

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7398

**AUTHORIZING A PURCHASE AND SALE AGREEMENT WITH MORTENSON
DEVELOPMENT FOR THE AIRSPACE DEVELOPMENT RIGHTS FOR THE 100
MULTNOMAH OFFICE BUILDING IN THE OREGON CONVENTION CENTER
TAX INCREMENT FINANCE DISTRICT**

WHEREAS, in 1991 the Prosper Portland Board of Commissioners (“Board”), through Resolution No. 4178, authorized the acquisition of a 0.88-acre parcel located at the southwest corner of NE Multnomah Street and NE 2nd Avenue (“Block 49 Property”) in the Oregon Convention Center Tax Increment Finance district for the purpose of assisting with the acquisition of property for a headquarters hotel site;

WHEREAS, in 2006, the Prosper Portland Board, through Resolution No. 6355, adopted a Development Vision for the Oregon Convention Center Blocks, which includes the Block 49 Property;

WHEREAS, in 2016 and 2018, the Prosper Portland Board, through Resolution Nos. 7165, 7222, and 7294, authorized the terms of a Parking Structure Development Agreement (“Development Agreement”) with Mortenson Development for design and construction of a 442-space Convention Center Parking Garage (“Garage”) for an amount not to exceed \$32,840,000 to be owned and operated by Prosper Portland to support the development and operation of the adjacent 600-room Hyatt Regency Portland at the Oregon Convention Center Hotel (“Hotel”);

WHEREAS, in 2016, the Prosper Portland Board, through Resolution No. 7223, authorized a Purchase and Sale Agreement to convey a condominium interest in the Garage to TriMet (“TriMet Unit”) for \$9,000,000 for the purposes of operating a transit police precinct;

WHEREAS, the Garage was completed and began operations in December 2019;

WHEREAS, in order to maximize development of the Block 49 Property, the design and construction of the Garage incorporated design and foundation elements to support development of an office building located adjacent to and on top of the Garage;

WHEREAS, in 2018, the Prosper Portland Board, through Resolution No. 7263, authorized a contract-specific special procurement to enter into a Pre-Development Services Contract with Mortenson Construction for \$477,593 for the purpose of preparing conceptual plans and associated cost estimates for an approximately 100,000 square foot office building and two levels of associated parking above the Garage (“100 Multnomah Office Building”);

WHEREAS, in 2019, the Prosper Portland Board, through Resolution No. 7299, authorized an amendment to the Pre-Development Services Contract to increase the contract amount to \$1,602,052 to advance the design of the 100 Multnomah Office Building through schematic design and 50 percent design development and associated cost estimates;

WHEREAS, in 2019, the Prosper Portland Board, through Resolution No. 7324, authorized a Design-Build Contract with Mortenson Construction for the design and construction of the 100 Multnomah Office Building, increasing the financial investment by \$1,492,620 to \$3,094,672;

WHEREAS, ownership of the Garage and the future 100 Multnomah Office Building will be subject to the *Declaration Submitting Block 49 Convention Center Condominiums to Condominium Ownership*, and upon recordation of the Declaration and construction of the 100 Multnomah Office Building, the property will consist of the Garage Unit, the TriMet Unit, and the Office Unit (the last of which consists of the rights to construct and own the 100 Multnomah Office Building in the airspace adjacent to and above the Garage);

WHEREAS, Prosper Portland marketed the airspace development rights for the Office Unit for sale, including issuing a Call for Offers, evaluated the three offers received, identified Mortenson Development as the preferred development partner based upon its capabilities and offer terms, and signed a non-binding Letter of Intent with Mortenson Development on June 16, 2020; and

WHEREAS, Prosper Portland and Mortenson Development have negotiated a Purchase and Sale Agreement substantially in the form attached hereto as Exhibit A (“Purchase and Sale Agreement”) for the airspace development rights of the 100 Multnomah Office Building and the conveyance of the Office Unit to Developer (after construction) for a base purchase price of SIX MILLION SIX HUNDRED AND FIFTY THOUSAND DOLLARS (\$6,650,000).

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board authorizes the Executive Director to execute the Purchase and Sale Agreement, in substantial accord with the terms and conditions reflected in Exhibit A;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the Purchase and Sale Agreement terms and conditions, if such changes 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 this resolution shall become effective immediately upon its adoption.

Adopted by the Prosper Portland Commission on

September 16, 2020



Pam Feigenbutz, Recording Secretary

BLOCK 49 CONVENTION CENTER CONDOMINIUMS PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (the “Agreement”) is dated effective _____, 2020 (the “Execution Date,” as defined in Section 23.14 below), by and between the **CITY OF PORTLAND** (the “City”), a municipal corporation of the State of Oregon, acting by and through **PROSPER PORTLAND**, the assumed business name of the Portland Development Commission, the redevelopment and urban renewal agency of the City of Portland (“Seller”), and **MORTENSON DEVELOPMENT, INC.**, a Minnesota corporation, or its assignee (“Buyer”). Buyer and Seller are sometimes hereafter referred to individually as a “party” or collectively as the “parties.”

RECITALS

A. Seller owns fee title to the real property and improvements described in Exhibit A attached hereto (the “Real Property”);

B. Seller desires to submit its real property interests in the Real Property, including any improvements thereon, but excluding the airspace above the Real Property, to condominium form of ownership, to be converted, handled, and used in the manner provided in the Oregon Condominium Act (“Act”);

C. Seller, as declarant, is in the process of negotiating a certain Declaration Submitting Block 49 Convention Center Condominiums To Condominium Ownership (the “Declaration”, and collectively with the bylaws thereto, the “Condominium Documents”, and the “Block 49 Convention Center Condominiums” referred to and as defined therein is referred to in this Agreement as the “Condominium”);

D. Upon execution of the Condominium Documents, receipt of all governmental approvals required under the Act with respect to the formation of the Condominium pursuant to the Condominium Documents, and due recording of the Condominium Documents in the official records of Multnomah County, Oregon in accordance with the Act (the satisfaction of the foregoing conditions being the “Condominium Formation”), Seller will convey the TriMet Unit (as defined in the Declaration) to TriMet, an Oregon municipal corporation, by deed (the “TriMet Deed” and such conveyance being the “TriMet Closing”).

E. The Declaration will reserve to Seller, as Declarant, certain rights to the Airspace (as defined in the Declaration), including the right to construct and annex the Office Unit (as defined in the Declaration) in accordance with the Office Plans (as defined in the Declaration) and the Office Unit Approvals (as defined in Section 9.1(e), below).

F. Accordingly, upon the Condominium Formation, Seller will be the owner of: (i) such rights in, to and with respect to the Airspace (as that term is defined in the Declaration), required to construct the Office Unit, in accordance with the Office Plans and the Office Unit Approvals, and to annex the Office Unit, as such rights are reserved to and by Declarant set forth in Article 7 (Staged Condominium) of the Declaration and all rights appurtenant or incidental thereto under the Condominium Documents and the Oregon Condominium Act (the “Act”)

(collectively, the “Airspace Development Rights”); (ii) the Office Plans (as defined in the Declaration) and all Office Unit Approvals, blueprints, plans, specifications, maps, drawings, guaranties and warranties made by any contractors, subcontractors, or other vendors or suppliers, with respect to the Office Plans and all rights appurtenant or incidental thereto (but excluding any remaining monetary obligations of Seller arising out of or relating to such permits, developments rights, entitlements and approvals, all of which shall remain obligations of Seller after the Closing); and (iii) that certain Design-Build Agreement #319001, dated August 15, 2019, as amended January 30, 2020, between Seller and M.A. Mortenson Company for the design and construction of the Office Unit (collectively, the “Plans, Permits, and Warranties”). All of the foregoing, collectively, the “Property.”

G. Buyer desires to purchase from Seller, and Seller desires to irrevocably convey, sell, transfer and assign to Buyer, the Property on the specific terms set forth in this Agreement.

