

## CAPITAL PROVIDER AGREEMENT

THIS CAPITAL PROVIDER AGREEMENT (the “**Capital Provider Agreement**”) is made this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, between \_\_\_\_\_ a \_\_\_\_\_ [type of entity], whose address is \_\_\_\_\_, (together with its assigns, nominees and/or designees) and Multnomah County, a political subdivision of the State of Oregon, acting by and through the Portland Development Commission doing business as Prosper Portland whose address is 222 NW 5<sup>th</sup> Avenue, Portland, Oregon 97209. Each is referred to herein as a “**Party**” and, collectively, as the “**Parties.**”

### RECITALS

1. The State of Oregon has authorized property assessed financing programs (the “**PROPERTYFIT Program**”) under Section 223.680 and 223.685 of the Oregon Revised Statutes, as amended (the “**Acts**”).
2. Pursuant to Resolution 2015-097 and 2016-118 (the “**Resolutions**”) of the Board of County Commissioners of Multnomah County (the “**Board**”), Multnomah County has established a **PROPERTYFIT** Program as authorized by the Acts. Pursuant to Resolution 2015-098, the Board on behalf of Local Government has designated the Portland Development Commission doing business as Prosper Portland as the program administrator (the “**Program Administrator**”) and delegated to Program Administrator authority to perform program administration functions on its behalf as set forth in the Acts.
3. The **PROPERTYFIT** Program facilitates financing of utility and seismic rehabilitation improvements (the “**Building Resiliency Improvements**”) to commercial, industrial, and multifamily properties by using a benefit assessment lien mechanism to provide security for repayment of financing pursuant to the terms of the Acts.
4. \_\_\_\_\_ (the “**Property Owner**”) is the legal owner of that certain property located at \_\_\_\_\_ (address), \_\_\_\_\_ (City), \_\_\_\_\_ (zip) in Multnomah County, Oregon as more fully described in *EXHIBIT A – LEGAL DESCRIPTION* to this Agreement (the “**Qualified Real Property**”) and has applied to the Program Administrator to participate in the **PROPERTYFIT** Program to finance Building Resiliency Improvements upon said property.
5. Property Owner has completed the application requirements of the **PROPERTYFIT** Program including, without limitation, providing notice to and obtaining the written consent from any and all holders of mortgages or deeds of trust recorded against the Qualified Real Property (the “**Mortgage Holder(s)**”) as required by Section 223.680(6)(a) and (b) and 223.685(5)(a) and (b) of the Acts. The

Notice was provided to and written consent of each Mortgage Holder to the Benefit Assessment Lien was obtained prior to the date of this Agreement as evidence by the attached EXHIBIT B – NOTICE AND REQUEST FOR MORTGAGE HOLDER CONSENT TO PROPOSED BENEFIT ASSESSMENT LIEN (the “**Notice**”) and EXHIBIT C – MORTGAGE HOLDER CONSENT TO BENEFIT ASSESSMENT LIEN AND FINANCING AGREEMENT hereof (the “**Mortgage Holder Consent**”).

6. Program Administrator has determined that Property Owner’s application meets all administrative rules and is eligible to participate in the **PROPERTYFIT** Program.
7. In accordance with the requirement of the **PROPERTYFIT** Program, the Property Owner has executed a contract dated \_\_\_\_\_ (the “**Construction Contract**”) with \_\_\_\_\_ an Oregon licensed contractor (the “**Contractor**”) to construct/install Building Resiliency Improvements to the Qualified Real Property as generally described in EXHIBIT D – BUILDING RESILIENCY IMPROVEMENTS hereof (the “**Project**”).
8. Property Owner has made application to \_\_\_\_\_ (the “**Capital Provider**”) and Capital Provider has approved the application and has entered into a Financing Agreement with Property Owner pursuant to which Capital Provider will advance financing for the Project to be constructed on the Qualified Real Property in an amount of up to \$ \_\_\_\_\_ and subject to the terms and conditions contained in this Agreement and other financing documents collectively the “**Transaction Documents**” (the “**PROPERTYFIT Financing**”).
9. Pursuant to the Acts, Property Owner has requested that Local Government impose an assessment on the Qualified Real Property as set forth in this Notice of Benefit Assessment Lien (the “**Benefit Assessment Lien**”) to secure repayment of the **PROPERTYFIT** Financing.
10. Program Administrator on behalf of Local Government will record the Benefit Assessment Lien against the Property and enter into an agreement between Capital Provider and Local Government for the collection and remittance of sums payable under the Transaction Documents and the Benefit Assessment Lien.

