

## FINANCING AGREEMENT

THIS PROPERTY ASSESSED FINANCING AGREEMENT (the “**Financing Agreement**”) is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between \_\_\_\_\_, a \_\_\_\_\_ [type of entity], organized under the law of the State of \_\_\_\_\_, whose address is \_\_\_\_\_, and \_\_\_\_\_, a \_\_\_\_\_ [type of entity], organized under the law of the State of \_\_\_\_\_, whose address is \_\_\_\_\_ (together with its assigns, nominees and/or designees). 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 \_\_\_\_\_ (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 Section 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 Financing 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 is entering into this 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 Financing 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 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: THE FINANCING**

**Section 2.01. PROPERTYFIT Financing of Building Resiliency Improvements.** On the terms and conditions of this Financing Agreement and other Transaction Documents, a list of which is attached hereto as EXHIBIT F – LIST OF TRANSACTION DOCUMENTS. Capital Provider agrees to provide Property Owner with construction and permanent **PROPERTYFIT** Financing in the amount of up to \_\_\_\_\_ and 00/100 (\$\_\_\_\_\_ .00) to finance the construction of the Building Resiliency Improvements. The **PROPERTYFIT** Financing will initially be construction financing, the proceeds of which shall be disbursed from time to time pursuant to the provisions of EXHIBIT H – CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT (the “**Disbursement Agreement**”). Upon expiration of the Construction Period, the **PROPERTYFIT** Financing, subject to satisfaction of the conditions precedent set forth in this Financing Agreement and the Disbursement Agreement, will convert to permanent financing. Property Owner hereby agrees to use the proceeds of such **PROPERTYFIT** Financing solely to construct the Building Resiliency Improvements (and to pay the fees and costs required to be paid in connection therewith) and to cause the **PROPERTYFIT** Financing to be repaid, together with any accrued interest on the terms set forth herein. The **PROPERTYFIT** Financing shall be secured by the Benefit Assessment Lien on the Qualified Real Property.

**Section 2.02. Interest.** The Property Owner acknowledges and agrees to repay the **PROPERTYFIT** Financing, plus applicable interest, Program Administration Fee and other fees, in accordance with the terms of this Financing Agreement, the Transaction Documents and the Acts. Unless the Delinquency Rate under Section 5.02.a is applicable, interest shall accrue on amounts disbursed hereunder at the rate of \_\_\_\_\_ (\_\_\_\_%) percent per annum (the “**Interest Rate**”) payable as hereinafter provided. Interest will be calculated based on a 360-day year and the actual number of calendar days during such month.

**Section 2.03. On-going Program Administration Fee.** The Benefit Assessment Lien payment will include an on-going program administration fee due to Program Administrator equal to one-quarter of one percent (0.25%) per annum based upon of the outstanding balance of the Benefit Assessment Lien (the “**Program Administration Fee**”). The Program Administration Fee is specifically detailed in the ATTACHMENT 1-E – ASSESSMENT PAYMENT SCHEDULE attached to the Benefit Assessment Lien and will be collected by Capital Provider as part of the periodic installments collected from Property Owner.

**Section 2.04. Financing Fees and Costs.** At closing, a **PROPERTYFIT** financing fee of \_\_\_\_\_ percent (\_\_\_\_%) of the **PROPERTYFIT** Financing amount shall be due and payable by Property Owner to Capital Provider and a **PROPERTYFIT** processing fee of \_\_\_\_\_ percent (\_\_\_\_%) of the **PROPERTYFIT** Financing amount (the “**PROPERTYFIT Processing Fee**”) shall be due and payable by Property Owner to Program Administrator. In addition, Property Owner shall pay all reasonable costs incurred by Capital Provider, Program Administrator or any other party in connection with the **PROPERTYFIT** financing, including, but not limited to, recording fees, inspection

fees, construction advisor fees, and all appraisal, building audit and legal fees incurred by Capital Provider, Program Administrator and/or Local Government related to the **PROPERTYFIT** Financing.

**Section 2.05. Security/Collateral for the PROPERTYFIT Financing.** Property Owner hereby agrees to cause the Benefit Assessment Lien to be placed on the Qualified Real Property for the benefit of the Capital Provider and to secure the **PROPERTYFIT** Financing. Pursuant to ORS 223.680 and 223.685:

- 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 Benefit Assessment Lien is recorded in the Official Records of Multnomah County (the “**Closing Date**”) 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 local improvement district, as provided in Section 223.680(7)(a) and Section 223.685(6)(a) of the Acts.
- b. 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 the obligations under the Transaction Documents, including, without limitation, the portion of the Benefit Assessment Lien that has not become due.
- c. Pursuant to ORS 223.680(7)(c) and 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. 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 223.685(6)(a), the lien created by the Benefit Assessment Lien may not be contested on the basis that the improvement is not “**Utility Improvements**” or as “**Seismic Rehabilitation Improvements**” as such term are defined in the Acts.
- e. 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, Capital Provider's rights under this Financing 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 (“**Release**”). The Program Administrator will record the release in the records of Multnomah County.

**Section 2.06. Permitted Encumbrances.** Only the following encumbrances are permitted by Capital Provider to become or remain a lien against the Qualified Real Property after the Closing Date (the “**Permitted Encumbrances**”), all of which must be subordinate to the Benefit Assessment Lien via a formal Lien Holder Consent or through recording of the Permitted Encumbrance subsequent to the recording of the Benefit Assessment Lien.

<b>Lien Position</b>	<b>Lender/Beneficiary</b>	<b>Amount of Encumbrance</b>	<b>Date Recorded</b>
First	_____	\$ _____	_____
Second	_____	\$ _____	_____
Third	_____	\$ _____	_____
Fourth	_____	\$ _____	_____

**Section 2.07. Absolute Obligation; Evidence of Indebtedness.** The Property Owner hereby agrees that the **PROPERTYFIT** Financing and the related Benefit Assessment Lien will not be subject to reduction, offset or credit of any kind for any reason. Subject to the terms of Section 5.03, this Financing Agreement constitutes an evidence of indebtedness to be paid by Property Owner (or its successors) in accordance with the terms hereof.

