

CAPITAL PROVIDER AGREEMENT

THIS CAPITAL PROVIDER AGREEMENT (the “**Capital Provider Agreement**”) is made this _____ day of _____, 20____, between _____, 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 5th 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 (the “**Local Government**”) 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 _____ in Multnomah County, Oregon as more fully described in EXHIBIT A – LEGAL DESCRIPTION to this Capital Provider 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 Capital Provider 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 Capital Provider 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 the 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 Qualified Real 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 up to \$ _____, pursuant to the terms

and conditions of the Transaction Documents a list of which is attached hereto as EXHIBIT F – LIST OF 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.

Section 2.2 Program Administration Costs. Upon closing and recording of the Benefit Assessment Lien, Capital Provider shall pay Program Administrator a processing fee equal to one percent (1.00%) of the **PROPERTYFIT** Financing amount (the “**PROPERTYFIT Processing Fee**”) for Program Administrator’s duties and services provided pursuant to this Capital Provider Agreement, including but not limited to processing the determination of Qualified Real 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 which can be included in the **PROPERTYFIT** Financing.

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, including but not limited to, the foreclosure process, 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 Lien, together with any interest, penalties, costs and fees thereon:
 - i. Is a first priority lien against the Qualified Real 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 Lien 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 Lien that has not become due.

- c. **Collection of Delinquent Payments.** Pursuant to ORS 223.680(7)(c) and ORS 223.685(6)(c) any unpaid installments of the Benefit Assessment Lien that become delinquent may be enforced in the manner provided in ORS 223.505 to 223.650.
- d. **Not Contested.** After the Notice of the Benefit Assessment Lien is recorded in the real property records of the county in which the Qualified Real Property is located 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 “**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 Lien 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, Program Administrator 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 (the “**Release**”) 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 Transaction Documents 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 Capital Provider 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 to 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 Lien.

- 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 Lien 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 Lien consistent with the terms of the Transaction Documents. Program Administrator shall promptly record the Amendment in the Official Records of Multnomah County. The cost of such recording will be remitted to Program Administrator by Capital Provider along with the executed Amendment for recordation.
- b. **Installments.** The Benefit Assessment Lien, 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 Lien 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, or Program Administrator on Local Governments behalf, in this Capital Provider Agreement.
- d. **On-going Program Administration Fee.** The Benefit Assessment Lien payment shall include an on-going program administration fee payable to Program Administrator equal to one quarter of

one percent per annum (0.25%) based upon the principal balance of the Benefit Assessment Lien (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 Lien 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 Transaction Documents.

- a. **Installments.** The Transaction Documents will require a minimum of one (1) annual Benefit Assessment Lien installments. Installments may be due more frequently as agreed to between Capital Provider and Property Owner. 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 Lien.
- b. **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.
- c. **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 three percent (3.00%) 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 Lien calculated from the date the unpaid installment became due until the date the delinquent installment(s) is/are paid in full.
 - 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 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 Transaction Documents and as such, may be referred to the Program Administrator for enforcement pursuant to ORS 223.680(7)(c), ORS 223.685(6)(c) and ORS 223.505 to 223.650, including possible foreclosure; and
 - 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) 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. Forward a copy of each notice of delinquency and demand for payment to all Mortgage Holders on the Qualified Real Property with a cover letter notifying the Mortgage Holder that Property Owner is in default on the payment of the Benefit Assessment Lien and if the default is not cured that the lien may be referred to the Program Administrator for enforcement pursuant to ORS 223.505 to 223.650; and
 - D. Forward a copy of each notice of delinquency and demand for payment and Mortgage Holder cover letter referred to in Section 2.6.c.ii.C above within 10 days of issuance to Program Administrator.
- d. **Request for Enforcement.** Any Benefit Assessment Lien installment that is more than 90 days delinquent is subject to enforcement. At Capital Provider's discretion, Capital Provider may submit a written request to the Program Administrator, requesting enforcement of the delinquent Benefit Assessment Lien in the manners provided in ORS 223.505 to 223.650. The request must include a detailed accounting of the delinquency, including, but not limited to:
- i. The unpaid principal balance of the Benefit Assessment Lien;
 - 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 unpaid late fees;
 - vi. Amount of individual and cumulative unpaid Program Administration fees;
 - vii. Details of any other delinquent fees or penalties due; and
 - viii. Calculation of interest due through the date of the request, including daily interest.
- e. **Payment of Enforcement Fees and Costs.** The Capital Provider is responsible for all costs and fees incurred in the enforcement of any delinquent Benefit Assessment Lien. Along with the

request for enforcement of delinquent Benefit Assessment Liens Capital Provider shall pay to the Program Administrator a minimum of \$_____, to cover the Program Administrator’s anticipated costs of enforcing the delinquent Benefit Assessment Lien (“**Enforcement Fees**”). If at any time during the enforcement of a delinquent Benefit Assessment Lien, the enforcement costs exceed the amount initially paid by the Capital Provider, upon notification by the Program Administrator, the Capital Provider will immediately submit additional funds to cover the enforcement costs.

