

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7503

**AUTHORIZING ACQUISITION OF A TENANT IN COMMON INTEREST
WITH THE PORT OF PORTLAND AT 3556 NW FRONT AVENUE**

WHEREAS, the Port of Portland (“Port”) owns real property and improvements, consisting of an approximately 40-acre lot located at 3556 NW Front Avenue, in the City of Portland, Multnomah County, Oregon, (“Property”);

WHEREAS, the Property is planned for redevelopment as a mass timber and housing innovation campus (“Innovation Campus”), which is partly supported by a U.S Economic Development Agency Build Back Better Regional Challenge Grant awarded to the Port and other members of the Oregon Mass Timber Coalition;

WHEREAS, the Port and Prosper Portland desire to invest in innovation in housing manufacturing and mass timber whose construction is more sustainable than steel or concrete, and the mass timber and modular housing industries can create new good-paying jobs in urban and rural communities, support forest restoration, and provide much-needed housing for the region;

WHEREAS, to further Prosper Portland’s and the Port’s shared goals of creating equitable growth and of reducing entitlement uncertainty for the Innovation Campus, the Port desires to convey to Prosper Portland, and Prosper Portland desires to receive from the Port, an undivided interest in the Property to be held by Prosper Portland as a tenant in common as set forth in a tenants in common agreement (“TIC Agreement”) to be executed by the parties;

WHEREAS, the TIC Agreement delegates all responsibility for the orderly administration of the operation, development, and management of the Property to the Port;

WHEREAS, the Port will hold a 99 percent interest in the Property as a TIC, and Prosper Portland will hold a one percent interest in the Property as a TIC; and

WHEREAS, Prosper Portland is willing to provide support for the Innovation Campus, on the terms set forth in the TIC Agreement attached as Exhibit A to this resolution.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board of Commissioners authorizes the Executive Director to acquire the TIC interest in the Property and to enter into a TIC Agreement with the Port that is substantially consistent with the TIC Agreement attached to this resolution as Exhibit A, in order to support the Innovation Campus;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to and amendments of the TIC Agreement prior to and subsequent to execution, so long as such changes do not materially increase Prosper Portland’s risks or obligations, 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 October 11, 2023



Pam Feigenbutz, Recording Secretary

TENANTS IN COMMON AGREEMENT

BETWEEN

THE PORT OF PORTLAND

AND

PROSPER PORTLAND

Dated as of:

TENANTS IN COMMON AGREEMENT

This Tenants In Common Agreement (“Agreement”), dated as of this ____ day of _____, 2023 (the “Effective Date), is by and between **THE PORT OF PORTLAND**, a Port district of the State of Oregon (the “Port”) and **PROSPER PORTLAND**, the economic development and urban renewal agency for the City of Portland (“Prosper Portland”) (together with any other persons or parties who acquire an interest and assume the rights and obligations hereunder by written instrument, each sometimes referred to as “Tenant in Common” or collectively as the “Tenants in Common” or “Parties”), with reference to the facts set forth below.

RECITALS

A. The Port owns real property and improvements thereon, consisting of an approximately 39.99-acre lot located at **3556 NW Front Avenue, in the City of Portland**, Multnomah County, Oregon, within the upland portion of the area formerly known as “Terminal 2,” and more particularly described in **Exhibit A** attached hereto and incorporated herein (“Property”).

B. The Property is planned for redevelopment as a mass timber and housing innovation campus (as more fully described below, the “Project”). The Project is partly supported described by a Federal EDA “Build Back Better” Regional Challenge Grant awarded to the Port and other members of the Oregon Mass Timber Coalition.

C. The Port and Prosper Portland desire to invest in innovation in housing manufacturing and mass timber. Mass timber construction is more sustainable than steel or concrete, and the mass timber and modular housing industries can create new good-paying jobs in urban and rural communities, support forest restoration, and provide much-needed housing for the region.

D. To further Prosper Portland’s and the Port’s shared goals of creating equitable growth as described in the City of Portland’s *Advance Portland* strategic plan and reducing entitlement uncertainty for the Project, the Port desires to convey to Prosper Portland, and Prosper Portland desires to receive from the Port, an undivided interest in the Property to be held by Prosper Portland as a tenant in common as set forth in this Agreement.

E. The Port and Prosper Portland desire to enter into this Agreement to (a) provide for the orderly administration of their rights and responsibilities as to each other and as to others and (b) delegate authority and responsibility for the intended further operation, development, and management of the Property.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained in this Agreement and for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties agree as set forth below.

