

## PROPERTYFIT PROGRAM AGREEMENT

THIS **PROPERTYFIT** PROGRAM AGREEMENT (“**PROPERTYFIT Program Agreement**”) is made effective \_\_\_\_\_, 20\_\_ (“**Effective Date**”), between \_\_\_\_\_, a \_\_\_\_\_, (the “**Property Owner**”), whose address is \_\_\_\_\_; \_\_\_\_\_, a \_\_\_\_\_ (the “**Capital Provider**”), whose address is \_\_\_\_\_; and, **Multnomah County**, a political subdivision of the State of Oregon (the “**Local Government**”), acting by and through **Prosper Portland**, the economic development and urban renewal agency of the City of Portland, (the “**Program Administrator**”) whose address is 220 NW 2nd Avenue, Suite 200, Portland, Oregon 97209. Each may be referred to herein as a “**Party**” and, collectively, as the “**Parties.**”

### RECITALS

1. Pursuant to Oregon Revised Statutes (“**ORS**”) 223.680 and 223.685, the Local Government’s authorizing Resolution Nos. 2015-097, 2016-118 and 2023-015, and Ordinance No. 1278 (collectively, the “**Acts**”), the Local Government has established a program known as the “**PROPERTYFIT Program**” to facilitate private financing by property owners of multifamily residential buildings (containing five or more units) or commercial or industrial buildings located within Multnomah County, for the construction of cost-effective utility improvements and/or seismic rehabilitation improvements that will benefit such property (“**Building Resiliency Improvements**”). Private financing provided through the **PROPERTYFIT** Program is secured by a lien on the benefited real property that has the same priority, as determined under ORS 223.230(3), as a lien for local improvements arising under ORS 223.393 (the “**Benefit Assessment Lien**”).
2. Through an Intergovernmental Agreement effective April 8, 2023 (the “**IGA**”), the Local Government has delegated authority to Prosper Portland to serve as the Program Administrator for the **PROPERTYFIT** Program. Prosper Portland administers the **PROPERTYFIT** Program in accordance with the Acts and the terms of the IGA, as each may be amended from time to time.
3. The Property Owner is the owner of record of that certain real property and improvements located at \_\_\_\_\_ in Multnomah County, Oregon, as more fully described in the attached *Exhibit A – Legal Description* (the “**Qualifying Real Property**”). The Property Owner has applied to participate in the **PROPERTYFIT** Program to obtain private financing for certain Building Resiliency Improvements that will benefit the Qualifying Real Property, as more fully described in attached *Exhibit B – Qualifying Project Improvements* (the “**Project**”). The Property Owner has completed the application requirements of the **PROPERTYFIT** Program including, without limitation, providing written notice to all mortgagees of the Qualifying Real Property (the “**Mortgage Holder(s)**”), and obtaining the written consent from such Mortgage Holders stating that the Property Owner’s participation in the **PROPERTYFIT** Program, including the execution of the **PROPERTYFIT** Financing Agreement (as defined in Paragraph 4), and the assessment and recording of a Benefit Assessment Lien against the Qualifying Real Property, will not constitute an event of default or give rise to any remedies by the Mortgage Holder under the terms of their mortgage documents. The written consent of each Mortgage Holder is attached to this **PROPERTYFIT** Program Agreement as *Exhibit C – Mortgage Holder Consent*.
4. The Property Owner and the Capital Provider have entered into a private financing agreement, and other transaction documents by and between the Property Owner and the Capital Provider

included or referenced therein, wherein the Capital Provider has agreed to advance funds to the Property Owner in support of the Project (the “**PROPERTYFIT Financing Agreement**”), subject to the terms and conditions contained in this **PROPERTYFIT** Program Agreement and the Acts.

5. The Program Administrator has determined, and the Capital Provider concurs, that the Property Owner, the Qualifying Real Property, and the Project meet all rules and regulations set forth in the Acts and that the Project is eligible to be funded by private financing secured by a Benefit Assessment Lien under the **PROPERTYFIT** Program.

## AGREEMENT

Now therefore the Parties hereby agree as follows:

### SECTION 1 - FINDINGS

The recitals are hereby incorporated herein and are acknowledged as being true and correct, as of the Effective Date.

### SECTION 2 – FINANCING; BENEFIT ASSESSMENT LIEN

**2.1. PROPERTYFIT Financing.** The Capital Provider will provide the Property Owner with private financing to support the Project in an amount not to exceed \_\_\_\_\_ (\$\_\_\_\_\_) (such amount together with interest, fees, penalties, and costs due under the **PROPERTYFIT** Financing Agreement are referred to herein as the “**PROPERTYFIT Financing**”), pursuant to the terms and conditions of the Acts, the **PROPERTYFIT** Financing Agreement, and this **PROPERTYFIT** Program Agreement. In partial consideration of receiving the **PROPERTYFIT** Financing from the Capital Provider, the Property Owner hereby requests and agrees that the Local Government, by and through the Program Administrator will secure repayment of the **PROPERTYFIT** Financing with a Benefit Assessment Lien assessed and recorded against the Qualifying Real Property.

