all of Lessee's obligations under this Lease, and the applicable Oregon Administrative Rules. Lessee will remain liable for the performance of all obligations under this Lease unless State's written consent expressly releases Lessee from further liability.
- 6.1.3 For the purposes of this section, if Lessee is a corporation or partnership or limited liability company, the transfer of any corporate stock or partnership or membership interest (including by operation of law) will be deemed an assignment subject to the provisions of this section if the result of the transfer is a change of management control or controlling interest in Lessee.
- 6.1.4 Lessee may not grant a mortgage or security interest in this Lease without prior written consent of State, which consent shall not be unreasonably withheld. Any subsequent assignment by the creditor will require the prior written approval of State.
- 6.2 <u>Permitted Assignments and Subleases</u>: Notwithstanding Section 6.1 of this Lease, the following assignments, mortgages and security interests, and subleases of Lessee's interest in the Leasehold are permitted and written notice to State is not required:
 - 6.2.1 subleases of portions of Lessee's interest in the Leasehold area in the ordinary course of Lessee's business for the purposes approved under Section 3.1;
 - 6.2.2 the sublease of the entire Leasehold for a term that is less than one year for a purpose specified in Section 3.1; or

6.2.3 the transfer of Lessee's interest in the Lease to a surviving spouse or immediate family member following the death of Lessee; except that, any other transfer of ownership following the death of Lessee is considered an assignment requiring State's approval.

SECTION 7 – DEFAULT

- 7.1 <u>Default</u>: The following are events of default:
 - 7.1.1 Failure of Lessee to pay any rent, tax, reimbursement or other charge or payment due under the Lease within 20 days after the date payment is due. For the purposes of this subsection, if the due date for payment is not otherwise stated in this Lease or otherwise defined in statute or administrative rule, payment is due on the date set forth in the Notice from State to Lessee informing Lessee of its obligation to pay the charge or payment.
 - 7.1.2 Failure of Lessee to comply with any non-payment-related term or condition or obligation of the Lease within 30 days after Notice by State specifying the nature of the deficiency, or, in the event of an emergency, within the time specified by State to resolve the emergency. Upon timely request from Lessee, State may in its good faith discretion permit the deadline for curing non-compliance to be extended if it finds that: (1) the default cannot reasonably be cured within the 30 day period; (2) the interests of State will not be harmed by an extension; (3) default was not due to the willful act or gross negligence of Lessee; and (4) State and Lessee mutually agree upon a written plan and timeline for curing the non-compliance.
 - 7.1.3 Any of the following:
 - a) insolvency of Lessee;
 - b) the filing by Lessee of a voluntary petition in bankruptcy;
 - c) an adjudication that Lessee is bankrupt or the appointment of a receiver of the properties of Lessee;
 - d) the filing of any involuntary petition of bankruptcy and failure of Lessee to secure a dismissal of the petition within 30 days after filing; or
 - e) attachment of or the levying of execution on the Leasehold interest and failure of Lessee to secure discharge of the attachment or release of the levy of execution within ten days.

If Lessee consists of two or more individuals or business entities, the events of default specified in this paragraph apply to each individual or entity unless within ten days after an event of default occurs the remaining individuals or entities produce evidence satisfactory to State that they have unconditionally acquired the interest of the one causing the default. If the Lease has been assigned under Section 6 of this Lease, the events of default specified in this subsection apply only with respect to the one then exercising the rights of Lessee under the Lease.

- 7.1.4 Notwithstanding the above, if State in good faith believes that a material default has occurred which may imperil State's rights in the land or the discharge of its Constitutional obligations with respect to the land, State may declare an immediate default without any right of Lessee to cure the deficiency.
- 7.2 Termination of Occupancy Upon Default: State may terminate Lessee's right to occupy the Leasehold for any default by Lessee that remains uncured past the time provided in Section 7.1. State shall exercise its right to terminate Lessee's occupancy under this section by providing Notice to Lessee of the default and of State's intent to terminate Lessee's right of occupancy under the Lease upon the date provided in the Notice. State may recover from Lessee all costs arising out of State's re-entry and, if State and Lessee mutually agree to terminate the Lease as provided in Section 1.4, all costs of re-letting the Leasehold. If State and Lessee mutually agree to terminate the Lease, State may recover the amount of unpaid rent that otherwise would have been required to be paid under the Lease from the date of default until a new Lease has been secured or, if State and Lessee do not agree to terminate the Lease and State is unable to secure another lessee for the Leasehold, until such time as the Lease expires. Lessee shall dispose of all Improvements as specified in Section 3.6 of this Lease. If Lessee owns a floating home and has placed the home on the Leasehold pursuant to the provisions of Section 3.1 of this Lease, the lease termination provisions of ORS chapter 90 will apply to the extent the provisions of this Lease are inconsistent with this chapter.

7.3 State's Right to Cure Defaults:

- 7.3.1 If Lessee fails to perform any obligation under this Lease, State may perform the obligation of the Lease 30 days after providing Notice to Lessee. All of State's expenditures to carry out the obligation must be reimbursed by Lessee on demand with interest at the rate of one percent per month accrued from the date of expenditure by State.
- 7.3.2 Notwithstanding Section 7.3.1, but subject to ORS chapter 90 if applicable, if any violation of a term or condition of this Lease, including without limitation use of the Leasehold in a manner not permitted under the Lease, is causing or threatens to cause personal injury or damage to the Leasehold or other property, or if damage to the Leasehold arises from some other cause, State may immediately enter upon the Leasehold and take such action as it deems necessary to stop the use or mitigate the injury or damage. If the injury or damage is due to a violation of the terms or conditions of this Lease, Lessee will be liable for all costs incurred by State as a result of the violation and the action taken by State to mitigate the injury or damage. State, at its option, may send Notice to Lessee of the violation and, upon receipt of the Notice, Lessee shall immediately cease the violation and repair the injury or correct all damage caused by the violation. State's failure to provide Notice of a violation may not be deemed a waiver of the violation by State or authorization to Lessee to continue or fail to correct the violation.

SECTION 8 - INSURANCE; BONDS

- 8.1 Commercial General Liability: Lessee shall obtain at Lessee's expense, and keep in effect during the term of this Lease, comprehensive or commercial general liability insurance covering bodily injury and property damage with an insurance company acceptable to State. This insurance must include personal injury coverage, contractual liability coverage for the indemnities provided under this Lease and products/completed operations liability. Combined single limit per occurrence may not be less than \$1,000,000. Annual aggregate limit may not be less than \$2,000,000.
- 8.2 <u>Marine Protection and Indemnity Coverage</u>: Lessee shall obtain, at Lessee's expense, and keep in effect during the term of the Lease, Marine Protection and Indemnity Coverage. Combined single limit per occurrence shall not be less than \$N/A.
- Automobile Liability Insurance: Lessee shall obtain, at Lessee's expense, and 8.3 keep in effect during the term of the Lease, Automobile Liability Insurance covering all owned, non-owned, and hired vehicles. This coverage may be written in combination with the Commercial General Liability Insurance. Combined single limit per occurrence shall not be less than \$N/A. [Option for Auto Liability if Lessee is transporting any commodity that could cause environmental damage, ranging from fuel oil to radioactive materials: Automobile Liability Insurance: Lessee shall obtain, at Lessee's expense, and keep in effect during the term of the Lease Automobile Liability Insurance, including MCS-90 endorsement, with a combined single limit of no less than \$N/A or equal to the U.S. Department of Transportation requirements, whichever is greater. The policy shall insure against bodily injury, property damage, or environmental damage arising out of the use (including loading, transporting and unloading) by or on behalf of Lessee, it agents and employees of owned, nonowned or hired vehicles.
- 8.4 <u>Pollution Liability</u>: Lessee shall obtain at Lessee's expense, and shall keep in effect during the term of the Lease, Pollution Liability Insurance covering Lessee's liability for bodily injury, property damage and environmental damage resulting from sudden accidental and gradual pollution and related cleanup costs incurred by Lessee, all arising out of Lessee's lease of the Leasehold. Combined single limit per occurrence may not be less than \$N/A. Annual aggregate limit may not be less than \$N/A.
- 8.5 <u>Workers' Compensation Insurance</u>: All employers, including Lessee, that employ subject workers who perform work under this Lease in the State of Oregon must comply with ORS 656.017 and provide the required Workers' Compensation coverage, unless such employers are exempt under ORS 656.126. Lessee shall ensure that each of its sublessees (if permitted) complies with these requirements.

- 8.6 Revisions/Amendments/New Requirements: The amounts and types of insurance and the party responsible for procuring the insurance may be revised or amended by State periodically at State's sole discretion after State:
 - (a) consults with its insurance advisor;
 - (b) consults with Lessee;
 - (c) considers the commercial reasonableness of any requirements, amendments or revisions; and
 - (d) considers State's need for adequate insurance protection and State's fiduciary obligations.

Within 30 days after Notice from State to Lessee of State's revision or amendment of the insurance requirements, Lessee shall provide satisfactory evidence to State that Lessee has obtained new insurance coverage the conforms to the revised/amended insurance requirements. If mutually agreed in writing, Lessee may have additional time to obtain such insurance.

- 8.7 <u>Named Insured Parties</u>: The liability insurance coverages required for performance of the Lease must include the State of Oregon, the Department of State Lands and its Departments, sections, officers, agents and employees as additional insureds but only with respect to Lessee's activities to be performed under this Lease.
- 8.8 <u>Certificate(s) of Insurance</u>: As evidence of the insurance coverages required by this Lease, Lessee shall furnish certificate(s) of insurance to State prior to the execution of this Lease, and not less often than annually thereafter and as reasonably requested by State. The certificate(s) must specify all of the parties who are additional insured (or loss payees). Insurance coverages required under this Lease must be obtained from acceptable insurance companies or entities reasonably acceptable to State. Lessee is financially responsible for all deductibles, self-insured retentions and/or self-insurance included hereunder.
- 8.9 <u>"Tail" Coverage</u>: If any of the required liability insurance is on a "claims made" basis, "tail" coverage will be required at the termination or expiration of this Lease for a duration of 24 months, or the maximum time period reasonably available in the marketplace. Lessee shall furnish certification of "tail" coverage as described or continuous "claims made" liability coverage for 24 months following termination or expiration of the Lease. Continuous "claims made" coverage is acceptable in lieu of "tail" coverage, provided its retroactive date is on or before the effective date of the Lease. If continuous "claims made" coverage is used, Lessee shall keep the coverage in effect for not less than 24 months from the termination or expiration of the Lease.
- 8.10 <u>Bond</u>: State reserves the right to require Lessee to furnish to State a surety bond or an equivalent cash deposit or certificate of deposit, in an amount to be determined by State in the exercise of its reasonable discretion, which names the State of Oregon as co-owner to ensure that Lessee will perform in accordance with all terms and conditions of the Lease. NOTE: all bonds must receive AG review and approval.

SECTION 9 - ADDITIONAL CONDITIONS AND STIPULATIONS

9.1 None.

SECTION 10 - MISCELLANEOUS

- 10.1 Entire agreement: This Lease, together with the attached exhibits and attachments, constitutes the entire agreement between the parties. No waiver, consent, modification or change of terms of this Lease will bind either party unless in writing. Such waiver, consent, modification or change, if made, will be effective only in the specific instance and for the specific purpose given, and will be valid and binding only if it is signed by each party. There are no understandings, agreements or representations, oral or written, not specified herein regarding this Lease. This Lease supersedes all prior or existing lease or rental agreements between the parties with respect to the Leasehold described in this Lease.
- 10.2 <u>No Partnership</u>: State is not a partner nor in a joint venture with Lessee in connection with any business carried on in connection with this Lease or the Leasehold and has no obligation for Lessee's debts or other liabilities.
- 10.3 <u>Non-Waiver</u>: Waiver by either party of strict performance of any provisions of this Lease will not be a waiver nor prejudice the party's right to require strict performance of the same provision in the future or of any other provision.
- 10.4 Notices:
 - 10.4.1 Any communication required by the terms of this Lease to be given in writing (hereafter, a "Notice") must be given or be served by:
 - a) depositing the same in the United States mail, postage prepaid; registered or certified mail, with return receipt requested; or
 - b) personal delivery service with all charges billed to shipper; or
 - c) expedited delivery service with all charges billed to shipper; or
 - d) prepaid telegram, telex or facsimile;

addressed to the party for whom the Notice is intended at the address set forth below or at such other address as the party may designate from time to time.

For Notices to Tenant:

Portland Development Commision 222 NW Fifth Avenue Portland OR 97209-3859

For Notices to Landlord:

Department of State Lands 775 Summer Street, NE Suite 100 Salem, OR 97301-11279

10.4.2 Notice is deemed received:

- a) upon receipt if sent by telegram, telex or facsimile or if personally delivered (as long as delivery is confirmed by the receiving telex or facsimile operator, including electronic confirmation of receipt, or by the courier delivery service, as the case may be); or
- b) three business days after the date of deposit in a post office or other official depository under the care and custody of the United States Postal Service, if sent by United States mail; or
- c) on the date of delivery by any expedited delivery service, or
- d) on the date any party declines to accept any Notice given as provided in this section.
- 10.4.3 Each party shall have an address, for Notice purposes, that is within the continental United States and, if any party resides outside the continental United States, the party shall designate an agent for the purpose of receiving Notices whose address is within the continental United States. Any party may change its address for the purpose of receiving Notices by delivering a Notice of the change of address to the other party as described in this section 7.3.
- 10.4.4 Communications between the parties that are not required by this Lease to be in writing may be by any mutually acceptable method.
- Governing Law; Venue: This Lease and all matters related to the rights and 10.5 responsibilities of the parties under it are governed by and subject to the laws of the State of Oregon and the administrative rules of the Department of State Lands and the State Land Board, as they may change from time to time. The Oregon Administrative Rules contain terms and conditions which relate to the rights and responsibilities of the parties under this Lease, and all such terms and conditions (as they may change from time to time) are hereby incorporated by reference and made a part of this Lease. Any claim, action, suit or proceeding (collectively, a "Claim") between State and Lessee that arises from or relates to the Lease must be brought and conducted solely and exclusively within the Circuit Court of Marion County for the State of Oregon; except that, if a Claim must be brought in a federal forum, then unless otherwise prohibited by law it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. However, in no way is this section or any other provision of this Lease to be construed as a waiver by the State of Oregon of any form of defense or immunity, whether it is sovereign immunity, governmental immunity, immunity based on the Eleventh Amendment to the Constitution of the United States, or otherwise, from any Claim or from the jurisdiction of any court. Lessee, by execution of this Lease, hereby consents to the personal jurisdiction of all such courts.
- 10.6 <u>Binding on Successors</u>: This Lease is binding on and will inure to the benefit of the successors and assigns of the parties to it, but nothing in this section may be construed as a consent by State to any disposition or transfer of the Lease or any interest in it by Lessee except as otherwise expressly provided in this Lease.

- 10.7 <u>Nondiscrimination</u>: The Leasehold must be used in a manner, and for such purposes, that assure fair and nondiscriminatory treatment of all persons without respect to race, creed, color, religion, handicap, disability, age, gender, or national origin.
- 10.8 Right To Sue More Than Once: State may sue periodically to recover damages accrued to date and no action for damages will bar later actions for damages subsequently accruing.
- 10.9 Remedies Cumulative: The remedies contained in this Lease are in addition to, and do not exclude, any other remedy available at law or in equity, and the exercise by either party of any one or more of its remedies does not preclude the exercise by it at the same or different times of any other remedies for the same default or breach by the other party.
- 10.10 Attorney Fees: If suit or action is instituted in connection with any controversy arising out of or in connection with this Lease, the prevailing party is entitled to recover all costs and disbursements incurred, including such sums as the court may adjudge reasonable as attorney fees at trial and on any appeal of the suit or action, and in any bankruptcy case or proceedings. State's obligation under this section is subject to the limitations of Article XI, section 7 of the Oregon Constitution.
- 10.11 <u>Exhibits</u>: All Exhibits to which reference is made in this Lease are incorporated in this Lease by the respective references to them, whether or not they are actually attached. References to "this Lease" include matters incorporated by reference.
- 10.12 <u>Survival</u>. Termination or expiration of the Lease will not extinguish or prejudice State's right to enforce the provisions of this Lease relating to indemnification, access to records, governing law, venue and consent to jurisdiction.