1. AGREEMENT TO CONVEY PROPERTY INTEREST

1.1 Conveyance of Undivided Interest to Prosper Portland. The Port agrees to convey to Prosper Portland and Prosper Portland agrees to accept an undivided ONE PERCENT (1%) interest in the Property (the “Conveyance”), to be held as a tenant in common interest, for the total cost of ONE DOLLAR (\$1.00), which along with other good and valuable consideration, including the advancement of equitable economic development for public benefit, is acknowledged by the parties as received and sufficient consideration.

1.2 Conditions to Conveyance. The following are conditions precedent to the Conveyance:

- 1) Completion of a property line adjustment and recordation of a legal lot comprising the Property, at the Port’s sole cost and expense;
- 2) Approval of this Agreement by the Port of Portland Board of Commissioners; and
- 3) Approval of this Agreement by the Prosper Portland Board of Commissioners.

1.3 Co-Tenant Interests in Property. Upon the closing of the Conveyance, the Port will hold a NINETY-NINE PERCENT (99%) Interest in the Property as a tenant in common and Prosper Portland will hold a ONE PERCENT (1%) Interest in the Property as a tenant in common. The undivided interests in the Property held by the Port and Prosper Portland as tenants in common are referred to in this Agreement as “Interests,” or each as “Co-Tenant Interest.”

2. NATURE OF RELATIONSHIP BETWEEN CO-TENANTS

2.1 Tenants in Common Relationship; No Partnership. The Tenants In Common each will hold their respective undivided Co-Tenant Interest in the Property as tenants-in-common. The Tenants In Common do not intend by this Agreement to create a partnership or joint venture among themselves but merely to set forth the terms and conditions upon which each of them will hold their respective Interests. In addition, the Tenants in Common do not intend to create a partnership or joint venture with the property manager (as defined below).

2.2 Conducting Business as Direct Owners and Not a Partnership. No Tenant in Common shall file a partnership or corporate tax return, conduct business under a common name, or execute any agreement identifying any or all of the Tenants in Common as partners,

shareholders, or members of a business entity or otherwise hold themselves out as partners, shareholders, or members of a business entity.

2.3 Indemnity. Each Tenant in Common hereby agrees to indemnify, protect, defend, and hold the other Tenant in Common free and harmless from all costs, liabilities, tax consequences, and expenses, including, without limitation, attorneys' fees and costs, which may result from any Tenant in Common conducting business in violation of this Section 2 or otherwise taking a contrary position to this Section 2 on any tax return, report or other document.

2.4 No Agency. Except as specified in this Agreement, No Tenant in Common is authorized to act as agent for, to act on behalf of, or to do any act that will bind any other Tenant in Common or to incur any obligations with respect to the Property.

3. MANAGEMENT

3.1 Property Management. Subject to Section 3.2, below, the Port will be the sole and exclusive manager of the Property ("Property Manager") to act on behalf of the Tenants in Common without further consent from Prosper Portland with respect to the management, operation, maintenance, and leasing of the Property. The Port will be responsible for determining, in its sole discretion, the services that the Property Manager will provide, which may include collecting rents, paying any property taxes and insurance premiums, arranging for repair and maintenance of the Property, utilities, heat, air conditioning, trash removal, parking or security services for the Property and paying such expenses, and providing other customary services. Property Management services will be conducted by the Port at the Port's sole cost and expense. No fee shall be due to the Port for its Property Management services.

3.2 Prosper Portland's Consent. All significant decisions with regard to the Property, including, without limitation, (a) lease, sale, or other disposition of the Property, (b) creation, refinance, or modification of any mortgage loan secured by the Property, (c) creation or modification of a blanket lien, or (d) amendment or modification (including any stipulations of settlement in connection therewith) of any lease other than modification of lease provisions relating to rent, rates, fees, term, definition of premises, or similar customary operational provisions, or (e) termination of any lease, will require the prior written consent of Prosper Portland, which consent will not be unreasonably withheld, conditioned, or delayed, and which consent will be deemed provided by Prosper Portland if not received by the Port within ten (10) business days of Port's written request for such consent, so long as Prosper Portland is expressly released from any liability in connection with any such lease, sale, mortgage, lien or other action requiring Prosper Portland's consent hereunder.

3.3 Accounts, Books, Records, Statements. The Port acting as Property Manager on behalf of the Tenants in Common will open and maintain all accounts necessary in connection

with ownership of the Property, will maintain books, and will provide such written reports as requested by Prosper Portland.

