FUND LOAN AGREEMENT

THIS FUND LOAN AGREEMENT (the "Fund Loan Agreement"), dated as of __________2016, is entered into by and between Chase NMTC Samoan Investment Fund, LLC, a Delaware limited liability company (hereinafter, the "Fund Borrower"), and Humboldt Bay Harbor, Recreation and Conservation District, a California public entity ("Fund Lender").

For good and valuable consideration, intending to be legally bound, the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

1.01. Defined Terms. Capitalized terms not otherwise defined herein shall have the meanings set forth in, and the interpretations applicable thereto under the Fund Agreement, as amended and modified from time to time in accordance with its terms. The following terms used herein shall have the following meanings:

"Advance" means the sum of all money disbursed by Fund Lender to Fund Borrower hereunder as provided herein for the purposes described in Section 2.02 of this Fund Loan Agreement.

"Allocation" shall have the meaning given in the Fund Agreement.

"Allocation Agreements" means, collectively, (i) that certain New Markets Tax Credit Program Allocation Agreement, with an allocation effective date of September 17, 2015, as may be further amended, by and among NMCC Allocatee, certain subsidiary allocatees of NMCC Allocatee and the CDFI Fund, and (ii) that certain New Markets Tax Credit Program Allocation Agreement, with an allocation effective date of September 9, 2014 as ay be further amended, by and among CNMC Allocatee, certain subsidiary allocatees of CNMC Allocatee and the CDFI Fund.

"Bankruptcy Code" means any Section or Chapter of the United States Bankruptcy Code.

"Business Day" means any day other than a Saturday, Sunday or a legal holiday on which banks are authorized or required to be closed for the conduct of commercial banking business in Los Angeles, California.

"CCE" means Chase Community Equity, LLC, a Delaware limited liability company, its successors and assigns.

"CDEs" means, collectively, CNMC CDE and NMCC CDE.

"CDE Loan" means, collectively, the CDE Loan A1, CDE Loan B1, CDE Loan A2, and CDE Loan B2.
“CDE Loan Agreement” means that certain Credit Agreement dated as of the date hereof, by and among CDEs and QALICB, as amended, restated or modified from time to time.

“CDE Loan A1” means that certain loan made by NMCC CDE to QALICB pursuant to the CDE Loan Documents, in the principal amount of $5,849,375.

“CDE Loan B1” means that certain loan made by NMCC CDE to QALICB pursuant to the CDE Loan Documents, in the principal amount of $1,080,625.

“CDE Loan A2” means that certain loan made by CNMC CDE to QALICB pursuant to the CDE Loan Documents, in the principal amount of $1,169,875.

“CDE Loan B2” means that certain loan made by CNMC CDE to QALICB pursuant to the CDE Loan Documents, in the principal amount of $580,125.

“CDE Loan Documents” shall mean all instruments and agreements which evidence, secure or are otherwise executed in connection with the CDE Loan, including all amendments, modifications, renewals, extensions, restatements and replacements thereof.

“CDE Operating Agreement” means, collectively, the NMCC CDE Operating Agreement and the CNMC CDE Operating Agreement.

“CDFI Fund” means the Community Development Financial Institutions Fund of the United States Department of Treasury, or any successor agency charged with oversight responsibility for the federal New Markets Tax Credit program.

“CNMC Allocatee” means Chase New Markets Corporation, a Delaware corporation.

“CNMC CDE” means CNMC Sub-CDE 69, LLC, a Delaware limited liability company.

“CNMC CDE Operating Agreement” means that certain Amended and Restated Operating Agreement of the CNMC CDE dated as of the date hereof, and all amendments and modifications thereto.


“Compliance Period” shall have the meaning given in the Fund Agreement.

“Default” means any of the events specified in Section 7.01 hereof, whether or not any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

“Default Rate” means a rate of interest per annum equal to five percent (5%) in excess of the rate of interest otherwise payable under this Fund Loan Agreement.
“Event of Default” has the meaning set forth in Section 7.01 of this Fund Loan Agreement.

“Financial Projections” means those financial projections prepared by Novogratz & Company, LLP and issued as of the date hereof relating to CCE’s investment in the Fund Borrower and other related loans and investments.

“Forbearance Termination Date” has the meaning set forth in Article 9.

“Fund Agreement” means that certain Amended and Restated Operating Agreement of Fund Borrower entered into by CCE, as sole member, dated on or about the date hereof.

“Fund Borrower” has the meaning set forth in the Preamble.

“Fund Lender” has the meaning set forth in the Preamble.

“Fund Loan” has the meaning set forth in Section 2.01 of this Fund Loan Agreement.

“Fund Loan Agreement” has the meaning set forth in the Preamble.

“Fund Loan Documents” means, collectively, each and every agreement, document and instrument now or hereafter executed in connection with this Fund Loan Agreement or evidencing, securing or otherwise ancillary to the Fund Loan as the same may from time to time be modified, amended, restated or replaced, including, without limitation, the following loan documents:

(a) this Fund Loan Agreement;

(b) the Fund Note;

(c) the Fund Pledge Agreement; and

(d) the UCC Financing Statement showing Fund Borrower as debtor and Fund Lender as secured party with respect to the security interests granted under the Fund Pledge Agreement.

“Fund Note” means that certain Promissory Note in the principal amount of Five Million Eight Hundred Forty-Nine Thousand Three Hundred Seventy-Five and No/100 Dollars ($5,849,375) made by Fund Borrower payable to Fund Lender dated of even date herewith.

“Fund Obligations” means the outstanding principal of and interest on the Fund Loan and the Fund Note and all fees and other amounts (other than principal and interest) owing to Fund Lender under the Fund Loan Documents. Interest shall include any interest that accrues after the commencement of an Insolvency Proceeding with respect to Fund Borrower, or that would accrue but for the commencement of such proceeding, whether or not allowed as a claim in such Insolvency Proceeding.
“Fund Pledge Agreement” means that certain Pledge Agreement between Fund Borrower and Fund Lender of even date herewith pursuant to which Fund Borrower has granted a security interest in certain assets to Fund Lender.

“GAAP” means generally accepted accounting principles in the United States of America in effect from time to time (as set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board, or in such other statements by such other entities as may be in general use by significant segments of the accounting profession, which are applicable to the circumstances as of the date of determination).

“Governmental Authority” means any nation or government, any state or other political subdivision thereof, and any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, and any corporation or other entity owned or controlled (through stock or capital ownership or otherwise) by any of the foregoing, whether domestic or foreign.

“Indemnity Agreements” means, collectively, (i) that certain Indemnification Agreement (NMCC CDE), dated as of the date hereof between JPMC, NMCC Allocatee and NMCC CDE, and (ii) that certain Indemnification Agreement (QALICB), dated as of the date hereof among JPMC, QALICB, and Fund Lender.

“Indemnity Payments” has the meaning set forth in Section 7.02(e) of this Fund Loan Agreement.

“Insolvency Proceeding” means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

“Interest Rate” means for each Advance hereunder, a fixed rate per annum equal to 2.7316%.

“Investor Member” means CCE, as the sole member of Fund Borrower, and its successors and assigns.

“JPMC” means JPMorgan Chase Bank, N.A., a national banking association, its successors and assigns.

“Lien Enforcement Action” means (i) any action to foreclose on, take possession of, sell or otherwise realize (judicially or non-judicially) upon the Pledged Collateral, or any rights or privileges attendant thereto (including, without limitation, by set-off), (ii) any action to assert ownership rights with respect to any of the Pledged Collateral, or any rights or privileges attendant thereto (including without limitation the exercise or withholding of consent or voting rights), (iii) any action (judicially or non-judicially) to dissolve or liquidate Fund Borrower, and/or (iv) the commencement of any legal proceedings to facilitate any of the actions described in clauses (i), (ii) or (iii) above.
“Material Adverse Effect” means a material adverse effect on (i) the business, operations, property, condition (financial or otherwise) or prospects of Fund Borrower, (ii) the ability of Fund Borrower to perform its obligations under the Fund Loan Documents, or (iii) the validity or enforceability of the Fund Loan Documents or the rights or remedies of Fund Lender thereunder.

“Maturity Date” means __________, 2046.

“Member(s)” means Investor Member, and any other member of Fund Borrower admitted pursuant to the Fund Agreement.

“New Markets Tax Credits” means the New Markets Tax Credits allowed pursuant to Section 45D of the Code for QEI's in connection with a certified community development entity.

“NMCC Allocatee” means New Markets Community Capital, LLC, a Delaware limited liability company.

“NMCC CDE” means NMCC XVII, LLC, a Delaware limited liability company.

“NMCC CDE Operating Agreement” means that certain Second Amended and Restated Operating Agreement of the NMCC CDE dated as of the date hereof, and all amendments and modifications thereto.

“NMTC Program Requirements” means, collectively, the provisions of Section 45D of the Code, the Treasury Regulations and Guidance, and the Allocation Agreement.

“Notice” means a writing containing the information required to be communicated to a Person and delivered in accordance with Section 8.09 of this Fund Loan Agreement.

“Payment Date” has the meaning set forth in Section 3.02(a) of this Fund Loan Agreement.

“Person” includes a natural person, domestic or foreign limited liability company, corporation, partnership, limited partnership, joint venture, association, business trust, estate, trust, enterprise, and any other legal or commercial entity.

“Pledged Collateral” shall have the meaning given in the Fund Pledge Agreement.

“Put and Call Agreement” means that certain Put and Call Option Agreement dated as of the date hereof between CCE and Fund Lender.

“QALICB” means Humboldt Bay Development Association, Inc. a California nonprofit public benefit corporation.

“QEI” means a “qualified equity investment” as such term is defined in Section 45D(b) of the Code.
“Regulations” means any temporary, proposed or final regulations promulgated by the U.S. Department of the Treasury pursuant to the Code, as amended from time to time.

“Suballocation” shall have the meaning given in the Fund Agreement.

“Treasury Regulations and Guidance” means and includes any Regulations and any guidance, rule, or procedure published by the CDFI Fund, as amended from time to time, including without limitation (i) the Community Development Entity Certification Application for each CDE, (ii) the New Markets Tax Credit Allocation Application pursuant to which the each Allocation was awarded, and (iii) the Allocation Agreement.

1.02. **Accounting Terms.** For purposes of this Fund Loan Agreement, all accounting terms not otherwise defined herein shall have the meanings assigned to such terms in conformity with GAAP.

1.03. **Other Definitional Provisions.**

(a) The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Fund Loan Agreement shall refer to this Fund Loan Agreement as a whole and not to any particular provision of this Fund Loan Agreement, and section, schedule and exhibit references are to this Fund Loan Agreement unless otherwise specified.

(b) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

**ARTICLE 2. THE FUND LOAN**

2.01 **Agreement to Make the Fund Loan.** Subject to the terms and conditions of this Fund Loan Agreement, Fund Lender hereby agrees to make the loan (the “Fund Loan”) to Fund Borrower in an aggregate principal amount of Five Million Eight Hundred Forty-Nine Thousand Three Hundred Seventy-Five and No/100 Dollars ($5,849,375.00). The proceeds of the Fund Loan shall be made pursuant to the provisions of Article 4 below.

2.02 **Purpose.** The proceeds of the Fund Loan shall be used by Fund Borrower (i) make an equity contribution to CNMC CDE in the amount of $1,750,000, and (ii) to return capital to CCE in the amount of $4,099,375, so that the net Capital Contribution (as defined in the Fund Agreement) in the Fund is $2,099,625.

2.03. **Fund Note.** The Fund Loan shall be evidenced by the Fund Note.

2.04. **Prepayment of Fund Loan.** Fund Borrower may prepay the Fund Note, in whole or in part, prior to the Maturity Date without Fund Lender’s consent.

2.05 **Loan Disbursement.** Following the satisfaction of all of the conditions precedent set forth in Article 4 hereof, Fund Lender shall Advance the proceeds of the Fund Loan to Fund Borrower.

**ARTICLE 3. PAYMENTS**
3.01. **Interest.** Provided no Event of Default has occurred under the Fund Loan Documents, from the date of the Advance until the Maturity Date, interest on the Advance shall accrue at the Interest Rate. From the date of any Event of Default hereunder and during the continuance thereof and from and after the Maturity Date, interest on all principal amounts outstanding under the Fund Note shall accrue at the Default Rate. All interest payable hereunder shall be computed on the basis of a thirty (30) calendar day month and a three hundred sixty (360) calendar day year and prorated for any partial quarter. The first quarterly payment of interest shall be calculated based on the period from the date of the Advance through the end of the first quarter after the Advance. Thereafter, each quarterly payment of interest shall be calculated on a quarterly basis. Fund Lender is authorized to rely on the written loan requests, including facsimile, telecopy, electronic mail or telegraphic loan requests, which Fund Lender believes in its good faith judgment to emanate from a properly authorized representative of Fund Borrower, whether or not that is in fact the case.

3.02. **Payments.**

(a) With respect to the Fund Loan, from and after the date of the Advance until the Maturity Date, interest accrued through the last day of each calendar quarter shall be due and payable, partially in advance and partially in arrears in quarterly installments on the tenth day of each March, June, September (each a “Payment Date”), with such payments commencing on March 10, 2016.

(b) Commencing on March 10, 2023 and on each Payment Date thereafter, Fund Borrower shall make principal and interest payments in an amount equal to $85,701.

(c) The Fund Borrower shall make a final payment of all outstanding principal, accrued interest and any and all unpaid fees and other charges owed pursuant to the Fund Loan Documents on the Maturity Date.

3.03. **No Setoff or Counterclaim.** All sums payable by Fund Borrower hereunder shall be paid in full without setoff or counterclaim by reason of any claim Fund Borrower may have against Fund Lender.

3.04. **Application of Payments.** Absent the occurrence of an Event of Default hereunder or under any of the other Fund Loan Documents, any payments received by Fund Lender pursuant to the terms hereof shall be applied first to sums, other than principal and interest, due to Fund Lender pursuant to the Fund Loan Documents, next to the payment of all interest accrued to the date of such payment, and the balance, if any, to the payment of principal. Any payments received by Fund Lender after the occurrence of an Event of Default hereunder or under any of Fund Loan Documents, shall be applied to the amounts specified in this Section in such order as Fund Lender may elect, in its sole discretion. In calculating interest and applying payments as set forth above, interest shall be calculated and collected through the last day of the calendar quarter in which the payment is made (except for the final payment at maturity for which interest shall be calculated through the date payment is actually received by Fund Lender). To the extent that Fund Borrower makes a payment or Fund Lender receives any payment or proceeds of the Pledged Collateral for Fund Borrower’s benefit that is subsequently invalidated, set aside or required to be repaid to any other person or entity, then, to such extent, the Fund Obligations intended to be satisfied shall be revived and continue as if such payment or proceeds
had not been received by Fund Lender and Fund Lender may adjust the balance of the Fund Loan as Fund Lender deems appropriate under the circumstances.

ARTICLE 4. CONDITIONS PRECEDENT

4.01. **Conditions Precedent to this Fund Loan Agreement.** The obligations of Fund Lender under this Fund Loan Agreement are subject to the receipt by Fund Lender of the following documents, in form and substance satisfactory to Fund Lender and its counsel:

(a) executed copies of this Fund Loan Agreement, duly executed and delivered by Fund Borrower;

(b) the Fund Note duly completed, executed and delivered by Fund Borrower and dated as of the date hereof, in the original principal amount of $5,849,375 bearing interest at the Interest Rate;

(c) executed copies of the Fund Pledge Agreement, the Fund Agreement and the CDE Operating Agreements; and

(d) such other agreements, documents, instruments and certificates as Fund Lender shall reasonably request.

4.02 **Conditions Precedent to the Advance.** The obligation of Fund Lender to make the Advance pursuant to this Fund Loan Agreement is subject to the satisfaction or waiver of the conditions precedent for the disbursement of funds under the CDE Loan Documents have been satisfied or waived.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

Fund Borrower represents and warrants to Fund Lender as follows:

5.01. **Formation, Qualification and Ownership.** Fund Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of Delaware.

5.02. **Power and Authority; Limited Liability Company Action.** Fund Borrower has full power and authority to incur the Fund Loan obligations hereunder, to execute and deliver this Fund Loan Agreement and the other Fund Loan Documents to which it is a party and to perform and observe the terms and conditions stated herein and therein. Fund Borrower has taken all necessary member action to authorize the execution, delivery and performance of this Fund Loan Agreement and the other Fund Loan Documents to which it is a party. Fund Borrower was formed for the sole purpose of entering into the transactions contemplated in the Fund Loan Documents and the Fund Agreement and has not engaged in any other activities.

5.03. **Fund Loan Documents Binding.** This Fund Loan Agreement and each other Fund Loan Document to which Fund Borrower is or will be a party have been duly executed and delivered on behalf of Fund Borrower, and this Fund Loan Agreement and each other Fund Loan Document to which it is or will be a party constitutes a legal, valid and binding obligation of Fund Borrower, enforceable against Fund Borrower in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium
or similar laws affecting the enforcement of creditors’ rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.04. **Conflict.** To the best of Fund Borrower’s knowledge, the execution, delivery and performance of this Fund Loan Agreement and the other Fund Loan Documents to which Fund Borrower is a party and the payment of all sums payable hereunder (i) will not violate any statute, order, regulation, or other provision of law applicable to Fund Borrower or any Governmental Authority having the force of law applicable to Fund Borrower; (ii) will not contravene any provision of the Fund Agreement; (iii) will not result in the breach of any provision of, or in the imposition of any lien or encumbrance under, any agreement to which Fund Borrower is a party or by which it or any of its property is bound; and (iv) to Fund Borrower’s knowledge, will not constitute a default or an event which with notice or lapse of time, or both, would constitute a default under any such agreement and which, in the case of clauses (i), (iii), and (iv) are reasonably likely to have a Material Adverse Effect.

5.05. **Absence of Defaults.** To the best of Fund Borrower’s knowledge, Fund Borrower is not in default under any agreement to which it is a party or by which it or any of its property is bound which could be reasonably expected to have a Material Adverse Effect, and no Default or Event of Default has occurred and is continuing hereunder.

5.06. **Litigation.** There are no pending or to the knowledge of Fund Borrower, threatened legal actions, arbitrations or other proceedings against Fund Borrower, nor are there any pending or to the knowledge of Fund Borrower, threatened proceedings as to unpaid or disputed tax liabilities of Fund Borrower which are reasonably likely to have a Material Adverse Effect or that have a legitimate basis in fact.

5.07. **Taxes.** Fund Borrower has filed and will file, subject to filing extensions, all required tax returns, if any, and all taxes, assessments and other such governmental charges due from Fund Borrower, if any, have been fully paid except for taxes which are being contested in good faith.

5.08. **No Other Liens.** Except for the lien and security interests granted by Fund Borrower to Fund Lender pursuant to the Fund Pledge Agreement, Fund Borrower has not granted, caused, or permitted to exist, any other security interest, pledge, assignment or lien with respect to any of its assets.

5.09. **Compliance with Laws.** To the best of Fund Borrower’s knowledge, Fund Borrower has complied in all material respects with all applicable laws, rules, regulations, policies and orders of Governmental Authorities, such compliance to include, without limitation, paying, before the same become delinquent, all taxes, assessments and governmental charges imposed upon it or upon its property (other than those the amount or validity of which is currently being contested in good faith by appropriate proceedings and with respect to which adequate reserves have been provided in accordance with GAAP).

5.10. **No Material Adverse Effect.** To the best of Fund Borrower’s knowledge, since Fund Borrower’s formation, no event has occurred that has or would, with the passage of time, cause a Material Adverse Effect with respect to Fund Borrower.
5.11. **Full Disclosure.** To the best of Fund Borrower’s knowledge, no representations or warranties by Fund Borrower in this Fund Loan Agreement or in any of the other Fund Loan Documents contains or will contain any untrue statement of a material fact or omits or will omit to state, when read in conjunction with all of the information contained in this Fund Loan Agreement and the other Fund Loan Documents, any material fact necessary to make the statements or facts contained herein or therein not misleading.

5.12 **Consents.** No consent, approval, order or authorization of, or registration, declaration or filing with, or Notice to, any Person is required in connection with Fund Borrower’s execution and delivery of the Fund Loan Documents or any of the agreements or instruments herein mentioned relating to the Fund Loan to which Fund Borrower is a party or the carrying out or performance of any of the transactions required or contemplated hereby or thereby or, if required, (a) such consent, approval, order or authorization has been obtained, (b) such registration, declaration or filing has been accomplished, or (c) such Notice has been given prior to the date hereof.

5.13 **Judgments.** There are no judgments outstanding or docketed against Fund Borrower.

5.14. **Brokerage Fees.** Fund Borrower has dealt with no broker or finder with regard to the Fund Loan.

**ARTICLE 6. COVENANTS**

6.01. **Affirmative Covenants of Fund Borrower.** So long as any of the Fund Obligations shall remain unpaid, Fund Borrower covenants and agrees with Fund Lender that it shall:

   (a) **Limited Liability Company Existence.** Preserve and maintain its existence and good standing in the jurisdiction of its formation.

   (b) **Maintenance of Properties.** Maintain, keep, and preserve all of its properties (tangible and intangible) necessary in the proper conduct of its business in reasonably good working order and condition, ordinary wear and tear excepted.

   (c) **Compliance with Laws.** Comply in all material respects with all applicable laws, rules, regulations, policies and orders of Governmental Authorities, such compliance to include, without limitation, paying, before the same become delinquent, all taxes, assessments, and governmental charges imposed upon it or upon its property (other than those the amount or validity of which is currently being contested in good faith by appropriate proceedings).

6.02. **Negative Covenants of Fund Borrower.** So long as any of the Fund Obligations shall remain unpaid, Fund Borrower covenants and agrees with Fund Lender that Fund Borrower shall not without the prior consent of Fund Lender:

   (a) **Liens.** Create or cause to exist any lien, security interest, mortgage or other charge or encumbrance upon or with respect to the Pledged Collateral, whether now owned or hereafter acquired, or assign any right to receive income, in each case to secure any
indebtedness (all of the foregoing are referred to in this section as “liens”), other than (i) the lien of the Fund Pledge Agreement, (ii) liens in respect of judgments against Fund Borrower with respect to which a stay of execution upon appeal shall have been secured, (iii) liens for taxes, assessments or other governmental charges which are being contested in good faith, and (iv) such existing liens that have been disclosed to Fund Lender in writing and approved by Fund Lender.

(b) Fundamental Changes: Other Activities. Merge, reorganize or consolidate with any other Person or purchase or acquire all or substantially all of the property or capital stock of any other Person, or sell, lease, or otherwise dispose of any of its property, business or assets, whether now owned or hereafter acquired except in accordance with the CDE Operating Agreements, and any disposition of assets or property unrelated to the CDEs or the Pledged Collateral; or engage in any activities other than being the investor member of the CDEs and the borrower under this Fund Loan Agreement, and activities reasonably related thereto. Notwithstanding the foregoing, such merger, reorganization, consolidation or other activity described in this subpart (b) shall be permitted so long as Fund Borrower takes such action as is necessary to preserve the Fund Lender’s lien in the Pledged Collateral and so long as the Indebtedness is not impaired thereby. Notwithstanding anything contained in this Fund Loan Agreement to the contrary, Fund Lender hereby agrees to transfers of membership interests in Fund Borrower in accordance with the terms of the Fund Agreement and/or in accordance with the Put and Call Agreement.

(c) Indebtedness. Create, incur, assume or suffer to exist any indebtedness, other than indebtedness of Fund Borrower (i) under this Fund Loan Agreement, (ii) pursuant to any other Fund Loan Documents, or (iii) as permitted under the Fund Agreement.

(d) Governing Agreements. Amend, modify or change, or consent or agree to any material amendment, modification or change to, any of the terms of the Fund Agreement, except to the extent such change, amendment, modification or consent has previously been approved in writing by Fund Lender (which approval shall not be unreasonably withheld, conditioned or delayed) or is necessary (based on the opinion of the Accountants, JPMC’s counsel or Fund Borrower’s counsel) to maintain compliance with NMTC Program Requirements or to otherwise prevent a loss or recapture of New Markets Tax Credits. In the event a modification is made as set forth herein without Fund Lender’s consent, Fund Borrower shall promptly send notice of such change to Fund Lender. Notwithstanding the foregoing or anything to the contrary in this Fund Loan Agreement, Fund Lender hereby agrees to transfers of membership interest in Fund Borrower in accordance with the terms of the Fund Agreement.

