

ENVIRONMENTAL CERTIFICATE AND INDEMNITY AGREEMENT

THIS **ENVIRONMENTAL CERTIFICATE AND INDEMNITY AGREEMENT** (the "Agreement") made this ____ day of _____, 20__ is being delivered by _____, a _____ organized and existing under the laws of the State of Connecticut and having a mailing address of _____, Connecticut _____ (the "**Borrower**") and [_____] [an individual/a limited liability company/corporation/partnership organized and existing under the laws of the State of [_____] with a permanent residence and mailing address at [_____] (the "**Guarantor**"; the Borrower and the Guarantor, collectively, the "**Applicant**") to the **CONNECTICUT HOUSING FINANCE AUTHORITY**, a body politic and corporate constituting a public instrumentality and political subdivision of the State of Connecticut, at its office at 999 West Street, Rocky Hill, Connecticut 06067 ("**CHFA**"), to induce CHFA to loan the sum of up to _____ AND ___/100 DOLLARS (\$_____) (the "**Loan**") to the Borrower, as guaranteed by the Guarantor. The Loan is secured in part by a mortgage on certain real property known as _____, Connecticut, as more particularly described on **Schedule A** attached hereto (the "**Premises**").

To induce CHFA to make the Loan to the Borrower and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Applicant hereby certifies and agrees as follows:

1. The terms described below shall have the following meanings:

(a) "**Environmental Condition(s)**" means circumstances with respect to soil, surface waters, ponds, groundwaters, stream sediments, air and similar environmental media both on and off of the Premises, resulting from any activity, inactivity or operations occurring on/or off of the Premises, that could require Site Remediation Measures and/or that may result in claims, demands and liabilities by or against any Applicant or any third party including, but not limited to, governmental entities.

(b) "**Release**" means releasing, spilling, leaking, pumping, pouring, emitting emptying, discharging, injecting, escaping, leaching, disposing or dumping of Hazardous Materials. The term "Release" shall be accorded the broadest possible interpretation and shall include the definition as provided in the Resource Conservation and Recovery Act, 42 U.S.C. 6901, et seq. ("RCRA"), or the Comprehensive Environmental Response Compensation and Liability Act of 1980, 42 U.S.C. 9601, et seq. ("CERCLA"). This term shall be interpreted to include the past, present and future tense, as appropriate.

(c) "**Environmental Law(s)**" means any and all Federal, state, local or municipal laws, rules, orders regulations, statutes, ordinances, codes, guidelines, policies or requirements of any governmental authority regulating or imposing standards of liability or standards of conduct (including common law) concerning air, water, solid

waste, hazardous waste, Hazardous Materials, worker and community right-to-know, hazard communication, noise, radioactive material, resource protection, health protection and similar environmental, health, safety, and local government concerns (to the extent they relate to Hazardous Materials) as may now or at any time hereafter be in effect.

Such laws include, but are not limited to, RCRA, the Emergency Planning and Community Right to Know Act, 42 U.S.C. 11001, et seq., the Occupational Safety and Health Act, 29 U.S.C. 651, et seq., CERCLA, the Clean Air Act, 42 U.S.C. 7401, et seq., the Hazardous Materials Transportation Act, 49 U.S.C. 5101, et seq., the Toxic Substance Control Act, 15 U.S.C. 2601, et seq., the Federal Insecticide Fungicide and Rodenticide Act, 7 U.S.C. 136, et seq., the Clean Water Act, 33 U.S.C. 1251, et seq., the Safe Drinking Water Act, 42 U.S.C. 300f, et seq., and Title 22a of the Connecticut General Statutes, all as amended and effective on the date hereof and including subsequent amendments thereto.

(d) "Environmental Permit(s)" means any and all permits, approvals, licenses, registrations, certificates, plans, contingency plans spill prevention control and countermeasure plans, consent agreements, consent orders, stipulations and authorizations which arise out of or are in any way related to Environmental Laws.

(e) "Hazardous Material(s)" means any solution or substance which may pose a present or potential hazard to human health or the environment.

(f) "Site Remediation Measure(s)" means any efforts of any government, or any Applicant, or its contractor, subcontractor or agent which are made, required, designed, initiated or maintained to ensure that Environmental Conditions are consistent with Environmental Laws or Environmental Permits, or to comply with Environmental Laws or Environmental Permits or to mitigate Environmental Conditions, and include, without limitation, investigation, site monitoring, containment, clean-up, transport, removal, disposal, restoration and other remedial efforts of any kind.