4. ALLOCATION OF COSTS AND REVENUE

4.1 The Port will bear, be fully responsible and liable for, and hold Prosper Portland harmless for, all fees, costs, and expenses arising from ownership of the Property, management of the Property, or related to the Property and the Project. Except for its own staff time, Prosper Portland will have no liability or responsibility for any costs or expenses related to the Property or Project.

4.2 The Port will be entitled to all revenue arising from or relating to the Property or the Project, including without limitation lease revenues, fees, or grant proceeds related to the Property or the Project.

5. INDEMNIFICATION

5.1 Indemnification Related to Property or Project. Prosper Portland will have no responsibility or liability related to the Property or Project. The Port will indemnify, defend, and hold Prosper Portland and its officers, directors, managers, employees, agents, successors and assigns, harmless from and against any and all costs, liabilities, claims, demands, suits, judgments, causes of action, losses, damages, injuries, penalties, enforcement actions, fines, forfeitures, liens, taxes, remedial and removal costs, abatement and disposal costs, investigation costs, maintenance and monitoring costs, closure costs, agency oversight costs, fees and expenses, and costs of investigation and defense of any claim, action, proceeding, order, directive, suit or litigation (including, without limitation, reasonable attorneys' fees, litigation, arbitration and administrative proceeding costs, expert and consultant fees, and laboratory costs) (collectively, "Claims") on account of, arising out of, or related to (a) the existence of hazardous materials upon, about, beneath, or passing through or adjacent to the Property, (b) any violation or potential violation of environmental laws in connection with the Property or the Project by any person or entity other than Prosper Portland, or (c) personal injury, death, or any damage to or loss of property or revenues resulting in whole or in part from any act, omission, negligence, fault or violation of, or failure to comply with, any contract, law, or order (including any environmental law) by the Port, its employees, agents, contractors, sub-contractors, invitees, directors or officers with respect to the Property or Project. This indemnity provision will not apply to Claims resulting from the sole negligence or intentional misconduct of Prosper Portland, and will survive termination of this Agreement.

5.2 Environmental Information. At Prosper Portland's request, the Port will provide Prosper Portland with all final site investigation, cleanup, and closure decision documentation in its possession either prepared under the oversight of, or issued by, the U.S. Environmental

Protection Agency and Oregon DEQ regarding any pre-existing environmental contamination at the Property or in adjacent sediments within the River Mile 10 West Project Area of the Portland Harbor Superfund Site, including but not limited to the No Further Action determination issued by Oregon DEQ with respect to Terminal 2, including the Property, dated February 13, 2014. The Port's indemnity of Prosper Portland under this Agreement includes indemnification for any pre-existing environmental liabilities or any liability associated with T2's adjacency to the Portland Harbor Superfund Site.

6. REPURCHASE; TERMINATION; SUCCESSORS AND ASSIGNS

6.1 Port Repurchase Options. Port and Prosper Portland will each have the right to terminate the Agreement and require Port to repurchase Prosper Portland's Co-Tenant Interest for the original purchase price of one dollar (\$1.00) at any time, but only if the Port determines in its reasonable and sole discretion that such termination would not result in the land uses planned for the Project becoming nonconforming under the City of Portland Zoning Code, as the same may be amended from time to time. Any termination of the tenancy in common and repurchase of Prosper Portland's Interest will not cause termination of any lease, which lessor's interest will be assigned to the Port upon any termination of the tenancy in common in the Property.

6.2 Successors or Assigns. The obligations of each of the parties under the Agreement will run and be binding on the successors of each party. If the Port sells or assigns its interest in the Property, Prosper Portland will have the right to either terminate this Agreement (in accordance with Section 6.1, above) or evaluate the financial status of the purchaser or assignee. At Prosper Portland's sole option, Prosper Portland may require that the Port's indemnity of Prosper Portland survive the sale or assignment of the Port's Co-Tenant Interest. Prosper Portland may not sell or assign its Co-Tenant Interest without the Port's prior written consent, which will not be unreasonably withheld, conditioned, or delayed.

7. LAND USE ZONING; GRANT OBLIGATIONS; PROSPER PORTLAND COSTS

7.1 Land Use Zoning. As of the date of this Agreement, zoning of the Property under the City of Portland Zoning Code is limited to river-dependent and river-related uses. As a material inducement to the Port's conveyance of an undivided interest in the Property to Prosper Portland under this Agreement, Prosper Portland will cooperate and support the Port's efforts to bring the Property into zoning conformance to allow the development of the Property for the Project.

