

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7519

AUTHORIZING THE TERMS OF A DEVELOPMENT AGREEMENT RELATING TO THE DESIGN AND CONSTRUCTION OF A PRIVATE MIXED-USE DEVELOPMENT AND PUBLIC INFRASTRUCTURE AT AND NEAR NE 102nd AVENUE AND PACIFIC STREET IN THE GATEWAY TAX INCREMENT FINANCE DISTRICT

WHEREAS, Prosper Portland is the City of Portland's (the "City's") redevelopment agency with broad powers to make investment towards economic development and community development outcomes;

WHEREAS, in March 1996, the Portland City Council (the "Council") adopted the Outer Southeast Community Plan, which identified the Gateway/Mall 205 Regional Center as an "...exciting new employment, commercial, and entertainment district, anchored by major retailers and office complexes";

WHEREAS, on May 15, 2001, through Resolution No. 5689, the Prosper Portland Board of Commissioners (the "Board") approved, and on June 21, 2001, through Ordinance No. 175699, the Council adopted, the Gateway Regional Center Urban Renewal Plan (as amended, the "Plan") to provide tax increment funding and authorize urban renewal activities to improve conditions and foster development and redevelopment within the Gateway Regional Center Urban Renewal Area ("Gateway") in order to protect public health, safety, and welfare;

WHEREAS, upon the Prosper Portland Board adopting a First Amendment to the Plan by Resolution No. 7455 on June 7, 2022, the last date to issue debt was removed to allow for the issuance of short-term debt and to gain additional resources to further support the goals and projects called for in the Plan, and acknowledgement was made that such action may impact the bonding capacity of David Douglas School District ("DDSD");

WHEREAS, pursuant to Resolution No. 7455, the Prosper Portland Board resolved that Prosper Portland staff "will work to offset any potential financial impact to DDSD by committing funding of \$3,000,000 tied to land development and infrastructure costs at properties at NE 99th and Pacific or otherwise within" [Gateway] and to memorialize the same through a binding agreement with DDSD that "acknowledges and addresses any potential financial impact to DDSD and supports investment in site planning, design, land development, or infrastructure costs related to properties at NE 99th Avenue and Pacific Street and in coordination with surrounding private development activities";

WHEREAS, the City and Prosper Portland share a commitment to Gateway becoming a vibrant, well-connected, and economically healthy community including through a diversity of housing and commercial development;

WHEREAS, the City and Prosper Portland have made significant investments in Gateway since 2001, including via the Gateway Action Plan accepted by the Council through Resolution No. 37228 on August 10, 2016 (as amended, the “Action Plan”), with a focus in three geographic subareas, including the Gateway Transit Center area;

WHEREAS, the Action Plan implements Prosper Portland’s strategic objectives to create healthy, complete neighborhoods; to support equitable wealth creation for historically disadvantaged communities and low-income neighborhoods including through small business opportunities; and to increase access to high-quality employment for residents of East Portland;

WHEREAS, by Ordinance No. 183270, effective October 22, 2009, the Council approved City policy BCP-TRN-7.07, amending the Portland Transportation System Plan based on the Gateway Master Street Plan for the purpose of providing flexibility for connections while maintaining larger parcels for redevelopment; recognizing existing parcel lines; providing connectivity on the local network without altering the district or neighborhood collectors; and fostering redevelopment in Gateway;

WHEREAS, the Action Plan identified the Master Plan as a barrier to redevelopment and prioritized leveraging system development charge investment and local improvement district financing to implement transportation infrastructure improvements;

WHEREAS, collaboration between multiple public and private sector partners and community organizations is required to further the objectives of the Action Plan, including: to stimulate development, employment, and educational opportunities; to connect new housing to jobs and transit; to support local businesses; and to leverage public infrastructure investments to increase safety and vitality with a focus on equitable outcomes;

WHEREAS, in 2015, DDSD purchased certain real property located at NE 99th Avenue/NE Pacific Street as a site for a future elementary school, (the “New School”), as further described in that certain DDSD Long-Range Facility Master Planning submitted December 2020;

WHEREAS, on or about January 1, 2021, the predecessor to Modomi Gateway Development, LLC (“Modomi”) entered into a certain contract with White/Gabriel LLC and GMB Unlimited LLC to acquire approximately 5.18 acres of vacant real property located at NE 102nd Avenue and Pacific Street (the “Property”), and began certain development activities intending to construct a new development on the Property featuring modular construction methods and consisting of, to the extent of the work actually performed on the Property: (a) approximately 200 housing units within six mixed-use three-story buildings along NE 102nd Avenue and NE Pacific Street, with approximately 10,549 square feet of commercial space and 11,280 square feet of residential amenity space on the ground floors; (b) approximately 12 interior, multi-dwelling, three-story residential structures with one, two, and three-bedroom units; and (c) approximately 145 surface parking spaces located in the interior of the site, taking access from a proposed extension of NE Oregon Street to the south of the site, and a proposed NE 100th Avenue to the west of the site (collectively, the “Project”);

WHEREAS, PBOT has determined that the New School and the Project collectively would require, among other things, the construction of certain transportation system improvements, including: (a) sufficient dedication for and construction of half-street improvements on the NE Oregon Street alignment between NE 100th and 102nd Avenues (the “Oregon Street Improvements”); (b) sufficient dedication for

and construction of a new street on the NE 100th Avenue alignment between NE Oregon and Pacific Streets (the "NE 100th Avenue Improvements"); (c) construction of a 12-foot-wide pedestrian corridor on the south side of NE Pacific Street (the "Pacific Street Improvements"); and (d) a 15-foot-wide pedestrian corridor on the west side of NE 102nd Avenue, which PBOT may allow to remain as is, subject to the conditions of Modomi's public works permit;

WHEREAS, the NE 100th Avenue Oregon Street, and Pacific Street Improvements would be adjacent to or otherwise in close proximity to the Project and would serve users of the Project as well as Gateway residents and the public generally, and PBOT has identified these road reconstruction and connectivity improvements as critical priorities in Gateway;

WHEREAS, Modomi approached Prosper Portland seeking input and assistance given the strategic history of the Gateway Transit Center within Gateway and regarding Action Plan priorities;

WHEREAS, Modomi, Prosper Portland, and DDS D seek to enter into a development agreement outlining their rights and obligations to one another with respect to the construction of the Street Improvements, the Project, and related matters;

WHEREAS, a purpose of the development agreement would be for Prosper Portland to satisfy its commitments to DDS D described in Resolution No. 7455, including to acknowledge and address any specified potential financial impact to DDS D, and to support investment in site planning, design, land development, or infrastructure costs related to properties at NE 99th Avenue and Pacific Street, in coordination with surrounding private development activities, such as the Project;

WHEREAS, given the complexity of funding public improvements at the DDS D properties at NE 99th Avenue and Pacific Street, Prosper Portland requires additional funding assistance from PBOT to fully fund the entirety of costs, totaling approximately \$6,102,000, associated with public and private improvements described in the Development Agreement;

WHEREAS, such development agreement would obligate Prosper Portland to enter into an intergovernmental agreement with PBOT governing certain matters related to the funding and construction of the NE 100th Avenue Improvements; and

WHEREAS, Prosper Portland will satisfy its commitments to DDS D described in Resolution No. 7455, with an anticipated direct financial commitment by Prosper Portland of \$3,452,101 as consideration for, and in consideration of, Developer's and PBOT's anticipated additional cash and noncash consideration of \$2,649,899 toward the Developer Street Improvements and the NE 100th Avenue Street Improvements, resulting in a net commitment of funding toward infrastructure of benefit to DDS D of \$5,344,101 as a direct result of Prosper Portland entering into the Development Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the Prosper Portland Board authorizes the Executive Director to execute a Development Agreement in substantially the form attached hereto as Exhibit A;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the terms set forth in the Development Agreement, 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;

BE IT FURTHER RESOLVED, that the Prosper Portland Board requests and recommends that the Portland City Council enact ordinances, make resolutions, and take any other actions necessary to authorize and direct City bureaus to cooperate and coordinate with Prosper Portland to implement the Development Agreement by its terms; 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 January 24, 2024

A handwritten signature in blue ink that reads "Pam Feigenbutz". The signature is written in a cursive, flowing style.

Pam Feigenbutz, Recording Secretary

AGREEMENT FOR THE DEVELOPMENT OF PROPERTY

LOCATED IN THE GATEWAY TIF DISTRICT,

AT NE PACIFIC STREET BETWEEN NE 99TH AND 102ND AVENUES,

PORTLAND, OREGON,

BY AND AMONG

PROSPER PORTLAND,

DAVID DOUGLAS SCHOOL DISTRICT,

AND

MODOMI GATEWAY DEVELOPMENT, LLC.

DEVELOPMENT AGREEMENT¹

This **DEVELOPMENT AGREEMENT** (this “*Agreement*”) is made and entered into as of the last date of signature below (the “*Effective Date*”), by and among PROSPER PORTLAND, the economic development and urban renewal agency of the City of Portland (“*Prosper Portland*”), DAVID DOUGLAS SCHOOL DISTRICT (“*DDSD*”), and MODOMI GATEWAY DEVELOPMENT, LLC, an Oregon limited liability company formerly known as Mosaic Gateway Development LLC (“*Developer*”). Prosper Portland, DDSD, and Developer may be referred to jointly in this Agreement as the “*Parties*” and individually as a “*Party*.”