NOW, THEREFORE, In consideration of the mutual undertakings of the parties set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

AGREEMENT

1. Purchase and Sale. Seller agrees to irrevocably convey, sell, transfer, and assign to Buyer, and Buyer agrees to purchase from Seller, upon the terms and conditions set forth in this Agreement, the Property.

2. Purchase Price.

2.1 Purchase Price. The purchase price for the Property shall be the sum of SIX MILLION SIX HUNDRED FIFTY THOUSAND AND NO/100 Dollars (\$6,650,000.00), subject to adjustment and any applicable prorations at Closing in accordance with this Agreement, including that, provided that Seller is not in default under this Agreement, such amount shall increase at the interest rate of six (6%) per annum between date of the Due Diligence Deadline (defined in Section 9.1(f), below) and the Closing Date, up to, but not exceeding the amount of Seven Million and No/100 Dollars (\$7,000,000.00) (the “Purchase Price”).

2.2 Leasing Success Fee. If by the Closing Date, Seller has secured one or more Lease Commitments (as defined below) with respect to the Office Unit, then, in addition to the Purchase Price, at Closing, Buyer shall pay to Seller the sum(s) indicated as follows (the “Leasing Success Fee”):

(a) \$50,000 for Lease Commitments with respect to 50% or more (up to, but not including 60%) of the rentable square footage of the Office Unit;

(b) \$100,000 for Lease Commitments with respect to 60% or more (up to, but not including 75%) of the rentable square footage of the Office Unit;

(c) \$150,000 for Lease Commitments with respect to 75% or more (up to, but not including 90%) of the rentable square footage of the Office Unit of the rentable square footage;

(d) \$200,000 for Lease Commitments with respect to 90% or more of the rentable square footage of the Office Unit.

As used in this Agreement, “Lease Commitment” means a (i) bona fide binding offer to lease 50% or more of the rentable square footage of the Office Unit (ii) proffered by a Qualified Tenant (as defined below), intending to be bound, (iii) for a term (exclusive of renewal options) of at least 12 years, and (iv) on terms that are consistent with prevailing market terms for office leases of Class A buildings in the Portland, Oregon, downtown and Lloyd’s Center market areas, (v) which is set forth in the form of a fully-compiled, execution-ready lease, and (vi) which has been approved by Buyer’s management for execution. As used in this Agreement, “Qualified Tenant” means a tenant with full power and authority to enter into the Lease Commitment and having an “investment grade” credit rating from Standard and Poor’s or Moody’s.

2.3 Upside Participation. In the event that the Leasing Success Fee has been earned and is due and payable according to Section 2.1 above, and Buyer has formed a joint venture to hold the Office Unit in the structure of a limited partnership having a general partner who is either Buyer or an Affiliate (as defined below) of Buyer and at least one limited partner; then, except as otherwise provided below in this Section, Buyer shall agree to, within ten (10) business days following the occurrence of a Capital Event (as defined below), pay to Seller the sum that is equal to 10% of such general partner’s portion of the return over a project level internal rate of return of 20% with respect to the Office Unit after transaction costs, calculated using the XIRR method, provided, such payment shall be capped at and shall not exceed a 6% annual return on \$6.4 million (as may be discounted for payment at Closing if and as agreed between the parties as provided below, the “Upside Participation Payment”). As used in this Section, “Capital Event” means the first sale, transfer or refinancing of the Office Unit occurring within ten (10) years following the date of completion of construction and annexation of the Office Unit into the Condominium. As used in the Section, “Affiliate” means an entity that controls, is controlled by, or is under common control with Buyer. Notwithstanding the foregoing, if the parties are able to agree upon an Upside Participation Payment that would be payable at Closing based upon a calculation by Buyer of the present value of the Upside Participation Payment that would otherwise be payable after Closing pursuant to this Section, the parties may elect to have Buyer make the Upside Participation Payment at Closing. If the Upside Participation Payment is not made at Closing, then the parties will execute and deliver a Post-Closing Upside Participation Agreement at Closing in a form mutually reasonably acceptable to both Parties consistent with the provisions of this Section and this Section shall be merged into such agreement at Closing.

3. Payment of the Purchase Price. The Purchase Price shall be payable as follows:

3.1 Deposit. Not later than 3:00 pm (Pacific time) on the date that is three (3) business days after the Execution Date, Buyer shall deposit into escrow with Guaranty Commercial Title, Inc. at The Nic on 5th, 465 Nicollet Mall, Suite 230, Minneapolis, MN 55401, Minneapolis, Minnesota, Attention: Wendy Ethen, Esq. (the “Title Company”), as earnest

money, the cash sum of \$50,000.00 (“Earnest Money”). If Buyer provides Seller the Approval Notice pursuant to Section 9.2, the Earnest Money shall become nonrefundable to Buyer unless this Agreement is terminated pursuant to Section 9.2, 9.3, 12.2, 17.1 or 21.1, in each of which cases, the Earnest Money shall be returned to Buyer within three (3) business days following such termination. At Closing (defined below), the Earnest Money, together with any interest earned thereon, if any, shall be credited toward payment of the Purchase Price. Notwithstanding any other provision of this Agreement, One Hundred and No/100 (\$100.00) Dollars of the Earnest Money is independent consideration for this Agreement, and will not be credited to the Purchase Price at Closing or returned to Buyer under any circumstances other than a Seller default.

3.2 Cash Balance of the Purchase Price; Leasing Success Fee. Not later than 12:00 pm (Pacific time) on the Closing Date, Buyer shall deposit into escrow with the Title Company in the form of wire transfer or funds the balance of the Purchase Price (which shall be an amount equal to the Purchase Price less the Earnest Money) and, if applicable, the Leasing Success Fee and the Upside Participation Payment.

4. Escrow. Escrow shall be opened at the Title Company for consummating this transaction. Seller shall deliver a fully executed copy of this Agreement to the Title Company. Buyer and Seller hereby authorize their respective attorneys to execute and deliver into escrow any additional or supplemental instructions as may be necessary or convenient to implement the terms of this Agreement and to close this transaction. In the event of any conflict between such additional or supplemental instructions and the express terms of this Agreement, the terms of this Agreement shall control.

5. Closing Date. If Buyer delivers its Approval Notice pursuant to Section 9.2 of this Agreement, and provided that Buyer’s and Seller’s respective conditions precedent to Closing set forth in Sections 8.1 and 9.1 have been satisfied or waived in writing, the transaction contemplated by this Agreement shall close on a date mutually agreed to by Buyer and Seller but to occur no later than thirty (30) days after the Due Diligence Deadline, except as may be extended pursuant to Section 9.3, Section 12.2 or Section 17.1 of this Agreement (the “Closing Date”). “Closing” shall occur when all conditions precedent to Closing set forth in Sections 8.1 and 9.1 of this Agreement have been satisfied or waived in writing and the Assignment of Declarant Rights (defined in Section 11.1) is recorded.

6. Document Review. Seller has made available to Buyer copies of the documents described on Exhibit A attached hereto and shall make available all other documents and instruments reasonably requested by Buyer relating to the Property and/or the Condominium, each to the extent such documents are in Seller’s or its agents’ possession or control (collectively, the “Property Documents”).

