

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7578

APPROVING TERMS OF A PURCHASE AND SALE AGREEMENT WITH BEAM CONSTRUCTION & MANAGEMENT, LLC AND COLAS DEVELOPMENT GROUP, LLC FOR THE 0.80 ACRE PROSPER PORTLAND-OWNED PARCEL BETWEEN SE SALMON, SE WATER, AND SE MAIN STREETS

WHEREAS, in 2017 Prosper Portland acquired approximately 2.19 acres of real property from the Oregon Department of Transportation, comprised of three parcels abutting SE Water Avenue to the west and bounded by SE Taylor Street to the north and SE Madison Street to the south (“Property”), as authorized by Prosper Portland Board of Commissioners (“Board”) Resolution No. 7216, adopted November 9, 2016;

WHEREAS, the Property is within the Central Eastside Tax Increment Financing District, as established pursuant to the Central Eastside Urban Renewal Plan, which was adopted by the Board and approved by the Portland City Council in Central Eastside;

WHEREAS, Prosper Portland staff engaged in a competitive solicitation for developer partners for the Property, and in 2018 selected Beam Construction & Management, LLC (“Beam”) as its preferred development partner for the Property;

WHEREAS, Prosper Portland staff have been working with Beam and Colas Development Group, LLC (collectively the “Buyer”) towards terms of a Purchase and Sale for the middle of the Property’s three parcels, comprising 0.80 acres between SE Salmon, SE Water and SE Main Streets (“Block B”);

WHEREAS, Buyer plans to develop Block B as an approximately 65,000 square foot live music and events venue that can accommodate approximately 3,500 occupants;

WHEREAS, the proposed terms of the Purchase and Sale Agreement are attached as Exhibit A to this Resolution (the “Term Sheet”);

WHEREAS, as described in the Term Sheet, the Purchase and Sale Agreement would convey Block B to Buyer at the appraised Fair Market Value price of \$2,410,000 following a 120-day due diligence period and 270-day closing period, which will begin after land use approval has been finalized for the proposed use of the property; and,

WHEREAS, Prosper Portland would retain the right to repurchase the property at the sale price if Buyer fails to commence vertical construction of Block B within 1-year of the closing date.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to enter into and execute a Purchase and Sale Agreement for Block B on terms substantially consistent with the Term Sheet attached to this Resolution as Exhibit A;

BE IT FURTHER RESOLVED, the Executive Director is hereby authorized to execute any amendments or other modifications to the Purchase and Sale Agreement, provided that the terms of the same do not materially increase Prosper Portland’s obligations or risks, as determined by the Executive Director in consultation with Prosper Portland’s General Counsel; and

BE IT FURTHER RESOLVED, that with the approval of not less than four Board members and of all Board members present at the meeting, this Resolution will take effect immediately upon adoption, otherwise it will become effective thirty (30) days after adoption by the Board.

Adopted by the Prosper Portland Commission on September 18, 2024

A handwritten signature in blue ink that reads "Pam Feigenbutz". The signature is written in a cursive style with a large, stylized initial "P".

Pam Feigenbutz, Recording Secretary

TERM SHEET

(Workshop Block B Term Sheet and Purchase & Sale Agreement)

This Term Sheet replaces and supersedes the Term Sheet between the Parties dated April 15, 2020, as amended. This Term Sheet is a nonbinding statement of the parties’ current intent, understandings and assumptions regarding the fundamental framework and structure related to the subject matter hereof. This Term Sheet outlines the principal anticipated terms for a binding purchase and sale agreement between Beam Development, assumed business name of Beam Construction & Management, LLC (or one or more affiliates, subsidiaries, or assigns as permitted in this Term Sheet) and Colas Development Group, LLC (or one or more affiliates, subsidiaries, or assigns as permitted in this Term Sheet) (collectively “Buyer”) and Prosper Portland for the development of the Workshop Block B parcel located along the Property (defined below).

This Term Sheet is for a purchase and sale agreement between the Buyer and Prosper Portland (the “Agreement” or the “Purchase and Sale Agreement”). Nothing contained in this Term Sheet or any acts of the parties hereto will be deemed or construed to create the relationship of principal and agent, or of partnership, or of joint venture or of any other association other than that of independent parties seeking to memorialize certain possible terms for a future binding agreement. Neither party makes any representations or warranties, whether express or implied, by execution of this Term Sheet.

