

**BLIGHT REDUCTION PROGRAM
TRI-PARTY AGREEMENT**

THIS BLIGHT REDUCTION PROGRAM TRI-PARTY AGREEMENT (this “Agreement”) is made as of the 30th day of June, 2015 by and among the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY** (the “Authority”), a body politic and corporate of the State of Illinois (“State”), created and existing pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 *et seq.* (1994) (“IHDA Act”), **CITY OF AURORA**, an Illinois unit of local government (the “Unit of Local Government” or “ULG”) and **FOX VALLEY HABITAT FOR HUMANITY**, an Illinois not-for-profit corporation (the “NFP”) (the ULG and the NFP shall be collectively referred to herein as the “Recipient”).

RECITALS

WHEREAS, the United States Department of Treasury (“Treasury”), under sections 101 and 109 of the Emergency Economic Stabilization Act of 2008 (P.L. 110-343), as may be amended from time to time (“EESA”), established the Housing Finance Agency Innovation Fund for the Hardest Hit Housing Markets (“HHF Program”); and

WHEREAS, the Authority submitted a successful proposal to the Treasury for the use of funds allocated to the HHF Program to develop and implement the Illinois Hardest Hit Fund Homeowner Emergency Loan Program and subsequent programs approved by the Treasury (“HHF Illinois Program”) in order to help decrease preventable foreclosures and stabilize housing markets in Illinois, and pursuant to the requirements of the HHF Illinois Program, the Authority and the Treasury entered into that certain Commitment to Purchase Financial Instrument and HFA Participation Agreement, as amended, and as may be further amended from time to time (collectively, “HFA Agreement”); and

WHEREAS, under the HFA Agreement, the Authority established a Blight Reduction Program (the “Program”) that will use, to the extent available, funds from the HHF Illinois Program to fund the Program and in order to help decrease preventable foreclosures and stabilize neighborhoods by targeting blighted, vacant, residential properties within certain targeted areas in Illinois for acquisition, demolition, greening/lot treatment, maintenance and eventual reuse, repurpose or redevelopment; and

WHEREAS, the Authority has issued, and ULG and NFP have accepted, that certain Conditional Commitment Letter dated May 15, 2015 (together with any amendments thereto, the “Commitment”), pursuant to which the Authority has agreed to make available those Funds from the Program (as described herein) to NFP (in conjunction with ULG) to provide the permanent financing in connection with the acquisition, closing, demolition, lot treatment, maintenance and administration of those Units approved by the Authority and as identified in **Exhibit A**, which are located in Aurora, Illinois (the “Project”), and for no other purpose; and

WHEREAS, it is a condition of the Authority’s making the Program Funds available to the Recipient, each of ULG and NFP agrees to enter into this Agreement and consents to be regulated and restricted by the Authority as provided in this Agreement, the Program Guide and the Program Requirements.

AGREEMENTS

NOW, THEREFORE, in consideration of the recitals set forth above and other good and valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. **INCORPORATION**. The foregoing recitals are made a part of this Agreement as though such Recitals were fully set forth in this Section 1. All capitalized terms used in this Agreement and not otherwise defined shall have the meanings established in the Commitment or the Program Guide.

2. **Definitions**:

(a) “Blighted Property” shall have the meaning ascribed to it in the Program Guide.

(b) “Administration” shall have the meaning ascribed to it in the Program Guide.

(c) “Application” shall mean the application for the Loan submitted by ULG and NFP to the Authority on December 8, 2014, as approved and/or modified by the Authority.

(d) “Business Day” shall mean any day other than (i) a Saturday or Sunday, or (ii) a day on which the Authority is authorized or obligated by law to be closed.

(e) “Demolition” shall have the meaning ascribed to it in the Program Guide.

(f) “Disbursement” shall mean that portion of the Funds that may be disbursed to NFP for a Loan made in accordance with the Program Requirements and closed on a Unit Closing Date.

(g) “Effective Date” shall mean June 30, 2015.

(h) “Eligible Uses” shall have the meaning ascribed to it in the Program Guide.

(i) “Funding Deadline” shall mean June 30, 2017.

(j) “Loan” shall mean a forgivable loan (individually for each Unit, a “Loan” and collectively, for all of the Units, the “Loans”), up to the maximum amount of the Unit Cap per Unit, from the available Funds, to provide permanent financing for the Eligible Uses with respect to those Units approved by the Authority, as provided in this Agreement.

(k) “Loan Documents” shall mean the Note, the Mortgage, the Environment Indemnity, this Agreement, the Application, the Commitment and any and all Other Documents evidencing or governing the Loan for each Unit.

(l) “Maintenance” shall have the meaning ascribed to it in the Program Guide.

(m) “Mortgage” shall mean that certain Mortgage, Security Agreement and Assignment of Rents and Leases in regards to a Loan (individually for each Unit, a “Mortgage” and collectively, for all of the Units, the “Mortgages”), dated as of the date of the Unit Closing Date and executed by Recipient in favor of the Authority, securing the Loan and constituting a valid first (1st) lien on the

Development, which Mortgage shall be recorded in the office of the Recorder of Deeds of the county in which the Unit is located; the Mortgage is made a part of this Agreement by this reference.

(n) "Note" shall mean that certain Mortgage Note in regards to a Loan (individually for each Unit, a "Note" and collectively, for all of the Units, the "Notes"), dated as of the date of the Unit Closing Date, executed and delivered to the Authority by NFP, payable to the order of the Authority, evidencing NFP's indebtedness incurred in connection with a Loan for a Unit; the Note is made a part of this Agreement by this reference.

(o) "Project" shall mean the acquisition, demolition, greening/lot treatment, maintenance and administration of the Units listed on Exhibit A.

(p) "Recapture" shall mean the repayment to the Authority the Recapture Amount if one or more of the Recapture Events occurs before the Loan's applicable Maturity Date.

(q) "Recapture Amount" shall mean the full amount of the Loan to be repaid to the Authority in the event of a Recapture Event, reduced by one-thirty-sixth (1/36th) of that amount for each month from the Unit Closing Date.

(r) "Termination Date" shall mean the date which is two (2) years after the Effective Date.

(s) "Unit Cap" shall mean the maximum amount of the Funds available in the refinancing of Eligible Uses in connection with an approved Unit, up to \$35,000.00, which may include the \$1,750 allocated towards Administration of the Unit and \$3,000 allocated towards Maintenance of the Unit, as provided in this Agreement.

(t) "Unit" shall have the meaning ascribed to it in the Program Guide.

All capitalized terms used in this Agreement and not otherwise defined shall have the meanings established in the Commitment or the Program Guide, and if not defined therein, the meanings established in the HFA Agreement, and if not defined therein, the meanings established in the EESA and its rules and regulations.

As used in this Agreement, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders. The titles and headings of the various sections and paragraphs of this Agreement are intended solely for means of reference and are not intended for any purpose whatsoever to modify, explain, or place any construction or interpretation on any of the provisions of this Agreement.