RECITALS

- A. Prosper Portland is the urban renewal and redevelopment agency of the City of Portland, Oregon (“*City*”), with broad powers to make investment towards economic development and community development outcomes.
- B. In March 1996, the Portland City Council (“*Council*”) adopted the Outer Southeast Community Plan. The plan identified the Gateway/Mall 205 Regional Center as an “...exciting new employment, commercial, and entertainment district, anchored by major retailers and office complexes.”
- C. On May 15, 2001, through Resolution No. 5689, the Prosper Portland Board of Commissioners (“*Prosper Portland Board*”) approved, and on June 21, 2001, through Ordinance No. 175699, the Council adopted, the Gateway Regional Center Urban Renewal Plan (as amended, the “*TIF Plan*”) to provide tax increment funding and authorize urban renewal activities to improve conditions and foster development and redevelopment within the Gateway Regional Center Urban Renewal Area (the “*Gateway TIF District*”) in order to protect public health, safety, and welfare.
- D. The City and Prosper Portland have made significant investments in the Gateway TIF District, including via the Gateway Five-Year Action Plan (“*Action Plan*”), accepted by the Council by Resolution No. 37228 in August 2016, with a focus in three geographic subareas, including the Gateway Transit Center area.
- E. The Action Plan implements Prosper Portland’s strategic objectives to create healthy, complete neighborhoods; to support equitable wealth creation for historically disadvantaged communities and low-income neighborhoods including through small business opportunities; and to increase access to high-quality employment for residents of East Portland.
- F. By Ordinance No. 183270, effective October 22, 2009, the Council approved City policy BCP-TRN-7.07, amending the Portland Transportation System Plan (“*System Plan*”) based on the Gateway Master Street Plan for the purpose of providing flexibility for connections while maintaining larger parcels for redevelopment; recognizing existing parcel lines; providing connectivity on the local network without altering the district or neighborhood collectors; and fostering redevelopment in the Gateway TIF District.
- G. In 2015, DDSD purchased certain real property located at NE 99th Avenue/NE Pacific Street, and legally described in **Exhibit A** attached hereto, as a site for a future elementary school, (the “*New School*”) as further described in that certain DDSD Long-Range Facility Master Planning

¹ Matters and items highlighted in yellow will be appended or resolved to the parties’ mutual satisfaction, and included, specified, or otherwise made certain prior to execution.

submitted December 2020. On or about January 1, 2021, Developer entered into a certain contract with White/Gabriel LLC and GMB Unlimited LLC to acquire approximately 5.18 acres of vacant real property located at NE 102nd Avenue and Pacific Street (as legally described in **Exhibit B**, the “**Property**”), and began certain development activities intending to construct a new development on the Property featuring modular construction methods and consisting of the following to the extent of the work actually performed on the Property: (a) approximately 200 housing units within 6 mixed-use three-story buildings along NE 102nd Avenue and NE Pacific Street, with approximately 10,549 square feet of commercial space and 11,280 square feet of residential amenity space on the ground floors; (b) approximately 12 interior, multi-dwelling, three-story residential structures with one, two, and three-bedroom units; and (c) approximately 145 surface parking spaces located in the interior of the site, taking access from a proposed extension of NE Oregon St. to the south of the site and a proposed NE 100th Ave. to the west of the site (the “**Project**”). Developer, due to the City’s proposed Housing Regulatory Relief Program, may reduce commercial space, however elimination of commercial space in its entirety will be subject to approval by Prosper Portland.

- H. The Gateway Master Street Plan, the System Plan, the New School, and the Project collectively call for or necessitate the construction of certain transportation system improvements, including: (a) sufficient dedication for and construction of half-street improvements on the NE Oregon Street alignment between NE 100th and 102nd Avenues (the “**Oregon Street Improvements**”); (b) sufficient dedication for and construction of a new street on the NE 100th Avenue alignment between NE Oregon and Pacific Streets (the “**NE 100th Street Improvements**”); (c) construction of a 12-foot-wide pedestrian corridor on the south side of NE Pacific Street (the “**Pacific Street Improvements**”), as further described in PBOT response letters dated July 16, 2018 (regarding the New School) and May 10, 2022 (regarding the Project); and (d) a 15-foot-wide pedestrian corridor on the west side of NE 102nd Avenue, which PBOT may allow to remain as is, subject to the conditions of the Developer’s public works permit. (The Oregon Street Improvements, the NE 100th Street Improvements, and the Pacific Street Improvements are collectively referred to as the “**Street Improvements**”.)
- I. The Street Improvements would be adjacent to or otherwise in close proximity to the Project and would serve users of the Project as well as the Gateway TIF District and the public generally.
- J. Developer approached Prosper Portland seeking input and assistance given the strategic history of the Gateway Transit Center within the Gateway TIF District and Action Plan priorities.
- K. On June 7, 2022, by Resolution No. 7455, the Prosper Portland Board adopted that certain First Amendment to the Gateway TIF District, thereby removing the last date to issue debt in order to allow for the issuance of short-term debt and to gain additional resources to further support the goals and projects called for in the Action Plan. By that resolution, the Prosper Portland Board also acknowledged that DDS D’s bonding capacities may be financially impacted by removing the last date to issue debt.
- L. By Resolution No. 7455, the Prosper Portland Board instructed staff to work to offset any potential financial impact to DDS D by committing funding of \$3,000,000.00 tied to land development and infrastructure costs at properties at NE 99th St. and Pacific St. or otherwise within the boundaries of the TIF District and to memorialize that offset commitment through a binding agreement with DDS D that supports investment in site planning, design, land development, or infrastructure costs related to properties at NE 99th Avenue and Pacific Street and in coordination with surrounding private development activities.
- M. A purpose of this Agreement is for Prosper Portland to satisfy its commitments to DDS D described in Resolution No. 7455, including to acknowledge and address any specified potential financial impact to DDS D, and to support investment in site planning, design, land development,

or infrastructure costs related to properties at NE 99th Avenue and Pacific Street, in coordination with surrounding private development activities, such as the proposed Project.

- N. Costs associated with public transportation system improvements near the New School and Project, and related public improvements, are estimated at approximately \$6,102,000 and therefore require additional funding from Developer and PBOT.
- O. Prosper Portland will satisfy its commitments to DDS D described in Resolution No. 7455 by entering into this Agreement and thereafter performing its obligations set forth in this Agreement. Prosper Portland's anticipated direct financial commitment of \$3,452,101 will be consideration for, and in consideration of, Developer's and PBOT's anticipated additional cash and noncash consideration of \$1,892,000 toward the Street Improvements, resulting in a net commitment of funding toward infrastructure of benefit to DDS D of \$5,344,101 as a direct result of Prosper Portland entering into this Agreement.
- P. On January 24, 2024, the Prosper Portland Board approved Resolution No. [REDACTED], authorizing the Executive Director of Prosper Portland to enter into this Agreement on the terms and conditions set forth herein and in such resolution.
- Q. On [REDACTED], 2024, the DDS D School Board authorized the Superintendent of DDS D to enter into this Agreement.

AGREEMENT

In consideration of the foregoing and of the mutual covenants of the Parties set forth in this Agreement, the Parties agree as follows:

SECTION 1 DEVELOPMENT.

1.1 **Certain Developer Obligations.** Provided that all conditions precedent accruing to the benefit of Developer have been waived by Developer or satisfied in accordance with **Section 2** below, and in accordance with the Schedule of Performance attached hereto as **Schedule 1.1** ("**Schedule of Performance**"), Developer will:

1.1.1 at Developer's sole cost and expense and without further consideration, convey any remnant parcel west of the new NE 100th Street to DDS D, which DDS D has agreed to accept in its as-is, where-is condition;

1.1.2 concurrently with the development of the Project as contemplated under land use permit 2022-187287-000-00-LU, design, engineer, construct, and dedicate the street and public system improvements resulting from, the Oregon Street Improvements and the Pacific Street Improvements, consistent with the funding and finance plan attached to this Agreement as **Schedule 1.1.2** (the "**Funding and Finance Plan**") and subject to Section 1.2.2 below. Provided DDS D has approved or has been deemed to have approved the permit set of plans for the Pacific Street Improvements in accordance with Section 1.5.2 below and that the Pacific Street Improvements are constructed in accordance with such approved plans, DDS D agrees to accept the Pacific Street Improvements fronting the New School and any other property owned by DDS D in its as-is, where-is condition and hereby releases Developer, its employees, members, managers, officers, directors, and agents from any liability and claims related to the design or construction of the Pacific Street Improvements;

1.1.3 *Intentionally Omitted;*

1.1.4 commence construction of the Project by the date set forth in the Schedule of Performance (the “**Construction Commencement Deadline**”);

1.1.5 use modular-based construction methods;

1.1.6 substantially complete the Project by the date set forth in the Schedule of Performance (the “**Project Completion Deadline**”); and

1.1.7 construct the Project subject to Prosper Portland’s Workforce Training and Hiring Program Specifications, Business Equity Program Specifications, and Green Building Policy (subject to **Section 1.6** below), copies of which are attached hereto as **Schedules 1.1.7-A, 1.1.7-B, and 1.1.7-C**, respectively (each, a “**Policy**”; collectively, the “**Policies**”). Prior to hiring a general contractor or commencing any bidding for construction of the Project, Developer must consult with Prosper Portland’s compliance personnel to ensure compliance with the Policies.

