

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7379

AUTHORIZING THE THIRD LEASE AMENDMENT WITH THE UNITED STATES POSTAL SERVICE TO PROVIDE FOR AN INTERIM RETAIL FACILITY AT 715 NW HOYT STREET

WHEREAS, the acquisition and redevelopment of the United States Postal Service (“USPS”) Property (“Property”) at 715 NW Hoyt Street in the River District Tax Increment Finance District has long been envisioned by the general public, elected officials, and adopted land use and development plans as one of the most significant redevelopment sites in Portland’s central city;

WHEREAS, Prosper Portland acquired the Property in September 2016 and has been preparing a Master Plan for redevelopment of the Property and initiating site preparation activities to facilitate redevelopment;

WHEREAS, one key component of necessary site preparation activities is the demolition of the existing Processing and Distribution Center (“P&DC Facility”);

WHEREAS, USPS currently operates a retail facility within the P&DC Facility pursuant to a Lease with Prosper Portland dated July 26, 2016 (“Lease”);

WHEREAS, Prosper Portland and USPS have worked collaboratively to develop plans for an interim retail location (“Interim Retail Facility”) for USPS located in the existing parking garage adjacent to the P&DC Facility, which would allow USPS to relocate its retail operations from the P&DC Facility and thus enable the P&DC Facility’s demolition before the end of the Lease’s term; and

WHEREAS, Prosper Portland and USPS are actively negotiating an amendment to the Lease, which is anticipated to be substantially similar to the form attached as Exhibit A to this Resolution (“Lease Amendment”), and which would obligate Prosper Portland to undertake construction of the Interim Retail Facility and amend the leased premises to be comprised solely of the Interim Retail Facility.

NOW, THEREFORE, BE IT RESOLVED, the Prosper Portland Board of Commissioners (“Board”) authorizes the Executive Director to enter into the Lease Amendment in substantially the form attached as Exhibit A, together with such negotiated changes as may be deemed necessary or appropriate by the Executive Director so long as such changes do not materially increase Prosper Portland’s financial obligations or materially alter Prosper Portland’s risks, as determined in consultation with the General Counsel;

BE IT FURTHER RESOLVED, that the Prosper Portland Board authorizes the Executive Director to take such further actions as may be necessary or appropriate to complete the transactions described in

the Lease Amendment, including, without limitation, execution of further instruments, amendments, certificates, or other documents that do not materially increase Prosper Portland’s financial obligations or materially alter Prosper Portland’s risks, as determined in consultation with the General Counsel; and

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

Adopted by the Prosper Portland Commission on June 10, 2020



Pam Feigenbutz, Recording Secretary

THIRD AMENDMENT TO LEASE

(Portland – P&DC 406785-906)

715 NW Hoyt Street, Ste. 4069, Portland, OR 97208-4067

This Third Amendment to Lease (this “**Third Amendment**”) is entered into by and between the **United States Postal Service** (the “**Postal Service**”) and **Prosper Portland**, the assumed business name of the Portland Development Commission, the urban renewal and economic development authority of the City of Portland, an Oregon municipal corporation (“**Prosper Portland**” or “**Landlord**”) (collectively, the “**Parties**”).

Recitals

A. Pursuant to a Purchase and Sale Agreement between the Parties dated May 5, 2016 (the “**PSA**”), Prosper Portland purchased from the Postal Service the ~13.3 acre property bounded by NW Hoyt St., NW 9th Ave., NW Lovejoy St and NW Broadway located at 715 NW Hoyt Street, Portland, Oregon (the “**Property**”).

B. As contemplated in the PSA, Prosper Portland and the Postal Service entered into a lease dated July 26, 2016 (together with the Lease Addendum attached thereto, the “**Initial Lease**”), in which Prosper Portland as Landlord leased the Property to the Postal Service as Tenant, in accordance with the terms and conditions set forth in the Initial Lease. The Initial Lease was amended by First Amendment to the Lease executed on September 6, 2016 changing the effective date of the Initial Lease, and a Second Amendment to Lease incorrectly identified as the First Amendment, effective as of February 1, 2019 (the “**Second Amendment**”). The Initial Lease, as amended by the First Amendment, the Second Amendment and this Third Amendment, is collectively referred to as the “**Lease**”. Capitalized terms used, but not defined, in this Amendment have the meanings given in the Lease.

B. The Parties’ agreements contemplate that in order for the Postal Service to vacate the Property, its two main component parts, the Postal Service retail facility, depicted on Exhibit A (*Depiction of the Project Area*) (the “**Existing Retail Facility**”), and the former processing and distribution center facility (the “**P&DC Facility**”), each with associated parking, shall be relocated by Prosper Portland in accordance with the terms and conditions of the PSA and the Lease. Prosper Portland has completed permanent relocation of the Postal Service’s P&DC Facility and related operations to a location near Portland International Airport.