## **AGREEMENT**

Now therefore the Parties hereby agree as follows:

### **ARTICLE I: DEFINITIONS**

Capitalized terms used herein have the meanings given such terms as set forth in SCHEDULE I – SCHEDULE OF DEFINITIONS attached hereto and made a part hereof.

### **ARTICLE II BENEFIT ASSESSMENT**

**Section 2.1. PROPERTYFIT Financing.** Capital Provider agrees to provide the **PROPERTYFIT** Financing for the Project in the amount of \$ \_\_\_\_\_, pursuant to the terms and conditions

of the Transaction Documents a list of which is attached hereto as EXHIBIT F – LIST OF TRANSACTION DOCUMENTS (the “**Transaction Documents**”). In consideration of the **PROPERTYFIT** Financing provided or to be provided by Capital Provider to the Project, and subject to the terms and conditions of this Capital Provider Agreement, Local Government agrees to enforce the Benefit Assessment Lien for benefit of Capital Provider until the **PROPERTYFIT** Financing, all contractual interest and program administration fees according to the Transaction Documents, including any statutory penalties, interest, attorney’s fees, or costs accrued in the event of default are paid in full. In the event of foreclosure by Local Government of the Benefit Assessment Lien, the Program Administrator may exercise the rights of a municipal local improvement district assessment on behalf of the Local Government to preserve a right to the distribution of proceeds under ORS 275.275 for the benefit of Capital Provider.

**Section 2.2 Program Administration Costs.** Upon closing of this Capital Provider Agreement, Capital Provider shall pay Program Administrator a processing fee equal to \_\_\_\_\_ percent ( \_\_\_\_\_%) of the **PROPERTYFIT** Financing amount (the “**PROPERTYFIT Processing Fee**”) for Program Administrator’s duties and services provided pursuant to this Agreement, including but not limited to processing the determination of Property and Property Owner’s eligibility for the **PROPERTYFIT** Program and the filing of the Benefit Assessment Lien. Any costs associated with filing the Notice of Benefit Assessment Lien, any Amendment of Benefit Assessment Lien and Payment Schedule shall be paid by Capital Provider.

Additionally, Capital Provider shall pay Program Administrator an on-going Program Administration Fee as outlined in Section 2.5.d hereof. Any additional expenses incurred by Program Administrator or Local Government in connection with its performance of its duties and obligations under this Capital Provider Agreement shall be borne by Capital Provider and Capital Provider shall reimburse Program Administrator and Local Government for any such out-of-pocket costs and expenses incurred by Program Administrator or Local Government.

**Section 2.3. Lien Priority.** As provided in the Benefit Assessment Lien and ORS 223.680 (7)(a) and 223.685(6)(a):

- a. The Benefit Assessment, together with any interest, penalties, costs and fees thereon:
  - i. Is a first priority lien against the Property from the date on which the Notice of Benefit Assessment Lien is recorded in the Official Records of Multnomah County (the “**Closing Date**”) as provided in ORS 223.680 (7)(a) and 223.685(6)(a), until the Benefit Assessment and any interest, penalties, fees and costs are paid in full; and
  - ii. Such lien has the same priority status as a lien for an assessment for a local improvement district, as provided in Section 223.680(7)(a) and 223.685(6)(a) of the Acts.
- b. **Runs with the Land.** The Benefit Assessment Lien runs with the land. In the event of a sale or transfer of the Qualified Real Property by Property Owner the Benefit Assessment Lien will remain a lien on the Qualified Real Property securing obligations under the Transaction

Documents, including, without limitation the portion of the Benefit Assessment that has not become due.