ARTICLE 7. EVENTS OF DEFAULT

7.01. Events of Default. Each of the following shall constitute an Event of Default under this Fund Loan Agreement:

(a) Fund Borrower shall fail to pay (i) any principal amount of the Fund Note as and when due and payable (whether at stated maturity or upon mandatory prepayment), or (ii) any interest on the Fund Note or any other amount payable under this Fund Loan Agreement or any of the other Fund Loan Documents, in each case, within ten (10) Business Days after receipt.
of written Notice from Fund Lender that such principal, interest or other amount is due and payable;

(b) Any representation or warranty of Fund Borrower herein or in any other Fund Loan Document proves to have been or will become materially incorrect or materially misleading, or any certificate, statement, report, or opinion furnished hereunder proves to have been materially incorrect or materially misleading as of the date it was delivered to Fund Lender and such defect shall continue unremedied for a period of sixty (60) days after written Notice thereof to Fund Borrower by Fund Lender;

(e) Fund Borrower shall default in the observance or performance of any material term, covenant or agreement contained in any of the Fund Loan Documents to which it is a party, and such default shall continue unremedied for a period of sixty (60) days after written Notice thereof to Fund Borrower by Fund Lender;

(d) Any of the Fund Loan Documents shall for any reason cease to be in full force and effect (other than in accordance with its terms), or be declared null and void or unenforceable in whole or in part (but only to the extent that such partial unenforceability would have a Material Adverse Effect upon (i) Fund Borrower’s ability to pay any amounts due under the Fund Loan or (ii) any collateral securing the Fund Loan), or the validity or enforceability of any of the Fund Loan Documents shall be challenged or be denied by Fund Borrower or any member thereof and such event shall continue unremedied for a period of sixty (60) days after written Notice thereof to Fund Borrower by Fund Lender;

(e) One or more final judgments, decrees, awards or orders for the payment of money in excess of $100,000, in the aggregate, shall be rendered against Fund Borrower and such final judgments, decrees, awards or orders shall continue unsatisfied and in effect for a period of sixty (60) consecutive days without being vacated, discharged, satisfied, or stayed or bonded pending appeal;

(f) Fund Borrower (i) shall generally not, or shall be unable to or shall admit in writing its inability to pay its debts as such debts become due; or (ii) shall make a general assignment for the benefit of creditors, petition or apply to any tribunal for the appointment of a custodian, receiver, trustee or other similar official for it or a substantial part of its assets; or (iii) shall commence any proceeding under any bankruptcy, reorganization, arrangement, readjustment of debt, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; or (iv) shall have any such petition or application filed or any such proceeding commenced against it, in which an order for relief is entered or adjudication or appointment is made and which remains undismissed for a period of sixty (60) days or more; or (v) by any act or omission shall indicate its consent to, approval of, or acquiescence in any such petition, application, or proceeding, or order for relief, or the appointment of a custodian, receiver, trustee or other similar official for all or any substantial part of its properties; or (vi) shall suffer any such custodianship, receivership, or trusteeship to continue undischarged for a period of sixty (60) days or more;

(g) Fund Borrower does any of the following: (i) suspends or discontinues its business; (ii) makes an assignment for the benefit of creditors or a composition with creditors; (iii) generally does not pay its debts as they mature; (iv) admits its inability to pay its debts as
they mature; (v) files a petition in bankruptcy; (vi) becomes insolvent (howsoever such insolvency may be evidenced); (vii) is adjudicated insolvent or bankrupt; (viii) petitions or applies to any tribunal for the appointment of any receiver, custodian, liquidator, or trustee of or for it, any of the Pledged Collateral, or any of its other property or assets; (ix) commences any proceeding relating to it under any bankruptcy, reorganization, arrangement, readjustment of debt, receivership, dissolution, or liquidation law or statute of any jurisdiction, whether now or hereafter in effect; (x) has any such proceeding commenced against it and the same is not dismissed within sixty (60) days after an order, judgment, or decree approving the petition in such proceeding is entered against it; (xi) by any act or failure to act indicates its consent to, approval of, or acquiescence in, any such proceeding or any appointment of any receiver, custodian, liquidator, or trustee of or for it or for any substantial part of its property or assets; (xii) fails to obtain dismissal of any such proceeding within sixty (60) days after any court of competent jurisdiction assumes jurisdiction thereof; (xiii) allows or suffers any receiver, trustee, or other officer or representative of a court, governmental office, or agency, under color of legal authority, to take and hold possession of any of the Pledged Collateral or its other property or assets without relinquishing possession within sixty (60) days; (xiv) conceals, removes, or permits to be concealed or removed any of the Pledged Collateral or its other property or assets with intent to hinder, delay, or defraud its creditors or any of them; (xv) makes or suffers any transfer of any of the Pledged Collateral or its property or assets which may be fraudulent under any bankruptcy, fraudulent conveyance, or similar law; (xvi) makes any transfer of any of the Pledged Collateral or its other property or assets to or for the benefit of a creditor which constitutes a preferential transfer under any bankruptcy or similar law; or (xvii) allows or suffers, while insolvent, any creditor to obtain a lien on any of the Pledged Collateral or its other property or assets through legal proceedings or distraint;

(h) Fund Borrower fails to maintain its valid existence and good standing as a Delaware limited liability company, which failure is not cured within the earlier of (i) thirty (30) days after receipt of written Notice thereof to Fund Borrower by Fund Lender, or (ii) Fund Borrower gains actual knowledge of such failure; or

(i) Fund Borrower creates, incurs, assumes, or suffers to exist any indebtedness or any liens, security agreements, or other encumbrances with respect to any of its assets without the prior written consent of the Fund Lender, except for (i) “Member Loans” in accordance with the Fund Agreement, (ii) existing indebtedness and reasonable trade liabilities, and purchase money and lease purchase financing by Fund Borrower incurred in the ordinary course of business, or (iii) “Member Loans” as defined in the CDE Operating Agreements.

Fund Lender acknowledges and agrees that to the extent any of the events described in subparts (a) through (i) above occur as a result of acts or omissions of (x) the QALICB, including, without limitation, a default by the QALICB under the CDE Loan Documents, or (y) the Fund Borrower or a CDE necessary to maintain compliance with the NMTC Program Requirements or to otherwise prevent a loss or recapture of New Markets Tax Credits, such event may constitute an Event of Default hereunder, provided, however, that Fund Lender may not exercise its remedies hereunder until the Forbearance Termination Date.

7.02. Remedies on Event of Default.
(a) Upon the occurrence of an Event of Default, but subject to the last paragraph of Section 7.01 and Article 9 hereof, Fund Lender shall by Notice to Fund Borrower, declare the aggregate outstanding principal amount of the Fund Note, all interest thereon, and all other amounts payable under this Fund Loan Agreement and the other Fund Loan Documents to be forthwith due and payable, whereupon the aggregate principal amount of the Fund Note, all such interest, and all such other amounts shall become and be forthwith due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by Fund Borrower; provided that, if there shall be an Event of Default under Section 7.01(f) hereof, the aggregate outstanding principal amount of the Fund Note, all interest thereon, and all other amounts payable under this Fund Loan Agreement and the other Fund Loan Documents shall be immediately due and payable, without notice, declaration, presentment, demand, protest or notice of any kind, all of which are hereby expressly waived by Fund Borrower.

(b) If any of the Fund Obligations have been, or are deemed to be, accelerated pursuant to Section 7.02(a) hereof, Fund Lender shall at its option enforce the rights and remedies granted to it under the Fund Loan Documents, including, without limitation, the Fund Pledge Agreement, in accordance with their respective terms and any other rights or remedies accorded to Fund Lender at equity or law, by virtue of statute or otherwise.

(c) In the event of any breach by Fund Borrower hereunder or any other Fund Loan Document, the liability of Fund Borrower under this Fund Loan Agreement or any other Fund Loan Document shall be nonrecourse to Fund Borrower and shall exclude any Capital Contributions (as defined in the Fund Agreement) made by the members of Fund Borrower, and any judgment rendered against Fund Borrower under the Fund Loan Documents shall exclude such Capital Contribution. Notwithstanding the foregoing or any other provision of this Fund Loan Agreement or any other Fund Loan Document, and without regard to the solvency or insolvency of Fund Borrower or the existence of any default or Event of Default with respect to the Fund Loan, (i) Fund Lender shall not be entitled to collect, receive, or make any claim against or with respect to any indemnity payments or distributions made to Fund Borrower (A) on account of any indemnification or reimbursements provisions contained in the CDE Operating Agreements, or (B) pursuant to the Indemnity Agreements (collectively, "Indemnity Payments") to satisfy any indebtedness or other sums due, or that may become due, under or in connection with the Fund Loan or the Fund Loan Documents, and (ii) any and all such Indemnity Payments, whenever made, shall be permitted to be distributed by Fund Borrower to the Investor Member as compensation for the loss or recapture of New Markets Tax Credits for which such Indemnity Payments shall have been made. Fund Lender expressly acknowledges and agrees that it has not bargained for, and does not intend to have, the right to collect or receive any Indemnity Payments, and Fund Lender hereby expressly waives and releases any and all rights to prohibit, set aside, revoke, or seek the return of any such Indemnity Payments made to Fund Borrower and distributed to the Investor Member, whether pursuant to the Fund Loan Documents or any bankruptcy, fraudulent transfer, insolvency, or other federal or state laws providing any such rights. Further, notwithstanding anything to the contrary in this Fund Loan Agreement or any other Fund Loan Document, no Member nor any member, manager, partner, officer, director, employee, or any successors, transferee or assign of any Member, shall have any personal liability hereunder, or under the Fund Loan Documents, and no deficiency or other personal judgment shall be sought or rendered against any Member or its members, managers, partners, officers, directors, employees, or any successors, transferees or assigns thereof, in any action or
proceeding arising out of this Fund Loan Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding.

(d) The limit on the Members’ liability set forth in this Section shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of Fund Borrower’s indebtedness evidenced by this Fund Loan Agreement, or a release, in whole or in part, or an impairment of the lien and security interest of the Pledged Collateral, or to preclude Fund Lender from foreclosing the Pledged Collateral in case of an Event of Default under the Fund Pledge Agreement after the Forbearance Termination Date.

(e) As security for the payment and performance of all obligations of Fund Borrower under the Fund Loan Documents, Fund Borrower hereby grants Fund Lender a security interest in, a lien on, and an express contractual right to set off against all depository account balances, cash, and any other property of Fund Borrower (except the Indemnity Payments) now or hereafter in the possession of Fund Lender and the right to refuse to allow withdrawals from any account. Fund Lender may, at any time upon the occurrence of any Default or Event of Default under this Fund Loan Agreement or any other Fund Loan Document, setoff against any amounts outstanding under the Fund Loan whether or not the Fund Loan or any portion thereof is then due or has been accelerated, all without any advance or contemporaneous notice of demand of any kind to Fund Borrower, such notice and demand being expressly waived.

ARTICLE 8. MISCELLANEOUS

8.01. **Entire Agreement.** This Fund Loan Agreement and the other Fund Loan Documents to which Fund Borrower is a party, constitute and embody the final, entire agreement among the parties hereto and supersede any and all prior commitments, agreements, representations, and understandings, whether written or oral, relating to the subject matter hereof and may not be contradicted or varied by evidence of prior, contemporaneous, or subsequent oral agreements or discussions of the parties hereto. There are no unwritten oral agreements among the parties thereto.

8.02. **Amendments.** This Fund Loan Agreement may be amended only by a writing, signed by the party or parties to be bound or burdened by such amendment.

8.03. **Waiver and Cumulative Rights.** The failure or delay of Fund Lender to require performance by Fund Borrower of any provision of this Fund Loan Agreement or any other Fund Loan Document to which Fund Borrower is a party shall not affect the right of Fund Lender to require performance of such provision, unless such performance has been waived in writing by Fund Lender. No waiver of any Default or Event of Default shall constitute a waiver of any other Default or Event of Default. All rights granted to Fund Lender hereunder or allowed to Fund Lender by law or in equity shall be cumulative and may be exercised in part or in whole from time to time.
8.04. **Successors and Assigns.** Subject to Article 9 hereof, this Fund Loan Agreement shall be binding upon and inure to the benefit of the parties hereto, all future holders of the Fund Loan and their respective successors and assigns.

8.05. **Submission to Jurisdiction.** Each of Fund Borrower and Fund Lender hereby irrevocably consents to the nonexclusive jurisdiction and venue of the Superior Court of the State of California, County of Humboldt or the U.S. District Court for the Northern District of California over any action or proceeding arising out of or relating to this Fund Loan Agreement, any of the other Fund Loan Documents to which Fund Borrower or Fund Lender is a party and otherwise arising out of or relating to the transactions contemplated hereby, and each of Fund Borrower and Fund Lender hereby irrevocably agrees that all claims in respect of such action or proceeding may be heard and determined in such state or federal court. Each of Fund Borrower and Fund Lender waives any objection to any action or proceeding in any state or federal court sitting in Los Angeles on the basis of forum non conveniens. Each of Fund Borrower and Fund Lender hereby waives personal service of any process in connection with any such action or proceeding and agrees that the service thereof may be made by certified or registered mail directed to Fund Borrower and/or Fund Lender, as applicable, at the address set forth herein for providing notice. Each of Fund Borrower and Fund Lender agrees that a 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.

8.06. **Waiver of Jury Trial.**

(a) Each party hereto hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in any legal proceeding directly or indirectly arising out of or relating to this Fund Loan Agreement or the transactions contemplated hereby (whether based on contract, tort or any other theory). Each party hereto (i) certifies that no representative, agent or attorney of any other party has represented, expressly or otherwise, that such other party would not, in the event of litigation, seek to enforce the foregoing waiver and (ii) acknowledges that it and the other parties hereto have been induced to enter into this Fund Loan Agreement by, among other things, the mutual waivers and certifications in this section.

(b) In the event any legal proceeding is filed in a court of the State of California (the “Court”) by or against any party hereto in connection with any controversy, dispute or claim directly or indirectly arising out of or relating to this Fund Loan Agreement or the transactions contemplated hereby (whether based on
CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN PARAGRAPH (ii) BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. VENUE FOR THE REFERENCE PROCEEDING WILL BE IN THE STATE OR FEDERAL COURT IN THE COUNTY OR DISTRICT WHERE VENUE IS OTHERWISE APPROPRIATE UNDER APPLICABLE LAW.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (C) APPOINTMENT OF A RECEIVER AND (D) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS FUND LOAN AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS FUND LOAN AGREEMENT.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).


(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY,
AND THE REFEREE SHALL OVERTAKE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(vi) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

8.07. GOVERNING LAW. THIS FUND LOAN AGREEMENT AND THE FUND NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CHOICE OF LAW RULES WHICH WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

8.08. Usury Limitations. It is the intention of Fund Borrower and Fund Lender to conform strictly to applicable usury laws. Accordingly, notwithstanding anything to the contrary in this Fund Loan Agreement or the Fund Note, amounts constituting interest under applicable law and contracted for, chargeable or receivable hereunder or under the Fund Note shall under no circumstances, together with any other interest, late charges or other amounts which may be interpreted to be interest contracted for, chargeable or receivable hereunder or thereunder, exceed the maximum amount of interest permitted by law, and in the event any amounts were to exceed the maximum amount of interest permitted by law, such excess amounts shall be deemed a mistake and shall either be reduced immediately and automatically to the maximum amount permitted by law or, if required to comply with applicable law, be canceled automatically and, if theretofore paid, at the option of Fund Lender, be refunded to Fund Borrower or credited on the principal amount of the Fund Note then outstanding.

8.09. Notices. All Notices, demands or other communications hereunder shall be in writing and shall be (a) sent by U.S. registered or certified mail, return receipt requested, with postage prepaid (except in the event of a postal disruption, by strike or otherwise, in the United States), (b) sent by personal delivery for same day delivery, or (c) sent by a nationally recognized courier service for next day delivery, addressed to the applicable party at the addresses set forth on Schedule A or at such other addresses as such parties may designate by Notice to the other parties. All Notices, demands and requests shall be effective when actually received; provided however that rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given shall be deemed to be receipt of the Notice, demand or request sent. Neither facsimile nor electronic mail transmission shall constitute Notice for purposes of this Fund Loan Agreement.

Fund Loan Agreement
8.10. **Severability.** If any provisions contained in this Fund Loan Agreement or any document executed in connection herewith shall be invalid, illegal or unenforceable in any respect, under any applicable law, the validity, legality and enforceability of the remaining provisions contained herein shall not, in any way, be affected or impaired, and such illegal, invalid or unenforceable provisions shall, at the reasonable request of the Fund Lender, be replaced by other provisions in accordance with the purpose and meaning of this Fund Loan Agreement. Notwithstanding the foregoing, the provisions of Article 9 of this Fund Loan Agreement shall be deemed integral to this Fund Loan Agreement and shall not be severable from the remainder of this Fund Loan Agreement.

8.11. **Captions.** The table of contents and captions, articles and section headings appearing herein are included solely for convenience of reference and are not intended to affect the interpretation of any provision of this Fund Loan Agreement.

8.12. **Conflicts.** In the case of any inconsistency between or within this Fund Loan Agreement and/or the other Fund Loan Documents, the more restrictive provision shall control over the less restrictive provision, and, if incapable of being so resolved, the provisions of this Fund Loan Agreement shall control over those of any of the other Fund Loan Documents.

8.13. **Counterparts.** This Fund Loan Agreement may be executed in any number of counterparts, all of which, when taken together, shall constitute one and the same instrument, and any party hereto may execute this Fund Loan Agreement by signing any such counterpart. Signature by facsimile or other reproduction sent by electronic mail shall be considered an original signature.

8.14 **Time is of the Essence.** Time is of the essence in the performance of this Fund Loan Agreement and the other Fund Loan Documents by Fund Borrower, and each and every term thereof.

8.15 **Purpose and Effect of Approval.** Fund Lender’s approval of any matter in connection with the Fund Loan is for the sole purpose of protecting Fund Lender’s security and rights. No such approval shall result in a waiver of any default of Fund Borrower. In no event shall Fund Lender’s approval be a representation of any kind with regard to the matter being approved.

8.16 **Language of Agreement.** The language of this Fund Loan Agreement shall be construed as a whole according to its fair meaning and not strictly for or against any party.

8.17 **Survival.** The representations, warranties, acknowledgments, and agreements set forth herein shall survive the date of this Fund Loan Agreement.

8.18 **Further Performance.** Fund Borrower, whenever and as often as it shall be requested by Fund Lender, shall execute, acknowledge, and deliver, or cause to be executed, acknowledged, and delivered to Fund Lender, such further instruments and documents, and do any and all things as may be reasonably requested, in order to carry out the intent and purpose of this Fund Loan Agreement and the other Fund Loan Documents.

**ARTICLE 9. FORBEARANCE**
Notwithstanding anything to the contrary in the Fund Loan Documents, and regardless of the existence or occurrence of any circumstance or event that would otherwise constitute a default or Event of Default of Fund Borrower, Fund Lender agrees to forbear from (a) accelerating the payment in full of all or part of the Fund Obligations; (b) collecting rents; (c) appointing (or seeking the appointment of) a receiver; (d) filing or participating in the filing of any involuntary bankruptcy proceeding of Fund Borrower or joining with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings with respect to Fund Borrower; (e) exercising any voting rights or management and control rights with respect to the Pledged Collateral; and (f) instituting a Lien Enforcement Action or taking any other action to enforce its rights and remedies under the Fund Loan Documents, including, without limitation, the Fund Pledge Agreement, as provided by applicable law from the date hereof until the date which is four (4) months after the end of the Compliance Period (the “Forbearance Termination Date”). On and after the Forbearance Termination Date, subject to the terms of this Fund Loan Agreement, Fund Lender shall be free, to take such actions as are permitted under the Fund Loan Documents and/or as provided by applicable law. All of Fund Borrower’s obligations and liabilities to Fund Lender hereunder (including, without limitation, Fund Borrower’s payment obligations) and any documents, instruments or agreements pursuant to which Fund Borrower may, from time to time, grant to Fund Lender collateral security for Fund Borrower’s obligations to Fund Lender shall survive the Forbearance Termination Date.

Fund Lender agrees that it will not sell, assign, transfer, syndicate, grant participations or otherwise dispose of the Fund Loan without the prior written consent of the Member and JPMC, which consent may be withheld at the sole discretion of the Member and JPMC. Any such sale, assignment, transfer, syndication, participation or otherwise shall be subject to the terms of this Fund Loan Agreement and the documents executed by Fund Borrower and Fund Lender in connection therewith.

[Signatures contained on following page]
IN WITNESS WHEREOF, the parties hereto have caused this Fund Loan Agreement to be executed by their respective duly authorized signatories as of the day and year written above.

FUND BORROWER: CHASE NMTC SAMOA INVESTMENT FUND, LLC, a Delaware limited liability company

By: Chase Community Equity, LLC, a Delaware limited liability company, its sole member

By: ____________________________
    Timothy C. Karp
    Vice President

FUND LENDER: HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, a California public entity

By: ____________________________
    Patrick Higgins
    President, Humboldt Bay Harbor, Recreation and Conservation Commission
SCHEDULE A

Notice Addresses of Parties

To Fund Borrower: Chase NMTC Samoa Investment Fund, LLC
c/o Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
10 S. Dearborn Street, Floor 19
Mail Code: IL1-0953
Chicago, Illinois 60603-5506
Attention: NMTC Asset Manager
Email: nmtc.reporting@chase.com
Facsimile: (312) 325-5050

With a copy to: Chase Community Equity, LLC
c/o JPMorgan Chase Bank, N.A.
300 S. Grand Avenue, Floor 4
Los Angeles, CA 90071
Attention: Timothy C. Karp
Email: timonty.c.karp@chase.com
Facsimile: (213) 621-8401

And to: Applegate & Thorne-Thomsen, P.C.
626 West Jackson Boulevard, Suite 400
Chicago, Illinois 60661
Attention: Debra A. Kleban
Email: dkleban@att-law.com
Facsimile: (312) 491-4411

To Fund Lender: Humboldt Bay Harbor, Recreation and Conservation District
601 Startare Drive
Eureka, CA 95501
Attention: Jack Crider
Facsimile: 707-443-0800
E-mail: Jcrider@humboldtbay.org

With a copy to: Mitchell, Brisso, Delaney & Vrieze LLP
814 Seventh Street
Eureka, CA 95501
Attention: Paul Brisso
Facsimile: (707) 444-9586
E-mail: pbrisso@mitchelllawfirm.com
PLEDGE AGREEMENT

This PLEDGE AGREEMENT (this "Fund Pledge Agreement"), dated as of __________, 2016, is made and entered into between Chase NMTC Samoa Investment Fund, LLC, a Delaware limited liability company ("Fund Borrower"), and Humboldt Bay Harbor, Recreation and Conservation District, a California public entity ("Fund Lender").

WITNESSETH:

WHEREAS, Fund Borrower has executed and delivered to Fund Lender that certain Promissory Note of even date herewith in the original principal amount of Five Million Eight Hundred Forty-Nine Thousand Three Hundred Seventy-Five and No/100 Dollars ($5,849,375) (as amended, restated, supplemented or otherwise modified from time to time, the "Fund Note"), which Fund Note evidences the loan being made by Fund Lender to Fund Borrower (the "Fund Loan");

WHEREAS, in connection with the Fund Loan, Fund Borrower and Fund Lender have entered into that certain Fund Loan Agreement of even date herewith (as amended, supplemented or otherwise modified from time to time, the "Fund Loan Agreement");

WHEREAS, Fund Borrower is the record and beneficial owner of a 99.99% membership interest in each of (i) NMCC XVII, LLC, a Delaware limited liability company, and (ii) CNMC Sub-CDE 69, LLC, Delaware limited liability company (collectively, the "Pledged Interests");

WHEREAS, in connection with the making of the Fund Loan and as security for the payment and performance of Fund Borrower's obligations in connection with the Fund Loan (the "Obligations"), Fund Lender is requiring that Fund Borrower execute and deliver this Fund Pledge Agreement and grant the security interest contemplated hereby.

NOW, THEREFORE, in consideration of the promises and the covenants hereinafter contained, and to induce Fund Lender to make the Fund Loan, it is agreed as follows:

1. Definitions.
   (a) "CDEs" means, collectively, NMCC CDE and CNMC CDE.
   (b) "CDE Operating Agreements" means, collectively, the Second Amended and Restated Operating Agreement of the NMCC CDE, and the Amended and Restated Operating Agreement, each as amended from time to time.
   (c) "CNMC CDE" means CNMC Sub-CDE 69, LLC, a Delaware limited liability company.
   (d) "NMCC CDE" means NMCC XVII, LLC, a Delaware limited liability company.
   (e) "Securities Act" means the Securities Act of 1933, as amended.

Fund Loan Pledge Agreement
Capitalized terms not otherwise defined herein shall have the meanings set forth in, and the interpretations applicable thereto under, the Fund Loan Agreement or that certain Operating Agreement of Fund Borrower of even date herewith (as amended, restated, supplemented or otherwise modified from time to time, the "Fund Agreement"). The meanings given to terms herein, in the Fund Loan Agreement and the Fund Agreement shall be equally applicable to both the singular and plural forms of such terms. The words "hereof," "herein" and "hereunder" and words of similar import when used in this Fund Pledge Agreement shall refer to this Fund Pledge Agreement as a whole and not to any particular provision of this Fund Pledge Agreement, and section, schedule and exhibit references are to this Fund Pledge Agreement unless otherwise specified.