1.2 **Certain Prosper Portland Obligations.**

1.2.1 In accordance with the Schedule of Performance, Prosper Portland will use reasonable diligent efforts to enter into an intergovernmental agreement, on such terms as may be mutually acceptable (the “**IGA**”), with the Portland Bureau of Transportation (“**PBOT**”), pursuant to which: (i) Prosper Portland would agree to contribute up to \$603,000 in Gateway TIF District tax increment financing funds to reimburse PBOT for tax increment financing eligible design, engineering, and construction work by PBOT on the NE 100th Street Improvements (including water system utilities improvements suitable to accommodate and serve an anticipated elementary school at the property owned by DDS at NE 99th and NE Pacific); (ii) PBOT would agree to use transportation system development charge (“**TSDC**”) revenue to fund its work on the NE 100th Street Improvements in an amount equal to the difference between \$1,892,000 and the value of TSDC credits granted to Developer for eligible improvements constructed by Developer as part of the Oregon Street Improvements, such prospective TSDC credit value having been estimated by Developer at \$570,000; and (iii) PBOT would agree to act as the performing party with respect to the design, engineering, and construction of the NE 100th Street Improvements such that the NE 100th Street Improvements are substantially complete by June 30, 2027, or the date on which the Oregon Street Improvements and Pacific Street Improvements are substantially complete, whichever is later. Should Developer materially increase the number of housing units in the Project, and therefore materially increase their TSDCs, Prosper Portland agrees to convene Developer and PBOT to discuss any credit of those additional TSDC funds for TSDC eligible public improvements to be constructed by Developer associated with the Project, including any unanticipated cost overruns specific to the TSDC eligible public improvements.

1.2.2 Provided that all conditions precedent accruing to the benefit of Prosper Portland have been waived by Prosper Portland or satisfied in accordance with Section 2 below, and in accordance with the Schedule of Performance, Prosper Portland will provide up to \$2,849,101 of Gateway TIF District tax increment financing funds (the “**TIF Funds**”) to reimburse Developer for tax increment financing eligible (“**TIF-eligible**”) design, engineering, and construction work by Developer on the Oregon Street Improvements and Pacific Street Improvements as contemplated by this Agreement. Prosper Portland shall provide such reimbursement to Developer within thirty (30) days of receipt of invoices or other reasonable evidence of TIF-eligible costs incurred by Developer. Developer shall not request reimbursement under this Section 1.2.2 more frequently than monthly.

1.2.3 Prosper Portland and Developer have been in discussions regarding the use of Prosper Portland's loan programs as gap funding for the non-infrastructure portion of the Project. Prosper and Developer agree to continue to work together to outline mutually agreeable loan terms with the intent of seeking Board approval for such loan within 180 days of execution of this Agreement.

1.3 **Obligations of DDS**. Provided that all conditions precedent accruing to the benefit of DDS have been waived by DDS or satisfied in accordance with **Section 2** below, and in accordance with the Schedule of Performance, DDS will: (a) participate in public engagement meetings organized by Prosper Portland with local community stakeholders and the public regarding the Project, the Street Improvements, and any development on or affecting DDS properties; (b) at no cost, convey certain real property to be specifically described, in such condition as requested, for Developer and/or PBOT to construct the new NE 100th Street right of way portion of the Street Improvements consistent with the preferred traffic calming design with a curved alignment to the NE 100th Ave. extension; (c) at no cost, convey any remnant parcel east of new NE 100th Street to Developer; (d) pursuant to an access agreement to be negotiated between DDS and Developer on reasonable terms, grant and afford access as necessary to Developer to DDS property between 99th Ave and 100th Ave to allow Developer to construct certain frontage improvements along such DDS property; (e) use reasonable efforts to improve and maintain conditions of certain DDS properties near to the Project for potential future development; (f) bear the cost of the design, engineering, and construction work necessary to satisfy its obligation under subsection (e) above; (g) pursue interim land uses on certain DDS properties near to the Project to complement neighboring activity, encourage economic activity, and neighborhood livability before permanent redevelopment occurs for DDS education facilities; (h) pursue funding for the redevelopment of DDS property for education facilities purposes, including any additional improvements for future elementary school as may be required by the City.

1.4 **Cost Overruns**. For purposes of determining any cost overrun related to the Street Improvements, the Funding and Finance Plan shall be updated (the "**Updated Funding and Finance Plan**") based on the permit set of drawings and guaranteed maximum pricing obtained for each of the Oregon Street Improvements, the NE 10th Street Improvements and the Pacific Street Improvements. If the amount set forth in the Updated Funding and Finance Plan for a given Street Improvement is insufficient for the completion of such Street Improvement, responsibility to contribute additional funding as necessary to complete such Street Improvement will: (a) with respect to the NE 100th Street Improvements, be determined pursuant to the IGA; (b) with respect to the Oregon Street Improvements, be Developer's alone; (c) with respect to the Pacific Street Improvements, if allocable to the approximately one-half of total relevant Pacific Street frontage that abuts property owned by DDS, be Prosper Portland's alone; and (d) with respect to the Pacific Street Improvements, if allocable to the approximately one-half of total relevant Pacific Street frontage that abuts property owned by Developer, be Developer's alone.

1.4.1 In consideration of Prosper Portland's willingness to enter this Agreement and thereby bear the risk of obligations of subsection 1.4(c), above, and in consideration of the advantages conferred on DDS and on the neighborhood from prospective interim uses of the subject property, DDS will, upon request by Prosper Portland, enter into a use permit with Prosper Portland whereby Prosper Portland may, for a term specified by Prosper Portland, which may not be earlier terminated by DDS except for good cause (including that such termination is reasonably necessary for DDS's convenient use and development of the property as a school facility), occupy and use certain DDS real property commonly known as [REDACTED], rent-free, and otherwise on mutually agreeable terms, for such specific uses as DDS, Prosper Portland, and Developer may agree and specify in the use permit.

1.4.2 With respect to any overrun described in subsection 1.4(b) and (d), above, Prosper Portland will, upon request by Developer, meet with Developer and PBOT in an attempt to mitigate and/or eliminate such cost overruns and agree to lend Developer 50% of the amount of the overrun, in an amount not to exceed one-hundred thousand dollars (\$100,000) in either case, free of regular interest, to mature at twelve (12) months, or upon substantial completion of the relevant portion of the Pacific Street Improvements, whichever is earlier, and otherwise on commercially reasonable terms.

1.5 **Land Use Approvals; Approval of Pacific Street Improvements.**

1.5.1 Prosper Portland and DDS (at no cost, expense, or liability to Prosper Portland or DDS other than as specifically provided elsewhere in this Agreement) will reasonably cooperate with Developer in connection with obtaining governmental land use approvals for the Project, which cooperation may include the execution and delivery of applications, agreements, approvals, licenses, plans, permits, and other instruments and assurances as may be reasonably requested and required by Developer.

1.5.2 Once approved by PBOT, Developer will provide the permit set of plans for the Pacific Street Improvements to DDS for review and approval, which approval DDS will not unreasonably withhold, condition or delay. DDS's failure to provide Developer with its written approval of such plans within 10 business days of receipt thereof shall be deemed DDS's approval of such plans.

1.6 **Green Building Policy.** In addition, with respect to the Green Building Policy, Developer will:

1.6.1 Design the Project with a goal of achieving Earth Advantage platinum certification, which shall satisfy Prosper Portland's Green Building Policy.

1.6.2 Following completion of the Project, provide Prosper Portland with proof of the Project's Earth Advantage platinum certification within five business days of receipt. If the Project certification is denied, Developer must promptly contact Prosper Portland to discuss the reason for denial and whether a waiver of the Earth Advantage platinum certification is warranted, which Prosper Portland will consider in good faith and based on what is reasonable under the circumstances.

1.7 **Green Building Policy Compliance Reporting.** Developer and Prosper Portland have agreed on the material terms of a plan to monitor Developer's compliance with the Green Building Policy, which plan will be in the form of **Schedule 1.7** attached hereto and is anticipated to include reporting obligations.

1.8 **Failure to Comply with Policies; Liquidated Damages.** Prosper Portland is a public entity that directs its resources, in part, to projects that will also advance important social benefits, including equitable employment and the construction of buildings that are least impactful to the environment. If Prosper Portland reasonably determines that Developer has failed to comply with any or all of the Policies, Prosper Portland will give written notice of such failure to Developer specifying with reasonable particularity the alleged failure to comply. Developer will have a period of 30 days after receipt of such notice to cure the alleged failure (whether or not such failure is susceptible to a cure), provided, however, that if Developer has commenced but not completed such a cure and is working in good faith to diligently complete such cure, then Developer will have an additional 90 days to complete such cure. The Parties agree that Prosper Portland would suffer actual harm if Developer fails to aid in the

advancement of these social benefits by failing to comply with the Policies. The Parties agree that Developer's failure to comply with any one of the Policies after the expiration of the cure period will give rise to liquidated damages to Prosper Portland in the amount of \$100,000.00 for each Policy with which Developer fails to comply. The Parties agree that this amount is, and is hereby deemed to be, the best estimate of the cost that Prosper Portland would face to promote equitable employment or to incentivize green building techniques on the Project. Upon receipt, Prosper Portland may apply such liquidated damages to other projects in order to achieve its social benefit goals and to compensate for the failure to achieve such goals on the Project. Such liquidated damages supersede and replace in their entirety all liquidated damages provisions set forth in the Policies.