- c. **Collection of Delinquent Payments.** Pursuant to ORS 223.680(8) and ORS 223.685(7) any unpaid installments of the Benefit Assessment that become delinquent may be certified to the Multnomah County Department of Assessment, Taxation and Recording (the “**Assessor**”) for collection in the manner provided in ORS 310.060.
- d. **Not Contested.** After the Notice of the Benefit Assessment Lien is recorded in the real property records of the county in which the Property is located as provided under ORS 223.680(7)(a) and ORS 223.685(6)(a), the lien created by the Benefit Assessment may not be contested on the basis that the improvement is not an “Utility Improvement” or “Seismic Rehabilitation Improvements” as such term is defined in ORS 223.680(1)(c) and ORS 223.685(1)(c) respectively.
- e. **Final Payment and Release.** When the Benefit Assessment has been satisfied and paid in full, together with all interest provided under the Transaction Documents and all costs, fees, penalties, and interest applicable under the Acts and payable to Capital Provider or Local Government, Local Government’s rights under Property Owner Agreement will cease and terminate, and upon notice of such payment from Capital Provider, Program Administrator on behalf of Local Government will execute a release of the Benefit Assessment Lien and Property Owner Agreement and Program Administrator will record the Release in the records of Multnomah County.

#### **Section 2.4. Assignment of Benefit Assessment Lien.**

- a. **Original Holder.** The Transaction Documents and Official Records of Multnomah County shall demonstrate that Local Government is the original holder of the Benefit Assessment Lien. Local Government hereby assigns its rights under the Benefit Assessment Lien to Capital Provider, or its designee, such that Capital Provider, or its designee, shall become entitled to payment under the Lien.
- b. **Assignment.** Subject to providing proper notification as required in Section 2.4.e, Capital Provider shall have the unrestricted right at any time and from time to time, and without Property Owner’s or Local Government’s consent, to assign all or any portion of its rights and obligations hereunder or any document executed in connection hereunder to one or more entities, persons, banks or financial institutions capable of funding the **PROPERTYFIT** Financing hereunder (each, an “**Assignee**”). Upon the execution and delivery of appropriate assignment documentation, amendments and any other documentation required by Capital Provider in connection with such assignment, the Assignee shall be a successor party to this Agreement and shall have all of the rights and obligations thereunder of Capital Provider hereunder and under any and all Transaction Documents executed in connection herewith, and Capital Provider shall be released from its obligations hereunder and thereunder effective as of the date of such assignment.

- c. **Participating Interest.** Capital Provider shall have the unrestricted right at any time and from time to time, and without the consent of or notice of Property Owner, to grant to one or more Capital Providers or other financial institutions (each, a “**Participant**”) participating interests in Capital Provider’s rights and obligations hereunder. In the event of any such grant by Capital Provider of a participating interest to a Participant, Capital Provider shall remain responsible for the performance of its obligations hereunder and Property Owner and Program Administrator on behalf of Local Government will continue to deal solely and directly with Capital Provider in connection with their respective rights and obligations hereunder unless otherwise directed by Capital Provider.
- d. **Information Release.** In furtherance of the foregoing, Capital Provider may furnish any information concerning the Qualified Real Property, Property Owner or the Project in its possession from time to time to prospective Assignees and Participants.
- e. **Notification of Assignment or Participation.** Capital Provider shall provide written notice of an assignment to Program Administrator and Property Owner within 30 days of assignment which notice will include the name of the Assignee and the address to which payment of future installments should be mailed.

#### **Section 2.5. Servicing of Benefit Assessment.**

- a. **Amendments.** After completion of construction of the Building Resiliency Improvements, Capital Provider may amend the Benefit Assessment Lien to adjust the payment schedule of the Benefit Assessment in accordance with the terms of the Transaction Documents. In such event, Capital Provider shall provide to Program Administrator an executed Amendment of Benefit Assessment Lien and Payment Schedule, attached hereto materially in the form of EXHIBIT G - AMENDMENT TO BENEFIT ASSESSMENT LIEN AND PAYMENT SCHEDULE (the “**Amendment**”) which shall include the restated payment schedule of the Benefit Assessment consistent with the terms of the Transaction Documents. Program Administrator shall promptly file the Amendment in the Official Records of Multnomah County. The cost of such filing will be remitted to Program Administrator by Capital Provider along with the executed document for recordation.
- b. **Installments.** The Benefit Assessment, including the amount financed and contractual interest and program administration fees, is due and payable to Capital Provider in installments as set forth in the Benefit Assessment Lien and Transaction Documents. As allowed by ORS 223.680 (4)(b) and ORS 223.685(3)(b) of the Acts, the period during which such installments are payable does not exceed the useful life of the Project.
- c. **Servicing.** The Benefit Assessment payments will be billed, collected, received, and disbursed in accordance with the procedures set out in this Capital Provider Agreement and the Transaction Documents. Capital Provider will be responsible for all servicing duties other than those specifically undertaken by Local Government in this Capital Provider Agreement.