C. Prosper Portland and the Postal Service have been working in good faith to develop the “Retail Services Plan” (defined in the PSA and the Lease) and identify a permanent replacement site for the Existing Retail Facility. At the request of Prosper Portland, the Postal Service has agreed to relocate the Existing Retail Facility on an interim (non-permanent) basis to the Interim Retail Facility (defined below), once all Relocation Conditions (as defined in Section 3 of this Amendment) are satisfied. The term “**Interim Retail Facility**” means the space so identified on Exhibit A. The Interim Retail Facility is located within the parking garage adjacent to the Existing Retail Facility (the “**Parking Garage**”), and includes the former Postal Service Business Mail Entry Unit (BMEU).

D. Once the Interim Retail Facility is completed and the other Relocation Conditions are satisfied, the Parties will sign a Notice of Commencement (as defined below), and (i) the term “Retail-only Premises” in the Lease will be automatically amended to exclusively refer to the Interim Retail Facility pursuant to the process described in this Amendment, and (ii) the Postal

Service will have no further right or interest in the remainder of the Property (except to the extent provided otherwise in the Lease) and the parking rights described in Section 4 of this Amendment.

E. This Amendment is not intended to waive or reduce Prosper Portland’s obligation to develop the “Retail Services Plan”, and to identify, acquire (if necessary), and construct (at its sole cost and expense) a permanent relocation site for the Postal Service’s Existing Retail Facility in accordance with the requirements of the PSA and the Lease. Rather, this Amendment is intended to (i) assist the Postal Service by providing a more suitable location than the Existing Retail Facility on an expeditious timeline, and (ii) assist Prosper Portland by fully vacating the Main Building, thus enabling Prosper Portland to commence demolition of the Main Building.

F. The Postal Service and Prosper Portland are willing to agree to this Amendment, subject to and in accordance with the following terms and conditions

Terms and Conditions

1. Construction of Interim Retail Facility.

a. Design of Interim Retail Facility.

(i) Prosper Portland represents that it has caused GBD Architects Incorporated and its sub-consultant, Cornerstone Architectural Group P.S. (collectively, the “**Architect**”) to prepare plans and specifications (the “**Plans**”) for construction of the Interim Retail Facility, in accordance with the Postal Service Standard Design Criteria and Construction Requirements for new or replacement facilities, which includes the Architectural Barriers Act and the Postal Service’s drawings, specifications, details and handbooks, including but not limited to Handbook RE-4, Standards for Facility Accessibility by the Physically Handicapped (collectively, “**Postal Service Requirements**”).

(ii) Architect. Landlord represents that it has caused its Architect to provide the Postal Service with the Plans at the 100% stage (“**Final Plans**”) for review and written approval by the Postal Service. The Postal Service has appointed an individual to oversee the design, implementation, and construction of the Interim Retail Facility (“**USPS Contracting Officer**”). The USPS Contracting Officer, or his/her designated representative has approved the Final Plans by signing and dating them, and indicated to Prosper Portland all revisions he/she believed to be necessary to them. Prosper Portland has made the corrections or revisions and resubmitted the revised Final Plans to the USPS Contracting Officer for final written approval (the “**Approved Plans**”). The Approved Plans are attached and incorporated herein as Exhibit B. The Final Plans have been correlated, checked and signed by the Architect and or its engineer, as applicable, and are accompanied by the following certifications by the Architect:

“I certify that the plans and specifications (1) are complete in accordance with all laws and applicable requirements, and (2) are in compliance with local building codes.”

and

“This project has been designed and must be constructed in strict accordance with the local building code applicable to the construction work.”

The Postal Service acknowledges that certain permits will be obtained in connection with utility and undergrounding work being performed in connection with the Project, but that, after Landlord’s consultation with the City of Portland Bureau of Development Services and the Postal Service, a commercial building permit is not being obtained for the Project.

(iii) Prosper Portland acknowledges and agrees that (a) any review and/or approval by or on behalf of the Postal Service of the Plans is for the Postal Service’s sole benefit, and shall create no responsibility or liability on the part of the Postal Service (to Prosper Portland or to any other person) for the Approved Plans, (b) the Postal Service makes no representation or warranty that the Approved Plans comply (or will comply) with professional standards of care or any applicable laws (including building code requirements, if applicable), are suitable, complete, sufficient or correct for any purpose, or are otherwise appropriate in any manner, and (c) the review and/or any approval by or on behalf of the Postal Service of the Approved Plans shall not constitute any opinion or representation or warranty by or on behalf of the Postal Service as to, among other matters, the compliance thereof of the Approved Plans with professional standards of care or any applicable laws or the suitability, completeness, sufficiency or correctness thereof for any purpose or otherwise (or as a waiver of any of the requirements of this Agreement). In addition, the Postal Service’s approval of the Approved Plans does not constitute a warranty, covenant, or assurance by the Postal Service that any equipment or system shown thereon will have the features or perform the functions for which such equipment or system was designed. Prosper Portland further acknowledges and agrees that the Postal Service’s approval of the Approved Plans does not constitute nor will it be deemed to constitute a warranty or assurance by the Postal Service that any such materials or the proposed work will not cause damage to any portion of the construction of the Interim Retail Facility or Project or that repairs or improvements will not be required to any portion of the Project or Interim Retail Facility.