#### **2.2. Benefit Assessment Lien.**

**a. Imposition.** The Local Government, by and through the Program Administrator agrees to impose and enter a Benefit Assessment Lien in the Multnomah County lien docket against the Qualifying Real Property, to secure the payment of the **PROPERTYFIT** Financing by recording the Benefit Assessment Lien with the Multnomah County, Division of Assessment, Recording and Taxation (“**DART**”).

**b. Priority.** The Benefit Assessment Lien is a first priority lien against the Qualifying Real Property from the date on which the Benefit Assessment Lien is recorded with DART (the “**Closing Date**”) as provided in ORS 223.680(7)(a) and (c) and ORS 223.685(6)(a) and (c), until the Release (defined below).

**c. Runs with the Land.** The Benefit Assessment Lien runs with the land. In the event of a sale or transfer of the Qualifying Real Property by the Property Owner, the Benefit Assessment Lien will remain a lien on the Qualifying Real Property securing obligations under the **PROPERTYFIT** Financing Agreement and the **PROPERTYFIT** Program Agreement, including, without limitation, the portion of the **PROPERTYFIT** Financing that has not yet become due.

**d. Not Contested.** After the Benefit Assessment Lien is recorded with DART, as provided under ORS 223.680(7)(a) and ORS 223.685(6)(a), the lien created by the Benefit Assessment Lien may not be contested on the basis that the improvement is not an “*Utilities Improvement*” or “*Seismic Rehabilitation*” as such terms are defined in ORS 223.680(1)(c) and ORS 223.685(1)(c), respectively.

**e. Amendments.** After completion of the Project, the Capital Provider may request an amendment to the Benefit Assessment Lien to reduce the maximum amount of the **PROPERTYFIT** Financing to the amount of funds actually advanced under the terms of the **PROPERTYFIT** Financing Agreement. In such event, the Capital Provider must provide the Program Administrator a written request for amendment of the Benefit Assessment Lien, which must include the amount of the reduced maximum principal indebtedness of the **PROPERTYFIT** Financing. Upon receipt of the request, the Program Administrator must promptly record an amendment to the Benefit Assessment Lien with DART.

**f. Release.** When the **PROPERTYFIT** Financing has been satisfied and paid in full, together with all accrued interest, costs, fees and/or penalties, due and payable to the Capital Provider and promptly upon notice of such payment from the Capital Provider, the Local Government, acting by and through the Program Administrator, will execute a release of the Benefit Assessment Lien (the “**Release**”) and will record the Release with DART. The Capital Provider must provide such notice to the Program Administrator within ten (10) business days after receiving payment in full. If the Capital Provider fails to so provide such notice, then the Property Owner or the Mortgage Holder may provide such notice to the Program Administrator, with a copy to the Capital Provider, together with evidence that the **PROPERTYFIT** Financing has been satisfied and paid in full. The Program Administrator will be entitled to rely upon the notice and the evidence received from the Property Owner or the Mortgage Holder as if it was received from the Capital Provider.

**2.3. Program Administration Costs.** The Capital Provider is responsible for paying or reimbursing the Program Administrator for the fees described in this Section 2.3. Except to the extent expressly prohibited by this **PROPERTYFIT** Program Agreement, the Capital Provider may pass on any such fees to the Property Owner under the terms of the **PROPERTYFIT** Financing Agreement

**a. Processing Fee.** Upon the execution of this **PROPERTYFIT** Program Agreement, the Capital Provider must pay the Program Administrator a processing fee equal to one percent (1.00%) of the maximum amount of the **PROPERTYFIT** Financing (less interest, fees, penalties, and costs due under the **PROPERTYFIT** Financing Agreement) set forth in Section 2.1, for the Program Administrator’s duties and services provided pursuant to this **PROPERTYFIT** Program Agreement (the “**PROPERTYFIT Processing Fee**”).

**b. Annual Administration Fee.** In addition to the **PROPERTYFIT** Processing Fee, the Capital Provider must also pay the Program Administrator an annual Program Administration Fee as outlined in Section 2.5(c).

**c. Filing Fees.** The Capital Provider must promptly reimburse the Program Administrator for all costs associated with filing/recording the Benefit Assessment Lien, including any amendments thereto, or the release thereof.

**d. Other Expenses.** The Capital Provider must pay any additional out-of-pocket expenses incurred by the Program Administrator or the Local Government in connection with the performance of its duties and obligations under this **PROPERTYFIT** Program Agreement, including but not limited to, expenses incurred to enforce the Benefit Assessment Lien.

## 2.4. Assignment by the Capital Provider.

**a. Assignment.** Subject to providing proper notification as required in Section 2.4(d), the Capital Provider will have the unrestricted right to assign all or any portion of its rights and obligations hereunder to one or more entities, persons, banks, or financial institutions capable of funding the **PROPERTYFIT** Financing (each, an “**Assignee**”). The Property Owner agrees that it will execute, or cause to be executed, such documents, including without limitation, amendments to this **PROPERTYFIT** Program Agreement, as the Capital Provider, as “**Assignor**”, may deem reasonably necessary to affect the assignment. Upon the execution and delivery of appropriate assignment documentation, amendments and any other documentation required by the Assignor in connection with such assignment, the Assignee will be a successor party to this **PROPERTYFIT** Program Agreement and will have all of the rights and obligations thereunder of the Capital Provider hereunder, and the Assignor will be released from its obligations hereunder and thereunder effective as of the date of such assignment and assumption.