7. Site Study Review; Due Diligence Period Conditions.

7.1 Inspections. Continuing through the Closing, Buyer may engage consultants, engineers or any other person of Buyer’s choosing to conduct non-invasive site studies, including without limitation environmental assessments and warranty surveys, of the Real Property as Buyer deems necessary in its sole and absolute discretion, subject to the rights

of TriMet under its lease and in the Declaration, as applicable. Subject to such rights of TriMet, Buyer and its advisory clients and their respective affiliates and their respective directors, officers, members, employees, agents, representatives, lenders, attorneys, accountants and consultants (individually and collectively, “Inspector Parties”) shall have the right to enter the Real Property at reasonable times to make such tests, inspections, studies, and other investigations as Buyer may require, at Buyer’s expense and risk and shall be permitted to review any of Seller’s files related to the Real Property, which are not privileged. Buyer shall indemnify Seller for, hold Seller harmless from, and defend Seller against any actual loss, damage, or claim arising directly out of Buyer’s entry and/or activities upon the Real Property, including without limitation any claim of lien against the Real Property arising from services performed on behalf of Buyer or at Buyer’s request. The foregoing indemnity shall not extend to (i) Buyer’s discovery of any pre-existing hazardous substance or hazardous material located on or about the Real Property, except to the extent that Buyer or its Inspector Parties have negligently, or through willful misconduct, exacerbated any such condition, (ii) any matter to the extent arising solely out of the gross negligence or willful misconduct of Seller (including Seller’s employees, agents, representative, contractors or invitees), and (iii) Buyer’s discovery of any other pre-existing adverse condition on or about the Real Property, except to the extent that Buyer or its Inspector Parties have negligently, or through willful misconduct, exacerbated such condition. Prior to Buyer or any Inspector Party entering the Property, Buyer shall provide Seller with evidence that Inspector Parties or others who investigate or examine the Real Property on Buyer’s behalf have in force adequate commercial general liability insurance with coverage of not less than One Million Dollars (\$1,000,000), per occurrence, One Million Dollars (\$1,000,000) general aggregate naming Seller as an additional insured, and worker’s compensation insurance in amounts required by law, to protect Seller against any and all liability, claims, demands, damages and costs (including reasonable attorneys’ fees and other litigation expenses) which may occur as a result of any activity of Buyer, the Inspector Parties or others who investigate or examine the Real Property on Buyer’s behalf. Seller may, at its reasonable discretion, waive this requirement if Buyer provides evidence to Seller that the applicable Inspector Parties desiring access to the Real Property maintain such insurance coverages (including naming Seller as an additional insured). The indemnity obligations of Buyer under this Section shall survive the Closing of the transaction contemplated herein or any termination of this Agreement for a period of six (6) months thereafter.

7.2 Limitations on Inspections. The parties agree that (i) all inspections of the Real Property by Buyer or the Inspector Parties shall be conducted during normal business hours and on not less than one business day’s prior notice to Seller (which may be in the form of an email or phone call); (ii) Seller shall be entitled to require that representatives of Seller accompany representatives of Buyer and/or the Inspector Parties (as applicable) on all inspections of the Real Property and the parties shall reasonably cooperate in scheduling to accommodate a Seller representative to be present for the inspection; provided, however, that a duly noticed inspection shall be permitted to continue if a representative is unavailable; (iii) all inspections by Buyer or the Inspector Parties shall be conducted in a commercially reasonable manner in order not to physically damage the Real Property in any material respect and minimize any material interference with the operations of the Real Property or the rights of any tenants thereof; (iv) Buyer shall be required to obtain Seller’s prior written approval of the scope and methods of any Phase II environmental assessment of the Real Property or other physically intrusive inspection or examination; and (v) Buyer shall restore, at its sole cost and expense, any

damage to the Real Property caused by any such inspections, examinations or tests to substantially the same condition existing immediately prior to such inspections, examinations or tests in the event that Closing does not occur through no fault of Seller. If requested by Buyer, Seller shall request Buyer interviews with any tenant or arrange interviews with the property manager for the Real Property, either before, on or after the Due Diligence Deadline, or any combination of the foregoing (each, as Buyer may require), and Seller shall have the right to have a representative present for such interviews.

7.3 Due Diligence Contingencies. The obligations of Buyer under this Agreement are, at Buyer's option and in its sole and complete discretion, subject to the complete satisfaction or waiver, on or before the Due Diligence Deadline, of the matters set forth in Section 9.1(a) and in this Section 7.3, below:

(a) Parking Rights. Within sixty (60) days following the Execution Date, Seller shall have provided Buyer with a plan for parking for the Office Unit.

(b) Amendments to Condominium Documents or Other Agreements. Seller and Buyer, and TriMet, as applicable, shall have agreed upon the execution forms of (a) any amendments to the Condominium Documents required by Buyer in order to fully provide for construction of the Office Unit, including access, temporary construction easements, and other items relating to and necessary for construction of the Office Unit, (b) any amendments to the Condominium Documents to address covenants, conditions and restrictions (“CCRs”) requested by Buyer relating to the post-construction operation of the Office Unit and the Condominium, or, appropriate, a separate agreement by and between Seller, TriMet and Buyer with respect to CCRs; and (c) any approvals or agreements required from TriMet as are necessary, in Buyer's discretion, to facilitate and evidence the TriMet approvals contemplated by Article 7 of the Declaration. TriMet's failure to agree upon the matters above, or its failure to provide any amendments or agreements to Seller for deposit into escrow, in accordance with Section 11.1(n), below, shall not be deemed a breach of this Agreement by Seller.

8. Seller's Contingencies to Closing.

8.1 Seller's obligation to close this transaction shall be subject to the satisfaction of each of the following conditions precedent:

(a) No Default. Buyer shall have complied in all material respects with all of Buyer's covenants to be performed under this Agreement; and the representations and warranties of Buyer under this Agreement shall be true, correct and complete, in all material respects, as of the Execution Date and Closing Date.

(b) Deliveries. Buyer's delivery to the Title Company on or before the Closing Date, for disbursement as provided herein, of the Purchase Price, any other amounts due to Seller pursuant to this Agreement, and the documents and materials described in this Agreement.

8.2 If any of the conditions set forth in Section 8.1 above are not satisfied or waived in writing by Seller on or before the Closing Date, Seller may, upon not less than three (3) business days' prior written notice to Buyer and Buyer's failure to remedy such failure within

such three (3) business day period, terminate this Agreement by written notice to Buyer given after the expiration of such three (3) business day period, in which event, provided that the Seller is not in default and is otherwise entitled to the same pursuant to Section 21.2 below, the Earnest Money shall be disbursed to Seller, and this Agreement will terminate, and neither party hereto shall have any further obligation to the other hereunder except for those obligations under Section 7.1 that expressly survive the termination of this Agreement.

9. Buyer's Contingencies.

9.1 In addition to the other conditions set forth in this Agreement, Buyer's obligation to close this transaction shall be subject to each of the following conditions precedent:

(a) Due Diligence Contingencies. Buyer's satisfaction, in Buyer's sole and absolute discretion, with the Property and every aspect thereof or related thereto, including without limitation, the sufficiency of the Condominium Documents, including with respect to facilitation of development and construction of the Office Unit, parking rights of the Office Unit, and covenants, conditions and restrictions relating to the operation of the Condominium after construction and annexation of the Office Unit; the physical condition of the Condominium, zoning and land use restrictions applicable to the Property, location of the Property, all systems, utilities, and access rights relating to the Property, the economic feasibility of the Property to Buyer, the suitability of the Property for Buyer's intended development of the Office Unit pursuant to the Condominium Documents, and the environmental condition of the Condominium.

(b) No Default. Seller having complied in all material respects with all of Seller's covenants to be performed by Seller under this Agreement, and the representations and warranties of Seller under this Agreement shall be true, correct and complete, in all material respects, as of the Execution Date and Closing Date.

(c) Deliveries. Seller's delivery to the Title Company on or before the Closing Date, of the documents and materials described in this Agreement to be delivered by Seller at Closing.

(d) Title Policies. The Title Company shall be unconditionally committed at the Closing to issue the Title Policies (as described in Section 12.1 below) to Buyer in the amount of the Purchase Price and in the form of the Proforma Policies approved by Buyer.

(e) Office Unit Approvals. All governmental approvals and permits required to develop and construct the Office Unit in accordance with the Office Plans, shall be final, binding and non-appealable, and subject only to terms and conditions of such approvals which are satisfactory to Buyer (collectively, the "Office Unit Approvals").