(iv) The Postal Service may make changes to the Approved Plans (“**Changes**”) as are proposed by the Postal Service and agreed upon by Landlord in its reasonable discretion, provided that (i) all Change requests shall be in writing and submitted to Landlord; and (ii) the Postal Service shall be responsible for all additional design, construction, engineering, or other costs related to the Changes.

b. Construction of Interim Retail Facility

(i) Generally. Prosper Portland has contracted with O’Neill / Walsh Community Builders, LLC (“**Contractor**”) for the construction of the Interim Retail Facility in accordance with the Approved Plans (the “**Project**”). Prosper Portland agrees to construct and cause its Contractor to construct the Interim Retail Facility in accordance with the Approved Plans and all applicable Laws. The Postal Service shall not be required to relocate to the Interim Retail Facility except on, and subject to, the terms and conditions described in this Amendment (including, without limitation, the conditions for Formal Acceptance described in Section 1.b.xi). The Contractor has estimated that the Project completion will occur in the first quarter of 2021. Regardless of the actual completion date, Prosper Portland acknowledges that the Postal Service will not move operations into the Interim Retail Facility during the time period between November 15 of any calendar year and January 15 of the succeeding calendar year.

(ii) Davis-Bacon Act and Miller Act. The Davis-Bacon Act (40 U.S.C. § 3141 *et seq.*) and/or the Miller Act (40 U.S.C. § 3131 *et seq.*) apply to the construction of the Interim Retail Facility and Landlord shall cause Contractor, at its sole cost and expense, to comply with the Davis-Bacon Act and/or the Miller Act, as applicable, in performing any such work. Landlord shall obtain

Performance and Payment Bonds (“Bonds”) substantially in the form of the drafts provided to the Postal Service prior to the date of this Amendment, which Bonds will be in the amount of the contract price of Prosper Portland’s contract with Contractor, and shall submit to the Postal Service copies of such executed Bonds prior to commencement of any construction work. No work or services on this Project may be commenced until the Bonds have been obtained and furnished to Postal Service in accordance with this paragraph. In the event Landlord fails or refuses to obtain the Bonds, and such failure continues for more than ten (10) business days after written notice from Postal Service to Landlord, this Amendment shall terminate at no cost to Postal Service, the Postal Service shall not be required to relocate to the Interim Retail Facility.

(iii) Insurance. Prosper Portland shall (i) maintain (or cause its contractor to maintain) during the course of construction and furnish to Postal Service evidence of an insurance policy to protect against claims for personal injury (including death) or property damage, under a policy of comprehensive general public liability insurance, with limits (through basic coverage plus umbrella coverage) of \$1,000,000 per occurrence / \$2,000,000 in aggregate in respect of bodily injury (including death) and property damage, which amounts shall be adjusted upon reasonable request of the Postal Service from time to time to amounts which are normal and customary for similar buildings and operations. Such policies of insurance shall name the Postal Service as an additional insured. Coverage may be affected under blanket policies if separate scheduled location amounts satisfy the requirements hereof. Each policy shall provide that it shall not be cancelable nor may it expire without at least thirty (30) days' prior written notice to the Postal Service and each policy shall be issued by an insurer of recognized responsibility, licensed to do business in the State of Oregon and reasonably satisfactory to the Postal Service; (ii) prior to commencement of work, deliver to the Postal Service a certificate of the insurance carrier certifying that the policy so delivered has been issued and is in effect and the duration thereof. At least thirty (30) days before any policy shall expire (10 days for non-payment of premium), Prosper Portland shall cause its contractor to deliver to the Postal Service a replacement certificate, and at least twenty (20) days prior to the date that the premium on any policy shall become due and payable, the Postal Service shall be furnished with satisfactory evidence of its payment. Each policy shall have attached thereto an endorsement to the effect that no act or omission shall affect the obligation of the insurer to pay the full amount of any loss sustained.

(iv) Indemnity. To the maximum extent permitted by the Oregon Tort Claims Act, the Landlord agrees to indemnify and hold harmless the Postal Service and its officers, agents, representatives and employees from all claims, loss, damage, actions, causes of action, expense and/or liability, including the reasonable cost of defense, resulting from, brought for, or on account of any personal injury or death or property damage received or sustained by any persons or property, caused by or arising from any work performed by or on behalf of Landlord in connection with the Project, except to the extent caused by or arising from the Postal Service’s negligence or willful misconduct.