**b. Participating Interest.** The Capital Provider will have the unrestricted right at any time, and from time to time, and without the consent of, or notice to the Property Owner, to grant to one or more Capital Providers or other financial institutions a participating interest in the Capital Provider’s rights and obligations hereunder (each, a “**Participant**”). In the event of any such grant by the Capital Provider of a participating interest to a Participant, the Capital Provider will remain responsible for the performance of its obligations hereunder and the Property Owner and the Program Administrator on behalf of the Local Government will continue to deal solely and directly with the Capital Provider in connection with their respective rights and obligations hereunder unless otherwise directed by the Capital Provider.

**c. Information Release.** In furtherance of the foregoing, the Capital Provider may furnish any information concerning this **PROPERTYFIT** Program Agreement, the Qualifying Real Property, the Property Owner, the Project and/or the **PROPERTYFIT** Financing in its possession from time to time to prospective Assignees and Participants, subject to standard confidentiality requirements.

**d. Notification of Assignment or Participation.** The Capital Provider must provide written notice of any assignment or grant of a participating interest to the Program Administrator and the Property Owner within 30 days of such action, which notice will include the name of the Assignee or Participant and the address to which payment of future installments must be sent.

**2.5. Required Terms for PROPERTYFIT Financing Agreement.** The **PROPERTYFIT** Financing Agreement must incorporate, at a minimum, the following terms, and conditions:

**a. Term.** The term of the **PROPERTYFIT** Financing must not exceed the useful life of the Project.

**b. Servicing.** The Capital Provider must be responsible for all servicing duties related to the **PROPERTYFIT** Financing, except for those duties expressly undertaken by the Local Government or the Program Administrator as set forth in this **PROPERTYFIT** Program Agreement.

**c. Annual Administration Fee.** The **PROPERTYFIT** Financing payment must include an annual Program Administration Fee payable to the Program Administrator equal to one quarter of one percent (0.25%) per annum based upon the outstanding principal balance of the **PROPERTYFIT** Financing (less interest, fees, penalties, and costs due under the **PROPERTYFIT** Financing Agreement), calculated in the same manner as interest is calculated on the **PROPERTYFIT** Financing (the “**Program Administration Fee**”). The Program Administration Fee must be specifically detailed in a payment schedule attached as

an exhibit to the **PROPERTYFIT** Financing Agreement and must be collected by the Capital Provider as part of the periodic installment payments paid by the Property Owner. The Capital Provider must hold these funds for the benefit of the Program Administrator and must remit them to the Program Administrator as outlined in Section 3.3.

**d. Installments.** The **PROPERTYFIT** Financing Agreement must require a minimum of annual installments. Installment payments are to be applied to the oldest receivable in the following order: (i) first to penalties and fees, (ii) second to accrued and unpaid interest, and (iii) finally, to the principal balance of the **PROPERTYFIT** Financing.

**e. Late Payments.** The **PROPERTYFIT** Financing Agreement may include a late fee not to exceed five percent (5%) of the installment amount due if an installment is received more than 10 days after its due date.

**f. Delinquent Installments.** An installment not received within 30 days of its due date is considered delinquent. At the Capital Provider's discretion, if a delinquent installment remains unpaid for more than 30 days, the interest rate on the **PROPERTYFIT** Financing may be increased by not more than five percent (5%) above the base interest rate expressed in the **PROPERTYFIT** Financing Agreement (to be confirmed with a promissory note payable to the Capital Provider) (the "**Delinquency Rate**"). The Delinquency Rate may be charged on the entire unpaid principal balance of the **PROPERTYFIT** Financing calculated from the due date of the unpaid installment until the date the delinquent installment(s) is/are paid in full. If the unpaid principal balance, accrued interest and all costs are not paid in full on the Maturity Date, the unpaid principal balance, all unpaid accrued interest, and any costs, will bear interest from the Maturity Date at the Delinquency Rate.

**g. No Acceleration of Financing.** The **PROPERTYFIT** Financing Agreement must not include any provision allowing for the Capital Provider to accelerate the **PROPERTYFIT** Financing and declare the entire unpaid **PROPERTYFIT** Financing, due and payable in full, for any reason, including without limitation, the sale of the Qualifying Real Property or any default of the Property Owner. Only delinquent installments, fees, costs, penalties, and interest thereon, are considered delinquent and subject to enforcement. Future installments, not yet due, will be considered current, remain secured by the Benefit Assessment Lien and the Capital Provider will continue to perform regular servicing of the remaining **PROPERTYFIT** Financing.

**h. Use of funds.** **PROPERTYFIT** Financing secured by the Benefit Assessment Lien must only be used for approved Project expenses, as described in the attached *Exhibit B - Qualifying Project Improvements* and may not be used for any purpose that is not expressly authorized by the Acts.