- d. **On-going Program Administration Fee.** The Benefit Assessment payment shall include an on-going program administration fee payable to Program Administrator equal to one-half of one percent per annum (0.50%) based upon the principal balance of the Benefit Assessment (the “**Program Administration Fee**”). The Program Administration Fee shall be specifically detailed in the payment schedule and shall be collected by Capital Provider as part of the periodic installment payments collected from Property Owner. Capital Provider shall hold these funds for the benefit of Program Administrator and will remit them to Program Administrator as outlined in Article III.
- e. **Remittances.** Each of the parties covenants and agrees to promptly remit to the other party any payments incorrectly received by such party with respect to the Benefit Assessment after the execution of this Capital Provider Agreement.

**Section 2.6. Installments, Late Payments, Delinquency, Default and Enforcement.** Capital Provider will at a minimum incorporate the terms specified within this Section 2.6 into the repayment terms of the **PROPERTYFIT** Financing transactions.

- a. **Synchronization with Property Tax Billing System.** Benefit Assessment installments are designed to synchronize with the property tax system. As such, installments will be assessed on an annual basis running concurrently with the property tax assessment year of July 1 to June 30. Program Administrator will issue an annual Benefit Assessment statement to Property Owner by July 1 each year based upon information provided by Capital Provider in its annual report outlined in Article III.
- b. **Installments.** The Transaction Documents will require three (3) Benefit Assessment installments annually on October 1, January 1 and April 1. 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 Benefit Assessment.
- c. **Late Payments.** Capital Provider may charge a late fee of up to five percent (5.00%) of the installment payment due if an installment is received more than 10 days after its due date. The Transaction Documents must specifically state the amount of any late charge and the number of days after a payment is due that a late fee will be imposed.
- d. **Delinquent Installments.**
  - i. Delinquency remedies are enforceable only to the extent specifically provided in the Transaction Documents. An installment not received within 30 days of its due date is considered delinquent. Subject to the limitations listed below, the interest rate on a

- delinquent account may be increased by two percent (2.00%) per annum above the interest rate expressed in the **PROPERTYFIT** Financing Agreement (the “Delinquency Rate”). The Delinquency Rate may be charged on the entire unpaid principal balance of the Benefit Assessment calculated from the date the unpaid installment became due until the earlier of:
- A. the date the unpaid installment is paid in full; or
  - B. **December 31** of the year in which Capital Provider requests certification of the account per Section 2.6.e.
- ii. Capital Provider agrees to take at least the following steps to collect a delinquent installment:
- A. Provide a written notice of delinquency and demand for payment to Property Owner by both certified mail, return receipt requested, and first class mail. The notice is to include a statement notifying Property Owner that a failure to pay the installment when due is an event of default under the terms of the **PROPERTYFIT** agreement and as such, may be certified to the Assessor for collection in the same manner as property taxes are collected pursuant to ORS 223.680(8), ORS 223.685(7) and ORS 310.060, up to and including foreclosure; and
  - B. If the delinquency continues for more than 30 days following the date of the first notice (and every 30 days thereafter until certified) provide an additional notice of delinquency and demand for payment to Property Owner by both certified mail, return receipt requested and first-class mail; and
  - C. If the delinquency continues for more than 90 days, forward a copy of the notice of delinquency and demand for payment to all Lien Holders on the Property with a cover letter notifying the Lien Holder that Property Owner is in default on the payment of the Benefit Assessment and if the default is not cured that the account may be referred to the Assessor for collection; and
  - D. Within 10 days thereafter, forward a copy of the notice of delinquency and Lien Holder letters to Program Administrator.
- e. **Request for Certification.** Any account that is delinquent on May 1 of any year is subject to certification. At Capital Provider's discretion, Capital Provider may request that Program Administrator certify the delinquent account to the Assessor for enforcement of the Benefit Assessment in the manner provided in ORS 310.060. **The request for certification may include all delinquent installment payments as of the date of the request plus all penalties and delinquent interest charges.** A written request for certification must be received by Program Administrator by May 15 for the delinquent benefit assessment to be included in the October tax billing cycle. The request must include an accounting of the delinquency including:
- i. The unpaid principal balance of the Benefit Assessment;