(v) License, Permits, Safety. Without any expense to the Postal Service, Landlord shall identify and comply with all applicable zoning, licensing and permitting requirements, and shall comply with all applicable federal, state, and municipal laws, codes, and regulations (“Laws”), in connection with the performance required under or related to this work. Landlord must take proper safety and health precautions to protect the work, the workers, the public and the property of others. Landlord is also responsible for the construction of the Interim Retail Facility and all materials delivered in connection therewith on behalf of Landlord.

(vi) Site Conditions. Landlord must examine the Property and be thoroughly acquainted with conditions thereon. The Landlord will be responsible for addressing the impacts

of any site conditions on construction of the Project, including, but not limited to, subsurface or latent physical conditions or unknown physical conditions.

(vii) Interference with Postal Service Operations. During construction of the Project, Prosper Portland shall cause its Contractor to take all steps identified in the Approved Plans regarding the avoidance of unreasonable interference with or disruption to the Postal Service's existing operations, the operation and delivery of the United States Mail and, except as may otherwise be agreed to between the Parties in accordance with Section 4 of this Amendment, existing employee and customer parking. Prosper Portland will ensure that Contractor complies with such conditions. Prosper Portland's construction team shall meet regularly with, and work in good faith with, the Postal Service's on-site staff to ensure that disruption to or interference with the Postal Service's operations is minimized. In addition, Prosper Portland shall not, and Prosper Portland shall cause its Contractor not to, close or block the Postal Service's loading docks or the entrance to the Existing Retail Facility, or access to either, without the Postal Service's express written consent, which may be withheld in its sole discretion. In the event of any violation of this provision, the Postal Service will provide reasonably detailed notice by email to Prosper Portland citing this paragraph, which the Parties agree is acceptable notice for purposes of this subsection, so long as such email is read receipt requested and is actually received by both Prosper Portland's Asset and Investment Manager and Prosper Portland's General Counsel. Such notice shall specifically identify the violation of this provision. Immediately upon receipt of any such notice from the Postal Service, Prosper Portland shall cause Contractor to immediately cease any action that is inconsistent with this provision. If such a violation is not corrected within twenty-four (24) hours of the date of such notice (or such later time as is reasonably necessary), the Postal Service shall have the right to seek and receive liquidated damages in an amount equal to \$250 per day a violation continues; provided, however, that if the violation involves blocked access to the loading docks or the entrance to the Existing Retail Facility, the amount of liquidated damages shall equal \$1,000 per day a violation continues.

(viii) Postal Service Furnishings and Equipment. Prosper Portland will require its Contractor to consider in good faith any request by the Postal Service to enable it to store, assemble and install Postal Service-owned furnishings and equipment in the Interim Retail Premises prior to substantial completion. The Postal Service acknowledges that (a) any request for such early access will be considered in light of construction progress and schedule, and the health and safety of all personnel on or anticipated to be on the Project site, and (b) any such early access to the Project site will be subject to and conditioned upon compliance with all job site safety requirements and rules established by the Contractor and such other reasonable conditions the Contractor may impose to ensure orderly and efficient progress in the construction of the Project. Such action by the Postal Service shall not be construed as constituting occupancy or Formal Acceptance, as hereinafter defined. The Postal Service must not unreasonably interfere with construction of the Project in engaging in such early access and must exercise reasonable care at all times on the Project site. Neither Landlord nor its agents shall be liable for any damage to or loss of items so stored except to the extent caused by Landlord's or Landlord's agents', employees' or contractors' negligent, willful or intentional acts.

(ix) Substantial Completion and Inspection. Upon Substantial Completion (as defined below) of the Project, Prosper Portland shall cause its Architect to deliver a written notice of Substantial Completion to the Postal Service in the form of a certification that the Project has been completed in accordance with all Laws and the Approved Plans, noting any exceptions that remain to be completed (the "**Punch List Items**"). Within ten (10) business days of receipt of the notice of Substantial Completion from Architect, Landlord, its Contractor and the Postal Service

shall conduct a joint walk-through of the new premises and, within five (5) business days after the inspection, identify in writing any incomplete or insufficient matters to be included as Punch List Items. Landlord must, without charge to the Postal Service, replace any material, correct any workmanship or supply any omitted work found by the Postal Service and identified as Punch List Items pursuant to the preceding sentence unless the Postal Service expressly consents in writing to the contrary. The terms “**substantial completion**,” “**substantially complete**” and “**substantially completed**” mean that the Project is complete in the manner required by this Third Amendment, except for only Minor Punch List Items. “**Minor Punch List Items**” means items which are minor, primarily cosmetic, contain or reflect no incomplete or inconclusive test reports, and can be completed or corrected within thirty (30) days without interruption or material interference with Postal Service operations in the Premises. Any items which may materially affect mail operations, the security and safe functioning of the Premises, and/or the handicap accessibility requirements for the Project are not Minor Punch List Items as reasonably determined by the Landlord and agreed to by the Postal Service.