**2.6 Collection of Delinquent Installments.** Prior to requesting the Program Administrator, on behalf of the Local Government, to initiate enforcement of the Benefit Assessment Lien, the Capital Provider must take reasonable steps to collect any delinquent installment, which must include, at a minimum, the following:

**a.** The Capital Provider must deliver a written notice of delinquency and demand for payment to the Property Owner in person or mailed by reputable overnight courier or by registered or certified mail, return receipt requested, postage prepaid. Notices will be effective (i) on the next business day if sent by a nationally recognized overnight courier service, (ii) on the date of delivery by personal delivery and (iii) on the date of transmission if sent by email during business hours on a business day (otherwise on the next business day) (with confirmation of receipt by reply email). The notice must



include a statement notifying the Property Owner that a failure to pay the installment when due is an event of default under the terms of the **PROPERTYFIT** Financing Agreement and as such, may be referred to the Program Administrator for enforcement pursuant to the Acts, and ORS 223.505 to 223.595;

**b.** If the delinquency continues for more than 30 days following the date of the first notice of delinquency (and every 30 days thereafter if delinquency remains unpaid), the Capital Provider must deliver an additional notice of delinquency and demand for payment to the Property Owner by both certified-mail, return receipt requested and first-class mail;

**c.** The Capital Provider must deliver a copy of each notice of delinquency and demand for payment to all Mortgage Holders on the Qualifying Real Property with a cover letter notifying the Mortgage Holder that the Property Owner is in default on the payment of the **PROPERTYFIT** Financing and that, if the default is not cured, the default may be referred to the Program Administrator for enforcement of the Benefit Assessment Lien pursuant to ORS 223.505 to 223.595; and

**d.** The Capital Provider must deliver a copy of each notice of delinquency, demand for payment, and Mortgage Holder cover letter referenced above to the Program Administrator within 10 days of issuance.

## **2.7 Enforcement of the Benefit Assessment Lien.**

**a. Request for Enforcement by the Capital Provider.** Any **PROPERTYFIT** Financing installment that remains unpaid for at least 120 days from the due date, may be referred to the Program Administrator for enforcement. At the Capital Provider's discretion, and consistent with the provisions of the **PROPERTYFIT** Financing Agreement and any applicable cure period described therein, the Capital Provider may submit a written request to the Program Administrator, requesting enforcement of the delinquent installment(s) in the manner provided in ORS 223.505 to 223.595. The request must include a detailed accounting of the delinquency, including, but not limited to:

- i.** The current unpaid principal balance of the **PROPERTYFIT** Financing;
- ii.** The date through which interest is paid;
- iii.** The amount of the delinquent installment(s) and the date(s) the installment(s) were due;
- iv.** The amount of unpaid late fees and the dates the late fees were incurred;
- v.** The amount of any other delinquent fees or penalties due;
- vi.** Indicate if the interest rate has been increased to the Delinquency Rate specified in the **PROPERTYFIT** Financing Agreement and if so, the date it began accruing at the Delinquency Rate;
- vii.** The current rate of interest being accrued; and
- viii.** The calculation of unpaid interest due through the date of the request, and the amount of daily interest accruing going forward.

**b. Payment of Enforcement Fees and Costs.** The Capital Provider is responsible for all costs and fees incurred by the Local Government and/or the Program Administrator related to the enforcement of any delinquent installment(s) ("**Enforcement Costs**"). Along with the request for enforcement of delinquent installment(s), the Capital Provider must submit to the Program Administrator a minimum deposit of \$5,000.00, to cover the initial estimated Enforcement Costs. If the Program Administrator determines at any time during the enforcement process that the estimated Enforcement Costs are expected to exceed the amount on deposit, then the Program Administrator may request an additional deposit of funds by written notice to the Capital Provider and the Capital Provider must submit

the requested amount to the Program Administrator within ten (10) business days of the date of the request. If the Capital Provider fails to timely deposit any required funds under this Section 2.7(b), then the Program Administrator may suspend or terminate the enforcement action at its sole discretion.

**c. Initiation of Enforcement Action.** Upon receiving a written request for enforcement and the initial deposit of Enforcement Costs from the Capital Provider, and after confirming the Capital Provider's compliance with the minimum delinquency procedures described in this **PROPERTYFIT** Program Agreement, the Program Administrator must initiate enforcement of the Benefit Assessment Lien securing the **PROPERTYFIT** Financing in the manner provided in the Acts and ORS 223.505 to 223.595. Only the delinquent installment(s), together with the accrued interest, fees, costs, and penalties thereon, may be included in the Program Administrator's enforcement action. Any installments not yet due and not included in the enforcement action will be considered current and remain subject to the Benefit Assessment Lien against the Qualifying Real Property. The Capital Provider must continue to perform regular servicing of the remaining **PROPERTYFIT** Financing, and the Property Owner must continue with regularly scheduled installment payments.

**d. Remittance of Sale Proceeds to the Capital Provider.** If the Qualifying Real Property is sold in the manner provided in ORS 223.525, the Program Administrator will, within 15 business days after receiving the sale proceeds from the Local Government, disburse the proceeds in accordance with ORS 223.525(4). The Capital Provider must accept such payment, for all purposes, as payment in full of the delinquent amounts, notwithstanding that the amounts collected by the Program Administrator and remitted to the Capital Provider may not total the full amount of the delinquent assessment that the Capital Provider referred to the Program Administrator for enforcement.