- ii. The date through which interest is paid;
  - iii. The number of, and periods for which, installments are delinquent;
  - iv. The amount of individual and cumulative delinquent installments;
  - v. Amount of individual and cumulative late fees;
  - vi. Amount of individual and cumulative Program Administration fees;
  - vii. Details of any other fees or penalties due; and
  - viii. Calculation of interest due, including daily interest, and date through which interest due is calculated.
- f. **Certification by Program Administrator to Assessor.** Upon receipt of the request for certification from Capital Provider and confirmation of Capital Provider's compliance with the delinquency procedures and the calculation of the amount being certified, Program Administrator will certify the delinquent installments to the Assessor for collection in the manner provided in ORS 310.060. Such certification shall be filed with the Assessor no later than June 15 following timely receipt by Program Administrator of the request for certification from Capital Provider. The certification to the Assessor will include all amounts included in Capital Provider's request for certification plus:
- i. Any additional Program Administration fees due through December 31; and
  - ii. A one-time Program Administrator certification fee for preparing and filing the certification, and managing the remittance of funds received from the Assessor to Capital Provider.

Following submission of the request for certification to the Assessor, Program Administrator will notify Capital Provider of the final amount, including all fees that were certified to the Assessor.

- g. **Collection Under the Property Tax System Following Certification.** Subject to Sections 2.6.h, l, and j below, the Assessor will collect the certified delinquency in the manner that local government taxes are collected, accounted for, enforced and disbursed as provided in ORS 223.680(8), 223.685(7), ORS 310.060 and ORS 311.395.
- h. **Loan Status Following Certification.** Once an account has been certified, only payment of the entire certified amount may be accepted from Property Owner. Capital Provider shall continue to pursue collection of the certified delinquency until August 31 and, if successful, will notify the Program Administrator by September 1 of any amounts received. Capital Provider will cease direct collection efforts of the certified amount after August 31 at which time it will rely solely upon the property tax system for collection of the certified assessment. The remaining unpaid

balance of the Benefit Assessment will be considered current and Capital Provider will continue to perform regular servicing of the remaining assessments.

- i. **Remittance to Capital Provider.** In accordance with Section 2.6.g and ORS 311.395 the Assessor will remit amounts collected from County taxpayers to Program Administrator at the same time and in the same manner as to other local government taxing districts. Program Administrator shall make payment by January 15 in the year following the request for certification, to Capital Provider of its pro rata share of all amounts received from the Assessor through December 1, less applicable program administration fees. Capital Provider shall accept for all purposes that payment as payment in full of the delinquent amount certified to the Assessor, notwithstanding that the amounts collected by the Assessor and remitted to Capital Provider by the January 15 deadline may not total the full amount of the delinquent assessment certified to the Assessor. Capital Provider shall not seek to collect any deficiency from Property Owner. Per ORS 311.395, Capital Provider's pro rata share of collections paid by the Assessor to Program Administrator shall be equal to the percentage that the amount certified on behalf of Capital Provider for the applicable fiscal period bears to the total of all certifications made by Program Administrator for the applicable fiscal period.
- j. **Change in Tax Collection Process.** Capital Provider acknowledges that it is possible that the tax collection procedures currently in effect and referred to in Section 2.6.g above may be changed in the future and such change may preclude Program Administrator from making remittances in accordance with Section 2.6.i. In such an event, Program Administrator will make appropriate adjustments in the remittance schedule that are designed to the maximum extent possible to keep the parties in the same position as they are under the current terms of this Agreement. In no event shall Program Administrator be required to make payment to Capital Provider from funds other than tax collections received from the Assessor.

## **Section 2.7. Limitations on Local Government's Actions.**

- a. **Written Instructions.** Without the prior written consent of Capital Provider, Local Government will not enter into any amendment or modification of or deviation from Property Owner Agreement. Local Government will not institute any legal action with respect to Property Owner Agreement or the Benefit Assessment Lien without the prior written request of Capital Provider.
- b. **No Implied Duty.** Local Government undertakes to perform only such duties as are specifically set forth in this Capital Provider Agreement, and no implied duties on the part of Local Government are to be read into this Capital Provider Agreement. Local Government will not be deemed to have a fiduciary or other similar relationship with Capital Provider. Local Government may request written instructions for action from Capital Provider and refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person for following such instructions, regardless of whether they are to act or refrain from acting.

