

ENVIRONMENTAL INDEMNITY

THIS ENVIRONMENTAL INDEMNITY (this "Indemnity") is given as of this _____ day of _____, 2015, by **FOX VALLEY HABITAT FOR HUMANITY** an Illinois not-for-profit corporation (the "NFP"), and **CITY OF AURORA**, a unit of local government (the "Unit of Local Government" also known as "ULG") (NFP and ULG are collectively referred to in this Indemnity as the "Indemnitor"), to the **ILLINOIS HOUSING DEVELOPMENT AUTHORITY**, a body politic and corporate created by and existing pursuant to the Illinois Housing Development Act, 20 ILCS 3805/1 *et seq.*, as amended from time to time (the "Indemnitee").

RECITALS:

A. ULG and NFP¹, concurrently with the execution and delivery of this Indemnity, are receiving from the Indemnitee the sum of up to Two Hundred Eighty Thousand and No/100 Dollars (\$280,000.00) (the "Funds") from the HHF Blight Reduction Program, the proceeds of which will be used for the acquisition, demolition, lot treatment, administration and maintenance of various real estate legally described in **Exhibit B** attached to and made a part of this Indemnity, and in subsequent exhibits attached hereto or to be attached hereto and each such attached **Exhibit** shall be made a part of this Indemnity as detailed in Section 13 hereafter, together with all improvements located or to be located on it (an individual parcel of real estate and improvements thereto shall be referred to as a "Unit" and all Units referred to in this Indemnity shall collectively be referred to as the "Premises").

D. The Indemnitee is unwilling to make the Loans unless the Indemnitor executes and delivers this Indemnity.

NOW, THEREFORE, in consideration of the Indemnitee's making of the Grant to the Developer, the Indemnitor agrees as follows:

1. Definitions. For purposes of this Indemnity, "Hazardous Material" means: (i) "hazardous substances", as defined by the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Sec. 9601 *et seq.*, and the Illinois Environmental Protection Act ("Illinois Environmental Act"), 415 ILCS 5/1 *et seq.*, as amended from time to time; (ii) "hazardous wastes", as defined by the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Sec. 6902 *et seq.*; (iii) any pollutant or contaminant or hazardous, dangerous or toxic chemicals, materials, or substances within the meaning of any other applicable federal, state, or local law, regulation, ordinance, or requirement (including consent decrees and administrative orders) relating to or imposing liability or standards of conduct concerning any hazardous, toxic or dangerous waste, substance or material, all as amended or hereafter amended;

¹ Under the HHF Blight Reduction Program, ULG and NFP are working cooperatively to complete the acquisition, demolition and lot treatment of the Premises, including, but not limited to NFP acquiring the Units from ULG and ULG financing such acquisition (which will be permanently financed with the Funds). As such ULG has an interest in each of the Units. As NFP acquires a Unit, it will be added as a new Exhibit.

(iv) more than 100 gallons of crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (v) any radioactive materials, including any source, special nuclear or by-product material as defined at 42 U.S.C. Sec. 2011 *et seq.*, as amended or hereafter amended; and (vi) asbestos in any form or condition.

2. Representations and Warranties. The Indemnitor represents and warrants to the Indemnitee that:

(a) Compliance. The Premises and each Unit (including underlying groundwater, if any), and the use and operation of them, are currently in compliance with all applicable federal, state and local laws, ordinances, requirements and regulations (including consent decrees and those in connection with health, safety and protection of the environment, including those statutes, laws, regulations, and ordinances identified in **Paragraph 1** hereof, all as amended and modified from time to time (collectively, "Environmental Laws"). To the best of Indemnitor's knowledge, after due and diligent inquiry, all Hazardous Materials generated or handled on the Premises or any Unit have been disposed of in a lawful manner.

(b) Absence of Hazardous Material. No generation, manufacture, storage, treatment, transportation or disposal of Hazardous Material has (to the best of Indemnitor's knowledge, after due and diligent inquiry) occurred, or is occurring on or from the Unit, except as has been disclosed in writing to and approved by the Indemnitee or except for cleaning and pest control products that may be used in the ordinary course of business of operating residential real estate ("Permitted Material"). No environmental or public health or safety hazards currently exist with respect to the Premises or any Unit, or the business or operations conducted thereon, [except for the possible presence of lead-based paint, asbestos and building code violations, all to be cured by the Indemnitor in the rehabilitation of the Premises or any Unit]. No underground storage tanks (including petroleum storage tanks) are present on or under the Premises or any Unit except as has been disclosed in writing to and approved by the Indemnitee.