**e. The Capital Provider's Credit Bid.** If no bid is received for the sale of the Qualifying Real Property at the foreclosure sale held pursuant to ORS 223.525, then upon receiving written direction from the Capital Provider, the Program Administrator must purchase the Qualifying Real Property on behalf of the Capital Provider, by credit bidding the amount of the delinquent installments plus unpaid interest, fees and cost (including the costs of advertising and sale). If the Program Administrator, on behalf of the Capital Provider, purchases the Qualifying Real Property under this method, the certificate of sale issued to the Program Administrator will be immediately assigned to the Capital Provider and the certificate of sale and assignment will be recorded with DART. It is the intention of the Parties that neither the Local Government nor the Program Administrator will take possession of, or be responsible for protecting, preserving, or maintaining, the Qualifying Real Property.

**f. Protection and preservation of Qualifying Real Property during Redemption Period.** The Capital Provider or other purchaser at the foreclosure sale (the "**Foreclosure Purchaser**") will be responsible for protecting, preserving, and maintaining the Qualifying Real Property during any redemption period at their own expense. The Program Administrator will have no obligation or responsibility for monitoring or maintaining the Qualifying Real Property. If the Qualifying Real Property is subsequently redeemed, the Foreclosure Purchaser may only be reimbursed for costs incurred to protect, preserve, and maintain the Qualifying Real Property during the redemption period, if such costs are preapproved in writing by the Program Administrator and do not exceed the 10 percent redemption penalty, pursuant to ORS 223.565. After expiration of the redemption period, if the Qualifying Real Property is not timely redeemed, the Program Administrator will execute and record a deed of conveyance pursuant to ORS 223.570 and the Foreclosure Purchaser will be entitled to immediate possession of the Qualifying Real Property pursuant to ORS 223.580.

## 2.8. Limitations on the Local Government and Program Administrator Actions.

**a. Written Instructions.** The Program Administrator, on behalf of the Local Government, will not initiate any action with respect to the Benefit Assessment Lien without the prior written request of the Capital Provider.

**b. No Implied Duty.** The Local Government and the Program Administrator undertake to perform only such duties as are specifically set forth in this **PROPERTYFIT** Program Agreement, and no implied duties on the part of either are to be read into this **PROPERTYFIT** Program Agreement. The Local Government and the Program Administrator will not be deemed to have a fiduciary or other similar relationship with the Capital Provider or the Property Owner. The Program Administrator may request written instructions for action from the Capital Provider and at its discretion refrain from taking action until it receives satisfactory written instructions. The Program Administrator and the Local Government will have no liability to any person, including the Capital Provider or the Property Owner, for following such instructions, regardless of whether they are to act or refrain from acting.

**c. Costs.** No provision of this **PROPERTYFIT** Program Agreement may be interpreted as requiring the Local Government or the Program Administrator to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

**2.9. Waiver.** By execution of this **PROPERTYFIT** Program Agreement, the Property Owner waives any claim, challenge, or cause of action, pertaining to the imposition of the Benefit Assessment Lien to secure the **PROPERTYFIT** Financing or the collection of delinquent installment payments as provided in this **PROPERTYFIT** Program Agreement, the Acts, or ORS 223.505 to 223.650, except as otherwise required by law.

## SECTION 3 – ANNUAL REPORTING AND PROGRAM ADMINISTRATOR’S FEE

**3.1. Periodic Reporting.** If the Qualifying Real Property is located within the City of Portland, as a condition of participation in the **PROPERTYFIT** Program, the Property Owner agrees to comply in all material respects with the City of Portland’s Commercial Building Energy Performance Reporting Policy as amended, regardless of building size.

**3.2. Annual Reporting.** By May 15<sup>th</sup> of each year, the Capital Provider agrees to provide to the Program Administrator an annual **PROPERTYFIT** Program activity report in a format prescribed by the Program Administrator (the “**Annual Report**”). Among other things, the Annual Report must include payment activity and the outstanding balance of the **PROPERTYFIT** Financing.

**3.3 Remittance of the Program Administration Fee.** The Capital Provider will collect the required on-going Program Administration Fee from the Property Owner as part of the Property Owner’s regular periodic installments on the **PROPERTYFIT** Financing. The Capital Provider must remit the prior year’s Program Administration Fees to the Program Administrator along with the Annual Report by May 15<sup>th</sup> of each year.

## SECTION 4 - PROPERTY OWNER’S WARRANTIES AND REPRESENTATIONS.

With respect to this **PROPERTYFIT** Program Agreement, the Property Owner hereby warrants and represents that, as of the Effective Date:

### 4.1. Organization and Authority.



- a. Property Owner owns the Qualifying Real Property and has full power, and all licenses necessary, to carry on its business at the Qualifying Real Property as it is now being conducted;
- b. Property Owner has full power to enter into this **PROPERTYFIT** Program Agreement and other Transaction Documents and to carry out the terms and conditions contained herein;
- c. Property Owner's execution of this **PROPERTYFIT** Program Agreement and its participation in the transaction specified herein have been duly authorized in its ordinary course of business and within the scope of its existing authority; and,
- d. It has designated \_\_\_\_\_, its \_\_\_\_\_ with the power and authority to execute this **PROPERTYFIT** Program Agreement on behalf of the Property Owner.