(f) No Material Casualty or Material Adverse Change. There shall not have occurred any casualty or condemnation providing Buyer with the right to terminate this Agreement as provided in Section 17.1 below, unless Buyer shall have elected not to terminate this Agreement as provided therein and no condemnation, eminent domain or similar proceeding are pending or, to the knowledge of Seller, threatened with regard the Property or the Condominium. Additionally, there shall have been no material adverse change in the use,

occupancy, tenants, title or condition of the Property or Condominium or any litigation pending against the Property or Condominium that arises after the Due Diligence Deadline (“Material Change”). Seller shall notify Buyer of any Material Change promptly after Seller obtains actual knowledge of same, and Buyer shall notify Seller if Buyer independently determines that there has been a Material Change. Within five (5) business days after receipt of such notice from Seller, or delivery of such notice to Seller, as applicable, Buyer shall: (i) waive such Material Change and complete its purchase of the Property pursuant to this Agreement; or (ii) terminate this Agreement and receive the return of the Earnest Money, in which event neither Seller nor Buyer shall have any further obligation under this Agreement, except for those obligations under Section 7.1 that expressly survive the termination of this Agreement.

(g) Due Diligence Deadline. If Buyer delivers a written notice to Seller on or before the later to occur of (a) thirty (30) days following TriMet Closing or (b) ninety (90) days following the Execution Date (the “Due Diligence Deadline”), advising Seller that Buyer has elected to approve the Property and waive the condition to Closing described in 9.1(a) (the “Approval Notice”), which election may be made or not made by Buyer for any reason or no reason, in Buyer’s sole and absolute discretion, then this Agreement shall remain in full force and effect. If Buyer does not provide the Approval Notice, or instead provides a notice of termination to Seller, on or before the Due Diligence Deadline, then this Agreement shall terminate and the Earnest Money shall be immediately returned to Buyer by Title Company without the need for any further instruction by either party, and neither party hereto shall have any further obligation to the other hereunder except for those obligations under Section 7.1 that expressly survive the termination of this Agreement.

9.2 Closing Conditions. If the conditions described in Section 9.1(b) – (f) above have not been satisfied or waived in writing by Buyer on or before the Closing Date, Buyer may terminate this Agreement by notice to Seller given at any time before the Closing, in which event the Earnest Money shall be refunded to Buyer. Notwithstanding the foregoing, (i) Buyer may not rely on the failure of any condition under Section 9.1 hereof if such failure was caused by Buyer’s failure to act in good faith or to use its commercially reasonable efforts to cause Closing to occur, and (ii) if such failed condition shall also constitutes a breach of this Agreement by Seller, then Buyer shall have the right to pursue any or all of the remedies of Buyer described in this Agreement. Further notwithstanding the foregoing, if the condition remaining unsatisfied as of the Closing Date is the condition in Section 9.1(e) relating to Office Unit Approvals, Buyer may, by written notice to Seller delivered prior to the Closing Date, elect to extend the Closing Date until the date that is not later than thirty (30) days after the satisfaction, or waiver in writing by Buyer, of such condition.

10. Pre-Closing Covenants. From the Execution Date until Closing, Seller shall (i) comply with applicable laws concerning the use and operation of the Real Property and the Condominium; (ii) continue to operate and maintain the Real Property and the Condominium in good working condition and repair in accordance with its prior practices; (iii) promptly provide Buyer with copies of notices of violation of laws and notices of litigation; (iv) provide Buyer with copies of notices of changes in the assessed value of the Real Property, if applicable; (v) use commercially reasonable efforts with all due diligence to obtain the Office Unit Approvals; (vi) maintain its existing permits and, if applicable, insurance coverage of the Real Property and Seller’s activities; (vii) after Condominium Formation, not amend the Condominium Documents

without Buyer's prior written consent, which may be withheld in Buyer's sole and absolute discretion with respect to any amendments that would affect the Property; (viii) not enter into any lease or contract with respect to the Airspace without Buyer's prior written consent, which may be granted or withheld in Buyer's sole and absolute discretion; (ix) pursue all warranty claims related to the Condominium construction or building system defects that Buyer requests that Seller pursue, at Buyer's sole expense; (x) pay all liens, encumbrances, taxes, penalties and assessments on the Property before they become due or a default would occur and shall not further encumber the Property; (xi) not market the Property for sale, enter into any back-up offers or solicit, encourage or engage in any negotiations or agreements (either directly or indirectly) with any third parties regarding the Property or any interest therein, except efforts to secure the Leasing Success Fee; (xii) if and as applicable, reasonably cooperate with Buyer's efforts to obtain any required approvals from the City for development of the Property as contemplated by this Agreement so long as such approvals may be obtained without out-of-pocket, third party expenses incurred by Seller; (xiii) cooperate with reasonable requests of Buyer or Buyer's financing lender in connection with the financing of Buyer's purchase and/or development of the Property pursuant to this Agreement; and (xiv) use commercially reasonable efforts with all due diligence to finalize amendments or agreements pursuant to Section 7.6 of this Agreement.

11. Deliveries to Title Company.

11.1 By Seller. On or before the Closing Date, Seller shall deliver the following in escrow to the Title Company:

(a) [Deed. A quit-claim deed as to the Office Unit (the "Deed") duly executed by Seller and acknowledged, substantially in the form of the attached Exhibit C, conveying the Office Unit to Buyer, such Deed to be held in escrow after Closing in accordance with the terms of the Assignment of Declarant's Rights;]¹

(b) Assignment of Plans, Permits, and Warranties. The Assignment of Plans, Permits, and Warranties, substantially in the form of the attached Exhibit D, duly executed by Seller (the "Assignment of Plans, Permits, and Warranties");

(c) Nonforeign Certification. An affidavit of Seller representing and warranting that it is not a "foreign person" as defined in Internal Revenue Code Section 1445, in substantially the form of the attached Exhibit E;

(d) Estoppel Certificate. The Estoppel Certificate substantially in the form of the attached Exhibit F, duly executed by [the Condominium Association and/or owner(s) of the Units of the Condominium;

¹ MDI Note: Subject to further review as to appropriate conveyance instrument.

(e) Post-Closing Upside Participation Agreement. If applicable pursuant to Section 2.3, the Post-Closing Upside Participation Agreement duly executed by Seller (the “Post-Closing Upside Participation Agreement”);

(f) Partial Assignment of Special Declarant’s Rights and Lease of Airspace. The Partial Assignment of Special Declarant’s Rights and Lease of Airspace, substantially in the form of the attached Exhibit G, duly executed and acknowledged by Seller (the “Assignment of Declarant’s Rights”);

(g) Proof of Authority. Such proof of Seller’s authority and authorization to enter into this Agreement and consummate the transactions contemplated by it, and such proof of the power and authority of the persons executing or delivering any instruments, documents, or certificates on behalf of Seller to act for and bind Seller, as may be reasonably required by the Title Company;

(h) Title Affidavits. Such documents as are necessary to issue the Title Policies, including a commercially reasonable owner’s affidavit, gap indemnity and a commercially reasonable “no change” survey affidavit in connection with the existing Survey (as defined below) on Title Company’s standard forms; provided that any statements in affidavits relating to condition of the Property may be based on the knowledge of Seller;

(i) Closing Certificate. A certificate executed by Seller certifying that the representations and warranties in Section 15.1 are true and correct in all material respects as of the Closing Date.

(j) No Material Change Certificate. A certificate executed by Seller certifying that, to Seller’s actual knowledge, there has not been any Material Change pursuant to Section 9.1(f), above.

(k) Settlement Statement. A closing settlement statement as prepared by Title Company, executed by Seller (“Settlement Statement”);

(l) Keys and Locks. Any keys in the possession or subject to the control of Seller to all locks located in the Condominium that Buyer may require in order to exercise the Airspace Development Rights, appropriately tagged for identification;

(m) Contracts, Warranties, Guaranties and Permits. Originals, or if not available, authentic and complete copies, of the Plans, Permits and Warranties;

(n) Amendments to Condominium Documents and Other Agreements. Seller’s and, if applicable, TriMet’s, duly executed counterparts of any amendments or agreements agreed to pursuant to Section 7.6 of this Agreement; and

(o) Other Documents. Any other documents, certificates or agreements as Buyer may reasonably request in order to satisfy the intent of this Agreement and such disclosures and reports as are required by applicable state and local law or reasonably required by the Title Company in connection with the conveyance of real property.