1.9 Affordable Housing. If the Project includes multifamily residential uses, Developer agrees that it will satisfy the City's residential building code and inclusionary housing requirements if and to the extent applicable to such residential development with affordable units provided on the Property, either in a mixed-income building or a stand-alone structure. Developer anticipates offering some of the housing units in the Project at rental rates affordable to those persons at or below 120% of area median income.

1.10 Prosper Portland Review and Approval of Project Design. Developer's conceptual design for the Project, which Prosper Portland has approved, is attached to this Agreement as **Schedule 1.10** (the "**Conceptual Design**"). Developer will submit to Prosper Portland 50% design development drawings ("**50% DDs**"), 100% design development documents ("**100% DDs**"), and 100% construction drawings ("**100% CDs**") for Prosper Portland's review and approval in accordance with **Section 1.10.1** below (the 50% DDs, 100% DDs and 100% CDs are collectively referred to in this Agreement as the "**Drawings**"). Upon approval, such submissions by Developer constitute the "**Project Design**".

1.10.1 Scope of Review. Prosper Portland's rights of review and approval or rejection of the Drawings will be limited to an evaluation of their conformance to the Conceptual Design and of their compliance with the express terms of this Agreement. Elements depicted in the Drawings for the Project shall be in a sufficient level of detail to permit an evaluation of their conformity with the Conceptual Design.

1.10.2 Changes in Project Design and Project Schedule. Developer will submit to Prosper Portland for review and written approval any Material Change. "**Material Change**" means any change that would, as determined by Prosper Portland in its reasonable discretion, (a) have a material impact on the consistency of Project Design or Project Schedule with the TIF Plan, the Action Plan, or Prosper Portland's ability to satisfy any commitments to DDSD, or (b) increase the cost of the Project if such cost increase is not covered with private funds. Developer acknowledges that it may be required to secure separate City approval of any refinements or changes. Any separate City approvals must be sought only after Prosper Portland has approved the new or revised plans. In all events, Developer must submit to Prosper Portland any proposed City applications, submittals, and/or amendments at least ten (10) business days prior to submittal to the City to permit Prosper Portland to make comments with respect to Material Changes, if any.

1.10.3 Prosper Portland's Review. Prosper Portland's Project Manager will coordinate Prosper Portland's internal design staff to assist in review of the Drawings. Prosper Portland shall review the Drawings in accordance with **Section 7.25** below.

1.11 Diligent Commencement and Completion of Project. Developer must Commence Construction of the Project in substantial accordance with the Project Design on or before the Construction Commencement Deadline, and thereafter diligently pursue completion of the Project and complete the Project on or before the Project Completion Deadline. "**Commence Construction**" means

that major site grading excavation is occurring on the Property, for which all necessary permits must have been duly obtained. Developer will keep Prosper Portland informed of its progress with respect to development of the Project during construction, with periodic reports to be provided to Prosper Portland no less frequently than once a quarter. In addition, Developer must diligently respond to any Prosper Portland inquiries regarding Project status.

1.12 Remedies for Failure to Commence Construction or Complete Construction. The Parties agree that Developer's failure to commence construction by the Construction Commencement Deadline, or failure to timely complete the Project by the Project Completion Deadline, will give rise to liquidated damages to Prosper Portland, as Prosper Portland's sole and exclusive remedy for such failure, in the amount of \$50,000.00 for each such failure to a maximum of \$100,000.00 in the aggregate. Such liquidated damages amounts are deemed to be the best estimate of cost that Prosper Portland would face to promote other development in the Gateway TIF District. Upon receipt, Prosper Portland may apply such liquidated damages to other projects in order to achieve its social benefit goals and to compensate for the failure to achieve such goals on the Project.

1.13 Compliance Certificate. Within 10 days of Developer's request, following completion of the Project in compliance with this Agreement, Prosper Portland will execute a recordable instrument confirming compliance with this Agreement in a form attached to this Agreement as **Schedule 1.13**, which Developer may record at Developer's expense.

SECTION 2 Conditions Precedent. None of Developer, Prosper Portland, or DDS is obligated to perform the obligations set forth in **Sections 1.1, 1.2.2, and 1.3**, respectively, unless and until the conditions set forth below to the benefit of such Party are satisfied. Unless otherwise expressly allowed by this **Section 2**, the Party benefited by a particular condition shall not unreasonably withhold, condition, or delay acknowledgment that a condition has been satisfied.

2.1 Mutual Conditions Precedent. To the satisfaction of each of Developer and Prosper Portland:

2.1.1 At least 10 business days prior to the scheduled date to Commence Construction, Developer shall have provided to Prosper Portland evidence of a construction financing commitment necessary and sufficient to complete construction of the Project, by providing to Prosper Portland copies of executed loan commitments and letters of intent reasonably acceptable to Prosper Portland and acceptable to Developer in Developer's sole and absolute discretion, from construction sources and investors providing reasonable proof that Developer has obtained or has commitments to obtain sufficient equity capital and/or debt financing for the Project, based on such sources' and investors' analysis of the financing needed for the Project.

2.1.2 The 100% CDs shall have been approved by Prosper Portland pursuant to the process provided in **Section 1.10**, which approval shall not be unreasonably withheld, conditioned, or delayed.

2.2 Developer's Conditions Precedent. To the satisfaction of Developer:

2.2.1 Developer has secured final non-appealable approvals for the Project required by the City. If an appeal is timely filed, it has been finally resolved. In the event of the filing of such an appeal, Developer may extend the deadline to Commence Construction based on this condition precedent, for a period not to exceed sixty (60) days beyond the period needed for

resolution of all filed appeals and expiration of any additional appeal periods so long as Developer is diligently pursuing the same.

2.2.2 Developer has closed all equity and debt financing necessary to construct the Project on commercially reasonable terms acceptable to Developer in its sole and absolute discretion.

2.2.3 Developer has secured all necessary permits for the Project, the issuance of which shall be subject only to the payment of permit fees.

2.2.4 The IGA has been fully executed, and a copy of the fully executed IGA has been delivered to Developer.

2.2.5 Prosper Portland has provided reasonable evidence to Developer that the TIF Funds are committed to the Project and readily available to be actually funded.

2.2.6 *Intentionally Omitted.*

2.2.7 *Intentionally Omitted.*

2.2.8 The access agreement referenced in **Section 1.3(d)** above has been fully executed and delivered by Developer and DDS.

2.2.9 Each of Prosper Portland's and DDS's representations and warranties stated in **Sections 3.2** and **3.3**, respectively, is true and correct in all material respects as of the date Developer closes the debt financing for the Project.

2.2.10 There is no pending claim, dispute, or litigation pending that prevents or is likely to prevent Prosper Portland or DDS from performing its obligations under this Agreement or that is likely to have a material adverse impact on the intended development of the Project.

2.2.11 Prosper Portland has approved of any assignment of the interest of Developer requested by Developer under the terms set forth in **Section 7.18.4** of this Agreement.

2.2.12 Each of Prosper Portland and DDS has provided Developer with reasonable proof that the execution of this Agreement and the performance of each such Party's obligations under this Agreement has received all requisite approvals.

2.2.13 Neither Prosper Portland nor DDS is in default under any material term or condition of this Agreement.

2.3 Prosper Portland's Conditions Precedent. To the satisfaction of Prosper Portland:

2.3.1 There is no pending claim, dispute, or litigation pending that prevents or is likely to prevent Developer or DDS from performing its obligations under this Agreement.

2.3.2 Each of Developer's and DDS's representations and warranties set forth in **Sections 3.1** and **3.3**, respectively, is true and correct in all material respects as of the date Developer closes the debt financing for the Project.

2.3.3 Each of DDS and Developer has provided Prosper Portland with reasonable proof that the execution of this Agreement and the performance of each such Party's obligations under this Agreement have received all requisite approvals.

2.3.4 Neither Developer nor DDS is in default under any material term or condition of this Agreement.

2.4 **DDS's Conditions Precedent.** To the satisfaction of DDS:

2.4.1 There is no pending claim, dispute, or litigation pending that prevents or is likely to prevent Developer or Prosper Portland from performing its obligations under this Agreement.

2.4.2 Each of Developer's and Prosper Portland's representations and warranties set forth in **Sections 3.1 and 3.2**, respectively, is true and correct in all material respects as of the date Developer closes the debt financing for the Project.

2.4.3 Each of Prosper Portland and Developer has provided DDS with reasonable proof that the execution of this Agreement and the performance of each such Party's obligations under this Agreement have received all requisite approvals.