7.2 Build Back Better Grant. As a tenant in common owner, Prosper Portland agrees to become a co-grantee to the Federal Economic Development Administration "Build Back Better" grant received by the Port for the Project. The Port will assume and perform on behalf of the Tenants in Common all obligations relating to such grant and will release and hold Prosper Portland harmless from and against all such grant-related obligations.

7.3 Prosper Portland Expenses Related to this Agreement. Upon entering into this Agreement, the Port will pay to Prosper Portland FIVE THOUSAND DOLLARS (\$5,000) to compensate Prosper Portland for any expenses Prosper Portland may incur to enter in connection with this Agreement, including materials, administrative and legal costs, or external services.

8. ADDITIONAL PROVISIONS

8.1 Attorney Fees. Except as specifically provided otherwise in this Agreement, if a suit, action, or other proceedings of any nature whatsoever (including without limitation any administrative proceeding and any proceeding under the U.S. Bankruptcy Code) is instituted in connection with any controversy arising out of this Agreement or to interpret or enforce any rights or obligations hereunder, the prevailing party will be entitled to recover attorney fees and all other fees, costs, and expenses actually incurred as reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or any petition for review, in addition to all other amounts provided by law.

8.2 Notices. Until hereafter changed by the parties by notice in writing, notices will be sent to the parties at the addresses set forth below. Any notice required or permitted under this Agreement must be in writing and will be deemed effective: (1) when actually delivered in person, (2) one business day after deposit with a commercial courier service for “next day” delivery, (3) two business days after having been deposited in the United States mail as certified or registered mail, or (4) when transmitted by email with receipt confirmed; and, addressed to the parties as follows:

Prosper Portland: 220 NW 2nd Avenue, Suite 200
Portland, OR 97209
Attn: Development & Investment
220 NW 2nd Avenue, Suite 200
Portland, OR 97209
Attn: General Counsel
legalnotice@prosperportland.us

8.3 Governing law. This Agreement shall be governed, construed, and enforced under the laws of the State of Oregon.

8.4 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8.5 Headings. Section headings and the table of contents contained in this Agreement are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

8.6 Modification; Interpretation of Agreement. This Agreement may not be modified, except by the mutual written agreement of the parties, signed by both the Port and Prosper Portland. This Agreement is the result of arms-length negotiations between the Port and Prosper Portland. Therefore, any ambiguity subject to interpretation contained herein shall not be construed against the Port or Prosper Portland by reason of its preparation of this Agreement.

8.7 Defined terms. Capitalized terms shall have the meaning given them in the text of this Agreement.

8.8 No limit on powers. Nothing in this Agreement shall limit, in any way, the power and right of the Port or Prosper Portland to exercise its governmental rights and powers, including any powers of eminent domain.

8.9 Entire Agreement. This Agreement represents the entire agreement between the Port and Prosper Portland relating to the Property. It is understood and agreed by Prosper Portland and Port that neither Prosper Portland’s nor the Port’s agents or employees have made any representations or promises with respect to this Agreement or the making or entry into this Agreement, except as expressly set forth in this Agreement. No claim for liability shall be asserted based on any claimed breach of any representations or promises not expressly set forth in this Agreement.

IN WITNESS WHEREOF, the parties hereto have subscribed their names.

PROSPER PORTLAND

PORT OF PORTLAND

Signed: _____

Signed: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPROVED AS TO LEGAL SUFFICIENCY
FOR PROSPER PORTLAND

APPROVED AS TO LEGAL SUFFICIENCY
FOR THE PORT

By: _____

By: _____

Counsel for Prosper Portland

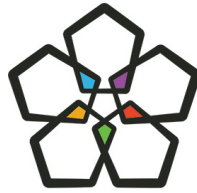
Counsel for the Port of Portland

APPROVED BY COMMISSION ON:

Board Resolution – <enter short title here>
<enter Board date here>

Exhibit A
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[page as needed for Exhibits with headers]



**PROSPER
PORTLAND**
Building an Equitable Economy

RESOLUTION NO. 7503

RESOLUTION TITLE:

AUTHORIZING ACQUISITION OF A TENANT IN COMMON INTEREST WITH THE PORT OF PORTLAND AT 3556 NW FRONT AVENUE


Adopted by the Prosper Portland Commission on October 11, 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 Marcelino J. Alvarez	<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 Michi Slick	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Serena Stoudamire Wesley	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/> Consent Agenda		<input checked="" type="checkbox"/> Regular Agenda		

CERTIFICATION

The undersigned hereby certifies that:

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

	Date: October 12, 2023
Pam Feigenbutz, Recording Secretary	