3. **GENERAL CONDITIONS.** The Recipient acknowledges that it has received, reviewed and understands the Program Requirements (as defined in the Commitment), including, but not limited to those set forth in the Program Guide (as amended and implemented by the Authority from time to time, "Program Guide")¹. Recipient agrees that, in addition to the provisions of this Agreement, it shall at all times comply with the Program Requirements, including those described and/or referenced in the Program Guide, including all requirements with respect to each Loan and the Program. The Program Guide is incorporated into this Agreement by this reference. This Agreement and each Loan shall also be subject to the terms and conditions of the EESA, the rules, regulations and procedures promulgated under the EESA (the "HHF

¹ The current version of the Program Guide is available on the Authority website – see (<http://www.ihda.org/government/BRP.htm>). Recipient is ultimately responsible to ensure compliance with the current version of the Program Guide. Therefore, Recipient must check the Authority's Program website frequently for changes, updates and modification to the Program Guide.

Rules”), the Program Guide and the Authority’s requirements for the Program all as they may be amended and supplemented from time to time (collectively, the “BRP Requirements”).

4. **TERM AND USE OF FUNDS.** This Agreement shall be effective as of the date hereof (the “Effective Date”) and shall remain in effect until the later of the following dates or events: (i) a closing has occurred for the Loan for the Recipient’s last Unit pursuant to the Program Requirements (*i.e.*, the last Unit Closing Date); (ii) Recipient has used all of the Funds awarded to Recipient under the Program and any Program Income (as defined below), if any; and (iii) the Termination Date (the “Term”). However the obligations of the Recipient for all reporting requirements shall survive the foregoing along with any other provisions of this Agreement that require survival of the Recipient’s obligations.

5. **AVAILABILITY OF THE FUNDS.**

(a) **Funds Available.** Subject to (i) the Program Requirements, (ii) the terms, covenants, and conditions set forth in this Agreement, (iii) the prompt and faithful performance by ULG and NFP of all of the terms, conditions and provisions of this Agreement, provided NFP (and ULG) is not then in default under the terms and conditions of this Agreement or any of the Loan Documents, (iv) the satisfaction of all of the conditions precedent contained in the Loan Documents and in reliance on all of the representations, warranties and covenants of both ULG and NFP set forth in this Agreement and in the other Loan Documents, the Authority agrees to make Program funds available to NFP, up to in the maximum aggregate amount of Two Hundred Eighty Thousand and No/100 Dollars (\$280,000.00) (the “Funds”), to assist with the permanent financing of the eligible acquisition, closing, demolition, greening/lot treatment costs incurred, and maintenance and administrative expenses to be incurred, with respect to a minimum of Eight (8) Units, as approved by the Authority, and located in Aurora, Illinois.

(b) **No Guarantee.** All costs and expenses, even if later determined to be Eligible Uses, that are incurred by NFP (or the ULG) are incurred voluntarily and at the risk of NFP (and/or the ULG if it is incurring the cost or expense), and upon its own credit and expense. The Authority’s agreement to make the Funds available to NFP to refinance Eligible Uses does not constitute a guarantee that such costs will be reimbursed or refinanced by a loan from the Funds.

(c) **Funding Deadline.** The Funds shall only be available to NFP up to the Termination Date (the “Funding Deadline”). No disbursements of the Funds (and no further Loans) will be made after the Termination Date (or after an occurrence of a Default). **RECEIPIENT ACKNOWLEDGES THAT TIME IS OF THE ESSENCE WITH RESPECT TO THE FUNDING DEADLINE AND THAT IN NO EVENT SHALL THE FUNDING DEADLINE BE EXTENDED UNLESS SUBSEQUENTLY PERMITTED BY THE AUTHORITY.**

6. **TERMS AND CONDITIONS OF EACH LOAN GENERALLY.**

(a) **A Loan Per Unit.** NFP acknowledges that the Funds are to be disbursed and are comprised of a series of loans, a loan for each Unit. Upon completion and satisfaction of the Program Requirements for a Unit, the Authority will make a loan from the available Funds to NFP to provide refinancing of the Eligible Uses with respect to a Unit approved by the Authority (individually, for each Unit, a “Loan”, and collectively, for all of the Units, the “Loans”).

(b) **Amount of Each Loan.** The maximum amount of the Funds available for each Loan in the refinancing of Eligible Uses in connection with an approved Unit is the Unit Cap. The ULG

and NFP will be responsible for any costs incurred in excess of the Unit Cap in the acquisition, closing, demolition, greening, administration and maintenance of a Unit.

(c) **Loan Terms.** Each Loan shall not bear interest and shall have a term of three (3) years from the date of the applicable Unit Closing Date (each is a “Maturity Date”). NFP agrees to repay to the Authority all, or a portion of a Loan if any Recapture Event (as defined in **Paragraph 6.d** below) occurs before the Maturity Date. After a Recapture Event (or a Default), the Loan shall bear interest at the Default Rate, as set forth in the Note, until the Default is cured. However, if no Recapture Event occurs before the Maturity Date, each Loan will be forgiven at the Maturity Date.

(d) **Recapture.** As a condition to the Authority’s making of the Loan, NFP agrees to repay to the Authority the Recapture Amount (as defined in subparagraph e below) if one or more of the following events (each such event is called a “Recapture Event”) occurs before the Loan’s applicable Maturity Date:

- (i) NFP sells, conveys or transfers title to the Unit;
- (ii) ULG and/or NFP have not performed their respective obligations under this Agreement, any of the Loan Documents or the Program Guide or they; or
- (iii) any other event of Default (as defined in **Paragraph 13** below) occurs pursuant to the terms of any of the Loan Documents.

The Authority reserves the right, in its sole discretion, to determine which event or events (each such event is called a “Permitted Transfer”) are *not* Recapture Event.

(e) If a Recapture Event occurs before the applicable Maturity Date, NFP shall pay to the Authority the full amount of the Loan reduced by one-thirty-sixth (1/36th) of that amount for each month from the Unit Closing Date (the “Recapture Amount”). After a Default, the Loan shall bear interest at the Default Rate, as set forth in the Note, until the Default is cured.

The provisions of this **Paragraph 6.d** shall encumber each Unit and be binding on any future owner of a Unit and the holder of any legal, equitable or beneficial interest in it for three (3) years from the applicable Maturity Date; provided, however: that: if no Recapture Event occurs before the Maturity Date or if any Permitted Transfer occurs; this Agreement shall automatically terminate and shall be deemed to have been released and this release provision shall be self-operative without the need, necessity or requirement for the Authority to record a written release or termination.

(f) **Evidence of a Loan.** Each Loan shall be evidenced by: (i) this Agreement; (ii) a Note, pursuant to which the NFP agrees, among other things, to repay to the Authority all, or a portion of the Loan as required pursuant to the terms of the Note; (iii) a Mortgage, which shall be a valid first, prior and paramount lien upon the fee title to each Unit; (iv) an update to the Environmental Indemnity listing the Unit; and (v) any and all other documents evidencing, securing and governing any and all indebtedness related to the Unit owing to the Authority by the Recipient or entered into in connection with the Loan (the “Other Loan Documents”).

