

PROSPER PORTLAND

Portland, Oregon

RESOLUTION NO. 7250

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LEASEHOLD PURCHASE AND SALE AGREEMENT TO CONVEY APPROXIMATELY 3.00 ACRES OF LEASED PROPERTY IN THE AIRPORT WAY URBAN RENEWAL AREA TO MORTENSON DEVELOPMENT, INC.

WHEREAS, on June 11, 1999, the Prosper Portland Board of Commissioners ("Board") approved Resolution No. 5278, authorizing the Executive Director to enter into a comprehensive Development Agreement related to the development of Cascade Station, a 120-acre parcel of land owned by the Port of Portland;

WHEREAS, as part of the Cascade Station development, Prosper Portland provided urban renewal funding to assist in the extension of the light rail line to the Airport and to fund public infrastructure within Cascade Station;

WHEREAS, on June 22, 2005, pursuant to Resolution No. 6263, the Prosper Portland Board authorized a restructure of the debt owed to Prosper Portland under the Development Agreement, consenting to take an assignment of development and lease rights to 36 acres of land within Cascade Station in lieu of debt repayment;

WHEREAS, over the past six years, Prosper Portland disposed of approximately 13 acres of these assigned properties for i) the construction of a federal agency's Portland headquarters,, ii) construction of a hotel facility, and iii) construction of a corporate headquarters building;

WHEREAS, in February 2017, Mortenson Development, Inc. ("Buyer") commenced discussions with Prosper Portland to acquire a leasehold interest in approximately 3.00 acres ("the Property") for the purpose of constructing a mid-rise hotel facility; and

WHEREAS, Prosper Portland and Buyer have negotiated the terms and conditions of a leasehold purchase and sale agreement in the form attached hereto as Exhibit A (the "Letter of Intent").


NOW, THEREFORE, BE IT RESOLVED, that the Executive Director is hereby authorized to execute a leasehold purchase and sale agreement with Buyer, for the conveyance of the Property according to the attached Letter of Intent, except that the Leasehold Sales Price in the Letter of Intent shall be amended to read "The greater of \$12.00 per square foot or the appraised value".

BE IT FURTHER RESOLVED, that the Executive Director is further authorized to execute all documents as may be necessary to complete this transaction;

BE IT FURTHER RESOLVED, that the Executive Director may approve changes to the leasehold purchase and sale agreement so long as such changes are not materially different from the Letter of Intent, as determined by the Executive Director in consultation with Prosper Portland's General Counsel; and

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

Adopted by the Prosper Portland Commission on August 9, 2017



Pam Micek, Recording Secretary



Tel. 971.202.4116
610 SW Alder, Suite 200
Portland, OR 97205
Mortenson.com

VIA ELECTRONIC MAIL

July 26, 2017

William Thier
Portland Development Commission
222 NW Fifth Avenue
Portland, OR 97209-3859

RE: Cascade Stations – Letter of Intent for Leasehold Purchase & Sale Agreement of Approximately 3.0 acres of the easternmost portion of PDC’s parcel G property, located on Block 606 at 9298 NE Cascades PKWY, Portland, Oregon 97220

Dear Mr. Thier,

This letter is in reference to the intent of the parties to enter into a Leasehold Purchase and Sale Agreement (“Agreement”) upon the terms and conditions set forth below. Accordingly, this Letter of Intent (“LOI”) outlines the basic terms and conditions under which Mortenson Development, Inc., or its assigns (“MDI”), and the Portland Development Commission (“PDC”) will enter into an Agreement for MDI to acquire a leasehold on the Property:

LEASEHOLD PURCHASE & SALE AGREEMENT TERMS

- Seller:** Portland Development Commission, dba Prosper Portland.
- Buyer:** Mortenson Development, Inc., or its Assigns
- Property:** Approximately 3.0 acres of the easternmost portion of PDC’s parcel G property, located on Block 606 at 9298 NE Cascades PKWY, Portland, Oregon 97220
- Modified Ground Lease:** Seller, as lessee, has an existing leasehold on the Property from The Port of Portland (“Port”), as lessor, that expires on June 30, 2084, with one option to extend for an additional period of fourteen-years through June 30, 2098 (“Extension Option”) (“PDC Ground Lease”). Seller agrees to cooperate as Buyer and Port negotiate the provisions of a new modified leasehold agreement pertaining to the Property that would be acceptable to both Buyer and Port (“Modified Ground Lease”). When satisfactory to all parties, Seller and Port shall execute the Modified Ground Lease applicable to the Property and Seller, with Port’s consent, shall assign the Modified Ground Lease to Buyer at Closing. An amendment to the PDC Ground Lease will also be executed at Closing, removing the Property from that leasehold agreement.
- Leasehold Sales Price:** \$12.00 per square foot. Final Leasehold Sales Price is subject to final site area of the Property.
- Project:** The proposed project is a mid-rise, select service hotel between 175 – 225 rooms with surface parking.

