

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7476

AUTHORIZING A CONSTRUCTION LOAN AND A PURCHASE AND SALE AGREEMENT WITH HOME FORWARD FOR THE RENOVATION AND ACQUISITION OF COMMERCIAL RETAIL SPACE AT 1103-1121 SW HARVEY MILK STREET IN THE RIVER DISTRICT URBAN RENEWAL AREA AND AUTHORIZING AN EXEMPTION FROM THE PROSPER PORTLAND GREEN BUILDING POLICY

WHEREAS, the Portland Housing Bureau (“PHB”) is the current owner of the real property and improvements located at 1103-1121 SW Harvey Milk Street (the “Fairfield Building”), a four-story unreinforced masonry structure built in 1911 that contains 82 single room occupancy (“SRO”) units that have been managed by Home Forward for federally subsidized extremely low-income housing since 2017;

WHEREAS, on January 15, 2021, Home Forward executed an initial agreement to acquire the Fairfield Building from PHB;

WHEREAS, Home Forward intends to form the Fairfield PSH Limited Partnership, and Oregon limited partnership (the “Partnership”) for the purpose of supporting their acquisition of the Fairfield Building, performing major renovations and seismic upgrades to the building, and continuing to operate the building as affordable housing (the “Housing Project”);

WHEREAS, the Fairfield Building also contains approximately 3,000 square feet of important retail commercial space located in the heart of the West End and Pride Plaza along SW Harvey Milk Street, however, due to the nature of the funding assembled for the Housing Project, Home Forward is prohibited from directly supporting the renovation and operation of the commercial retail space in the Fairfield Building (the “Retail Project”);

WHEREAS, the estimated total budget for the Retail Project is \$2,600,000, including \$2,500,000 million for renovation of the retail commercial space to a warm shell condition and \$100,000 for subsequent (“Tenant Improvements”);

WHEREAS, recognizing the importance of maintaining ground floor retail space, the Portland City Council has asked Prosper Portland to partner with Home Forward to lead the renovation and management of the commercial retail space and has provided Prosper Portland with a \$1,900,000 grant allocation from American Rescue Plan Act (“ARPA”) funds to support the Retail Project;

WHEREAS, the remaining costs of the Retail Project after applying the ARPA grant funds is \$700,000, which is eligible for funding using River District Tax Increment Finance (“TIF”) district funds;

WHEREAS, Prosper Portland and Home Forward have tentatively agreed to the terms of a series of agreements whereby Prosper Portland would provide up to \$2,500,000 in a construction loan to support the Retail Project, which would be guaranteed by Home Forward and would be forgiven when Home Forward transfers ownership of the commercial retail spaces to Prosper Portland following formation of a condominium that separates the commercial retail spaces (the “Retail Unit”) from the housing spaces (the “Housing Unit”);

WHEREAS, Home Forward will incorporate green building standards into the Fairfield Building renovation through a Self-Directed Sustainable Building Path described in the Oregon Housing and Community Services’ Core-Development Manual that, due to the shared and integrated nature of the building systems serving both the Housing Project and Retail Project, will make it impractical and prohibitively expensive for Home Forward to also comply with Prosper Portland’s separate Green Building Policy; and

WHEREAS, the Tenant Improvements of the Retail Project would be performed by Prosper Portland following its acquisition of the Retail Unit.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board of Commissioners authorizes the Executive Director to execute a Construction Loan Agreement, a Purchase and Sale Agreement, and related documents and agreements necessary to carry out the renovation of the Retail Project and acquisition of the Retail Unit, in substantial accord with the terms and conditions reflected in the Term Sheet attached to this Resolution as Exhibit A;

BE IT FURTHER RESOLVED, that the maximum amount authorized to be spent on the Retail Project, including acquisition of the commercial property and Tenant Improvements, is \$2,600,000, including \$1,900,000 in ARPA grant funds from the City of Portland and an amount not to exceed \$700,000 of River District TIF funds;

BE IT FURTHER RESOLVED, that the Retail Project is exempt from Prosper Portland’s Green Building Policy and will instead comply with the provisions of the Self-Directed Sustainable Building Path set forth in the Oregon Housing & Community Services Core-Development Manual;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the terms set forth in the Term Sheet, 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 with the affirmative vote of no less than four commissioners for this resolution, this resolution shall become effective immediately upon its adoption, and otherwise it will take effect thirty days after adoption.