11.2 By Buyer. On or before the Closing Date, Buyer shall deliver the following in escrow to the Title Company:

(a) Purchase Price; Leasing Success Fee; Upside Participation Payment. The Purchase Price (to be delivered by wire transfer not later than 12:00 p.m. (Pacific time) on the Closing Date), and, if applicable, the Leasing Success Fee and Upside Participation Payment;

(b) Assignment of Plans, Permits and Warranties. The Assignment of Plans, Permits and Warranties duly executed by Buyer;

(c) Assignment of Declarant's Rights. The Assignment of Declarant's Rights duly executed and acknowledged by Buyer;

(d) Proof of Authority. Such proof of Buyer's authority and authorization to enter into this Agreement and consummate the transactions contemplated by it, and such proof of the power and authority of the persons executing or delivering any instruments, documents, or certificates on behalf of Buyer to act for and bind Buyer, as may be reasonably required by the Title Company;

(e) Closing Certificate. A certificate duly executed by Buyer certifying that the representations and warranties in Section 16 are true and correct as of the Closing Date;

(f) Post-Closing Upside Participation Agreement. If applicable pursuant to Section 2.3, the Post-Closing Upside Participation Agreement duly executed by Buyer;

(g) Buyer's Project Commitments. Buyer's Project Commitments Agreement (relating to LEED Gold v. 4.0, Seller's Workforce Equity Program and Business Equity Program, and implementation of a mentorship program) in the form attached hereto as Exhibit H ("Buyer's Project Commitments") duly executed by Buyer;

(h) Amendments to Condominium Documents and Other Agreements. If applicable, Buyer's duly executed counterparts of any amendments or agreements agreed to pursuant to Section 7.6 of this Agreement; and

(i) Settlement Statement. The Settlement Statement, executed by Buyer.

12. Title Review; Title Insurance.

12.1 Title Policies. At Closing, Seller shall cause the Title Company to issue to Buyer an ALTA extended coverage owner's title insurance policy and, for Buyer's construction lender, an ALTA extended coverage construction loan title insurance policy (the "Title Policies") in the amount of the Purchase Price, insuring title in the Airspace vested in Buyer, subject only

to the exceptions approved or waived pursuant to Section 12.2 below (the “Permitted Exceptions”) and in the form of a Proforma Policies to be issued by the Title Company and approved by Buyer in its sole discretion prior to the Due Diligence Deadline (the “Proforma Policies”). In connection with such extended coverage Title Policy, Seller shall pay the premium for the standard coverage of the owner’s policy and Buyer shall pay the additional premium for the extended coverage, loan policy, and all survey costs associated therewith. Seller shall remove, pay and satisfy, prior to or at Closing, all deeds of trust, mortgages, judgments and other monetary liens affecting the Property or any portion thereof and any mechanic’s and materialmen’s liens affecting the Property (collectively, the “Monetary Liens,” but excluding any liens caused by Buyer or Buyer’s agents, employees, contractors or representatives). Seller shall not permit the recordation of any additional exceptions to title or matters affecting title in any manner that are not shown on the Proforma Policies or on the ALTA survey dated _____, prepared by _____, as such survey is updated by Buyer (collectively, the “Survey”), without Buyer’s consent, which consent shall not be unreasonably withheld, conditioned or delayed.

12.2 Title and Survey Review. Buyer shall be entitled to review title to the Property as shown on a current title commitment and legible copies of all exceptions noted therein from the Title Company issued with respect to the Property (the “Title Commitment”) and the Survey which depicts the location of the improvements and easements located on and appertaining to the Property as set forth on the Title Commitment, all of which shall be delivered by Seller to Buyer within five (5) days after the Execution Date. Buyer may, at its expense, have the Survey updated, with which Seller will reasonably cooperate in a timely manner. By no later than the Due Diligence Deadline, Buyer may approve or disapprove (in its sole and absolute discretion) any items set forth in Title Commitment or the Survey for the Property by delivering written notice to Seller (“Buyer’s Title Notice”) specifying (i) each title defect or matter for which Buyer is requesting an elimination or cure by Seller (“Title Defect”) and (ii) each Title Company requirement (“Title Requirement”) Buyer is requesting Seller to satisfy in order for the Title Policies to be issued for the Property at Closing. Notwithstanding anything in the foregoing to the contrary, in no event shall Buyer be required to object to any Monetary Liens that Seller is otherwise obligated to remove or satisfy pursuant Section 12.1 above. Within thirty (30) days after receiving Buyer’s Title Notice, Seller shall deliver to Buyer written notice (“Seller’s Title Notice”) of those Title Defects which Seller covenants and agrees to either eliminate or cure by the Closing Date and those Title Requirements which Seller agrees to satisfy by the Closing Date. Seller’s failure to deliver Seller’s Title Notice to Buyer within the time period specified above or Seller’s failure to expressly agree in Seller’s Title Notice to eliminate or cure any Title Defect or to satisfy any Title Requirement shall be deemed to constitute Seller’s election not to eliminate or cure any such Title Defect or to satisfy any such Title Requirement. If Buyer delivers to Seller the Approval Notice described in Section 9.2, Buyer shall be deemed to have waived its objections to Title Defects and satisfaction of Title Requirements that Seller has not expressly agreed to eliminate, cure or satisfy, respectively. If after the Due Diligence Deadline, but prior to Closing, Buyer receives a supplemental notice from the Title Company of any additional title matters not reflected in the Title Commitment or the Survey, then Buyer shall have two (2) business days after receipt of such notice to object to such additional title matters (the “New Objections”) and the parties shall follow the procedures set forth above as with respect to the review, objection and approval of the initial title documents for the approval, disapproval or waiver of the New Objections. If Seller fails to expressly agree to eliminate or

cure any New Objection within the two (2) business day period after receipt of Buyer's notice of New Objections (the "Seller Response Period"), Buyer may terminate this Agreement by giving written notice to Seller within two (2) business days after expiration of the Seller Response Period, in which case this Agreement shall terminate (except for those obligations under Section 7.1 that expressly survive the termination of this Agreement) and the Earnest Money shall be promptly returned to Buyer.

13. Adjustments. Seller shall pay for (i) the cost and premium for the Title Policy (other than the premium for the loan policy, extended coverage, and any endorsements requested by Buyer, other than any required to cure Title Defects, which shall be at Seller's cost), (ii) one-half of all escrow fees and costs, (iii) one-half of all recording charges related to the Deed and the Partial Assignment of Declarant's Rights, and (iv) Seller's share of prorations pursuant to Section 14 below. Buyer shall pay for (i) all recording charges related to Buyer's trust deed, mortgage, or other security instrument(s), if any, (ii) the premium for an extended coverage endorsement to the Title Policy and any endorsements requested by Buyer, (iii) one-half of all escrow fees and costs, (iv) one-half of all recording charges related to the Deed and the Assignment of Declarant's Rights, (v) and Buyer's share of prorations pursuant to Section 14 below. Buyer and Seller shall each pay its own legal and professional fees in connection with Closing. All other costs and expenses shall be allocated between Buyer and Seller in accordance with the customary practice in Multnomah County, Oregon. At Closing, Buyer shall contribute any funds necessary to pay its share of adjustments.

14. Prorations.

14.1 Property Taxes. Any ad valorem property taxes and other assessments imposed by a governmental authority upon (but only with respect to) the Airspace Development Rights, if any, for the tax or assessment year in which Closing occurs, shall be prorated as of the Closing Date.

14.2 No Other Prorations. Except as provided above in Section 14.1, Buyer shall not be responsible for any taxes, expenses, charges, assessments or other impositions relating to the Property or Condominium attributable to the period prior to Closing.