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Portland, OR 97220
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Note: Buyer is aware that the 250-hotel room maximum at Cascade Subdistrict A has been met (City of Portland Zoning Code 33.508.120). However, per City of Portland Zoning Code 33.508.220.B.3.c, a Transportation Impact Analysis can be conducted to allow for a hotel use, despite the maximum room count being met. Buyer intends to pursue this option.

Due Diligence:

Buyer shall conduct its due diligence including, but not limited to, PDC and Port policies, environmental testing, geotechnical testing, design, project costing, traffic impact analysis and FAA permitting with respect to development of the Property, for a period of twelve (12) months following execution of the Agreement (the "Due Diligence Period"). To enable Buyer to complete its due diligence, Seller shall promptly provide to Buyer all documentation in Seller's possession related to the Property that Buyer reasonably requests and allow Buyer representatives reasonable access to the Property and all records pertaining to the Property. Buyer anticipates, and Seller acknowledges, that Buyer (or its agents) shall perform inspections of the physical condition of the Property, as well as geological and environmental studies of the Property. Invasive testing shall not be permitted without Seller's written consent, not to be unreasonably withheld. Seller shall have the right to review and approve all scopes of work related to invasive testing.

In the event the update to the Cascade Station and PIC NEPA Environmental Assessment is not completed prior to expiration of the Due Diligence Period, the Buyer may elect to extend the Due Diligence Period for a period of three (3) months by Buyer delivering to Seller at least five (5) business days prior to the Due Diligence Period a wire transfer, cashier's check or certified check payable to Seller in an amount equal to Ten Thousand Dollars (\$10,000.00) ("Due Diligence Extension Payment"), along with a written notification of Buyer's election to extend. Buyer and Seller acknowledge and agree that (i) the election for a Due Diligence Extension shall be effective immediately upon receipt by Seller of the Due Diligence Extension Payment and irrevocable and (ii) the Due Diligence Extension Payment shall be nonrefundable upon receipt by Seller and is not applicable to the Leasehold Sales Price..

Earnest Money:

Within five (5) business days of execution of the Agreement, Buyer shall deposit with Chicago Title Company of Oregon, attention: Patricia Parsons ("Escrow Agent") the sum of \$50,000 ("Earnest Money Deposit"). The Earnest Money Deposit shall be returned to Buyer if for any reason in its sole discretion it elects during the Due Diligence Period not to proceed with the transaction. If Buyer elects to proceed with the transaction after conducting its due diligence to its satisfaction, the Earnest Money Deposit shall be increased to \$100,000 and become non-refundable. The Earnest Money Deposit will be applicable to the Leasehold Sales Price and after expiration of the Due Diligence Period, will only be refundable to Buyer in the event of default by Seller under the Agreement.

Project Approval:

Closing is contingent upon Buyer's reasonable certainty of obtaining required project and governmental approvals, as outlined in the Cascade Station Design and Development Standards and from the appropriate Port of Portland and City of Portland departments ("Project Approval").

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Buyer acknowledges that the City of Portland's Bureau of Development Services may not issue a building permit until the Property boundary is recorded in substantial compliance with the approved Site Plan, and meets the definition of "lot" contained in the Cascade Station Plan District, Section 33.508.040. If Buyer does not obtain a Final Land Use Decision Report from the City of Portland prior to the expiration of the Due Diligence Period, Buyer will have the option to either terminate the Agreement or extend the Due Diligence Period as provided above by payment of the Due Diligence Extension Payment. Buyer shall exercise reasonable diligence and good faith in attempting to secure the Project Approval. Seller will reasonably cooperate with Buyer's efforts to obtain the Project Approval.

Tax Lot & Account:

Buyer acknowledges that Multnomah County will not create a separate tax lot & account for the Property until the Modified Ground Lease has been executed, assigned to Buyer, and a Memorandum of Ground Lease & Assignment has been recorded.