(g) **Use.** The proceeds of a Loan shall be used by NFP solely for the permanent refinancing and reimbursement of the Eligible Uses incurred for a Unit in accordance with the Program

Requirements and for no other purpose without the prior written consent of the Authority, which consent may be withheld by the Authority in its sole and absolute discretion.

7. **GENERAL LOAN DISBURSEMENT REQUIREMENTS.**

(a) **Compliance by Recipient; Amount of Loan.** It is expressly agreed and understood that the Authority's obligation to disburse a Loan to NFP under this Agreement from time to time shall be conditioned upon NFP's full and timely compliance with all the terms of this Agreement, including completing the demolition and greening/lot treatment of the Units as provided herein, and the other conditions set forth herein, including, without limitation, the conditions precedent set forth in **Paragraph 8** below. In no event shall the aggregate amount to be disbursed to NFP exceed the amount of the Funds allocated to the Recipient, and for any Unit, the amount to be disbursed shall not exceed the Unit Cap. Without limiting the foregoing, the Authority may immediately cease all or any Disbursements to NFP to the extent the Authority determines, in its sole discretion, that NFP (or ULG) is using the proceeds of any Loan in any manner which is not in compliance with the Program Requirements or the terms of this Agreement or there is some other occurrence of a Default under the terms of this Agreement or under the terms of any of the Loan Documents.

(b) **Disbursements.** The Authority shall disburse the proceeds of a Loan to NFP from time to time as a Unit is ready to close as provided herein and upon the conditions contained in this Agreement; provided, however, NFP must have at least one (1) Unit ready to close per quarterly Unit Closing Date (unless otherwise permitted by the Authority in its sole discretion). Furthermore, there will only be one disbursement per Loan (individually, for each Loan, a "Disbursement" and collectively, for all of the Units, "Disbursements"). Disbursement to NFP of a Loan shall be made in accordance with the Program Requirements.

(c) **Requests for Disbursement and Certification.** Prior to, and as a condition precedent of, each Disbursement of each Loan by the Authority relating to the Eligible Uses of each Unit, NFP shall furnish to the Authority, NFP's written request for Disbursement of the Loan ("Disbursement Request"), on a form supplied by the Authority, which must be satisfactory to the Authority in its sole and absolute discretion which shall, among other things, specify the amount of the requested Disbursement (which shall be consistent with the terms provided in this Agreement) for the Unit(s) to be closed at that quarter's Unit Closing Date; direct the Authority to disburse such proceeds of a Loan in accordance with this Agreement. **NFP's delivery of Disbursement Request shall be deemed to certify to the Authority, as of the date of the applicable Disbursement Request, that:**

- i.* no default by NFP (or the ULG), or condition or event which, with the giving of notice or passage of time, or both, in the opinion of the Authority, would constitute default by a Recipient, exists under this Agreement;
- ii.* the representations and warranties of NFP (and the ULG) contained in this Agreement, in the Commitment or in any other Loan Documents are true and correct and remain true and correct;
- iii.* NFP and the Unit, as applicable, shall be in compliance with the terms, conditions and covenants of this Agreement; and
- iv.* A hazardous material identification survey has been completed and the proper disposal of the materials have been identified in compliance with all applicable laws for each Unit to be closed at that quarter's Unit Closing Date.

(d) **Escrow Payouts.** Each Loan shall be made through escrow with a title insurance company chosen by NFP (and approved by the Authority) and upon such escrow terms and conditions as the Authority shall determine in its sole discretion. In such case, NFP shall execute such escrow agreement (the “Escrow Agreement”) with the title company as the Authority determines in its sole discretion is necessary or appropriate to protect the Authority’s interests (the “Title Company”). NFP shall endeavor to utilize, to the extent that this is reasonably possible, the same title insurance company to serve as the escrow agent for all of its Units receiving a Loan pursuant to this Agreement.

(e) **Frequency of Unit Closings - Quarterly.** Unit Closings will be held quarterly for those Units ready to close - provided the conditions precedent to such Disbursements and the Program Requirements for those Units to be closed that quarter, are met by NFP as determined by the Authority in its sole discretion. For the first quarterly Unit Closing Date, NFP will be required to submit all of the required documentation and showings for each Loan to be closed that quarter, **by no later than September 30, 2015**. Such quarterly Unit Closings will commence with the first full quarter ending after the Effective Date, so the first quarterly Unit Closing Date will be **October 30, 2015**. Within thirty (30) calendar days of the end of each quarter, NFP shall provide the Authority with: (i) a Disbursement Request (as described below) for each Unit to be closed in that quarter, and (ii) all of the required documentation and showings required for a Loan, as provided in the Commitment (in particular see Paragraph 8 of the Commitment).

(f) **General.** Without limiting the foregoing, the Authority shall only pay a Loan to NFP through escrow to the extent consistent with the Escrow Agreement and the Authority’s policies in effect from time to time concerning such payments and only to the extent NFP is in full compliance with all its obligations under this Agreement, including delivering to the Authority such information as the Authority may request from time to time as a condition to making such payment.

8. **CONDITIONS PRECEDENT TO A LOAN.** In addition to those documents set forth in **Paragraph 7** above, prior to and as conditions precedent to the Authority’s obligation to make a Loan and to make a Disbursement, Recipient shall deliver, or cause to be delivered, to the Authority **at least thirty (30) days prior to each Unit Closing Date**, and the Authority shall have accepted or approved, each of the documents, instruments and showings required pursuant to the Commitment, all of which shall be in form and substance satisfactory to the Authority.

9. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF NFP.** To induce the Authority to enter into this Agreement and award and disburse the Loan to Recipient, Recipient hereby represents, covenants and warrants to the Authority as follows:

(a) **No Violation of Legal Requirements.** NFP’s use of the proceeds of a Loan, and NFP’s actions in completing the Project, including, but not limited to the purchase, demolition and greening/lot treatment by NFP with the proceeds of a Loan, do not and will not violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind, including any zoning, building, land use, noise abatement, environmental, hazardous substance or materials, occupational health and safety laws.

(b) **Necessary Permits.** All governmental permits, approvals and licenses required by applicable law to complete the Project, including the purchase, demolition, greening/lot treatment and maintenance of any Unit, have been validly issued and are in full force or, if the present stage of a Unit does not allow the issuance of all such permits, approvals and licenses, then as each Unit progress, NFP shall promptly obtain such licenses, approvals and permits as and when they become available.

(c) **Organization.** NFP is duly existing and in good standing under the laws of the state of its formation.