**Section 2.08. Construction Financing (the “Construction Financing”).**

- a. *Periodic Disbursement.* The **PROPERTYFIT** Financing will initially be Construction Financing, the proceeds of which shall be disbursed from time to time pursuant to the provisions of Disbursement Agreement.
- b. *Construction Interest Capitalization.* Interest on the Construction Financing shall accrue at the rate stated in Section 2.02 on amounts disbursed from the date of first disbursement until the earlier of:
  - i. The end of the month in which the Property Owner Certification occurs (as defined in ATTACHMENT G-H – PROPERTY OWNER CERTIFICATION), or
  - ii. \_\_\_\_\_ [enter outside completion date expected] (the "**Construction Period**") at the Interest Rate stated above.

Unpaid, accrued interest on the Construction Financing shall be capitalized and added to the principal balance of the **PROPERTYFIT** Financing on the first day of each month until the end of the Construction Period and such capitalized interest shall, itself, accrue interest from the date it is capitalized.

- c. *Completion Date; Property Owner Certification.* The Project shall be completed on the date (such date, the “**Completion Date**”) that:

- i. The construction on the Project is completed in accordance with the requirements of the Disbursement Agreement and all funds in the Construction Account have been reconciled to the Budget;
- ii. The Building Resiliency Improvements have been put into service;
- iii. All approvals and reports required to be submitted to the Local Government and Program Administrator pursuant to this Financing Agreement and the Acts have been submitted;
- iv. All other requirements of the Disbursement Agreement have been met; and,
- v. The Property Owner shall issue to Capital Provider a certificate of completion in substantially the form attached to the Disbursement Agreement as ATTACHMENT 6-H – PROPERTY OWNER CERTIFICATION (the “**Property Owner Certification**”) and Capital Provider shall acknowledge and approve the Completion Date set forth therein and deliver a copy of the Property Owner Certification to the Program Administrator and Local Government.

**Section 2.09. Permanent Financing** (the “**Permanent Financing**”).

- a. Upon expiration of the Construction Period the Construction Financing shall be converted to Permanent Financing, the initial principal balance shall be the actual amount disbursed pursuant to the provisions of the Disbursement Agreement (whether the actual amount disbursed is less than the **PROPERTYFIT** Financing) plus Interest that accrued during the Construction Period that was capitalized to the principal balance of the **PROPERTYFIT** Financing.

Capital Provider shall have no further obligation to advance any funds to Property Owner after expiration of the Construction Period, whether or not the Project has been completed. In its sole discretion, Capital Provider may (but is not obligated to) make further disbursements after expiration of the Construction Period (for example, to pay construction liens or otherwise for the protection of its collateral for the **PROPERTYFIT** Financing), and all such disbursements will be deemed advances and added to the balance of the **PROPERTYFIT** Financing and be secured by the Benefit Assessment Lien.

- b. If the amount of the Permanent Financing exceeds the amount originally cited in the Notice of Benefit Assessment Lien, Capital Provider will promptly request that Program Administrator record an amendment to the Benefit Assessment Lien in the Official Records of Multnomah County, in substantially the form of EXHIBIT G – AMENDMENT TO THE BENEFIT ASSESSMENT LIEN AND PAYMENT SCHEDULE (the “**Amendment**”). The Amendment will adjust the principal amount of the Benefit Assessment Lien and the payment schedule to fully amortize the Permanent

Financing by Maturity Date. The cost of such recording will be remitted to Program Administrator by Capital Provider.

- c. The term of the Permanent Financing shall commence on the first day of the month after expiration of the Construction Period and shall terminate on the Maturity Date, at which time all principal and accrued interest, fees and costs shall be due and payable in full. The **PROPERTYFIT** Financing shall be amortized over \_\_\_\_\_ (\_\_\_\_\_) months.

**Section 2.10. Periodic Installments.** Installments on the **PROPERTYFIT** Financing are detailed in the Benefit Assessment Lien. Each installment shall be applied first to any unpaid late charges, fees or other sums payable by Property Owner under the Transaction Documents, then to accrued Interest and then to the principal balance.

**Section 2.11. Maturity Date.** The unpaid principal balance of the **PROPERTYFIT** Financing and all unpaid accrued Interest, costs and fees thereon and all sums payable by Property Owner in connection with this Financing Agreement shall be due and payable in full on \_\_\_\_\_ (the "Maturity Date").

**Section 2.12. Prepayment. DEFINED BY CAPITAL PROVIDER.** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Section 2.13. Late Fee.** If any installment due under this Financing Agreement is not paid in full within ten (10) days of its Payment Date, a late charge equal to five percent (5%) of the late payment shall be charged. That late charge shall be paid with the first installment payment due after Property Owner has received written notice of the late charge, but, if not so paid, Capital Provider may elect to:

- a. Refuse any late payment or any subsequent payment unless accompanied by the applicable late charge;
- b. Add the late charge to the principal balance; or
- c. Treat the failure to pay the late charge as demanded as a default under this Financing Agreement.

If a late charge is added to the principal balance, it shall bear Interest at the same rate as the principal balance of this Financing Agreement. However, assessment of a late charge is not a waiver of Capital Provider's right to demand and receive timely payment of any payments due or a waiver of any of Capital Provider's remedies hereunder.

**Section 2.14. Delinquent Installments.** At Capital Provider's option, an installment not received within 30 days of its due date is considered delinquent. Subject to the limitations listed below, the interest rate on the delinquent account may increase per Section 5.02.a. 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 unpaid installment is paid in full. Capital Provider may take the following steps to collect the delinquent installment (in addition to other actions permitted by law):

- a. Provide a written notice of delinquency and demand for payment to the Property Owner by both certified-mail, return receipt requested, and first-class mail. The notice is to 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 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 on the Benefit Assessment Lien; and
- b. If the delinquency continues for more than 30 days following the date of the first notice (and every 30 days thereafter until paid) provide an additional notice of delinquency and demand for payment to the Property Owner by both certified-mail, return receipt requested; 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 the 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 2.14.c. above within 10 days of issuance to Program Administrator.

**Section 2.15 Request for Enforcement.** Any Benefit Assessment Lien installment that is more than 90 days delinquent is subject to enforcement. 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 for enforcement may include all delinquent installment payments as of the date of the request, plus all penalties, interest, costs and fees.