Adopted by the Prosper Portland Commission on

February 8, 2023



Pam Feigenbutz, Recording Secretary

TERM SHEET

Proposed Actions:

Commission authorization for the Executive Director to execute Construction Loan documents, a Purchase and Sale Agreement, a Priority and Subordination Agreement with Home Forward, Fairfield PSH Limited Partnership, an Oregon limited partnership (the “Partnership”) in which Home Forward serves as the general partner, and other parties, to support the renovation and eventual purchase of approximately 3,000 sf of ground floor retail space at 1103-1121 SW Harvey Milk Street, Portland, OR 97205.

Background:

Home Forward has executed an initial agreement dated January 15, 2021, to acquire the real property and improvements located at 1103-1121 SW Harvey Milk Street, Portland, OR 97205 (the “**Property**”) from the Portland Housing Bureau (“**PHB**”). PHB, Home Forward, and the Partnership will also execute an Agreement for the Disposition and Development of Real Property, which will govern the sale and the development of the Property. The Partnership intends to renovate the improvements on the Property into an affordable housing project with ground floor retail space (the “**Project**”). Home Forward has requested that Prosper Portland support the Project by financing the development of approximately 3,000 square feet of ground floor commercial retail space, as depicted in the floor plan attached to this Term Sheet as Exhibit A through a Construction Loan (defined below).

Home Forward has indicated that it intends to file a condominium declaration that will separate the Property into two condominium units, one unit containing the affordable housing (the “**Housing Unit**”) and the second unit containing the ground floor commercial retail space (the “**Retail Unit**”). Once created, Home Forward proposes that Home Forward will convey ownership of the Retail Unit to Prosper Portland for an amount equal to the outstanding balance of the Construction Loan, at which point the Construction Loan and all deferred interest will be deemed paid in full. Prosper Portland anticipates leasing out the Retail Unit as affordable commercial space as defined by Prosper Portland’s current guidelines on affordable commercial space.

Home Forward and Prosper Portland entered into a non-binding Letter of Intent related to the proposed action on April 1, 2022, which has allowed Prosper Portland to begin its due diligence process and to provide comments on the development of the Project plans, designs, specifications, budget, and schedule as they pertain to the Retail Unit.

Proposed Terms:

1. CONSTRUCTION LOAN

- a. Prosper Portland will provide a loan to the Partnership in an amount not to exceed Two Million Five Hundred Thousand and 00/100 Dollars (\$2,500,000.00) for the purpose of financing the construction costs allocable to the Retail Unit (the “**Construction Loan**”). The Construction Loan will be funded by a combination of \$1.9 MM in Federal ARPA funds (American Rescue Act of 2021) and \$0.6 MM in TIF funds (River District Urban Renewal Plan).
- b. The terms and conditions of the Construction Loan will be memorialized through, among other documents, a Construction Funding Agreement or similar contract between the parties, which must include at a minimum:

- i. Prosper Portland will obtain a Deed of Trust for the Property and will receive a security interest in the Property and Project (the “**Security Interest**”) subordinate to a senior construction loan in the amount of \$20-25MM by Keybank (the “**Construction Lender**”) and a \$6.5MM loan by Portland Housing Bureau (collectively the “**Senior Security Interests**”). Prosper Portland’s Security Interest will be reconveyed upon the earlier of: (a) the date that the Construction Loan is repaid in full, or (b) the date that ownership of the Retail Unit is transferred to Prosper Portland. Prosper Portland will seek to protect its interests in the Retail Unit portion of the property through a Priority and Subordination Agreement, which will provide, at a minimum, that the parties providing financing to the Project will release their liens and/or covenants from the Retail Space prior to or concurrently with the conveyance of the Retail Unit to Prosper Portland.
- ii. Home Forward will guarantee repayment of the Construction Loan in the event of a default by the Partnership (the “**Guarantee**”). In addition, if the Retail Unit is not conveyed to Prosper Portland within a reasonable period of time following the anticipated completion date of the Project, the Guarantee will include a requirement that Home Forward pay liquidated damages to Prosper Portland in an amount reflecting the value of lost net operating income to Prosper Portland caused by the delay, until either the Construction Loan is repaid in full or the Retail Unit is conveyed to Prosper Portland. No interest will be assessed on the Construction Loan.
- iii. The Construction Loan shall be on a draw down basis and the Partnership may request draws on the Construction Loan not more than monthly during construction, subject to retainage withheld in the amount of 5% of each draw until the Project is substantially complete (“**Construction Retainage**”). At completion of the Project, as evidenced by the recording of a notice of completion in the records of Multnomah County, Prosper Portland will release all Construction Retainage to the Partnership. To the extent reasonably required by the Construction Lender or other investor in the Project, the Construction Loan proceeds may be deposited into a Construction Lender controlled account (the “**Controlled Account**”), provided that no disbursements of the Construction Loan from the Controlled Account will be authorized without the express written consent of Prosper Portland.
- iv. The Partnership must cause the construction of the Retail Unit in material accordance with the Project documents (i.e. plans, designs, specifications, budget, schedule, etc.) that have been approved in writing by Prosper Portland. The Construction Loan proceeds may only be used to pay for reasonably incurred construction and development costs of the Project allocated to the Retail Unit pursuant to a mutually agreeable Retail Unit allocated cost schedule. For purposes of this section, costs may include, but are not necessarily limited to, payments to the Partnership’s contractor and engineering/design teams; permit fees, and other government taxes or charges in connection with the construction