2. **Pledge.** Subject to Article 9 of the Fund Loan Agreement, Fund Borrower hereby pledges to Fund Lender and grants to Fund Lender, a security interest in all of the following now owned or hereafter acquired (collectively, the "Pledged Collateral"):

   (a) the Pledged Interests and the certificates and other instruments or agreements, if any, representing or evidencing the Pledged Interests, and all dividends, distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Interests;

   (b) all rights and privileges of Fund Borrower with respect to the interests and assets referred to in clause (a) above; and

   (c) all proceeds of any of the foregoing.

Notwithstanding the foregoing, the Pledged Collateral shall not include any new markets tax credits or any Indemnity Payments (as defined in the Fund Loan Agreement).

3. **Security for the Obligations.** This Fund Pledge Agreement secures, and the Pledged Collateral is security for, the prompt payment and performance of the Obligations. Except as provided in Section 7 hereof, and subject to Article 9 of the Fund Loan Agreement, by executing this Fund Pledge Agreement, (i) Fund Borrower has divested itself of all control over the Pledged Collateral, and Fund Lender is entitled to and does possess sole dominion and control over the Pledged Collateral and is entitled to receive the benefits accruing with respect thereto, in accordance with the provisions of this Fund Pledge Agreement and (ii) Fund Borrower surrenders all authority or right to withdraw, collect, receive the benefits of, or otherwise assign or encumber the Pledged Collateral. Subject to Article 9 of the Fund Loan Agreement, the assignment evidenced by this Fund Pledge Agreement is a continuing one and is irrevocable so long as any of the Obligations are outstanding or Fund Borrower shall have any obligations under the Fund Note and shall terminate only upon payment or other satisfaction in full of all Obligations or Fund Lender’s acknowledgment in writing that this Fund Pledge Agreement has been terminated.

4. **Delivery of Pledged Collateral.** Subject to Article 9 of the Fund Loan Agreement, Fund Lender shall have the right, at any time after the occurrence and during the continuance of an Event of Default, in its discretion and without notice to Fund Borrower, to transfer to or to register in the name of Fund Lender, any or all of the Pledged Collateral.
5. **Representations and Warranties.** Fund Borrower represents and warrants to Fund Lender that as of the date hereof:

(a) Fund Borrower is duly organized or formed, validly existing and in good standing under the laws of the State of Delaware, has the legal power and authority to own its properties and to carry on its business as now being and hereafter proposed to be conducted.

(b) Fund Borrower is the sole holder of record and the sole beneficial owner of the Pledged Collateral, free and clear of any lien, charge or encumbrance thereon or affecting the title thereto, except for the security interests created by this Fund Pledge Agreement.

(c) Fund Borrower has the right and requisite authority to pledge the Pledged Collateral to Fund Lender, as provided herein.

(d) This Fund Pledge Agreement has been duly authorized, executed and delivered by Fund Borrower and constitutes the legal, valid and binding obligation of Fund Borrower enforceable in accordance with its terms except as enforceability may be limited by the applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or law).

The representations and warranties set forth in this Section 5 shall survive the execution and delivery of this Fund Pledge Agreement.

6. **Covenants.** Fund Borrower covenants and agrees that until the payment in full of the Obligations:

(a) Except as expressly permitted under the CDE Operating Agreements, Fund Borrower will not sell, assign, transfer, pledge, or otherwise encumber any of its rights in or to any Pledged Collateral or any dividends or other distributions or payments with respect thereto or grant a lien, charge, encumbrance or security interest on any thereof without the consent of Fund Lender.

(b) Fund Borrower will, at its expense, promptly execute, acknowledge and deliver all such instruments and take all such action as Fund Lender from time to time may reasonably request in order to ensure to Fund Lender the benefits of the liens and security interests in and to the Pledged Collateral intended to be created by this Fund Pledge Agreement, including the delivery of all certificates and other documentation evidencing any of the Pledged Collateral and the filing of any necessary Uniform Commercial Code financing statements deemed reasonably necessary by Fund Lender, which may be filed by Fund Lender without the signature of Fund Borrower.

(c) Fund Borrower will defend the title to the Pledged Collateral and the liens of Fund Lender, for the benefit of Fund Lender against the claim of any Person and will maintain and preserve such liens until the payment in full of the Obligations.
(d) Subject to Article 9 of the Fund Loan Agreement, Fund Borrower hereby consents to Fund Lender's or its designee's right to become and be admitted as a member of each of the CDEs and to receive distributions and allocations from each of the CDEs upon the exercise of Fund Lender's rights hereunder without further action, approval or consent.

7. **Fund Borrower’s Rights.**

(a) Until the Forbearance Termination Date and at all times thereafter, so long as no Event of Default shall have occurred and be continuing, and until notice shall be given to Fund Borrower, Fund Borrower shall have the right, from time to time, to vote and give consents with respect to the Pledged Collateral or any part thereof for all purposes not inconsistent with the provisions of this Fund Pledge Agreement, the Fund Loan Agreement, the Fund Note and any other agreement;

(b) After the Forbearance Termination Date and upon the occurrence and continuance of an Event of Default, Fund Lender shall have the right, from time to time, to vote and give consents with respect to the Pledged Collateral; and

(c) Fund Borrower may receive cash or property distributions attributable to the Pledged Collateral and make distributions that are permitted under the Fund Agreement to its members of any amounts not needed to make payments on the Fund Note which are then due and payable.

8. **Defaults and Remedies.** Subject to Article 9 of the Fund Loan Agreement, upon the occurrence of an Event of Default under the Fund Loan Agreement, and during the continuation of such Event of Default, then or at any time after such declaration, Fund Lender is hereby authorized and empowered to do any and all of the following in a commercially reasonable manner: transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing the Pledged Interests for certificates or instruments of smaller or larger denominations, to collect and receive all cash dividends and other distributions made thereon, to sell in one or more sales after ten (10) days’ written notice is sent to Fund Borrower of the time and place of any public sale or of the time after which a private sale is to take place (which notice Fund Borrower agrees is commercially reasonable), but without any previous notice or advertisement, the whole or any part of the Pledged Collateral and to otherwise act with respect to the Pledged Collateral as though Fund Lender were the outright owner thereof, provided, however, Fund Lender shall not have any duty to exercise any such right of sale or to preserve the same and shall not be liable for any failure to do so or for any delay in doing so. Any sale shall be made at a public or private sale at Fund Lender’s place of business, or at any public building to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as Fund Lender may deem fair and reasonable, and Fund Lender may be the purchaser of the whole or any part of the Pledged Collateral so sold and hold the same thereafter in its own right free from any claim of Fund Borrower or any right of redemption. Each sale shall be made to the highest bidder, but Fund Lender reserves the right to reject any and all bids at such sale which, in its discretion, it shall deem inadequate. Demands of performance, notices of sale, advertisements and the presence of
property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of Fund Lender.

(a) If, at the original time or times appointed for the sale of the whole or any part of the Pledged Collateral, the highest bid, if there be but one sale, shall be inadequate to discharge in full the Obligations or if the Pledged Collateral be offered for sale in lots, if at any of such sales, the highest bid for the lot offered for sale would indicate to Fund Lender, in its discretion, the unlikelihood of the proceeds of the sales of the whole of the Pledged Collateral being sufficient to discharge all the Obligations, Fund Lender may, on one or more occasions and in its discretion, postpone any of said sales by public announcement at the time of sale or the time of previous postponement of sale, and no other notice of such postponement or postponements of sale need be given, any other notice being hereby waived; provided, however, that any sale or sales made after such postponement shall be after ten (10) days’ notice to Fund Borrower.

(b) In the event of any sales hereunder, Fund Lender shall, after deducting all reasonable costs or expenses of every kind (including reasonable attorneys’ fees and disbursements) for care, safekeeping, collection, sale, delivery or otherwise, apply the residue of the proceeds of the sales to the payment or reduction, either in whole or in part, for the benefit of Fund Lender, of the Obligations.

(c) If, at any time when Fund Lender shall determine to exercise its right to sell the whole or any part of the Pledged Collateral hereunder, such Pledged Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act, Fund Lender may, in its discretion (subject only to applicable requirements of law), sell such Pledged Collateral or part thereof by private sale in such manner and under such circumstances as is commercially reasonable and shall not be required to effect such registration or to cause the same to be effected; provided, however, that Fund Lender agrees and causes any purchaser of Pledged Collateral to agree that Fund Borrower shall not be (a) liable to any purchaser of Pledged Collateral for any action taken or omitted to be taken by Fund Lender in connection with the sale of Pledged Collateral, or (b) responsible in any manner to any purchaser of Pledged Collateral for any statement, representation or warranty made by Fund Lender in connection with the sale of Pledged Collateral. Without limiting the generality of the foregoing, in any such event Fund Lender may either, in accordance with applicable securities laws, (i) proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Pledged Collateral or part thereof could be or shall have been filed under the Securities Act (or similar statute), (ii) approach and negotiate with a single possible purchaser to effect such sale, or (iii) restrict such sale to a purchaser who will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such Pledged Collateral or part thereof. In addition to a private sale as provided above in this Section 8, if any of the Pledged Collateral shall not be freely distributable to the public without registration under the Securities Act (or similar statute) at the time of any proposed sale pursuant to this Section 8, then Fund Lender shall not be required to effect such registration or cause the same to be effected but, subject to applicable requirements of law, may proceed with such
sale provided that Fund Lender requires any such sale hereunder (including a sale at auction) be conducted subject to restrictions (i) as to the financial sophistication and ability of any Person permitted to bid or purchase at any such sale, (ii) as to the content of legends to be placed upon any certificates representing the Pledged Collateral sold in such sale, including restrictions on future transfer thereof, (iii) as to the representations required to be made by each Person bidding or purchasing at such sale relating to that Person’s access to financial information about the CDEs and such Person’s intentions as to the holding of the Pledged Collateral so sold for investment, for its own account, and not with a view to the distribution thereof, and (iv) as to such other matters necessary or appropriate in order that such sale (notwithstanding any failure so to register) may be effected in compliance with the Uniform Commercial Code and other laws affecting the enforcement of creditors’ rights and the Securities Act and all applicable state securities laws.

(d) Fund Borrower recognizes that Fund Lender may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof. Fund Borrower also acknowledges that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale. Fund Borrower agrees that such sale shall not be deemed to have been made in a commercially unreasonable manner because it was conducted as a private sale. Fund Lender shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the registrant to register such securities for public sale under the Securities Act, or under applicable state securities laws, even if Fund Borrower and the CDEs would agree to do so.

(e) Fund Borrower agrees, to the extent not prohibited by applicable law, that, subject to Article 9 of the Fund Loan Agreement, following the occurrence and during the continuance of an Event of Default, it will not at any time plead, claim or take the benefit of any appraisal, valuation, stay, extension, moratorium or redemption law now or hereafter in force in order to prevent or delay the enforcement of this Fund Pledge Agreement, or the absolute sale of the whole or any part of the Pledged Collateral or the possession thereof by any purchaser at any sale hereunder, and Fund Borrower waives the benefit of all such laws to the extent not prohibited by applicable law. No failure or delay on the part of Fund Lender to exercise any such right, power or remedy and no notice or demand which may be given to or made upon Fund Lender with respect to any such remedies shall operate as a waiver thereof, or limit or impair Fund Lender’s right to take any action or to exercise any power or remedy hereunder, without notice or demand, or prejudice its rights as against Fund Borrower.

(f) Fund Borrower further agrees that a breach of any of the covenants contained in this Section 8 will cause irreparable injury to Fund Lender, that Fund Lender has no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 8 shall be specifically enforceable against Fund Borrower, and Fund Borrower hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that any of the Obligations are not then due and payable in accordance with the agreements and instruments governing and evidencing such obligations.
Subject to the restrictions contained in the Fund Loan Agreement, the rights and remedies of Fund Lender under this Fund Pledge Agreement shall be cumulative and not exclusive of any other rights or remedies available to Fund Lender at law or equity. In exercising such rights and remedies, Fund Lender may be selective, and no failure or delay by Fund Lender in exercising any right shall operate as a waiver of it, nor shall any single or partial exercise of any power or right preclude its other or further exercise or the exercise of any other power or right.

9. **Power of Attorney: Proxy.** Subject to Article 9 of the Fund Loan Agreement, upon and after an Event of Default and during its continuance, Fund Borrower irrevocably designates, makes, constitutes and appoints Fund Lender as its true and lawful attorney (and agent-in-fact) and Fund Lender may, without notice to Fund Borrower, and at such time or times thereafter as Fund Lender, in its discretion, determines, in the name of Fund Borrower or Fund Lender, request that the CDEs transfer any or all of the Pledged Collateral on the books of the CDEs, with full power of substitution in the premises; endorse the name of Fund Borrower upon any checks, notes, acceptance, money orders, certificates, drafts or other forms of payment of security that come into Fund Lender’s possession; and do all acts and things necessary, in Fund Lender’s discretion, to fulfill the obligations of Fund Borrower under this Fund Pledge Agreement. The appointment set forth herein is deemed to be coupled with an interest and therefore irrevocable.

10. **Waiver.** Subject to Article 9 of the Fund Loan Agreement, no delay on Fund Lender’s part in exercising any power of sale, lien, option or other right hereunder, and no notice or demand which may be given to or made upon Fund Borrower by Fund Lender with respect to any power of sale, lien, option or other right hereunder, shall constitute a waiver thereof, or limit or impair Fund Lender’s right to take any action or to exercise any power of sale, lien, option, or any other right hereunder, without notice or demand, or prejudice Fund Lender’s rights as against Fund Borrower in any respect.

11. **Termination.** This Fund Pledge Agreement shall terminate and be of no further force or effect at such time as the Obligations shall be paid and performed in full. Upon such payment and performance in full of the Obligations, Fund Lender shall deliver to Fund Borrower, the Pledged Collateral at the time subject to this Fund Pledge Agreement and then in Fund Lender’s possession or control and all instruments of assignment executed in connection therewith, free and clear of the liens hereof and, except as otherwise provided herein, all of Fund Borrower’s obligations hereunder shall at such time terminate.

12. **Forbearance.** Notwithstanding any provision in this Fund Pledge Agreement to the contrary, the rights and remedies of Fund Lender are subject in all respect to the provisions of Article 9 of the Fund Loan Agreement, and nothing in this Fund Pledge Agreement shall be deemed to authorize or empower Fund Lender to take any action or exercise any right or remedy that is inconsistent with such provisions.

13. **Lien Absolute.** All rights of Fund Lender hereunder, and all obligations of Fund Borrower hereunder, shall be absolute and unconditional irrespective of:

   (a) any lack of validity or enforceability of the Fund Note, or any other agreement or instrument governing or evidencing any Obligations or any of Fund Borrower’s obligations under the Fund Note;
(b) any change in the time, manner or place of payment of, or in any other term of, all or any part of the Obligations or any of Fund Borrower’s obligations under the Fund Note, or any other amendment or waiver of or any consent to any departure from the Fund Note or any other agreement or instrument governing or evidencing any Obligations or any of Fund Borrower’s obligations under the Fund Note;

(c) any exchange, release or non-perfection of any other collateral, or any release or amendment or waiver of or consent to departure from any guaranty, for all or any of the Obligations or any of Fund Borrower’s obligations under the Fund Note; or

(d) any other circumstance which might otherwise constitute a defense available to, or a discharge of, the Fund Borrower.

14. Release. Except as provided for in the Fund Note, Fund Borrower hereby waives notice of acceptance of this Fund Pledge Agreement, and also presentment, demand, protest and notice of dishonor of any and all of the Obligations or any of Fund Borrower’s obligations under the Fund Note, and promptness in commencing suit against any party hereto or liable hereon, and in giving any notice to or of making any claim or demand hereunder upon Fund Borrower. No act or omission of any kind on Fund Lender’s part shall in any event affect or impair this Fund Pledge Agreement.

15. Miscellaneous. This Fund Pledge Agreement shall be binding upon Fund Borrower and its successors and assigns, and shall inure to the benefit of Fund Lender, and be enforceable by Fund Lender and its successors and assigns. Notwithstanding the foregoing, Fund Lender agrees that it will not sell, assign, transfer, syndicate, grant participations or otherwise dispose of the Fund Loan without the prior written consent of the member of Fund Borrower and JPMorgan Chase Bank, N.A. (“JPMC”), which consent may be withheld at the sole discretion of the member of Fund Borrower and/or JPMC, provided, however, consent shall not be required in the event Fund Lender shall cease to exist as a public entity and its assets or interests are assigned or otherwise transferred to a successor agency. Any such sale, assignment, transfer, syndication, participation or otherwise shall be subject to the terms of this Fund Pledge Agreement and the documents executed by Fund Borrower and Fund Lender in connection therewith, including, without limitation, Article 9 of the Fund Loan Agreement. None of the terms or provisions of this Fund Pledge Agreement may be waived, altered, modified or amended except in writing duly signed for and on behalf of Fund Lender and Fund Borrower. Time is of the essence in the performance of this Fund Pledge Agreement and each and every term thereof.

16. Severability. If for any reason any provision or provisions hereof are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or effect those portions of this Fund Pledge Agreement which are valid. Notwithstanding the foregoing, the provisions of Section 12 of this Fund Pledge Agreement shall be deemed integral to this Fund Pledge Agreement and shall not be severable from the remainder of this Fund Pledge Agreement.

17. Notices. All notices and other communications provided to any party hereto under this Fund Pledge Agreement shall be given in accordance with and at addresses set forth in the Fund Loan Agreement.
18. **Section Titles.** The Section titles contained in this Fund Pledge Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

19. **Counterparts.** This Fund Pledge Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement. Signature by facsimile or other reproduction sent by electronic mail shall be considered an original signature.

20. **SUBMISSION TO JURISDICTION.** EACH OF FUND BORROWER AND FUND LENDER HEREBY IRREVOCABLY CONSENTS TO THE NONEXCLUSIVE JURISDICTION AND VENUE OF THE SUPERIOR COURT OF CALIFORNIA, COUNTY OF HUMBOLDT OR THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS FUND PLEDGE AGREEMENT, THE FUND NOTE, OR ANY OTHER FUND LOAN DOCUMENT TO WHICH FUND BORROWER OR FUND LENDER IS A PARTY AND OTHERWISE ARISING OUT OF OR RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY, AND EACH OF FUND BORROWER AND FUND LENDER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. EACH OF FUND BORROWER AND FUND LENDER WAIVES ANY OBJECTION TO ANY ACTION OR PROCEEDING IN ANY STATE OR FEDERAL COURT SITTING IN LOS ANGELES, CALIFORNIA ON THE BASIS OF FORUM NON CONVENIENS. EACH OF FUND BORROWER AND FUND LENDER HEREBY WAIVES PERSONAL SERVICE OF ANY PROCESS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING AND AGREES THAT THE SERVICE THEREOF MAY BE MADE BY CERTIFIED OR REGISTERED MAIL DIRECTED TO FUND BORROWER AND/OR FUND LENDER, AS APPLICABLE, AT THE ADDRESS SET FORTH IN THE FUND LOAN AGREEMENT FOR PROVIDING NOTICE. EACH OF FUND BORROWER AND FUND LENDER AGREES THAT A 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.

21. **JURY TRIAL WAIVER AND JUDICIAL REFERENCE.**

(a) **EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS FUND PLEDGE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN
INDUCED TO ENTER INTO THIS FUND PLEDGE AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS FUND PLEDGE AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN PARAGRAPH (ii) BELOW, ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. VENUE FOR THE REFERENCE PROCEEDING WILL BE IN THE STATE OR FEDERAL COURT IN THE COUNTY OR DISTRICT WHERE VENUE IS OTHERWISE APPROPRIATE UNDER APPLICABLE LAW.

(ii) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (A) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (B) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (C) APPOINTMENT OF A RECEIVER AND (D) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN CLAUSES (A) - (D) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

(iii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iv) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN ANY PARTY SO REQUESTS, A COURT REPORTER
WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.

(v) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(vi) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.]

22. GOVERNING LAW. THIS FUND PLEDGE AGREEMENT AND THE FUND NOTE SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF CALIFORNIA WITHOUT REGARD TO ANY CHOICE OF LAW RULES WHICH WOULD REQUIRE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

[Signatures contained on following page]
IN WITNESS WHEREOF, this Fund Pledge Agreement has been duly executed as an instrument under seal as of the date first written above.

FUND BORROWER: CHASE NMTC SAMOA INVESTMENT FUND, LLC,
a Delaware limited liability company

By: Chase Community Equity, LLC,
a Delaware limited liability company,
its sole member

By: ______________________________________
Timothy C. Karp
Vice President

FUND LENDER: HUMBOLDT BAY HARBOR, RECREATION
AND CONSERVATION DISTRICT,
a California public entity

By: __________________________
Patrick Higgins
President, Humboldt Bay Harbor,
Recreation and Conservation Commission
CREDIT AGREEMENT

by and among

Humboldt Bay Development Association, Inc., a California nonprofit public benefit corporation, as Borrower,

and

CNMC SUB-CDE 69, LLC, a Delaware limited liability company,

and

New Markets Community Capital XVII, LLC, a Delaware limited liability company,

as Lenders

Dated as of February [__], 2016
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• Exhibit A -- New Markets Tax Credit Program Addendum to Credit Agreement
• Exhibit B -- Project Budget
• Exhibit C -- QALICB Questionnaire
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• Exhibit E -- Community Impact Survey
CREDIT AGREEMENT

THIS CREDIT AGREEMENT (together with all addenda, exhibits and schedules attached hereto, as originally executed and as hereafter amended or restated from time to time in writing, this "Agreement"), dated as of February [___], 2016 (the "Effective Date"), is made by and among HUMBOLDT BAY DEVELOPMENT ASSOCIATION, INC., a California nonprofit public benefit corporation ("Borrower"), NEW MARKETS COMMUNITY CAPITAL XVII, LLC, a Delaware limited liability company ("NMCC CDE"), and CNMC SUB-CDE 69, LLC, a Delaware limited liability company ("CNMC CDE") (each of NMCC CDE and CNMC CDE, a "Lender", and collectively, "Lenders").

RECITALS

The following recitals are a material part of this Agreement:

WHEREAS, Borrower is the owner of a leasehold interest in the Land (as hereinafter defined) located at as more particularly described in the Collateral Documents (as hereinafter defined); and

WHEREAS, Borrower intends to renovate, rehabilitate and develop the Improvements (as hereinafter defined) on the Land, inclusive of a [206,290 square foot renovation of Samoa Pulp Mill] facility, as more particularly described in the Borrower's Plans and Specifications (as hereinafter defined); and

WHEREAS, Borrower's acquisition, renovation, development, leasing and/or operation of the Project (as hereinafter defined) is expected to constitute a "qualified active low-income community business" (as that term is defined in Section 45D of the Code (as hereinafter defined)); and

WHEREAS, Chase NMTC Samoa Investment Fund, LLC, a Delaware limited liability company ("Fund") has made (i) a "qualified equity investment" (a "QEI") within the meaning of Section 45D(c) of the Code in each of the Lenders, as follows: (i) a QEI in the NMCC CDE in the amount of $7,000,000.00 on December 30, 2015, and (ii) a QEI in the CNMC CDE in the amount of $1,750,000.00 as of the date hereof; and

WHEREAS, the proceeds of the QEIs made by Investment Fund in the Lenders will be used by each Lender respectively (i) to pay certain agreed-upon fees and (ii) to fund NMCC CDE Loan A1, NMCC CDE Loan B1, CNMC CDE Loan A2 and CNMC CDE Loan B2 (each as hereinafter defined), all pursuant to this Agreement; and

WHEREAS, each of the CDE Loans (as hereinafter defined) is expected to constitute a "qualified low-income community investment" within the meaning of Section 45D(d) of the Code (each a "QLICI," and collectively, "QLICIs"), and as a result of which Fund's investment in each Lender is expected to generate "new markets tax credits" pursuant to Section 45D of the Code; and
WHEREAS, Borrower has applied to the Lenders for the purpose of financing the cost of acquiring, developing, renovating, operating and/or master leasing the Project; and

WHEREAS, to evidence (a) NMCC CDE Loan A1, Borrower has executed and delivered to NMCC CDE the NMCC CDE Loan A1 Note, (b) NMCC CDE Loan B1, Borrower has executed and delivered to NMCC CDE the NMCC CDE Loan B1 Note, (c) CNMC CDE Loan A2, Borrower has executed and delivered to CNMC CDE the CNMC CDE Loan A2 Note, and (d) CNMC CDE Loan B2, Borrower has executed and delivered to CNMC CDE the CNMC CDE Loan B2 Note (each as hereinafter defined); and

WHEREAS, the Notes (as hereinafter defined) are secured by, among other things, that certain Mortgage (as defined below); and

WHEREAS, the Lenders have agreed to make the Loans to Borrower upon and subject to all of the terms, conditions, covenants and agreements of this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements hereinafter contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1
GENERAL TERMS

Section 1.1 Terms Defined Above. As used in this Agreement, the terms "Agreement", "Effective Date", "Borrower", and "Lenders" have the meanings indicated above.