15. Seller's Representations and Warranties. Seller represents and warrants to Buyer as of the Execution Date and as of the Closing, as follows:

15.1 Organization and Authority. Seller is a the redevelopment and urban renewal agency of the City of Portland, a municipal corporation, validly existing under the laws of the State of Oregon. Seller has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein. The persons executing this Agreement and the instruments referred to herein on behalf of Seller have the legal power, right, and actual authority to bind Seller to the terms and conditions of this Agreement. This Agreement is, and all the documents executed by Seller which are to be delivered to Buyer at the Closing will be, duly authorized, executed, and delivered by Seller. The obligations contained in this Agreement are, and all the documents executed by Seller which are to be delivered to Buyer at the Closing will be, legal, valid, and binding obligations of Seller enforceable against Seller in accordance with its respective terms

(except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, moratorium and other principles relating to or limiting the right of contracting parties generally).

15.2 No Default. The execution, delivery and performance by Seller of its obligations under this Agreement do not constitute a default under any of the provisions of any law, governmental rule, regulation, judgment, decree or order by which Seller is bound, or under any provision of any contract to which Seller is a party, or under Seller's charter or other organizational documents, or under the Condominium Documents, as the case may be. There is no agreement to which Seller is a party or, to Seller's knowledge, binding on Seller which is in conflict with this Agreement. No consent, approval, authorization or order of, registration or filing with (other than recording of the Assignment of Declarant's Rights), or notice to any court or governmental agency or body is required for the execution, delivery and performance by Seller of this Agreement except as have previously been obtained.

15.3 No Litigation. There is no litigation or arbitration pending or, to the knowledge of Seller, threatened with regard to Seller or the Property or its operation or with respect to the Condominium. There is no condemnation, eminent domain or similar proceedings pending or, to the knowledge of Seller, threatened with regard to the Property or the Condominium.

15.4 No Unrecorded Agreements. Except with respect to the TriMet Unit, there are no unrecorded agreements with respect to the Property, including any leases, licenses or other occupancy agreements, and/or any agreements to sell or providing an option or first right of offer or refusal to purchase, with respect to all or any portion of the Property.

15.5 Compliance with Laws. Seller has not received written notice of any, and to the knowledge of Seller neither Property nor the Condominium, or Seller's use and operation thereof, is in, violation of any zoning, building, fire, health, environmental, or other statutes, ordinances, regulations, orders or other laws, including but not limited to Environmental Laws.

15.6 Assessments. Seller has not received written notice of any, and to the actual knowledge of Seller there are no, (i) currently due and payable assessments for public improvements against the Property, (ii) local improvement district or other taxing authority in the process of formation that would create a lien on the Property, and (iii) pending or proposed special assessments against the Property. Except for assessments by the Condominium Association incurred in the ordinary course under the Declaration after completion of the Future Improvements and Annexation of the Office Unit pursuant to the Condominium Documents, there are no private assessments due or to become due and payable under any declaration, easement, covenant or other similar documents affecting the Property.

15.7 Prohibited Persons. Neither Seller nor, to Seller's knowledge, any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Seller) is or will be an entity or person (i) that is listed in the Annex to, or is otherwise subject to the provisions of Executive Order 13224 issued on September 24, 2001 ("EO13224"); (ii) whose name appears on the United States Treasury Department's Office of Foreign Assets Control ("OFAC") most current list of "Specifically Designated National and Blocked Persons" (which list may be published from time to time in

various mediums including, but not limited to, the OFAC website, <http://www.treas.gov/ofac/t11sdn.pdf>); (iii) who commits, threatens to commit or supports “terrorism”, as that term is defined in EO13224, (iv) is subject to sanctions of the United States government or is in violation of any federal, state, municipal or local laws, statutes, codes, ordinances, orders, decrees, rules or regulations relating to terrorism or money laundering, including, without limitation, EO13224 and the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, or (v) who is otherwise affiliated with any entity or person listed above (any and all parties or persons described above are herein referred to as a “Prohibited Person”). Seller covenants and agrees that neither Seller nor any of its respective officers, directors, shareholders, partners, members or affiliates (including without limitation indirect holders of equity interests in Seller) shall (x) conduct any business, nor engage in any transaction or dealing, with any Prohibited Person, including, but not limited to, the making or receiving of any contribution of funds, goods, or services, to or for the benefit of a Prohibited Person, or (y) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in EO13224.

15.8 Environmental. Except as expressly disclosed in the Property Documents, to the actual knowledge of Seller, there are no Hazardous Materials (as hereinafter defined) in, on or about the Condominium or the Property in violation of Environmental Laws or that require reporting, cleanup or remediation under Environmental Laws, whether such Hazardous Materials were placed by spill, release, discharge, disposal or storage, nor have any Hazardous Materials penetrated any waters including, but not limited to, streams crossing or abutting the Condominium or any aquifer underlying the Condominium. Except as disclosed in the Property Documents, to the actual knowledge of Seller, there are no underground storage tanks located beneath the surface of the Condominium. “Hazardous Materials”, as used in this Agreement, means any hazardous or toxic substance, material, waste or similar term which is regulated by local authorities, the State of Oregon and/or the federal government under Environmental Laws. “Environmental Laws”, as used in this Agreement, means and includes any present and future local, state and federal laws, regulations, rules, or ordinances relating to the environment and environmental conditions, including without limitation the Resource Conservation and Recovery Act of 1976 (“RCRA”), 42 U.S.C. § 6901 et seq., the Comprehensive Environmental Response Compensation and Liability Act of 1980 (“CERCLA”), 42 U.S.C. §§ 9601-9657, as amended by the Superfund Amendments and Reauthorization Act of 1986 (“SARA”), the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq., the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq., the Clean Air Act, 42 U.S.C. § 741 et seq., the Clean Water Act, 33 U.S.C. § 7401 et seq., the Toxic Substances Control Act, 15 U.S.C. §§ 2601-2629, the Safe Drinking Water Act, 42 U.S.C. §§ 300f-300j, and all federal, state, or local regulations, orders and decrees now or hereafter promulgated thereunder.

15.9 Foreign Person. Seller is not a “foreign person” as defined in Internal Revenue Code Section 1445.

15.10 ERISA. Seller is not and is not acting on behalf of (i) an “employee benefit plan” within the meaning of Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), (ii) a “plan” within the meaning of Section 4975 of the

Internal Revenue Code of 1986, as amended or (iii) an entity deemed to hold “plan assets” within the meaning of 29 C.F.R. §2510.3-101 of any such employee benefit plan or plans.

15.11 Property Documents. To Seller’s knowledge, Seller has delivered true, correct and complete copies of the Property Documents and Seller does not have any knowledge of any material inaccuracy or omission therein. Seller has not received written notice that any party is in default under any of the Property Documents.

15.12 Bankruptcy. Neither Seller nor, to the knowledge of Seller, any other party having any rights with respect to the Property, has filed or been the subject of any filing of a petition under the Federal Bankruptcy Law or any federal or state insolvency laws or laws for composition of indebtedness or for the reorganization of debtors.

15.13 Condominium Documents. As of the date of Closing, the Condominium Documents of record in the office records of Multnomah County, Oregon, have not been modified and will not be modified prior to Closing, except as expressly provided in this Agreement. As of the date of Closing, Seller, as Declarant and owner of the Property, has paid any and all amounts owed under the Condominium Documents, to Seller’s knowledge, is not in default under the Condominium Documents and, to the knowledge of Seller, the Condominium Documents are in compliance with all applicable laws, rules, regulations and ordinances applicable thereto.

15.14 Warranties. Except with respect to the elevator in the improvements on the Real Property, Seller does not have any pending claims for repair, recovery or other remedies under the Plans, Permits and/or Warranties to be assigned to Buyer at Closing.

16. Buyer’s Representations and Warranties. Buyer represents and warrants to Seller as of the Execution Date and as of the Closing, as follows:

16.1 Organization and Authority. Buyer is a corporation or other legal entity validly existing and in good standing under the laws of the state of its formation. Buyer has the legal power, right, and authority to enter into this Agreement and the instruments referred to herein and to consummate the transactions contemplated herein. The persons executing this Agreement and the instruments referred to herein on behalf of Buyer have the legal power, right, and actual authority to bind Buyer to the terms and conditions of this Agreement.