(x) Final Deliverables. Upon Final Completion (meaning completion of the Project in accordance with the Approved Plans, including completion of any Punch List Items in the satisfaction of the Postal Service), Landlord shall deliver to Postal Service the following (collectively, the “**Final Deliverables**”): (i) one complete full sized printed set of As-Built Plans (and one additional electronic copy) including all plans and specifications to the Postal Service in an industry standard electronic or digital format such as AutoCAD; (ii) copies of all required licenses, permits, approvals, certificates, rulings and authorizations issued by Governmental Authorities with respect to the construction, completion and use of the Interim Retail Facility; (iii) a certificate of Landlord stating that, to the best knowledge after due inquiry, all amounts for the payment of which Landlord or any contractor is or may become liable in respect of to the Project have been paid in full; (iv) waivers of liens from, or other evidence reasonably satisfactory to the Postal Service of the payment in full of, all persons furnishing labor or materials with respect to the Improvements; and (v) an assignment of all warranties provided by any contractor, supplier or materialman that performed or supplied materials in connection with the Project. All such warranties must be assigned to the Postal Service by the Landlord upon Final Completion of the Project.

(xi) Formal Acceptance. “**Formal Acceptance**” of the Project occurs when the Postal Service’s Contracting Officer notifies Landlord in writing that the Project has been completed (including that the Punch List Items have been corrected to the satisfaction of the Postal Service) and all Final Deliverables have been received, in case consistent with the terms and conditions of this Amendment. Should such conditions be satisfied, the Postal Service will so notify Landlord promptly but in no event later than ten (10) business days following satisfaction of all such conditions.

(xii) Landlord’s Warranty for the Interim Retail Facility.

(a) Landlord warrants that the construction of the Interim Retail Facility shall be performed in a good and workmanlike manner, in accordance with the Approved Plans and in accordance with the requirements of this Amendment. Without limiting the preceding sentence, if the Postal Service finds (on or before the first (1st) anniversary of the date on which the Interim Retail Facility is Formally Accepted) that (1) any improvements, materials, equipment or workmanship with respect to any portion or all of the Interim Retail Facility needs to be repaired or replaced because the same were inferior or defective or not in accordance with the Approved Plans in all material respects, or (2) that there are design or latent defects in any component of the Project, then Landlord must promptly and without expense to the Postal

Service: (x) place in a satisfactory condition all or any such defective work; (y) satisfactorily correct all damage to the Postal Service’s equipment, the Interim Retail Facility and its contents that is the result of such unsatisfactory work; and (z) satisfactorily correct any work, materials, or equipment disturbed in making the corrections to any such defective work.

(b) Should Landlord fail to commence to correct the defective or improper work (or the work which is not in accordance with the Approved Plans, or which includes design or latent defects) within fifteen (15) days of the Postal Service’s written notice during the one year warranty period described above, then, in addition to such remedies as the Postal Service shall have pursuant to the Lease and Lease Amendment, the Postal Service may seek liquidated damages from Landlord in an amount of \$500 per day between the 15th day from the date of receipt of the Postal Service’s written notice and the date Landlord commences such work.

c. Prosper Portland’s Sole Cost and Expense. Landlord shall be responsible for all costs related to completion of the Project which shall include but are not limited to design, construction and all costs related thereto for the Interim Retail Facility other than Changes as described in Section 1.a.iv; provided that any legal, management, and administrative costs of the Postal Service in connection with the Project are to be borne exclusively by the Postal Service except to the extent expressly provided to the contrary in Section 2.d.

d. Cooperation. Prosper Portland shall cause its Contractor to (i) permit the Postal Service’s designated representatives to visit the Project site as reasonably possible (subject to safety regulations and other reasonable conditions), (ii) provide periodic updates to the Postal Service as to construction progress, and (iii) seek Postal Service input if any Project-related issues arise. The Postal Service shall promptly cooperate with Prosper Portland in resolving issues relating to construction of the Project, including offering input as appropriate.

e. Title. Concurrently with the execution of the Notice of Commencement, the Postal Service Agrees to execute a [*Partial Termination of Memorandum of Lease*] in substantially the form of Exhibit C (*Form of Partial Termination*).