2.4.4 Neither Developer nor Prosper Portland is in default under any material term or condition of this Agreement.

2.5 **Elections upon Non-Occurrence of Conditions.** Except as provided below, if any condition set forth in **Sections 2.1, 2.2, 2.3 or 2.4** is not fulfilled to the satisfaction of the benefited Party or Parties (a) at the time designated for satisfaction of the same, or (b) if no deadline is specified for satisfaction of such condition, then on the date scheduled for closing of Developer construction loan for the Project, subject to Unavoidable Delay and any extension that may be granted pursuant to **Section 2.5.3**, then the applicable benefited Party or Parties (e.g., Developer with respect to any condition precedent set forth in **Section 2.2**) may elect to:

2.5.1 Terminate this Agreement by providing written notice of intent to terminate to the other Parties, which termination shall be effective 30 days after the notice of termination is received by the other Parties, unless, before the 30-day period ends, the Party or Parties whose condition precedent failed fulfills such condition or conditions to the reasonable satisfaction of the benefited Party or Parties, or if such condition or conditions cannot reasonably be satisfied within such 30 day period, the other Party has begun and is diligently pursuing the fulfillment of such condition or condition, and such condition or conditions are fulfilled within 90 days of the notice of termination; or

2.5.2 Waive in writing the benefit of that condition precedent to such Party's obligation to perform under this Agreement, and proceed in accordance with the terms hereof; or

2.5.3 Request to extend the time for satisfaction of the condition precedent for up to an additional one hundred and eighty (180) days, by providing written notice of such extension request to the other Parties, which each other Party may accept or reject in its sole and absolute discretion.

2.6 **Termination For Failure of Conditions.** If all of the conditions presented under **Sections 2.1, 2.2, 2.3 and 2.4** have not been satisfied, waived, or otherwise resolved by the date set forth for closing of Developer's construction financing for the Project, which may consist of debt, equity, or a

combination of debt and equity, then, unless extended as set forth in **Section 2.5.3**, any Party may terminate this Agreement by written notice delivered to the other Parties, which notice shall include a termination date not earlier than the date such notice is deemed delivered in accordance with **Section 7.1**.

2.7 Effect of Termination for Failure of Conditions Precedent. If the Agreement is terminated for failure of satisfaction of the conditions precedent, and such failure is not the result of Default of this Agreement by any Party, then the obligations of the Parties to each other under this Agreement shall terminate. If a Party is in Default on the date this Agreement terminates, then the rights and remedies accruing to the other Parties under this Agreement as a result of such Default shall survive termination of this Agreement.

SECTION 3 Representations and Warranties. To induce each other Party to enter into and perform its obligations under this Agreement, the Parties hereby makes the following respective representations and warranties, upon which each other Party is entitled to rely and has relied, and each of which is true in all material respects as of the Effective Date and will be true as of the closing of Developer's construction loan for the Project:

3.1 Developer's Representations and Warranties.

3.1.1 Developer has full power and authority to enter into and perform this Agreement in accordance with its terms, and Developer has taken all requisite action in connection with the execution of this Agreement and the transactions contemplated herein. Each of the individuals executing this Agreement on behalf of Developer has full power and authority to execute and deliver this Agreement on behalf of Developer. This Agreement has been duly executed and delivered by Developer and is a valid and binding obligation of Developer, enforceable against Developer in accordance with its terms.

3.1.2 Developer is a limited liability company duly formed and existing in the State of Delaware.

3.1.3 None of the execution and delivery of this Agreement and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, or other agreements or instruments to which Developer is a party.

3.1.4 No representation, warranty, or statement of Developer in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

3.1.5 As of the Effective Date, there are no material defaults by Developer under this Agreement or to Developer's knowledge, events that with the passage of time would constitute a material default of Developer under this Agreement.

As used in this Agreement, "**Developer's knowledge**" means the actual subjective knowledge of Tom Cody without duty of inquiry. In no event shall the foregoing individual have any personal liability in connection with the representations and warranties provided hereunder.

3.2 Prosper Portland's Representations and Warranties.

3.2.1 Prosper Portland has full power and authority to enter into and perform this Agreement in accordance with its terms, and Prosper Portland has taken all requisite action in connection with the execution of this Agreement and the transactions contemplated hereby. Each of the individuals executing this Agreement on behalf of Prosper Portland has full power and authority to execute and deliver this Agreement on behalf of Prosper Portland. This Agreement has been duly executed and delivered by Prosper Portland and is a valid and binding obligation of Prosper Portland, enforceable against Prosper Portland in accordance with its terms.

3.2.2 There is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending, or to Prosper Portland's knowledge, threatened, which may affect Prosper Portland's ability to perform its obligations under this Agreement or Developer's ability to develop the Project.

3.2.3 *Intentionally Omitted.*

3.2.4 None of the execution and delivery of this Agreement and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, or other agreements or instruments to which Prosper Portland is a party.

3.2.5 No representation, warranty, or statement of Prosper Portland in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

3.2.6 As of the Effective Date, there are no material defaults by Prosper Portland under this Agreement or to Prosper Portland's knowledge, events that with the passage of time would constitute a material default of Prosper Portland under this Agreement.

As used in this Agreement, "***Prosper Portland's knowledge***" means the actual subjective knowledge of the managerial and supervisory personnel of Prosper Portland having responsibility for this Agreement and the obligations of Prosper Portland hereunder, without duty of inquiry. In no event shall the foregoing individuals have any personal liability in connection with the representations and warranties provided hereunder.

3.3 **DDSD's Representations and Warranties.**

3.3.1 DDSD has full power and authority to enter into and perform this Agreement in accordance with its terms, and DDSD has taken all requisite action in connection with the execution of this Agreement and the transactions contemplated hereby. Each of the individuals executing this Agreement on behalf of DDSD has full power and authority to execute and deliver this Agreement on behalf of DDSD. This Agreement has been duly executed and delivered by DDSD and is a valid and binding obligation of DDSD, enforceable against DDSD in accordance with its terms.

3.3.2 There is no litigation, action, suit, or any condemnation, environmental, zoning, or other government proceeding pending, or to DDSD's knowledge, threatened, which may affect DDSD's ability to perform its obligations under this Agreement.

3.3.3 None of the execution and delivery of this Agreement and documents referred to herein, the incurring of the obligations set forth herein, the consummation of the transactions herein contemplated, compliance with the terms of this Agreement and the documents referred to herein conflict with or result in the material breach of any terms, conditions, or provisions of, or constitute a default under any bond, note or other evidence of indebtedness, or any contract, or other agreements or instruments to which DDS D is a party.

3.3.4 No representation, warranty, or statement of DDS D in this Agreement or any of the exhibits attached contains any untrue statement of a material fact or omits a material fact necessary to make the statements of facts contained herein not misleading.

3.3.5 As of the Effective Date, there are no material defaults by DDS D under this Agreement or to DDS D's knowledge, events that with the passage of time would constitute a material default of DDS D under this Agreement.

As used in this Agreement, "*DDS D's knowledge*" means the actual subjective knowledge of the managerial and supervisory personnel of DDS D having responsibility for this Agreement and the obligations of DDS D hereunder, without duty of inquiry. In no event shall the foregoing individuals have any personal liability in connection with the representations and warranties provided hereunder.

SECTION 4 Default; Remedies.

4.1 **Default and Cure.** As used in this Agreement, "*Default*" means a breach by a Party of a material provision of this Agreement, whether by action or inaction, where such breach continues and is not remedied within 30 days after the breaching Party receives written notice from any other Party describing the breach. In the case of a breach that cannot with diligent and reasonable action be cured within 30 days, a Default will arise if and when such Party does not (a) provide a written response of its intent to cure, and commence to cure, the breach within 30 days after receiving written notice from the other Party of the breach, and (b) thereafter diligently prosecute to completion such cure within 180 days. Notwithstanding the foregoing, the cure period for failure of a Party to provide funds in accordance with the Funding and Finance Plan by the date set forth in the Schedule of Performance shall be 10 days.

4.2 **Immediate Default.** Notwithstanding the foregoing, Developer will be in Default without the benefit of any cure period upon a Transfer in violation of **Section 7.18**.

4.3 Certain Prosper Portland Remedies.

4.3.1 If Developer breaches its obligation to comply with the Policies and notwithstanding anything to the contrary contained in the Policies, Prosper Portland, as its sole and exclusive remedies, will have the remedies set forth in **Section 1.8** of this Agreement.

4.3.2 If Developer breaches its obligations to timely Commence Construction or to timely complete the Project, Prosper Portland, as its sole and exclusive remedy, will have the remedies described in **Section 1.12**.

4.3.3 If Developer makes a Material Change to the Project without the written consent of Prosper Portland, Prosper Portland does not have an adequate remedy at law. As such, it is agreed that Prosper Portland may obtain equitable remedies including the obtaining of temporary and permanent injunctions against developing the Project in violation of this Agreement, and/or specific performance.

4.4 **Nonexclusive Remedies.** The rights and remedies provided by this Agreement are not exclusive, except where otherwise indicated, and will be in addition to any and all rights and remedies otherwise available at law or in equity. The exercise by any Party of one or more of such remedies will not preclude the exercise by it, at the same or different times, of any other such remedies for the same Default or of any of its remedies for any other Default by any other Party, including, without limitation, the right to compel specific performance.