Title & Survey:

Within seven (7) days after execution of the Agreement, Seller shall provide to Buyer a current leasehold preliminary title insurance report for the Property, together with legible copies of the title exceptions referred to therein, in an amount equal to the value of the ground lease interest (the "Title Report"). Buyer may, at Buyer's expense, obtain an ALTA survey of the Property ("Survey"). The title and survey issues will be subject to typical timeframes for objection and resolution to be more fully set forth in Agreement.

Costs:

Seller shall bear the cost of the premium for the standard portion of Buyer's title insurance policy. Seller and Buyer shall share equally recording fees and charges and escrow costs. Each party shall pay its own legal, accounting, and consultant fees and expenses. Buyer shall be responsible for the costs associated with the land survey, if any. Buyer shall be responsible for any title costs associated with special endorsements or extended coverage, and all direct expenses incurred by Buyer in conducting its due diligence with respect to the Property. The parties shall use reasonable efforts to minimize, wherever possible, all such costs.

PDC Policies:

Buyer shall comply with all applicable PDC policies, to include the Green Building Policy and the Equity Policies, as well as applicable Port of Portland environmental and construction requirements. Buyer's non-compliance with PDC policies may incur a liquidated damages charge for each non-compliance event as shall be set forth in the Agreement.

Warranties and Representations:

The Agreement shall contain standard warranties and representations pertaining to matters such as governmental orders, leases and contracts and other similar matters, but it is expressly understood by Buyer that the Property shall be taken AS-IS.

Closing Date:

The closing of the transaction shall occur not later than the *earlier* of eighteen (18) months from the Effective date of the Agreement (the "Closing"). The parties will endeavor to negotiate the Agreement in a timely manner to allow for a Closing no later than March 1, 2019.

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GENERAL TERMS AND CONDITIONS

- Exclusivity:** Seller agrees to work exclusively with Buyer during the term of this LOI and to work in good faith to execute a binding Leasehold Purchase and Sale Agreement within 90 days of the PDC Board of Commissioners approval of this LOI. Seller shall provide a draft of the PSA to Buyer within 30 days of the PDC Board of Commissioners approval.
- Confidentiality:** Subject to the Seller's obligations as a public agency, the parties agree that the contents of this letter of intent and any negotiations between the parties shall remain confidential and shall only be disclosed to the respective parties' attorneys, accountants, lenders, consultants, agents and employees as appropriate to accomplish the transaction contemplated in this letter.
- Non-Binding LOI:** Except for the provisions entitled Exclusivity and Confidentiality which are current legal obligations binding on the parties hereto and each of their successors and assigns, and shall be specifically enforceable, this LOI is not intended to be a binding agreement between Seller and Buyer. The parties will only be bound by the Leasehold Purchase and Sale Agreement executed by both parties and neither party shall have any claim against the other for damages or expenses in the event a mutually acceptable Agreement is not timely executed..

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Thank you for your consideration of this proposal. If this proposal is acceptable, please sign in the space provided below and return a copy of this letter to me. If you have questions, please do not hesitate to call.

Regards,

MORTENSON DEVELOPMENT INC.

Nate Gundrum, Mortenson Development, Inc.

cc: Brian Gunn, Mortenson Development, Inc.
Dan Mehls, Mortenson Construction

AGREED:

Prosper Portland

By

Name:

KIMBERLY BRANAM

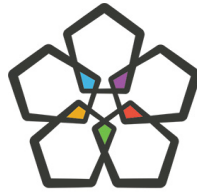
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Title:

EXECUTIVE DIRECTOR

Date:

7.26.17



**PROSPER
PORTLAND**
Building an Equitable Economy

RESOLUTION NO. 7250

RESOLUTION TITLE:

AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A LEASEHOLD PURCHASE AND SALE AGREEMENT TO CONVEY APPROXIMATELY 3.00 ACRES OF LEASED PROPERTY IN THE AIRPORT WAY URBAN RENEWAL AREA TO MORTENSON DEVELOPMENT, INC.

Adopted by the Prosper Portland Commission on August 9, 2017

PRESENT FOR VOTE	COMMISSIONERS	VOTE		
		Yea	Nay	Abstain
<input checked="" type="checkbox"/>	Chair Gustavo J. Cruz, Jr.	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Alisha Moreland-Capua MD	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Francesca Gambetti	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input checked="" type="checkbox"/>	Commissioner Peter Platt	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<input type="checkbox"/>	Commissioner William Myers	<input 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: August 24, 2017
Pam Micek, Recording Secretary	