Section 1.2 Certain Definitions. As used in this Agreement, the following terms will have the meanings indicated, unless the context otherwise requires:

(a) "Accountants" means Novogradac & Company LLP or such other firm of independent certified public accountants as may be engaged by Borrower with the prior written consent of Lenders, which consent may be granted or withheld in Lenders' reasonable discretion.

(b) "Addendum" means the New Markets Tax Credit Program Addendum to Credit Agreement attached as Exhibit A.

(c) "Affiliate" means, when used with reference to a specified Person: (i) any Person that, directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with the specified Person, including by means of a non-member manager; (ii) any Person that is an officer of, manager of, member of, partner in, or trustee of, or serves in a similar capacity with respect to the specified Person or of which the specified Person is an officer, manager, member, partner, or trustee, or with respect to which the specified Person serves in a similar capacity; (iii) any Person that, directly or indirectly, is the beneficial owner of, or controls, 10% or more of any class of equity securities of, or otherwise has a substantial beneficial interest (10% or more) in, the specified Person, or of which the specified Person is directly or indirectly the owner of 10% or more of any class of equity securities, or in which the specified Person has a substantial beneficial interest (10% or more); and (iv) any relative or spouse of the specified Person. As used in this definition, the term "control" (including the terms 203338547.4 -2-
"controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

(d) "Allocatees" mean collectively the NMCC Allocatee and CNMC Allocatee.

(e) "Anti-Corruption Laws" means all laws, rules, and regulations of any jurisdiction applicable to Borrower and its Affiliates from time to time concerning or relating to bribery or corruption.

(f) "Approved Remedial Action Plan" has the meaning set forth in Section 9.2(c).

(g) "Article 9 Expenses" has the meaning set forth in Section 9.2(i).

(h) "Assignment of Contracts" means that certain Assignment of Contracts, dated as of the Effective Date, by Borrower in favor of Lenders, assigning the Plans & Specifications and the Construction Contracts to Lenders, as the same may be amended, restated, modified, or supplemented.

(i) "Authorizations" has the meaning set forth in Section 4.1(c).

(j) "Bank" means JPMorgan Chase Bank, N.A., a national banking association.

(k) "Business Day" means any day other than a Saturday, Sunday or any day on which commercial banks in New York, New York and Los Angeles, California are authorized or required to be closed.

(l) "CCE" means Chase Community Equity, LLC, a Delaware limited liability company, the investor member of Fund.

(m) "CDE Loan" and "CDE Loans" means, individually or collectively, as applicable, any of the NMCC CDE Loans and/or the CNMC CDE Loans.

(n) "CDE Reserve Account" means the NMCC CDE Reserve Account.

(o) "CDE Reserve Account P&C Agreement" means the NMCC CDE Reserve Account P&C Agreement.

(p) "CDFI Fund" means the Community Development Financial Institutions Fund, an agency of the United States Department of the Treasury.

(q) "Closing Transfers Memorandum" means that certain Closing Transfers Memorandum, dated as of the Effective Date, to which Lenders, Bank, CCE, and Borrower (together with certain other parties) are parties.

(r) "CMDA" means that certain Construction Monitoring and Disbursement Agreement, dated as of the Effective Date, by and among Bank, Disbursement Agent, Borrower, and Lenders, as the same may be amended, restated, modified, or supplemented.
(s) "CNMC Allocatee" means Chase New Markets Corporation, a Delaware corporation.

(t) "CNMC CDE Loan A2" has the meaning set forth in Section 2.2.

(u) "CNMC CDE Loan A2 Note" has the meaning set forth in Section 2.2.

(v) "CNMC CDE Loan B2" has the meaning set forth in Section 2.2.

(w) "CNMC CDE Loan B2 Note" has the meaning set forth in Section 2.2.

(x) "CNMC CDE Loans" means, together, the CNMC CDE Loan A2 and the CNMC CDE Loan B2.

(y) "CNMC CDE OA" means that certain Amended and Restated Operating Agreement of CNMC CDE, dated as of the Effective Date, by and between Fund, as investor member, and CNMC Allocatee, as managing member, and as amended, supplemented or otherwise modified from time to time.

(z) "Code" means the Internal Revenue Code of 1986, as amended.

(aa) "Collateral" means the Property and all other collateral described in the Collateral Documents.

(bb) "Collateral Documents" has the meaning set forth in Section 3.1 and collectively includes, without limitation, all guarantees and all security agreements, financing agreements, mortgages, deeds of trust, pledges, assignments creating and perfecting security interests, liens or encumbrances in the assets of Borrower in favor of Lenders to secure the Indebtedness, as the same may be amended, restated, modified, or supplemented.

(cc) "Community Benefits Agreement" means that certain Community Benefits Agreement between Lenders, Allocatees, and Borrower of even date herewith, as the same may be amended, supplemented or otherwise modified from time to time.

(dd) "Completion of the Improvements" has the meaning set forth in Section 5.14(a).

(ee) "Completion Period" means the period beginning on the Effective Date and ending on the seventh anniversary of the Effective Date.

(ff) "Construction Completion Schedule" has the meaning set forth in Section 5.14(a).

(gg) "Construction Contracts" means, collectively, the following agreements relating to the Improvements contemplated by the Plans & Specifications: (i) all agreements between Borrower and Contractors, including without limitation the "Construction Contracts" as listed on Exhibit A to the Assignment of Contracts; and (ii) all other contracts by and between Borrower and any other contractors, suppliers and construction service providers relating to the Project and the development and renovation of the Improvements.
(hh) "Construction Documents" means, collectively, the Plans & Specifications, Construction Contracts, all guaranties, warranties and undertakings under any of the foregoing, and all permits and licenses used in connection with the Improvements.

(ii) "Contractors" and "Contractor" means, collectively or individually, as applicable, any or all of ACGC, Inc., Advanced Security Systems, Alves, Inc., JZ Contracting, Pacific Gas and Electric Company, Redwood Electrical Services, and Thomas Home Center.

(jj) "Controlled Affiliate" has the meaning set forth in Section 4.11(c).

(kk) "Covered Person" or "Covered Persons" has the meaning set forth in Section 5.12.

(ll) "Debt" means any and all amounts and/or liabilities owing from time to time by Borrower or Guarantor, as applicable, to any Person, including each Lender, direct or indirect, liquidated or contingent, now existing or hereafter arising, including without limitation (i) indebtedness for borrowed money; (ii) unfunded portions of commitments for money to be borrowed; (iii) the amounts of all standby and commercial letters of credit and bankers acceptances, matured or unmatured, issued on behalf of Borrower; and (iv) guaranties of the obligations of any other Person, whether direct or indirect, whether by agreement to purchase the indebtedness of any other Person or by agreement for the furnishing of funds to any other Person through the purchase or lease of goods, supplies or services (or by way of stock purchase, capital contribution, advance or loan) for the purpose of paying or discharging the indebtedness of any other Person, or otherwise.

(mm) "Default" means the occurrence of any of the events specified in Section 8.1, whether or not any requirement for notice or lapse of time has been satisfied.

(nn) "Development Expense Schedule" means the detailed line item cost breakdown of construction costs (hard costs) and all other related indirect development costs, including without limitation, interest expense, design and engineering costs, construction management, inspection and development fees, loan fees, expense payments and reimbursements, and costs for permits and approvals (soft costs) submitted to and approved by Lenders.

(oo) "Disbursement Account" means the account with Bank into which all proceeds of the CDE Loans (all of which are governed by the CMDA) will be deposited. Said account will be owned by Borrower and pledged to Lenders to secure the CDE Loans.

(pp) "Disbursement Account P&C Agreement" means that certain Account Pledge and Control Agreement (Disbursement Account), dated as of the Effective Date, by and among Borrower, Bank, and Lenders, as the same may be amended, restated, modified, or supplemented.

(qq) "Disbursement Agent" means JPMorgan Chase Bank, N.A., a national banking association, in its capacity as "Disbursement Agent" under the CMDA, or any successor thereto appointed by Lenders in accordance with the CMDA.

(rr) "District" means Humboldt Bay Harbor, Recreation and Conservation District, a California public entity.
"Embargoed Person" has the meaning set forth in Section 4.11(c).

"Environmental Indemnity" means that certain Environmental Indemnity Agreement, dated as of the Effective Date, given by Borrower and Guarantor in favor of Lenders, as the same may be amended, restated, modified, or supplemented.

"Environmental Reports" means those certain reports referenced in Exhibit B to the Environmental Indemnity.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder from time to time.

"Event of Default" has the meaning set forth in Section 8.1, provided, that any requirement for notice or lapse of time or any other condition precedent has been satisfied.

"Executive Order" has the meaning set forth in Section 4.11(c).

"Fiscal Year" means the fiscal year of the Borrower and the Guarantor, which starts on July 1 and ends on June 30 of each calendar year.

"Force Majeure" means strikes, lockouts, inability to procure materials (but not including changes in cost thereof), inability despite due diligence to obtain required permits, power failure, acts of God, actions or failures to act on the part of Governmental Authorities preventing performance, civil commotion, fire, unavoidable casualty, or other causes not caused by and beyond the control of the party performing an obligation hereunder; provided, that unless such party gives notice of the Force Majeure event to the other party to this Agreement describing the particulars of the Force Majeure event, including but not limited to the nature of the occurrence and its expected duration within 20 calendar days of the initial date of such event, then such event shall not constitute Force Majeure event hereunder.

"Foreign Assets Control Regulations" has the meaning set forth in Section 4.11(c).

"Fund" has the meaning set forth in the Recitals to this Agreement.

"Fund OA" means that certain First Amended and Restated Operating Agreement of the Fund, dated as of the Effective Date, by CCE, as sole member of the Fund, as the same may be amended, restated, modified, or supplemented.

"Governmental Authority" means (i) any federal, state, parish or municipal government, or any political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, department, commission, instrumentality or public body, (iii) any court, administrative tribunal or public utility, or (iv) any official or officer of the foregoing.

"Guarantor" means District.
(fff) "Guaranty of Payment and Completion" means that certain Guaranty of Payment and Completion, dated as of the Effective Date, given by Guarantor in favor of Lenders, as the same may be amended, restated, modified, or supplemented.

(ggg) "Hazardous Substances" has the meaning set forth in the Environmental Indemnity.

(hhh) "Improvements" means the development and construction of certain improvements on and to certain portions of the Property pursuant to the Plans & Specifications, which, upon completion, is anticipated to contain renovated built space for District, as the sublessee under the Sublease, and all related improvements and fixtures.

(iii) "Incurred Expenditures" has the meaning set forth in Section 4.20.

(iii) "Indebtedness" means, collectively, all of Borrower's obligations under the Notes, including without limitation, all unpaid principal of and accrued and unpaid interest and premiums, if any, on each Note; all accrued and unpaid fees and all indebtedness, expenses, reimbursements and indemnities, including any recapture payments, of Borrower to Lenders or any indemnified party under the Loan Documents; and any and all other present and future loans, extensions of credit, liabilities and/or obligations of every nature and kind whatsoever that Borrower may now or in the future owe to or incur in favor of Lenders, pursuant to the Loan Documents.

(kkk) "Intended Use" means the intended use of the Property, specifically, an [industrial and research uses of an industrial pulp mill located in Samoa], California.

(III) "Land" means that certain tract of land located at 364 Vance Avenue, Samoa, California (more particularly described in the Collateral Documents) and on which the Improvements will be developed, rehabilitated, and constructed.

(mmm)"Lead CDE" has the meaning set forth in Section 9.2(c).

(nnn) "Lease" means that certain Ground Lease, dated as of the Effective Date, by and between District, as lessor, and Borrower, as the same may be materially amended, restated, modified, or supplemented with the prior written consent of Lenders (such consent in each Lender's sole and absolute discretion), and pursuant to which District will lease the Property to Borrower for a term of years, a portion of which Property will be improved by Borrower pursuant to the Plans & Specifications.

(ooo) "Lenders" has the meaning set forth in the preamble hereto.

(ppp) "Lessee" means Borrower.

(qqq) "Leverage Lender" means District.

(sss) "Lien" means, as applied to the property of any Person, any interest in such property securing an obligation owed by, or a claim made against, the Person, whether such interest is based on jurisprudence, statute or contract, and including but not limited to (i) the lien
or security interest arising from a mortgage, mortgage deed, deed of trust, encumbrance, assignment, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes, (ii) any arrangement, express or implied, under which any property of such Person is transferred, sequestered or otherwise identified for the purpose of causing the same to act as security for the payment of any Debt or the performance of any other obligation in priority to the payment of the general unsecured creditors and/or subsequent creditors of such Person, or (iii) the filing of, or any agreement to give, any financing statement under the Uniform Commercial Code of any Governmental Authority or its equivalent in any jurisdiction. The term "Lien" will include reservations, exceptions, encroachments, easements, servitudes, usufructs, rights-of-way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting property. For the purposes of this Agreement, Borrower will be deemed to be the owner of any property which it has accrued or holds subject to a conditional sale agreement, financing lease or other arrangement pursuant to which title to the property has been retained by or vested in some other Person for security purposes.

(rrr) "Loan" and "Loans" means, individually or collectively, as applicable, any of the NMCC CDE Loans and/or CNMC CDE Loans.

(sss) "Loan Documents" means this Agreement, the Notes, the Mortgage, CMDA, Collateral Documents, QALICB NMTC Indemnity, Closing Transfers Memorandum, the Community Benefits Agreement and all other instruments and documents, now existing or hereafter existing, executed by Borrower, Guarantor, and/or any other Person in connection with the CDE Loans, as the same may be amended, restated, modified, or supplemented.

(ttt) "Material Adverse Effect" means, with respect to any Person, a material adverse effect upon such Person's business, assets, liabilities, condition (financial or otherwise), results of operations or business prospects. With respect to Borrower and Guarantor, a "Material Adverse Effect" shall include, but not be limited to, a material adverse effect upon Borrower's or Guarantor's ability to perform its obligations under the Loan Documents or upon the enforceability of such obligations against Borrower or Guarantor, past any reasonable ability to remedy or cure.

(uuu) "Modified Collateral" has the meaning set forth in Section 9.1.

(vvv) "Mortgage" means that certain Leasehold Deed of Trust, Security Agreement, Assignment of Rents and Fixture Filing, dated on or about the Effective Date, made by Borrower in favor of Lenders, together with the appropriate UCC-1 Financing Statements.

(www) "New Markets Tax Credits" or "NMTC" means the credits against federal income taxes under Section 45D of the Code.

(xxx) "New Markets Tax Credit Program" means the program of the Internal Revenue Service and the Community Development Financial Institutions Fund, a wholly-owned governmental corporation within the United States Department of Treasury, related to the tax credits able to be claimed pursuant to Section 45D of the Code.

(yyy) "NMCC Allocatee" means New Markets Community Capital, LLC, a Delaware limited liability company.
"NMCC CDE Loan A1" has the meaning set forth in Section 2.1.

"NMCC CDE Loan A1 Note" has the meaning set forth in Section 2.1.

"NMCC CDE Loan B1" has the meaning set forth in Section 2.1.

"NMCC CDE Loan B1 Note" has the meaning set forth in Section 2.1.

"NMCC CDE Loans" means, together, the NMCC CDE Loan A1 and the NMCC CDE Loan B1.

"NMCC CDE OA" means that certain Second Amended and Restated Limited Liability Company Agreement of NMCC CDE, dated as of the Effective Date, by and between Fund, as investor member, and NMCC Allocatee, as managing member, as the same may be amended, supplemented or otherwise modified from time to time.

"NMCC CDE Reserve Account" has the meaning set forth in Section 2.4. Said account is maintained by Bank for Borrower and is pledged to NMCC CDE to secure amounts due by Borrower to Lender under Section 5.6(a).

"NMCC CDE Reserve Account P&C Agreement" means that certain Account Pledge and Control Agreement (NMCC Reserve Account), dated as of the Effective Date, by and among Borrower, Bank and NMCC CDE, as the same may be amended, restated, modified, or supplemented.

"Note" and "Notes" means, individually or collectively, as applicable, the NMCC CDE Loan A1 Note, the NMCC CDE Loan B1 Note, the CNMC CDE Loan A2 Note and the CNMC CDE Loan B2 Note, together with any amendments, extensions, modifications, supplements, restatements, refinancings, substitutions or renewals thereto or thereof.

"OFAC" means the Office of Foreign Assets Control of the United States Department of the Treasury or any successor agency thereof.

"Operating Accounts" means all operating, reserve, capital funds, endowment, donation and other accounts maintained by or for Borrower other than the Disbursement Account and the CDE Reserve Account.

"Operating Budget" means the annual budget for the operation and management of the Property (including but not limited to capital expenditure projections for at least three years beyond the next fiscal year), as applicable.

"Patriot Act" has the meaning set forth in Section 4.11(a).

"Person" means any individual, sole proprietorship, general or limited partnership, limited liability partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party or government (whether territorial, national, federal, state, county, city, municipal or otherwise, including,
without limitation, any instrumentality, division, agency, body or department thereof), or any other form of entity.

(mmnn) "Plan" means any plan subject to Title IV of ERISA and maintained by Borrower, or any such plan to which Borrower is required to contribute on behalf of its employees.

(oooo) "Plans & Specifications" means the final plans and specifications for the Improvements, including architectural drawings, engineering drawings, landscape drawings and all other plans and specifications, all as amended from time to time, subject to the terms of this Agreement.

(pppp) "Prohibited Person" means any Person (i) listed in the Annex to the Executive Order or identified pursuant to Section 1 of the Executive Order; (ii) that is owned or controlled by, or acting for or on behalf of, any Person listed in the Annex to the Executive Order or identified pursuant to the provisions of Section 1 of the Executive Order; (iii) with whom either Lender is prohibited from dealing or otherwise engaging in any transaction by any terrorism or anti-laundering law, including the Executive Order; (iv) who commits, threatens, conspires to commit, or support "terrorism" as defined in the Executive Order; (v) who is named as a "Specially designated national or blocked person" on the most current list published by the OFAC at its official website, at http://www.treas.gov/offices/enforcement/ofac/sdn/t11sdn.pdf or any replacement website or other replacement official publication of such list; or (vi) who is owned or controlled by a Person listed above in clauses (iii) or (v).

(qqqq) "Projections" means the financial projections dated as of the Effective Date prepared by the Accountants in connection with the transactions contemplated in this Agreement, the other Loan Documents, the NMCC CDE OA, the CNMC CDE OA and the Fund OA.

(rrrr) "Project" means the leasing of the Land, and the development and renovation of the Improvements thereon, and subleasing of the Property to the District pursuant to the Sublease.

/ssss) "Project Budget" means the budget for construction of the Project, including, without limitation, all items on the Development Expense Schedule. The applicable pages of the Projections evidencing the Project Budget are attached hereto as Exhibit B.

(tttt) "Property" means the Land and the Improvements.

(uuuu) "Proposed Remedial Action Plan" has the meaning set forth in Section 9.2(c).

(vvvv) "Punch List Items" means details of construction, decoration and mechanical and electrical adjustment which in the aggregate are minor in character and do not materially interfere with the operation of the affected portions of the Improvements for the Intended Use.

(wwwv) "QALICB NMTC Indemnity" means that certain QALICB Recapture Indemnification Agreement, dated as of the Effective Date, by and among Borrower and Guarantor (as the "Indemnitors" thereunder) and Bank, as the same may be amended, restated, modified, or supplemented.
(xxxx) "QALICB Questionnaire" means the QALICB Questionnaire attached hereto as Exhibit C.

(yyyy) "Release" has the meaning set forth in the Environmental Indemnity.

(zzzz) "Returned Payment" has the meaning set forth in Section 9.5.

(aaaaa) "Reviewing Lender" has the meaning set forth in Section 9.2(c).

(bbbbb) "Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by the U.S. government, including those administered by the Office of Foreign Assets Control of the U.S. Department of the Treasury or the U.S. Department of State.

(ccccc) "Sanctioned Country" means, at any time, a country or territory which is the subject or target of any Sanctions.

(ddddd) "Sanctioned Person" means, at any time, (i) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the U.S. Department of State, (ii) any Person operating, organized or resident in a Sanctioned Country or (iii) any Person controlled by any such Person.

(eeeee) "Solvent" means, when used with respect to any Person on a particular day, that on such date (i) the fair value of the property of such Person is greater than the total amount of liabilities, including without limitation, contingent liabilities, of such Person, (ii) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (iii) such Person is able to realize upon its assets and pay its debts and other liabilities, contingent obligations and other commitments as they mature in the ordinary course of business, (iv) such Person does not intend to, and does not believe that it will, incur debts and liabilities beyond such Person's ability to pay such debts and liabilities mature, and (v) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person's property would constitute unreasonably small capital after giving due consideration to the prevailing practice in the industry in which such Person is engaged. In computing the amount of contingent liabilities at any time, it is intended that such liabilities will be computed at the amount which, in light of all of the facts and circumstances existing at such time, represents the amount that can be reasonably expected to become an actual or matured liability.

(fffff) "Sublease" means that certain Operating Lease, dated as of the Effective Date, by and between Borrower, as sublessor, and District, as sublessee, as the same may be materially amended, restated, modified, or supplemented with the prior written consent of Lenders (such consent in each Lender's sole and absolute discretion), and pursuant to which Borrower will sublease the Property to District for a term of years, a portion of which Property will be improved by Borrower pursuant to the Plans & Specifications.

(ggggg) "Sublessee" means District.
(hhhh) "Substantially Complete" mean the full completion of the Improvements except for Punch List Items and minor items that do not materially interfere with the full operation of all of the Intended Use of the Property.

(iiiii) "Trading With the Enemy Act" has the meaning set forth in Section 4.11(c).

Section 1.3 Accounting Terms. Unless otherwise specified herein, all accounting terms used herein will be interpreted, all accounting determinations hereunder will be made, and all financial statements required to be delivered hereunder will be prepared in accordance with generally accepted accounting principles as in effect from time to time, on a basis consistent (except for changes approved by independent public accountants for Borrower) with the most recent audited financial statements of Borrower.

ARTICLE 2
THE CREDIT

Section 2.1 NMCC CDE Loans.

(a) NMCC CDE Loan A1. Subject to and upon the terms and conditions contained in this Agreement, and relying on the representations and warranties contained in this Agreement and the other Loan Documents, NMCC CDE agrees to make a loan on the Effective Date to Borrower in the original principal amount of $[4,679,500.00] ("NMCC CDE Loan A1"). NMCC CDE Loan A1 will be evidenced by that certain NMCC CDE Loan A1 Note, executed on the Effective Date by Borrower, payable to the order of NMCC CDE (as the same may be amended, restated, modified, or supplemented, the "NMCC CDE Loan A1 Note"). Borrower will pay interest, principal and all applicable fees, costs and charges on NMCC CDE Loan A1 as set forth in the NMCC CDE Loan A1 Note and this Agreement. On the Effective Date, the entire proceeds of NMCC CDE Loan A1 will be advanced as provided in Section 2.4.

(b) NMCC CDE Loan B1. Subject to and upon the terms and conditions contained in this Agreement, and relying on the representations and warranties contained in this Agreement and the other Loan Documents, NMCC CDE agrees to make a loan on the Effective Date to Borrower in the original principal amount of $[2,250,500] ("NMCC CDE Loan B1"). NMCC CDE Loan B1 will be evidenced by that certain NMCC CDE Loan B1 Note, executed on the Effective Date by Borrower, payable to the order of NMCC CDE (as the same may be amended, restated, modified, or supplemented, the "NMCC CDE Loan B1 Note"). Borrower will pay interest, principal and all applicable fees, costs and charges on NMCC CDE Loan B1 as set forth in the NMCC CDE Loan B1 Note and this Agreement. On the Effective Date, the entire proceeds of NMCC CDE Loan B1 will be advanced as provided in Section 2.4.

Section 2.2 CNMC CDE Loans.

(a) CNMC CDE Loan A2. Subject to and upon the terms and conditions contained in this Agreement, and relying on the representations and warranties contained in this Agreement and the other Loan Documents, CNMC CDE agrees to make a loan on the Effective Date to Borrower in the original principal amount of $[1,169,875.00] ("CNMC CDE Loan A2"). CNMC CDE Loan A2 will be evidenced by that certain CNMC CDE Loan A2 Note, executed on the Effective Date by Borrower, payable to the order of CNMC CDE (as the same may be amended,
restated, modified, or supplemented, the "CNMC CDE Loan A2 Note"). Borrower will pay interest, principal and all applicable fees, costs and charges on CNMC CDE Loan A2 as set forth in the CNMC CDE Loan A2 Note and this Agreement. On the Effective Date, the entire proceeds of CNMC CDE Loan A2 will be advanced as provided in Section 2.4.