**Section 2.16 Enforcement of Benefit Assessment Lien.** Upon receipt of the request for enforcement and payment of the Enforcement Fees 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 the manners provided in ORS 223.505 to 223.650.

**Section 2.17 Waiver.** By execution of this Financing Agreement, Property Owner waives all claim, challenge, or cause of action, to the imposition of the Benefit Assessment Lien, the collection of



delinquent installments as provided in this Financing Agreement, the Transaction Documents or in ORS 223.680, ORS 223.685 or in ORS 223.505 to 223.650.

**ARTICLE III: PROPERTY OWNER'S REPRESENTATIONS AND WARRANTIES**

The Property Owner represents and warrants to the Capital Provider as follows, which representations and warranties shall be true and correct as of the date hereof, the Closing Date and at all times thereafter.

**Section 3.01. Organization and Authority.** Property Owner certifies that:

- a. If other than an individual, it 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. It has full power, and all licenses necessary, to own carry on its business as now being conducted; and,
- c. It has full power to enter into this Financing Agreement and the Transaction Documents and to carry out the terms and conditions contained herein; and,
- d. The execution of this Financing Agreement and the Transaction Documents on its behalf and its participation in the transaction specified herein and therein have been duly authorized is in its ordinary course of business and within the scope of its existing authority; and,
- e. The execution and delivery of this Financing Agreement and the Transaction Documents constitute a valid and binding obligation of the Property Owner, each enforceable in accordance with its respective terms.
- f. It has designated \_\_\_\_\_, with the power and authority to execute all Transaction Documents on behalf of the Property Owner.

**Section 3.02. No Approvals Needed.** No approval of, or consent from, any governmental authority is required for the execution, delivery or performance by Property Owner of this Financing Agreement; the execution, delivery and performance by Property Owner of this Financing Agreement and the performance by Property Owner hereunder and the transactions contemplated hereby:

- a. Do not contravene any provisions of law applicable to Property Owner, 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 Property Owner is a party,

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

**Section 3.03. Binding Agreement.** This Financing Agreement constitutes the legal, valid and binding obligation of Property Owner, enforceable against Property Owner 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 3.04. Financial Statements.** All financial statements delivered to the Capital Provider are true and correct, have been prepared in accordance with generally accepted accounting principles (or such alternate accounting method acceptable to the Capital Provider) consistently applied, fairly represent the financial condition of the Property Owner as of the date thereof, and no material adverse change has occurred in the financial condition presented therein since such date.

**Section 3.05. Tax Returns and Taxes.** All federal, state, and other tax returns of Property Owner required by law to be filed have been filed. All other taxes applicable to Property Owner, including real property taxes (to the extent not abated in accordance with applicable law), are current.

**Section 3.06. No Litigation.** There are no actions, suits, investigations or proceedings pending, or to the knowledge of the Property Owner threatened, against or affecting it or the Qualified Real Property which could materially adversely affect the Property Owner, its financial condition, the Qualified Real Property or the construction of the Project or the Property Owner's ability to satisfy its obligations under the Transaction Documents.

**Section 3.07. Title.** The Property Owner has good and insurable title to the Qualified Real Property subject only to the Permitted Encumbrances approved by Capital Provider. To the extent commercially available and acceptable to Capital Provider, the Property Owner shall deliver a title policy to the Capital Provider confirming and insuring the Benefit Assessment Lien as a lien against the Qualified Real Property in a pari passu position with other assessment liens of record and superior to Permitted Encumbrances as detailed in Section 2.06.

**Section 3.08. Compliance with Laws.** The Property Owner has complied with, and will continue to comply with, all applicable statutes, regulations and ordinances in connection with the Qualified Real Property and construction of the Project. All permits, consents, approvals and authorizations required to be issued by any governmental body (collectively, the "**Permits**") necessary for:

- a. The construction of the Project in accordance with the plans and specifications submitted by the Property Owner and which are incorporated into the Construction Contract (together, the "**Plans**");
- b. The construction, connection and operation of all utilities necessary to service the Project;  
and

- c. The construction and use of all roadways, driveways, curb cuts and other vehicular or other access to and egress from the Project, as shown on the Plans. The Construction Contract, Permits, Plans and any other contract for services to complete the Building Resiliency Improvements are collectively referred to as “**Construction Documents**”:
  - i. Have been obtained, are valid, are in full force and effect and have been complied with by the Property Owner in all respects; or
  - ii. Will be obtained, will be valid, will be in full force and effect prior to the initiation of construction, and Property Owner will be in compliance therewith in all respects prior to the Capital Provider’s disbursing any **PROPERTYFIT** Financing proceeds.
- d. Construction of the Project in accordance with the Plans will comply with applicable zoning, use, building or other applicable codes, laws, regulations and ordinances and any restrictive covenants affecting the Qualified Real Property.

**Section 3.09. Environmental Matters.** The Property Owner does not and will not engage (nor will it allow any tenants of the Qualified Real Property to engage) in operations that involve the generation, manufacture, refining, transportation, treatment, storage or handling of hazardous materials or hazardous wastes, pursuant to applicable state law, or any other federal, state or local environmental laws or regulations, and, to the best of the Property Owner’s knowledge, after due inquiry, neither the Qualified Real Property nor any other of its buildings thereon has been so used previously, except as previously disclosed in writing to and approved by the Capital Provider.

**Section 3.10. Approval of Plans and Budgets.** Any Plans submitted will be a true and accurate reflection of the Project (when completed) and have been approved as required by all governmental bodies or agencies having jurisdiction over the Project or will be approved prior to the first Disbursement of funds from the Construction Account. The budget for construction of the Project submitted by the Property Owner to the Capital Provider is attached as ATTACHMENT 1-H TO EXHIBIT H, PROPERTYFIT PROJECT BUDGET (the “**Budget**”) and is an accurate current estimate of all costs necessary to construct the Project in accordance with the Plans as set forth in the Construction Documents.