- c. **Costs.** No provision of this Capital Provider Agreement will require Local Government to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder.

### **ARTICLE III REPORTING AND REMITTANCE OF PROGRAM ADMINISTRATION FEE**

#### **Section 3.1. Annual Reporting**

By May 15<sup>th</sup> of each year, Capital Provider agrees to provide to Program Administrator an annual **PROPERTYFIT** program activity report in a format prescribed by Program Administrator. Among other things, the report will include payment activity and outstanding balances on each **PROPERTYFIT** project and information with which Program Administrator can issue the official annual benefit statement to Property Owner. The annual activity report is to be accompanied by a remittance of the prior year's Program Administration Fee collected by Capital Provider as part of the Property Owner's periodic installments.

**Section 3.2 Remittance of Program Administration Fee.** Per Section 2.5.d, Capital Provider will collect the required On-going Program Administration Fee from Property Owner as part of Property Owner's regular periodic installments on the **PROPERTYFIT** financing. Capital Provider must remit the prior year's Program Administration Fees collected to Program Administrator by May 15 of each year.

**Section 3.3 Issuance of Official Benefit Assessment Statement.** Per Section 3.1, Capital Provider is to provide Program Administrator with the information with which to issue the official annual benefit assessment statement to Property Owner. Program Administrator will complete the annual statement and issue it to Property Owner by June 30<sup>th</sup> of each year. Program Administrator will provide Capital Provider with a copy of the official statement.

### **ARTICLE IV LOCAL GOVERNMENT'S WARRANTIES AND REPRESENTATIONS; DISCLAIMER**

**Section 4.1. Warranties and Representations.** Local Government hereby warrants and represents that:

- a. Local Government is a body politic and corporate, constituting a public instrumentality and political subdivision of the State of Oregon and has full power and authority to enter into this Agreement and to carry out the terms and conditions contained herein;
- b. No approval of, or consent from, any governmental authority is required for the execution, delivery or performance by Local Government of this Agreement; and
- c. The execution, delivery and performance by Local Government of this Agreement and the transactions contemplated hereby:
  - i. Do not contravene any provisions of law applicable to Local Government; and
  - ii. Do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the 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 Local Government is a party, by which Local Government may be bound, to which Local Government or its property may be subject or the Acts.

- d. This Agreement and the Benefit Assessment Lien, and Local Government's role hereunder comply with the Acts. In the event of a conflict between this Agreement and the Acts, the Acts shall govern.

**Section 4.2. Disclaimer.** Except as set forth in this Article IV or expressly provided in the Transaction Documents:

- a. Local Government has not heretofore made, nor does it make by this Agreement, any representations or warranties with respect to the Properties, including any warranty of title or any environmental matters; and
- b. Local Government makes no representation or warranty in connection with, and assumes no responsibility with respect to, the solvency, financial condition or statements of Property Owner, or with respect to the performance or observance by Property Owner of their obligations under the Transaction Documents, after the date of execution of this Agreement.

**ARTICLE V CAPITAL PROVIDER'S WARRANTIES AND REPRESENTATIONS.** With respect to this Agreement, Capital Provider hereby warrants and represents that effective on the date on which Capital Provider executes this Agreement:

**Section 5.1. Capital Provider:**

- a. 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; and
- b. Has full power, and all licenses necessary, to own carry on its business as now being conducted; and
- c. Has full power to enter into this Agreement and to carry out the terms and conditions contained herein; and
- d. The execution of this Agreement on its behalf and its participation in the transaction specified herein and therein have been duly authorized and is in its ordinary course of business and within the scope of its existing corporate authority.

**Section 5.2. No Actions Pending.** There is no action, suit or proceeding pending against 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 Capital Provider of this Agreement.