(b) **CNMC CDE Loan B2.** Subject to and upon the terms and conditions contained in this Agreement, and relying on the representations and warranties contained in this Agreement and the other Loan Documents, CNMC CDE agrees to make a loan on the Effective Date to Borrower in the original principal amount of $[580,125.00] ("CNMC CDE Loan B2"). CNMC CDE Loan B2 will be evidenced by that certain CNMC CDE Loan B2 Note, executed on the Effective Date by Borrower, payable to the order of CNMC CDE (as the same may be amended, restated, modified, or supplemented, the "CNMC CDE Loan B2 Note"). Borrower will pay interest, principal and all applicable fees, costs and charges on CNMC CDE Loan B2 as set forth in the CNMC CDE Loan B2 Note and this Agreement. On the Effective Date, the entire proceeds of CNMC CDE Loan B2 will be advanced as provided in Section 2.4.

Section 2.3 **Prepayment.** Borrower may not prepay any CDE Loan, in whole or in part, prior to the expiration of the Compliance Period. Borrower understands and acknowledges that a breach of this Section 2.3 will have adverse tax implications to the applicable Lender(s) and their constituent direct and indirect owners and investors which cannot be fully compensated by money damages. Therefore, Borrower consents to the remedies of specific performance and of injunction and other equitable remedies for a breach or prospective breach of this Section 2.3. Notwithstanding the foregoing, from and after expiration of the Compliance Period, Borrower may from time to time prepay some or all of the CDE Loans.

Section 2.4 **Single Advance.** The entire proceeds of the CDE Loans shall be advanced on the Effective Date and deposited into the Disbursement Account. Immediately following such deposit, $[ ] shall be disbursed from the Disbursement Account pursuant to and in accordance with the CMDA (i) to pay certain transaction fees, costs, and expenses in accordance with the Closing Transfers Memorandum, (ii) to make an initial payment of rent under the Lease, and (iii) to establish that certain interest reserve account (the "NMCC CDE Reserve Account") from which funds shall be withdrawn in accordance with this Agreement to pay certain fees and expenses of NMCC CDE.

Section 2.5 **Disbursements.** Following the Effective Date, the remaining proceeds of the CDE Loans deposited into the Disbursement Account shall be disbursed by Disbursement Agent to Borrower (or directly to payees) in accordance with this Agreement, and the CMDA.

Section 2.6 **Business Days.** If the date for any advance, payment, or disbursement hereunder falls on a day which is not a Business Day, then for all purposes of this Agreement the same shall be deemed to have fallen on the next following Business Day, and such extension of time shall in such case be included in the computation of payments of interest.

Section 2.7 **Use of Proceeds.** Borrower shall use the proceeds of the CDE Loans solely (a) as set forth in Section 2.4 and (b) to pay for hard and soft costs incurred in connection with the Improvements on and after the Effective Date, all in accordance with this Agreement and the CMDA and as reflected on the Closing Transfers Memorandum.
Section 2.8 Method of Payment. All payments of the CDE Loans shall be made, without setoff, deduction, or counterclaim, in immediately available funds to the applicable Lender, in accordance with the terms of each applicable Note at the address specified from time to time by the applicable Lender by 4:00 p.m. (Pacific Time) on the date when due, and shall be applied by the applicable Lender to reimbursements, costs and expenses payable by Borrower under this Agreement or any of the other Loan Documents, to interest or to principal, in such order as is determined by the applicable Lender in its reasonable discretion.

ARTICLE 3
SECURITY FOR THE INDEBTEDNESS

Section 3.1 Security. The Indebtedness shall be secured by the Collateral, which includes all property of Borrower of whatever nature. In furtherance thereof, Borrower shall assign to Lenders or grant to Lenders security interests in the Collateral, as the case may be, by (without limitation) the following documents and instruments:

(a) Assignment of Contracts.

(b) NMCC CDE Reserve Account P&C Agreement (provided, that the NMCC CDE Reserve Account is being pledged to NMCC CDE only).

(c) Disbursement Account P&C Agreement.

(d) [One or more Contractor's Agreement and Consent to Assignment of Contract, dated as of the Effective Date, by Contractors in favor of Lenders], as the same may be amended, restated, modified, or supplemented.

(e) Guaranty of Payment and Completion.

(f) Mortgage.

(g) UCC-1 Financing Statements filed with the appropriate Governmental Authorities, and recorded among the appropriate land records, as the same may be amended, restated, modified, or supplemented.

(h) Any other instruments required by Lenders from time to time to better or more completely establish or perfect Lenders' security interests in the Collateral, as the same may be amended, restated, modified, or supplemented.

Collectively, the agreements referenced in this Section 3.1(a)-(h) are referred to herein as the "Collateral Documents."

ARTICLE 4
REPRESENTATIONS AND WARRANTIES

Section 4.1 Representations and Warranties of Borrower and Guarantor. In order to induce Lenders to enter into this Agreement and the other Loan Documents, each of Borrower and Guarantor, as applicable, represent and warrant to Lenders for itself and only with respect to
itself (which representations and warranties will survive the extensions of credit under this Agreement) that:

(a) Borrower is a nonprofit public benefit corporation, duly formed, legally existing and in good standing under the laws of the State of California. Borrower is duly authorized and empowered to execute, deliver and perform the Loan Documents to which it is a party. All actions on the part of Borrower requisite for the due execution of the Loan Documents have been duly and effectively taken. Borrower's execution, delivery and performance of the Loan Documents to which it is a party do not require the consent or approval of any other Person, including without limitation, any Governmental Authority and/or any existing creditors of Borrower, that has not already been obtained. Borrower has reviewed the Loan Documents with counsel for Borrower and has had the opportunity to discuss the provisions thereof with Lenders prior to execution. The respective Loan Documents to which Borrower is a party constitute valid and binding obligations of Borrower as the case may be, enforceable in accordance with their terms (except that enforcement may be subject to any applicable bankruptcy, insolvency or applicable laws generally affecting the enforcement of creditors' rights). Borrower further represents and warrants that, as of the date hereof, Borrower is in material compliance with all of the affirmative and negative covenants contained in the Loan Documents to which it is a party.

(b) Guarantor is a California public entity, duly formed, legally existing and in good standing under the laws of the State of California. Guarantor is duly authorized and empowered to execute, deliver and perform the Loan Documents to which it is a party. All actions on the part of Guarantor requisite for the due execution of the Loan Documents have been duly and effectively taken. Guarantor's execution, delivery and performance of the Loan Documents to which it is a party do not require the consent or approval of any other Person, including without limitation, any Governmental Authority and/or any existing creditors of Guarantor, that has not already been obtained. Guarantor has reviewed the Loan Documents with counsel for Guarantor and has had the opportunity to discuss the provisions thereof with Lenders prior to execution. The respective Loan Documents to which Guarantor is a party constitute valid and binding obligations of Guarantor, enforceable in accordance with their terms (except that enforcement may be subject to any applicable bankruptcy, insolvency or applicable laws generally affecting the enforcement of creditors' rights). Guarantor further represents and warrants that, as of the date hereof, Guarantor is in compliance with all of the affirmative and negative covenants contained in the Loan Documents to which it is a party.

(c) Guarantor has all requisite licenses, permits, consents, approvals, exemptions and certificates from all federal, state and local governmental entities or public bodies or authority (each, an "Authorization") which are required to authorize, or are required in connection with the execution, delivery and performance of this Agreement or any of the Loan Documents, or the taking of any action hereby or thereby contemplated, or necessary to operate its existing facilities and the Project.

(d) Guarantor has not received notice of any pending action to revoke, restrict, withdraw or suspend any Authorization. To the best of Guarantor's knowledge after due inquiry, no action or event by Guarantor has occurred which, with the giving of notice, the passage of time or both, would constitute grounds for a material violation or deficiency with respect to any Authorization.
Section 4.2 No Legal Bar or Resultant Lien. The execution, delivery and performance of the Loan Documents by Borrower and Guarantor do not and will not violate (a) any provisions of Borrower’s or Guarantor’s organizational and/or governing documents, (b) to the best of Borrower and Guarantor’s knowledge, any other contract, indenture or agreement to which Borrower or Guarantor is a party or by which any of their respective property (including but not limited to the Land) may be bound, or (c) to the best of Borrower and Guarantor’s knowledge, any material provision of law, regulation, order, injunction, judgment, decree or writ to which Borrower or Guarantor or any of their respective property (including but not limited to the Land) is subject. The Loan Documents will not result in or require the creation or imposition of any Lien upon any property (including but not limited to the Land) now owned or hereafter acquired by Borrower or Guarantor other than as contemplated by this Agreement.

Section 4.3 Financial Condition; Solvency; Other Information.

(a) All financial statements of Borrower and Guarantor delivered to Lenders (i) are true, correct and complete in all material respects and (ii) fairly and accurately present the financial condition of the parties for whom such financial statements were submitted as of the date of such financial statements, and there are no contingent liabilities not disclosed thereby that had or could reasonably be expected to have a Material Adverse Effect on or to Borrower or Guarantor.

(b) Since the close of the period covered by the latest financial statements delivered to Lenders with respect to Borrower and Guarantor, no event has occurred that has caused or could reasonably be expected to cause a Material Adverse Effect on or to Borrower or Guarantor.

(c) As of the Effective Date, no condition exists or, to the knowledge of Borrower or Guarantor, is threatened, that could reasonably be expected (i) to cause a Material Adverse Effect on or to Borrower or Guarantor or (ii) to cause a Default or an Event of Default under this Agreement or any other Loan Document.

(d) Each of Borrower and Guarantor is Solvent and after consummation of the transactions contemplated by the Loan Documents (including the making of the CDE Loans), and after giving effect to all obligations incurred by Borrower and Guarantor in connection herewith, each of Borrower and Guarantor will be Solvent.

(e) All information, reports, papers and data given to Lenders by Borrower or Guarantor pursuant to this Agreement and the other Loan Documents and in connection with Borrower’s application for the CDE Loans are accurate and correct in all material respects. All financial projections given to Lenders were prepared in good faith based on facts and circumstances existing at the time of preparation and were accurate in all material respects. No information, exhibit or report furnished by Borrower or Guarantor to Lenders in connection with the negotiation of this Agreement and the other Loan Documents contains any material misstatement of fact or fails to state a material fact or any fact necessary to make the statements contained therein not materially misleading.

(f) Borrower owes no outstanding Debt other than the Indebtedness to Lenders under the Loan Documents.
(g) Guarantor owes no outstanding Debt other than the indebtedness reflected in the financial statements provided to Lenders in accordance with Section 7.1(g). In addition, Guarantor has executed the Guaranty of Payment and Completion, pursuant to which Guarantor has, among other things, guaranteed the payment and performance of the Guaranteed Obligations (as defined therein).

Section 4.4 Taxes and Governmental Charges. Borrower and Guarantor have filed all federal, state and any other tax returns and reports required to be filed and has paid all taxes, assessments, fees and other governmental charges levied upon it or upon its property or income which are due and payable, including interest and penalties, or has provided adequate reserves for the payment thereof.

Section 4.5 Defaults. To the best of their knowledge, neither Borrower nor Guarantor are in default under any indenture, mortgage, deed of trust, agreement or other instrument to which Borrower or Guarantor are a party or by which they are bound, respectively and/or collectively, including without limitation, the Construction Documents, which default had or could reasonably be expected to have a Material Adverse Effect on or to Borrower or Guarantor.

Section 4.6 Compliance with the Law. To the best of their knowledge, neither Borrower nor Guarantor (a) are in violation of any law, judgment, decree, order, ordinance, or governmental rule or regulation to which Borrower or Guarantor or any of their respective property (including but not limited to the Property) are subject respectively and/or collectively; and (b) have not failed to obtain any license, permit, franchise or other governmental authorization necessary to the ownership of any of their respective property (including but not limited to the Property) or the conduct of their respective businesses (including but not limited to the Project, except as otherwise set forth herein); in each case, which violation or failure had or could reasonably be expected to have a Material Adverse Effect on or to Borrower or Guarantor.

Section 4.7 ERISA. Borrower and Guarantor are each in compliance in all material respects with the applicable provisions of ERISA, and no "reportable event", as such term is defined in Section 4043 of ERISA, has occurred with respect to any Plan of Borrower or Guarantor.

Section 4.8 Title to Collateral. Borrower has good and merchantable title to the Collateral, free of all liens and encumbrances except those created in favor of Lenders and those permitted by this Agreement, including without limitation the Permitted Exceptions set forth in that certain Title Policy issued to Lenders. Borrower has not prior to the date of this Agreement conveyed or agreed to convey or encumber any Collateral in any way, except in favor of Lenders pursuant to the Loan Documents. The Property has all necessary rights-of-way, easements and servitudes for ingress and egress to a public street.

Section 4.9 Environmental Matters. To the best of Borrower's knowledge, information and belief: (a) except as may be disclosed in or in connection with that certain Title Policy issued to Lenders, no part of the Property constitutes "wetlands", as such term is defined by applicable federal law and no permit is needed for construction of the Improvements from the U.S. Army Corps of Engineers or any other Governmental Authority not disclosed in writing to Lenders and Disbursement Agent prior to the Effective Date; (b) except as disclosed in the Environmental Reports, neither Guarantor nor Borrower has any knowledge of any deposit, storage, disposal,
burial, discharge, spillage, uncontrolled loss, seepage or filtration of Hazardous Substances at, upon, under or within the Property; and (c) neither Guarantor nor Borrower has caused or permitted to occur, and shall not permit to exist, any condition which may cause a Release of any Hazardous Substances at, upon, under or within the Property or on any contiguous real estate.

Section 4.10 Governmental Requirements. Except in connection with the Project with respect to the development, construction, and rehabilitation of the Improvements, pursuant to which some or all of the following are underway and/or in progress, and therefore not yet complete, the Property is in compliance with all current governmental requirements affecting the Property, including, without limitation, zoning and land use regulations, building codes and all restrictions and requirements imposed by applicable Governmental Authorities with respect to the Improvements and the Intended Use of the Property.

Section 4.11 Patriot Act Representations and Covenants; Anti-Corruption Laws and Sanctions.

(a) Notification. Each Lender hereby notifies the Borrower that pursuant to the requirements of Section 326 of the USA Patriot Act of 2001 31 U.S.C. Section 5318 (the "Patriot Act"), it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow each Lenders to identify the Borrower in accordance with the Patriot Act.

(b) Government Regulation. Borrower shall not (i) be or become subject at any time to any law, regulation, or list of any Governmental Authority (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits any Lender from either making any advance or extension of credit to Borrower or from otherwise conducting business with Borrower, or (ii) fail to provide documentary and other evidence of Borrower's identity as may be requested by Lenders at any time to enable Lenders to verify Borrower's identity or to comply with any applicable law or regulation, including, without limitation, Section 326 of the Patriot Act.

(c) Representations.

(i) Neither Borrower nor, to the knowledge of Borrower, any of its respective Affiliates over which Borrower exercises management control (each, a "Controlled Affiliate") is a Prohibited Person, and Borrower and, to the knowledge of Borrower, such Controlled Affiliates are in compliance with all applicable orders, rules and regulations of OFAC.

(ii) Neither Borrower nor, to the knowledge of Borrower, any of its respective Affiliates: (A) is targeted by United States or multilateral economic or trade sanctions currently in force; (B) is owned or controlled by, or acts on behalf of, any Person that is targeted by United States or multilateral economic or trade sanctions currently in force; (C) is a Prohibited Person; or (D) is named, identified or described on any list of Persons with whom United States Persons may not conduct business, including any such blocked persons list, designated nationals list, denied persons list, entity list, debarred party list, unverified list, sanctions list or other such lists published or maintained by the United States, including OFAC, the United States Department of Commerce or the United States Department of State.
(iii) None of Borrower's assets constitute property of, or are beneficially
owned, directly or indirectly, by any Person targeted by economic or trade sanctions under
federal law ("Embargoed Person"), including but not limited to, the International Emergency
App. 1 et seq. (the "Trading With the Enemy Act"), any of the foreign assets control regulations
of the Treasury (31 C.F.R., Subtitle B, Chapter V, as amended) (the "Foreign Assets Control
Regulations") or any enabling legislation or regulations promulgated thereunder or executive
order relating thereto (which includes, without limitation, (A) Executive Order No. 13224,
effective as of September 24, 2001, and relating to Blocking Property and Prohibiting
Transaction With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed.
Reg. 49079 (2001) (the "Executive Order") and (B) the Patriot Act), if the result of such
ownership would be that the CDE Loans made by Lenders would be in violation of law. No
Embargoed Person has any interest of any nature whatsoever in Borrower if the result of such
interest would be that any CDE Loan would be in violation of law, Borrower has not engaged
in business with Embargoed Persons if the result of such business would be that the CDE Loan
made by Lenders would be in violation of law, and neither Borrower nor any Controlled Affiliate
(1) is or will become a "blocked person" as described in the Executive Order, the Trading With
the Enemy Act or the Foreign Assets Control Regulations or (2) engages or will engage in any
dealings or transactions, or be otherwise associated, with any such "blocked person". For
purposes of determining whether or not a representation is true or a covenant is being complied
with under this Section 4.11(c)(iii), Borrower shall not be required to make any investigation into
the ownership of publicly traded stock or other publicly traded securities or the beneficial
ownership of any collective investment fund.

(d) Anti-Corruption Laws and Sanctions. Borrower has implemented and maintains
in effect policies and procedures designed to ensure compliance by Borrower, its Affiliates and
their respective directors, officers, employees and agents with Anti-Corruption Laws and
applicable Sanctions, and Borrower, its Affiliates and their respective officers and employees
and, to the knowledge of Borrower, its directors and agents, are in compliance with Anti-
Corruption Laws and applicable Sanctions in all material respects. None of (i) Borrower,
Guarantor, any Affiliate or any of their respective directors, officers or employees, or (ii) to the
knowledge of Borrower, any agent of Borrower or any Affiliate that will act in any capacity in
connection with or benefit from the credit facility established hereby, is a Sanctioned Person. No
Loan, use of proceeds or other transaction contemplated by this Agreement will violate Anti-
Corruption Laws or applicable Sanctions.

Section 4.12 New Markets Tax Credit Program Representations and Warranties. Borrower's
representations and warranties contained in the Addendum are incorporated into this Agreement
in full by this reference.

Section 4.13 Litigation. No litigation or proceedings are pending, or to Borrower's knowledge
are threatened, against Borrower or Guarantor which had or could reasonably be expected to
have a Material Adverse Effect on or to Borrower or Guarantor. Without limiting the foregoing,
there are no pending or, to Borrower's knowledge, threatened proceedings or actions to revoke,
invalidate, rescind or modify any building or other permits heretofore issued with respect to the
Property.
Section 4.14 Plans & Specifications. To Borrower's knowledge, the Plans & Specifications comply in all material respects (and the Improvements, when completed in accordance with the Plans & Specifications, will comply in all material respects) with all applicable federal, state and local laws, statutes, codes, ordinances, orders, rules, and regulations and interpretations thereof, including those relating to erosion control, land use and development, subdivision of property, environmental matters, zoning, fire safety, and structural, architectural or other features of buildings or other improvements to property or the uses thereof (including those regulating or requiring access or special facilities for disabled persons).

Section 4.15 Improvements. To Borrower's knowledge, neither the Improvements nor the Intended Use of the Property will violate (a) any applicable federal, state or local law, statute, code, ordinance, order, rule, or any regulation or interpretation thereof, or (b) any zoning, land use or historical site plans, approvals or other requirements, building permits, restrictions of record, or any agreement affecting the Improvements or any part thereof, including without limitation, the Construction Documents, the Lease, and the Sublease. Without limiting the foregoing, all authorizations, approvals, consents, licenses, permits, exemptions of, registrations and filings with, and reports to, a Governmental Authority required to complete the construction of the Improvements in accordance with the Plans & Specifications have been or will be obtained prior to the commencement of any work for which such Governmental Approval is required. All permits and licenses required for the operation of the Property that cannot be obtained until the Improvements are completed can be obtained if the Improvements are completed in accordance with the Plans & Specifications.

Section 4.16 Change Orders. Borrower has provided copies of all change orders (if any) permitting changes to the Plans & Specifications approved by Borrower or any other Person on or before the Effective Date.

Section 4.17 Reaffirmations. Each request for a disbursement of the proceeds of the CDE Loans under the CMDA shall constitute an express representation, warranty and affirmation to Lenders and Disbursement Agent, as of the date of each such request, that each of the representations and warranties of this Article 4 are true and correct in all material aspects as of the date of each such request and on the date of the actual disbursement of proceeds of the CDE Loans, except as may be otherwise disclosed to Lenders and Disbursement Agent in writing.

Section 4.18 Tax Treatment of Lease. Borrower and District shall treat the Lease as a full net lease (as opposed to a sale) of the Property from District to Borrower for federal income tax purposes.

Section 4.19 Margin Stock. No portion of the Loans is being made for the purpose of purchasing or carrying "margin stock" within the meaning of Regulations G, T, U or X issued by the Board of Governors of the Federal Reserve System.

Section 4.20 Incurred Expenditures. District has made or incurred expenditures up to and including in an amount not less than $[219,510.00] in connection with, and directly related to, the development of the Project (collectively, the "Incurred Expenditures"), which amount will be reimbursed by Borrower to District on the Effective Date. At the time the Incurred Expenditures were incurred, District intended and expected to be reimbursed for part of the Incurred
Expenditures from the proceeds of the Loans. Borrower has benefitted from the Incurred Expenditures, and intends to reimburse District the amount of the Incurred Expenditures out of the proceeds of the Loans. Borrower and/or District has detailed accounting records, including, without limitation, invoices, receipts, checks, and other payments, to substantiate in full the Incurred Expenditures. Disbursement Agent, CCE and Fund are third party beneficiaries of this Section 4.20.

Section 4.21 Lease. The Borrower has delivered to Lenders a true and correct copy of the Lease and represents and warrants that the Lease is in full force and effect. Borrower has not received a notice of default of its obligations under the Lease and to the best of Borrower’s knowledge no condition exists that, with the giving of notice or the lapse of time or both, would constitute a default under the Lease. Borrower acknowledges that each Lender is a third-party beneficiary of Borrower’s rights under the Lease. Borrower represents and warrants that upon an Event of Default under this Agreement, each Lender may on Borrower’s behalf enforce Borrower’s rights under the Lease, notwithstanding if such Lender has taken any other action permitted to it under this Agreement or law.

ARTICLE 5
AFFIRMATIVE COVENANTS

Unless the prior written consent to the contrary is obtained from each Lender (which consent may be granted or withheld in each such Lender’s sole and absolute discretion), Borrower will at all times comply with the covenants contained in this Article 5, from and after the Effective Date and for so long as any part of the Indebtedness is outstanding.

Section 5.1 Performance of Obligations. Borrower will repay the CDE Loans in accordance with the Loan Documents. Each of Borrower and Guarantor will do and perform every act required of it under the applicable Loan Documents at the time or times and in the manner specified.

Section 5.2 Financial Statements and Reports; Tax Returns. Borrower will furnish, or cause to be furnished, to each Lender (unless otherwise noted):

(a) Borrower’s Quarterly Financial Statements. As soon as available and in any event within 60 calendar days after the end of each fiscal calendar quarter of Borrower, Borrower’s internally prepared statements of financial position and related statements of activities and cash flows as of the end of and for such period, certified correct by the chief financial officer of Borrower.

(b) Borrower Annual Financial Statements. As soon as available and in any event within 180 calendar days after the end of each Fiscal Year, its audited annual statements of financial position and related statements of activities and cash flows as of the end of and for such year, certified correct by the chief financial officer of Borrower, together with an unqualified opinion of an independent public accountant acceptable to each Lender. At least 15 calendar days prior to the foregoing deadline, Borrower shall furnish to each Lender draft audited financial statements of Borrower.
(c) **Guarantor's Quarterly Financial Statements.** As soon as available and in any event within 60 calendar days after the end of each fiscal calendar quarter of Guarantor, respectively, Guarantor's internally prepared statements of financial position and related statements of activities and cash flows as of the end of and for such period, certified correct by the respective chief financial officer of Guarantor.

(d) **Guarantor Annual Financial Statements.** As soon as available and in any event within 180 calendar days after the end of each Fiscal Year, its audited annual statements of financial position and related statements of activities and cash flows as of the end of and for such year, together with an unqualified opinion of an independent public accountant acceptable to each Lender. At least 15 calendar days prior to the foregoing deadline, Borrower shall cause Guarantor to furnish to each Lender draft audited financial statements of Guarantor.

(e) **Compliance Certificates.** Borrower shall prepare and submit to Lenders (i) the Community Benefits Report in the form set forth in the Community Benefits Agreement by August 15 of each year during the Compliance Period for the twelve month period ending in June 30 of such year, and (ii) a NMTC program compliance certificate substantially in the form as Attachment 1 to the Addendum and a QALICB Questionnaire substantially in the form as Exhibit C, each by February 15 (for the period ending December 31) and August 15 (for the period ending June 30) of each year during the Compliance Period.