Project costs are not expected to exceed the cost set forth in the Budget; however, should costs increase, the Property Owner is responsible for any costs in excess of the Budget. The amount of equity capital the Property Owner is obligated to contribute to the Project (the “**Property Owner’s Equity**”) and the amount of other funding sources (“**Non-PROPERTYFIT Financing**”) obtained for the Project is described in the Budget. In the event that the costs to complete the Project exceed the Budget the Property Owner shall be required to deposit such amounts to the Construction Account within fifteen (15) days following written notice from the Capital Provider to Property Owner of the deficit (the “**Financing In Balance**”) in accordance with EXHIBIT H – CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT.

**Section 3.11. Compliance with Documents.** No Event of Default (as defined herein) has occurred hereunder, and no event has or shall have occurred and be continuing, which, with the lapse of time or the giving of notice, or both, would constitute an Event of Default.

**Section 3.12. No Misrepresentation or Material Nondisclosure.** The Property Owner has not made and will not make to the Capital Provider, in this Financing Agreement, Transaction Documents or otherwise, any untrue statement of a material fact, nor has it omitted and nor will it omit to state a material fact necessary to make any statement made not misleading.

**Section 3.13. Insurance.** The Property Owner has provided to the Capital Provider satisfactory evidence of current insurance policies on the Qualified Real Property meeting the requirements set forth below:

- a. Property insurance on the Qualified Real Property, written on an “all risk” or broad special perils form, in an amount equal to the full current replacement value of the Qualified Real Property, on an agreed value (no coinsurance) basis, and with a deductible not to exceed \$10,000. Such coverage may be written as part of a blanket policy, but if written as part of, a blanket policy, Property Owner must provide evidence that the policy does not include a margin clause, or, if there is a margin clause, that the value declared is equal to the full current replacement value of the Qualified Real Property. The Capital Provider must be named as loss payee on the policy with ISO form CP 12 18 06 07 Loss Payable Provisions, Clause D, or equivalent, and the policy must provide for 30 days’ notice to the Capital Provider in the event of cancellation or nonrenewal;
- b. Commercial general liability insurance with limits of \$1,000,000 per occurrence;
- c. The Capital Provider must be named as an additional insured;
- d. Such insurance shall be maintained in force during the term of the **PROPERTYFIT** Financing. All insurance policies must be issued by insurance companies admitted in the State of Oregon and with a Best rating of “A-” or better, and in form and content reasonably acceptable to Local Government and the Capital Provider;
- e. Should Property Owner fail to maintain required insurance, the Capital Provider may obtain such required insurance in amounts and limits sufficient to protect the Capital Provider’s interest, and charge back the cost to the Property Owner; and
- f. During the Construction Period, the Property Owner shall provide to the Capital Provider evidence of such additional insurance coverage required to be maintained pursuant to EXHIBIT H – CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT.
- g. **ORS 746.201 WARNING.** Unless Property Owner provides Capital Provider with evidence of insurance coverage as required herein, Capital Provider may purchase insurance at Property Owner’s expense to protect Capital Provider’s interest. This insurance may, but need

not, also protect Property Owner's interest. If the Qualified Real Property becomes damaged, the coverage Capital Provider purchases may not pay any claim Property Owner makes or any claim made against Property Owner. Property Owner may later seek to cancel this coverage by providing evidence to Capital Provider that Property Owner has obtained the insurance coverage with the required coverages and endorsements elsewhere.

Property Owner is responsible for the cost of any insurance purchased by Capital Provider. The cost of this insurance may be added to principal balance of the **PROPERTYFIT** Financing. If the cost is so added it shall bear Interest at the Delinquency Rate until paid. The effective date of coverage maybe the date the prior coverage lapsed or the date Property Owner failed to provide proof of coverage.

The coverage Capital Provider purchases may be considerably more expensive than insurance Property Owner can obtain on Property Owner's own and may not satisfy any need for property damage coverage or any mandatory liability insurance requirements imposed by applicable law.

**Section 3.14. Incorporation of Representations and Warranties.** Each request by the Property Owner for a disbursement of **PROPERTYFIT** Financing proceeds shall constitute a covenant and certification by the Property Owner that the representations and warranties contained herein are true and correct as of the date of such request.

#### **ARTICLE IV: ADDITIONAL COVENANTS AND AGREEMENTS**

The Property Owner covenants and agrees as follows:

**Section 4.01. Maintenance of Qualified Real Property.** The Property Owner shall, at all times, maintain the Qualified Real Property and, after construction, the Building Resiliency Improvements. The Property Owner shall pay when due all taxes, assessments (including the Benefit Assessment Lien), water charges, sewer charges and all other charges levied on or against the Qualified Real Property, and upon written request, submit to the Capital Provider official receipts evidencing such payments.

**Section 4.02. Construction Start and Completion.** The Property Owner shall commence construction of the Project and shall diligently proceed with construction of the Building Resiliency Improvements in accordance with the approved Construction Documents and Budget in a good, substantial and workmanlike manner in accordance with all applicable laws, ordinances, codes, rules and regulations. Construction of the Project shall be completed on or prior to the end of the Construction Period.

**Section 4.03. Compliance with Laws and Use Restrictions.** Property Owner will comply with, or cause any tenants of the Qualified Real Property to comply with, all laws, ordinances, statutes, rules, regulations, orders, injunctions, or decrees of any government agency or instrumentality applicable to Property Owner, the Qualified Real Project, or the operation thereof, including:

- a. All applicable health and safety, environmental, and zoning laws; and
- b. All restrictions on the use, occupancy or operation of the Qualified Real Property arising from the original source of the **PROPERTYFIT** Financing or otherwise required by Capital Provider.

**Section 4.04. Protection Against Liens.** Property Owner shall promptly pay and discharge before the same shall become delinquent all indebtedness, taxes, and other obligations for which it is liable or to which its income or Qualified Real Property is subject and all claims for labor and materials or supplies which, if unpaid, might become by law a lien upon the Qualified Real Property except any claim or lien whose validity or amount is being contested in good faith by Property Owner in appropriate proceedings with adequate provision having been made in accordance with generally accepted accounting principles for the payment thereof if the contest is determined adversely to Property Owner. If Property Owner fails to discharge any such claim or lien, Capital Provider may, in its sole discretion and without waiving the default, pay the same, which payment shall, at Capital Provider's option, be added to the principal balance of the **PROPERTYFIT** Financing.