and development of the Project; construction-related insurance obtained by the Partnership; and Home Forward's negotiated developer fee.

- v. The Partnership must comply, and cause its contractors to comply, with ORS 279C.800 et seq. (Prevailing Wages) and/or the Davis-Bacon Act (collectively the "**Prevailing Wage Laws**"), as applicable, as well as any other state, federal, or local requirements applicable to the construction of the Project.
- vi. The Partnership will apply Home Forward's Construction Business and Workforce Equity Policy and Green Buildings Policy, to the construction of the Retail Unit.
- vii. The Partnership, must at its own cost and expense, comply with any applicable residential relocation requirements (such as the Federal Uniform Relocation Act, if applicable) and may not use any portion of the Construction Loan to pay any required compensation in connection with any such relocation.

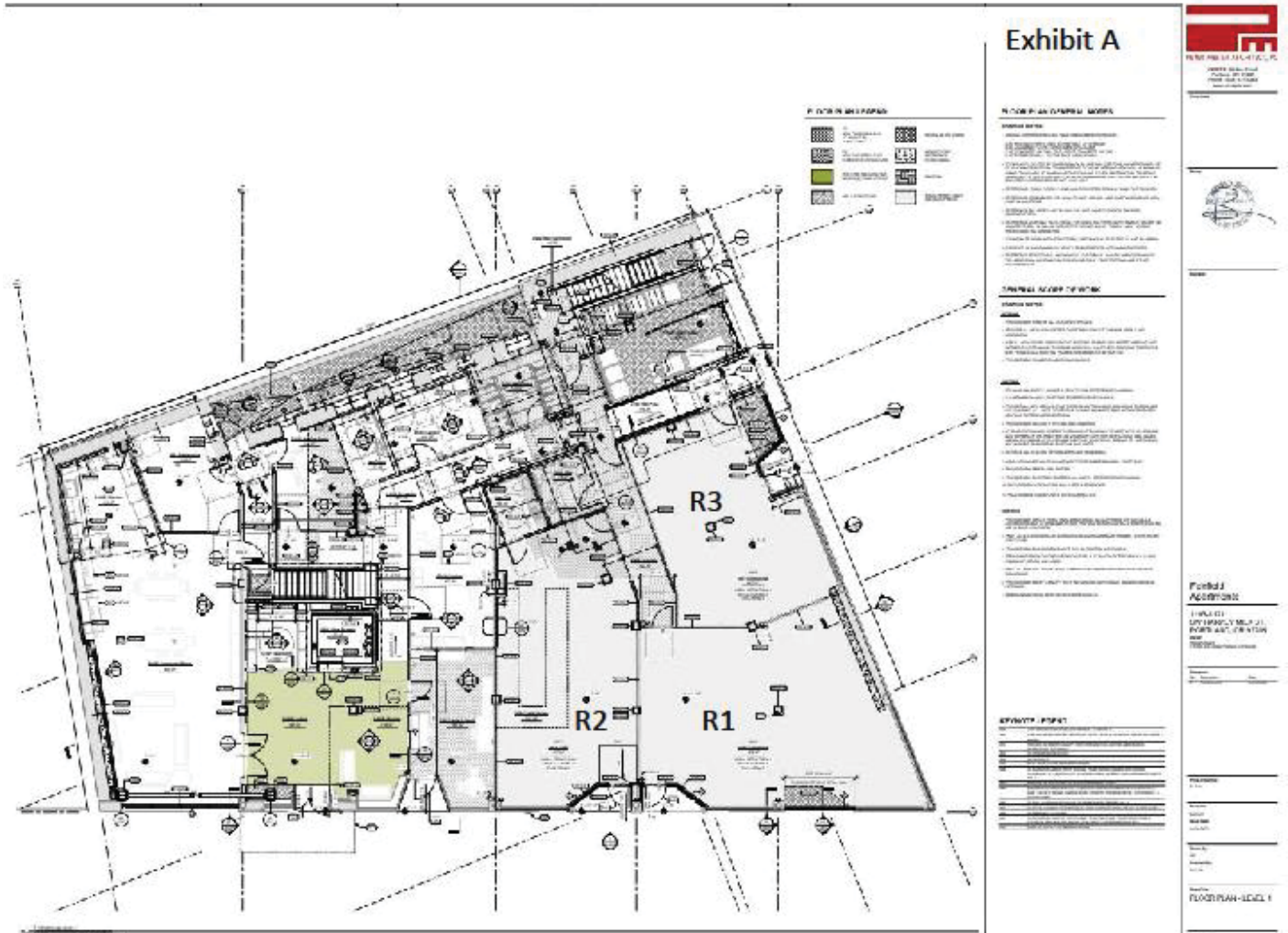
2. RETAIL UNIT PURCHASE

- a. Home Forward will be responsible for establishing the condominium, to include the creation of the Retail Unit, and will retain counsel and/or consultants to handle all applicable steps in doing so, such as drafting or causing the preparation of a declaration, bylaws and plat (the "**Condominium Documents**"), forming the association, plat/survey work, and obtaining approval from the Oregon Real Estate Agency. Prosper Portland may share in the actual costs and expenses of condominium formation, including attorneys' fees, consistent with the allocation of Retail Allocated Costs or other equitable distribution method agreed to by Prosper Portland.
- b. The terms and conditions of the purchase will be memorialized through a Purchase and Sale Agreement (the "**Agreement**") or similar contract between Home Forward, the Partnership and Prosper Portland, which must include at a minimum:
 - i. Home Forward must provide drafts of the Condominium Documents to Prosper Portland a reasonable time before the Agreement is anticipated to be executed to allow Prosper Portland and its counsel to review and comment. The parties must agree on substantially final versions of the Condominium Documents before the Agreement is executed, and such documents must be attached as an exhibit to the Agreement.
 - ii. When construction is sufficiently complete so that the condominium plat can be recorded, Home Forward must promptly cause the Condominium Documents to be approved by any necessary governmental entities, including the Oregon Real Estate Agency, and must form the condominium by recording the Condominium Documents with the Multnomah County Recorder (the "**Condominium Formation**").