Lessee, by the signature below of its authorized representative, hereby acknowledges that Lessee has read this Lease, understands it and agrees to be bound by its terms and conditions.

STATE:

The State of Oregon, acting by and through the Oregon State Land Board and the Department of State Lands 775 Summer ST NE, STE 100 Salem, OR 97301-1279

Manger N Prestis
Authorized Signature
7/2/10
Date

COMMISSION NO. 433353
MAY COMMISSION EXPIRES OCTOBER 14, 2012

LESSEE:

City of Portland by and through Portland Development Commission Municipal Corporation 222NW Fifth Avenue Portland OR 97209-3859

Op J. Gellefor Buch.	Warner
Signature// itle	4 4
(Note requirement below)	
6/u/10	The state of the s

Date

Note: If Lessee is a corporation, partnership, limited liability company or other form of business entity, signer warrants that s/he has the authority to sign the Lease on behalf of such entity by resolution of its Board of Directors or equivalent, or through delegation of authority to the signer.

STATE OF)	
County of <u>Mulinomah</u>) ss _)	
The foregoing instrument was 2010, by Brithe Executive Director (title of Commission (name of businessincorporation)	officer or agent) of The Po s entity), a()ชยงษ	this day of officer or agent of corporation), ortland Development (state or place of
(corporation, general partnersh	nip, limited liability compar	•
partnership, limited liability con		corporation, general
partifership, inflited hability con	iparry, etc.)	
	Kence C	astilla
	Signature	expires 14 Oct 2012
OFFICIAL SEAL RENEE A CASTILLA	My commission	expires 14 ()c+ 2013

CERTIFICATE OF COMPLIANCE WITH OREGON TAX LAWS

Use the following if the Lessee is an individual I, the undersigned, hereby certify under penalty of perjury that to the best of my knowledge, I am not in violation of any Oregon Tax Laws.

Use the following if the Lessee is a corporation, LLC or similar entity I, the undersigned, hereby certify under penalty of perjury that I am authorized to act in behalf of the Lessee, that I have authority and knowledge regarding the payment of taxes, and that Lessee is, to the best of my knowledge, not in violation of any Oregon tax laws.

For the purposes of this certificate, "Oregon Tax Laws" means those programs listed in ORS 305.380(4) which is incorporated herein by this reference. Examples include the state inheritance tax, personal income tax, withholding tax, corporation income and excise taxes, amusement device tax, timber taxes, cigarette tax, other tobacco tax, 9-1-1 emergency communications tax, the homeowners and renters property tax relief program and local taxes administered by the Department of Revenue (Lane Transit District Self-Employment Tax, Lane Transit District Employer Payroll Tax, Tri-County Metropolitan Transit District of Oregon ("Tri-Met") Employer Payroll Tax, and Tri-Met Self-Employment Tax).

Signature: <u>A</u>	2- July for Br	a A. l	Num	\
Date:	6/11/10	·		1
Printed Name:	John Jackeley	Fon	Bave A. Wanner	
Title:	ective Director,	(Au)	riên)	

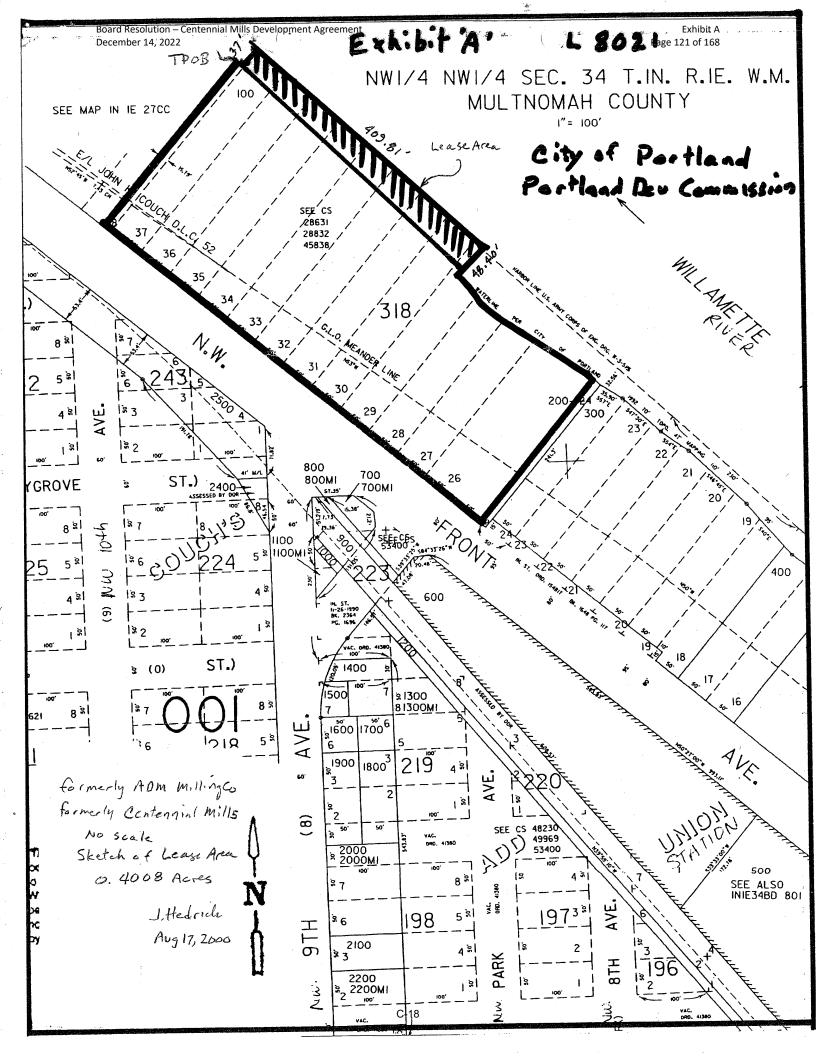


EXHIBIT D FORM OF PERMIT OF ENTRY



REVOCABLE TEMPORARY PERMIT OF ENTRY

THIS REVOCABLE TEMP	PORARY PERMIT OF ENTRY	("Permit") is granted by PROSPER
PORTLAND to	(" <u>Developer</u> ") on	(the "Effective Date") for
the temporary use of the "Property,"	as defined in the Disposition and	Development Agreement between the
parties (the "DDA"), dated	Capitalized terms used bu	at not defined in this Permit have the
meanings given to them in the DDA.		

SECTION 1. LICENSE

- 1.1 <u>Personal License</u>. Subject to the terms and conditions of this Permit, and to the rights of lessees under their current permits affecting the Property, Prosper Portland grants to Developer (which will include the "<u>Developer Parties</u>" as defined below) a revocable, non-exclusive temporary license to enter upon and use the Property, at Developer's sole cost and expense (a) for such investigations, studies, and tests as Developer deems necessary or advisable in order to determine the condition and suitability of the Property for the use and development contemplated in the DDA ("<u>Due Diligence</u>"); and (b) to demolish the existing warehouse and/or the horse barn on the Property, if Developer has so elected in accordance with the terms of Section 2.2 of the DDA (the "<u>Demolition Work</u>"). This Permit is personal to Developer and is not transferable or assignable to any other party or entity without the prior written approval of Prosper Portland.
- AS-IS; ASSUMPTION OF RISK. Entry onto the Property for any Due Diligence or Demolition Work is at Developer's sole cost and risk, and Developer is solely responsible for any theft, damage or destruction to any materials, equipment or any other property of Developer, or of the Developer Parties (defined below), in connection with or incidental to this Permit. Prosper Portland makes no warranty or representation regarding the physical or environmental condition or safety of the Property. Developer accepts the same "AS IS." Developer will be solely responsible for the acts and omissions of its personnel, representatives, employees, contractors, agents, and consultants while on the Property (collectively, the "Developer Parties"). Developer hereby waives and releases any and all claims or causes of actions it might have on account of injury to persons or property arising from any dangerous condition encountered on the Property, whether hidden or otherwise, known or unknown, except to the extent caused by the gross negligence or willful misconduct of Prosper Portland.

SECTION 2. GENERAL REQUIREMENTS

- 2.1 <u>Notice Prior to Entry.</u> In addition to the requirements for Invasive Testing, in Section 4, below, Developer must notify Prosper Portland in writing or by telephone at least twenty-four (24) hours in advance of any entry onto the Property, including names and affiliation of all individuals who will be making such entry. Prosper Portland may accompany each person entering the Property under this Permit and will have the right to observe the Due Diligence or Demolition Work. In no event may Developer or any broker or representative of Developer communicate in any way with any existing users, licensees or permittees of the Property, without Prosper Portland's prior written consent.
- 2.2 <u>No Use of Utilities; Liens.</u> Developer will not use the electricity, gas, water, sewer and other utilities on the Property, unless approved by Prosper Portland in advance in writing, and will not allow any lien of any kind, type or description to be placed or imposed upon the Property or upon any improvements on the Property (if any). If any lien attaches, Developer may bond and contest the validity and/or the amount of such lien, and Developer

must immediately pay any judgment rendered and all costs and charges, and have the lien released promptly at its sole expense.

2.3 <u>Maintenance of Property</u>. Developer will keep and maintain the Property in a clean and orderly condition during Developer's activities and entry under this Permit. No modification of any improvements is permitted under this Agreement except with respect to the Demolition Work and in connection with an approved Testing Plan pursuant to Section 4, below.

SECTION 3. DEMOLITION WORK

- 3.1 <u>Demolition Permit</u>. The parties acknowledge and agree that Prosper Portland has agreed to allow Developer to perform the Demolition Work as an accommodation to Developer and at Developer's request, in connection with Developer's acquisition of the Property, and not as a service to Prosper Portland. In performing the Demolition Work, Developer is not an employee or agent of Prosper Portland. Developer will provide Prosper Portland with a copy of any application for a permit to perform the Demolition Work (the "<u>Demolition Permit</u>"), and Developer will provide Prosper Portland a complete copy of the Demolition Permit issued by the City prior to commencing any Demolition Work on the Property.
- 3.2 Responsibility for Demolition Work; Compliance With Laws. Although the Demolition Work will be subject to observation by Prosper Portland, no supervision, inspection, or observation of the Demolition Work will relieve Contractor from its obligation to perform the Demolition Work in a professional manner, in strict accordance with the approved Demolition Permit, and in compliance with all laws. Developer will be solely responsible for and have control over construction means, methods, techniques, sequences, scheduling and procedures and for coordinating all portions of the Demolition Work, and will be fully and solely responsible for the jobsite safety of such means, methods, techniques, sequences, scheduling or procedures. Developer is responsible for the actions of all its personnel, laborers, suppliers, and subcontractors, and will enforce strict discipline and good order among its employees and other persons carrying out the Demolition Work. Developer is responsible to safely and legally perform the Demolition Work according to all state, federal and local laws, codes and regulations, including but not limited to earthwork shoring, confined space entry, hoisting and rigging, and other practices incidental to the normal prosecution of the Demolition Work. Developer is responsible for all violations of law, in connection with the Demolition Work, including any obstruction of streets or sidewalks, or otherwise. Developer must be familiar with and comply with all federal, state, and local laws, codes, regulations and ordinances applicable to the Demolition Work.
- 3.3 <u>Cost of Demolition Work; Obligation to Complete.</u> Once Developer has commenced the Demolition Work, Developer will be obligated to complete the Demolition Work in accordance with the approved Demolition Permit and all applicable laws, at Developer's sole cost, including all labor, materials, transportation, disposal, equipment, and services required to complete the Demolition Work. If Developer fails to complete the Demolition Work, Prosper Portland may perform such work, and Developer will reimburse Prosper Portland for all fees, costs, and expenses associated therewith. Notwithstanding the foregoing, if the DDA terminates due to a breach by Prosper Portland after Developer has commenced the Demolition Work, then Developer will nevertheless complete the Demolition Work, but any such Demolition Work completed after the date of termination will be at Prosper Portland's sole cost.
- Safety; Responsibility for Damage. Developer is responsible for all compliance with OR-OSHA job safety requirements to include but not limited to job safety personnel protective equipment, preparing a health and safety plan and providing all safety measures as may be necessary or required. Developer will take all reasonable precautions for the safety of the public and all personnel on the job site, and will comply with all applicable provisions of federal, state and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the location where the Demolition Work is being performed. Developer will erect and properly maintain at all times, as required by the conditions and progress of the Demolition Work, all necessary safeguards for protection of workers and the public against any hazards created by the Demolition Work. Developer will designate a responsible employee or associate on the Property, whose duty will be the prevention of accidents. Developer will protect Prosper Portland and the public from injury or loss arising in

connection with the Demolition Work. Developer will be required to remedy any damage, injury, or loss caused by Developer or its agents. Developer will be responsible for protecting all public and private property along and adjacent to the Property from damage attributable to performance of the Developer Work or its agents' actions. If Developer damages any such property, Developer must at once notify the property owner and make, or arrange to make, full restitution. Developer must report, immediately in writing, to Prosper Portland, all pertinent facts relating to such property damage and the ultimate disposition of the claim for damage. Explosives are not permitted without specific written approval from the Prosper Portland.

SECTION 4. INVASIVE TESTING; HAZARDOUS MATERIALS

- Contaminated Media Management. Developer acknowledges that the soil and groundwater on or under the Property may be impacted by historic releases of hazardous substances (as more fully detailed in public records within the custody and control of the Oregon Department of Environmental Quality ("DEQ") and as provided in the DEQ Environmental Cleanup Site Information ("ECSI") database (see ECSI Site ID 5136, Centennial Mills). Further, Developer acknowledges that its exercise of rights under this Permit including, but not limited to, any activities involving drilling, excavation, trench work, management or disposal of soil or groundwater, and/or other activities that breach the existing surface cap or occur below the ground surface, are subject to certain environmental conditions and measures to protect worker safety and other legal obligations including, but not limited to those identified in the December 2014 Selected Remedial Action Record of Decision for the Centennial Mills Site Portland Oregon ("ROD") and as provided in the Contaminated Media Management Plan ("CMMP") dated June 10, 2015.
- 4.2 <u>Testing Plan</u>. Prior to conducting any Due Diligence or Demolition Work that involves or requires soil disturbing activities or other invasive testing ("<u>Invasive Testing</u>"), Developer will work with Prosper Portland's Environmental Coordinator, Colin Polk, to prepare and provide to Prosper Portland a written work plan for the Invasive Testing ("<u>Testing Plan</u>"). Developer must obtain Prosper Portland's prior written approval of the Testing Plan, which approval will not be unreasonably withheld, conditioned, or delayed. The Testing Plan must describe how the Invasive Testing will be performed, how it complies with the ROD and the CMMP, how any materials or waste generated by the Invasive Testing will be handled and disposed of, and approximately how many holes, pits, or wells will be bored, filled or removed, if any. All plans prepared and Invasive Testing must be consistent with DEQ's Environmental Cleanup Quality Assurance Policy (DEQ10-LQ-0063-QAG).
- Compliance with Laws; Copies of Approvals. Developer must (a) perform all activities under this Permit in a safe and workmanlike manner, in material compliance with any Testing Plan and all applicable laws, permits, orders, rules, regulations and ordinances, including all environmental laws and specifically, the ROD and the CMMP; (b) obtain any and all governmental permits and approvals that may be necessary to perform the Demolition Work and/or the Due Diligence, including any required approval(s) from DEQ or the State Historic Preservation Office (SHPO); and (c) provide Prosper Portland with a copy of all permit applications, permits, approvals, and any other related documentation associated with obtaining regulatory authorization for the Demolition Work and/or Due Diligence. Developer will observe all rules, regulations, and laws in effect by any municipality, county, state or federal authority having jurisdiction over the Property, as they relate to the use of the Property. Developer will conduct all sampling, sample transport, and sample analysis in accordance with any QA/QC provisions approved by Prosper Portland or DEQ.
- 4.4 <u>Stop Work</u>. At Prosper Portland's request (which may be made in writing or verbally in person or by telephone), Developer and any Developer Parties will immediately stop any Invasive Testing that Prosper Portland reasonably determines does not comply with an approved Testing Plan. Prosper Portland's approval of a Testing Plan or failure to stop any Invasive Testing will not relieve Developer of responsibility for the Invasive Testing (or any Due Diligence or Demolition Work) or subject Prosper Portland to any liability for the Invasive Testing or the condition or suitability of the Property.
- 4.5 <u>Copies of Reports</u>. Developer will promptly provide Prosper Portland with copies of all final written reports regarding its Due Diligence (with supporting data) produced by or for Developer.