**Section 4.05. Construction Inspections; Reports.** Capital Provider and their agents and representatives shall have the right at any reasonable time to inspect the Project, observe the work of construction, examine all records, materials, plans, specifications, work drawings and other matters relating to the construction, and verify that construction is progressing in compliance with the Budget and all Construction Documents; provided, however, such inspection by Capital Provider, Program Administrator or Local Government are solely for the purpose of protecting Capital Provider and Local Government's rights and interests, and shall under no circumstances impose any liability on Capital Provider, Project Administrator or Local Government or result in a waiver of any default of Property Owner or be a representation that Property Owner is or will be in compliance with the Construction Documents, Transaction Documents or other applicable laws or requirements. In addition, Capital Provider, Program Administrator or Local Government may perform such examinations or audits as it may deem necessary or desirable to assure compliance with the Transaction Documents and the Acts.

**Section 4.06. Periodic Reports.**

- a. During the Construction Period, the Property Owner shall provide quarterly reports to Capital Provider that includes:
  - i. A current Budget;
  - ii. A current actual to Budget analysis; and
  - iii. An updated schedule for completion of construction of the Project.
- b. In addition, as a condition of participation in the **PROPERTYFIT** Program, Property Owner agrees to comply with the City of Portland's Commercial Building Energy Performance Reporting Policy as amended, regardless of building size. This policy requires owners of

commercial buildings to track energy use with the ENERGY STAR® Portfolio Manager web-tool, and report energy performance information to the City of Portland annually. A detailed How-to Guide, additional policy information and resources to improve your building performance are available on the policy website at [www.portlandoregon.gov/bps/energyreporting](http://www.portlandoregon.gov/bps/energyreporting).

**Section 4.07. Notice of Claims; Adverse Matters.** The Property Owner shall promptly notify Capital Provider in writing of all pending or threatened litigation or other matters that may materially and adversely affect the Qualified Real Property or Property Owner's ability to meet its obligations under this Financing Agreement, the Transaction Documents or otherwise with respect to the Project.

**Section 4.08. Damage or Destruction.** The Property Owner shall promptly notify the Capital Provider if the Qualified Real Property is damaged or destroyed by fire or any other cause. Upon the occurrence of such casualty, the Parties will agree to either apply the insurance proceeds to repayment to the Capital Provider of the outstanding balance of the **PROPERTYFIT** Financing or, with the prior written approval of the Capital Provider, to the restoration of the Qualified Real Property. The Capital Provider shall have no obligation to make additional Disbursements upon the occurrence of a casualty. In the event restoration of the Qualified Real Property is approved by the Capital Provider, the Property Owner shall immediately proceed with the restoration thereof and shall restore the Building Resiliency Improvements in accordance with the Plans or other similar plans approved by Capital Provider. If, in the Capital Provider's judgment, said insurance proceeds are insufficient to complete the restoration, the Property Owner shall deposit with the Capital Provider such amounts as are necessary, in the Capital Provider's reasonable judgment, to complete such restoration. Disbursement of insurance proceeds (plus any supplemental funds provided by the Property Owner) shall, at the Capital Provider's election, be deposited with the Capital Provider and disbursed under the Disbursement Agreement or, if completion had been achieved before the casualty, under an agreement for disbursement acceptable in all respects to the Capital Provider.

**Section 4.09. Condemnation.** If the Project or the Qualified Real Property or any part thereof are taken by condemnation or subject to an imminent threat of condemnation, the Capital Provider's obligation to make further Disbursements hereunder shall immediately terminate unless, in the Capital Provider's judgment, the Qualified Real Property and the Project can be replaced and restored in a manner which will enable the Project to be functionally and economically utilized and occupied as originally intended. If the Capital Provider determines (in its sole discretion) that the Project can be so restored, then the rights and obligations of the Capital Provider and the Property Owner subsequent to a taking by condemnation or imminent threat thereof and the disbursement of any condemnation proceeds actually paid to the Capital Provider and undisbursed **PROPERTYFIT** Financing, shall be the same as described in the immediately preceding Section 4.08 with regard to insurance proceeds.

**Section 4.10. Indemnification.** Without limitation of any other obligation or liability of the Property Owner or any right or remedy of the Capital Provider contained herein, the Property Owner agrees to



indemnify and hold harmless the Capital Provider, as well as their respective directors, officers, employees, agents, subsidiaries and affiliates (each, an “**Indemnified Party**”), from and against all damages, losses, settlement payments, obligations, liabilities, claims, suits, penalties, assessments, citations, directives, demands, judgments, actions or causes of action, whether statutorily created or under the common law, including all costs and expenses (including, without limitation, reasonable fees and disbursements of attorneys, engineers and consultants) and all other liabilities whatsoever (including, without limitation, liabilities under any applicable environmental laws, regulations or rules) which shall at any time or times be incurred, suffered, sustained or required to be paid by any such Indemnified Party (except any of the foregoing which result from the negligence or willful misconduct of the Indemnified Party) on account of or in relation to or in any way in connection with any of the arrangements or transactions contemplated by, associated with or ancillary to this Financing Agreement, Transaction Documents or any other documents executed or delivered in connection herewith or therewith, all as the same may be amended from time to time, whether or not all or part of the transactions contemplated by, associated with or ancillary to this Financing Agreement, Transaction Documents or any such other documents are ultimately consummated, resulting from any conduct, act or failure to act by the Property Owner or its affiliates or related parties. In any investigation, proceeding or litigation, or the preparation therefore, the Capital Provider shall select its own counsel and, in addition to the foregoing indemnity, the Property Owner agrees to pay promptly the reasonable fees and expenses of such counsel. In the event of the commencement of any such proceeding or litigation, the Property Owner shall be entitled to participate in such proceeding or litigation with counsel of its choice at its own expense; provided that such counsel shall be reasonably satisfactory to the Capital Provider. This section shall survive the execution, delivery, performance and repayment of this Financing Agreement, the Transaction Documents, the **PROPERTYFIT** Financing, and the extinguishment of the Benefit Assessment Lien.

**Section 4.11. Further Assurances.** Upon request of the Capital Provider, the Property Owner shall provide such additional information and execute such further documents as the Capital Provider deems reasonably necessary or appropriate (in their sole discretion) to carry out the purposes of this Financing Agreement and the **PROPERTYFIT** Program as it relates to the Project.