**Section 5.3. No Approvals Needed.** No approval of, or consent from, any governmental authority is required for the execution, delivery or performance by Capital Provider of this Agreement; the execution, delivery and performance by Capital Provider of this Agreement and the performance by Capital Provider hereunder and the transactions contemplated hereby:

- a. do not contravene any provisions of law applicable to Capital Provider, and
- b. do not conflict and are not inconsistent with, and will not result (with or without the giving of notice or passage of time or both) in the 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 Capital Provider is a party, by which Capital Provider may be bound, to which Capital Provider or its property may be subject, or Capital Provider's charter or bylaws.

**Section 5.4. Binding Agreement.** This Agreement constitutes the legal, valid and binding obligation of Capital Provider, enforceable against 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.

**Section 5.5 Independent Review.** Capital Provider has independently and without reliance upon Local Government conducted its own credit evaluation of Property Owner, reviewed such information as it has deemed adequate and appropriate and made its own analysis of the Transaction Documents.

**Section 5.6 No Reliance.** Capital Provider has not relied upon any investigation or analysis conducted by, advice or communication from, nor any warranty or representation by, Local Government or any agent or employee of Local Government, express or implied, concerning the financial condition of Property Owner, or the tax or economic benefits of an investment in the Transaction Documents. Capital Provider acknowledges that Local Government takes no responsibility for any financial information regarding Property Owner furnished to Capital Provider by Local Government. Capital Provider, or its authorized representatives acting on its behalf, have such knowledge and experience in business and financial matters necessary to evaluate the merits and risks of an investment in the Project.

**Section 5.7 Access to Information.** Capital Provider has had (or acknowledges by its execution of this Agreement, that Capital Provider will prior thereto have had) access to all financial and other information that it deems necessary to evaluate the merits and risks of an investment in the Transaction Documents including the opportunity to ask questions, receive answers and obtain additional information from Local Government and Property Owner necessary to verify the accuracy of information provided,

**Section 5.8 Investment Experience.** Capital Provider is experienced in making investments in Building Resiliency Improvement projects similar to the Project and that it is financially able to undertake the risks involved in such an investment.

## ARTICLE VI DELIVERY OF DOCUMENTS

**Section 6.1.** As a condition to Local Government's performance of its obligations with respect to this Agreement, all of the conditions precedent enumerated below must be satisfied (in Program Administrator's reasonable discretion):

- a. Capital Provider shall have delivered to Program Administrator all of the following:
  - i. Certified true and correct photocopies of the duly executed Transaction Documents which directly relate to the Property; and
  - ii. An original of this Agreement duly executed by Capital Provider.

**Section 6.2.** As a condition to Capital Provider's performance of its obligations with respect to this Agreement, all of the conditions precedent enumerated below must be satisfied (in Capital Provider's reasonable discretion):

- a. Local Government via the Program Administrator shall have delivered to Capital Provider all of the following:
  - i. Certified true and correct photocopies of the Benefit Assessment Lien to Capital Provider which directly relate to the Property; and
  - ii. An original of this Agreement duly executed by Program Administrator on behalf of Local Government.

**Section 6.3.** All of Capital Provider's and Local Government's respective representations and warranties provided herein or in any of the Transaction Documents shall be true and correct on the date of the execution of this Agreement.

## ARTICLE VII: MISCELLANEOUS

**Section 7.01. Successors and Assigns.** This Agreement is binding upon and made for the benefit of the Parties their successors and permitted assigns, and no other person or persons shall have any right of action hereunder.

**Section 7.02. Notices.** Any notice and other communications hereunder shall be in writing and shall be delivered in person or mailed by reputable overnight courier or by registered or certified mail, return receipt requested, postage prepaid, to the other Parties, at the address set forth at the Preamble of this Agreement. The addresses of any party may be changed by notice to the other party given in the same manner as provided above.

**Section 7.03. Entire Agreement and Amendments.** No amendment, modification, termination or waiver of any provisions of this Agreement shall be effective unless in writing and signed by all of the Parties. This Agreement, taken together with the other Transaction Documents, reflects and sets forth

the entire agreement and understanding of the Parties with respect to the subject matter hereof, and supersede all prior agreements and understandings relating to such subject matter.

**Section 7.04. Captions.** The headings in this Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

**Section 7.05. Validity; Severability.** If any provision of this Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Agreement, and the remainder shall be construed without the invalid provision so as to carry out the intent of the Parties to the extent possible without the invalid provision.