SECTION 5. COMPLETION OF ACTIVITIES

Upon completion of its Due Diligence and/or Demolition Work, Developer will (a) complete measures required by DEQ, the CMMP, the ROD, or any law or any permit for Developer's activities, such as, but not limited to, restoration of the surface cap for any borings or test pits; (b) promptly and adequately repair any damage to the Property caused by the Developer Parties by restoring the damaged area(s) to the same or better condition as existed immediately prior to Developer's entry upon and use of the Property (or such other condition as Prosper Portland may reasonably approve in writing); and (c) promptly remove from the Property all equipment, vehicles, materials, soil, liquids, wastes, and/or other substances that come to be located on the Property as a result of entry on the Property by any Developer Parties. If restoration is impossible or in lieu of restoration, at Prosper Portland's discretion, upon written request, Developer will compensate Prosper Portland for any physical damage to the Property in the amount Prosper Portland may reasonably determine.

SECTION 6. TERM

This Permit is effective commencing on the Effective Date and terminates upon the termination of the DDA. Developer's indemnity obligations under this permit will survive any Closing or termination of the DDA.

SECTION 7. INSURANCE AND INDEMNIFICATION

- 7.1 Developer will obtain and keep in full force and effect during the term of this Permit:
- 7.1.1 A policy of commercial general liability insurance with an insurance company licensed to do business in Oregon and having a rating of at least "A-VII" by A.M. Best Company with a combined single limit of not less than \$5,000,000 combined single limit insuring bodily and/or personal injury, including death and disease, and property damages. Developer's insurance will be primary insurance and any insurance or self-insurance maintained by the City of Portland and/or Prosper Portland will not contribute to it.
- 7.1.2 For automobiles that Developer uses in association with its business, an automobile liability insurance policy covering owned (if used for Developer's business), non-owned, and hired vehicles with a combined single limit bodily injury and property damage limit of not less than One Million Dollars (\$2,000,000).
- 7.1.3 Statutory Workers Compensation insurance covering all employees as required by law (such coverage also shall provide Employer's Liability limits of at least \$1,000,000).
- 7.2 Prior to any Invasive Testing or commencement of Demolition Work, Developer will maintain or cause any third party environmental consultant to maintain in force (a) Pollution Legal Liability coverage for bodily injury, property damages including loss of use, cleanup costs, and defense expenses of limit of at least \$5,000,000; and (b) Professional Liability with an aggregate coverage of limit of at least \$5,000,000.
- 7.3 On or prior to the Effective Date, except for the Workers Compensation Insurance, Developer will provide Certificates of Insurance evidencing the coverages required in this Section 7, naming the City of Portland and Prosper Portland, their elected officials, commissioners, officers, agents and employees as additional insureds. The certificate will provide that coverage afforded and may not be canceled or amended without prior written notice to Prosper Portland.
- 7.4 Developer will defend, indemnify and hold harmless Prosper Portland and the City of Portland (including its officers, directors, agents, employees and elected and appointed officials) from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any attorney's fees in defense of such indemnitees) on account of personal injury, death, or any damage to or loss of property or revenues arising out of or in any way connected with its entry onto the Property or work on the Property under this Permit, or resulting in whole or in part from any act, omission, negligence, fault or violation of law or ordinance by Developer; *provided, however*, that Developer will not be required to indemnify Prosper Portland if and to the extent that any such liabilities were (a) caused by the gross negligence or willful misconduct of

Prosper Portland, its employees, representatives, contractors, or agents, or (b) related to pre-existing environmental conditions at the Property discovered by Developer, unless and to the extent that Developer's actions exacerbated the pre-existing condition, caused or contributed to a release or other environmental condition or harm, or were contrary to any law. If Developer is required to defend the indemnitees, Prosper Portland may select the legal counsel used. If Developer refuses or fails to defend as required, the indemnitees may, at their sole option, settle or defend any claims, and Developer must, upon demand, pay to Prosper Portland the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees.

SECTION 8. MISCELLANEOUS

8.1 <u>Notices</u>. All notices given under this Permit will be in writing and may be delivered, with all applicable delivery and postage charges prepaid, by: (a) personal delivery or messenger; (b) nationally recognized overnight courier service; (c) certified mail through the United States Postal Service, return receipt requested; or (d) e-mail, and addressed as follows:

Prosper Portland: Prosper Portland

Kimberly Branam, Executive Director 220 NW Second Ave., Suite 200

Portland OR 97209

Email: BranamK@prosperportland.us

With a copy to: Prosper Portland, General Counsel

220 NW Second Ave., Suite 200

Portland OR 97209

Email: LegalNotices@prosperportland.us

Developer:

With a copy to: Bachrach Law, P.C.

921 SW Washington St., Suite 320

Portland OR 97205

Email: jeffb@bachrachlaw.com

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof; provided that notices sent by email will be deemed given on the date received if and only if delivered prior to 6:00 p.m. Pacific Time. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision. Notices may be given by counsel to a party on behalf of such party.

- 8.2 <u>Counterparts</u>. This Permit may be executed in counterparts, each of which will be deemed to be an original, and such counterparts, when taken together, will constitute one and the same instrument. Electronic signatures will be valid for all purposes.
- 8.3 <u>Waivers</u>. No waiver made by either party with respect to the performance, or manner or time thereof, of any obligation of the other party or any condition inuring to its benefit under this Permit will be considered a waiver of any other rights of the party making the waiver. No waiver by Prosper Portland or Developer of any provision of this Permit or any breach thereof, will be of any force or effect unless in writing and no such waiver will be construed to be a continuing waiver.
- 8.4 <u>Attorneys' Fees</u>. If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Permit, or with respect to any dispute relating to this Permit, including, without limitation, any action in

which a declaration of rights is sought or an action for rescission, the prevailing or non-defaulting party will be entitled to recover from the losing or defaulting party its reasonable attorneys' and all other fees, costs and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by Law. This provision will cover costs and attorney fees related to or with respect to proceedings in U.S. Bankruptcy Court, including those related to issues unique to bankruptcy Law.

- 8.5 <u>Governing Law; Venue; Consent to Jurisdiction</u>. This Permit will be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Permit by a party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each party, by execution of this Permit, hereby consents to the *in personam* jurisdiction of said courts.
- 8.6 <u>Entire Permit</u>. This Permit and the DDA are the entire agreement between the parties with regard to the Due Diligence or Demolition Work. There is no other oral or written agreement between the parties with regard to this subject matter.
- 8.7 <u>Amendments and Modifications</u>. Any modifications to this Permit must be made in writing and executed by all parties.
- 8.8 <u>No Partnership.</u> Nothing contained in this Permit or any acts of the parties hereby will be deemed or construed by the parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association between any of the parties other than that of independent contracting parties.
- 8.9 Time of Essence. Time is of the essence of this Permit.
- 8.10 <u>No Third-Party Beneficiary Rights</u>. No person other than a party is an intended beneficiary of this Permit, and no person other than a party will have any right to enforce any term of this Permit.

IN WITNESS WHEREOF, the parties have executed this Permit as of the Effective Date.

PROSPER PORTLAND	
	Approved as to form:
Kimberly Branam, Executive Director	
DEVELOPER	

EXHIBIT E

DUE DILIGENCE DOCUMENTS

DSL Lease

- o C-Mills-ODSL Lease (Fully Executed) 07-2010.pdf
- o CMills DSL Modification Application 1-14-20.pdf
- Email: Waterway Lease delinquency
- o Email: RE: Site visit for waterway lease 16644-ML

Environmental

DEQ VCP - Upland

- o 5136_Cent_Mills_CMMP_6-10-15.pdf
- o Final_Report_-_1510034_PDC-Mill Sampling Metals.pdf
- o Final_Report_-_1510035_PDC-Mill ACM Sampling.pdf
- o NW Demo CM HMMP July 6 2015 Rev 9.0.pdf
- o ROD Attachments.pdf
- o ROD Text with Signature.pdf
- Centennial Mills Tanner Creek Sewer Mitigation Phase II DRAFT.pdf
- 2022_0921_HAI_TCS Phase 1 Summary Ltr Final.pdf
 All of the documents found on DEQ's ECSI Site ID 5136, found at the following link: https://www.deq.state.or.us/Webdocs/Forms/Output/FPController.ashx?SourceId=5136&S
 ourceIdType=11

Superfund

- o Centennial Mills SCD Final.pdf
- o EPA Response -Centennial Mills SCD.pdf
- SCD attachments final.pdf

Flour Mill

Flour Mill Core and Shell Costs with Drawings

February 2021

- o 10Flour Mill-4th Floor (north).jpg
- o 11Flour Mill-4th Floor (south).jpg
- o 12Flour Mill-5th Floor (north).jpg
- 13Flour Mill-5th Floor (south).jpg
- 14Flour Mill-Floor of the 6th floor.jpg
- 15Flour Mill-Stairs to 6th Floor.jpg
- 1Flour Mill from Naito.jpg
- 2Flour Mill Basement Door-Water Flooding Out.jpg
- 3Flour Mill-1st Floor off Naito (south).jpg
- 4Flour Mill-1st Floor Off Naito (north).jpg
- o 5Flour Mill-2nd Floor (north).jpg
- o 6Flour Mill-2nd Floor (south).jpg
- 7Flour Mill-Stairs from 2nd to 3rd Floor.jpg
- o 8Flour Mill-3rd Floor (north).jpg
- 9Flour Mill-3rd Floor (south).jpg

- Interior Flour Mill Photos 7 1.5th Floor Flour Mill_1.5th Floor_Pre-Demo Photos 12.jpg Flour Mill 1.5th Floor Pre-Demo Photos 16.jpg Flour Mill 1.5th Floor Pre-Demo Photos 46.jpg Flour Mill 1.5th Floor Pre-Demo Photos 48.jpg Flour Mill_1.5th Floor_Pre-Demo Photos 51.jpg Flour Mill_1.5th Floor_Pre-Demo Photos 63.jpg o IMG 8392.jpg IMG_8410.jpg ↑ 1st Floor Flour Mill Main Floor Pre-Demo Photos 11.jpg Flour Mill Main Floor Pre-Demo Photos 15.jpg Flour Mill_Main Floor_Pre-Demo Photos 20.jpg o IMG 8322.jpg o IMG 8324.jpg IMG_8349.jpg 0 o IMG 8351.jpg IMG_8362.jpg Flour Mill Second Floor Pre-Demo Photos 04.jpg Flour Mill Second Floor Pre-Demo Photos 07.jpg Flour Mill Second Floor Pre-Demo Photos 14.jpg Flour Mill Second Floor Pre-Demo Photos 18.jpg 0 Flour Mill Second Floor Pre-Demo Photos 38.jpg 0 Flour Mill_Second Floor_Pre-Demo Photos 47.jpg Flour Mill Second Floor Pre-Demo Photos 59.jpg 0 Flour Mill_Second Floor_Pre-Demo Photos 61.jpg 0 IMG 7409.jpg 0 o IMG_8439.jpg ☐ 3rd Floor Flour Mill Third Floor Pre-Demo Photos 05.jpg Flour Mill_Third Floor_Pre-Demo Photos 07.jpg Flour Mill Third Floor Pre-Demo Photos 14.jpg 0 Flour Mill Third Floor Pre-Demo Photos 17.jpg 0 Flour Mill Third Floor Pre-Demo Photos 20.jpg 0 Flour Mill_Third Floor_Pre-Demo Photos 26.jpg IMG_8504.jpg 0
- IMG_8547.jpg

 ☐ 4th Floor

0

IMG 8512.jpg

IMG 8519.jpg

- Flour Mill Fourth Floor Pre-Demo Photos 03.jpg
- o Flour Mill_Fourth Floor_Pre-Demo Photos 05.jpg
- o Flour Mill_Fourth Floor_Pre-Demo Photos 08.jpg
- Flour Mill Fourth Floor Pre-Demo Photos 13.jpg
- o Flour Mill Fourth Floor_Pre-Demo Photos 14.jpg
- Flour Mill_Fourth Floor_Pre-Demo Photos 16.jpg

- Flour Mill_Fourth Floor_Pre-Demo Photos 24.jpg
- Flour Mill Fourth Floor Pre-Demo Photos 33.jpg
- o IMG_8590.jpg
- IMG_8592.jpg

5th Floor

- Flour Mill_Fifth Floor_Pre-Demo Photos 003.jpg
- Flour Mill_Fifth Floor_Pre-Demo Photos 015.jpg
- Flour Mill_Fifth Floor_Pre-Demo Photos 021.jpg
- Flour Mill_Fifth Floor_Pre-Demo Photos 024.jpg
- Flour Mill Fifth Floor Pre-Demo Photos 033.jpg
- Flour Mill Fifth Floor Pre-Demo Photos 037.jpg
- Flour Mill_Fifth Floor_Pre-Demo Photos 050.jpg
- Flour Mill Fifth Floor Pre-Demo Photos 070.jpg
- Flour Mill_Fifth Floor_Pre-Demo Photos 074.jpg
- Flour Mill Fifth Floor Pre-Demo Photos 089.jpg
- o IMG 8664.jpg
- IMG_8669.jpg

6th Floor

- Flour Mill_Sixth Floor_Pre-Demo Photos02.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos03.jpg
- Flour Mill Sixth Floor Pre-Demo Photos07.jpg
- Flour Mill Sixth Floor Pre-Demo Photos12.jpg
- Flour Mill Sixth Floor Pre-Demo Photos14.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos16.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos18.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos33.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos38.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos46.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos51.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos67.jpg
- Flour Mill Sixth Floor Pre-Demo Photos69.jpg
- Flour Mill_Sixth Floor_Pre-Demo Photos74.jpg
- IMG_8671.jpg

Basement

- Flour Mill_Basement Floor_Pre-Demo Photos 08.jpg
- o Flour Mill_Basement Floor_Pre-Demo Photos 50.jpg
- Flour Mill Basement Floor Pre-Demo Photos 54.jpg
- Flour Mill_Basement Floor_Pre-Demo Photos 55.jpg
- IMG_8297.jpg

- IMG_1279.jpg
- IMG_7373.jpg
- IMG_7374.jpg
- IMG_7375.jpg
- IMG_7432.jpg
- o IMG 7433.jpg
- IMG_7434.jpg
- IMG_7435.jpg

- IMG_7436.jpgIMG_7437.jpgIMG_7448.jpg
- o IMG_7449.jpg
- o IMG_9043.jpg
- Water Tower.jpg
- Weather Vane.jpg

Licenses

- o CMills_Oceanpark Mechanical Use Permit 8-2021 FINAL.pdf
- o CM-TUP-Just Bucket Staging 7-2020 FINAL.pdf
- CM-TUP-ReBuilding Center 2-2020 FE.pdf

PacifiCorp Easement

- Proposed Easement Description.docx
- o Centennial Mills Feasibility Cost Study 12-9-21