2. Amendment of Retail-only Premises to Comprise of Interim Retail Facility.

a. Notice of Commencement. The Parties agree to sign a Notice of Commencement in substantially the form attached to this Amendment as Exhibit D (*Form of Notice of Commencement*) (the “**Notice of Commencement**”) promptly following the date that all Relocation Conditions are satisfied.

b. Amendment of Retail-only Premises. On the effective date specified in the Notice of Commencement (which shall be the date all Parties have signed the Notice of Commencement unless otherwise agreed by the Parties) (the “**Commencement Date**”), and automatically and without further action:

(i) the Lease shall be deemed amended such that the “Retail-only Premises” will refer solely and exclusively to the Interim Retail Facility (without limitation of the parking rights of the Postal Service described in the Lease including Section 25 of the Lease Addendum and Section 4 of this Amendment);

(ii) the Postal Service shall have no further right or interest in the Main Building, the Existing Retail Facility, or in any part of the Property other than the Interim Retail

Facility and the parking rights of the Postal Service described in the Lease, including Section 25 of the Lease Addendum and the parking rights described in Section 4 of this Amendment; and

(iii) Landlord shall have the right to demolish the Main Building and any other structure on the Property other than the Interim Retail Facility, the Parking Garage, and (in accordance with the agreement of the Parties to the extent provided in Section 4 of this Amendment) certain parking spaces in the existing surface lot for customer parking abutting Hoyt Street; provided, however, that:

1. Prosper Portland will give to the Postal Service a copy of the section of the plans and specifications for the demolition of the Main Building pertaining to non-interference with existing operations, including noise and dust conditions (the “**Demolition Non-Interference Conditions**”) for its review and approval. The Postal Service’s approval may not be unreasonably withheld, conditioned, or delayed. If the Postal Service has not either approved such section or indicated, with specificity, the changes it would require to such section in order for its approval to be obtained, within fifteen (15) business days of receipt, the Postal Service’s approval will be deemed given.
2. Landlord shall immediately correct, repair and/or remedy any adverse impacts caused by it or its Contractors actions that are inconsistent with the Demolition Non-Interference Conditions.
3. In undertaking the demolition, Landlord shall cause its contractors and agents to comply with the Demolition Non-Interference Conditions and to meet regularly with, and confer in good faith with, the Postal Service’s on-site staff to ensure that disruption to or interference with the Postal Service’s operations is minimized.
4. Landlord shall not, and shall cause its Contractor not to, close or block the Postal Service’s loading docks or the entrance to the Existing Retail Facility, or access to either, without the Postal Service’s express written consent, which may be withheld in its sole discretion.

Notwithstanding the foregoing, the Postal Service acknowledges that all demolition projects involve some noise and dust impacts, and Landlord’s obligation to obtain the approval of the Postal Service does not require it to incorporate any steps into the Demolition Non-Interference Conditions to mitigate the impact of noise and dust beyond those that would be implemented by a reasonably conscientious contractor undertaking demolition and construction in a similar location and under similar circumstances unless expressly agreed to the contrary. The Parties expressly agree that Prosper Portland’s obligation to obtain the Postal Service’s approval of the Demolition Non-Interference Conditions applies to the demolition of the Main Building only, and not to the demolition of the Vehicle Maintenance Facility on the northern part of the Property; provided, however, that in connection with such demolition Prosper Portland shall not close or block access to the loading docks or the Existing Retail Facility and will comply with OSHA rules and applicable laws relating to noise and dust.

c. Postal Service Relocation.

(i) Relocation to Interim Retail Facility. Following Formal Acceptance (or earlier if desired by the Postal Service and consistent with Section 1.b(vi) of this Amendment), the Postal Service will use reasonable efforts to relocate from the Existing Retail Facility to the Interim Retail Facility, which includes movement of all equipment, materials, supplies, or other personal property. The Postal Service will make reasonable efforts to complete the relocation within 30 days following Formal Acceptance, but must complete the relocation within 60 days of Formal Acceptance (the “**Moving Period**”); provided, however, that if the Moving Period described in this paragraph would otherwise commence on or later than October 1 of a calendar year or earlier than January 15 of a succeeding calendar year, then the Moving Period will commence on January 15, regardless of the date of Formal Acceptance.

(ii) Personal Property of the Postal Service. Any materials, equipment, or other personal property left in the Existing Retail Facility or the Main Building by the Postal Service after the Moving Period shall be deemed abandoned by the Postal Service and may be disposed of by Prosper Portland as Prosper Portland deems appropriate.

d. Prosper Portland Payment of Certain Postal Service Expenses. Landlord will pay to the Postal Service an amount equal to (i) \$25,000, plus (ii) the Postal Service’s documented, out of pocket, third-party costs of moving IT equipment and self-service kiosks from the Existing Retail Facility to the Interim Retail Facility and installing the same; provided, however, that the maximum amount payable to the Postal Service under this clause (ii) is \$[*To Be Inserted*].¹ Landlord will make this payment in one lump sum promptly following the Postal Service’s execution of the Notice of Commencement or Landlord’s receipt of documentation of costs relating to the move and installation of IT equipment and self-service kiosks, whichever is later. The Parties agree that the compensation described in this paragraph (d) constitutes full and final payment to the Postal Service for all moving costs (including employee time devoted to relocation of personal property from the Existing Retail Facility to the Interim Retail Facility) and Postal Service administrative, review and oversight (including construction project management) costs in connection with the Project. All costs above the compensation described in this paragraph, and any internal staff time or administrative costs on the part of the Postal Service, will be borne by the Postal Service.

e. Acknowledgment of Payment of Rent. Prosper Portland hereby acknowledges that the Postal Service has already paid in full the \$1.00 in base rent for the Extended Retail Term.

f. Postal Service’s Right to Terminate this Amendment.