4.5 **Unavoidable Delay.**

4.5.1 Neither a Party nor a Party's successor in interest will be considered in breach of or in Default with respect to any obligation under this Agreement if the delay in performance of such obligation ("**Unavoidable Delay**") is a result of conditions beyond the Party's reasonable control and without the Party's fault or negligence, including, without limitation, events such as natural disasters (fire, flood, earthquake, storm, hurricane, or unusually severe weather), war, invasion, hostilities, terrorist activities, pandemic (as designated by the Centers for Disease Control), epidemic, quarantine, blockage, embargo, strike, unavailability of labor, supplies, or utilities, malicious mischief, explosion, acts of or inaction by a governmental body with respect to regulatory approvals or issuance of permits provided Developer is diligently pursuing the same, litigation or arbitration involving a Party if the outcome of the litigation or arbitration may have a material impact on the Project or the ability of a Party to perform its obligations under this Agreement, or condemnation. A material change in the financial markets alone will not be deemed an Unavoidable Delay, but Developer's inability to obtain equity or debt financing for the Project on commercially reasonable terms acceptable to Developer will be deemed an Unavoidable Delay.

4.5.2 A Party asserting an Unavoidable Delay as an excuse for failure to perform the Party's obligation must, within 30 days after the Party becomes actually aware of the causes of any such Unavoidable Delay, notify the other Parties in writing of the cause or causes of the delay and estimated time of correction. Such Party must thereafter make all commercially reasonable efforts to resume performance of the delayed obligation.

4.5.3 Unavoidable Delays will extend the time or times for performance of the Party's obligation for the period of the Unavoidable Delays, except in no event will the time for performance be extended for more than 12 months in the aggregate without the prior written agreement of the other Parties, as further described in **Section 7.13**.

4.6 **Existing Obligations.** Prosper Portland, DDS, and Developer acknowledge that each of the other Parties may have as of the Effective Date certain obligations to third parties in connection with the Project (e.g., Developer's obligations to senior lenders), and that it is reasonable for each of the Parties to ensure to their own satisfaction that the terms and performance of this Agreement will be consistent with such other obligations.

SECTION 5 Mortgage Protection Provisions.

5.1 **Right to Mortgage.** Developer will have the right, at any time and from time to time, to grant a mortgage, deed of trust, or other security instrument encumbering all or a portion of the Property and any and all improvements and fixtures located or to be located on the Property for the benefit of its holder (each, a "**Mortgagee**"), as security for one or more loans made by the Mortgagee to Developer (each, a "**Mortgage**"). A Mortgagee may transfer all or any part of or interest in any Mortgage without the consent of or notice to any Party. The names and addresses of all Mortgagees known as of the date of this Agreement are identified on **Schedule 5.1** to this Agreement. During the term of this Agreement,

Developer will notify Prosper Portland and DDS D by means of updated versions of **Schedule 5.1** whenever the identities or notices addresses of one or more Mortgagees changes.

5.2 Mortgagee Not Obligated to Construct. Notwithstanding any of the other provisions of this Agreement, none of a Mortgagee, its designee for purposes of acquiring title at foreclosure, a purchaser at a foreclosure sale, or a party who purchases from a Mortgagee shall be obligated by the provisions of this Agreement to construct or complete the Project or any portion or component thereof or to guarantee such construction or completion. Nothing in this **Section 5.2** or any other Section or subsection or provision of this Agreement shall be deemed or construed to permit or authorize any such Mortgagee to devote the Property or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or permitted by this Agreement.

5.3 Copy of Notice of Default to Mortgagee. If Prosper Portland or DDS D gives any notice or demand to Developer with respect to a breach of this Agreement by Developer, the Party giving such notice or demand will at the same time send a copy of such notice or demand to each Mortgagee at the address for such Mortgagee set forth in the recorded Mortgage or as otherwise specified by such Mortgagee in a written notice to such Party. If such breach remains after the expiration of any cure period afforded under this Agreement, the Party that gave notice or demand will deliver a notice of the Default to each such Mortgagee at such applicable address. The failure of Prosper Portland or DDS D to send a notice or demand to a Mortgagee will not create any liability for Prosper Portland or DDS D, but a delay or failure by both Prosper Portland and DDS D to provide a notice of a given Default as required by this Section will extend, for the number of days until such notice is given, the time allowed for Mortgagee to cure the Default pursuant to **Section 5.4**, below.

5.4 Mortgagee's Options to Cure Defaults. Before or after receiving any notice of a breach or of a Default, pursuant to **Section 5.3**, above, each Mortgagee will have the right (but not the obligation), at its option, to cure within Developer's applicable cure period, plus an additional period of (a) 30 days to cure a monetary Default and (b) 60 days to cure a non-monetary Default that is susceptible of cure by the Mortgagee without obtaining title to the Property. If a Default is not cured within the applicable cure period (or cannot be cured by the Mortgagee without obtaining title to the Property), Prosper Portland or DDS D (as the case may be) will refrain from exercising their remedies for the Default and will permit the cure by Mortgagee of such Default if, within the Mortgagee's applicable cure period: (i) the Mortgagee notifies Prosper Portland in writing that the Mortgagee intends to proceed promptly and without delay to foreclose the Mortgage or otherwise obtain title to all or a portion of the Property; (ii) the Mortgagee commences foreclosure proceedings within 60 days after giving such notice to Prosper Portland, and diligently pursues the foreclosure to completion; and (iii) after obtaining title or possession of the Property, the Mortgagee diligently proceeds to cure the Default within the time periods set forth in subsections (a) and (b) of this Section. If a Mortgagee does cure or remedy the Default, the Mortgagee may add the cost thereof to the Mortgage debt and the lien of its Mortgage, if permitted by its loan documents.

5.5 Mortgagee's Obligations with Respect to the Property. A Mortgagee that acquires title to all or a portion of the Property (the "**Foreclosed Property**") will take title (a "**Mortgagee Acquisition**") subject to all of the terms and conditions of this Agreement to the extent applicable to the Foreclosed Property, including any claims for payment or performance of obligations that are due as a condition to enjoying the benefits under this Agreement from and after the Mortgagee Acquisition, but excluding any obligation to construct or build or to pay monetary damages, including liquidated damages, under this Agreement. Upon completion of a Mortgagee Acquisition, Prosper Portland and DDS D will recognize the Mortgagee as Developer's successor under this Agreement with respect to the Foreclosed Property.

5.6 **Amendments Requested by Mortgagee.** Prosper Portland and DDS D will execute amendments to this Agreement or separate agreements to the extent reasonably requested by a Mortgagee proposing to make a loan to Developer secured by a security interest in all or any portion the Property; provided, however, that such proposed amendments or other agreements do not require Prosper Portland or DDS D to assume, incur, or accept any new material liabilities, or otherwise materially and adversely affect the rights of Prosper Portland or DDS D under this Agreement, as reasonably determined by Prosper Portland or DDS D.

SECTION 6 Casualty and Condemnation.

6.1 **Condemnation.** If the Property, or any part thereof, is or becomes the subject of a condemnation proceeding during the term of this Agreement, resulting in a material adverse effect on the Project, as determined by Developer in its sole and absolute discretion, then Developer may terminate this Agreement, in which event all rights and obligations of the Parties hereunder shall cease. Developer agrees to notify the other Parties in writing of any condemnation proceedings within 10 business days after Developer becomes actually aware of such proceedings. If Developer does not timely elect to terminate this Agreement, this Agreement shall remain in full force and effect.

6.2 **Damage and Destruction.** If, during the term of this Agreement, all or any material part of the Property is destroyed or suffers material damage affecting Developer's intended use and (a) for which risk Developer was not substantially insured (including insurance with a deductible, coinsurance, or shared risk feature), or (b) if Developer was insured, Developer was required to deliver the proceeds of such insurance to a Mortgagee, Developer shall have the right, exercisable by giving written notice to the other Parties of such decision within thirty (30) days Developer becoming actually aware of such damage or destruction, to terminate this Agreement, in which event all rights and obligations of the Parties hereunder shall cease. If Developer does not timely elect to terminate this Agreement, this Agreement shall remain in full force and effect.

SECTION 7 General Provisions.

7.1 **Notices and Communications.** Any notice or communication under this Agreement by any Party to any other Party will be deemed given and delivered on the earlier of actual delivery or refusal of a Party to accept delivery thereof if sent, with all applicable postage and delivery charges prepaid, by (a) registered or certified U.S. mail, return receipt requested, (b) messenger service or personal delivery, (c) nationally-recognized overnight courier service such as Federal Express, or (d) e-mail with receipt of written reply confirmation from the recipient that such transmission has been received, provided, however that any email received after 6 p.m. Pacific Time will be deemed delivered on the next business day:

In the case of a notice or communication to Developer, addressed as follows:

Modomi Gateway Development, LLC
c/o Project^
1116 NW 17th Avenue
Portland, OR 97209
Email: tom@projectpdx.com

With a copy to:

Radler White Parks & Alexander LLP
Attn: Dina Alexander

111 SW Columbia Street, Suite 700
Portland, OR 97201
Email: dalexander@radlerwhite.com

In the case of a notice or communication to Prosper Portland, addressed as follows:

Prosper Portland
Attn: Joel Devalcourt
220 NW Second Avenue, Suite 200
Portland, OR 97209
Email: devalcourtj@prosperportland.us

With a copy to:

Prosper Portland
Attn: General Counsel
220 NW Second Avenue, Suite 200
Portland, OR 97209
Email: whitneyh@prosperportland.us

In the case of a notice or communication to DDSD, addressed as follows:

With a copy to:

or addressed in such other way in respect to a Party as that Party may, from time to time, designate in writing dispatched as provided in this Section. Notices may be given by counsel to a Party on behalf of such Party.