Pedestrian Bridge

- o Bridge A V3.pdf
- o Bridge B V2.pdf
- o Bridge C V1.pdf
- o Bridge Examples.pdf
- DAR PPT Presentation.pdf
- o Fields Park Centennial Mills Pedestrian Bridge DAR submission.pdf
- o Fields Park Centennial Mills Pedestrian Bridge.pdf

Photos

Cenn Mills Drone Footage.mp4

Site Photos

- o 20170718-C-Mills-01.jpg
- o 20170718-C-Mills-02.jpg
- o 20170718-C-Mills-03.jpg
- o 20170718-C-Mills-04.jpg
- o 20170718-C-Mills-05.jpg
- o 20170718-C-Mills-06.jpg
- o 20170718-C-Mills-07.jpg
- o 20170718-C-Mills-09.jpg
- o 20170718-C-Mills-10.jpg
- o 20170718-C-Mills-11.jpg
- o 20170718-C-Mills-12.jpg
- o 20170718-C-Mills-13.jpg
- o 20170718-C-Mills-14.jpg

Prosper Portland Policies

- Construction Business and Workforce Equity Policy.pdf
- o Green Building Policy.pdf

E-4

SHPO Memorandum of Agreement

- o 20160921 Compliance No_Legal Action_-_Accept_Mod (12-2-15).pdf
- o EXECUTED MOA AMENDMENT 20220731 Centennial Mills MOA signed.pdf
- o Final Amended MOA Feb2018.pdf
- o Form of MOA Permit Transfer.pdf
- o Letter re: MOA Amendment 20220809 IP Modification Ltr NWP-2010-540-3.pdf
- o PresIncentivesSummCombined.doc
- o RE EXTERNAL Centennial Mills Portland OE Stipulation DRAFT.msg
- o SHPO ltr 10.07.16.pdf
- o SHPO_MOA_July2015.pdf

Final Historical Artifact List Photos 6-14-2015

- o 04.jpg
- 04A.jpg
- o 05.jpg
- 05A.jpg
- o 06.jpg
- 06A.jpg
- o 07.jpg
- o 07A.jpg
- o 10.jpg
- o 10A.jpg
- o 12.jpg
- o 12A.jpg
- 13.jpg
- o 13A.jpg
- 14.jpg
- 14A.jpg
- o 17.jpg
- 17A.jpg
- o 18.jpg
- o 18A.jpg
- o 19.jpg
- o 19A.jpg
- o 20.jpg
- o 20A.jpg
- o 21.jpg
- o 21A.jpg
- 24.jpg
- o 24A.jpg
- 26.jpg
- 26A.jpg
- o 27.jpg
- o 27A.jpg
- o 32.jpg
- 32A.jpg

- o 34.jpg
- o 34A.jpg
- o 35.jpg
- o 35A.jpg
- o 36.jpg
- o 36A.jpg
- o 38.jpg
- o 38A.jpg
- o 41.jpg
- o 41A.jpg
- o 43.jpg
- o 43A.jpg
- o 44.jpg
- o 44A.jpg
- o 45.jpg
- o 45A.jpg
- o 49.jpg
- o 49A.jpg
- o 51.jpg
- 51A.jpg
- CM Actual Recovered Historical Artifact Salvage Inventory 4-6-2016.xlsx
- o CM Historical Artifact Salvage SHPO FINAL 6-14-15.pdf

Feed Mill Final Historic Artifact List

- 1.pdf
- o 1A.pdf
- o 2.pdf
- o 2A.pdf
- o 3.pdf
- o 3A.pdf
- o 4.pdf
- o 4A.pdf
- 5.pdf
- o 5A.pdf
- o 6.pdf
- o 6A.pdf
- o 8.pdf
- o 8A.pdf
- o CM Historical Artifact Salvage FEED Mill List 10-19-2016.pdf

- o HAER OR-184_Crown Mills Portland, OR FINAL SUBMITAL 7-July-2016.pdf
- o HAER-OR-184-001.tif
- o HAER-OR-184-002.tif
- o HAER-OR-184-003.tif
- o HAER-OR-184-004.tif
- o HAER-OR-184-005.tif
- o HAER-OR-184-006.tif
- o HAER-OR-184-007.tif

- o HAER-OR-184-008.tif
- o HAER-OR-184-009.tif
- o HAER-OR-184-010.tif
- o HAER-OR-184-011.tif
- o HAER-OR-184-012.tif
- o HAER-OR-184-013.tif
- o HAER-OR-184-014.tif
- o HAER-OR-184-015.tif
- o HAER-OR-184-016.tif
- o HAER-OR-184-017.tif
- o HAER-OR-184-018.tif

Site Drawings

- o C0.1.pdf
- o C1.0.pdf
- o C2.0.pdf
- o C3.0.pdf

☐ Title

- o Prelim Update 10-25-21 Centennial Mills.pdf
- Property_Taxes.pdf
- o PTR_Feb2016.pdf
- o R141440 Taxes 21-22 Centennial Mills.pdf
- Tax_Map.pdf
- Vesting Deed.pdf
- o Waterfront Pearl Lease Exhibit.pdf

18_175272 ea summary notes.pdf Centennial Mills Constraints Diagram v2.pdf Centennial Mills OM.pdf Framework Plan 2006.pdf

E-7



Business Equity Program Specifications Exhibit

In furtherance of Prosper Portland's commitment to social and racial equity, the Prosper Portland Board of Commissioners adopted the *Construction Business and Workforce Equity Policy* on April 14, 2021 through Resolution No. 7411 (the "CBWE Policy"). The CBWE Policy establishes two different programs: (i) the Workforce Training and Hiring Program; and (ii) the Business Equity Program (the "BEP"). These specifications (these "Specifications") relate to the BEP, and identify specific requirements that contractors, developers, borrowers, grantees, purchasers, or other parties with whom Prosper Portland does business and to whom the BEP applies (each a "Recipient") must meet to comply with its contractual obligations. By attaching these Specifications to the contract, agreement, or instrument to which they are an exhibit (the "Contract"), the requirements of these Specifications are incorporated into the Contract.

The goal of the BEP is to improve outcomes for local small businesses and support the growth of construction and development firms owned by people of color and women by providing opportunities for State of Oregon Certified Firms. "Certified Firms" are Disadvantaged/Minority/Women/Emerging Small Business and Service-Disabled Veteran (sometimes abbreviated as "D/M/W/ESB/SDV") firms as certified by the State of Oregon's Certification Office for Business Inclusion and Diversity ("COBID")

1. PROGRAM APPLICABILITY

These Specifications apply to the construction project described in the Contract (the "**Project**"), including construction-related professional services, such as design and engineering, associated with the Project, except to the extent otherwise expressly stated in the Contract.¹ Notwithstanding anything to the contrary in these Specifications, where a Recipient is not directly undertaking construction (e.g., a developer is instead contracting with a prime contractor to undertake construction), the Recipient must see to it that applicable requirements in these Specifications are passed through to its contractor and subcontractors, and ensure that any contractor / subcontractors comply with these Specifications and thereby enable Recipient to comply with these

- A Prosper Portland Personal Services Contract in the construction context for any amount.
- A Prosper Portland Flexible Services Contract in the construction context for any amount.
- A Prosper Portland-Owned Construction Contract with Hard Construction Costs greater than \$200,000.
- A Prosper Portland Sponsored Project receiving more than \$300,000 of Prosper Portland Resources to support a project with Hard Construction Costs greater than \$200,000.
- A sale of Prosper Portland real property to a private party with a purchase price greater than \$300,000 that is expected to involve Hard Construction Costs greater than \$200,000.
- An Intergovernmental Agreement with Hard Construction Costs greater than \$200,000, whether project is contracted by Prosper Portland or another agency.

¹ Pursuant to the CBWE Policy, the BEP applies in the following circumstances (this footnote is for informational purposes only; if these Specifications are attached to the Contract, or the Contract otherwise indicates the BEP applies, the BEP applies to the Project):

Specifications.

2. PROGRAM GOALS

The overall goal of the BEP is to ensure Prosper Portland projects and programs provide meaningful professional, supplier, and construction contracting opportunities for Certified Firms. The BEP's goals for the utilization of Certified Firms are as follows:

- 22% of the Project's total Hard Construction Costs (as defined in the CBWE Policy) allocated to Certified Firms, and 14% of Hard Construction Costs (which counts towards the overall 22% goal) allocated to any combination of DBE and/or MBE firms.
- 20% of the Project's professional services² costs allocated to Certified Firms.

Prosper Portland strongly encourages Recipients to promote their prime contractors to utilize Certified Firms for all divisions of work. A directory of Certified Firms can be found by visiting the State of Oregon's COBID website at: https://oregon4biz.diversitysoftware.com/

For construction contracts not subject to ORS 279C.305 (e.g., Sponsored Projects (as defined in the CBWE Policy) and Prosper Portland-Owned alternative contracts), Prosper Portland encourages opportunities for smaller contractors and Certified Firms. Prime contractors who intend to self-perform more than 10% of the trade work to complete a project or an entire Construction Specifications Institute (CSI) Master Format trade division (e.g., excluding superintendence, supervision, mobilization, etc.) will be required to have the written authorization of Prosper Portland, who may approve a higher percentage based on the type, size, available subcontractors, and other relevant project criteria.

3. STANDARDS OF COMPLIANCE

Recipients shall document all good faith efforts taken to contract with Certified Firms. If a Recipient, or a prime contractor/ consultant thereof, has difficulty in achieving BEP goals, it is such Recipient's and prime contractor's/consultant's obligation to immediately notify Prosper Portland and seek guidance. The following tasks are minimum reasonable and necessary steps to comply with BEP goals:

a. Initial meeting

Recipients shall attend an initial kickoff meeting with Prosper Portland Project Staff and Compliance Team at the earliest possible opportunity. Recipients of Prosper Portland project support on BEP applicable projects shall bring the following to the initial meeting:

- Project Description;
- Project Design/Construction Schedule; and
- Professional Services Team List (A/E, Survey etc.).

The purposes of the initial meeting are:

- To answer questions the Recipient may have regarding compliance with BEP and Prosper Portland's equity goals;
- o For the Recipient to obtain information from Prosper Portland regarding resources the

² For purposes of this goal, the term "professional services" means services within the scope of the professional practice of architecture, engineering, or registered land surveying, or those services performed by any architect, landscape architect, professional engineer or registered land surveyor in a professional capacity.

- Recipient may utilize in meeting its obligations under the BEP;
- For the Prosper Portland Compliance Team to explain the Utilization Plan (as explained below);
- To explain the Ongoing Compliance Report Requirements in the City of Portland's Contract Compliance Reporting System (CCRS) with the City of Portland Compliance Staff,
- o To explain how the projects utilization is reported on Prosper Portland's website, and
- To explain the ramifications of noncompliance with this guidance, including debarment and liquidated damages.

If Hard Construction Costs are \$1,000,000 or more, the Recipient and its prime contractor shall attend an additional meeting with Prosper Portland's Compliance team and agency partners to review the scopes of work and determine a potential Outreach Plan at the earliest possible time, and no later than two (2) months before bidding on construction contracts and the Project begins.

b. Outreach Methods - Additional Assistance

Recipients, with and through their prime contractor, shall conduct outreach so that Certified Firms have at least fifteen (15) business days after the conclusion of such outreach to respond to any bidding deadlines and be considered for construction contracts on the Project. Any changes to this schedule must be approved by Prosper Portland. Recipients, with and through their prime contractor, consultant are encouraged to engage in additional outreach methods to ensure maximum participation by Certified Firms, including but not limited to:

- i. Working with the assistance of Prosper Portland's Partners (See list of partnering organizations in section 6, below) to develop an outreach plan; and
- ii. Hold Outreach events at Partnering Organizations meetings or spaces.

c. Reporting Requirements (CCRS)

BEP applicable projects are subject to compliance reporting requirements. Recipients are required to provide all contract compliance-related data electronically in the City of Portland's Contract Compliance Reporting System (CCRS).

All parties identified are responsible for responding to any instructions or requests for information from the City of Portland's Compliance Officer and Prosper Portland's Compliance Coordinator (see Section 5) and should regularly check the CCRS to manage contact information and contract records.

Recipients, with and through their prime contractor, consultant are responsible for ensuring all subcontractors/subconsultants have completed all requested items and that their contact information is accurate and up to date. Prosper Portland may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award.

Information related to contractor/ consultant access of the system will be provided to a designated point of contact upon notification. The CCRS is web-based and can be accessed at the following internet address: https://portlandoregon.diversitycompliance.com/

i. Utilization Plan (UP)

The UP is due to Prosper Portland from a Recipient, with and through their prime contractor, consultant at the **beginning of the project for soft costs** and **one (1) month before construction begins** for hard costs. A completed UP is required to be submitted electronically in the CCRS. On-screen instructions in the CCRS will guide you through the UP-submittal process. The UP must list ALL subcontractors/subconsultants to be used on the project, their corresponding type of work, their subcontract amount, and their Certified Firm status, if applicable, regardless of the dollar amount. After submission of the UP, you may review your Dashboard for status updates.

ii. Monthly Reporting

Recipients, or any prime contractor thereof, shall submit records of subcontractor/ subconsultant payments via the CCRS by the 15th day of each month once work has commenced and shall ensure that subcontractors/subconsultants are confirming payments reported to them in the system. Subprime firms are also responsible for reporting participation of lower tier subs.

iii. Subcontractor Changes

If any subcontractor/subconsultant is added or replaced after the UP is submitted, the Recipient, and any prime contractor/ consultant thereof, shall make good faith efforts to solicit bids from Certified Firms for the work to be performed.

All subcontractor/subconsultant changes/requests shall be made in the CCRS and will include supporting documentation of the foregoing prior to making any changes. A tutorial for adding subcontractors can be found here:

https://portlandoregon.diversitycompliance.com/Help/Tutorial/TutorialView.asp?XID=566 6&TFL=RequestingASub

A Recipient, or any prime contractor/ consultant thereof, shall not add, delete, or replace any subcontractor without prior written consent from Prosper Portland.

iv. Good Faith Effort Documentation

D/M/W/ESB/SDV BIDS RECEIVED LOG: Recipient shall provide upon request if BEP program goals are not met:

- (1) If the CCRS shows that the program goals have not been met, the Recipient, with and through their prime contractor, must submit Form 2 and additional documentation as required. To submit Form 2 and additional documentation, click Attach Waiver Files. When finished click Save Waiver Details before leaving the plan or attempting to complete another step.
- (2) Any of Recipient's bidders must have contacted Certified Firm subcontractors/subconsultants in writing to advise them of potential subcontracting/subconsulting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors/subconsultants the same information and informing them of the date and time that sub-bids are due.
- (3) Any Recipient, with and through their prime contractor/consultant, must have obtained a minimum of three (3) written bids from Certified Firms that specialize in the type of work that will be subcontracted/sub consulted. Bidders shall submit additional

information and provide clarification upon request.

v. Final Reporting

All reporting is due in the **CCRS** 60 days after the Project is complete.

The Project's Business Equity Utilization will be posted on Prosper Portland's website (https://www.prosperportland.us) during the life of the project.