**Section 4.12. Assignment.**

- a. Subject to providing proper notification as required in Section 4.12.d, the Capital Provider shall have the unrestricted right at any time and from time to time, and without the Property Owner’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**”), and the Property Owner agrees that it shall execute, or cause to be executed, such documents, including without limitation, amendments to this Financing Agreement, Transaction Documents and to any other documents, instruments and agreements executed in connection herewith as the Capital Provider shall deem reasonably necessary to effect the foregoing. Upon the execution and delivery of



appropriate assignment documentation, amendments and any other documentation required by the Capital Provider in connection with such assignment, the Assignee shall be a successor party to this Financing Agreement and shall have all of the rights and obligations thereunder of the Capital Provider hereunder and under any and all other Transaction Documents executed in connection herewith, and the Capital Provider shall be released from its obligations hereunder and thereunder effective as of the date of such assignment.

- b. The Capital Provider shall have the unrestricted right at any time and from time to time, and without the consent of or notice of the Property Owner, to grant to one or more Capital Providers or other financial institutions (each, a “**Participant**”) with participating interests in the Capital Provider’s rights and obligations hereunder. In the event of any such grant by the Capital Provider of a participating interest to a Participant, the Capital Provider shall remain responsible for the performance of its obligations hereunder and Property Owner, Program Administrator and Local Government shall continue to deal solely and directly with the Capital Provider in connection with their respective rights and obligations hereunder unless otherwise directed by Capital Provider.
- c. In furtherance of the foregoing, the Capital Provider may furnish any information concerning the Qualified Real Property, the Property Owner or the Project in its possession from time to time to prospective Assignees and Participants.
- d. Capital Provider shall provide written notice of an assignment to Local Government, Project 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 4.13. Integrity of the Qualified Real Property As a Single Parcel.** The Property Owner shall not, without the express written consent of the Capital Provider, which consent may be withheld in the Capital Provider’s sole discretion, by act or omission, impair the integrity of the Qualified Real Property, which contains the Building Resiliency Improvements as a single, separate, subdivided and zoned lot or otherwise remove or separate the Building Resiliency Improvements from the Qualified Real Property.

**Section 4.14. Transfers.** Unless the prior written consent of the Capital Provider is first obtained, Property Owner agrees not to sell, transfer, pledge, or hypothecate the Qualified Real Property or reconstitute the Property Owner’s ownership structure until completion of the Building Resiliency Improvements. Any and all transfers of the Qualified Real Property shall be subject to the Benefit Assessment Lien and all obligations under the Transaction Documents shall run with the land and bind all future owners of the Qualified Real Property or any interest therein.

## **ARTICLE V: DEFAULT AND REMEDIES**

**Section 5.01. Events of Default.** The occurrence of any of the following events shall constitute an “Event of Default” hereunder:

- a. Failure by Property Owner to make any payment required under this Financing Agreement, the Disbursement Agreement, or the Transaction Documents when due or beyond any applicable cure period;
- b. Any breach by the Property Owner beyond applicable notice and/or cure periods of any other terms of the Transaction Documents or an Event of Default as defined in any of the Transaction Documents shall occur;
- c. Any written representation, warranty or disclosure made to the Local Government, the Program Administrator or the Capital Provider by the Property Owner proves to be materially false or misleading as of the date when made, whether or not such representation or disclosure appears in the Transaction Documents;
- d. Failure to pay property taxes on the Qualified Real Property when due and payable;
- e. The failure to commence and diligently pursue construction of the Project and to complete the Project during the Construction Period;
- f. The cost of construction of the Project or any portion thereof materially exceeds the cost set forth in the approved Budget and the Property Owner has failed to deposit within 15 days of demand with Capital Provider the deficiency between such budgeted cost and the actual cost;
- g. The loss of any governmental approval, license or permit necessary for the construction of the Project or any governmental license for the operation of the business operated or to be operated on the Qualified Real Property for a period exceeding sixty (60) days;
- h. Any material deviation in the Project from the Plans without the prior written consent of Local Government and Capital Provider, or defective workmanship or materials in the Project, which has not been cured for a period exceeding thirty (30) days;
- i. Failure to complete the Project within the Construction Period;
- j. Property Owner:
  - i. Applies for or consents to the appointment of, or the taking of possession by, a receiver, custodian, trustee, or liquidator of itself or of all or a substantial part of its property or the Qualified Real Property;
  - ii. Admits in writing its inability to pay, or generally is not paying, its debts as they become due;
  - iii. Makes a general assignment for the benefit of creditors;

- iv. Commences a voluntary action under the United States Bankruptcy Code (as now or hereafter in effect);
- v. Is adjudicated bankrupt or insolvent;
- vi. Files a petition seeking to take advantage of any other law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts; or,
- vii. Takes any action for the purpose of effecting any of the foregoing.

A(n):

- i. Proceeding or case is commenced against Property Owner or the Qualified Real Property, without its consent, in any court of competent jurisdiction, seeking the liquidation, reorganization, dissolution, windup, or composition or readjustment of the debts of Property Owner
  - ii. Receiver, trustee, custodian, liquidator, or the like is appointed for Property Owner or for all or a substantial part of its assets, including but not limited to the Qualified Real Property; or
  - iii. Relief is granted to Property Owner under any law relating to bankruptcy, insolvency, reorganization, winding up, or composition or adjustment of debts, and such proceeding or case continues undismissed;
  - iv. Order, judgment, or decree approving or ordering any of the foregoing is entered and continues unstayed and in effect for any period of 60 days, or an order for relief against Property Owner or the Qualified Real Property is entered in an involuntary case under the United States Bankruptcy Code.
- k. There occurs any event which in the Capital Provider's reasonable judgment materially and adversely affects:
- i. The ability of the Property Owner to perform any of its obligations hereunder or under any of the Transaction Documents;
  - ii. The business or financial condition of the Property Owner; or
  - iii. The timely repayment of the **PROPERTYFIT** Financing authorized by the Acts and this Financing Agreement;
- l. Any encumbrance on any portion of the Qualified Real Property is created, which encumbrance purports to have priority over the Benefit Assessment Lien;