 - iii. The Agreement will set forth reasonable closing conditions for the conveyance of fee title of the Retail Unit to Prosper Portland and for Prosper Portland to take possession of the Retail Unit, including that the Condominium Formation has occurred, all Senior Security Interests and other liens or covenants impacting the Project have been or will concurrently be released from the Retail Unit upon closing of the sale of the Retail Unit to Prosper Portland, and any lease between

Home Forward and the Partnership or any other entity will be amended to release the Retail Unit from that lease. The parties will work to close as quickly after the Condominium Formation as possible, or simultaneously with the Condominium Formation if possible; provided that the closing will not occur prior to the completion of construction of the Retail Unit.

- iv. Purchase Price. As full consideration for its acquisition of the Retail Unit from Home Forward, Prosper Portland will pay an amount equal to the outstanding balance due on the Construction Loan, including Construction Retainage (the “**Purchase Price**”), and Prosper Portland will receive a credit against the Purchase Price equal to the outstanding balance due on the Construction Loan, including Construction Retainage.
 - v. At closing, Home Forward will convey title of the Retail Unit to Prosper Portland by a special warranty deed and must deliver possession of the Retail Unit to Prosper Portland in a warm shell condition.
 - vi. At any time after closing, Prosper Portland will have the right to sell the Retail Unit as long as the buyer is qualified based on the requirements outlined in Exhibit C to the Letter of Intent.
- c. Assuming that Prosper Portland acquires the Retail Unit, \$100,000 of additional TIF Funds, plus the unspent portion of the maximum committed Construction Loan funds, will be designated to support tenant improvements of the Retail Unit. Prosper Portland will be solely responsible for the financing and construction of all tenant improvements, including any compliance with Prevailing Wage Laws, as well as any other state, federal, or local requirements applicable to the Tenant Improvements.

Fairfield Retail Map





**PROSPER
PORTLAND**
Building an Equitable Economy

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Adopted by the Prosper Portland Commission on February 8, 2023

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 William Myers	<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 Sam Rodriguez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Serena Stoudamire Wesley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

CERTIFICATION

The undersigned hereby certifies that:

The attached resolution is a true and correct copy of the resolution as finally adopted at a Board Meeting of the Prosper Portland Commission and as duly recorded in the official minutes of the meeting.

	Date: February 13, 2023
Pam Feigenbutz, Recording Secretary	