(c) Proceedings and Actions. There have been (to the best of the Indemnitor's knowledge, after due and diligent inquiry) no past, and there are no pending or (to the best of Indemnitor's knowledge) threatened: (i) actions or proceedings by any governmental agency or any other entity regarding public health risks or the environmental condition of the Premises or any Unit, or the disposal or presence of Hazardous Material, or regarding any Environmental Laws; or (ii) liens or governmental actions, notices of violations, notice of noncompliance or other proceedings of any kind relating to Hazardous Material or Environmental Laws that could impair the value of the Premises or any Unit, or the priority of the Indemnitee's mortgage liens on them.

3. Indemnitor's Covenants. The Indemnitor agrees as follows:

(a) Compliance. Upon completion of demolition, the Premises or any Unit, and the use and operation of them, shall comply with all Environmental Laws, and all required governmental permits and licenses shall remain in effect, and the Indemnitor shall comply

with them. All Hazardous Materials present, handled or generated on the Premises or any Unit will be disposed in a lawful manner. The Indemnitor will satisfy all requirements of applicable Environmental Laws for the maintenance and removal of all underground storage tanks on the Premises or any Unit, if any. Without limiting the foregoing, all Hazardous Material shall be handled in compliance with all applicable Environmental Laws.

(b) Absence of Hazardous Material. Other than Permitted Material, no Hazardous Material shall be introduced to or handled on the Premises or any Unit without thirty (30) days prior written notice to the Indemnitee.

(c) Proceedings and Actions. The Indemnitor shall immediately notify the Indemnitee, and provide copies upon receipt, of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Premises or any Unit or compliance with Environmental Laws. The Indemnitor shall promptly cure and have dismissed with prejudice any such actions and proceedings to the satisfaction of the Indemnitee. The Indemnitor shall keep the Premises and every Unit free of any lien imposed pursuant to any Environmental Laws.

(d) Environmental Audit. The Indemnitor shall provide such information and certifications that the Indemnitee may reasonably request from time to time to ensure the Indemnitor's compliance with this Indemnity. To investigate the Indemnitor's compliance with Environmental Laws and with this Indemnity, the Indemnitee shall have the right, but no obligation, at any time to enter upon the Premises or any Unit, take samples, review books and records of the Indemnitor, interview the employees and officers of the Indemnitor, and conduct similar activities. The Indemnitor shall cooperate in the conduct of such an audit.

4. Indemnitee's Right to Rely. The Indemnitee shall be entitled to rely upon the Indemnitor's representations and warranties contained in this Indemnity despite any independent investigations by the Indemnitee or its consultants. The Indemnitor shall take reasonable actions to determine for itself, and to remain aware of, the environmental condition of the Premises and every Unit, and shall have no right to rely upon any environmental investigations or findings made by the Indemnitee or its consultants.

5. Indemnifications. The term "Indemnitee's Environmental Liability" shall mean any losses, liabilities, obligations, penalties, claims, litigation demands, defenses, costs, judgments, suits, proceedings, damages (including consequential damages), disbursements or expenses of any kind or nature whatsoever related to the Premises or any Unit (including reasonable attorneys' fees at trial and appellate levels and experts' fees and disbursements and expenses incurred in investigating, defending against or prosecuting any litigation, claim or proceeding) that may at any time be imposed upon, incurred by or asserted or awarded against the Indemnitee in connection with or arising from:

(a) any Hazardous Material, on, in, under or affecting all or any portion of the Premises or any Unit, the groundwater, or any surrounding areas arising from conditions at the Premises or any Unit;

(b) any misrepresentation, inaccuracy or breach of any warranty, covenant or agreement contained or referred to in this Indemnity;

(c) any violation or claim of violation by the Indemnitor of any Environmental Laws;

(d) the imposition of any lien for damages caused by or the recovery of any costs for the cleanup, release or threatened release of Hazardous Material; or

(e) any claim against the Indemnitee under Environmental Laws, or any similar law now existing or hereafter enacted.

The Indemnitor agrees to indemnify, defend (at trial and appellate levels and with counsel acceptable to the Indemnitee and at the Indemnitor's sole cost) and hold the Indemnitee free and harmless from and against the Indemnitee's Environmental Liability.

It is expressly understood and agreed that, to the extent that the Indemnitee is strictly liable under any Environmental Laws, the Indemnitor's obligation to the Indemnitee under this indemnity shall likewise be without regard to fault on the part of the Indemnitor with respect to the violation or condition which results in Indemnitee's Environmental Liability.