#### 4.2 Notice and Consent of Mortgage Holders

Pursuant to ORS 223.680(6) and 223.685(5), in order to qualify for **PROPERTYFIT** Financing, the Property Owner is required to:

- a. Provide a written notice to all mortgagees of the Qualifying Real Property, indicating the Property Owner intends to participate in the **PROPERTYFIT** Program and obtain **PROPERTYFIT** Financing by entering into a loan or financing agreement and other transaction documents, and authorizing the recording of a Benefit Assessment Lien against the Qualifying Real Property.
- b. Obtain a written consent, in a form acceptable to the Program Administrator, from every such Mortgage Holder stating that neither the Property Owner's participation in the **PROPERTYFIT** Program, the execution of the **PROPERTYFIT** Financing Agreement this **PROPERTYFIT** Program Agreement, other Transaction Documents, nor the assessment or recording of a Benefit Assessment Lien against the Qualifying Real Property to secure such financing, will constitute an event of default or give rise to any remedies by the Mortgage Holder under the terms of any mortgage or loan agreement effecting the Qualifying Real Property.

**4.3. No Actions Pending.** There are no actions, suits, investigations, or proceedings pending, or to the knowledge of the Property Owner, threatened, against or affecting it or the Qualifying Real Property that are reasonably likely to materially adversely affect the Property Owner, its financial condition, the Qualifying Real Property or the construction of the Project or the Property Owner's ability to satisfy its obligations under this **PROPERTYFIT** Program Agreement.

**4.4. No Approvals Needed.** To the Property Owner's knowledge, the approval of, or consent from, any governmental authority is not required for the execution, delivery, or performance by the Property Owner of its obligations under this **PROPERTYFIT** Program Agreement. To Property Owner's knowledge, the execution, delivery, and performance by the Property Owner of its obligations under this **PROPERTYFIT** Program Agreement:

- a. Do not contravene any provisions of law applicable to the Property Owner; and
- b. Do not conflict with, or are inconsistent with, and will not result (with or without the giving of notice, the passage of time or both) in breach of or constitute a default or require any consent under any credit agreement, indenture, mortgage, purchase agreement, deed of trust, security agreement, lease, guarantee or other instrument to which the Property Owner is a party, by which the

Property Owner may be bound, to which the Property Owner or its Qualifying Real Property may be subject, or the Property Owner's charter or bylaws.

**4.5. Binding Agreement.** This **PROPERTYFIT** Program Agreement constitutes the legal, valid and binding obligation of the Property Owner, enforceable against the Property Owner and the Qualifying Real Property in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein.

**4.6 Independent Review.** The Property Owner has independently, and without reliance upon the Local Government or the Program Administrator, conducted its own evaluation of this **PROPERTYFIT** Program Agreement and the legal and financial benefits and risks associated with the **PROPERTYFIT** Financing.

**4.7 No Reliance.** The Property Owner has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, the Local Government, the Program Administrator or their respective agents or employees, express or implied, concerning the tax or economic benefits of obtaining the **PROPERTYFIT** Financing, the enforceability in accordance with the terms of this **PROPERTYFIT** Program Agreement and the Benefit Assessment Lien against the Property Owner and the Qualifying Real Property, or the legal and financial benefits and risks associated with the **PROPERTYFIT** Financing. The Property Owner acknowledges that the Local Government and the Program Administrator take no responsibility for any information (financial or otherwise) regarding the Capital Provider. The Property Owner acknowledges that the Local Government and the Program Administrator have not provided to the Property Owner any legal advice regarding this **PROPERTYFIT** Program Agreement, the Benefit Assessment Lien, the Acts, or any other matters.

## **SECTION 5 - CAPITAL PROVIDER'S WARRANTIES AND REPRESENTATIONS.**

With respect to this **PROPERTYFIT** Program Agreement, the Capital Provider hereby warrants and represents that, as of the Effective Date:

### **5.1. Organization and Authority:**

- a.** The Capital Provider is an entity (corporation, limited liability company, partnership) duly incorporated or organized, validly existing and in good standing under the laws of its state of incorporation or organization;
- b.** The Capital Provider has full power, and all licenses necessary, to own and carry on its business as now being conducted;
- c.** The Capital Provider has full power to enter into this **PROPERTYFIT** Program Agreement and to carry out the terms and conditions contained herein; and
- d.** The Capital Provider's execution of this **PROPERTYFIT** Program Agreement on its behalf and its participation in the transaction contemplated herein has been duly authorized and is in its ordinary course of business and within the scope of its existing corporate authority.

**5.2. No Actions Pending.** There is no action, suit, investigations or proceeding pending against the Capital Provider before or by any court, administrative agency or other governmental

authority which brings into question the validity of, or might in any way impair, the execution, delivery, or performance by the Capital Provider of this **PROPERTYFIT** Program Agreement.

**5.3. No Approvals Needed.** No approval of, or consent from, any governmental authority is required for the execution, delivery, or performance by the Capital Provider of this **PROPERTYFIT** Program Agreement.

The execution, delivery, and performance by the Capital Provider of this **PROPERTYFIT** Program Agreement:

- a. Do not contravene any provisions of law applicable to the Capital Provider; and
- b. Do not conflict with, are consistent with, and will not result (with or without the giving of notice or passage of time or both) in the breach of the Capital Provider's charter or bylaws, or any other contract or agreement to which the Capital Provider is a party.