Parties to Agreement	Prosper Portland and Buyer. Buyer may not assign its interest under the Agreement without the prior written consent of Prosper Portland (which consent will not be unreasonably withheld, conditioned or delayed); provided that no consent will be required to an assignment to an entity so long as Buyer has control over the development of the Project.
Property	The real property described in this Term Sheet totals .80 acres and is located between SE Water Ave and SE Main Street in Portland’s Central Eastside Urban Renewal Area, more particularly described as Parcel 2 in the Deed recorded in Multnomah County Official Records as Instrument Number 2017-076262 (the “Property”): Parcel 2: NWC/ MAIN & SE WATER AVE, .80 acres / 34,862 SF (“Block B”)
Block B Purchase and Sale Agreement	Prosper Portland and Buyer will enter into the Agreement for the sale of Block B on terms and conditions substantially consistent with those described in this Term Sheet.
Block B Purchase Price	Prosper Portland obtained an appraisal for Block B in August 2024 (the “Block B Appraisal”). The Block B Appraised Value of Block B as of the appraisal date is \$2,410,000 (“FMV”), which will be the purchase price.
Block B Purchase and Sale Agreement; Key Terms	The Purchase and Sale Agreement will include the following key terms: <ul style="list-style-type: none"> • <u>Due Diligence Period</u>: Buyer will have one hundred (120) days from a fully executed Purchase and Sale Agreement to complete due diligence and determine, in Buyer’s sole discretion, the feasibility of the Property, including title and entitlements, for Buyer’s intended use (the “Due Diligence Period”). Notwithstanding the foregoing, the Due Diligence Period will not begin until the project has received all final land use approvals,

	<p>including the resolution of all appeals of the same, in the matter of City of Portland File Number LU-23-111784 CU AD (a Type III Conditional Use Review and Adjustment Review), <u>but in no event will the Due Diligence Period extend beyond December 31, 2029.</u></p> <ul style="list-style-type: none">• <u>Deposits:</u> Within three (3) business days after the execution of the Purchase and Sale Agreement and the opening of escrow, Buyer will deposit \$50,000 as a refundable deposit (“First Deposit”). Upon expiration of the Due Diligence Period and Buyer’s approval of all due diligence and feasibility matters, Buyer will deposit an additional \$50,000 (“Second Deposit”), and both deposits will become non-refundable and credited to the Purchase Price.• <u>Closing Costs & Procedures:</u> Prosper Portland will pay the premium for the Owner’s standard coverage policies of title insurance in the face amount of the Purchase Price; real estate excise taxes on the conveyance; transfer taxes, if any; and one-half of the escrow fees. Buyer will pay the cost of recording the deed, any premium for an extended title policy over the standard coverage, and one-half of the escrow fees.• <u>“As-Is”:</u> The Property will be sold to Buyer “as-is, where is, with all faults,” and Prosper Portland will not make representations of any kind regarding the premises, including any representations regarding environmental condition, title condition, utility or right-of-way access, zoning, or suitability for Buyer’s intended use. At Closing, Buyer waives its right to recover from, and forever releases and discharges, Prosper Portland from claims 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 of the Property and hazardous substances on, under or about the Property.• <u>Indemnity:</u> Buyer will protect, defend, indemnify, and hold Prosper Portland (agents and employees) harmless for, from and against any claims, liabilities, damages, liens, attorneys’ fees, penalties, demands, causes of actions and suits of any nature whatsoever arising out of the inspection of and/or entry onto the Property by Buyer, its agents, employees or contractors. This indemnity includes an obligation of Buyer to reimburse Prosper Portland for any and all damage Buyer may cause to the Property in connection with Buyer’s inspection.
Environmental Matters	<p>The estimated cost of environmental remediation of Block B needed in connection with the development of Block B, including removing contaminated and co-mingled (debris-laden) soils and any DEQ-related monitoring and oversight activities and associated fees (the “Remediation Activities”), is estimated to be \$505,000.00.</p> <p>The Purchase and Sale Agreement will require the Buyer to undertake and complete the Remediation Activities, including obtaining a No Further Action letter (or Prospective Purchaser Agreement) and coordinating with DEQ to ensure compliance with the Remedial Action Approach Plan and Contaminated Media Management Plan.</p> <p>Prosper Portland will pay, on a reimbursement basis, for the remediation based on documented environmental remediation costs in accordance with a schedule of values approved in advance by Prosper Portland, not to exceed \$749,000.00.</p>