Notwithstanding anything in this Indemnity to the contrary, Indemnitor's liability under this Indemnity shall not include any loss arising out of the gross negligence or willful misconduct of Indemnitee or release of Hazardous Materials by Indemnitee after Indemnitee has taken possession of the Premises or any Unit.

6. Survival. The foregoing indemnification, defense and hold harmless obligations shall forever survive repayment of the obligations of Developer to the Indemnitee or any transfer of the Premises or any Unit by foreclosure or by a deed in lieu of foreclosure in connection with any Indemnitee's Environmental Liability.

7. Interest. Any amount claimed under this Indemnity by the Indemnitee that is not paid by the Indemnitor within thirty (30) days after written demand from the Indemnitee shall bear interest at the rate of the lesser of nine percent (9%) per year and the highest rate permitted by law.

8. Binding Nature. This Indemnity and the indemnities and agreements contained herein shall be continuing, irrevocable and binding upon each of the persons and entities comprising the Indemnitor and their respective successors and assigns, and shall benefit the Indemnitee and its successors and assigns. [Notwithstanding anything to the contrary contained in this Indemnity, no liability or obligations under this Indemnity shall be construed to apply to any limited partner of Indemnitor (or to any of such limited partners' component partners)].

9. Notices. Notices under this Agreement shall be given as provided in **Exhibit B** attached to and made a part hereof.

10. Governing Law. This Indemnity shall be governed by and construed under the laws of the State of Illinois, exclusive of its conflict of laws principles, and any applicable laws of the United States of America.

11. No Impairment. The Indemnitor's obligations under this Indemnity shall in no way be impaired, reduced or released by reason of the Indemnitee's omission or delay to exercise any right described in this Indemnity, or any act or omission of the Indemnitee in connection with any notice, demand, warning or claim regarding violations of codes, laws, or ordinances governing the Premises or any Unit.

12. Counterparts. This Agreement may be executed in any number of counterparts each of which shall be deemed an original and all of which shall constitute one and the same instrument with the same effect as if all parties had signed the same signature page.

13. Multiple Premises. The proceeds from the Loans will be utilized to demolish at least Eight (8) Units. The Indemnitor and the Indemnitee hereby agree that the indemnification, agreements, representations, warranties, covenants, rights, remedies and obligations contained in this Indemnity shall apply to each Unit of the Premises. As Indemnitor acquires each Unit, to add a Unit to this Indemnity, the Indemnitor and the Indemnitee shall attach as **Exhibit B, Exhibit C** and so on for each Unit hereto the relevant information for such Unit. Upon the attachment of an Exhibit for each Unit, the indemnification and other provisions of this Indemnity shall apply to such Unit and such Unit shall be a part of this Indemnity for all purposes as if it has been included on the date this Indemnity was initially signed.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the Indemnitor has caused this Indemnity to be executed by its authorized representatives.

UNIT OF LOCAL GOVERNMENT:
CITY OF AURORA,
An Illinois unit of local government

By: _____
Printed Name: _____
Its: _____

NFP:
FOX VALLEY HABITAT FOR HUMANITY,
An Illinois not-for-profit corporation

By: _____
Printed Name: _____
Its: _____

EXHIBIT A
NOTICE PROVISIONS

Any notice, demand, request or other communication that any party may desire or may be required to give to any other party under this document 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.

If to Indemnitee:

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

with a copy to:

Illinois Housing Development Authority
401 North Michigan Avenue, Suite 700
Chicago, Illinois 60611
Attention: General Counsel

If to Indemnitor:

City of Aurora
44 E. Downer Place
Aurora, Illinois 60507
Attention: Jim Pilmer

and

Fox Valley Habitat for Humanity
1300 S. Broadway, #101
Montgomery, Illinois 60538
Attention: Jeffrey Barrett, Executive Director

Such addresses may be changed by notice to the other party given in the same manner as provided in this Exhibit. Any notice, demand, request or other communication sent pursuant to subparagraph (a) shall be served and effective upon such personal service. Any notice, demand, request or other communication sent pursuant to subparagraph (b) shall be served and effective one (1) business day after deposit with the overnight courier. Any notice, demand, request or other communication sent pursuant to subparagraph (c) shall be served and effective three (3) business days after proper deposit with the United States Postal Service.

In connection with any courtesy copy, the Indemnitee will exercise reasonable efforts to provide copies of any notices given to Indemnitor; however, the Indemnitee's failure to furnish copies of such notices shall not limit the Indemnitee's exercise of any of its rights and remedies under any document evidencing, securing or governing the Grant from Indemnitee to the Indemnitor, or affect the validity of the notice.

**EXHIBIT B
UNIT DESCRIPTION**

PIN: _____

Common Address: _____, Illinois