**Section 7.06. Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. All Parties agrees that the execution of this Agreement and the other Transaction Documents, and the performance of its obligations hereunder and thereunder, shall 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 Local Government, Capital Provider, or their respective successors or assigns, may commence hereunder or thereunder. 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 this Agreement or any of the other Transaction Documents, or the enforcement thereof. Any such action shall be brought in Multnomah County.

**Section 7.07. Further Assurances.** The Parties further covenant and agree to do, execute and deliver, or cause to be done, executed and delivered, and covenant and agree to use their respective reasonable best efforts to cause their successors and assigns to do, execute and deliver, or cause to be done, executed and delivered, all such further acts, transfers and assurances, for implementing the intention of the parties under this Agreement, as the Parties and their successors and assigns reasonably shall request.

**Section 7.08. Transaction Expenses.** Each Party shall bear and be responsible for its own costs and expenses incurred in connection with the negotiation, preparation, execution and delivery of this Agreement and any other agreements, documents, certificates and instruments relating hereto, and it shall not have any right of reimbursement or indemnity for such costs and expenses as against the other party.

**Section 7.09. Counterparts.** With respect to each of this Agreement and any of the other documents to be delivered pursuant to this Agreement, each such agreement may be executed in any number of counterparts, all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart.

**Section 7.10. Recitals.** Each Party agrees that all of the recitals are hereby incorporated herein and are acknowledged as being true and correct.

**Section 7.11. Exhibits.** Any exhibits or schedules attached to this Agreement and referred to herein are incorporated into the Agreement as if they were fully set forth in the text hereof.

**Section 7.12. Time is of the Essence.** Time is of the essence of this Agreement and each of the Transaction Documents.

**Section 7.13. No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to Local Government, its officials, employees, contractors, or agents, or any other person acting on behalf of Local Government 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).

**Section 7.14. Open Records Act.** Local Government is subject to the Oregon Public Records Law (ORS 192.410 to 192.505). As such, to the extent this Agreement or any other Transaction Documents constitute “public records” under the Public Records Law, for which the public has the right to inspect, such records shall be made accessible and opened for public inspection in accordance with the Public Records Law and Local Government policies. Nothing contained herein shall limit Capital Provider’s or Property Owner’s right to defend against disclosure of records alleged to be public pursuant to the Public Records Law.

**IN WITNESS WHEREOF,** Capital Provider and Local Government have executed this Agreement as of the date first written above by and through their duly authorized representatives.

**LOCAL GOVERNMENT**

**CAPITAL PROVIDER**

**MULTNOMAH COUNTY, OREGON, acting by and through its Program Administrator, the Portland Development Commission**

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

State of OREGON

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of the Portland  
Development Commission, Program Administrator for Multnomah County, Oregon.

\_\_\_\_\_  
Notary Public -- State of Oregon  
My commission expires: \_\_\_\_\_

State of \_\_\_\_\_

County of \_\_\_\_\_

This instrument was acknowledged before me on \_\_\_\_\_, 20\_\_\_\_,  
by \_\_\_\_\_ as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_.

\_\_\_\_\_  
Notary Public -- State of Oregon  
My commission expires: \_\_\_\_\_

LIST OF EXHIBIT/ATTACHMENTS/SCHEDULES REFERENCED WITHIN THIS **PROPERTYFIT** CAPITAL PROVIDER AGREEMENT

SCHEDULE I – SCHEDULE OF DEFINITIONS

EXHIBIT A – LEGAL DESCRIPTION

EXHIBIT B – NOTICE AND REQUEST FOR MORTGAGE HOLDER CONSENT TO BENEFIT ASSESSMENT

EXHIBIT C – MORTGAGE HOLDER CONSENT TO BENEFIT ASSESSMENT LIEN AND FINANCING AGREEMENT

EXHIBIT D – BUILDING RESILIENCY IMPROVEMENTS

EXHIBIT E – NOTICE OF BENEFIT ASSESSMENT LIEN

ATTACHMENT 1-E – ASSESSMENT PAYMENT SCHEDULE

EXHIBIT F – LIST OF TRANSACTION DOCUMENTS

EXHIBIT G – AMENDMENT TO BENEFIT ASSESSMENT LIEN AND PAYMENT SCHEDULE

ATTACHMENT 1-G – RESTATEMENT OF ASSESSMENT PAYMENT SCHEDULE