(f) **NMTC Reports.** Promptly upon the reasonable request of any Lender and in any event within 15 Business Days of any such request, all information, reports and certifications required from time to time by each Lender as such Lender deems reasonably necessary to demonstrate compliance with any law, regulation or other guidance applicable to the New Markets Tax Credit Program, as such reporting requirements may change from time to time, including without limitation, (i) Section 45D of the Code and the treasury regulations and guidance issued pursuant to Section 45D of the Code, as the same may reasonably relate to Borrower and its obligations hereunder and under the Loan Documents, and (ii) all information as specified in the Addendum and Attachment 1 thereto.

(g) **Tax Returns / Forms 990.** As soon as available and in any event within 180 calendar days after the end of each Fiscal Year, (i) copies of any federal income tax returns, with all supporting schedules, of Borrower and Guarantor, and (ii) copies of Forms 990 (or equivalent documentation required to be filed with the Secretary of State of California) of each of Guarantor and Borrower prepared and signed by an independent certified public accountant reasonably acceptable to Lenders, provided if the Borrower and/or Guarantor is filing for an extension of time to file a federal income tax return, Borrower and Guarantor shall deliver to the Lenders no less than 15 calendar days prior to filing such extension (a) a copy of such extension and (b) Borrower and Guarantor's federal income tax returns for the prior year. At least 30 calendar days prior to the foregoing deadline, Borrower shall furnish (or cause to be furnished) draft federal income tax returns for each of Borrower and Guarantor and Form 990 (or equivalent documentation required to be filed with the Secretary of State of California) for each of Guarantor and Borrower. However, Lenders acknowledge that Guarantor is a California governmental public entity and as such does not file state or federal income tax returns.
(h) **Local Taxes.** As soon as available and in any event within ninety (90) calendar days after the end of each calendar year, a schedule of all local taxes paid by Borrower during calendar year (including, without limitation, sales/use tax, lodging tax, beverage tax, tourism tax and property tax), along with proof of payment.

(i) **Operating Budget.** Borrower shall furnish no later than thirty (30) calendar days prior to the start of each Fiscal Year, the Operating Budget (prepared consistent with the requirements of Section 5.2(a)).

(j) **Borrower’s Insurance Policies.** As soon as available and in any event within sixty (60) calendar days after the start of each fiscal year of Borrower, a listing of insurance policies providing coverage for the Property, detailing the type, level of coverage, deductibles, insurance carrier, and term, along with the current Accord certificates showing the same.

(k) **Other Information.** Promptly upon the reasonable request of any Lender and in any event within fifteen (15) Business Days of such request, such other information regarding the business and affairs and financial condition of Borrower and Guarantor as any Lender may reasonably request.

(l) **Community Impact Survey.** Within 60 calendar days after the end of each calendar year or such later date as agreed to by CNMC Lender in its reasonable discretion, the Community Impact Survey (a sample of which is attached hereto as Exhibit E) shall be provided to CNMC Lender. CNMC Lender shall provide Borrower with the specific Community Impact Survey to be filled out (which may be revised annually) each year.

(m) All balance sheets and other financial reports referred to in this Section 5.2 shall be in such detail as each Lender may reasonably request and will conform to generally accepted accounting principles applied on a consistent basis.

Section 5.3 **Taxes and Other Liens.** Borrower will, or will cause Guarantor as sublessee pursuant to the Sublease to, pay and discharge (or bond over) promptly when due, or prior to delinquency in the case of property taxes, all taxes, assessments and governmental charges or levies imposed upon it or upon its income or upon the Property as well as all claims of any kind (including claims for labor, materials, supplies and rent) which, if unpaid, would have or could reasonably be expected to have a Material Adverse Effect on or to Borrower or Guarantor, and might become a Lien upon any or all of the Property; provided, that Borrower will not be required to pay any such tax, assessment, charge, levy or claim if the amount, applicability or validity thereof is contested in good faith by appropriate proceedings diligently conducted and Borrower sets up adequate reserves for the same in accordance with generally accepted accounting principles and meets all bonding or deposit requirements therefor. If requested by any Lender, Borrower will furnish each Lender with proof of payment acceptable to such Lender of all taxes, assessments, charges, levies or claims not later than the date on which penalties or Liens might attach thereto. In the event that Borrower contests any such taxes, assessments, charges, levies or claims in accordance with this Section 5.3, if requested by any Lender, Borrower will furnish each Lender with a reasonably detailed, written description of the contested matter and all actions taken by Borrower in connection with such contest.
Section 5.4 **Maintenance of Existence and Property.** Borrower will maintain its nonprofit public benefit corporate existence and rights (be it corporate, religious or other such nonprofit existence). Guarantor will maintain its public entity existence and rights. Borrower will maintain (or will ensure that Lessee maintains pursuant to the Lease) the Property in good order and condition at all times and make all repairs, replacements, additions, betterments and improvements to the Property to the extent necessary to keep the Property in full operation and in neat, clean and secure condition.

Section 5.5 **Further Assurances.** Borrower will promptly (and in no event later than thirty (30) calendar days after notice from any Lender is received) cure any defects in the creation, execution and delivery of the Loan Documents. Borrower, at its expense, will promptly execute and deliver to each Lender upon request all such other and further documents, agreements and instruments in compliance with or accomplishment of the covenants and agreements of Borrower in the Loan Documents, or to correct any omissions in the Loan Documents, or more fully state the security obligations set out herein or in any of the Loan Documents.

Section 5.6 **Payment/Reimbursement of Lenders' Fee and Expenses.**

(a) **NMCC CDE Fees and Expenses.**

(i) On the Effective Date, Borrower shall establish the NMCC CDE Reserve Account in the amount of $431,375.00. The NMCC CDE Reserve Account funds shall be used only for the purposes, and shall be released in accordance with the terms and conditions, set forth in this Agreement. The NMCC CDE Reserve Account (and the funds maintained therein) shall be subject to the NMCC CDE Reserve Account P&C Agreement.

(ii) On the Effective Date, Borrower shall make a payment to the NMCC Allocatee in the amount of $210,000 in consideration for (i) forming and managing the NMCC Lender and (ii) making the sub-allocation to NMCC Lender.  

Section 5.7 **Insurance: Casualty or Condemnation.**

(a) Borrower shall procure and maintain for the benefit of each Lender, or cause to be so procured and maintained, original paid up insurance policies from companies licensed as regulated insurers in the State of California, or from a governmental joint powers authority which provides insurance coverage to public entities, and reasonably acceptable to each Lender, in amounts, in form and substance, and with expiration dates reasonably acceptable to each Lender, providing the types of insurance on the Property as set forth in hereto attached Exhibit D.

(b) All of the policies listed in Exhibit D shall contain an agreement by the insurer not to cancel or amend the policies without giving each Lender at least 30 calendar days' prior written notice of such insurer's intention to do so, except in case of non-payment, in which case, at least 10 calendar days' prior written notice shall be required.

(c) Borrower shall deliver original or certified policies to each Lender as of the Effective Date, and Borrower shall deliver original or certified renewal policies (or insurance certificates from Borrower's insurance servicer) to each Lender with satisfactory evidence of
payment not less than 15 calendar days in advance of the expiration date of the existing policy or
policies. Borrower shall provide each Lender with endorsements or other evidence reasonably
acceptable to such Lender, evidencing the required coverages, additional insured/mortgagee/loss
payee status, waiver of subrogation and other requirements of this Section 5.7. In the event
Borrower should, for any reason whatsoever, fail to keep the Property or any part thereof so
insured, or to keep said policies so payable, or fail to deliver to each Lender the original or
certified policies of insurance and the renewals thereof upon demand, then each Lender may, but
shall not be obligated to, have such insurance effected in such amounts and by such companies
as such Lender may deem proper and may pay the premiums therefor. Borrower shall reimburse
each such Lender upon demand for the amount of premium paid.

(d) Borrower agrees to notify Lenders immediately in writing of any material fire or
other casualty to or accident involving the Property, whether or not such fire, casualty or
accident is covered by insurance, and of any institution of condemnation proceedings or notice of
any pending or threatened condemnation proceedings. Borrower further agrees to notify
promptly Borrower's insurance company and to submit an appropriate claim and proof of claim
to the insurance company if the Property is damaged or destroyed by any material fire or other
casualty.

(e) Each Lender is hereby authorized and empowered, at its option, to collect and
receive the proceeds from any policy or policies of insurance or from any condemnation
proceedings or compromise in lieu thereof, and each insurance company and Governmental
Authority is hereby authorized and directed to make payment of all such losses directly to
Lenders instead of to Borrower and Lenders jointly. Net proceeds thereof shall be applied in
accordance with Section 5.7(f), (g), and/or (h).

(f) If there is a fire or casualty loss which damages all or a portion of the
Improvements, or any condemnation affecting the Property, then the proceeds of the insurance or
condemnation shall be deposited into a cash collateral account with Bank, for the benefit of
Lenders and such proceeds will be applied to the payment of the cost of restoration of the
Improvements upon such terms and conditions as each Lender may deem necessary or
appropriate in its reasonable discretion; provided, that (i) restoration is reasonably feasible in
each Lender's reasonable discretion and such insurance proceeds must be adequate to cover the
cost of restoration of the Improvements, or if the proceeds are insufficient, then Borrower shall
give each Lender such adequate protection and assurance as such Lender may, in its reasonable
discretion require, that additional funds will be provided by Borrower in order to complete the
restoration of the Improvements, (ii) Borrower shall have provided each Lender with such
adequate protection and assurance as such Lender may, in its reasonable discretion require, that
Borrower has sufficient funds on hand to pay interest and principal on the CDE Loans during the
restoration period, (iii) no Event of Default has occurred and is continuing, and (iv) the priority
of the Collateral Documents in the Property is not impaired. In connection with any restoration
of the Improvements, Borrower shall provide Lenders with a detailed cost breakdown showing
by line item all costs projected for such restoration and a revised and updated cost breakdown
shall be furnished by Borrower to Lenders on a monthly basis.

(g) If not all of the conditions set forth in Section 5.7(f)(i)-(iv) are satisfied, then any
insurance or condemnation proceeds resulting from a partial or total loss of the Improvements
may, at Lenders' option, be applied to the payment of the Indebtedness or to full or partial restoration of the Improvements. If such insurance or condemnation proceeds are not sufficient to pay the Indebtedness in full, Lenders shall have a right to accelerate the maturity of the Indebtedness and proceed against Borrower and/or the remainder of the Collateral; and if the proceeds exceed the amount necessary to pay the Indebtedness in full, then such excess shall be paid to Borrower.

(h) If there is a fire or casualty loss or condemnation which causes the proceeds of any rental loss or business interruption insurance to be payable, such proceeds shall be paid to Lenders on a pari passu basis and (i) so long as no Event of Default has occurred and is continuing, applied to the payment of the installments of principal and interest on the CDE Loans as they become due, ad valorem real estate taxes and special assessments and operating expenses of the Property, as they respectively become due, or (ii) if an Event of Default has occurred and is continuing, applied to the payment of the Indebtedness as Lenders may elect in their sole and absolute discretion, subject to Section 9.3.

(i) Coverages for commercial property, builders risk, boiler and machinery, windstorm, earthquake, business interruption / loss of rents, or other property coverages, and any umbrella coverages with respect to any of the foregoing, shall include a noncontributory standard mortgagee clause or its equivalent in a form satisfactory to Lenders, or the statutory mortgagee clause, if any, required in California, or a mortgagee's loss payable endorsement, in favor of Lenders, as reasonably acceptable to Lenders.

Section 5.8 Accounts and Records. Borrower and Guarantor will keep books of record and accounts in which true and correct entries will be made as to all material matters of all dealings or transactions in relation to its business and activities, in accordance with generally accepted accounting principles, consistently applied except for changes in accounting principles or practices with which the independent certified public accountants for Borrower or Guarantor, as applicable, concur.

Section 5.9 Right of Inspection. Borrower will permit any officer, employee or agent of any Lender to enter and access the Property and the Project, for the express purpose of inspecting the same, including without limitation examining the books of record and accounts of Borrower, taking copies and extracts therefrom, and discussing the affairs, finances and accounts of Borrower with Borrower's officers, accountants and auditors, all at such reasonable times and on reasonable prior notice and as often as any Lender may reasonably request. Guarantor shall permit any Lender to undertake the same inspections and related rights with regard to Guarantor's books and records as provided for herein.

Section 5.10 Notice of Certain Events.

(a) Borrower will promptly notify Lenders if Borrower learns of the occurrence of any event which constitutes a Default and of any claim of default by Borrower, together with a reasonably detailed, written statement by a responsible officer of Borrower of the steps being taken to cure the Default.
(b) Borrower shall promptly notify Lenders of any change in operations of Borrower that would have or could reasonably be expected to have a Material Adverse Effect on or to Borrower, or any material change in the cost or scope of the Improvements.

(c) Borrower shall promptly notify Lenders of any litigation or dispute threatened or instituted against or affecting Borrower or the Property. In the event of such litigation, Borrower will cause such proceedings to be vigorously contested in good faith and, in the event of any adverse ruling or decision, Borrower shall prosecute all allowable appeals.

(d) Lenders may (but shall not be obligated to), without prior notice to Borrower, commence, appear in, or defend any action or proceeding purporting to directly affect the CDE Loans, or the respective rights and obligations of Lenders and Borrower pursuant to this Agreement or any of the other Loan Documents. Lenders may (but shall not be obligated to) pay all necessary fees and expenses (including, without limitation, reasonable attorneys’, accountants’, experts’, consultants’ fees, disbursements and court costs prior to trial, at trial and on appeal) incurred in connection with such proceedings or actions, which amount Borrower shall repay without mark-up, profit, or overhead to Lenders upon demand. The foregoing shall not be deemed to limit or waive any right or remedy of Lenders pursuant to or in connection with an Event of Default.

Section 5.11 ERISA Compliance. Borrower will comply with all of the applicable funding and other requirements of ERISA as such requirements relate to the Plans of Borrower.

Section 5.12 Indemnification.

(a) The CDE Loans shall be without any cost whatsoever to Lenders except as expressly provided for herein. Borrower shall pay or cause to be paid, on demand, all of Lenders’ reasonable costs and expenses, including but not limited to, the legal fees and expenses of counsel to each Lender, together with all recording fees and taxes, title insurance premiums, appraiser fees, environmental audit fees and insurance consulting fees, any broker’s fees, survey costs and other costs and expenses related to the preparation, negotiation, execution, delivery, filing, and recording of the Loan Documents (or any amendment or modification thereof) and the closing and funding of the Loan. In addition, Borrower shall pay, on demand by any Lender, all reasonable expenses, charges, costs and fees (including reasonable attorneys' and accountants' fees and expenses) in connection with the servicing, administration, enforcement interpretation, and collection of the CDE Loans and the Loan Documents, and in the preservation and protection of Lenders’ rights hereunder and thereunder. Without limitation, Borrower shall pay all costs and expenses, including reasonable attorneys' and accountants' fees, incurred by any Lender in any case or proceeding against Borrower under the Bankruptcy Code (or any law succeeding or replacing any of the same).

(b) Borrower agrees to indemnify, protect, hold harmless and defend Lenders, Bank, Disbursement Agent, CCE, Lenders' members (including, without limitation, Fund and Allocatees), the respective Affiliates of each of the foregoing, and the respective directors, managers, members, officers, employees, lenders, representatives, consultants, and attorneys of each of the foregoing (each, a "Covered Person" and collectively, the "Covered Persons"), from and against any and all losses, liabilities, suits, actions, obligations, fines, damages, judgments,
penalties, claims, causes of action, charges, costs and expenses (including, without limitation, reasonable attorneys', accountants', experts', and consultants' fees, disbursements and court costs prior to trial, at trial and on appeal) which are imposed on, incurred or paid by, or asserted against a Covered Person by reason or on account of, or in connection with, (i) any Default or Event of Default under any of the Loan Documents; (ii) any breach of any representation or covenant of Borrower or Guarantor in any of the Loan Documents; (iii) any gross negligence, fraud or willful misconduct of Borrower, Guarantor, or any Affiliate thereof or any of their respective directors, managers, members, officers, employees, representatives, consultants, or attorneys; (iv) the development, redevelopment, operation or financing of the Property; (v) any accident, injury, death or damage to any Person or property occurring in, on or about the Property or any street, drive, sidewalk, curb or passageway adjacent thereto, except to the extent that the same results directly from the willful misconduct, fraud or gross negligence of a Covered Person; (vi) any Specified NMTC Recapture Event (for which Borrower and/or any Guarantor are liable), as defined in the QALICB NMTC Indemnity (provided, Borrower acknowledges and agrees that any liability it incurs on account of such event shall be governed exclusively by the QALICB NMTC Indemnity); (vii) any claim arising from the ownership, occupancy, operation or use of the Property or any other collateral related to any current or future debt owed to Lenders (including without limitation any other real property owned, managed or leased by Borrower or Guarantor) and any business conducted by Borrower or Guarantor, including without limitation claims by or on behalf of contractors, neighbors, tenants, and community groups; (viii) the execution or delivery by Borrower of any of the Loan Documents or any agreement or instrument contemplated thereby, the performance (or non-performance) by Borrower of its respective obligations hereunder or the consummation of the transactions contemplated hereby; and (ix) any claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory (including negligence by any Covered Person). Notwithstanding the foregoing, Borrower shall not have any liability for losses, liabilities, suits, actions, obligations, fines, damages, judgments, penalties, claims, causes of action, charges, costs and expenses of a Covered Person caused by the gross negligence, fraud, breach or willful misconduct of or by a Covered Person. In addition and without limiting the generality of the foregoing, if any Lender shall be made a party to any litigation commenced by or against Borrower, Guarantor or otherwise in connection with any CDE Loan (other than suits between Borrower and a Lender or Borrower and Guarantor, as the case may be), then Borrower and/or Guarantor, as the case may be, shall protect and hold such Lender harmless and shall be obligated to pay immediately when due all costs, expenses and attorneys' fees of such Lender in connection with such litigation.

(c) Borrower, at the request of any Covered Person, shall have the obligation to defend against such investigation, litigation or proceeding and Borrower, in any event, may participate in the defense thereof, with legal counsel of Borrower's choice. In the event that such Covered Person requests Borrower to defend against such investigation, litigation or proceeding, Borrower shall promptly do so and such Covered Person shall have the right to have legal counsel of its choice participate in such defense (and the reasonable fees and expenses of such counsel shall be borne by Borrower). No action taken by legal counsel chosen by such Covered Person in defending against any such investigation, litigation or proceeding shall vitiate or in any way impair Borrower's obligation and duty hereunder to indemnify and hold harmless such Covered Person.
(d) The obligations of Borrower under this Section 5.12 shall survive the making and repayment of the CDE Loans, foreclosure of the Mortgage or acceptance by Lenders or their successors or assigns of a deed in lieu of foreclosure and shall inure to the benefit of any Person who was at any time a Covered Person under this Agreement or any other Loan Document.

(e) Guarantor hereby acknowledges and agrees that it has an independent obligation (and hereby consents to and undertakes such obligation) to guarantee Borrower's obligations under this Section 5.12. Guarantor agrees that any indemnification or other protection provided to any Covered Person pursuant to this Section 5.12 shall (i) survive repayment of the Loan, foreclosure of the Mortgage or acceptance by Lenders or their successors or assigns of a deed in lieu of foreclosure, and (ii) inure to the benefit of any Person who was at any time a Covered Person under this Agreement or any other Loan Document.

(f) Any amount payable to a Covered Person under this Section 5.12 shall be due and payable upon demand therefor and receipt by Borrower of a statement setting forth in reasonable detail the amount claimed and the basis therefor. Borrower's obligations under this Section 5.12 shall not be affected by the absence or unavailability of insurance covering the same or by the failure or refusal of any insurance carrier to perform any obligation on its part under any such policy of insurance. If any claim, action or proceeding is made or brought which is subject to the indemnity set forth in this Section 5.12, Borrower shall resist or defend against the same, in its own name or, if necessary, in the name of the applicable Covered Person, by attorneys for Borrower's insurance carrier (if the same is covered by insurance) approved by the applicable Covered Person or otherwise by attorneys retained by Borrower and approved by the applicable Covered Person. All obligations set forth in this Section 5.12 shall survive the making and repayment of the CDE Loans, foreclosure of the Mortgage or acceptance by Lenders or their successors or assigns of a deed in lieu of foreclosure.

Section 5.13 Compliance with Laws and Covenants. Borrower and Guarantor will observe and comply in all material respects with all laws, statutes, codes, acts, ordinances, orders, judgments, decrees, injunctions, rules, regulations, certificates, franchises, permits, licenses, authorizations, directions and requirements (including without limitation any of the foregoing relating to environmental standards or controls) of all Governmental Authorities applicable to Borrower, Guarantor or the Property. Borrower will maintain in effect and enforce policies and procedures designed to ensure compliance by Borrower, its Affiliates and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

Section 5.14 Construction Covenants. In addition to the covenants of Borrower otherwise set forth in this Agreement and the other Loan Documents, Borrower hereby agrees that, so long as any part of the Indebtedness is outstanding, unless compliance shall have been waived in writing by Lenders (or Disbursement Agent on behalf of Lenders), Borrower shall at all times comply with the following covenants:

(a) Commencement and Completion of the Improvements.

(i) Borrower will (A) cause the continued construction of the Improvements to be prosecuted with diligence and continuity after the Effective Date in accordance with the Plans & Specifications, (B) promptly correct or cause to be corrected any defect in the
Improvements, any material departure in the construction of the Improvements from the Plans & Specifications, requirements of any Governmental Authorities, or any encroachment by any part of the Improvements or any other structure located on the Property on any building line, easement, property line, or restricted area, (C) undertake and guarantee to Lenders that the Improvements will be completed in a good and workmanlike manner in accordance with the Plans & Specifications, (D) promptly notify Lenders of any Lien that Borrower has knowledge of filed by any architect, Contractor, subcontractor, supplier or laborer, and (E) promptly notify Lenders that Borrower has knowledge that any Contractor has failed to pay any subcontractor any amounts due following the funding of any advance for the payment of same.

(ii) Notwithstanding anything to the contrary in this Agreement, the Improvements shall not be deemed to be Substantially Complete (the "Completion of the Improvements") until (A) they shall contain all equipment, furnishings and fixtures which may be required by Governmental Authorities and/or by any law, regulation or rule of any Governmental Authority, or as required pursuant to the Lease for delivery of possession to Lessee of that portion of the Property subject to the Improvements, (B) permanent certificates of occupancy and all other necessary certificates, licenses, consents and other approvals of Governmental Authorities have been issued or made with respect to the Improvements (subject to Section 8.1(e), temporary certificates of occupancy (if applicable) may be provided instead of permanent certificates of occupancy), and (C) title to the Property is clear and no liens or encumbrances exist against the Property other than the Permitted Exceptions set forth in that certain Title Policy issued to Lenders, or such other liens or encumbrances otherwise previously approved in writing by Lenders.

(iii) Borrower shall cause the construction of the Improvements to proceed according to the schedule of work contained in the Construction Documents ("Construction Completion Schedule"), and in any event, shall cause Completion of the Improvements to occur on or before such date that is twelve (12) months following the Effective Date.

(iv) Borrower may not change the Construction Completion Schedule without the prior written consent of Lenders, which consent may be granted or withheld in either Lender's reasonable discretion.

(v) Borrower shall cause satisfaction of all conditions precedent to final Funds Release as set forth in Section 7 of the CMDA and completion of all Punch List Items to occur not later than sixty (60) calendar days following the date of Completion of the Improvements. Section 4 of the CMDA (Funds Release Procedures) is incorporated herein by this reference.

(b) Project Budget and Development Expense Schedule. Borrower has submitted to Lenders the Project Budget and Development Expense Schedule. The total amount of the Development Expense Schedule shall not exceed $[______]. Proceeds of the CDE Loans shall not be used in violation of the sublimits as are set forth in the Project Budget, subject to the CMDA. Changes in the Project Budget may be made only in accordance with the following:

(i) Reductions in line items for Improvements may be made and the savings may be reallocated by Borrower only at such time as Borrower certifies and Lenders concur that
all work in connection with the line item for such Improvements has been completed satisfactorily and paid for in full.

(ii) No reallocations to or from (A) the Disbursement Account or (B) the CDE Reserve Account may be made without respective Lender's prior written consent in each instance, which consent may be granted or withheld in such Lender's sole and absolute discretion.

(iii) [Intentionally Omitted].

(iv) No reallocations may be made from the contingency line item of the Project Budget to any other line item within the Project Budget to which such contingency line item pertains without the prior written consent of Lenders, which consent may be granted or withheld in each Lender's reasonable discretion.

(v) All other line item reductions and reallocations of the Project Budget shall require the prior written consent of Lenders, which consent may be granted or withheld in each Lender's reasonable discretion.