(d) **Authorization; No Conflict.** NFP's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement are within its powers, have been duly authorized by all necessary company action, have been executed by the duly authorized and proper equity owners of NFP, require no governmental, regulatory or other approval that has not been previously obtained, and do not and will not contravene or conflict with any provision of (i) law, (ii) any judgment, decree or order binding upon NFP or (iii) NFP's organizational documents, and do not and will not contravene or conflict with, or cause any lien to arise under, any provision of any agreement or instrument binding upon Recipient.

(e) **Validity and Binding Nature.** This Agreement is a legal, valid and binding obligation of NFP enforceable against NFP in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the enforcement of creditors' rights generally, subject to general principles of equity.

(f) **Accuracy of Information.** All information heretofore or contemporaneously furnished by NFP to the Authority for purposes of or in connection with this Agreement or obtaining each Loan is, and all other information hereafter furnished by NFP to the Authority will be, true and accurate in every material respect on the date as of which such information was or is so provided to the Authority. NFP has not omitted and will not omit any material fact necessary to prevent such information from being false or misleading. NFP has disclosed to the Authority in writing all facts which NFP reasonably believes could materially and adversely affect the business, properties, financial condition or results of operations of NFP, or any of its equity owners, principals or employees, or the use of the Funds or any Loan by NFP's or its performance under this Agreement.

(g) **Compliance with Applicable Laws.** NFP shall at all times remain in compliance with the requirements of all applicable laws, rules, regulations, and orders of all governmental authorities (federal, state, local or foreign), including, without limitation, the Program Requirements.

(h) **Litigation and Contingent Litigation.** No litigation, arbitration proceedings, governmental proceedings or investigations or regulatory proceedings are pending, or to NFP's best knowledge, threatened against NFP or any of its equity owners, principals or employees. In addition, there are no inquiries, formal or informal, which might give rise to such actions, proceedings or investigations of which NFP has knowledge. No litigation, arbitration proceedings, governmental proceedings or investigations or regulatory proceedings are pending, or to NFP's best knowledge, threatened in connection with any of the Units.

(i) **Continuation of Representations and Warranties.** The representation, warranties and covenants made in this Agreement shall remain true and correct at all times hereafter so long as any part of any of the Loans remain outstanding.

(j) **Delinquency.** Recipient represents and warrants to the Authority that it is not delinquent in the payment of any debt to the State (or if delinquent it has entered into a deferred payment plan with the State to pay the debt).

(k) **General Responsibilities.** In connection with the Project, NFP shall perform functions that include, but may not be limited to, the following:

- (i) NFP has entered into an agreement acceptable to both parties with the Not-For-Profit Partner outlining its roles and responsibilities concerning its participation in the Program;
- (ii) NFP will report data-points and financials to Authority, as required by the Authority from time to time;
- (iii) NFP must develop an instrument of debt with the ULG, acceptable to both parties, which can take the form of a mortgage, forgivable loan, recapture agreement, or demand note.;
- (iv) NFP will use the proceeds of the Loans for Eligible Uses as ascribed in Program Requirements;
- (v) NFP will timely complete, or cause to be completed, the Eligible Uses for each Unit in a good and workmanlike manner in compliance with industry standards and in accordance with the Program Requirements set forth in this Agreement;
- (vi) NFP will not permit any discrimination against on the basis of their gender, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability in connection with its participation in the Program;
- (vii) NFP will satisfy and continuing to satisfy all terms, conditions, and covenants of this Agreement, the other Loan Document and the Program Requirements, and has not suffered nor will suffer any event of default of any agreement, contract or requirement of the Authority, Treasury, the State, or any political subdivision thereof; and
- (viii) Perform any other functions that the Authority may reasonably require.

(1) **Reasonableness of Eligible Uses.** NFP shall ensure that all expenditures made in connection with Eligible Uses for each Unit are “reasonable”, as determined by the Authority in its sole discretion, and shall maintain such documents and other evidence satisfactory to the Authority to evidence such compliance.

NFP acknowledges and agrees that the Funds shall be used only for the purposes described in this Agreement and that the award of Funds is conditioned upon the representations, warranties and covenants provided by NFP as set forth in this **Paragraph 9**.

10. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF UNIT OF LOCAL GOVERNMENT.** To induce the Authority to enter into this Agreement and award and disburse the Loan to ULG, ULG hereby represents, covenants and warrants to the Authority as follows:

(a) **No Violation of Legal Requirements.** ULG’s participation in the Program, ULG’s agreement with NFP, and ULG’s actions in completing the Project, including, but not limited to the sale of a Unit and a loan to NFP to finance the acquisition, demolition and greening/lot treatment by NFP, do not and will not violate or conflict with any applicable law, statute, ordinance, rule, regulation or order of any kind, including any zoning, building, land use, noise abatement, environmental, hazardous substance or materials, occupational health and safety laws.

(b) **Necessary Permits.** All governmental permits, approvals and licenses required by applicable law to complete the Project have been validly issued and are in full force or, if the present stage of a Unit does not allow the issuance of all such permits, approvals and licenses, then as each Unit progress, ULG or NFP shall promptly obtain such licenses, approvals and permits as and when they become available.

(c) **Organization.** ULG is duly existing and in good standing under the laws of the State.

(d) **Authorization; No Conflict.** ULG's execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement are within its powers, have been duly authorized by all necessary company action, have been executed by the duly authorized and proper persons, require no governmental, regulatory or other approval that has not been previously obtained, and do not and will not contravene or conflict with any provision of (i) law, (ii) any judgment, decree or order binding upon ULG or (iii) ULG's organizational documents, and do not and will not contravene or conflict with, or cause any lien to arise under, any provision of any agreement or instrument binding upon ULG.

(e) **Validity and Binding Nature.** This Agreement is a legal, valid and binding obligation of ULG enforceable against ULG in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, moratorium or similar laws affecting the enforcement of creditors' rights generally, subject to general principles of equity.

(f) **Accuracy of Information.** All information heretofore or contemporaneously furnished by ULG to the Authority for purposes of or in connection with this Agreement or obtaining each Loan is, and all other information hereafter furnished by ULG to the Authority will be, true and accurate in every material respect on the date as of which such information was or is so provided to the Authority. ULG has not omitted and will not omit any material fact necessary to prevent such information from being false or misleading. ULG has disclosed to the Authority in writing all facts which ULG reasonably believes could materially and adversely affect the actions properties, financial condition or results of operations of ULG, or any of its officials, officers or employees or its performance under this Agreement.

(g) **Compliance with Applicable Laws.** ULG shall at all times remain in compliance with the requirements of all applicable laws, rules, regulations, and orders of all governmental authorities (federal, state or local), including, without limitation, the Program Requirements, and all applicable historical preservation, environmental, demolition and lead based paint laws.

(h) **Litigation and Contingent Litigation.** No litigation, arbitration proceedings, governmental proceedings or investigations or regulatory proceedings are pending, or to ULG's best knowledge, threatened against ULG or any of its officials, officers or employees. In addition, there are no inquiries, formal or informal, which might give rise to such actions, proceedings or investigations of which ULG has knowledge. No litigation, arbitration proceedings, governmental proceedings or investigations or regulatory proceedings are pending, or to ULG's best knowledge, threatened in connection with any of the Units.