16.2 No Default. The execution, delivery and performance by Buyer of its obligations under this Agreement do not constitute a default under any of the provisions of any law, governmental rule, regulation, judgment, decree or order by which Buyer is bound, or under any provision of any contract to which Buyer is a party or by which Buyer is bound, or under Buyer’s organizational documents.

16.3 AS IS. Except as expressly set forth in Section 15, Buyer accepts the Property, “AS IS, WITH ALL FAULTS” without any representations or warranties by Seller or any agent or representative of Seller, expressed or implied. Buyer has ascertained for itself the value and condition of the Property, and except as set forth in Section 15, Buyer is not relying on, nor has Buyer been influenced by, any representation of Seller or any agent or representative of Seller regarding the value, condition, or any aspect of the Property. As part of Buyer’s

agreement to purchase the Property “AS-IS, WITH ALL FAULTS,” and not as a limitation on such agreement, Buyer hereby unconditionally and irrevocably waives and releases any and all actual or potential rights Buyer might have regarding any form of warranty, express or implied, of any kind or type, relating to the Property, except for Seller’s warranties set forth in this Agreement. Such waiver is absolute, complete, total and unlimited in every way. Seller shall not be responsible for any failure to investigate the Property on the part of Buyer or, except as expressly set forth in Section 15, 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 Seller, or any third party). Effective upon Closing, and except with respect to the representations set forth in Section 15 which survive Closing in accordance with Section 23.4, below, Buyer waives its right to recover from, and forever releases and discharges, Seller, Seller’s affiliates, the directors, officers, employees and agents of each of them, and their respective heirs, successors, personal representatives and assigns (collectively, the “Seller 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 of the Property and Hazardous Substances on, under or about the Property. The provisions of this Section shall survive closing and shall be fully enforceable thereafter.

17. Damage or Destruction; Condemnation.

17.1 Damage, Destruction or Taking. If, prior to Closing, if any part of the Real Property is damaged or destroyed by casualty or taken under power of eminent domain, Buyer may, in its sole and absolute discretion, elect whether to terminate or proceed under this Agreement by giving written notice of its election to Seller within thirty (30) days after receiving notice of such destruction or taking and, if applicable, the Closing Date shall be deferred to provide for such time period. During such period, the parties will confer as to whether the Real Property, as applicable, is capable of restoration, the impact such damage, destruction or taking may have on Buyer’s development of the Property as contemplated by this Agreement, and possible plans for coordination of restoration with development of the Property and how to allocate applicable awards or proceeds in connection with such coordination. Buyer shall be deemed to have elected to terminate this Agreement pursuant to this Section unless Buyer delivers notice to Seller within the above-described 30-day period that Buyer elects to proceed under this Agreement (including as may have been amended by the mutual agreement of the parties).

17.2 Termination. If Buyer elects to terminate this transaction as provided in Section 17.1 above, this Agreement shall be terminated, and neither party hereto shall have any further obligation to the other hereunder except for those obligations under Section 7.1 that expressly survive the termination of this Agreement. In such event, Seller shall be entitled to retain all insurance and/or condemnation proceeds received or receivable with respect to such destruction or condemnation and the Earnest Money shall be returned by Buyer.

18. Notices. All notices or other communications required or permitted under this Agreement shall be in writing and shall be (a) personally delivered (including by means of professional messenger service), which notices and communications shall be deemed received on receipt at the office of the addressee; (b) sent by registered or certified mail, postage prepaid, return receipt requested, which notices and communications shall be deemed received three business days after deposit in the United States mail; (c) sent by overnight delivery using a nationally recognized overnight courier service, which notices and communications shall be deemed received one business day after deposit with such courier; (d) if a telefax number is shown below, sent by telefax, which notices and communications shall be deemed received on the delivering party's receipt of a transmission confirmation, or (e) if an e-mail address is shown below, sent by email, which notices and communications shall be deemed received when the delivering party sends such notice. Notices given by counsel to Buyer shall be deemed given by Buyer and notices given by counsel to Seller shall be deemed given by Seller.

To Buyer: Mortenson Development, Inc.
700 Meadow Lane North
Minneapolis, MN 55422
Attention: Bob Solfelt, Senior Vice President
e-mail: Bob.Solfelt@Mortenson.com

With a copy to: Stacey Braybrook
Associate General Counsel
700 Meadow Lane North
Minneapolis, MN 55422
e-mail: Stacey.Braybrook@mortenson.com

and

Stoel Rives LLP
760 SW Ninth Ave
Portland, OR 97205
Attn: Chris Criglow
e-mail: chris.criglow@stoel.com

To Seller: Prosper Portland
220 NW 2nd Ave, Suite 200
Portland OR 97209
Attention: Eric Jacobson
e-mail: JacobsonE@ProsperPortland.us

With a copy to: Prosper Portland
220 NW 2nd Ave, Suite 200
Portland OR 97209
Attention: Hope Whitney
e-mail: WhitneyH@ProsperPortland.us

Notice of change of address shall be given by written notice in the manner detailed in this Section 18.

19. Brokers. Seller represents and warrants to Buyer that no broker or finder, other than Jeff Falconer of Capacity Commercial (“Seller’s Broker”), has been engaged by Seller in connection with the transaction contemplated by this Agreement. Seller shall be responsible for all commissions due to Seller’s Broker relating to the sale of the Property to Buyer. Buyer represents and warrants to Seller that no broker or finder has been engaged by Buyer in connection with the transaction contemplated by this Agreement. Seller shall indemnify Buyer for, hold Buyer harmless from, and defend Buyer against any claims for commissions or fees asserted by Seller’s Broker or any other broker or finder claiming by, through, or under Seller; and Buyer shall indemnify Seller for, hold Seller harmless from, and defend Seller against any claims for commissions or fees asserted by any broker or finder claiming by, through, or under Buyer. The indemnification obligations of Buyer and Seller under this Section 21 shall survive Closing.

20. Required Actions of Buyer and Seller. Buyer and Seller agree to execute all such reasonable instruments and documents and to take all reasonable actions pursuant to the provisions of this Agreement in order to consummate the purchase and sale transaction contemplated herein.

21. Remedies.

21.1 Buyer’s Remedies. If the conditions set forth in Section 8.1 above are satisfied or waived in writing by Seller and Seller fails to convey the Property to Buyer according to the terms and conditions of this Agreement, or Seller fails to perform any of its covenants set forth herein prior to Closing, or Seller materially breaches any of its representations or warranties prior to Closing, Buyer may elect either to (a) terminate this Agreement, in which event the Earnest Money shall be promptly refunded to Buyer by the Title Company, and Buyer shall be entitled to reimbursement from Seller for Buyer’s out-of-pocket third-party costs and expenses incurred by Buyer in connection with this Agreement, up to the maximum amount of \$ _____); or (b) enforce specific performance of this Agreement.

21.2 Seller’s Remedies. If the conditions set forth in Section 9.1 above are satisfied or waived by Buyer in writing and the Closing of the sale of the Property fails to occur as the result of Buyer’s failure to perform as required under this Agreement, Seller’s sole remedy hereunder shall be to terminate this Agreement and retain the Earnest Money. Buyer and Seller agree that it would be impractical and extremely difficult to estimate the damage that Seller may suffer in the event of such default by Buyer. Therefore, Buyer and Seller agree that a reasonable estimate of the total net detriment that Seller would suffer if Buyer defaults and fails to complete the purchase of the Property is an amount equal to the Earnest Money. This amount shall be the full, agreed, and liquidated damages for the breach of this Agreement by Buyer, and all other claims to damages or other remedies are expressly waived by Seller. The payment of this amount as liquidated damages is not intended as a forfeiture or penalty, but is intended to constitute liquidated damages to Seller. Upon such a default by Buyer, this Agreement shall be terminated and neither party shall have any further rights or obligations under it, except for the

right of Seller to collect such liquidated damages and the rights and obligations of Seller and Buyer under Section 7.1 that expressly survive termination of this Agreement. Seller and Buyer have made this provision for liquidated damages because it would be difficult to calculate, on the Execution Date, the amount of actual damages for such breach, and these sums represent reasonable compensation to Seller for such breach. Other than the retention of the Earnest Money as herein provided, in no event shall Buyer be liable to Seller for any damages, including without limitation punitive, special, consequential, and/or lost profits damages. Under no circumstances shall Seller be entitled to specific performance against Buyer under this Agreement.