(c) Change Orders. Prior to the Effective Date, all change orders shall be deemed approved by Lenders permitting changes to the Plans & Specifications. On or after the Effective Date, Borrower will not (i) cause or permit any changes in the Plans & Specifications except pursuant to a change order approved in writing by Lenders and Disbursement Agent, or (ii) make any change in any contract or subcontract without the prior written consent of Lenders, which consent may be granted or withheld in each Lender's reasonable discretion; provided further, however, that if any change order of less than $50,000.00 submitted on or after the Effective Date when added to all other change orders of less than $50,000.00 submitted on or after the Effective Date equals $150,000.00 or more in change orders submitted on or after the Effective Date such latter change order and all future change orders shall require the prior written consent of Lenders, which consent may be granted or withheld in Lenders' reasonable discretion.

(d) Subcontractor Verifications; Materials Testing. Within ten (10) calendar days after request by any Lender, Borrower shall furnish to Lenders (i) a certificate, in form prescribed by Lenders, signed by all subcontractors and material suppliers as to the existence, amount and retainage of any subcontracts and materials supplies agreements, and/or (ii) copies of all reports documenting field and laboratory tests on materials and construction quality to verify compliance of the work with the specified quality standards set forth in the Plans & Specifications.

(c) Off-Site Storage. Section 6(b) of the CMDA is incorporated herein by this reference.

Section 5.15 Accounts. Borrower shall maintain the Disbursement Account and all Operating Accounts with Bank. Subject to the rights of NMCC CDE under the NMCC CDE Reserve Account P&C Agreement, Borrower shall maintain the NMCC CDE Reserve Account with Bank.
Section 5.16 **Appraisal.** Lenders shall have the right to have the Property appraised at Borrower's expense once during the term of the CDE Loans (and at any time an Event of Default remains outstanding and uncured) and at each request for an extension of the CDE Loans. In addition, each Lender shall have the right to have the Property appraised at such Lender's expense at any time during the term of the CDE Loans.

Section 5.17 **New Markets Tax Credit Program Covenants.** Borrower will comply with all of the covenants set forth in the Addendum, all of which are incorporated herein by this reference.

Section 5.18 **Certain Taxes of Lenders and Lenders' Members.** If any income, franchise or withholding taxes are imposed on any Lender or its members (including, but not limited to, Fund) in connection with such Lender's CDE Loans or any Event of Default by Borrower or Guarantor under the Loan Documents, such Lender shall provide reasonable notice to Borrower, including documentation evidencing the amount of the applicable taxes due. Borrower shall pay or reimburse such Lender for any such taxes in accordance with Section 5.6 (with such Lender distributing such payment or reimbursement to its appropriate member, if applicable). Notwithstanding the foregoing, Borrower shall have no obligation to pay or reimburse any such income, franchise or withholding taxes imposed on any Lender if (a) such Lender is taxed as a corporation under Subchapter C of the Code, (b) such taxes when paid by such Lender are allowed as a credit against amounts otherwise due by the members of such Lender, (c) such taxes are payable as a result of any asset management fees or other fees payable by Borrower to (or otherwise earned by) such Lender pursuant to or in connection with the CDE Loans, or (d) such taxes are payable as a result of such Lender conducting any business other than making its respective CDE Loans. Borrower's obligation to pay or reimburse such income, franchise or withholding taxes imposed on any member of any Lender (including, but not limited to, Fund) shall be subject to the same exclusions as described in this Section 5.18 with respect to such Lender.

Section 5.19 **Compliance with Lease and Sublease.** Borrower and District shall comply at all times with the terms and conditions of the Lease and Sublease. Borrower will pay the rent required by the Lease as the same becomes due and payable and promptly perform and observe all of the covenants, agreements, obligations and conditions required to be performed and observed by the Borrower under the Lease.

**ARTICLE 6**

**NEGATIVE COVENANTS**

Unless Lenders' prior written consent to the contrary is obtained (which consent may be granted or withheld in each Lender's sole and absolute discretion), Borrower will at all times comply with the covenants contained in this Article 6, from the Effective Date and for so long as any part of the Indebtedness is outstanding.

Section 6.1 **Debts, Guaranties and Other Obligations.** Borrower will not incur, create, assume or in any manner become or be liable in respect of any Debt direct or contingent, except for:

(a) the Indebtedness to each Lender under this Agreement and the other Loan Documents;
unsecured trade payables from time to time incurred in the ordinary course of business; and

taxes, assessments or other government charges which are not yet due or are being contested in good faith by appropriate action promptly initiated and diligently conducted, as long as Borrower has provided adequate reserves therefor as required by generally accepted accounting principles and has complied with all deposit and bonding requirements;

Section 6.2 Liens. Borrower will not create, incur, assume or permit to exist any Lien on any of its property (including the Property and any other real or personal property owned by Borrower, whether or not associated with the Project) now owned or hereafter acquired, except for:

(a) Liens in favor of any Lender securing the Indebtedness;

(b) Liens for taxes, assessments, or other governmental charges not yet due or which are being contested in good faith by appropriate action promptly initiated and diligently conducted, as long as Borrower has provided adequate reserves therefor as required by generally accepted accounting principles and has complied with all deposit and bonding requirements;

(c) Liens of landlords, vendors, carriers, warehousemen, mechanics, laborers and materialmen arising by law in the ordinary course of business for sums either not yet due or being contested in good faith by appropriate action promptly initiated and diligently conducted, as long as Borrower has provided adequate reserves therefor as required by generally accepted accounting principles and has complied with all deposit and bonding requirements; and

(d) inchoate Liens arising under ERISA to secure the contingent liability of Borrower permitted by this Agreement.

(c) Borrower will not surrender the Lease or Borrower's leasehold estate and interest therein, nor terminate or cancel the Lease; and will not, without the prior written consent of Lenders modify, change, supplement, alter or amend the Lease, either orally or in writing.

Section 6.3 Merger and Sale of Property.

(a) Borrower will not acquire, merge with or consolidate with any Person (whether or not such acquisition, merger, or consolidation requires any capital expenditures on the part of Borrower and whether or not Borrower is the surviving Person), or sell, assign, transfer or encumber its ownership interests, if any, or enter into any agreement by which effective control over board appointments, proxies, voting or other board actions are granted, assigned or delegated to any other party, other than Guarantor, without the prior written consent of Lenders (which consent may be granted or withheld in each Lender's sole and absolute discretion).

(b) Except for the Sublease, Borrower will not sell, assign, lease, exchange, transfer, convey or otherwise dispose of (whether in one transaction or in a series of transactions) any interest in the Property to any Person without the prior written consent of Lenders (which consent may be granted or withheld in each Lender's sole and absolute discretion).
(c) Without the prior written consent of Lenders (which consent may be granted or withheld in each Lender’s reasonable discretion), Borrower shall not (a) enter into any sublease or permit any lease assignment or sublease of space at the Property, (b) materially modify, amend or terminate any lease of space at the Property, or permit the modification, amendment or termination of any sublease, or (c) accept any rental payment more than one month in advance of its due date. Borrower shall provide Lenders with a copy of any such sublease promptly following its execution. Notwithstanding the foregoing, in no case may Borrower sublease any portion of the Property where such portion of the Property does not include the Project buildings. Borrower shall provide Lenders with a copy of any such proposed sublease no less than twenty (20) calendar days prior to the anticipated execution thereof. Notwithstanding the foregoing, Lenders hereby approve and consent to the execution of the Sublease.

(d) Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, and except as otherwise set forth in the Sublease, Borrower acknowledges and agrees that it shall not contract for, delegate or assign, in whole or in part, its management and/or operational responsibilities of the Improvements and/or any of its responsibilities under the Loan Documents without the prior written consent of Lenders (which consent may be granted or withheld in each Lender’s reasonable discretion).

Section 6.4 ERISA Compliance. Neither Borrower nor Guarantor will at any time permit any Plan maintained by it to engage in any "prohibited transaction" as such term is defined in Section 4975 of the Code to the extent an exemption to the prohibited transaction does not exist under ERISA or the Code; incur any "accumulated funding deficiency" as such term is defined in Section 302 of ERISA; or terminate any such Plan in a manner which could result in the imposition of a Lien on the property of Borrower or Guarantor pursuant to Section 4068 of ERISA.

Section 6.5 Management Fee. Borrower shall not enter into a management agreement for the Property without receiving the prior written approval of Lenders, which consent may be granted or withheld in each Lender’s reasonable discretion. In the event Borrower executes a management agreement for the Property, it is understood and agreed that (a) no such management agreement may be amended, modified or terminated except with the prior written consent of Lenders (which consent may be granted or withheld in each Lender’s reasonable discretion) or as expressly authorized by any of the Loan Documents, (b) Borrower shall not pay any management fees to the manager of the Property prior to making timely debt service payments to Lenders in accordance with the terms of the CDE Loans, and (c) if an Event of Default has occurred and is continuing, Borrower acknowledges and agrees that no management fees will be paid.

Section 6.6 Use of Proceeds. Borrower will not request any Loan advance or disbursement, and Borrower shall not use, and shall ensure that its Affiliates and its or their respective directors, officers, employees and agents shall not use, the proceeds of any Loan (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (b) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (c) in any manner that would result in the violation of any Sanctions applicable to any party hereto.
ARTICLE 7
CONDITIONS OF LENDING

Section 7.1 Conditions of Advances of CDE Loans. The obligation of Lenders to close and make the advance on the CDE Loans is subject to the accuracy of each and every representation and warranty of Borrower contained in this Agreement and the other Loan Documents, and to the receipt by Lenders of the following on or before the Effective Date, all of which will be satisfactory in form and substance to Lenders and such other Persons as specifically identified below:

(a) Deed. Recorded deed reflecting Borrower's leasehold interest in the Land.

(b) Construction Contracts. Complete copies of the Construction Contracts duly executed by the respective parties thereto, with each specifically identifying, as applicable, the duties to be performed by the respective parties thereto, terms of payment, change orders and retainage.

(c) Construction Completion Schedule. Schedule of all construction trades and delivery of materials from beginning of construction through completion of the Project.

(d) Contribution History and Schedule. A summary of Guarantor's capital campaign history and its current pledge receipt schedule.

(e) Disbursement Schedule. Schedule of Borrower's anticipated advances, and all expenditures made as of the Effective Date or such earlier date as may be agreed to by Borrower, Lenders, and Disbursement Agent.

(f) Environmental Reports. Environmental reports with reliance letters in favor of Lenders and certain Affiliates thereof.

(g) Financial Statements. Financial statements of Borrower (if available) and Guarantor reasonably satisfactory to Lenders and Disbursement Agent, including pro forma statements for the first three years of operation following Completion of the Improvements.

(h) Formation and Other Documents. (i) Organizational documents of Borrower and, as applicable, enabling legislation of Guarantor, together with all amendments, certified correct and complete by a Person deemed acceptable by Lenders, (ii) together with certificates of existence, fact or good standing, as applicable, as to Borrower and Guarantor from the Secretary of State of California, and (iii) resolutions of Borrower and Guarantor authorizing the execution of the Loan Documents and the Lease, as applicable, and (iv) certificates of incumbency and authority, as applicable, of Borrower and Guarantor as to the incumbency and signature of each representative of Borrower and Guarantor in connection with the transactions contemplated by the applicable Loan Documents.

(i) Insurance Policies. Insurance policies or certificates required by this Agreement, including builders risk insurance provided by Contractors.
(j) **Lease.** Recorded Memorandum of Ground Lease and full executed copy of the Lease reflecting Borrower’s leasehold interest in the Land.

(k) **Loan Documents.** Duly executed originals of its Notes (if required by Lenders) and complete copies of all other Loan Documents (including this Agreement) duly executed by the parties thereto.

(l) **New Market Tax Credits Program.** Compliance and debarment certificates and all other instruments reasonably required by any Lender's counsel confirming that the Project meets the criteria for additional distress as defined by the New Markets Tax Credit Program. Borrower shall have provided evidence to Lenders sufficient for each Lender to determine that each Lender has a reasonable expectation that Borrower is and will continue to be a "qualified active low-income community business" (as such term is defined in Section 45D of the Code) for the term of the CDE Loans.

(m) **No Default or Event of Default.** No Default or Event of Default has occurred and is continuing as of the Effective Date.

(n) **No Material Adverse Effect.** No event has occurred that had or could reasonably be expected to have a Material Adverse Effect on or to Borrower or Guarantor, or any material change in the cost or scope of the Improvements.

(o) **Opinions of Counsel.**

(i) One or more general corporate opinions (e.g., due authorization, enforceability, good standing) provided by counsel to Borrower and Guarantor in form and substance satisfactory to Lenders and Disbursement Agent in their sole and absolute discretion.

(ii) One or more due general corporate opinions (e.g., due authorization, enforceability, good standing) provided by counsel to each Lender, in form and substance satisfactory to Disbursement Agent in its sole and absolute discretion.

(iii) A tax opinion provided by counsel to Borrower and Guarantor, in form and substance satisfactory to each Lender and Disbursement Agent in their sole and absolute discretion.

(iv) A tax opinion provided by counsel to each Lender, in form and substance satisfactory to Disbursement Agent in its sole and absolute discretion.

(p) **Sublease.** Complete copy of the Sublease duly executed by the parties thereto.

(q) **Other Loan Documentation.**

(i) **Compass Loan Documents.** Executed loan documents relating to the loan made by Compass Bank and Compass Mortgage Corporation, Inc. to District on or prior to the Effective Date in the original principal amount of $1,554,892.00.
(ii) **Fund Loan Documents.** Executed loan documents relating to the leverage loan from Leverage Lender to Fund in the original principal amount of $[5,849,375.00].

(r) **Payment and Performance Bonds.** Receipt of payment and performance bonds in favor of Lenders and such other Persons as may be reasonably requested and in form, substance and amount acceptable to Lenders and Disbursement Agent.1

(s) **Permits.** Evidence that appropriate permits and such other licenses that are required to authorize the construction of the Improvements in accordance with the Plans & Specifications, including without limitation copies of all building permits for work already under construction are approved and can be obtained by each contractor upon commencement of work.

(t) **Plans & Specifications.** Final architectural and engineering drawings and specifications, including any change orders, minor field changes, revisions, amendments and addenda required to complete the construction of the Improvements. Plans and specifications of work under construction can be made available at the construction trailer for the Project.

(u) **Project Budget, Development Expense Schedule, and Operating Budget.** The Project Budget, Development Expense Schedule, and pro forma Operating Budget.

(v) **Qualified Equity Investment.** The Fund will have closed and funded one or more "qualified equity investments" (as such term is defined in Section 45D(b)(1) of the Code) into (i) NMCC CDE in the aggregate amount of $7,000,000.00, and (ii) CNMC CDE in the aggregate amount of $1,750,000.00.

(w) **Representations and Warranties.** All representations and warranties of Borrower and Guarantor set forth in this Agreement, the other Loan Documents, and the Lease (as applicable) are true and accurate in all material respects as of the Effective Date.

(x) **Schedule of Values (AIA Form G702 G703).** Line item hard costs breakdown for the Project.

(y) **Title Insurance.** A first mortgage title insurance policy covering the Property in an amount reasonably acceptable to Lenders and Disbursement Agent, which contains coverage exceptions and encumbrances approved by Lenders and Disbursement Agent.

(z) **Utilities Letters.** Letters or evidence in form and substance satisfactory to Lenders that the Property has adequate available water, electric, gas, telephone and other appropriate utility services.

(aa) **Zoning Certificate.** Proof satisfactory to Lenders, in each Lender's sole and absolute discretion, that the Land is zoned to permit construction and/or rehabilitation, as applicable, of the Improvements in accordance with the Intended Use.2

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1 NTD: Under consideration by Chase TBD
2 NTD: Lenders to consider if title endorsements are sufficient

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(bb) **Submission of Form 1023.** Borrower shall submit an Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code to the Internal Revenue Service within sixty (60) days of the date hereof.

(cc) **Other.** The satisfaction of all other applicable provisions under Article 2 and all other reasonable requirements and conditions reasonably imposed by Lenders and Disbursement Agent.

**ARTICLE 8**

**DEFAULT**

Section 8.1 **Events of Default.** Any of the following events will be considered an "Event of Default" as that term is used herein.

(a) **Addendum Covenants.** Borrower defaults in the observance or performance of any of the covenants or agreements contained in Section 5.17 or as set forth in the Addendum.

(b) **Addendum Representations.** A warranty or representation made by Borrower or Guarantor in the Addendum or furnished to Lenders in connection with any compliance requirements under the New Markets Tax Credit Program, is false in any material respect, or if of a continuing nature, becomes false in any material respect.

(c) **Assignments for Benefit of Creditors.** Borrower or Guarantor makes an assignment for the benefit of its creditors, or admits in writing its inability to pay its debts generally as they become due, or consents to the appointment of a receiver, trustee or liquidator of Borrower or Guarantor, the Collateral or of all or any part of Borrower's or Guarantor's property (including but not limited to the Property).

(d) **Certain Breaches.** Borrower (i) violates Section 6.4, (ii) fails to maintain insurance pursuant to Section 5.7, or (iii) fails to commence construction or cause Completion of the Improvements to occur within the time frames set forth in Section 5.14(a) (subject to Force Majeure).

(e) **Certificates of Occupancy.** The Completion of the Improvements was achieved pursuant to the receipt of temporary certificates of occupancy and Borrower fails to receive permanent certificates of occupancy prior to the expiration of such temporary certificates of occupancy.

(f) **Damage to Improvements.** The Improvements are substantially damaged or destroyed by fire or other casualty and Lenders determine in their reasonable discretion that the Improvements cannot be restored and completed in accordance with the terms and provisions of this Agreement and the Mortgage.

(g) **Default – Lease and Sublease.** Borrower or Guarantor, as applicable, fails to cure a default under the Lease or Sublease within any applicable notice and/or grace period thereunder.
(h) **Default - Other Material Agreements.** Borrower fails to cure within any applicable notice and/or grace period a default under the Construction Contracts or any other material agreement affecting the Project or the financial condition of Borrower.

(i) **Deficiency.** Section 4(f) of the CMDA is incorporated herein by reference.

(j) **Failure to Comply with Construction Requirements.** (i) Borrower fails to comply with any requirements of any Governmental Authority having jurisdiction with regard to the Project or the construction of the Improvements, or (ii) any permit, approval or license for the construction of the Improvements shall be revoked or suspended, or any stop work order is issued against construction of the Improvements or any part thereof, and such revocation, suspension or stop work order is not the result of Force Majeure and remains in effect for forty-five (45) calendar days.

(k) **Involuntary Bankruptcy or Receivership Proceedings.** A receiver, conservator, liquidator or trustee of Borrower or Guarantor, or of any of their respective property (including but not limited to the Property) is appointed by order or decree of any court or agency or supervisory authority having jurisdiction; or an order for relief is entered against Borrower or Guarantor under the Federal Bankruptcy Code; or Borrower or Guarantor is adjudicated bankrupt or insolvent; or the Property or any material portion of any property of Borrower or Guarantor (including but not limited to the Property) is sequestered by court order and such order remains in effect for more than thirty (30) calendar days after such party obtains knowledge thereof; or a petition is filed against Borrower or Guarantor under any state, reorganization, arrangement, insolvency, readjustment of debt, dissolution, liquidation or receivership law of any jurisdiction, whether now or hereafter in effect, and such petition is not dismissed within sixty (60) calendar days of the filing date.

(l) **Other Debt - Borrower's Default.** Borrower fails to cure within any applicable notice and/or grace period a default under any other Debt owed to any Person other than Lenders which has or could reasonably be expected to have a Material Adverse Effect on Borrower.

(m) **Other Debt - Guarantor's Default.** Guarantor fails to cure within any applicable notice and/or grace period a default under any other Debt, which has or could reasonably be expected to have a Material Adverse Effect on such Guarantor.

(n) **Other Debt - Owed to Lenders.** Borrower or Guarantor defaults in the payment of any amounts due to any Lender or any material default in the observance or performance of any of the covenants or agreements contained in any loan agreements, note, leases, collateral or other documents relating to any Debt of Borrower or Guarantor to Lenders (other than the CDE Loans), and any grace period applicable to such default has elapsed.

(o) **Payments.** Borrower fails to make payment when due of any principal, interest or other payment obligation under any Note, this Agreement (including but not limited to Section 5.6) or any of the other Loan Documents and such failure remains more than five (5) Business Days after notice of non-payment is given by any Lender to Borrower. Notwithstanding the foregoing or anything else to the contrary in this Agreement or the other Loan Documents, it shall be an immediate Event of Default, without any prior notice, if either
(i) a scheduled interest payment on any Note is not made within five (5) calendar days after the date due or (ii) the payment due on the Maturity Date under (and as defined in) any Note is not made on such date.

(p) Permits. All permits and such other licenses that are required to authorize the construction of the Improvements in accordance with the Plans & Specifications are not obtained as of the Effective Date.

(q) Progress of Construction. Following the commencement of construction of the Improvements within the time frame set forth in Section 5.14(a), such construction is abandoned or is discontinued for a period of more than fifteen (15) consecutive calendar days, subject to Force Majeure.

(r) Representations and Warranties. Any representation or warranty of Borrower or Guarantor contained in the Loan Documents (other than in the Addendum) or the Lease proves to have been incorrect in any material respect as of the date thereof; or any representation, statement (including financial statements), certificate or data furnished or made to Lenders by Borrower or Guarantor under the Loan Documents (other than in the Addendum) or the Lease proves to have been untrue in any material respect as of the date stated or certified, and such default continues uncured for a period of thirty (30) calendar days after notice of such default (specifying the default) is given by any Lender to Borrower; provided, that for any such default which cannot in the reasonable determination of the Lenders be cured within thirty (30) calendar days, it shall not be an Event of Default provided that Borrower or Guarantor commences a cure within thirty (30) calendar days of notice and continues to diligently prosecute a cure to the satisfaction of Lenders; provided, however, that in no event shall Borrower or Guarantor have more than sixty (60) calendar days from the date of notice from any Lender to cure a default under this Section 8.1(r).

(s) Risk to Collateral. Any (i) threatened or actual material impairment to the priority of Lenders' interests in the Collateral or (ii) material adverse effect on the value of the Collateral or the amount which Lenders likely would receive (after giving consideration to delays in payment and costs of enforcement).

(t) Undischarged Judgments. Judgment for the payment of money in excess of $50,000.00 (which is not covered by insurance) is rendered by any Governmental Authority against Borrower, and Borrower does not discharge the same or provide for its discharge in accordance with its terms, or procure a stay of execution thereof within 30 calendar days from the date of entry thereof, and within said 30-day period or such longer period during which execution of such judgment will have been stayed, appeal therefrom and cause the execution thereof to be stayed during such appeal while providing such reserves therefor as may be required under generally accepted accounting principles, and such default continues uncured for a period of 30 days after notice of such default (specifying the default) is given by any Lender to Borrower.

(u) Unauthorized Amendments. The Lease and Sublease or any other key documents, are amended, restated, modified, or supplemented without the prior written consent of each Lender (such consent in each Lender's sole and absolute discretion).
(v) **Voluntary Petitions.** Borrower or Guarantor files a case under the Federal Bankruptcy Code or seeks relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or consents to the filing of any case or petition against Borrower or Guarantor under any such law.

(w) **Other Covenants.** Borrower or Guarantor defaults in the observance or performance of any of the covenants or agreements contained in the Loan Documents, to be kept or performed by Borrower or Guarantor (other than a default under Section 8.1(a)-(v)), as applicable, and such default continues unremedied for a period of thirty (30) calendar days after notice thereof being given by any Lender to Borrower or Guarantor, as applicable; provided, that for any default which cannot in the reasonable determination of Lenders be cured within thirty (30) calendar days, it shall not be an Event of Default provided that Borrower or Guarantor, as applicable, commences a cure within thirty (30) calendar days of notice and continues to diligently prosecute a cure to the satisfaction of Lenders; provided, however, that in no event shall Borrower or Guarantor, as applicable, have more than sixty (60) calendar days from the date of notice from any Lender to cure a default under this Section 8.1(w).

(x) **Use of Proceeds.** Borrower defaults in the observance or performance of any covenant or agreement contained in Section 6.6.