(i) **Continuation of Representations and Warranties.** The representation, warranties and covenants made in this Agreement and in any other Loan Document, shall remain true, accurate and complete as of the date hereof and shall be true, accurate and complete at the time of a Disbursement, and true, accurate and complete at all times hereafter so long as any part of any of the Loans remain outstanding.

(j) **General Responsibilities.** In connection with the Project, NFP shall perform functions that include, but may not be limited to, the following:

(i) ULG has entered into an agreement acceptable to both parties with the Not-For-Profit Partner outlining its roles and responsibilities concerning its participation in the Program;

- (ii) ULG is eligible to participate in the Program in accordance with the Program Requirements;
- (iii) ULG certifies that each Unit is an Eligible Property in accordance with the Program Requirements
- (iv) ULG has (or will obtain), or will cause NFP to obtain, the legal authority and rights to complete the demolition of each Unit;
- (v) ULG must develop an instrument of debt, with the NFP, acceptable to both parties which can take the form of a mortgage, forgivable loan, recapture agreement, or demand note.;
- (vi) ULG will not permit any discrimination against on the basis of their gender, race, religion, national origin, ancestry, creed, pregnancy, marital or parental status, sexual orientation, or physical, mental, emotional or learning disability in connection with its participation in the Program;
- (vii) ULG will satisfy and continuing to satisfy all terms, conditions, and covenants of this Agreement, the other Loan Document and the Program Requirements, and has not suffered nor will suffer any event of default of any agreement, contract or requirement of the Authority, Treasury, the State, or any political subdivision thereof;
- (viii) ULG will perform any other functions that the Authority may reasonably require.

ULG acknowledges and agrees that the Funds shall be used only for the purposes described in this Agreement and that the award of Funds is conditioned upon the representations, warranties and covenants provided by ULG as set forth in this **Paragraph 10**.

11. **OTHER PROGRAM REQUIREMENTS.**

(a) **Unit Requirements.** The Authority has approved the initial _____ (___) eligible properties listed on **Exhibit A**, as attached hereto and incorporated herein, as the Units for the Project. The Project was approved, in part, based upon the specific Units listed on **Exhibit A**, and any change to any of these Units shall be subject to Authority's prior written consent, at its sole discretion. The Authority's consent for any change in the Units must be obtained using the substitution procedures outlined in the Program Guide.

- (i) Each Unit must meet the criteria listed in the Program Guide, including, but not limited to: (i) each Unit must contain not more than four (4) residential units; (ii) each Unit must be vacant, unoccupied, deemed to be blighted and in need of demolition by ULG; (iii) each Unit must have at least one Property Index Number (which is also commonly referred to as the "permanent index number" or "PIN") (unless evidence is submitted to and accepted by the Authority that the Unit complies with the Unit Definition Exception as provided in the Program Guide); and (iv) the Unit must be located in within the census tract of a BRP Target Area.

- (ii) NFP should conduct an asbestos inspection in compliance with the Illinois Environmental Protection Agency and Illinois Department of Public Health regulations and any other inspections NFP deems reasonably necessary to complete the Project or that the Authority requests or requires.

- (iii) NFP must hold title to a Unit prior to the commencement of any Eligible Uses, including, but not limited to any demolition activities.

(b) **Davis-Bacon Act Requirements.** The wages to be paid to all laborers and mechanics employed in connection with the Project shall be not less than the prevailing wage rates ("Prevailing Wages") for corresponding classes of laborers and mechanics employed on construction of a similar

character in the locality in which the work is to be performed, as determined by the United States Secretary of Labor, with respect to the Project, all as provided for under the Davis-Bacon Act, 40 USC 276a *et seq.* Recipient shall require that each contract for the Eligible Uses shall provide for (i) the payment of Prevailing Wages and (ii) that all subcontracts let for any of the Eligible Uses require the payment of Prevailing Wages.

(c) **NFP Requirements.** The Project was approved, in part, based upon the NFP included in the Application, and any change of the party who will serve as the NFP shall be subject to Authority's prior written consent, which consent is at its sole discretion. The use of an unapproved not-for-profit partner is considered a material breach of this Agreement. NFP has satisfied and will continue to satisfy all terms, conditions, and covenants of and has not suffered or will suffer any event of default of any agreement, contract or requirement of the Authority, Treasury, the State, or any political subdivision thereof. NFP shall obtain a fidelity bond coverage or honesty insurance in an amount that is at least equal to the lesser of (a) the Funds awarded, or (b) \$100,000.00 with the Authority named as an additional insured.

(d) **Project Performance; Program Schedule.**

(i) The Authority may inspect or monitor, or retain third parties to inspect or monitor, NFP's compliance with the terms, conditions, and covenants of this Agreement, NFP's use of the Loan, the Units and the performance of the ULG and NFP against all obligations and covenants set forth in this Agreement, including the Exhibits attached hereto, and such other standards established by the Authority from time to time in its sole discretion. Without limiting anything in this Agreement, either Recipient's failure to meet the Program Requirements shall constitute a Default of this Agreement.

(ii) Each Recipient acknowledges that (A) time is of the essence with respect to this Agreement and with respect to each of the deadlines and milestones set forth in this Agreement, the other Loan Documents and the Program Guide, and (B) failure by NFP to achieve such deadlines or milestones shall entitle the Authority to exercise its remedies under this Agreement, including, without limitation, to declare a Default hereunder, to withhold or reduce further Loans from the Funds and/or Disbursements of any Loan or take any other action which the Authority may deem appropriate.

(iii) NFP must complete at least one the demolition and greening/lot treatment and greening of at least one (1) Unit within twelve (12) months of the Effective Date. NFP must complete all of the demolition and greening/lot treatment for all of the Units within twenty-three (23) months of the Effective Date. Notwithstanding the foregoing, the Authority, in its sole and absolute discretion, may at any time, and from time to time, extend these deadlines and milestones without having to amend this Agreement. NFP must have a minimum of three (3) completed Unit Closings within six months of the Effective Date and at least half (50%) of the Units successfully closed within twelve (12) months from the Effective Date, all undisbursed Funds may be subject to return to IHDA and/or redistribution .”

12. **RECORDS AND REPORTS.**

(a) **Monitoring.** The plans, specifications, books, contracts, records and documents relating to the Program shall at all times be maintained by the Recipient in reasonable condition for proper audit, and shall be subject to examination, inspection and copying by the Authority or its agent or representative at any time as the Authority reasonably requires. Recipient authorizes the Authority

to conduct on-site reviews, examine personnel records and to conduct any other procedure or practice necessary to assure compliance with this Agreement and applicable regulations. Recipient will ensure that all documents related to the Projects shall be kept for a period of five (5) years after the Termination Date. Records to be retained include, but are not limited to receipts and invoices for materials, supplies and services, and documentation to request reimbursement of expenses.