2. Except as disclosed on **Schedule B** attached hereto, Applicant represents and warrants that, to the best of its knowledge:

(a) Applicant has duly complied with, and the Premises, are in material compliance with all Environmental Laws and Environmental Permits. No proceedings have been commenced against, nor any notice received by, Applicant concerning any alleged violation of any Environmental Law or Environmental Permit or the existence of any Environmental Condition.

(b) No Hazardous Materials of any kind are currently, or have at any time been, generated, stored, produced, treated, handled, disposed of or used on the Premises in violation of any Environmental Law or Environmental Permit.

(c) There has never been any Release of Hazardous Materials with respect to the Premises.

(d) The Premises are not now and have never been the site of an Environmental Condition.

(e) Applicant has been issued all required Environmental Permits relating to the Premises.

(f) No Site Remediation Measures have been conducted on, or recommended or required for, the Premises, and Applicant is unaware of any Environmental Condition that would lead to the implementation of such Site Remediation Measures.

3. Applicant agrees to promptly notify CHFA if it becomes aware of (a) any Environmental Condition, (b) any Release, (c) the violation or alleged violation of any Environmental Law or Environmental Permit, or (d) any lien, action, notice of violation or administrative or judicial enforcement action concerning an Environmental Law and/or Environmental Permit and/or Environmental Condition and the Premises, including without limitation, any inspection report, notice of inspection, abatement notice, abatement order or notice of noncompliance, or notice by a third party. Applicant shall promptly deliver to CHFA any and all documentation or records as CHFA may request in connection with such notice, claim, charge, cause of action, demand, order or report. This provision specifically includes the creation of any lien pursuant to Section 22a-452a of the Connecticut General Statutes or any similar laws or regulations. At its own cost, Applicant will take or cause to be taken all actions which are necessary or desirable to remediate any Release or Environmental Condition or satisfy or comply with all Environmental Laws and Environmental Permits affecting the Premises, including Site Remediation Measures. Upon the request of CHFA, Applicant shall provide at its expense verification by an independent environmental consulting firm acceptable to CHFA that the Applicant and the Premises are in compliance with all Environmental Laws and Environmental Permits.

4. Applicant hereby covenants and agrees at all times to comply with, and perform all Site Remediation Measures in accordance with, all Environmental Laws and Environmental Permits affecting the Premises or any business or other activity conducted thereon.

5. Applicant hereby covenants and agrees to indemnify, hold harmless and defend the State of Connecticut and CHFA, its successors and assigns (collectively, the "Indemnitees") from and against all times, unconditionally, absolutely and irrevocably, any and all liability, loss, damage, cost, fine, penalty, expense (including, without limitation, reasonable attorneys' and other professionals' fees and expenses), cause of action, suit, claim, demand or judgment of any nature pertaining to any breach of this Agreement, any Hazardous Materials, any Release, any Environmental Condition, any

violation of Environmental Laws and/or any violation of Environmental Permits, whether caused by the Applicant or any other person (the "Indemnified Claims").

6. The obligations hereunder of the Applicant shall in no way, manner or respect be impaired, affected, reduced or released by reason of (a) the failure or delay by any Indemnitee to do or take any of the acts, actions or things described herein; or (b) any act or omission of any Indemnitee in connection with any notice, demand, warning or claim regarding Hazardous Materials on the Premises or the Indemnified Claims.

7. Each representation, warranty, covenant, agreement, undertaking and indemnification set out in this Agreement shall survive the making and repayment of the Loan and shall continue to be the obligation of the Applicant binding upon it.

8. If any provision of this Agreement or the application thereof to any party or circumstance is held invalid or unenforceable, the remainder of this Agreement and the application of such provision or provisions to the other parties and circumstances will not be affected thereby, the provisions hereof being severable in any such instance.

9. The Applicant shall, upon the written request of any of the Indemnitees, execute such further instruments and deliver such further documents as are necessary or appropriate to confirm the indemnification provided herein.