<p>Block B Project Description</p>	<p><u>Block B Project – Concert Venue</u></p> <p>Current construction plans for Block B include the following (collectively, the “Block B Project”): A live music and events venue that can accommodate approximately 3,500 occupants. The venue will be built to cover the entire Property and will be approximately 65,000 gross sq. ft. The project will include right-of-way dedications and improvements on all three frontages.</p>
<p>Closing Conditions:</p>	<p>Buyer must close on financing that, together with any equity or other financial resources available to Buyer, is sufficient to complete the Block B Project and close on the purchase of Block B not later than 270 days after the end of the Due Diligence Period, but in no event later than June 30, 2030 (the “Closing Date”).</p>
<p>Right to Repurchase</p>	<p>If Buyer fails to commence vertical construction of the Block B Project within one (1) year of the Closing Date (“the Construction Commencement Date”), Prosper Portland will have the right to repurchase the Property by paying to Buyer the Block B Purchase Price. The Construction Commencement Date may be extended one day for each day that Buyer is delayed in the Block B Project due to a force majeure delay, but only upon written agreement by the parties that the delay is reasonable under the circumstances. To exercise such repurchase right, Prosper Portland must give written notice to Buyer of the exercise of such repurchase right no later than 12 months after the Buyer’s deadline to commence vertical construction.</p>
<p>Prosper Portland Policies</p>	<p>The following Prosper Portland policies will apply to the Block B Project:</p> <ul style="list-style-type: none"> - Workforce Training and Hiring Program - Business Equity Policy - Green Building Policy
<p>Prevailing Wage Determination</p>	<p>Prior to the execution of the Purchase and Sale Agreement, Buyer may obtain a determination from the Bureau of Labor and Industries regarding the applicability or inapplicability of prevailing wage laws and regulations (ORS 279C.800, et seq.) to the Block B Project. The parties acknowledge that Buyer anticipates that the Block B Project will not be subject to prevailing wage requirements; provided, however, that Buyer will indemnify Prosper Portland for any claims that Buyer has failed to comply with the Prevailing Wage law.</p>
<p>Exclusivity</p>	<p>If the land use authorization sought by Buyer in City of Portland File Number LU-23-111784 CU AD is denied by the City Council or denied after review by LUBA or an appeals court, the parties agree to enter into good faith negotiations to grant Buyer additional exclusivity rights for Block B.</p>

[Signature Page Follows]

This Term Sheet is made and entered into by and between the parties below as of _____,
2024.

Beam Construction & Management, LLC
d/b/a Beam Development

Colas Development Group, LLC

By: _____
Jonathan Malsin, Manager

By: _____
Andrew Colas, Manager

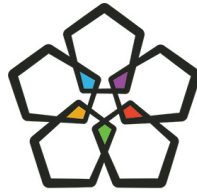
Prosper Portland

By: _____
Kimberly Branam, Executive Director

Approved as to Form:

Prosper Portland Legal Counsel

DRAFT



**PROSPER
PORTLAND**
Building an Equitable Economy

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RESOLUTION TITLE:

APPROVING TERMS OF A PURCHASE AND SALE AGREEMENT WITH BEAM CONSTRUCTION & MANAGEMENT, LLC AND COLAS DEVELOPMENT GROUP, LLC FOR THE 0.80 ACRE PROSPER PORTLAND-OWNED PARCEL BETWEEN SE SALMON, SE WATER, AND SE MAIN STREETS


Adopted by the Prosper Portland Commission on September 18, 2024

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Gustavo J. Cruz, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Marcelino J. Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Felisa Hagins	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Michi Slick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Serena Stoudamire Wesley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> 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: September 20, 2024
Pam Feigenbutz, Recording Secretary	