22. Assignment. Buyer shall not assign its rights and obligations under this Agreement without the prior written consent of Seller, which may not be unreasonably withheld, conditioned, or delayed; except that Seller's consent shall not be required for Buyer to assign its rights to (i) an exchange accommodator, or any entity owned or controlled by an exchange accommodator, in connection with Buyer's pursuing a tax-deferred exchange under Section 1031 of the Internal Revenue Code in connection with Section 23.15 below, or (ii) any entity controlling, controlled by, or under common control with Buyer. No assignment, whether or not permitted, shall release the Buyer herein named from any obligation or liability under this Agreement unless and until the Closing occurs; the Buyer herein named and any permitted assignee shall be jointly and severally liable for all such obligations and liabilities unless and until such time as the Closing occurs. Any permitted assignee shall be deemed to have made any and all representations and warranties made by Buyer hereunder, as if the assignee were the original signatory hereto.

23. Miscellaneous.

23.1 Partial Invalidity. If any term or provision of this Agreement or the application to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

23.2 Waivers. No waiver of any breach of any covenant or provision contained herein shall be deemed a waiver of any preceding or succeeding breach thereof, or of any other covenant or provision herein contained. No extension of time for performance of any obligation or act shall be deemed an extension of the time for performance of any other obligation or act.

23.3 Exhibits. The exhibits referenced in this Agreement are a part of this Agreement as if fully set forth in this Agreement.

23.4 Survival of Representations, Warranties, and Covenants. The covenants, agreements, representations, and warranties made herein shall survive the Closing for a period of six (6) months, and shall not merge into the Deed and the recordation of it in the official records or the delivery at Closing of any assignment of leases, general assignment, or bill of sale.

23.5 Successors and Assigns. This Agreement shall be binding on and shall inure to the benefit of the permitted successors and permitted assigns of the parties to it.

23.6 Electronic Signatures. Facsimile or PDF transmission of any signed original document, and retransmission of any transmission, will be the same as delivery of an original, but at the request of either party, the parties shall confirm facsimile transmitted signatures by signing and delivering an original document.

23.7 Representation. The initial draft of this Agreement was prepared by Stoel Rives LLP, which represents Buyer. Seller acknowledges that it had an opportunity to consult with separate legal counsel prior to executing this Agreement. Seller and Buyer waive any claim that any term or condition of this Agreement should be construed against the drafter. This Agreement will be construed as if it had been prepared by both of the parties.

23.8 Attorney Fees. In the event that either party to this Agreement institutes a suit, action, arbitration, or other legal proceeding of any nature whatsoever, relating to this Agreement or to the rights or obligations of the parties with respect thereto, the prevailing party shall be entitled to recover from the losing party its reasonable attorney, paralegal, accountant, expert witness (whether or not called to testify at trial or other proceeding) and other professional fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, including but not limited to deposition transcript and court reporter costs, as determined by the judge or arbitrator at trial or other proceeding, and including such fees, costs and expenses incurred in any appellate or review proceeding, or in collecting any judgment or award, or in enforcing any decree rendered with respect thereto, in addition to all other amounts provided for by law. This cost and attorney fees provision shall apply with respect to any litigation or other proceedings in bankruptcy court, including litigation or proceedings related to issues unique to bankruptcy law.

23.9 Entire Agreement. This Agreement (including any exhibits attached to it) is the final expression of, and contains the entire agreement between the parties with respect to the subject matter of the Agreement and supersedes all prior letters of intent and understandings with respect to the subject matter of the Agreement. This Agreement may not be modified, changed, supplemented, or terminated, nor may any obligations under it be waived, except by written instrument signed by the party to be charged or by its agent duly authorized in writing or as otherwise expressly permitted herein. The parties do not intend to confer any benefit on any person, firm, or corporation other than the parties hereto.

23.10 Counterparts. This Agreement may be executed in counterparts, each of which will be considered an original and all of which together will constitute one and the same agreement.

23.11 Time of Essence. Seller and Buyer hereby acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, obligation, and provision of this Agreement.

23.12 Construction. Headings at the beginning of each section and subsection of this Agreement are solely for the convenience of the parties and are not a part of this Agreement.

Whenever required by the context of this Agreement, the singular shall include the plural, and the masculine shall include the feminine, and vice versa. Use of “including” shall mean “without limitation”, regardless of whether expressly so stated. Unless otherwise indicated, all references to sections are to this Agreement. Unless otherwise specified, in computing any period of time described in this Agreement, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless the last day is a Saturday, Sunday, or legal holiday, in which event the period shall run until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. As used in this Agreement, “business day” means a day other than a Saturday, Sunday or legal holiday.

23.13 Governing Law/Venue. The parties expressly agree that this Agreement shall be governed by, interpreted under, and construed and enforced in accordance with the laws of the State of Oregon. Any action, suit, or proceeding arising out of the subject matter of this Agreement will be litigated in courts located in Multnomah County, Oregon. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

23.14 Execution Date. The “Execution Date” of this Agreement is the later of the dates shown beneath the parties’ signatures below, and such date shall be inserted in the first paragraph of this Agreement.

23.15 Section 1031 Exchange. If either party (the “Exchanging Party”) intends to have the Property used as the relinquished or replacement property for an IRC Section 1031 exchange, the other party (the “Other Party”) will cooperate in such exchange as long as (a) such cooperation is at the sole expense of the Exchanging Party, (b) the Other Party assumes no additional risk or liability or loses no remedies or rights due to the exchange transaction, (c) the Closing is not delayed as a result of the exchange, and (d) the Other Party is not obligated to take title to any additional property.

23.16 Disclaimer. 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.

23.17 Exculpation. Notwithstanding anything appearing to the contrary in this Agreement, no direct or indirect partner, member or shareholder of Seller or Buyer (or any officer, director, agent, member, manager, personal representative, trustee or employee of any such direct or indirect partner, member or shareholder) shall be personally liable for the performance of the obligations of, or in respect of any claims against, Seller or Buyer arising under this Agreement. No personal judgment shall be sought or obtained against any of the foregoing in connection with this Agreement.

23.18 Third Party Beneficiaries. No third party shall be entitled to enforce or otherwise shall acquire any right, remedy or benefit by reason of this Agreement.

[Signature Page Follows]

DRAFT

SELLER:

CITY OF PORTLAND, a municipal corporation of the State of Oregon, acting by and through **PROSPER PORTLAND**, the assumed business name of the Portland Development Commission, the redevelopment and urban renewal agency of the City of Portland.

By: _____
Kimberly Branam, Executive Director

Date: _____

BUYER:

MORTENSON DEVELOPMENT, INC., a Minnesota corporation

By: _____

Name: _____

Title: _____

Date: _____

Exhibits and Schedules:

- Exhibit A: Real Property
- Exhibit B: Property Documents
- Exhibit C: Deed
- Exhibit D: Assignment of Plans, Permits, and Warranties
- Exhibit E: Certification of Nonforeign Status
- Exhibit F: Form of Estoppel Certificate
- Exhibit G: Assignment of Declarant's Rights
- Exhibit H: Buyer's Project Commitments Agreement



PROSPER PORTLAND

Building an Equitable Economy

RESOLUTION NO. 7398

RESOLUTION TITLE:

AUTHORIZING A PURCHASE AND SALE AGREEMENT WITH MORTENSON DEVELOPMENT FOR THE AIRSPACE DEVELOPMENT RIGHTS FOR THE 100 MULTNOMAH OFFICE BUILDING IN THE OREGON CONVENTION CENTER TAX INCREMENT FINANCE DISTRICT

Adopted by the Prosper Portland Commission on September 16, 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 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 Serena Stoudamire Wesley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner William Myers	<input 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.

	Date: September 17, 2020
Pam Feigenbutz, Recording Secretary	