(i) If the Project has not been completed by June 30, 2022 (which date is subject to force majeure conditions that extend no longer than 6 months that are no fault of Prosper Portland, such as civil unrest, strike, labor shortage, pandemic, or natural disaster (“**Force Majeure**”), provided Prosper Portland delivers written notice to Postal Service of Force Majeure), and if (a) the Postal Service’s requirements for the space have been materially, revised or amended and such amendments or modifications render the Approved Plans out of conformance to such standards (a “**Standards Modification**”), as determined by the Postal Service in its

¹ The Postal Service is refining cost estimates regarding the move of IT equipment and self-service kiosks; it has been indicated that this number will be below \$100,000, but a clear estimate may not be available before the 6/10 Board meeting.

reasonable discretion, or (b) the Postal Service’s operational needs have changed, as determined by the Postal Service in its reasonable discretion, then subject to paragraph (ii) below, the Postal Service shall have the right to terminate this Amendment by delivering written notice to Property Portland terminating this Amendment (the “**Termination Notice**”) from and after the date the notice is delivered.

3. Relocation Conditions.

As used in this Amendment, the term “**Relocation Conditions**” means each of, and collectively, the following:

- a. Formal Acceptance has occurred.
- b. All required utilities (water, electric, sewer, communications) for the Interim Retail Facility are connected in the Postal Service’s name and account, and Prosper Portland has paid any required set-up or installation fees (it is acknowledged that the Postal Service is thereafter responsible for all ongoing utility fees and charges relating to the Interim Retail Facility).
- c. Prosper Portland has delivered physical possession (keys, access cards, etc.) as reasonably needed by the Postal Service to the Interim Retail Facility to the Postal Service.
- d. The Postal Service has notified Landlord that it has physically moved all equipment, supplies or other personal property it wishes to keep from the Existing Retail Facility to the Interim Retail Facility, or the Moving Period has expired, whichever is earlier.

4. Parking Rights.

Until the Postal Service’s retail operations are permanently relocated to the Retail Facility in accordance with the PSA and the Lease terminates:

- a. Employee Parking in Parking Garage. The Postal Service shall have the right to continue to use twenty (20) spaces, which includes one (1) handicap accessible space, within the Parking Garage for employee parking (the “Employee Parking”) during the Extended Retail Term, as depicted on Exhibit A.
- b. Customer Parking. In addition, the Postal Service shall have the right to use (i) the existing thirty-two (32) spaces within the existing customer parking area abutting Hoyt Street (the “Customer Parking”) until the permanent relocation of the Postal Service’s retail operations contemplated in the PSA is achieved, subject to the right to demolish certain of the customer parking spaces and provide replacement customer parking described in paragraph (c) below, and (ii) the five (5) spaces noted within the Parking Garage for call-in customer parking (all as depicted on Exhibit A).
- c. Relocation of Parking. If Prosper Portland determines that some or all of the parking spaces described above need to be temporarily closed for safety reasons during the construction of the Project, the demolition of the Main Building, or work associated with either, Prosper Portland shall notify the Postal Service in writing and the Postal Service and Prosper Portland will work in good faith to achieve a suitable replacement solution during the period of any such closure provided that any solution shall not modify the number of customer and

employee spaces or significantly modify the location of the customer spaces. The Parties agree that this Section 4 does not modify or change that Postal Service's right to exclusive use customer parking spaces during the Extended Retail Term described in Paragraph (25) of the Lease Addendum. Nothing herein shall require the Postal Service to accept any replacement solution that unreasonably interferes with the Postal Service's operations or its employees or customers' access to the Interim Retail Facility or the Existing Retail Facility; provided, however, that the Postal Service hereby acknowledges and consents to the temporary (e.g., approximately five business days) close approximately six customer parking spaces adjacent to the Parking Garage for enclosure of a wall in connection with the Project so long as Prosper Portland provides not less than five (5) business days' notice prior to temporarily closing such spaces.