10. This Agreement shall be governed and construed in accordance with the laws of the State of Connecticut and shall be continuing, irrevocable and binding upon the Applicant and its successors and assigns and shall inure to the benefit of the Indemnitees, and their respective successors and assigns. The dissolution of the Applicant shall not affect this Agreement or any of the other obligations of the Applicant hereunder.

11. THE APPLICANT ACKNOWLEDGES THAT THIS AGREEMENT AND THE UNDERLYING TRANSACTIONS GIVING RISE HERETO CONSTITUTE COMMERCIAL BUSINESS TRANSACTIONS WITHIN THE STATE OF CONNECTICUT. IN THE EVENT OF ANY LEGAL ACTION BETWEEN THE APPLICANT AND CHFA HEREUNDER, THE APPLICANT HEREBY EXPRESSLY WAIVES ANY RIGHTS WITH REGARD TO THE NOTICE, PRIOR HEARING AND ANY OTHER RIGHTS IT MAY HAVE UNDER THE CONNECTICUT GENERAL STATUTES, CHAPTER 903A, AS NOW CONSTITUTED OR HEREAFTER AMENDED, OR OTHER STATUTE OR STATUTES, STATE OR FEDERAL, AFFECTING PREJUDGMENT REMEDIES, AND CHFA MAY INVOKE ANY PREJUDGMENT REMEDY AVAILABLE TO IT, INCLUDING, BUT NOT LIMITED TO, GARNISHMENT, ATTACHMENT, FOREIGN ATTACHMENT AND REPLEVIN, WITH RESPECT TO ANY TANGIBLE OR INTANGIBLE PROPERTY (WHETHER REAL OR PERSONAL) OF THE APPLICANT TO ENFORCE THE PROVISIONS OF THIS AGREEMENT, WITHOUT GIVING THE APPLICANT ANY NOTICE OR OPPORTUNITY FOR A HEARING.

ACCORDINGLY, THE APPLICANT HEREBY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY ACTION, DEFENSE, COUNTERCLAIM, CROSSCLAIM AND/OR ANY FORM OF PROCEEDING BROUGHT IN CONNECTION WITH THIS AGREEMENT.

FURTHER, THE APPLICANT HEREBY IRREVOCABLY (i) SUBMITS TO THE JURISDICTION OF ANY CONNECTICUT STATE OR FEDERAL COURT SITTING IN CONNECTICUT IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, (ii) AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH CONNECTICUT STATE OR FEDERAL COURT AND (iii) WAIVES TO THE FULLEST EXTENT IT MAY EFFECTIVELY DO SO, THE DEFENSE OF ANY INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING. THE APPLICANT IRREVOCABLY CONSENTS TO THE SERVICE OF ANY AND ALL PROCESS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES OF SUCH PROCESS IN THE MANNER SPECIFIED IN CHAPTER 601 OF THE CONNECTICUT GENERAL STATUTES, AS AMENDED. THE APPLICANT AGREES THAT FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW.

12. The provisions of this Agreement shall govern and control over any inconsistent provision in any other document relating to the Loan, including, without limitation, any exculpatory provisions contained in any of said documents, provided that under no circumstances shall the provisions of this Agreement be construed as in any way limiting the obligations of the Applicant under any of said documents.

13. The Applicant shall make any payment required to be made under this Agreement promptly and shall make such payment in immediately available funds in the amount thereof.

14. The Applicant has delivered and shall promptly deliver to CHFA a copy of every environmental report or audit heretofore or hereafter performed with respect to any portion of the Premises.

15. The representations, warranties and covenants of the Applicant set forth in this Agreement shall continue in effect and, to the extent permitted by law, shall survive the transfer of the Premises pursuant to foreclosure proceedings (whether judicial or non-judicial), by deed in lieu of foreclosure or otherwise. The Applicant acknowledges and agrees that the covenants and obligations hereunder are separate and distinct from all obligations under any of said other documents. A default by the Applicant in any respect under the terms of this Agreement shall constitute a default under the terms of said other documents.

[remainder of page intentionally left blank / signature page follows]

Dated as of the day and year first written above.

BORROWER:

[_____]

By: _____

Name:

Title:

Duly Authorized

Date: _____

GUARANTOR:

[_____]

Name:

DRAFT

SCHEDULE A

[Premises]

DRAFT

SCHEDULE B

[Exceptions to Section 2]

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