- m. The existence of any liens with respect to the Qualified Real Property, including mechanics', materialmen's, repairmen's or other liens that have not been dismissed or bonded for 30 days; and

**Section 5.02. Capital Provider Rights and Remedies.** Upon the occurrence of an Event of Default and at any time thereafter, the Capital Provider may, in addition to any other remedies which it may have, at its option and without prior demand or notice, take any or all of the following actions:

- a. Interest hereunder shall accrue on the unpaid principal balance from the date of default, or if the event of default is a payment default, from the date the first unpaid payment was due, at a rate equal to three two percentage points above the rate stated in Section 2.02 of this Financing Agreement (the "**Delinquency Rate**"). If the unpaid principal balance and accrued interest is not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Delinquency Rate. Property Owner agrees that the increase in the rate of interest payable under this Financing Agreement to the Delinquency Rate represents a fair and reasonable estimate, taking into account all circumstances existing on the date of this Financing Agreement, of the additional costs and expenses Capital Provider will incur by reason of the Property Owner's delinquent payment and the additional compensation Capital Provider is entitled to receive for the increased risks of nonpayment associated with delinquent financing;
- b. Immediately terminate any pending Disbursements (and the Capital Provider shall have no obligation to make further Disbursements) and from time to time apply all or any part of any undisbursed **PROPERTYFIT** Financing to payment of amounts owing on the **PROPERTYFIT** Financing and Benefit Assessment Lien and/or to any other obligations of the Property Owner hereunder or under the Transaction Documents;
- c. Enter the Qualified Real Property and complete construction of the Project in accordance with the Construction Documents, with such changes therein as the Capital Provider may from time to time and in its reasonable judgment deem appropriate, for that purpose, make disbursements from the Construction Account. Any contract entered into or indebtedness incurred on the exercise of such right may be exercised by Capital Provider in the name of Property Owner, and Capital Provider is hereby irrevocably appointed attorney-in-fact (the appointment being coupled with an interest) to enter into the contract, incur such obligations, enforce contracts or agreements theretofore made by or on behalf of Property Owner, and to do any and all things necessary or proper to complete the work of construction, including the signing of Property Owner's name to such contracts and documents as may be deemed necessary by counsel for Capital Provider. In no event shall Capital Provider be required to use its own funds to complete the Project if undisbursed **PROPERTYFIT** Financing is insufficient, but Capital Provider may, at its option, advance such funds. Any funds so advanced shall be payable to Capital Provider by Property Owner on

demand together with interest thereon at the Delinquency Rate under Section 5.02.a. and shall be secured by the Benefit Assessment Lien;

- d. Refer any delinquent account to the Program Administrator for enforcement in the manners provided in ORS 223.505 to 223.650.;
- e. Exercise any remedies available under the **PROPERTYFIT** Financing and Benefit Assessment Lien, including those contemplated by the Acts; and
- f. Exercise any other rights and remedies available to it hereunder, under the Transaction Documents, or at law or in equity.

All remedies of Capital Provider provided for herein are cumulative.

**Section 5.03. Non-Recourse Provisions.** Subject to the exceptions set forth in this Section 5.03, the Capital Provider agrees that, following completion of the Building Resiliency Improvements, the Capital Provider shall not enforce against the Property Owner the collection of the **PROPERTYFIT** Financing due under this **PROPERTYFIT** Financing Agreement, it being agreed that the Capital Provider shall look solely to the **PROPERTYFIT** Financing and the Benefit Assessment Lien (and the exercise of rights and remedies relating thereto) for repayment of the **PROPERTYFIT** Financing. During the Construction Period, the Capital Provider shall have full recourse against the Property Owner for any and all amounts due hereunder or under EXHIBIT H – CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT. The nonrecourse provisions of this Section 5.03 shall not, however:

- a. Constitute a waiver, release, limitation, or impairment of any obligation evidenced or secured by any of the **PROPERTYFIT** Transaction Documents;
- b. Impair the right of the Capital Provider to name Property Owner or other Party as a party defendant in any action or suit to enforce its rights, powers, and remedies upon the occurrence of an Event of Default;
- c. Affect the validity or enforceability of the Disbursement Agreement; or
- d. Constitute a prohibition against the Capital Provider to commence any appropriate action or proceeding in order for the Capital Provider to exercise its remedies against all or any portion of the Qualified Real Property securing the **PROPERTYFIT** Financing.

Notwithstanding the foregoing, the limitation on recourse liability provided above SHALL BECOME NULL AND VOID, SHALL BE OF NO FURTHER FORCE AND EFFECT, AND THE PROPERTY OWNER SHALL BE FULLY LIABLE FOR THE FULL PAYMENT AND PERFORMANCE HEREUNDER (INCLUDING THE FULL AMOUNT OF THE OUTSTANDING BALANCE OF THE **PROPERTYFIT** FINANCING, TOGETHER WITH ALL ACCRUED INTEREST, FEES, COSTS AND ALL SUMS DISBURSED BY THE CAPITAL PROVIDER PURSUANT TO THE TRANSACTION DOCUMENTS), IF:

- e. The Property Owner shall institute or have instituted against it any proceeding or other action under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization, conservatorship, receivership, or relief of debtors;
  - i. Seeking to adjudicate it bankrupt or insolvent;
  - ii. Seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, composition of it or its debts or any similar order; or
  - iii. Seeking entry of an order for relief or appointment of a custodian, receiver, trustee, conservator, liquidating agent, liquidator, or other official with similar powers, for it or for any substantial part of its property; and in the case of any such proceeding or other action instituted against (but not by or with the consent of) such credit party, either:
    - 1. Such proceeding or action shall remain undismissed or unstayed for a period of 60 days or more; or
    - 2. Any action sought in such proceedings shall occur.
- f. The Property Owner commences any legal proceeding against the Capital Provider or Local Government seeking to recover damages or other affirmative recovery against the Capital Provider or the Local Government, including any proceeding asserting claims based on any theory of lender liability; or contests or in any way interferes, directly or indirectly, with:
  - i. Any foreclosure action, other action or proceeding to exercise remedies hereunder; or
  - ii. Any other enforcement of the Capital Provider's rights, powers, and remedies under any of the Transaction Documents.
- g. Fraud or material misrepresentation of the Property Owner or Guarantor made in or in connection with the **PROPERTYFIT** Financing or Transaction Documents.
- h. Violation by Property Owner of the covenants against transfers set forth in Section 4.14.