4. CONSEQUENCES OF NON-COMPLIANCES WITH BEP

Prosper Portland's commitment to construction business equity is reflected, in part, by the cost of administering and promoting the BEP and of Prosper Portland's initiatives to advance equity in the context of the construction industry. Failure of any Recipient to meet BEP requirements deprives Prosper Portland of the benefits of these costs and efforts, and impairs Prosper Portland's attempts to promote contractor diversity and to provide equitable opportunities to the public. A Recipient's failure to meet the requirements of these Specifications, including but not limited to the timely submission of required documentation, constitutes a material breach of these Specifications and thus the Contract. In the event of a material breach of these Specifications by any Recipient or an entity for whom a Recipient is responsible (e.g., a contractor or subcontractor performing work on the Project), in the sole discretion of Prosper Portland, Prosper Portland may take any or all the following actions (without limiting any other rights or remedies Prosper Portland may have under the Contract):

a. Withholding Progress Payments

If the Contract provides for progress payments, Prosper Portland may withhold all or part of any payments until the breach is remedied to Prosper Portland's reasonable satisfaction. If payments are so withheld, the Recipient shall in no event be entitled to interest on said payments, if reinstituted, unless otherwise required by applicable law.

b. Liquidated Damages

It would be difficult, if not impossible, to assess actual damages or costs incurred by Prosper Portland for a Recipient's failure to comply with the Specifications. Therefore, for violations of these Specifications, Prosper Portland reserves the right to assess an amount of liquidated damages of up to \$150,000 based upon the seriousness of the violation, as determined by Prosper Portland. These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by a Recipient's failure to comply with the Specifications or that may otherwise be available to Prosper Portland under any other agreement with the Recipient.

c. Notification of Possible Debarment

Recipient's acknowledge that failure to comply with the Specifications may lead to the Recipient's disqualification from bidding on and receiving other Prosper Portland contracts for a minimum of two years and a maximum of three years based on the violation.

d. Other Remedies

The remedies that are noted above do not limit any other remedies available to Prosper Portland under the Contract, at law, or in equity in the event that the Recipient fails to meet the requirements of the Specifications.

5. REVIEW OF RECORDS

Prosper Portland shall be entitled to inspect and copy any books and records of any such Recipient related to its compliance or non-compliance with the Specifications within 7 days of the date

when a Recipient receives a request under this provision. In the event that a Recipient fails to provide its books and records for inspection and copying when requested under this provision, such failure shall constitute a material breach of the Specifications and permit the imposition of any of the remedies set forth above. This provision does not limit any other audit or inspection rights Prosper Portland may have under the Contract.

6. CONTACTS

Compliance Team

Wendy Wilcox- (Business and Workforce Equity Compliance Coordinator) wilcoxw@prosperportland.us | 503.823.3236

Ay Saechao – City of Portland Compliance Officer (Reporting Liaison) <u>Ay.Saechao@portlandoregon.gov</u> | 503.823.1090

John Cardenas (Sr. Construction Business and Workforce Equity Project Manager) cardenasj@prosperportland.us | 503-823-3253

Partnering Organizations

COBID-Certification Office for Business Inclusion and Diversity-

https://oregon4biz.diversitysoftware.com/

PBDG-Professional Business Development Group

http://pbdgweb.com/

NAMC-National Association of Minority Contractors of Oregon

http://namc-oregon.org/

Latino Built

https://latinobuilt.org

OAME-Oregon Association of Minority Entrepreneurs

https://oame.org/

CCRS Links

Contract Compliance Reporting System

https://portlandoregon.diveristycompliance.com

Changing a subcontractor

https://portlandoregon.diversitycompliance.com/Help/Tutorial/TutorialView.asp?XID=5666 &TFL= RequestingA

PROSPER PORTLAND Green Building Policy

Approved by the PROSPER PORTLAND Board of Commissioners on May 13, 2015

PROSPER PORTLAND creates economic growth and opportunity for Portland.

1.0 OBJECTIVES OF THE PROSPER PORTLAND GREEN BUILDING POLICY

The objective of the PROSPER PORTLAND Green Building Policy (this "Green Building Policy" or "this policy") is to ensure that PROSPER PORTLAND's strategic goals in development and construction advance environmental, social, and economic conditions by:

- Promoting Green Building practices that protect human health and the quality of air, water, and other natural resources and maintaining consistency with the City of Portland's Climate Action Plan;
- Maximizing public benefits via new construction and redevelopment projects receiving PROSPER PORTLAND Financial Assistance as well as in PROSPER PORTLAND's own real property portfolio to increase return on investment, attract and retain tenants, and create equitable access to well-performing and healthy buildings for Portlanders;
- Leveraging economic development opportunities to grow Portland's global reputation of deep industry expertise in sustainable design, development, and construction; and
- Providing flexibility for borrowers and other partners to incorporate Green Building practices in all projects to the maximum extent practical.

Note: Capitalized terms in this policy are defined in Section 7 below.

2.0 APPLICABILITY

This policy applies to all PROSPER PORTLAND projects that include both a Transaction Type in Section 2.1 <u>and</u> a Project Type in Section 2.2:

2.1 TRANSACTION TYPES

- A project receiving PROSPER PORTLAND Financial Assistance greater than or equal to two hundred thousand dollars (\$200,000);
- All real property dispositions; and
- PROSPER PORTLAND owned and leased real property at time of lease agreement or planned improvement.

2.2 PROJECT TYPES

- New construction and Major Renovations of commercial and mixed-use buildings;
- Tenant Improvements; and
- New or renovated stand-alone parking structures that are not a part of a broader Green Building project scope.

Once PROSPER PORTLAND has confirmed that one of the above transaction types has triggered this policy, PROSPER PORTLAND and/or the borrower will use Section 2.2 to determine which building requirements are necessary to comply with this policy.

3.0 POLICY REQUIREMENTS

3.1 NEW CONSTRUCTION AND MAJOR RENOVATIONS OF COMMERCIAL AND MIXED-USE BUILDINGS

- Commercial / Mixed-Use Buildings greater than or equal to fifty thousand (≥50,000) square feet or greater than or equal to thirty (30) residential units must register and certify for the U.S. Green Building Council's Leadership in Energy and Environmental Design (LEED) at the Gold level.
- Commercial / Mixed-Use Buildings less than fifty thousand (<50,000) square feet or less than thirty (30) residential units must register and certify for either LEED at the Gold level or Earth Advantage at the Gold level.

3.2 TENANT IMPROVEMENTS

- Commercial / Mixed-Use Buildings greater than or equal to five thousand (≥5,000) square feet with major modifications to the building's mechanical, electrical, and plumbing systems must register and certify for **LEED at the Silver level**.
- Commercial / Mixed-Use Buildings less than five thousand (<5,000) square feet or minor tenant improvement modifications must use <u>Creating a High Performance</u> <u>Workplace: Portland's Green Tenant Improvement Guide</u>. (This is a guiding document only and does not require registration or certification of the project.)

3.3 PARKING STRUCTURES

 New or renovated standalone parking structures that are not a part of a new construction or renovation project must register and certify for Parksmart at the Gold level.

4.0 GOOD FAITH DEPOSIT

Borrowers will be required to provide PROSPER PORTLAND with a good faith deposit to enforce compliance with the requirements of this policy.

5.0 EXEMPTIONS

Only the PROSPER PORTLAND Board of Commissioners may exempt PROSPER PORTLAND projects from this policy.

6.0 IMPLEMENTATION

The Executive Director is hereby authorized to (a) administer the policy; (b) create and periodically update administrative policies or procedures to guide policy implementation; and (c) resolve any dispute arising from the application, administration, or enforcement of the policy.

7.0 DEFINITIONS

Capitalized terms in this policy have the following meanings:

Green Building:

Green building is the practice of creating structures and using processes that are environmentally responsible and resource-efficient throughout a building's lifecycle from siting to design, construction, operation, maintenance, renovation and

deconstruction.1

Financial (A) A direct loan or grant of funds by PROSPER PORTLAND to a borrower, or

(B) an

Assistance: indirect financial benefit resulting from PROSPER PORTLAND's write-down

on the value of land in a real estate transaction

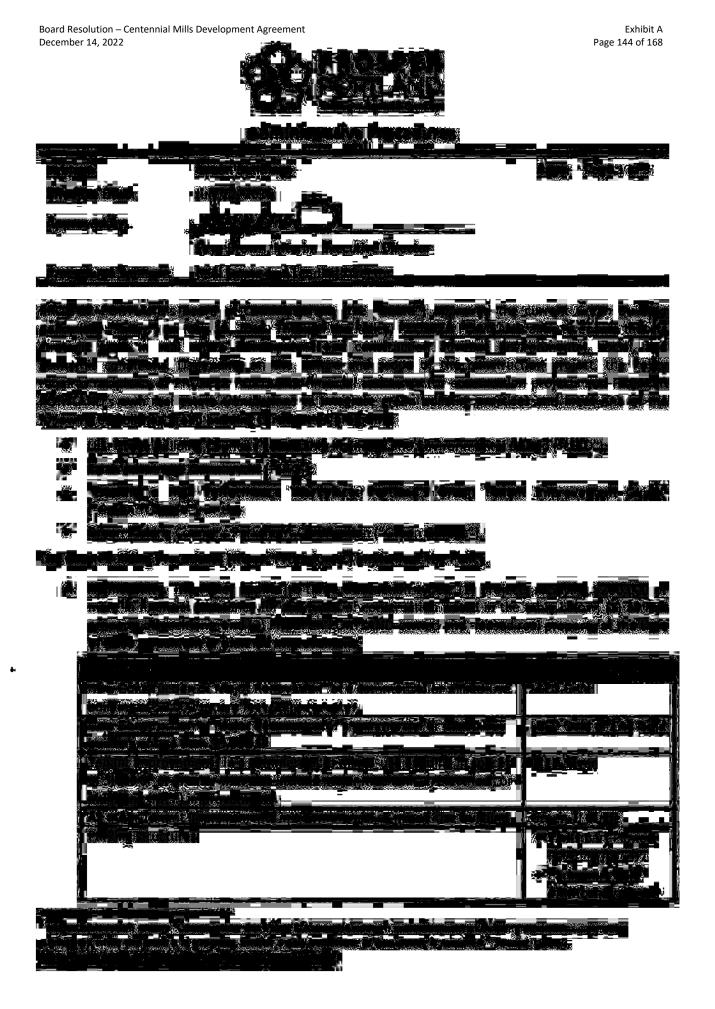
Major Construction work that is extensive enough such that normal building

Renovation: operations cannot be performed while the work is in progress, and/or a new

certificate of occupancy is required.²

 $^{^1 \ \}text{U.S. Environmental Protection Agency,} \ \underline{\text{http://www.epa.gov/greenbuilding/pubs/about.htm}}$

² Source: U.S. Green Building Council http://www.usgbc.org/Docs/Archive/General/Docs5546.pdf

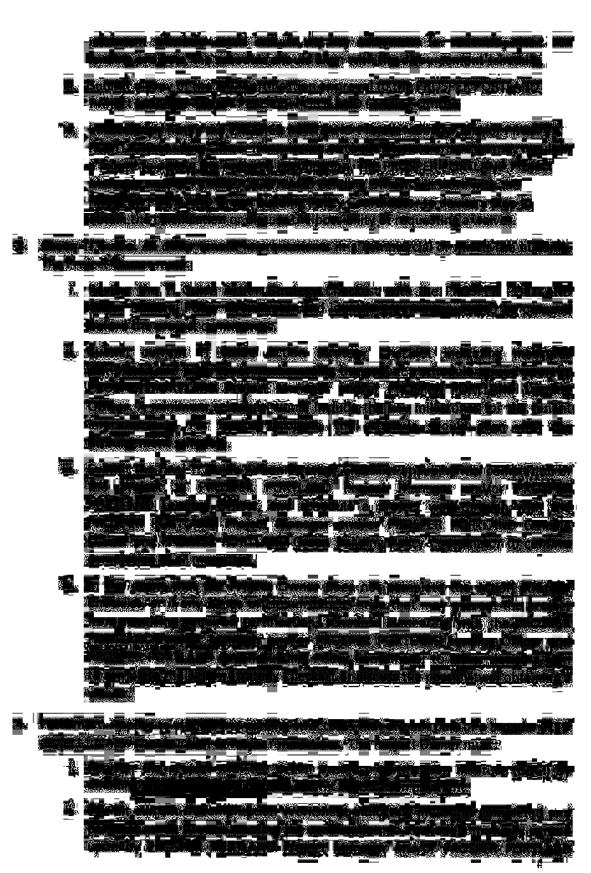


Subject: Green Building Procedures Page 2 of 5

- B. Authority. The Board's approval is required to change the Policy and approve any requested exemption or waiver. PROSPER PORTLAND's Executive Director is authorized to administer the Policy, create and periodically update administrative policies or procedures to guide implementation of the Policy, and resolve disputes arising from the application, administration, or enforcement of the Policy.
- C. Certifications. If the Policy applies to a particular project, the "Project Owner" (defined as property owner, business owner, recipient of PROSPER PORTLAND's financial assistance, or PROSPER PORTLAND in the case of PROSPER PORTLAND-owned or -leased property) must comply with the following. (While this section summarizes each certification process, Project Owners are ultimately responsible for completing all steps that may be required by the certifying entity to comply with the Policy).
 - 1. LEED. New Construction and Major Renovations of commercial and mixed-use buildings (greater than or equal to 50,000 SF) and Tenant Improvements (greater than or equal to 5,000 SF) with major modifications to the building's major systems. The Project Owner must:
 - Determine the appropriate LEED rating system and version for the project. The Project Owner may choose from whichever certification version is active and the rating system most applicable to the project's profile.
 - ii. Register the project with the Green Business Certification Institute and submit proof of registration to the assigned PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer.
 - iii. Submit the current LEED Checklist indicating point goals and progress toward meeting the goal on a schedule agreed upon by the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer. A minimum schedule will include completion of key milestones (e.g., schematic design, design development, construction documents, entitlements). For projects where PROSPER PORTLAND is the lender, the submittal schedule should align with the disbursement schedule.
 - iv. Submit a copy of the LEED Certification approval to Green Business Certification Institute.
 - v. Immediately notify the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer if any issues or circumstances arise that may result in a failure to obtain the required certification. The PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer will work with the PROSPER PORTLAND Green Building Policy Coordinator to devise a plan to obtain the certification or discuss the possibility of requesting a waiver.
 - 2. **EAC.** New Construction and Major Renovations of commercial and mixed-use buildings (less than 50,000 SF). The Project Owner must:
 - i. Register the project for EAC certification with Earth Advantage.
 - ii. Submit the current EAC Project Tracker indicating measures completed and progress made toward the goal on a schedule agreed upon by PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer. A

h





Subject: Green Building Procedures Page 4 of 5

Lending Officer. A minimum schedule would include the key milestones. For lending projects, the schedule should align with the disbursement schedule.

- iii. Submit a copy of the Parksmart Certification to the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer.
- iv. If any issues or circumstances arise that may result in a failure to obtain the required certification, the Project Owner must immediately notify the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer who will work with the PROSPER PORTLAND Green Building Policy Coordinator to devise a plan to obtain the certification or discuss the possibility of requesting a waiver.
- D. Enforcement. The Project Owner's failure to comply with these Procedures may, at PROSPER PORTLAND's sole discretion, subject the Project Owner to liquidated damages, forfeiture of the good faith deposit, debarment from participation on future PROSPER PORTLAND projects, or some combination thereof.
 - 1. Liquidated Damages. Failure to comply with the Policy and these Procedures may subject the Project Owner to liquidated damages. Liquidated damages shall be established by PROSPER PORTLAND and stated within the binding sale, loan, or other project document with the Project Owner. Liquidated damages are the default mechanism to enforce Policy compliance and will usually be an amount of \$150,000; however, the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer, in consultation with the PROSPER PORTLAND Green Building Policy Coordinator, may elect to establish a different amount in the case of a particularly large or small project so that the amount of liquidated damages is proportionate to the project and provides an incentive for compliance.
 - 2. Good Faith Deposit. In lieu of liquidated damages, PROSPER PORTLAND may require the Project Owner to provide a good faith deposit or promissory note to ensure Policy compliance. The amount will be jointly determined by the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer and the PROSPER PORTLAND Green Building Coordinator. PROSPER PORTLAND will return the deposit when the Project Owner provides the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer with notice of certification approval or an accepted waiver of non-compliance. In the event the project fails to obtain certification, the Project Owner shall forfeit the good faith deposit to PROSPER PORTLAND.
 - Debarment. Failure to comply with the Policy and these Procedures may also affect the Project Owner's eligibility to participate on future PROSPER PORTLAND-supported projects.
- E. Exemptions. This section describes the criteria and process to exempt a project from the Policy. Exemptions should be sought prior to the commencement of the project. Exceptions are not encouraged and require approval from the PROSPER PORTLAND Executive Director and Board of Commissioners.
 - 1. Criteria. The Project Owner must demonstrate that compliance with the Policy: (a) will burden the project with extraordinary costs affecting the economic feasibility of the

Page 5 of 5 Subject: Green Building Procedures

> project; or (b) is not feasible for reasons other than cost, given the particular circumstances of the project.