7.2 **Project Managers.** Each of the individuals identified below is the primary point of contact for the applicable Party for purposes of this Agreement and has the obligations, if any, expressly set forth in this Agreement (each, a “*Project Manager*”). A Party may replace its Project Manager at any time by notice given to the other Parties. No Project Manager shall have any personal liability under this Agreement for acting as the Project Manager for a Party.

7.2.1 Developer: Tom Cody

7.2.2 Prosper Portland: Joel Devalcourt

7.2.3 DDSD: Patt Komar

7.3 **Covenants Run with the Land.** This Agreement runs with the land as to all property benefited and burdened thereby, including any partition or division of such property. The rights, covenants, and obligations contained in this Agreement bind, burden, and benefit Prosper Portland, DDSD, and Developer, and their respective successors, assigns, lessees, mortgagees, and beneficiaries under any deeds of trust, subject to **Section 5** (Mortgagee Protection Provisions) and the terms and conditions of this Agreement regarding Transfers.

7.4 **No Waiver.** No waiver made by any Party with respect to the performance, or manner or time thereof, of any obligation any other Party or any condition inuring to its benefit under this Agreement will be considered a waiver of any other rights of the Party making the waiver. No waiver by

Prosper Portland or Developer of any provision of this Agreement or any breach thereof, will be of any force or effect unless in writing and no such waiver will be construed to be a continuing waiver.

7.5 **Joint and Several.** If the Developer includes more than one individual or entity that is a party to this Agreement, then the obligations of Developer under this Agreement are joint and several as to all such individuals or entities.

7.6 **Compliance with Legal Requirements.** The Parties agree to comply with (a) all laws, ordinances, notices, orders, rules, regulations, and requirements of all federal, state, and municipal governments and all departments, commissions, boards, and officers thereof (collectively, "**Legal Requirements**") in all cases in which such Legal Requirements relate to any or all of the Property, or the use or manner of use thereof.

7.7 **No Merger.** *Intentionally Omitted.*

7.8 **Headings.** Titles of the Sections of this Agreement are inserted for convenience of reference only and will be disregarded in construing or interpreting any of its provisions.

7.9 **Counterparts.** This Agreement may be executed in counterparts, each of which will be deemed to be an original, and such counterparts, when taken together, will constitute one and the same instrument. Electronic signatures will be valid for all purposes. However, upon request and within a reasonable time period, a Party will deliver an original signature to the other Parties.

7.10 **Attorneys' Fees.** If a suit, action, arbitration, or other proceeding of any nature whatsoever, including, without limitation, any proceeding under U.S. Bankruptcy Code, is instituted to interpret or enforce any provision of this Agreement, or with respect to any dispute relating to this Agreement, including, without limitation, any action in which a declaration of rights is sought or an action for rescission, the prevailing or non-defaulting Party will be entitled to recover from the losing or defaulting Party its reasonable attorneys', paralegals', accountants', and other experts' fees and all other fees, costs, and expenses actually incurred and reasonably necessary in connection therewith, as determined by the judge at trial or on any appeal in addition to all other amounts provided by law. This provision will cover costs and attorneys' fees related to or with respect to proceedings in federal bankruptcy courts, including those related to issues unique to bankruptcy law.

7.11 **Governing Law; Venue; Consent to Jurisdiction.** This Agreement will be governed by Oregon law, without regard to principles of conflicts of law. Any action or suit to enforce or construe any provision of this Agreement by any Party must be brought in the Circuit Court of the State of Oregon for Multnomah County or, if the action or suit must be brought in a federal forum, the United States District Court for the District of Oregon in Portland, Oregon. Each Party, by execution of this Agreement, hereby consents to the *in personam* jurisdiction of said courts.

7.12 **Calculation of Time.** All periods of time referred to herein will include Saturdays, Sundays, and legal holidays in the state of Oregon, except that if the last day of any period falls on any Saturday, Sunday, or legal holiday observed by the state of Oregon or the City, the period will be extended to include the next day which is not a Saturday, Sunday, or legal holiday observed by the state of Oregon or the City. Business days refers to all days except Saturdays, Sundays, and legal holidays in the state of Oregon or the City.

7.13 **Time of Essence.** Time is of the essence of this Agreement. Notwithstanding any other terms of this Agreement, including **Sections 2.2.1, 4.5, and 7.17**, no obligation of a Party may be extended further than 12 months from the date first specified on which such obligation would arise, for

any reason or combination of reasons, without the prior written agreement of the other Parties, to be given or withheld in their sole and absolute discretion. As used in this **Section 7.13**, “the date first specified on which such obligation would arise” means the date or deadline plus any expressly stated extension period set forth in this Agreement other than the 12-month period for Unavoidable Delay.

7.14 Construction. In construing this Agreement, singular pronouns will be taken to mean and include the plural. “Including” means “including without limitation.” “Will”, “must”, and “shall” are synonymous and mean mandatory and imperative.

7.15 Severability. If any term of this Agreement is held to be illegal, invalid, or unenforceable, it will not affect the remainder of this Agreement, which will be construed as if the illegal, invalid, or unenforceable term had never been contained in this Agreement. Notwithstanding the foregoing, if an essential purpose of this Agreement would be defeated by the loss of the illegal, invalid, or unenforceable term, then the Parties will seek in good faith to agree on replacing the removed term or condition with a valid provision that will most nearly and fairly approach the effect of the removed term and the intent of the Parties in entering into this Agreement. If the Parties cannot reach agreement on a replacement for the illegal, invalid, or unenforceable provision, the Agreement will terminate upon written notice delivered by one Party to the others.

7.16 Incorporation; Entire Agreement. The Exhibits attached to this Agreement are incorporated into and made a part of this Agreement. This Agreement and the Exhibits attached hereto are the entire agreement among the Parties regarding the disposition and development of the Property. There is no other oral or written agreement among the Parties or between any of them regarding its subject matter. There are no oral or written representations or warranties made by any Party, implied or express, other than those contained in this Agreement.

7.17 Amendments and Modifications. Any modifications to this Agreement must be made in writing and executed by all Parties, with the approval of their Boards, if required. Notwithstanding this general requirement, the Prosper Portland Executive Director may approve minor modifications to this Agreement without Prosper Portland Board approval. Changes to the Project Schedule that do not exceed 180 days and changes that do not increase the City’s or Prosper Portland’s economic obligations are considered minor modifications. Any modifications to this Agreement made without the approval of the Prosper Portland Board must include an acknowledgement by Prosper Portland’s General Counsel that such approval is not necessary.

7.18 Successors and Assigns; Limitation on Transfer by Developer. Subject to the limitations of this Agreement including in this Section, the benefits conferred by this Agreement, and the obligations assumed hereunder, will inure to the benefit of and bind the successors and permitted assigns of the Parties. Developer may not Transfer this Agreement without the prior written consent of Prosper Portland, such consent not to be unreasonably withheld, conditioned, or delayed. The foregoing restriction on transfer shall apply until the Project has received a temporary certificate of occupancy, at which point Developer may freely Transfer the Agreement and all or any portion of the Property and may freely engage in any Change in Control, none of which shall require Prosper Portland’s consent.

7.18.1 “Transfer” means (a) to make, permit, or attempt any voluntary or involuntary total or partial sale, lease, assignment, conveyance, mortgage, pledge, encumbrance, or other transfer of this Agreement or any of the rights, interests, or obligations either under this Agreement or in all or any portion of the Property; or (b) a Change in Control.

7.18.2 “Change in Control” means any transfer, sale, pledge, encumbrance, or other disposition, in any single transaction or cumulatively, of Control of Developer through any

or all of the following actions, if, as the result of such action, one or more persons who are not in control of Developer on the Effective Date acquire such Control: (a) the transfer, sale, pledge, encumbrance or other disposition of interests in Developer existing as of the Effective Date, either by Developer or by any of the owners of interests in Developer as of the Effective Date; (b) the creation of new ownership interests in Developer; or (c) the surrender or liquidation of ownership interests in Developer.

7.18.3 “**Control**” means the control of more than fifty percent (50%) in the aggregate of any and all of those interests in Developer that entitle the controller thereof to participate in its management. Following a Transfer permitted by this Section, the “**Effective Date**” for purposes of this Section will be deemed to mean the effective date of such permitted Transfer for purposes of assessing whether there has been a Change in Control of such transferee.

7.18.4 Notwithstanding anything to the contrary set forth in this **Section 7.18**, Prosper Portland hereby consents to (a) the collateral assignment of this Agreement to a Mortgagee and to the recordation of any Mortgages against the Property, and (b) any Transfer or Change in Control provided that Tom Cody retains day-to-day management rights within Developer through ownership, voting or contractual management rights.