Nothing in this Section 5.03 shall be deemed to be a waiver of any right which the Capital Provider may have under Sections 506(a), 506(b), 1111(b) or any other provision of the United States Bankruptcy Code, as such sections may be amended, or corresponding or superseding sections of the Bankruptcy Amendments and Federal Judgeship Act of 1984, to file a claim in any relevant bankruptcy proceeding for the full amount due to the Capital Provider under the **PROPERTYFIT** Financing Agreement or any other Transaction Document.

## **ARTICLE VI: MISCELLANEOUS**

**Section 6.01. No Waiver.** No waiver of any default or breach by the Property Owner hereunder shall be implied from any failure by the Capital Provider to take action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than the default specified in the waiver. Waivers of any covenant, term or condition contained herein shall not be construed as a waiver of any subsequent breach of the same covenant, term or condition.

**Section 6.02. Successors and Assigns.** This Financing 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 6.03. 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 Financing Agreement. The addresses of any Party may be changed by notice to the other Party given in the same manner as provided above.

**Section 6.04. Entire Agreement and Amendments.** No amendment, modification, termination or waiver of any provisions of this Financing Agreement shall be effective unless in writing and signed by all of the Parties. This Financing 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 6.05. Captions.** The headings in this Financing Agreement are for the purpose of reference only and shall not limit or otherwise affect any of the terms hereof.

**Section 6.06. Validity; Severability.** If any provision of this Financing Agreement is held to be invalid, such event shall not affect, in any respect whatsoever, the validity of the remainder of this Financing 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 6.07. WAIVER OF JURY TRIAL.** THE PROPERTY OWNER HEREBY IRREVOCABLY WAIVES ITS RIGHTS TO TRIAL BY JURY IN ANY ACTION ARISING OUT OF OR RELATING TO THE **PROPERTYFIT** FINANCING, THIS FINANCING AGREEMENT OR ANY TRANSACTION DOCUMENT, OR THE TRANSACTIONS CONTEMPLATED THEREBY.

**Section 6.08. Governing Law; Jurisdiction.** This Financing Agreement shall be governed by and construed in accordance with the laws of the State of Oregon. All Parties agree that the execution of this Financing 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 the Local Government, the 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 Financing Agreement or any of the other Transaction Documents, or the enforcement thereof. Any such action shall be brought in Multnomah County.

**Section 6.09. Legal Fees.** In case of default, Property Owner promises to pay any reasonable expenses incurred in making collection of delinquent amounts, including reasonable attorney fees, even though no suit or action is filed thereon. In case suit or action is instituted relating in any way to this Financing Agreement, the prevailing party shall be entitled to its costs and disbursements incurred herein and such additional sums as the court may adjudge reasonable as attorney fees in any such suit or action and in any appeal therefrom. Such costs and attorney fees agreed to be paid to the prevailing party shall include, without limitation, costs and attorney fees incurred in any federal bankruptcy proceedings or under any state receivership statutes.

**Section 6.10. 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 Financing Agreement, as the Parties and their successors and assigns reasonably shall request.

**Section 6.11. Counterparts.** With respect to this Financing Agreement and any of the other Transaction Documents to be delivered pursuant to this Financing 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 6.12. Recitals.** Each Party agrees that all of the recitals are hereby incorporated herein and are acknowledged as being true and correct.

**Section 6.13. Exhibits.** Any exhibits or schedules attached to this Financing Agreement and referred to herein are incorporated into the Financing Agreement as if they were fully set forth in the text hereof.

**Section 6.14. Time is of the Essence.** Time is of the essence of this Financing Agreement and each of the Transaction Documents.

**Section 6.15. No Waiver of Governmental Immunity.** Nothing in this Financing Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Local Government, the Program Administrator, its officials, employees, contractors, or agents, or any other person acting on behalf of the 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 6.16. Public Records Act.** The Local Government and the Program Administrator are subject to the Oregon Public Records Law (ORS 192.410 to 192.505). As such, to the extent this



Financing 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, Local Government and Program Administrator policies. Nothing contained herein shall limit the Capital Provider's or Property Owner's right to defend against disclosure of records alleged to be public pursuant to the Public Records Law.

**Section 6.17. Statutory Notice.** UNDER OREGON LAW, MOST AGREEMENTS, PROMISES, AND COMMITMENTS MADE BY CAPITAL PROVIDERS CONCERNING LOANS AND OTHER CREDIT EXTENSIONS WHICH ARE NOT FOR PERSONAL, FAMILY, OR HOUSEHOLD PURPOSES OR SECURED SOLELY BY PROPERTY OWNER'S RESIDENCE MUST BE IN WRITING, EXPRESS CONSIDERATION, AND BE SIGNED BY CAPITAL PROVIDER TO BE ENFORCEABLE. **IN WITNESS WHEREOF**, the Property Owner and the Capital Provider have executed this Financing Agreement as of the date first written above by and through their duly authorized representatives.

**PROPERTY OWNER**

**CAPITAL PROVIDER**

\_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

Name \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

Title \_\_\_\_\_

Date \_\_\_\_\_

Date \_\_\_\_\_

State of OREGON

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

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

\_\_\_\_\_  
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** FINANCING 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

EXHIBIT H – CONSTRUCTION FUNDING AND DISBURSEMENT AGREEMENT

ATTACHMENT 1-H – PROJECT BUDGET

ATTACHMENT 2-H – AIA DOCUMENT G702 – APPLICATION FOR CERTIFICATE FOR PAYMENT

ATTACHMENT 3-H – AIA DOCUMENT G703 – CONTINUATIONS SHEET

ATTACHMENT 4-H – REQUEST FOR DISBURSEMENT

ATTACHMENT 5-H – INTERIM LIEN/CLAIM WAIVER

ATTACHMENT 6-H – PROPERTY OWNER CERTIFICATION

ATTACHMENT 7-H – FINAL DISBURSEMENT CHECKLIST