**5.4. Binding Agreement.** This **PROPERTYFIT** Program Agreement constitutes the legal, valid, and binding obligation of the Capital Provider, enforceable against the Capital Provider in accordance with its terms, except as limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws affecting the enforcement of creditors' rights generally, and by applicable laws (including any applicable common law and equity) and judicial decisions which may affect the remedies provided herein.

**5.5 Independent Review.** The Capital Provider has independently, and without reliance upon the Local Government or the Program Administrator, conducted its own evaluation of the credit of the Property Owner and the title to the Qualifying Real Property, and has conducted its own evaluation of this **PROPERTYFIT** Program Agreement and the legal and financial benefits and risks associated with the **PROPERTYFIT** Financing.

**5.6 No Reliance.** The Capital Provider has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, the Local Government, the Program Administrator or their respective agents or employees, express or implied, concerning the financial condition of the Property Owner, the status and valuation of the Qualifying Real Property, the tax or economic benefits of extending the **PROPERTYFIT** Financing, the enforceability in accordance with their terms of this **PROPERTYFIT** Program Agreement or the Benefit Assessment Lien against the Property Owner and the Qualifying Real Property, or the legal and financial benefits and risks associated with the **PROPERTYFIT** Financing. The Capital Provider acknowledges that the Local Government and the Program Administrator take no responsibility for any information (financial or otherwise) regarding the Property Owner or the Qualifying Real Property, furnished by the Property Owner. The Capital Provider acknowledges that the Local Government and the Program Administrator have not provided to the Capital Provider any legal advice regarding this **PROPERTYFIT** Program Agreement, the Benefit Assessment Lien, the Acts, or any other matters.

**5.7 Access to Information.** The Capital Provider has had access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the **PROPERTYFIT** Financing, including the opportunity to ask questions, receive answers and obtain additional information from the Local Government, the Program Administrator, and the Property Owner necessary to verify the accuracy of information provided.

**5.8 Investment Experience.** The Capital Provider, or its authorized representatives acting on its behalf, have knowledge and experience in business and financial matters necessary to evaluate the merits and risks of providing financing to the Project. The Capital Provider is experienced in making investments in Building Resiliency Improvement projects similar to the Project and is financially able to undertake the risks involved in such an investment.

## **SECTION 6 – THE LOCAL GOVERNMENT’S WARRANTIES AND REPRESENTATIONS; DISCLAIMER**

**6.1. Warranties and Representations.** The Local Government, by and through the Program Administrator, hereby warrants and represents that as of the Effective Date:

**a.** The Local Government is a governmental body duly established under the laws of the State of Oregon and has full power and authority to enter into this **PROPERTYFIT** Program Agreement and to carry out the terms and conditions contained therein;

**b.** No approval of, or consent from, any other governmental authority is required for the execution, delivery, or performance by the Local Government of this **PROPERTYFIT** Program Agreement; and

**c.** The execution, delivery, and performance by the Local Government of the transactions contemplated hereby, including the **PROPERTYFIT** Program Agreement:

**i.** Do not contravene any provisions of law applicable to the Local Government; and

**ii.** Do not conflict and are consistent with and will not result (with or without the giving of notice or passage of time or both) in the breach of charter or bylaws, or any other contract or agreement to which the Local Government is a party.

**d.** Local Government, after due investigation, is of the opinion that this **PROPERTYFIT** Program Agreement, the Benefit Assessment Lien, and the Local Government’s role hereunder comply with the Acts. In the event of a conflict between this **PROPERTYFIT** Program Agreement and the Acts, the Acts will govern.

**6.2. Disclaimer.** Except as set forth in this Section:

**a.** The Local Government and the Program Administrator have not heretofore made, nor do they make by this **PROPERTYFIT** Program Agreement, any representations, or warranties with respect to the Qualifying Real Property, including any warranty of title or any environmental matters;

**b.** The Local Government and the Program Administrator make no representation or warranty in connection with, and assume no responsibility with respect to, the solvency, financial condition, or statements of the Property Owner, or with respect to the performance or observance by the Property Owner of their obligations under this **PROPERTYFIT** Program Agreement;

**c.** The Capital Provider and the Property Owner have no recourse against the Local Government or the Program Administrator with respect to any future change in law or judicial decisions which affect the Benefit Assessment Lien or interpretation of this **PROPERTYFIT** Program Agreement, the Acts, or the IGA;

**d.** The Local Government and the Program Administrator will in no event be liable to the Capital Provider or the Property Owner, or their respective successors or assigns, for any damages incurred by such Parties for any reason in connection with this **PROPERTYFIT** Program Agreement, the Benefit Assessment Lien, the Transaction Documents or the Acts; provided that, in the event that such damages are the direct result of a breach of this **PROPERTYFIT** Program Agreement or other failure by the Local Government or the Program Administrator in the performance of their obligations under this **PROPERTYFIT** Program Agreement, then the Local Government or the Program Administrator may be liable to such Parties for an amount not to exceed the lesser of (a) that Party's actual damages, or (b) the amount of any fee received by the Local Government or the Program Administrator in connection with the **PROPERTYFIT** Financing; and

**e.** The Local Government and the Program Administrator hereby advise the Property Owner and the Capital Provider to secure their own independent legal advice from a member of the Oregon State Bar on all matters relating to the validity, priority, suitability, and enforceability of this **PROPERTYFIT** Program Agreement, the Benefit Assessment Lien, and the Acts.