7.19 **No Partnership.** Nothing contained in this Agreement, and no acts of the Parties hereto, will be deemed or construed by the Parties, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or any association among the Parties or between any of them, other than that of independent contracting parties.

7.20 **Non-waiver of Government Rights.** Except as may be expressly set forth in this Agreement, each of Prosper Portland and DDS D are specifically not, whether by making this Agreement, by performing any action, or by exercising any right, obligating itself, the City, or any other agency with respect to any discretionary action relating to the Property, including, but not limited to, rezoning, variances, environmental clearances, or any other governmental approvals which are or may be sought or required.

7.21 **Limitation on Damages.** Notwithstanding anything to the contrary that may be contained in this Agreement, in no event will Prosper Portland, DDS D, or Developer be obligated to pay special, incidental, or consequential damages for any purposes or in any circumstance under or in relation to this Agreement, each of which is hereby waived by the Parties. For the avoidance of doubt, the foregoing waiver includes without limitation any lost opportunities, profits, or losses.

7.22 **No Third-Party Beneficiary Rights.** Other than a Mortgagee to whom rights are expressly granted in this Agreement, no person not a Party to this Agreement is an intended beneficiary of this Agreement, and no person not a Party to this Agreement will have any right to enforce any term of this Agreement.

7.23 **Estoppel Certificates.** Each Party, at any time and from time to time, within thirty (30) days after written request from any other Party, shall execute, acknowledge and deliver to the Party that has requested the same or to any prospective Mortgagee, assignee, buyer, tenant or subtenant designated by Developer, a certificate stating: (a) that this Agreement is in full force and effect and has not been modified, supplemented or amended in any way, and if there have been modifications, supplements or amendments, the Agreement is in full force and effect as modified, supplemented or amended, identifying such modification, supplement or amendment agreement (and if the Agreement is not in force and effect, the certificate shall so state); (b) the dates on which the term of this Agreement commenced and will terminate, to the extent such termination date is actually known; (c) that all conditions under the

Agreement required to be performed by the certifying Party by the date of the request have been satisfied and, to such Party's knowledge as of the date of such certificate, there are no existing defenses or offsets which the certifying Party, as applicable, has against the enforcement of this Agreement by any other Party, or, if to the certifying Party's knowledge such conditions have not been satisfied or there are any defenses or offsets, the certificate shall so state; and (d) other factual matters reasonably related to this Agreement and the performance of the Parties hereunder. The Party or Parties to whom any such certificate was issued may rely on the matters therein set forth and thereafter the Party issuing the same shall be estopped from denying the veracity or accuracy of the same.

7.24 Confidentiality/Public Records. Developer understands that Prosper Portland and DDS D are public entities subject to the Oregon Public Records Law, government audit requirements, and public review and oversight. Records of Prosper Portland and DDS D may be required to be disclosed publicly unless exempted. Exemptions are few, narrowly tailored, and often conditional. Prosper Portland and DDS D will not voluntarily disclose confidential material to private third parties. Developer may inform Prosper Portland or DDS D of the written materials it provides Prosper Portland or DDS D that Developer considers confidential. However, such confidentiality will not guarantee that such material will not be subject to a public records request and subsequent disclosure. Prosper Portland or DDS D, as the case may be, will inform Developer of any and all public records requests they receive that would involve material received from Developer related to the matters contemplated by this Agreement, so that Developer may participate in seeking any available legal protection of the material. If Prosper Portland or DDS D receives a public records request for material that is considered confidential, Prosper Portland or DDS D will notify Developer in writing before complying with such request and will provide Developer with a reasonable time within the statutorily-prescribed time period for public records responses, to assert to Prosper Portland or DDS D and to discuss with Prosper Portland's or DDS D's legal counsel Developer's position as to whether such records fall within an exemption to the Public Records Act. Prosper Portland or DDS D will work cooperatively with Developer to protect confidential information to the extent that Prosper Portland or DDS D reasonably believes an exemption to the Public Records Act applies. Confidential information does not include material, data, or information that (a) was known to Prosper Portland or DDS D prior to its receipt thereof from Developer, (b) is generally available to the public or that has been obtained from a third party having the right to disclose the same, or (c) is independently developed by or on behalf of a Party without reference to any materials or information received from the other Parties. Each Party will maintain and retain all books, documents, papers, plans, and records, electronic or otherwise, necessary to document such Party's performance and compliance with all requirements imposed on it under the terms of this Agreement for, in the case of Developer, six years following termination of this Agreement, or for six years following completion of any improvement it was required to build under this Agreement, whichever is longer; and in the cases of Prosper Portland and DDS D, in accordance with their records retention policies and pursuant to law. Developer must maintain fiscal records related to its obligations under this Agreement in accordance with sound accounting principles consistently applied. Upon reasonable notice, following a Default by Developer, and otherwise at any other reasonable time and frequency not more than once in any consecutive twelve (12) month period, Prosper Portland may inspect, examine, or audit the records of Developer related to the Project at any time prior to the expiration of Developer's obligation to so maintain such records. If the original records are located outside the boundaries of the greater Portland region, Developer, at Prosper Portland's expense unless Developer is in Default at the time of the request, will provide Prosper Portland with copies of the records Prosper Portland wishes to inspect.

7.25 Approvals. Where approvals of Prosper Portland are required for Developer, Prosper Portland will approve, disapprove, or request further materials from Developer reasonably necessary for Prosper Portland to make the decision regarding approval or disapproval, on or before the date that is 10 business days after receipt of the material to be approved, and will approve or disapprove within 15 business days of the latest date on which Developer submitted any such materials, except where a longer

or shorter time period is expressly provided in this Agreement including the Schedule of Performance. Any disapproval shall state in writing the specific reasons for such disapproval. Approvals will not be unreasonably withheld, conditioned, or delayed, except where rights of approval are in Prosper Portland's sole discretion. Developer, upon receipt of such disapproval (and if Developer elects to continue to seek such approval), shall revise such disapproved portions in a manner responsive to the specifically stated reasons for disapproval and resubmit the same to Prosper Portland within 10 business days after receipt of the notice of disapproval. Prosper Portland's failure to timely respond to a request for approval shall be deemed Prosper Portland's approval thereof.

7.26 Term and Termination. This Agreement shall terminate upon the earliest of: (a) a Party giving a notice of termination in accordance with any provision of this Agreement; (b) the mutual agreement of the Parties in writing to terminate this Agreement; and (c) the completion or full satisfaction of all obligations of all Parties under this Agreement.

7.27 Dispute Resolution. The Parties shall endeavor to resolve all disputes, issues and other matters in question between them by first escalating the dispute, issue or matter to the principals of Developer, the Executive Director of Prosper Portland, and the Superintendent of DDS. Any Party may provide written request to the other Parties to meet, in which case a meeting shall occur within thirty (30) calendar days of receipt of the request. At the meeting, the Parties will attempt to achieve resolution of the dispute, issue or other matter. If resolution is not achieved at the meeting, then the Parties agree any such dispute shall be decided in Multnomah County Circuit Court, with a jury trial.

*(Remainder of page intentionally left blank;
Signatures follow on next page.)*

IN WITNESS WHEREOF, this Agreement is executed in multiple counterparts as of the Effective Date.

PROSPER PORTLAND, the economic development and urban renewal agency of the City of Portland

By: _____
Kimberly Branam, Executive Director

APPROVED AS TO FORM:

Prosper Portland Legal Counsel

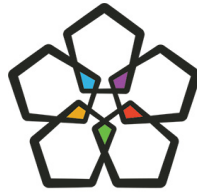
MODOMI GATEWAY DEVELOPMENT, LLC,
an Oregon limited liability company

By: _____
[Name]
[Title]

DAVID DOUGLAS SCHOOL DISTRICT
By: _____
[Name]
[Title]

List of Exhibits and Schedules:

- Exhibit A: Legal Description of New School
- Exhibit B: Legal Description of Property
- Schedule 1.1: Schedule of Performance
- Schedule 1.1.2: Funding and Finance Plan
- Schedule 1.1.7-A: Workforce Training and Hiring Policy
- Schedule 1.1.7-B: Business Equity Program Specifications
- Schedule 1.1.7-C: Green Building Policy
- Schedule 1.7: Compliance Monitoring Plan
- Schedule 1.10: Conceptual Design
- Schedule 1.13: Certificate of Completion
- Schedule 5.1: Names and Addresses of Mortgagees



**PROSPER
PORTLAND**
Building an Equitable Economy

RESOLUTION NO. 7519

RESOLUTION TITLE:

AUTHORIZING THE TERMS OF A DEVELOPMENT AGREEMENT RELATING TO THE DESIGN AND CONSTRUCTION OF A PRIVATE MIXED-USE DEVELOPMENT AND PUBLIC INFRASTRUCTURE AT AND NEAR NE 102nd AVENUE AND PACIFIC STREET IN THE GATEWAY TAX INCREMENT FINANCE DISTRICT


Adopted by the Prosper Portland Commission on January 24, 2024

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Gustavo J. Cruz, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Marcelino J. Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner 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: January 29, 2024
Pam Feigenbutz, Recording Secretary	