(b) **Financial Audit.** Each Recipient shall furnish the Authority with a compliance audit, prepared in accordance with the requirements of 24 CFR Part 85, OMB Circular A-133 (audits of State of Local Governments) and OMB Circular A-110, as applicable, which shall include but shall not be limited to the progress of the demolition and greening/lot treatment for each Unit and the use of the proceeds of each of the Loans, and the same shall be certified to the Authority by the respective Recipient and an Illinois-licensed certified public accountant. The Authority reserves the right to require such additional reports as it deems necessary. Notwithstanding the foregoing, or any other provision in this Agreement to the contrary, the Authority and its authorized representatives', agents' and third-party contractors' rights to site, document and personnel access for evaluation purposes are not limited to the required retention period, but shall last as long as records are retained. In addition, the books, contracts, records, and documents relating to the Program shall at all times be maintained by the Recipient in reasonable condition for proper audit, and shall be subject to examination, inspection and copying by the Authority, the Auditor General, the Attorney General, HUD and/or Treasury (collectively, the "Auditor") or their respective agents or representatives at any time as the Auditor reasonably requires.

(c) **Audited Financial Statements.** Each recipient shall provide annual audited financial statements to the Authority no later than the earlier to occur of the following: (a) ninety (90) days after the end of its fiscal year, commencing with the first fiscal year ending after the Effective Date; or (b) as required pursuant to OMB Circular No. A-133 which was revised to show changes published in the *Federal Registers* of June 27, 2003 and June 26, 2007 – Audits of States, Local Governments, and Non-Profit Organizations ("OMB Circular No. A-133").

(d) **Project Files.** Recipient shall maintain files, in a manner acceptable to the Authority, for each Unit evidencing that the Recipient has met all requirements of the Program Requirements.

(d) **Furnishing Information.** At the request of the Authority, the Recipient shall furnish such reports, budgets, certifications and other documents required pursuant to the Program Requirements, or other applicable federal or State statutes or requirements, and shall give specific answers to questions from the Authority, from time to time, relative to the Funds, any Loan, and Recipient's contracts and operations in connection with the Program and the Units.

(e) **Books and Records.** Upon reasonable notice, Recipient and the General Contractor for all Projects shall allow the Authority, the Auditor General or Attorney General of the State of Illinois, or representatives or agents of any of such parties, (i) to inspect such Project, including, but not limited to each Unit, at any reasonable time, and from time to time at any time during normal business hours and (ii) to inspect and audit and have access to the records, books of account and papers related to the Project, the operation, administration and maintenance of any Unit, or the uses for which the Loan has been utilized, including any supporting or related vouchers or papers, kept by or on behalf of the Recipient and their representatives or agents; such access shall include the right to make extracts or copies of them.

13. **DEFAULT.**

(a) **Default under Agreement.** If ULG or NFP fail to comply with, keep or perform any of their respective obligations, agreements, undertakings, conditions or warranties under the terms of this Agreement, any of the other Loan Documents, any other document executed and delivered by such party pursuant to this Agreement or in connection with a Loan, or under any of the Program Requirements, it shall constitute a Default. Each of the following shall also constitute a Default (“Default”):

i. There is an unreasonable delay in the demolition and/or greening/lot treatment of any Unit, or NFP causes any delay in such demolition and/or greening/lot treatment so that any Project may not, in Authority's judgment, be completed as required pursuant to the terms of the Loan Documents;

ii. If a petition in bankruptcy is filed by or against either NFP or the ULG, or a receiver or trustee of the property of the NFP is appointed, or if the NFP makes an assignment for the benefit of creditors or is adjudicated insolvent by any state or federal court. In the case of an involuntary petition, action or proceeding for the adjudication as a bankrupt or for the appointment of a receiver or trustees of the property of NFP not initiated by NFP, NFP and the ULG, respectively, shall have ninety (90) days after the service of such petition or the commencement of such action or proceeding, as the case may be, within which to obtain a dismissal of such petition, action or proceeding, provided that NFP is not otherwise in default under the terms of this Agreement; and/or

iii. There is a Recapture Event;

iv. Failure of Recipient to comply with any of the rules, regulations or provisions governing the Program including those referred to herein, or such statutes, regulations, executive orders and guidelines, policies or directives as may become applicable at any time from the Authority, the State or any other federal, state or local governmental agency;

v. Failure, for any reason, of Recipient to fulfill in a timely and proper manner any of its obligations under this Agreement or Recipient otherwise being in breach of this Agreement, including, without limitation the failure by the Recipient to achieve such deadlines or milestones set forth in the Project Schedule unless otherwise extended by the Authority in its sole and absolute discretion pursuant to the terms hereof;

vi. Failure of any representation or warranty to be true and correct at any time;

vii. Ineffective or improper use of the proceeds of a Loan;

viii. Submission by Recipient to the Authority of documents, reports or information that are incorrect or incomplete in any material respect.

ix. The existence of any collusion, fraud, dishonesty or bad faith by, or with the acquiescence of, Recipient or any of its (as applicable) officials, principals, equity owners, officers, directors, managers, employees, representatives or agents which in any way relates to or affects a Loan;

x. Recipient (A) is voluntarily adjudicated a bankrupt or insolvent or consents to or does not contest the entry of an order for relief against it as debtor; or (B) seeks, consents to or does not contest the appointment of a receiver, trustee, custodian or other similar official for itself or for all or any part of its property; or (C) files a petition or commences any case, proceeding or other action seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership, or other debtor relief under the laws of the United States or any state or any other competent jurisdiction;

xi. (A) a petition is filed, or any case, proceeding or other action is commenced against Recipient seeking to have an order for relief entered against it as debtor, or seeking reorganization, arrangement, adjustment, liquidation, dissolution, or composition of it or its debts or other relief under any law relating to bankruptcy, insolvency, arrangement, reorganization, receivership, or other debtor relief under the laws of the United States or any state or other competent jurisdiction; or (B) a court of competent jurisdiction enters an order for relief against it as debtor, or an order, judgment or decree is entered appointing, with or without the consent or contest of Recipient, a receiver, trustee, custodian or other similar official for it, or for all or any part of its property, and in the case of either (A) or (B) such petition, case, proceeding, action, order, judgment or decree shall not be stayed within 60 days after the entry thereof or shall not be dismissed within 60 days after being commenced;

xii. Recipient dissolves, liquidates, suspends or discontinues its business; or

xiii. Recipient fails to meet any of the Program Requirements or milestones set forth herein; or

Recipient otherwise breaches the terms hereof or of any other Loan Agreement.