2. Process.

- i. The Project Owner must submit a written request for an exemption to the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer that details the rationale for the request and provides documents that support the case.
- ii. PROSPER PORTLAND staff, including the Green Building Policy Coordinator, will review the request and make a recommendation to the PROSPER PORTLAND Executive Director. If the Executive Director supports the exemption, the request will be submitted to the PROSPER PORTLAND Board of Commissioners which has the sole authority to approve the exemption request.
- iii. If an exemption is approved, the Project Owner must agree to integrate green building practices and design into the project to the maximum extent possible and provide the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer with reports indicating the green efforts.
- Waiver for Non-Compliance. A Project Owner may seek a Waiver for Non-Compliance should G. the project be denied certification from the applicable certification body or not fulfill the requirements in the Green TI Guide Checklist. The process to obtain a Waiver for Non-Compliance is as follows:
 - 1. The Project Owner must submit a written request for a waiver to the PROSPER PORTLAND Project Manager and/or PROSPER PORTLAND Lending Officer that details the rationale for the request including economic and logistical feasibility and documents that support the case including the ruling from the certifying agency. (PROSPER PORTLAND will serve as certifying agency for the Green TI Guide Checklist.)
 - 2. PROSPER PORTLAND staff will review the request and make a recommendation to the PROSPER PORTLAND Executive Director. If the Executive Director supports the waiver, the request will be submitted to the PROSPER PORTLAND Board of Commissioners which has the sole authority to grant the waiver request.



Workforce Training and Hiring Program Specifications Exhibit

In furtherance of Prosper Portland's commitment to social and racial equity, the Prosper Portland Board of Commissioners adopted the *Construction Business and Workforce Equity Policy* on April 14, 2021 through Resolution No. 7411 (the "CBWE Policy"). The CBWE Policy establishes two different programs: (i) the Business Equity Program, and (ii) the Workforce Training and Hiring Program ("WTHP"). These specifications (these "Specifications") relate to the WTHP, and identify specific requirements that contractors, developers, borrowers, grantees, purchasers, or other parties with whom Prosper Portland does business and to whom the WTHP applies (each a "Recipient") must meet to comply with its contractual obligations. By attaching these Specifications to the contract, agreement, or instrument to which they are an exhibit (the "Contract"), the requirements of these Specifications are incorporated into the Contract.

The goal of the WTHP is for each Recipient's project workforce to reflect workforce diversity in the city of Portland, and to ensure that Prosper Portland's contracting dollars provide equitable opportunities to Portland's diverse populations, including those who have been historically underrepresented in the construction trades.

1. PROGRAM APPLICABILITY

These Specifications apply to the construction project described in the Contract (the "**Project**"), but not to Soft Construction Costs (as defined in the CBWE Policy), except to the extent otherwise expressly stated in the Contract.¹ Notwithstanding anything to the contrary in these Specifications, where a Recipient is not directly undertaking construction (e.g., a developer is instead contracting with a prime contractor to

- A Prosper Portland-Owned Construction Contract consisting of construction work greater than \$300,000.
- A Prosper Portland-Sponsored Project consisting of construction, the WTHP will apply if the project receives \$300,000 or more of Prosper Portland Resources to support a project with a Hard Construction Cost greater than \$1,000,000.
- A sale of Prosper Portland real property to a private party with a purchase price greater than \$300,000 that is expected to involve Hard Construction Costs greater than \$300,000.
- A Prosper Portland-Intergovernmental Agreement consisting of construction work greater than \$300,000.

If the WTHP applies, it applies to the prime contractor and all subcontracts with values of \$100,000 or greater, but not to subcontracts with values of less than \$100,000. The WTHP does not apply to Personal Services Contracts, Flexible Services Contracts, and services contracts or agreements not involving construction work.

¹ Pursuant to the CBWE Policy, the WTHP applies in the following circumstances (this footnote is for informational purposes only; if these Specifications are attached to the Contract, or the Contract otherwise indicates the WTHP applies, the WTHP applies to the Project):

undertake construction), the Recipient must see to it that applicable requirements in these Specifications are passed through to its contractor and subcontractors, and ensure that any contractor / subcontractors comply with these Specifications and thereby enable Recipient to comply with these Specifications.

2. PROGRAM REQUIREMENTS AND GOALS

Recipients must do the following:

- Ensure that a minimum requirement of twenty percent (20%) of labor hours in each apprenticeable trade performed by any Recipient (or its prime contractor/subcontractor, as applicable), are filled by State Registered apprentices if working an excess of 300 hours or more on any trade; and
- Use active, good faith efforts towards achieving workforce goals of hiring thirty percent (30%) minority workers and fifteen percent (15%) women workers. This goal will be measured in aggregate by combining both apprentice hours and journey hours. Although goals are measured in aggregate, Prosper Portland staff may nonetheless collect this data in a disaggregated manner (e.g., collecting data about journey and apprentice performance separately) to help inform future policy development.
- Not intentionally divide subcontracts into smaller scopes to avoid any requirements of the WTHP.

3. STANDARDS OF COMPLIANCE

Recipients shall comply with the following requirements:

a. Initial Meeting

Recipient shall attend an initial kickoff meeting with Prosper Portland's Compliance Coordinator at the earliest possible opportunity.

Recipients shall bring the following to the initial meeting:

- Project description;
- Proposed project schedule; and,
- Scopes of work, if any, to be subcontracted on the project.

Purpose of initial meeting:

- Answer questions Recipient may have regarding the WTHP;
- Identify any barriers to compliance and provide assistance, if possible;
- Present the ongoing compliance reporting requirements in the City of Portland's LCP Tracker Reporting System; and
- Explain the ramifications of noncompliance with this guidance, including but not necessarily limited to liquidated damages, withholding of progress payments (if applicable), and debarment.

b. Subcontractor Workforce Plan

Any Recipient required to register as a training agent pursuant to Section 4(a), below, shall submit **Exhibit 2**, "Workforce Plan," prior to beginning work on the Project or within five (5) calendar days after the execution of an applicable subcontract, whichever occurs first. Work by any Recipient shall not begin prior to submission of such documentation. Failure to timely and properly enroll as a training agent prior to beginning work may subject a Recipient to liquidated damages.

4. APPRENTICESHIP REQUIREMENTS

a. Training Agent

Any Recipient (or their prime contractor and any subcontractor at any tier) that directly employs workers and has a subcontract of \$100,000 or more on a WTHP Project must be registered as a training agent with an Oregon Bureau of Labor and Industries (**BOLI**) approved training program. Registration as a training agent in a specific trade is not required if there are no training programs in that trade.

Any Recipient (or any prime contractor or subcontractor, as applicable) must submit proof to the Compliance Officer that they are registered Training Agents with BOLI <u>prior to beginning any work on the Project</u>. Failure to register as a training agent prior to beginning work may subject a Recipient to liquidated damages.

- i. Only training programs approved by and registered with BOLI may be used to fulfill training requirements under WTHP.
- **ii.** Training is intended to be primarily on-the-job training in apprenticeable crafts, and does not include classifications such as flag person, timekeeper, office engineer, estimator, bookkeeper, clerk/typist, fire fighter, or secretary. Hours performed in crafts which are not apprenticeable occupations are exempt from training agent requirements.

b. Use of Apprentices

Any Recipient shall:

- i. Ensure that a minimum of twenty percent (20%) of labor hours in each apprenticeable trade performed on a Project are worked by state registered apprentices throughout the duration of such Project. Recipients shall fulfill the twenty percent (20%) apprenticeship hours requirement without exceeding the apprentice ratios approved by the applicable apprenticeship program;
- **ii.** Pay all apprentices the wages required by any applicable collective bargaining contract or pursuant to state or federal law and regulations;
- **iii.** Not use workers previously employed at journey-level or those who have successfully completed a training course leading to journey-level status to satisfy the requirements of these provisions;
- iv. Notify the Compliance Officer when an apprentice is hired for this Project;
- **v.** Count apprentice hours as follows:
 - (1) Compile hours worked on the Project by apprentices enrolled in state-approved apprenticeship programs. If a Recipient is unable to fulfill its twenty percent (20%) requirement, then the Recipient may also use the methods below:
 - (a) Compile hours worked on the project by apprentices who are required to be away from the job site for related training during the course of the Project, but only if the apprentice is rehired by the same employer after completion of training; and
 - (b) Compile hours worked on the project by graduates of state-registered apprenticeship programs, provided that such hours are worked within the 12-month period following the apprentice's completion date.

c. Use Apprenticeship Programs for Referrals

Recipients must follow each of these steps in seeking apprentice referrals:

- i. Contact the appropriate apprenticeship program or dispatch center to request apprentices who are enrolled in the apprenticeship program;
- **ii.** Request female or minority apprentices from union or open shop apprenticeship programs if such an action will help remedy historical underutilization in the Recipient's (or its

- contractor's or subcontractors') workforce;
- **iii.** Keep a written record of any request for apprentices, including name of the contact person at apprenticeship program, phone, fax, e-mail, date, time, job location, start date, etc.; and
- **iv.** Make reasonable best efforts to recruit apprentice applicants from community organizations/recruitment resources, and seek to enroll them into an apprenticeship program, if the apprenticeship program is unable to supply an apprentice and if the program is open for applications or allows direct entry from community resources.

NOTE: Recipients may contact the Compliance Officer for assistance regarding the apprentice referral process, or may utilize Exhibit 3, Request for Apprentice form, to document their efforts. A list of community organizations/recruitment resources is also available.

5. WORKFORCE DIVERSITY GOAL

Recipient shall make all active, good faith efforts consistent with applicable law to achieve workforce hiring goals of thirty percent (30%) minority and fifteen percent (15%) women workers, including apprenticeship and journey level hours, where applicable. See Exhibit 1 for a description of good faith recruitment efforts.

When hiring, requesting, recruiting, or replacing workers for a WTHP Project, any Recipient's active and good faith efforts to employ a diverse workforce shall include, without limitation:

- requesting minority and female applicants;
- making requests to unions, community-based organizations, apprenticeship programs, and other community resources, both union-affiliated and non-union-affiliated; and,
- making requests to community resources who assist contractors with recruitment and referral of workers.

Additional documentation will be requested by the Compliance Officer from any Recipient not meeting workforce diversity goals if it appears, in the sole discretion of Prosper Portland, that the Recipient has not made reasonable and necessary efforts to acquire an equitably diverse workforce. The Recipient shall provide any such requested documentation to the Compliance Officer within 7 calendar days.

Direct hiring of employees (such as "walk-ons") without providing notification of job opportunity may not constitute a reasonable effort.

6. PROJECT REPORTING

Any Recipient (and its contractors or subcontractors at any tier) that directly employs workers and has a subcontract of \$100,000 or more on the Project shall provide monthly employment reporting online via the City of Portland's LCP Tracker reporting system by the fifth day of each month.

The Compliance Officer and Compliance Coordinator will review the monthly reporting and share the status of the project to the Prosper Portland project team. The monthly reporting data from the Project will also be posted on Prosper Portland's website. Failure to submit timely monthly reporting could adversely affect the Project's ability to meet the program requirements and thus lead to Liquidated Damages as referenced in Section 7 below, or other consequences if applicable in the Contract. At the completion of the Project the Compliance Officer and Compliance Coordinator will provide a project closeout report documenting the overall compliance of the project.

The Compliance Officer's failure to object to the timeliness or completeness of documentation

submitted by any Recipient shall not relieve them of the requirements of this section.

A copy of certified payroll reports may be requested by the Compliance Officer to verify information in any workforce compliance report provided by a Recipient. Such payroll reports shall be provided within seven days of the date when a Recipient receives the request for the payroll reports.

7. CONSEQUENCES OF NON-COMPLIANCE WITH WTHP

Prosper Portland's commitment to construction workforce equity is reflected, in part, by the cost of administering and promoting the WTHP and of Prosper Portland's initiatives to advance equity in the context of the construction industry. Failure of any Recipient to meet WTHP requirements deprives Prosper Portland of the benefits of these costs and efforts, and impairs Prosper Portland's attempts to promote workforce diversity and to provide equitable opportunities to the public. A Recipient's failure to meet the requirements of these Specifications, including but not limited to the timely submission of required documentation, constitutes a material breach of these Specifications and thus the Contract.

In the event of a material breach of these Specifications by any Recipient or an entity for whom a Recipient is responsible (e.g., a contractor or subcontractor performing work on the Project), in the sole discretion of Prosper Portland, Prosper Portland may take any or all the following actions (without limiting any other rights or remedies Prosper Portland may have under the Contract):

a. Withholding Progress Payments

If the Contract provides for progress payments, Prosper Portland may withhold all or part of any payments until the breach is remedied to Prosper Portland's reasonable satisfaction. If payments are so withheld, the Recipient shall in no event be entitled to interest on said payments, if reinstituted, unless otherwise required by applicable law.

b. Liquidated Damages for Noncompliance with the Apprenticeship Requirements

It would be difficult, if not impossible, to assess actual damages or costs incurred by Prosper Portland for a Recipient's failure to comply with the Specifications. Therefore, if the Recipient fails to comply with the apprenticeship requirements of this program, the Recipient agrees to pay the sum of \$250 per day for each day of missed apprenticeship hours. These damages are independent of any liquidated damages that may be assessed due to any delay in the project caused by a Recipient's failure to comply with the Specifications or that may otherwise be available to Prosper Portland under any other agreement with the Recipient. For other violations of these Specifications not relating to missed apprenticeship hours, Prosper Portland reserves the right to assess an amount of liquidated damages of up to \$150,000 based upon the seriousness of the violation, as determined by Prosper Portland.

c. Notification of Possible Debarment

Recipient's acknowledge that failure to comply with the Specifications may lead to the Recipient's disqualification from bidding on and receiving other Prosper Portland contracts for a minimum of two years and a maximum of three years based on the violation.

d. Other Remedies

The remedies that are noted above do not limit any other remedies available to Prosper Portland under the Contract, at law, or in equity in the event that the Recipient fails to meet the requirements of the Specifications.

8. REVIEW OF RECORDS

Prosper Portland shall be entitled to inspect and copy any books and records of any such Recipient related to its compliance or non-compliance with the Specifications within 7 days of the date when a Recipient receives a request under this provision. In the event that a Recipient fails to provide its books and records for inspection and copying when requested under this provision, such failure shall constitute a material breach of the Specifications and permit the imposition of any of the remedies set forth above. This provision does not limit any other audit or inspection rights Prosper Portland may have under the Contract.