## **SECTION 7 - DELIVERY OF DOCUMENTS**

**7.1.** As a condition to the Local Government's performance of its obligations with respect to this **PROPERTYFIT** Program Agreement, all of the condition's precedent enumerated below must be satisfied (in the Program Administrator's reasonable discretion):

**a.** The Capital Provider must have delivered to the Program Administrator each of the following:

- i.** True and correct copies of all duly executed documents that directly relate to this **PROPERTYFIT** Financing, including without limitation the **PROPERTYFIT** Financing Agreement;
- ii.** An original of this **PROPERTYFIT** Program Agreement duly executed by the Capital Provider.

**b.** The Property Owner must have delivered to the Program Administrator all of the following:

- i.** True and correct copies of all duly executed documents that directly relate to this **PROPERTYFIT** Financing, including without limitation the **PROPERTYFIT** Financing Agreement; and
- ii.** The original of this **PROPERTYFIT** Program Agreement duly executed by the Property Owner.

**7.2.** As a condition to the Capital Provider's performance of its obligations with respect to this **PROPERTYFIT** Program Agreement, all of the condition's precedent enumerated below must be satisfied (in the Capital Provider's reasonable discretion):

**a.** The Local Government via the Program Administrator must have delivered to the Capital Provider all of the following:





of this **PROPERTYFIT** Program Agreement, and the performance of their respective obligations hereunder and thereunder, will be deemed to have an Oregon situs and all Parties agree to submit to the personal jurisdiction of the courts of the State of Oregon with respect to any action involving the Local Government, the Program Administrator, the Property Owner, the Capital Provider, or their respective successors or assigns. Accordingly, the Parties hereby specifically and irrevocably consent to the jurisdiction of the courts of the State of Oregon with respect to all matters concerning the **PROPERTYFIT** Financing, this **PROPERTYFIT** Program Agreement, the Transaction Documents, or the enforcement thereof. Any such action must be brought in Multnomah County.

**8.8. Further Assurances.** The Parties further covenant and agree to execute and deliver, or cause to be executed and delivered, and covenant and agree to use their respective reasonable best efforts to cause their successors and assigns to execute and deliver, or cause to be executed and delivered, all such further acts, transfers and assurances, for implementing the intention of the Parties under this **PROPERTYFIT** Program Agreement, as the Parties and their successors and assigns reasonably request.

**8.9. Counterparts.** With respect to this **PROPERTYFIT** Program Agreement and any other documents to be delivered pursuant to this **PROPERTYFIT** Program Agreement, each such document may be executed in any number of counterparts, all of which when taken together constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

**8.10. Exhibits.** Any exhibits or schedules attached to this **PROPERTYFIT** Program Agreement are incorporated into this **PROPERTYFIT** Program Agreement as if they were fully set forth in the text hereof.

**8.11. Time is of the Essence.** Time is of the essence of this **PROPERTYFIT** Program Agreement.

**8.12. No Waiver of Governmental Immunity.** Nothing in this **PROPERTYFIT** Program Agreement or the Transaction Documents may be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Local Government or the Program Administrator, its officials, employees, contractors, or agents, or any other person acting on behalf of the Local Government or the Program Administrator, and, in particular, governmental immunity afforded or available pursuant to the Oregon Constitution or the Oregon Tort Claims Act (ORS 30.260 to 30.300).

**8.13. Public Records Law.** The Local Government and the Program Administrator are subject to ORS 192.311 to 192.431 (the “**Public Records Law**”). As such, to the extent this **PROPERTYFIT** Program Agreement or any related documents constitute *public records* under the Public Records Law, for which the public has the right to inspect, such records will be made accessible and opened for public inspection in accordance with the Public Records Law, the Local Government policies, and the Program Administrator’s policies. Nothing contained herein will limit the Capital Provider’s or the Property Owner’s right to defend against disclosure of records alleged to be public records pursuant to the Public Records Law.

*[Signatures on following page]*

**IN WITNESS WHEREOF**, the Property Owner, the Capital Provider, and the Local Government, by and through their duly authorized representatives, have executed this **PROPERTYFIT** Program Agreement as of the Effective Date.

**LOCAL GOVERNMENT**

**MULTNOMAH COUNTY, OREGON,**  
acting by and through  
**PROSPER PORTLAND**, its Program Administrator

By: \_\_\_\_\_  
Kimberly Branam, Executive Director

Dated: \_\_\_\_\_

**APPROVED AS TO FORM:**

\_\_\_\_\_  
Prosper Portland Counsel

**PROPERTY OWNER**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

**CAPITAL PROVIDER**

\_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

**LIST OF EXHIBITS**  
**REFERENCED WITHIN THIS PROPERTYFIT PROGRAM AGREEMENT**

<u>Exhibit A</u>	Legal Description
<u>Exhibit B</u>	Qualifying Project Improvements
<u>Exhibit C</u>	Mortgage Holder Consent
<u>Exhibit D</u>	Form of Benefit Assessment Lien