(b) **Suspension of Disbursements**. If any of the events described in this **Paragraph 13** have occurred, or if NFP has failed to satisfy any of the conditions precedent to any Disbursement set forth in this Agreement then, at Authority's sole discretion, Authority's agreement to make the Funds available to NFP as set out in this Agreement (if it has not been previously terminated) shall immediately, automatically and without notice of any kind (other than as may be required elsewhere in this Agreement or in the other Loan Documents) be suspended and Authority shall have no further obligation to make Disbursements or do any other act or thing under or with respect to this Agreement until such time as Authority is satisfied, in its sole discretion, that the event that occurred has not or will not mature into a Default or until the condition precedent has been satisfied.

(c) **Authority's Other Remedies Upon Default**. Upon the happening of any Default, Authority shall have the right, but not the obligation, to do any or all of the following, concurrently or successively, without further notice to Recipient:

i. Declare the one or more of the Notes to be, and the Notes shall thereupon become, immediately due and payable without presentment, demand, protest or further notice of any kind, all of which are expressly waived, anything contained in this Agreement or in the Notes to the contrary notwithstanding;

ii. Terminate the Authority's commitments and obligations under this Agreement, including, but not limited to make the Funds available to Recipient, extend credit of any kind, or to make any Disbursement or any further Loans;

iii. Enter upon, take possession of, and use any Unit and all parts of it and all material, equipment and supplies on it and elsewhere that were ordered for or appropriated to any Project, and do anything that, in Authority's sole judgment, is necessary or desirable to fulfill, pay, settle or compromise the obligations of Recipient under this Agreement. All sums paid or incurred for demolition, completion and equipping of any Unit pursuant to the provisions of this Section or otherwise, and all other payments made or liabilities incurred by Authority under this Agreement of any kind whatsoever, including without limitation, reasonable attorneys' fees and charges or fees for supervision and inspection of the construction, shall bear interest from the date so paid or incurred at the Default Rate (as defined in the Notes) and such amounts, including interest, shall be deemed and shall constitute advances under this Agreement, as more fully provided below. The Authority and its designees, representatives, agents, licensees and contractors shall be entitled to such entry, possession and use without the consent of any party and without any legal process or other condition precedent whatsoever, except as specified above. NFP acknowledges that any interference with such entry, possession and use by Authority will cause irreparable injury and damages to Authority. Nothing in this Agreement shall impose any obligation on Authority to either complete or not to complete any Unit; and

(iv) Exercise such other rights and remedies as Authority may have at law or equity in addition to the rights and remedies established by this Agreement or any of the other Loan Documents.

None of the rights conferred upon Authority in this Section is intended to be exclusive of any other right or remedy contained in this Agreement, in the other Loan Documents or in any instrument or document delivered pursuant to this Agreement, and every such right or remedy contained in this Agreement and in the other Loan Documents, now or hereafter existing at law or in equity or by statute, or otherwise shall be cumulative and may be pursued consecutively or concurrently.

(e) **Advances.** It is specifically understood and agreed that all funds furnished by Authority and employed in performance of the obligations of Recipient under this Agreement shall be deemed advanced by Authority under an obligation to do so regardless of the identity of the person or persons to whom such funds are furnished, and regardless of the fact that certain conditions must be satisfied before Authority is actually obligated to furnish such funds. Funds advanced by Authority in the exercise of its judgment that such funds are needed to protect its security are to be deemed obligatory advances under this Agreement and are to be added to the total indebtedness evidenced by the Notes and secured by the Mortgages and such indebtedness shall be increased accordingly.

(f) **Effect of Grace or Cure Periods.** The Authority will determine, in its sole discretion, if and when a granting of a grace or cure period will be granted. The grant of a grace or cure period such shall not be construed to or have the effect of extending the deadline or periods granted or replicating the grace or cure period relating to such matters.

14. **NO PERSONAL LIABILITY.** No member, director, officer, employee or agent of the Authority, or their successors and assigns, shall be liable personally concerning any matters arising out of or in relation to the undertakings or obligations set forth in this Agreement.

15. **INDEMNIFICATION.**

(a) All of each Recipient's representations and warranties in this Agreement or in the other Loan Documents shall be true and correct in all material respects when made and as of the date of each Disbursement for each Unit, and shall remain in full force and effect, regardless of a Disbursement until all indebtedness to the Authority pursuant to this Agreement and the other Loan Documents is forgiven (or otherwise is paid in full). To the extent permitted by law, each Recipient shall indemnify, defend and hold the Authority, its members, directors, officers, employees and agents harmless from and against, and shall be obligated to pay and reimburse the Authority for any and all loss and damage including, without limitation, consultants', experts' and accountants' fees and reasonable attorneys' fees, that the Authority may sustain or incur, or suffer by reason of, or in connection with the Project, including without limitation the execution of the Loan Documents, the provision of the Funds, or disbursement of any Loan, any misrepresentation, breach of warranty or nonfulfillment of any covenant on the part of a Recipient. This obligation of Recipient shall survive the Term of this Agreement and the forgiveness, repayment or cancellation of any Loan.

(b) If a claim or suit is brought against the Authority or the Authority's officers, agents, employees or servants for which the Recipient is responsible pursuant to subparagraph (a) of this Section, the Recipient shall defend the Authority, with counsel of the Authority's choice, at the Recipient's sole cost and expense, and will pay any resulting claims, judgments, damages, losses, costs, expenses or settlements against the Authority or the Authority's members, directors, officers, employees or agents, including, but not limited to, attorneys' fees.

16. **JOINT AND SEVERAL OBLIGATIONS.** The respective obligations undertaken by the ULG and NFP are joint and several and Authority may, in its sole discretion, elect to pursue its rights and remedies against any one or more of the parties responsible for such obligations without pursuing such rights and remedies against all of such parties.

17. **AMENDMENT.** The parties may amend this Agreement, including the Exhibits hereto, at any time provided that such amendment is in writing and signed by a duly authorized representative of each of the parties, and is approved by the Authority's governing body. Such amendments shall not invalidate this Agreement, nor relieve or release the Authority, the ULG or NFP from its obligations under this Agreement, except as specifically amended. The Authority may, in its discretion, amend this Agreement to conform with Federal, State or local governmental guidelines, policies and available Funds amounts, or for other reasons. If such amendments result in a change in a Loan, the scope of the Project, or schedule of the activities to be undertaken as part of this Agreement, such modifications will be incorporated only by written amendment signed by all of the parties.

18. **NOTICES.** Any notices, demand, request or other communication that any party may desire or may be required to give to any other party hereunder shall be given in writing (at the addresses set forth below) by any of the following means: (a) personal service; (b) overnight courier; or (c) registered or certified United States mail, postage prepaid, return receipt requested.