9. CONTACTS

a. For any notices or questions regarding apprenticeships, please contact:

Bureau of Labor & Industries

Apprenticeship & Training Division 800 N.E. Oregon St. # 32 Portland, OR 97232 (971) 673-0760

b. For any notices or questions regarding Prosper Portland WTHP requirements, please contact either:

Ay Saechao

Compliance Officer

City of Portland/Outside Services, Purchasing 1120 S.W. Fifth Ave., Room 1000 Portland, OR 97204 (503) 823-1090 <u>Ay.Saechao@portlandoregon.gov</u>

Wendy Wilcox

Compliance Coordinator

Prosper Portland
220 NW 2nd Ave. Suite 200
Portland, OR 97209-3859
(503) 823-3236 wilcoxw@prosperportland.us

ATTACHMENTS:

Exhibit 1: Recommended Recruitment & Retention Practices

Exhibit 2: Workforce Plan

Exhibit 3: Request for Apprentice form

Exhibit 4: Recipient Checklist

Recommended Good Faith Recruitment & Retention Practices

A. Recruitment Efforts

Good faith recruitment efforts are intensive, active, sincere, and result-oriented actions taken, and best practices used, by a Recipient designed to accomplish WTHP and Equal Employment Opportunity Program objectives and requirements. Good faith recruitment efforts include, but are not limited to:

- 1. Working aggressively with the Recipient's Joint Apprenticeship Training Committee (**JATC**) to recruit minorities, women and disadvantaged individuals and documenting these efforts;
- 2. Requesting JATC ideas on how to increase employment of underutilized groups, and assist JATC in conducting a recruitment workshop with potential minority and women employees;
- Supporting JATC by giving all apprentices referred to the Recipient by JATC a fair chance to perform successfully, allowing for possible lack of previous experience, and taking responsibility for providing on- the-job training, understanding that all apprentices should not be expected to have previous experience;
- 4. Participation in job fairs, school-to-work, and community events to recruit minorities, women, and disadvantaged individuals into the construction trades;
- 5. Allowing scheduled job site visits by participants in community programs, as safety allows, to increase awareness of job and training opportunities in the construction trades; and
- 6. Retaining job applications of those recruited but not selected for a job, in the event a relevant job becomes open.

B. Retention Efforts

Recipients shall attempt to retain minorities, women, and disadvantaged employees by implementing steps such as the following:

- 1. Maintaining a harassment-free work place;
- 2. Ensuring that employees are knowledgeable about company policies if they need to report a harassment issue;
- 3. Making reasonable best efforts to keep apprentices working and train them in all work processes described in the apprenticeship standards;
- 4. Reviewing and disseminating, at least annually, the obligations under the WTHP, as well as the Recipient's EEO policy, with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions;
- 5. Reviewing, at least annually, of all supervisors' adherence to and performance under the Recipient's EEO
 - policies and affirmative action obligations;
- 6. Taking steps to reduce any negative isolation of, or hostile attitudes or behavior toward, minorities and women (e.g., have several minorities and women at the job site; provide access to support group system);
- 7. Providing adequate toilet facilities for women on the job site; and
- 8. Matching minority, female, or disadvantaged apprentices who may need support to complete their apprenticeship programs with a journey-level mentor.

Workforce Plan

This form must be completed by any Recipient. Please state how you plan to perform the work on this project, indicating the number of journey workers and apprentices by trade. This workforce plan must demonstrate how your company will fulfill all Workforce Training & Hiring Program (WTHP) requirements, including utilization of apprentices. Refer to Exhibit 5 for apprenticeship ratio data. Complete all columns, with project-specific information.

Bid#	_ Contract A	mount \$		Proje	ct Name:				
Company Name	any Name Federal ID #:								
Prime Contractor:				Subco	ontractor				
List all Trades to be us on this Project	sed Jou	al # of rney orkers	Total # of Apprentices	Total # of Female Workers	Total # of Minority Workers	# and Lev New Posi (i.e. 1A o	tions	Anticipated Start Date	Estimated Total Hours (all workers in each trade)
Please list the apprentic must approve all apprer			s project. If your	need more space	 -, attach an addit	 ional sheet o	f paper	. The Complian	nce Agency
Name of App	prentice		Trac	de	Race	Gender	Date	e of Hire	
If no current apprenti	ices, indicate	when an	d how they wil	l be hired:					
Person in your company	/ who does h	iring:							
Company:								_Fax:	
E-mail address for subm	nitting Montl	nly Emplo	yment Reports	s via e-mail:					
Are you a registered Tra	nining Agenti	? Yes □ I	No □ Are yo	u a Union 🗆 o	r Open Shop □	contracto	r?		
, With which JATCs are yo			•						
Apprentice committee of	_		_						
							v.		
			Phone:						
			Phone: Fax:						
Prepared by: (Print and s						Date:			
Prime Contractor must of	complete an	d submit	to as designate	ed to Compliar	ce Agency:				
Workforce Training & Hi	ring Progran	n 1120 S	S.W. Fifth Aven	ue #750, Portla	nd, OR 97204	Phone (50	3) 823-	6850 or FAX (503) 823-5539

Request for Apprentice

The contractor may use this form to document efforts when recruiting apprentices.

(Apprenticeship Committee) (Contact/ Dispatcher) Fax Number :	FAX To:				
Request From: Company Name:				er)	
Company Name:	Fax Number : _	Number c	of Pages:		
Registered Training Agent Contact Person	Request From:				
Registered Training Agent Contact Person	Company Name	2:	/		
Apprentice Request: As a registered Training Agent, I am using this form to request referral of an apprentice for employment with my compan in cooperation with the City Workforce Training & Hiring Program. I would like to continue to diversify my workforce Therefore, please make special efforts to include ethnic minorities and women for my consideration, among other available candidates you believe are well-qualified. If I am unable to receive a referral from my apprenticeship program within reasonable time, and my apprenticeship program is open for applications or allows direct entry, I may use this form to request a referral to the apprenticeship program from community recruitment resources. Apprentice referral is needed by this date:	, ,	(Registered Training Agent)	(Contact Person)		
As a registered Training Agent, I am using this form to request referral of an apprentice for employment with my compan in cooperation with the City Workforce Training & Hiring Program. I would like to continue to diversify my workforce Therefore, please make special efforts to include ethnic minorities and women for my consideration, among other available candidates you believe are well-qualified. If I am unable to receive a referral from my apprenticeship program within reasonable time, and my apprenticeship program is open for applications or allows direct entry, I may use this form to request a referral to the apprenticeship program from community recruitment resources. Apprentice referral is needed by this date:	Phone:	Fax:	Date:	Time:	
in cooperation with the City Workforce Training & Hiring Program. I would like to continue to diversify my workforce Therefore, please make special efforts to include ethnic minorities and women for my consideration, among other available candidates you believe are well-qualified. If I am unable to receive a referral from my apprenticeship program within reasonable time, and my apprenticeship program is open for applications or allows direct entry, I may use this form to reasonable time, and my apprenticeship program from community recruitment resources. Apprentice referral to the apprenticeship program from community recruitment resources. Apprentice referral is needed by this date:	Apprentice Rec	quest:			
Expected Length of Employment:	candidates you reasonable tim	believe are well-qualified. If I a e, and my apprenticeship progra	m unable to receive a referral fr m is open for applications or al	om my apprenticeship polows direct entry, I may	rogram within a
Project: Compliance Agency (City of Portland) Number of Apprentices: Trade/Occupation: Number of Apprentices: Trade/Occupation: Minimum qualifications (if different from apprenticeship standards): Safety needs. Hard hat: Gloves: Hard-toed boots: Other? Please fax this Request for Apprentice form to your apprenticeship committee. To document your good faith efforts, copies may also be sent to:	Apprentice refe	erral is needed by this date:	Work Starts:		
Number of Apprentices: Trade/Occupation: Trade/Occupation: Minimum qualifications (if different from apprenticeship standards): Safety needs. Hard hat: Gloves: Hard-toed boots: Other? Please fax this Request for Apprentice form to your apprenticeship committee. To document your good faith efforts, copies may also be sent to:	Job Site Locatio	n:	_Expected Length of Employment	:	
Number of Apprentices: Trade/Occupation: Minimum qualifications (if different from apprenticeship standards): Safety needs. Hard hat: Gloves: Hard-toed boots: Other? Please fax this Request for Apprentice form to your apprenticeship committee. To document your good faith efforts, copies may also be sent to: City Workforce Training & Hiring 1120 SW 5th Ave. Rm 750 Portland, OR 97204 Phone: (503) 823-6850 FAX: (503) 823-5539 (a) For Apprenticeship Program Only Please check the appropriate box and fax to City Workforce Equity Program: [] I was able to dispatch an apprentice to the project listed above. Name of Apprentice Race Gender Term [] I was unable to dispatch an apprentice to the project listed above because	Project:	ect: Compliance Agency (City of Portland)			
Minimum qualifications (if different from apprenticeship standards):	Number of App	rentices:	Trade/Occupation:		
Please fax this Request for Apprentice form to your apprenticeship committee. To document your good faith efforts, copies may also be sent to: City Workforce Training & Hiring 1120 SW 5th Ave. Rm 750 Portland, OR 97204 Phone: (503) 823-6850 FAX: (503) 823-5539 (a) For Apprenticeship Program Only Please check the appropriate box and fax to City Workforce Equity Program: [] I was able to dispatch an apprentice to the project listed above because [] I was unable to dispatch an apprentice to the project listed above because	Number of App	rentices:	Trade/Occupation:		
Please fax this Request for Apprentice form to your apprenticeship committee. To document your good faith efforts, copies may also be sent to: City Workforce Training & Hiring 1120 SW 5th Ave. Rm 750 Portland, OR 97204 Phone: (503) 823-6850 FAX: (503) 823-5539 (a) For Apprenticeship Program Only Please check the appropriate box and fax to City Workforce Equity Program: [] I was able to dispatch an apprentice to the project listed above. Name of Apprentice	Minimum quali	fications (if different from appren	ticeship standards):		
To document your good faith efforts, copies may also be sent to: City Workforce Training & Hiring 1120 SW 5th Ave. Rm 750 Portland, OR 97204 Phone: (503) 823-6850 FAX: (503) 823-5539 (a) For Apprenticeship Program Only Please check the appropriate box and fax to City Workforce Equity Program: [] I was able to dispatch an apprentice to the project listed above. Name of Apprentice	Safety needs.	Hard hat: Gloves:	_ Hard-toed boots:Other	?	
Please check the appropriate box and fax to City Workforce Equity Program: [] I was able to dispatch an apprentice to the project listed above. Name of ApprenticeRaceGenderTerm [] I was unable to dispatch an apprentice to the project listed above because		To document your	good faith efforts, copies may als ty Workforce Training & Hiring 1120 SW 5th Ave. Rm 750 Portland, OR 97204 Phone: (503) 823-6850		
[] I was able to dispatch an apprentice to the project listed above. Name of ApprenticeRaceGenderTerm [] I was unable to dispatch an apprentice to the project listed above because	(a) <u>Fo</u>	r Apprenticeship Program Only			
Name of ApprenticeRaceGenderTerm [] I was unable to dispatch an apprentice to the project listed above because					
[] I was unable to dispatch an apprentice to the project listed above because				orm	
i wa i	[] I was unable	to dispatch an applicative to the	project listed above because	,	

Workforce Training & Hiring Program Prime Contractor Checklist

The following Workforce Training & Hiring Program (WTHP) requirements are a summary of the key contractual obligations of Recipients. It is the Recipient's responsibility to read and fully understand this section of the bid specifications and to comply with all provisions of the program, regardless of whether they appear on this checklist. The City administers this program for the Prosper Portland.

CHECKLIST:

1. Prime Contractor:

- A. Submit Workforce Plan form (Exhibit 2) to Compliance Officer within 15 calendar days after bid opening or prior to contract award, whichever occurs first.
- B. Ensure compliance by all subcontractors with subcontracts of \$100,000 or more and provide them with a copy of the Specifications. Incorporate the Specifications into applicable subcontracts.

2. Subcontractors, at all tiers, with contracts of \$100,000 or more:

Submit Workforce Plan form (Exhibit 2) prior to beginning work on the project or within 5 days of signing subcontracts, whichever occurs first.

3. Prime Contractor and all subcontractors with contracts of \$100,000 or more must:

- A. Before starting work on this project: Submit proof of registration as a Training Agent with the Bureau of Labor & Industry (BOLI), Apprenticeship & Training Division. Not a BOLI registered training agent? Contact BOLI at (971) 673-0760 or the City of Portland at (503) 823-6888 for information on how to become a BOLI registered training agent.
- B. Throughout the duration of the project:
 - 1. Ensure that a minimum of 20% of labor hours in each apprenticeable trade performed by the prime and subcontractors of \$100,000 or more are worked by State-registered apprentices.
 - 2. Strive, actively and in good faith, to meet the applicable workforce diversity goals of employing people of color and women (including both journey level and apprentice workers).
 - 3. Make all active, good faith efforts to employ a workforce that reflects the diversity of the City of Portland, including recruitment of diverse workforce through the unions, apprenticeship programs and other community resources, as described herein.
 - 4. Maintain written documentation of all requests for workers from the unions, apprenticeship programs, and community organizations.
 - 5. When an apprentice is hired, notify the Compliance Officer, Ay Saechao at (503) 823-1090.
 - 6. Submit WTHP reporting online via LCP Tracker by the 5th business day of the month.
 - 7. Communicate with the Compliance Officer early and often regarding any issues with meeting the WTHP requirements.

Exhibit A Page 159 of 168

EXHIBIT G FORM OF MEMORANDUM OF AGREEMENT

After recording return to:

Prosper Portland Attn. Karen L. Harris 220 NW Second Avenue, Suite 200 Portland, OR 97209

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT FOR DISPOSITION AND DEVELOPMENT OF PROPERTY ("Memorandum") will serve as notice to all persons that Prosper Portland, with an address of 222 NW Second Avenue, Portland, Oregon 97209 and MLR Ventures, LLC, an Oregon limited liability company ("Developer"), with an address of _______, entered into an Agreement for Disposition and Development of Property in the River District Urban Renewal Area, effective as of October 13, 2023 and all amendments (collectively "Agreement") relating to Lots 25 through 37, inclusive, and the Southeasterly 15.79 feet of Lot 38, Block 318, COUCH'S ADDITION TO THE CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon (the "Property").

Among other things, the Agreement requires Prosper Portland to convey the Property to Developer upon the satisfaction of certain conditions precedent and requires Developer to construct improvements on the Property, all as more particularly set forth in the Agreement.

Prosper Portland and Developer execute this Memorandum to acknowledge being bound by the Agreement and to give notice of the Agreement to third parties.

This Memorandum is for informational purposes only and nothing contained herein will be deemed to in any way modify or otherwise affect any of the terms and conditions of the Agreement, the terms of which are incorporated herein by reference. This Memorandum is merely a memorandum of the Agreement and is subject to all of the terms, provisions and conditions of the Agreement. In the event of any inconsistency between the terms of the Agreement and this Memorandum, the terms of the Agreement will prevail.

[Signatures and acknowledgements on next page]

PROSPER PORTLAND , the economic development and urban renewal agency of The City of Portland	MLR Ventures, LLC , an Oregon limited liability company				
_	By:				
By: Kimberly Branam, Executive Director	Name:				
	Title:				
STATE OF OREGON)) ss.					
County of Multnomah)					
urban renewal agency for the City of Portland, or	ROSPER PORTLAND, the economic development and				
STATE OF OREGON)) ss.					
County of Multnomah)					
This instrument was acknowledge, as	ed before me on October, 2022, by of MLR Ventures, LLC, on its behalf.				
	NOTARY PUBLIC FOR OREGON My commission expires:				

Exhibit A Page 161 of 168

EXHIBIT H FORM OF DECLARATION OF POST-CLOSING COVENANTS

After recording return to:

Prosper Portland Attn: Karen Harris 220 NW 2nd Ave. Suite 200 Portland, OR 97209

DECLARATION OF COVENANTS AND EQUITABLE SERVITUDES

THIS DECLARATION OF COVENANTS AND EQUITABLE SERVITUDES (the "Declaration") is entered into as of ______, by _____ limited liability company ("Declarant"), in favor of The City of Portland, a municipal corporation of the State of Oregon, acting by and through Prosper Portland, its economic development and urban renewal agency ("Prosper Portland").

WHEREAS, Declarant purchased from Prosper Portland the real property legally described as Lots 25 through 37, inclusive, and the Southeasterly 15.79 feet of Lot 38, Block 318, COUCH'S ADDITION TO THE CITY OF PORTLAND, in the City of Portland, County of Multnomah and State of Oregon (the "*Property*");

WHEREAS, Prosper Portland is a municipal corporation whose purpose is, among other things, to promote workforce development and active reuse of property in the City of Portland; and

NOW THEREFORE, Declarant, as owner of the Property, hereby declares and establishes a covenant that the Property shall be held, sold and conveyed subject to the following restrictions, covenants, and equitable servitudes, which shall run with the Property and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part or land division thereof for the term hereof, and shall inure to the benefit of Prosper Portland.