- f. **Enforcement of Benefit Assessment Lien.** Upon receipt of the request for enforcement and payment of the Enforcement Fee from Capital Provider, and confirmation of Capital Provider’s compliance with the delinquency procedures, Program Administrator will initiate enforcement of the delinquent Benefit Assessment Lien in the manners provided in ORS 223.505 to 223.650.
- g. **Only Delinquent Installments to be Included in Enforcement Action.** As allowed in ORS 223.510, only delinquent installments, and the fees, costs, penalties and interest thereon, will be included in the Program Administrator’s enforcement action. Pursuant to ORS 223.575, at the completion of any foreclosure action and expiration of the redemption period, fee simple title will be conveyed to a purchaser, excepting only the balance of the benefit assessment lien that was not included in the foreclosure proceedings. The remaining unpaid balance of the Benefit Assessment Lien will be considered current and Capital Provider will continue to perform regular servicing of the remaining assessments.
- h. **Remittance to Capital Provider.** Within 15 business days after receipt from Local Jurisdiction of any sale proceeds from the foreclosure sale, Program Administrator will disburse the proceeds in accordance with ORS 223.525. Capital Provider shall accept for all purposes that payment as payment in full of the delinquent amounts, notwithstanding that the amounts collected by the Program Administrator and remitted to Capital Provider may not total the full amount of the delinquent assessment which Capital Provider referred to Program Administrator for enforcement. Any installments not yet due and not included in the enforcement action will remain an outstanding lien against the Qualified Real Property.
- i. **Capital Provider Credit Bid.** Pursuant to ORS 223.545, if no bid is received for the sale of the Qualified Real Property at the foreclosure sale, upon written direction from Capital Provider, Program Administrator on behalf of the Capital Provider, will purchase the Qualified Real Property by credit bidding the amount of the delinquent installments plus unpaid interest, and the fees and cost of advertising and sale.
 - i. If Program Administrator, on behalf of Capital Provider, purchases the Qualified Real Property under this method, the certificate of sale, issued to Program Administrator will be immediately assigned to Capital Provider and the certificate of sale and assignment will be recorded in the County lien records.
 - ii. Capital Provider, at its own expense, will be responsible for protecting, preserving and maintaining the Qualified Real Property during any redemption

period. Program Administrator will have no obligation or responsibility for monitoring or maintaining the Qualified Real Property after the certificate of sale is assigned to Capital Provider.

- j. Program Administrator will carry out all redemption procedures as required by law. If the Qualified Real Property is subsequently redeemed, the foreclosure purchaser (including Capital Provider under a credit bid) may be reimbursed for preapproved costs incurred to protect, preserve and maintain the Qualified Real Property during the redemption period, up to a maximum of the actual costs incurred or the maximum 10 percent redemption penalty allowed under ORS 223.565.
- k. After expiration of the redemption period, if the Qualified Real Property is not timely redeemed, Program Administrator will execute and record a deed of conveyance to the foreclosure purchaser.

Section 2.7. Limitations on Local Government and Program Administrator Actions.

- a. **Written Instructions.** Without the prior written consent of Capital Provider, Local Government and Program Administrator will not enter into any amendment or modification of or deviation from Capital Provider Agreement or 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 and Program Administrator undertake 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 at its discretion refrain from taking action until it receives satisfactory written instructions. Local Government will have no liability to any person, including the Capital Provider, 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 or Program Administrator 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 15th 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 any information Program Administrator needs to complete the official annual benefit statement to Property Owner. The annual activity report is to be accompanied with

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 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 30th 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 Capital Provider 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 Capital Provider Agreement; and
- c. The execution, delivery and performance by Local Government of this Capital Provider 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 Capital Provider Agreement and the Benefit Assessment Lien, and Local Government's role hereunder comply with the Acts. In the event of a conflict between this Capital Provider 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 Capital Provider Agreement, any representations or warranties with respect to the Qualified Real 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 Capital Provider Agreement.

ARTICLE V CAPITAL PROVIDER'S WARRANTIES AND REPRESENTATIONS. With respect to this Capital Provider Agreement, Capital Provider hereby warrants and represents that effective on the date on which Capital Provider executes this Capital Provider 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 Capital Provider Agreement and the Transaction Documents and to carry out the terms and conditions contained herein; and
- d. The execution of this Capital Provider Agreement and the Transaction Documents 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 Capital Provider 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 Capital Provider Agreement; the execution, delivery and performance by Capital Provider of this Capital Provider 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 Capital Provider 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 or the Program Administrator 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, Program Administrator or any agent or employee of Local Government or Program Administrator, 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 and Program Administrator take no responsibility for any financial information regarding Property Owner furnished to Capital Provider by Local Government or Program Administrator. 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 Capital Provider 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, the Program Administrator 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 Capital Provider 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 each 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 Capital Provider Agreement duly executed by Capital Provider.

Section 6.2. As a condition to Capital Provider's performance of its obligations with respect to this Capital Provider 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 Capital Provider Agreement duly executed by Program Administrator on behalf of Local Government.

Section 6.3. All of Capital Provider's, Local Government and Program Administrator'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 Capital Provider Agreement.

ARTICLE VII: MISCELLANEOUS

Section 7.01. Successors and Assigns. This Capital Provider 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 Capital Provider 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 Capital Provider Agreement shall be effective unless in writing and signed by all of the Parties. This Capital Provider 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 supersedes all prior agreements and understandings relating to such subject matter.

Section 7.04. Captions. The headings in this Capital Provider 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 Capital Provider Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Capital Provider 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 Capital Provider 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 Capital Provider 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, Program Administrator, 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 Capital Provider 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 Capital Provider 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 Capital Provider 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 Capital Provider Agreement and any of the other Transaction Documents to be delivered pursuant to this Capital Provider 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 Capital Provider Agreement and referred to herein are incorporated into the Capital Provider 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 Capital Provider Agreement and each of the Transaction Documents.

Section 7.13. No Waiver of Governmental Immunity. Nothing in this Capital Provider Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to Local Government or Program Administrator, 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 Capital Provider 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 Program Administrator on behalf of Local Government have executed this Capital Provider 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 (Name)

By _____

By _____

Name Kimberly Branam

Name _____

Title Executive Director

Title _____

Date _____

Date _____

State of OREGON

County of _____

This instrument was acknowledged before me on _____
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 _____,
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