ULG:

City of Aurora
44 E. Downer Place
Aurora, Illinois 60507
Attention: Jim Pilmer
jpilmer@aurora-il.org

NFP: Fox Valley Habitat for Humanity
1300 S. Broadway, #101
Montgomery, Illinois 60538
Attention: Jeffrey Barrett
Executive Director
j.barrett@foxvalleyhabitat.org

The Authority: Illinois Housing Development Authority
401 N. Michigan, Suite 700
Chicago, Illinois 60611
Attn: Legal Department

And to:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attn: Community Affairs

Such addresses may be changed by notice to the other party given in the same manner as herein provided. Any notice, demand, request or other communication sent pursuant to subsection (a) hereof shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subsection (b) shall be served and effective one business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subsection (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

19. **SUCCESSORS.** This Agreement shall bind, and the benefits shall inure to, the parties hereto, their legal representatives, successors in office or interest and assigns, provided that the Recipient may not assign this Agreement or any of its obligations, or delegate any of its duties, hereunder without the prior written approval of the Authority.

20. **PUBLICITY.** Neither the ULG nor NFP shall communicate any public messages or advertisements related to the Program, the Project, the Funds, the Loans, the Units, nor any of the obligations or terms of this Letter including without limitation the execution of the Loan Documents and the provision of the Funds and of each Loan (collectively, the "Publicity") without the prior written approval of the Authority. Both the ULG and NFP shall consult with the Authority to develop a communication and outreach strategy to ensure that any public messages related to any Publicity is consistent with the intent of the Program. Each of ULG and NFP shall notify the Authority at least ten (10) business days in advance and provide a copy of any proposed press releases, Publicity or any other public statements that refers to the Program, their participation therein, the results thereof. The Authority shall have the right to object to or modify such press release, statement or any other Publicity, in its sole discretion. This Section shall survive the termination or expiration of this Agreement.

21. **ASSIGNMENT.** The Authority may assign, negotiate, pledge or otherwise hypothecate all or any portion of this Agreement, or grant a participation interest in, or in any of its rights and security under this Agreement, including, without limitation, any Note and Mortgage. In case of such assignment, Recipient shall accord full recognition to it and agree that all rights and remedies of the Authority in connection with the interest so assigned shall be enforceable against Recipient by such assignee with the same force and effect and to the same extent as the same would have been enforceable by the Authority but for such assignment.

Both the ULG and NFP shall not assign or attempt to assign its rights under this Agreement either voluntarily or by operation of law, except as otherwise permitted pursuant to this Agreement.

22. **NO JOINT VENTURE.** Notwithstanding anything to the contrary contained in this Agreement, the Authority, by making a Loan or by any action taken pursuant to this Agreement or the other Loan Documents, is not and shall not be deemed a partner or joint venturer with either the ULG or NFP. By execution of this Agreement, each of the ULG and NFP agrees to indemnify, defend and hold the Authority harmless from and against any damage or liability that may be incurred by the Authority as a result of a claim that the Authority is such a partner or joint venturer.

23. **DOCUMENTS OF FURTHER ASSURANCE.** ULG and NFP agree that, at any time or from time to time, upon the written request of the Authority, it shall execute, and if required, record (and pay all fees, taxes or other expenses relating to such recording) all such further documents and do all such other acts and things as the Authority may request to effectuate the transaction contemplated in this Agreement.

24. **SURVIVAL OF OBLIGATIONS.** Each of the Unit of Local Government's and NFP's obligations, as set forth in this Agreement, shall survive the Term and ULG and NFP shall continue to cooperate with the Authority and furnish any documents, schedules, exhibits or showings required hereunder.

25. **NOTICE OF LITIGATION.** During the Term, each of ULG and NFP shall promptly furnish the Authority a written notice of any litigation in which ULG or NFP is named a defendant or any litigation that affects or relates to any Unit.

26. **CONSTRUCTION OF AGREEMENT.**

(a) **Partial Invalidity.** If any term, covenant, condition or provision of this Agreement, or the application thereof to any circumstance, shall, at any time or to any extent, be determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement, or the application thereof to circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and each term, covenant, condition and provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

(b) **Gender.** The use of the plural in this Agreement shall include the singular, the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

(c) **Captions.** The captions used in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of the intent of any provision of this Agreement.

(d) **Construction.** This Agreement shall be construed and interpreted in accordance with the laws of the State of Illinois.

(e) **Exhibits.** The Exhibits attached hereto are incorporated herein and made a part of this Agreement.

27. **WAIVER OF JURY TRIAL. THE PARTIES WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER ON ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE PROGRAM OR THIS AGREEMENT. RECIPIENT ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS AGREEMENT AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL**

COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH COUNSEL.

28. **JURISDICTION.** TO INDUCE THE AUTHORITY TO ACCEPT EACH OF THE NOTES, EACH OF THE ULG AND NFP IRREVOCABLY AGREES THAT, SUBJECT TO THE AUTHORITY'S SOLE AND ABSOLUTE ELECTION, ALL ACTIONS OR PROCEEDINGS IN ANY WAY ARISING OUT OF OR RELATED TO THE LOAN DOCUMENTS WILL BE LITIGATED IN COURTS HAVING SITUS IN CHICAGO, ILLINOIS. THE ULG AND NFP HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY COURT LOCATED WITHIN CHICAGO, ILLINOIS, WAIVE PERSONAL SERVICE OF PROCESS UPON EITHER OF THE ULG OR NFP, AND AGREE THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE BY REGISTERED MAIL DIRECTED TO THE ULG AND NFP AT THE ADDRESS STATED HEREIN AND SERVICE SO MADE WILL BE DEEMED TO BE COMPLETED UPON ACTUAL RECEIPT.

29. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, all of which shall be taken to be one and the same instrument, for the same effect as if all parties hereto had signed the same signature page.

30. **LIABILITY OF AUTHORITY.** In no event shall the Authority be liable to the Recipient for consequential or incidental damages, including, without limitation, lost profits, whatever the nature of the breach by the Authority of its obligations under this Agreement or the Loan Documents or in connection herewith and the Recipient waives all claims for consequential and incidental damages and for all damages described herein.

31. **LOAN.** The parties acknowledge that the Loan is to be funded with monies provided by the Treasury, and that the Authority is under no obligation to request such funds for any Disbursement of Program Funds unless and until all necessary preconditions to Disbursement set forth in the Loan Documents shall have been satisfied to the Authority's satisfaction, and that significant time delays might result from a Loan of such monies by the foregoing. Without limiting the generality of **Paragraph 31** above, in no event shall the Authority be liable to a Recipient for any damages whatsoever which might result in whole or in part from any delays in obtaining any proceeds of a Loan.

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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first above written.

UNIT OF LOCAL GOVERNMENT:

CITY OF AURORA, an Illinois unit of local government

By: _____

Name: _____

Title: _____

NFP:

FOX VALLEY HABITAT FOR HUMANITY, an Illinois not-for-profit corporation

By: _____

Name: _____

Title: _____

AUTHORITY:

ILLINOIS HOUSING DEVELOPMENT AUTHORITY

By: _____

Mary R. Kenney, Executive Director

Approved as to form:

By: _____

Nandini Natarajan, Chief Financial Officer

By: _____

Maureen Ohle, General Counsel

EXHIBIT A
ELIGIBLE PROPERTIES