1. Waiver

Declarant waives its right to recover from, and forever releases and discharges, the City of Portland's and Prosper Portland's commissioners, directors, officers, employees and agents of each of them, and their respective successors and assigns (collectively, "*Prosper Related Parties*") from any and all demands, claims, legal or administrative proceedings, losses, liabilities, damages, penalties, fines, liens, judgments, costs or expenses whatsoever (including, without limitation, attorneys' fees and costs), whether direct or indirect, known or unknown, foreseen or unforeseen, that may arise on account of or in any way be connected with the physical condition of the Property including, without limitation, the environmental condition and history of the Property and any hazardous waste, material, or substance, toxic substance, pollutant, oil, or contaminant, as defined by any federal, state, or local law, rule, order, ordinance, requirement, or regulation on, under or about the Property. Notwithstanding the foregoing, Declarant's release of the City of Portland and its commissioners, directors, officers, employees, agents, successors and assigns does not include

claims against the City of Portland arising from future contamination that may migrate onto the Property after Closing from NW Naito Parkway or other off-Property sources, which claims are released and discharged with respect to Prosper Portland, and its commissioners, directors, officers, employees, agents, successors and assigns.

2. **Indemnity**

- 2.1 Declarant acknowledges that the following documents have been assigned to Declarant and affect the Property: (a) a Memorandum of Agreement, dated July 8, 2015, between Prosper Portland, the United States Corps of Engineers, and the Oregon State Historic Preservation Officer, which agreement was amended and restated as of February 22, 2018, and further amended on July 31, 2022 (the "Historic Preservation Agreement"); (b) a Record of Decision approved by the Oregon Department of Environmental Quality on December 4, 2014 (the "2014 ROD"); and (c) a Submerged and Submersible Land Lease (ML-8021), between Prosper Portland and the State of Oregon, by and through the Oregon State Land Board and the Department of State Lands ("DSL"), dated July 2, 2010 (as amended, the "DSL Lease").
- 2.2 Declarant will defend, indemnify and hold harmless the Prosper Related Parties from and against any and all liabilities, claims, demands, damages, actions, costs, penalties, losses and expenses (including any related professional consultant fees or attorney's fees) ("Claims") resulting in whole or in part from any act, omission, negligence, fault or violation of, or failure to comply with, the Historic Preservation Agreement, the 2014 ROD, and the DSL Lease by Declarant, its employees, agents, contractors, sub-contractors, invitees, directors or officers; provided that such indemnity obligation shall not extend to the City of Portland for future Claims arising from any contamination that may migrate onto the Property after Closing from NW Naito Parkway or other off-Property sources. If Declarant is required to defend the indemnitees, Declarant may select the legal counsel used, subject to reasonable approval by Prosper Portland. If Declarant refuses or fails to defend as required, the indemnitees may, at their sole option, settle or defend any Claims, and Declarant must, upon demand, pay to indemnitees the full costs of any settlement, judgment, or defense, including all expenses and attorneys' fees. This indemnity provision will not apply to Claims resulting from the negligence or intentional misconduct of the indemnitees.

3. Run with the Land

Declarant acknowledges and agrees that the waiver in Section 1 touches and concerns the Property because it is intimately bound up with the physical condition of the land, aiding Prosper Portland, as former landowner, and hampering Declarant in a similar capacity. It increases the value of the Property because the sale of the Property to Declarant would not have occurred but for the ability of Declarant to assure Prosper Portland through this waiver that Declarant has done its due diligence on the physical condition of the Property and would not pursue Prosper Portland to help clean up or remedy any future discovered physical or environmental condition.

In addition, the obligation to indemnify the Prosper Related Parties for failure to comply with the Historic Preservation Agreement, the 2014 ROD, and the DSL Lease in Section 2 each concern and relate to the use of the Property in a direct way because, among other things, they constitute a physical advantage to the Property for Declarant by allowing Declarant to comply with

the Historic Preservation Agreement, the 2014 ROD, and the DSL Lease, each of which require physical improvements to the Property, without the involvement or interference of Prosper Portland, which could occur if Prosper Portland were not assured, through this covenant, that it would not be held responsible for the physical improvements to the Property under the Historic Preservation Agreement, the 2014 ROD, and the DSL Lease.

4. Construction Timing

Declarant will Commence Construction on the Property within ten (10) years after the recording date of this Declaration. "Commence Construction" means that permits necessary to commence site work have been obtained, a general contractor has been hired, the contractor has mobilized for construction, and either (a) excavation is occurring on the Property, in which case necessary excavation, shoring and foundation permits must have been obtained, or (b) Declarant has provided Prosper Portland with reasonable evidence of an executed completion guaranty in favor of the construction lender for the Property. The Parties agree that Developer's failure to timely Commence Construction will give rise to liquidated damages in the amount of \$400,000. This liquidated damages amount is deemed to be the best estimate of cost that Prosper Portland would face to promote other development in the Plan area. Upon receipt, Prosper Portland may apply such liquidated damages to other projects in order to achieve its social benefit goals and to compensate for the failure to achieve such goals on the Property. Upon commencement of construction or payment of liquidated damages in full, Prosper Portland shall execute and record a release confirming the extinguishment of this Section 4.

5. Affordable Housing

If Declarant constructs multi-family residential on the Property, then Declarant will satisfy the City's residential building code and inclusionary housing requirements applicable to such residential development with affordable dwelling units provided on the Property, either in a building or buildings with both market rate and affordable dwelling units or in a building on the Property with only affordable dwelling units.

6. Compliance with Prosper Portland Policies

- 6.1 <u>Policies Apply</u>. Declarant hereby acknowledges and agrees that the development of the Property is and will be subject to the following Prosper Portland policies, as the same may be modified by this **Section 6** (collectively, the "*Policies*"):
 - 6.1.1 Part Three of Prosper Portland's Construction Business and Workforce Equity Policy (set forth in Commission Res. No. 7411), the requirements of which are set forth in the Business Equity Program specifications attached as Exhibit A-1 (the "BEP"). Declarant's obligation is to make a good faith effort to achieve the Program Goals for Certified Firms in Section 2 of the BEP by taking the actions set forth in Section 3 of the BEP. The first sentence of Section 3.b. of the BEP is modified to require Declarant to provide certified firms a reasonable time to respond to a bidding deadline (which may be less than 15 days as circumstances may require), and the second sentence of Section 3.b. of the BEP is modified to require that Declarant provide notice to Prosper Portland of any changes to the schedule (Prosper Portland's approval is not required). Section 3.c.iv(3) of

the BEP is modified to require that Declarant must have made good faith efforts to obtain three (3) written bids from Certified Firms.

- 6.1.2 Prosper Portland's Green Building Policy, the requirements of which are set forth in the specifications attached as <u>Exhibit A-2</u> (the "*Green Building Policy*"); provided however, that references to LEED in the Green Building Policy and this **Section 6** may, at Declarant's election, be replaced by such alternative green building certification as allowed by the City of Portland's Low-Carbon Building requirements.
- 6.1.3 Part Two of Res. No. 7411, the requirements of which are set forth Prosper Portland's Workforce Training and Hiring Program specifications attached as Exhibit A-3 (the "WTHP"). Declarant's obligation is to make a good faith effort to achieve the Program Requirements and Goals in Section 2 of the WTHP by complying with the requirements in Sections 3-6 of the WTHP, as modified by the remainder of this paragraph. Section 4(b) of the WTHP is modified such that if Declarant is unable to meet the minimum labor hours in a trade because apprentices are not reasonably available, failure to meet the minimum targets will not subject Declarant to liquidated damages. The bulleted tasks outlined in Section 5 of the WTHP are intended to be examples of tasks Declarant may undertake to demonstrate good-faith efforts to achieve the workforce diversity goal, and they are not a mandatory or exclusive list of tasks.
- 6.2 Compliance with Policies. Prior to hiring a general contractor or commencing any bidding for construction of a building on the Property, or any portion thereof, Declarant will consult with Prosper Portland's compliance personnel to ensure compliance with the Policies. Declarant will comply with the provisions of the Policies' specifications set forth in the Exhibits and this Section 6. The terms and conditions of this Declaration control if there is any conflict between this Declaration and the Policies. In addition, with respect to the Green Building Policy, Declarant will: (a) provide Prosper Portland with proof that any new building on the Property is registered with the Green Building Certification Institute https://www.usgbc.org/leedonline or such alternative green building certification program permitted under Chapter 33.510.244 of the Portland City Code; b) once construction has commenced, and until obtaining a certificate of occupancy for such building, provide quarterly updates that include a LEED Project Checklist, if applicable, and written description that includes an estimation of the likelihood that requirements will be met or exceeded, or any issues or circumstances that may prevent the building from attaining certification; and (c) following completion of construction of a building on the Property, provide Prosper Portland proof of Project LEED Gold certification or such alternative certification as permitted under the City's code within five (5) business days after receipt by Declarant. If certification of a building is denied, Declarant will immediately contact Prosper Portland to discuss the reason for denial and whether a waiver of the Policy by the Prosper Portland Board of Commissioners is warranted.
- 6.3 <u>Compliance Reporting</u>. Declarant will provide Prosper Portland a report (in a form reasonably acceptable to Prosper Portland) confirming compliance with the Policies within ninety (90) days after issuance of a certificate of occupancy for any building on the Property.
- 6.4 <u>Failure to Comply; Liquidated Damages</u>. Prosper Portland is a public entity that directs its resources, in part, to projects that will also advance important social benefits including

equitable employment and the construction of buildings that are least impactful to the environment. If Prosper Portland believes that Declarant or any of its contractors has failed to comply with any or all of the Policies in constructing a new building on the Property, or any portion thereof, Prosper Portland will give written notice of such failure in accordance with Section 7.1. The parties agree that Prosper Portland would suffer harm and damages if Declarant or its contractors fails to aid in the advancement of these social benefits by failing to comply with the Policies. The parties further agree that failure to comply with any one of the Policies after the expiration of any cure period will give rise to liquidated damages in the amount up to \$150,000 for each Policy with which Declarant or its contractors fails to comply. The parties agree that this amount is, and it is hereby deemed, the best estimate of cost that Prosper Portland would face to promote equitable employment or to incentivize green building techniques. Notwithstanding any other provision of the Agreement, liquidated damages as provided for herein shall be Prosper Portland's sole remedy in the event of any alleged violation of the Policies. Declarant shall have the right to contest through third-party binding arbitration with the Arbitration Service of Portland, Inc., any assessment of Liquidated Damages for violation of the Policies. Upon receipt, Prosper Portland may apply such liquidated damages to other projects or property in order to achieve its social benefit goals and to compensate for the failure to achieve such goals by Declarant. Notwithstanding any other provision of this Declaration, liquidated damages shall be the sole remedy available in the event of an alleged breach of the Policies.

7. **Enforcement**

- 7.1 Default and Cure. As used in this Declaration, "Default" means a party breaches a material provision of this Declaration, whether by action or inaction, and such breach continues and is not remedied within thirty (30) days after the breaching party receives written notice from the other party describing the breach. If the Default is based on a violation of the Policies in **Section** 6, the written notice of breach must include the specific details of the breach, the specific policy or policies that were breached, the name or names of the contractors or subcontractors whose actions have violated the Policies, and the recommended actions to be taken to cure the breach. In the case of a breach that cannot with prompt and reasonable action be cured within a period of thirty (30) days, a party will not be in Default under this Agreement if such party (a) provides a written response of its intent to cure and commence the cure of the breach within thirty (30) days after receiving written notice from the other party of the breach, and (b) thereafter diligently prosecutes to completion such cure within ninety (90) days (or if such cure requires additional time, then within any such additional time as the parties may agree in writing is reasonably necessary). If a cure period is greater than ninety (90) days, the breaching party will provide the other party with a written assessment of the cure every week describing: the curative actions taken since the last written report, the estimated date by which the cure will be completed, the remaining impediments to completing the cure, and the planned curative acts for the next week.
- 7.2 Specific Performance. Without limiting any remedies that may otherwise be available to a party in the event of a Default, the aggrieved party may institute proceedings to compel injunctive relief or specific performance by the party in Default to the extent permitted by law, including without limitation, seeking an order to compel payment of amounts due under this Declaration. Prosper Portland shall have standing and may bring an action at law or equity in a court of competent jurisdiction to enforce all restrictions and covenants established by this Declaration.

- 8. **Severability**. Invalidation of any of these provisions, by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.
- 9. **Duration**. The covenants granted pursuant to this Declaration shall run with the land as to all property benefited and burdened by such covenants, including any partition or division of such property. The rights, covenants, and obligations contained in this Declaration will bind, burden and benefit Declarant and Prosper Portland, and their respective successors, assigns, heirs, personal representatives, lessees, mortgagees, and beneficiaries under any deed of trust. Upon expiration or fulfillment of any covenant in this Declaration, at the request of Declarant, Prosper Portland shall timely execute and record a release confirming the extinguishment of the covenant. This Declaration shall expire and be deemed automatically extinguished twenty (20) years after the date it is first recorded.
- 10. **Amendment**. Except as provided for in Section 9, this Declaration may not be amended or revoked except by written agreement executed by Prosper Portland and Declarant, their successors and assigns, and recorded in the manner then provided for by law.
- 11. **Choice of Law.** This Declaration shall be interpreted under the laws of the State of Oregon.
- 12. **Attorneys' Fees**. If a suit, action, or other proceeding of any nature whatsoever (including any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Declaration or to interpret or enforce any rights hereunder, the prevailing party shall be entitled to recover its attorneys', paralegals', accountants', and other experts' fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.
- 13. **Entire Agreement; Severability**. This Declaration constitutes the entire agreement between the parties, and shall not be modified or altered in any respect except by a writing signed by the parties.

[Signature pages follow.]

SIGNATURE PAGE FOR DECLARATION OF COVENANTS

DECLARANT:		
a limited liabili	ty company	
By:		
Name: Title:		
STATE OF OREGON)	
COUNTY OF MULTNOMAH)ss.)	
This instrument was acknowledged, as the	before me on March, 20, by	LLC
alimited l	iability company.	
	NOTARY PUBLIC FOR OF	REGON

SIGNATURE PAGE FOR DECLARATION OF COVENANTS

City of Portland, a municipal corp of Oregon acting by and through Preconomic development and urban r	rosper Portland its		
By:			
Name: Kimberly Branam Title: Executive Director			
STATE OF OREGON))ss.		
COUNTY OF MULTNOMAH)		
This instrument was acknowledged Branam as Executive Director of Pr		, 202	by Kimberly

NOTARY PUBLIC FOR OREGON



RESOLUTION NO. 7470

DECOLUTION TITLE.					
CONVEY APPROX	E TERMS OF A DISPOSITION AND DEVE IMATELY 4.4 ACRES OF PROSPER POR FAX INCREMENT FINANCE DISTRICT				
Adopte	ed by the Prosper Portland Commission on	December 14	ł, 2022		
PRESENT FOR	COMMISSIONERS		VOTE		
VOTE	COMMISSIONERS	Yea	Nay	Abstain	
✓	Chair Gustavo J. Cruz, Jr.	✓			
\checkmark	Commissioner William Myers	\checkmark			
	Commissioner Peter Platt				
✓	Commissioner Sam Rodriguez	✓			
✓	Commissioner Serena Stoudamire Wesley	√			
☐ Consent Agenda ✓ Regular Agenda					
	CERTIFICATION				
The undersigned hereby certifies that: The attached resolution is a true and correct copy of the resolution as finally adopted at a Board					
Meeting of the Prosper Portland Commission and as duly recorded in the official minutes of the meeting.					
			Date:		
			December 1	6, 2022	
Pam Feigenbutz, F	Recording Secretary				