5. Other Amendments to the Lease as of the Commencement Date.

This Section 5 will take effect only as of the Commencement Date. At all times on and after the Commencement Date:

a. Utilities and Operating Expenses for Interim Retail Facility. Section 21 of the Lease Addendum is hereby deleted and replaced in its entirety with the following paragraph:

All utilities for the Retail-only Premises (water, sewer, electric, communications, etc.) will be separately metered, and the Postal Service will directly pay all recurring charges to the utility service providers.

b. Partition of Main Building No Longer Applicable. The first paragraph of Section 22 of the Lease Addendum is hereby deleted.

c. Maintenance and Repair. Sections 23 and 24 of the Lease Addendum, regarding maintenance and repair obligations, are not modified by this Amendment, and such obligations apply with equal force and effect to the Interim Retail Facility as to the Existing Retail Facility.

d. Security. Section 26 of the Lease Addendum regarding Landlord's responsibility to maintain security are not modified by this Amendment, and such obligations apply with equal force and effect to the Interim Retail Facility and Parking Garage as to the Existing Retail Facility.

6. Defined Terms and Conflict in Terms. Any terms used and not defined in this Amendment have the same meaning as in the Lease, except as otherwise specifically herein provided. To the extent there are any conflicts between the terms and provisions contained in this Amendment and those contained in the Lease, the terms and provisions of this Amendment control.

7. Full Force and Effect. Except as herein modified, all the terms, conditions and requirements of the Lease remain in full force and effect.

8. Authority to Execute. Each Party expressly represents and warrants that the persons executing this Amendment on its behalf are duly authorized to do so.

9. Effective Date. This Amendment is effective when fully executed by the Parties.

10. Counterparts. This Amendment may be executed in counterparts, and each counterpart has the same binding legal effect as if it were a single document containing all signatures.

11. Exhibits. The following Exhibits are hereby incorporated by reference:

Exhibit A (Depiction of the Project Area)

Exhibit B (Approved Plans)

Exhibit C (Form of Notice of Partial Termination)

Exhibit D (Form of Notice of Commencement)

[Signature Page Follows]

In Witness Whereof, this Agreement has been duly executed by the Parties on the dates indicated below.

PROSPER PORTLAND

UNITED STATES POSTAL SERVICE

By: _____
Kimberly Branam, Executive Director

By: _____

Date: _____, 2020

Name: _____

Title: _____

Date: _____, 2020

Approved as to Form by:

Prosper Portland Legal Counsel

EXHIBIT A

Depiction of the Project Area

[To Be Attached]

EXHIBIT B

Approved Plans

[To Be Attached]

EXHIBIT C

Form of Partial Termination

[To Be Attached]

EXHIBIT D

Form of Notice of Commencement

NOTICE OF COMMENCEMENT

THIS NOTICE OF COMMENCEMENT (“**Notice**”) is made jointly by **PROSPER PORTLAND**, the assumed business name of the Portland Development Commission, the redevelopment and urban renewal agency of the City of Portland (“**Landlord**”) and the **UNITED STATES POSTAL SERVICE** (“**Tenant**”). Reference is hereby made to that certain Lease made by and between Landlord and Tenant dated July 26, 2016, as amended by a First Amendment to Lease effective as of September 6, 2016 (the “**First Amendment**”) a Second Amendment to Lease effective as of February 1, 2019 (the “**Second Amendment**”), and a Third Amendment effective as of [], 2020 (collectively, the “**Lease**”).

The Third Amendment requires Landlord and Tenant to promptly execute a Notice of Commencement in this form confirming that all Relocation Conditions (as defined in the Third Amendment) have been satisfied and triggering the amendment of the leased premises to comprise solely of the Interim Retail Facility (as defined in the Third Amendment).

Landlord and Tenant hereby confirm that all Relocation Conditions (as defined in the Third Amendment) have been satisfied, and that the “Commencement Date” described in the Second Amendment is **[Date of Execution of Notice of Commencement, Unless Otherwise Agreed]**, 2021 (the “**Commencement Date**”). This Notice is effective as of the Commencement Date.

In Witness Whereof, this Notice has been executed by Landlord and Tenant on the dates indicated below.

PROSPER PORTLAND

By: _____
Kimberly Branam, Executive Director

Date: _____, 2021

UNITED STATES POSTAL SERVICE

By: _____
[Name, Title]

Date: _____, 2021



PROSPER PORTLAND

Building an Equitable Economy

RESOLUTION NO. 7379

RESOLUTION TITLE:

AUTHORIZING THE THIRD LEASE AMENDMENT WITH THE UNITED STATES POSTAL SERVICE TO PROVIDE FOR AN INTERIM RETAIL FACILITY AT 715 NW HOYT STREET

Adopted by the Prosper Portland Commission on June 10, 2020

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 Alisha Moreland-Capua MD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Francesca Gambetti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Peter Platt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner William Myers	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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.

Pam Feigenbutz, Recording Secretary

Date:

June 16, 2020