Section 8.2 **Remedies.** Upon the occurrence and during the continuance of any Event of Default, each Lender may, in its sole and absolute discretion, pursue any one or more of the following remedies concurrently or successively, it being the intent hereof that none of such remedies shall be to the exclusion of any other:

(a) withhold any further advances of its respective CDE Loans to Borrower (if applicable);

(b) direct Disbursement Agent to cease authorizing releases of the proceeds of the CDE Loans to Borrower from the Disbursement Account;

(c) take possession of the Property and complete (or discontinue the completion of) the renovation and equipping of the Improvements and do anything in its sole but reasonable judgment to fulfill the obligations of Borrower hereunder, including but not limited to the right to avail itself of or procure performance under the Construction Contracts or to terminate the Construction Contracts (in accordance with the applicable Collateral Documents). Without restricting the generality of the foregoing and for purposes aforesaid, Borrower hereby appoints and constitutes each Lender its lawful attorney-in-fact with full power of substitution in the Property, exercisable at any time an Event of Default has occurred and is continuing, to complete construction and equipping of the Improvements in the name of Borrower; to make changes in the Plans & Specifications as necessary or desirable to complete renovation and equipping of the Improvements in substantially the manner contemplated by the Construction Documents; to retain or employ new general contractors, subcontractors, architects and inspectors as shall be required for such purposes; to pay, settle, or compromise all existing bills and claims, which may be lien or security interests, or to avoid such bills and claims becoming liens against the Property or security interests against fixtures or equipment, or as may be necessary or desirable for the
Completion of the Improvements or for the clearance of title; to provide for and cause the completion of any tenant work, tenant furnishings or tenant improvements for all or any portion of the Improvements on the Land; and to do any and every act which Borrower might do in its own behalf; to prosecute and defend all actions or proceedings in connection with the Property or fixtures or equipment; it being understood and agreed that this power of attorney shall be a power coupled with an interest and cannot be revoked, but shall terminate once the Indebtedness is paid in full;

(d) perform any or all of Borrower's covenants and agreements hereunder, under any of the other Loan Documents, the Lease or under any other lease or sublease, and Borrower shall pay the cost thereof to Lenders on demand;

(e) declare the entire principal amount of all Indebtedness then outstanding including interest accrued thereon, to be immediately due and payable without presentment, demand, protest, notice of protest or dishonor or other notice of default of any kind, all of which are hereby expressly waived by Borrower;

(f) set off any sum due to or incurred by Lenders against all deposits and credits of Borrower with, and any and all claims of Borrower against, Lenders. Such right shall exist whether or not any Lender shall have made any demand hereunder or under any other Loan Documents, whether or not said sums, or any part thereof, or deposits and credits held for the account of Borrower is or are matured or unmatured, and regardless of the existence or adequacy of any collateral, guaranty or any other security, right or remedy available to Lenders. Each Lender agrees that, as promptly as is reasonably possible after the exercise of any such setoff right, it shall notify Borrower of its exercise of such setoff right; provided, however, that the failure of any Lender to provide such notice shall not affect the validity of the exercise of such setoff rights. Nothing in this Agreement shall be deemed a waiver or prohibition of or restriction on any Lender to all rights of banker's lien, setoff and counterclaim available pursuant to law; and

(g) exercise any or all remedies specified herein and in the other Loan Documents, including without limitation the right to foreclose the Mortgage, exercise its rights under the Collateral Documents, and/or exercise any other rights or remedies which it may have at law or in equity. Borrower hereby consents to the remedies of any one or more of specific performance or injunction or other equitable remedies in connection with this Section 8.2 and/or the covenants contained in the Addendum.

Section 8.3 Default Rate of Interest. Any amount payable by Borrower under this Agreement or any of the other Loan Documents which is not paid when due shall bear interest at the Default Rate specified in each Note from the date due until paid.

ARTICLE 9
INTERCREDITOR PROVISIONS

Section 9.1 Lien Priorities. Lenders agree that at all times, whether before, during or after the pendency of any bankruptcy, reorganization or other insolvency proceeding, and notwithstanding the priorities that ordinarily would result under the UCC and other applicable law from the order
of granting or perfecting of any security interests (including, without limitation, purchase money security interests) referred to herein, that Lenders shall have the following priorities:

(a) Except with respect to each Lender's security interest in such Lender's CDE Reserve Account (which each Lender hereby acknowledges and agrees, that notwithstanding anything to the contrary set forth herein or in any of the Loan Documents, the respective secured party Lender has an exclusive first priority lien and security interest in the CDE Reserve Account pledged to such Lender), Lenders' security interest in the Collateral shall each constitute a pari passu first priority lien and security interest in the Collateral (the Collateral exclusive of the CDE Reserve Account is herein referred to as the "Modified Collateral").

(b) Borrower and Lenders shall cooperate to effect the agreement expressed in this Section 9.1, and from time to time shall execute such other and further documents, including subordination agreements, assignments of claim, and otherwise as may be necessary or appropriate to implement the provisions of this Article 9.

Section 9.2  Exercise of Remedies.

(a) Collateral. Irrespective of whether any Event of Default shall have occurred under the terms of the Loan Documents, and notwithstanding any provision of the UCC, so long as any obligations of Borrower to any Lender under the Loan Documents remain unpaid, no Lender shall enforce any of its rights with respect to any of the Modified Collateral except as set forth in this Section 9.2.

(b) Notice of Event of Default. Each Lender shall use commercially reasonable efforts to advise the other Lenders promptly of any Event of Default of which such Lender has actual knowledge under the Loan Documents, and shall provide back-up documentation reasonably requested by the other Lenders. No Lender shall issue a notice of an Event of Default to Borrower and/or Guarantor without the prior written consent of the other Lenders. Lenders agree to use commercially reasonable efforts to reach unanimous consent with respect to a determination of an Event of Default. In the event that both Lenders do not agree as to whether a potential Event of Default should be deemed an Event of Default within 30 calendar days of the Reviewing Lenders' receipt of notice of such potential Event of Default, such potential Event of Default shall be deemed not to be an Event of Default. Notwithstanding the foregoing, each Lender is permitted to engage in routine collection activities, such as sending out delinquency notices (with copies to the other Lenders) and making telephonic collection calls to Borrower or Guarantor in the ordinary course of servicing their respective CDE Loan(s) and enforce its rights under the CDE Reserve Account P&C Agreement without the consent of any other Lender.

(c) Remedies.

(i) Upon the occurrence of an Event of Default for which a notice was issued to Borrower and/or Guarantor in accordance with Section 9.2(b) (excluding routine collection matters), the Lender that issued such notice shall propose a remedial action plan to the other Lenders (the "Reviewing Lenders") in writing (which may be by email) (a "Proposed Remedial Action Plan"). The Reviewing Lenders shall provide written
comments (which may be submitted solely by email) to a Proposed Remedial Action Plan to the other Lenders within 10 Business Days of receipt thereof. Lenders agree to use commercially reasonable efforts to reach unanimous consent with respect to a Proposed Remedial Action Plan. In the event that a majority of Lenders do not agree to a Proposed Remedial Action Plan within 30 calendar days of the Reviewing Lenders' receipt thereof, such plan shall be deemed rejected. In the event that such a plan is rejected, Lenders agree to work in good faith to develop a new Proposed Remedial Action Plan.

(ii) Any consent requested of any Lender under this Article 9 shall be deemed given only upon receipt of affirmative written consent by such Lender. Consent of any Lender shall be deemed denied if such Lender has not provided affirmative written consent within 10 Business Days following a request for such consent.

(iii) A Proposed Remedial Action Plan approved in accordance with this Section 9.2(c) shall be referred to herein as an "Approved Remedial Action Plan". Upon such approval, Lenders shall authorize any one of them (in such capacity, "Lead CDE") to pursue such Approved Remedial Action Plan. Notwithstanding anything to the contrary herein, Lead CDE shall have no obligation to implement an Approved Remedial Action Plan until the Article 9 Expenses have been provided for in accordance with Section 9.2(i), unless otherwise agreed by Lenders in writing.

(d) Consents Generally; Unanimous Rule. Each Lender shall use commercially reasonable efforts to provide notice to the other Lenders in the event that such Lender has actual knowledge of a matter that requires the approval or consent of Lenders pursuant to the Loan Documents (unless it appears that the other Lenders have received notice of such matters). Notwithstanding anything to the contrary in the Loan Documents, any matters which require the approval or consent of Lenders pursuant to the Loan Documents shall be subject to the unanimous consent of the Lenders in accordance with the consent procedures set forth in Section 9.2(c)(ii); provided that without the consent of the affected Lender no amendment, waiver, consent or approval shall be effected if the effect thereof would (i) increase the amount such Lender is required to advance hereunder, (ii) reduce the principal amount of any loan or reduce the rate of interest thereon or reduce any fees payable under the Loan Documents, (iii) change the maturity date of any loan, (iv) permit the assignment or delegation by Borrower of any rights or obligations under any Loan Document, (v) release Guarantor of any of its obligations under the Guaranty, (vi) release all or any portion of the Collateral, (vii) reduce the reserves held with respect to such Lender, (viii) reduce the obligations of Borrower to such Lender pursuant to Section 5.12, (ix) change the provisions of this Article 9, (x) amend any Loan Documents or (xi) change Exhibit A.

(e) Power of Attorney. Lead CDE is granted an irrevocable power of attorney, coupled with an interest, to execute any and all documents on behalf of the other Lenders as shall be reasonably necessary and sufficient to effect all of the foregoing provisions of this Article 9 (including but not limited to a release of liens with respect to the Modified Collateral as may be reasonably required in order to effect a sale or deed in lieu of foreclosure pursuant to an Approved Remedial Action Plan). The power of attorney granted herein shall terminate automatically upon the termination of this Article 9 in accordance with the terms hereof.
(f) **Limitation of Liability.**

(i) Neither Lead CDE nor any of its members, partners, managers, directors, officers, employees, attorneys, agents, Affiliates, successors or assigns shall be liable or responsible in any manner whatsoever to the other Lenders, Borrower, Guarantor or any other Person in connection with Lead CDE's role as Lead CDE except for Lead CDE's own gross negligence, willful misconduct or fraud in performing its duties hereunder. Lead CDE shall in all cases be fully protected in acting, or in refraining from acting, under this Article 9 or any of the Loan Documents in accordance with the consent of Lenders, including without limitation the implementation of an Approved Remedial Action Plan. This Section 9.2(f)(i) shall survive the termination of this Article 9 only to the extent such obligations arise from actions taken or omissions made by Lead CDE prior to the termination of this Article 9.

(ii) Notwithstanding anything to the contrary herein, none of Lead CDE's members, partners, managers, directors, officers, employees, attorneys, agents, Affiliates, successors or assigns shall have any personal liability in connection with Lead CDE's obligations hereunder.

(g) **Reliance on Communications.** Lead CDE shall be entitled to rely, and shall be fully protected in relying, upon any writing, communication, signature, resolution, representation, notice, consent, instruction, direction, certificate, affidavit, letter, telegram, facsimile, telex or telephone message, electronic mail message, statement or other document or conversation believed by it in its reasonable discretion to be genuine and correct and to have been signed, sent or made by the proper responsible officers or other authorized parties of the other Lenders, Borrower, Guarantor or any Affiliate thereof, and upon advice and statements of legal counsel (including counsel to each Lender), independent accountants and other experts selected by Lead CDE.

(h) **Reporting.** Each Lender may specifically enforce Borrower's reporting obligations pursuant to the Loan Documents, and collect any penalties with respect thereto without the consent of the other Lenders (excluding any action against the Modified Collateral).

(i) **Expenses.** Borrower shall be obligated to reimburse Lead CDE and the other Lenders for any third party out-of-pocket costs and expenses (including, without limitation, reasonable attorneys', accountants', experts', and consultants' fees, disbursements and court costs prior to trial, at trial and on appeal) incurred in enforcing Lenders' rights under the Loan Documents pursuant to this Article 9 (collectively, the "Article 9 Expenses"). This obligation is guaranteed by Guarantor pursuant to the Guaranty of Payment and Completion. Notwithstanding the foregoing, to the extent Article 9 Expenses will be incurred by Lead CDE prior to the availability of funds from Borrower or Guarantor, Lenders shall use commercially reasonable efforts to identify a source of funds to pay such Article 9 Expenses. This Section 9.2(i) shall survive the termination of this Article 9.
Section 9.3 Payments.

(a) Generally. Lenders agree that any payments made by Borrower shall be applied in accordance with the Notes, first to late charges and other expenses incurred in accordance with the Loan Documents, if any, second to accrued and unpaid interest, and then in reduction of principal. Prior to and after the occurrence of an Event of Default pursuant to the Loan Documents, all interest payments made by Borrower shall be applied to amounts outstanding under the Notes in proportion to the interest then outstanding under the Notes. After the end of the Compliance Period, all principal payments made by Borrower shall be applied to amounts outstanding under the Notes in proportion to the principal then outstanding under the Notes. Late charges and reimbursements of Expenses shall be applied pro rata based on amounts owed to each Lender.

(b) Payments Prior to End of Compliance Period. Prior to the end of the Compliance Period, Lenders covenant and agree that all Default Proceeds shall be distributed as follows:

(i) first, to NMCC CDE for application against the amounts due under the NMCC CDE Loan Note A1 and the NMCC CDE Loan Note B1 until the NMCC CDE Loan A1 and the NMCC CDE Loan B1 are paid in full; then

(ii) second, to CNMC CDE for application against the amounts due under the CNMC CDE Loan Note A2 and the CNMC CDE Loan Note B2 until the CNMC CDE Loan A2 and the CNMC CDE Loan B2 are paid in full; and

(iii) all remaining amounts, if any, shall be paid to Borrower.

(c) "Default Proceeds" means, upon the occurrence of any Event of Default and the continuation thereof beyond any applicable cure period provided in the applicable Loan Documents, and during the continuation thereof, all sums actually received by any Lender (net of any actual enforcement and/or costs of collection incurred by Lenders) from (i) Borrower, (ii) Guarantor, (iii) net foreclosure proceeds from the sale of any Modified Collateral, or (iv) any other proceeds received by any Lender upon the exercise of remedies under the Loan Documents with respect to any Modified Collateral, but should exclude any amounts received by a Lender from amounts withdrawn from any CDE Reserve Account pledged to such Lender.

(d) Following the end of the Compliance Period, Lenders covenant and agree that all Default Proceeds shall be distributed pari passu.

(e) Each Lender agrees that should it receive any monies to which it is not entitled pursuant to this Agreement, it will (unless otherwise restricted or prohibited by law) hold the same in trust for and promptly pay over the same to the other Lenders in accordance with the priorities provided in this Section 9.3.

Section 9.4 Insurance Proceeds. To the extent that insurance proceeds will be distributed to Lenders pursuant to the Loan Documents, such proceeds, to the extent available, shall be distributed to Lenders in order of their respective priorities as provided in Section 9.3. To facilitate any distribution of insurance proceeds pursuant to this Agreement, Lead CDE is hereby designated as attorney in fact for the other Lenders to endorse any draft, check or other item on
which such other Lenders' name appears, which power of attorney shall terminate automatically upon termination of this Article 9.

Section 9.5 Reinstatement of Obligation. Except as the result of the gross negligence or willful misconduct of a Lender, to the extent such Lender is required to restore or return any payments received by such Lender from Borrower (a "Returned Payment"), (a) such Returned Payment shall be deemed never to have been made to such Lender for all purposes of this Article 9, and (b) any amounts paid to another Lender in reliance on the Returned Payment having been made shall immediately become subject to Section 9.3(e). This Section 9.5 shall survive the termination of this Article 9.

Section 9.6 Continuing Agreement/Termination.

(a) The subordinations, agreements, and priorities set forth hereinabove shall remain in full force and effect regardless of whether any Lender or any other Person in the future seeks to rescind, amend, terminate, or reform, by litigation or otherwise, its agreements with Borrower.

(b) Upon Payment in Full of the CDE Loans of any two Lenders, this Article 9 shall immediately terminate.

(c) "Payment in Full" means, with respect to each Lender, the applicable CDE Loan(s) has or have been fully and indefeasibly paid and satisfied, and that such Lender does not have any further obligation under the Loan Documents to extend financial accommodations of any kind whatsoever to Borrower.

Section 9.7 Obligations Absolute. The provisions of this Article 9 are solely for the purpose of (a) defining the relative rights of Lenders with respect to the priority of payment of the various obligations of Borrower to each of them, (b) the priority of each Lender's liens in the Modified Collateral, and (c) the right of each Lender to exercise rights and remedies as a creditor of Borrower. As between Borrower and the holders of any of the Notes, nothing in this Article 9 shall impact the obligations of Borrower, which are unconditional and absolute, to pay to the holders thereof the principal and interest thereon and any other liabilities pursuant to the Loan Documents, all in accordance with their respective terms.

Section 9.8 Subordination Not Conditioned on Perfection. The subordinations and relative priority agreements set forth above are not conditioned upon the perfection of the security interests described in the Loan Documents.

Section 9.9 Negative Covenant. Except in accordance with the terms of the Loan Documents, no Lender shall demand or accept from Borrower any consideration which would result in a prepayment of any CDE Loan.

Section 9.10 Conflict. Notwithstanding anything to the contrary in any Note, this Agreement or any other Loan Document to the contrary, in the event of any inconsistency between the terms of any Note, this Agreement or any other Loan Document, except with respect to the CDE Reserve Account P&C Agreement and those of this Article 9, including without limitation prohibitions or limitations established in this Article 9 regarding the rights of Lenders to receive payments, to act with respect to the Property or to exercise remedies following the occurrence of
an Event of Default, the terms of this Article 9 shall govern and control; provided, however, the
dispute resolution procedures set forth in the CMDA shall govern all disputes among Lenders
and Disbursement Agent under the CMDA.

ARTICLE 10
MISCELLANEOUS

Section 10.1 Notices. Any notice, request, demand, consent, approval, direction, agreement, or
other communication (any "notice") required or permitted hereunder shall be in writing and shall
be validly given if (a) sent by a nationally-recognized courier that obtains receipts, (b) delivered
personally by a courier that obtains receipts, (c) mailed by United States certified mail (with
return receipt requested and postage prepaid), (d) sent by facsimile (with a copy of such
facsimile and proof of transmission thereof sent via one of the methods of delivery set forth in
clauses (a), (b) or (c) hereof), or (e) sent by email (with a copy of such email and proof of
transmission thereof sent via one of the methods of delivery set forth in clauses (a), (b) or (c)
hereof), addressed to the applicable Person at the address set forth on Schedule A to this
Agreement. Each notice shall be effective upon being so sent, delivered, mailed, or transmitted,
but the time period for response or action shall run from the date of receipt as shown on the
delivery receipt. Refusal to accept delivery or the inability to deliver because of a changed
address for which no notice was given shall be deemed receipt. Further, any notice actually
received shall be deemed received. Any party may periodically change its address for notice
(including different or additional addresses for copies) by giving the other party at least 10
calendar days' prior notice in accordance with the foregoing provisions.

Section 10.2 Entire Agreement.

(a) The Addendum, Exhibits, Recitals, and Schedules identified in this Agreement
are incorporated herein by reference in their entirety and made a part hereof.

(b) The Loan Documents now, or hereafter to be, executed set forth the entire
agreement of Lenders and Borrower and supersede all prior written or oral understandings with
respect thereto; provided, that all written representations, warranties and certifications made by
Borrower to Lenders with respect to the Indebtedness under any Loan Document will survive the
execution of this Agreement.

Section 10.3 Renewal, Extension or Rearrangement. All provisions of this Agreement relating
to each Note will apply with equal force and effect to each and allQLICI loan notes hereinafter
executed which in whole or in part represent a renewal, extension for any period, increase,
decrease or rearrangement of any part of any Note, as applicable, except to the extent modified
therein.

Section 10.4 Amendment. None of the Loan Documents may be changed, waived, discharged
or terminated orally or in any manner other than by an instrument in writing signed by the party
against whom enforcement of the change, waiver, discharge or termination is sought.

Section 10.5 Invalidity. In the event that any one or more of the provisions contained in the
Loan Documents will, for any reason, be held invalid, illegal or unenforceable in any respect,
such invalidity, illegality or unenforceability will not affect any other provision of the Loan Documents.

Section 10.6 Survival of Agreements. All representations and warranties of Borrower herein and all covenants and agreements herein not fully performed before the Effective Date will survive such date.

Section 10.7 Waivers. No course of dealing on the part of Lenders or their respective officers, employees, consultants or agents, nor any failure or delay by Lenders with respect to exercising any of their rights, powers or privileges under the Loan Documents will operate as a waiver thereof.

Section 10.8 Cumulative Rights. The rights and remedies of Lenders under the Loan Documents will be cumulative, and the exercise or partial exercise of any such right or remedy will not preclude the exercise of any other right or remedy available to any Lender under the Loan Documents or by law or equity.

Section 10.9 Time of the Essence. Time will be deemed of the essence with respect to the performance of all of the terms, provisions and conditions on the part of Borrower and each Lender to be performed hereunder.

Section 10.10 Successors and Assigns: Participants.

(a) This Agreement binds and benefits the parties and their respective permitted successors and assigns.

(b) References to each Person herein shall include such Person's respective permitted successors and assigns.

(c) This Agreement is for the benefit of Lenders and for such other Person or Persons as may from time to time become or be the holders of any of the Indebtedness in accordance with the terms hereof, and to the extent set forth in Section 10.10(d), this Agreement will be transferable and negotiable, with the same force and effect and to the same extent as the Indebtedness may be transferable, it being understood that, upon the transfer or assignment by a Lender of any of the Indebtedness, the legal holder of such Indebtedness will have all of the rights granted to such Lender under this Agreement.

(d) Borrower hereby recognizes and agrees that: (i) NMCC CDE may transfer all or any portion of the Indebtedness to its Investor Member as defined in and in accordance with the NMCC CDE OA; (ii) CNMC CDE may transfer all or any portion of the Indebtedness to its Investor Member as defined in and in accordance with the CNMC CDE OA; and (iii) each Lender may, from time to time and one or more times, transfer all or any portion of the Indebtedness to one or more third parties upon the occurrence and during the continuance of any Event of Default (such transfers under this subsection (iii) may include, but are not limited to, sales of participation interests in such Indebtedness in favor of one or more third parties, provided, however, that such transfers shall not occur if they result in the recapture of any New Markets Tax Credits); provided further, that no Lender may transfer any portion of the Indebtedness except as expressly set forth in Section 10.10(d)(i)-(iii).
Subject to the limitations on assignments set forth in Section 10.10(d), Borrower specifically (i) consents to all such transfers and assignments and waives any subsequent right to consent to any such transfers and assignments as may be provided under applicable state or federal law; (ii) agrees that the purchaser of a participation interest in the Indebtedness will be considered as the absolute owner of a percentage interest of such Indebtedness and that such a purchaser will have all of the rights granted to the purchaser under any participation agreement governing the sale of such a participation interest; (iii) waives any right of offset that Borrower may have against any Lender and/or any purchaser of such a participation interest in the Indebtedness and unconditionally agrees that each Lender or purchaser may enforce Borrower’s Indebtedness under this Agreement and the other Loan Documents, without regard to the failure or insolvency of such Lender or any such purchaser; (iv) agrees that any purchaser of a participation interest in the Indebtedness may exercise any and all rights of counter-claim, set-off, banker's lien and other liens with respect to any and all monies owing to Borrower; and (v) agrees that, upon any transfer of all or any portion of the Indebtedness, each Lender may transfer and deliver any and all Collateral to the transferee of such Indebtedness and the Collateral will secure any and all of the Indebtedness in favor of such a transferee, and after any such transfer has taken place, each Lender will be fully discharged from any and all future liability and responsibility to Borrower with respect to the Collateral, and the transferee thereafter will be vested with all the powers, rights and duties with respect to the Collateral.

Section 10.11 Relationship Between the Parties. The relationship between each Lender, on the one hand, and Borrower, on the other, will be solely that of lender and borrower, and such relationship will not, under any circumstances whatsoever, be construed to be a joint venture, joint adventure, or partnership.

Section 10.12 Third Party Beneficiaries. All obligations of the Lenders to make advances hereunder are imposed solely and exclusively for the benefit of Borrower and its permitted assigns. No other Person will have standing to require satisfaction of such condition or be entitled to assume that a Lender will refuse to make an advance in the absence of strict compliance with any or all conditions thereof, and no other Person will, under any circumstances, be deemed to be a beneficiary of such conditions, any or all of which may be freely waived, in whole or in part, by each Lender at any time in its sole and absolute discretion.

Section 10.13 Titles of Articles, Sections and Subsections. All titles or headings to articles, sections, subsections or other divisions of this Agreement or the exhibits hereto are only for the convenience of the parties and will not be construed to have any effect or meaning with respect to the other content of such articles, sections, subsections or other divisions, such other content being controlling as to the agreement between the parties hereto.

Section 10.14 Singular and Plural. Words used herein in the singular, where the context so permits, will be deemed to include the plural and vice versa. The definitions of words in the singular herein will apply to such words when used in the plural where the context so permits and vice versa.

Section 10.15 Article and Section References. References in this Agreement to Articles and Sections are intended to refer to Articles and Sections of this Agreement, unless otherwise specifically stated.
Section 10.16 **Counterparts.** This Agreement may be executed in two or more counterparts, and it will not be necessary that the signatures of all parties hereto be contained on any one counterpart hereof; each counterpart will be deemed an original, but all of which together will constitute one and the same instrument. A faxed, scanned or photocopied signature to this Agreement shall be deemed equivalent to an original signature.

Section 10.17 **Review by Counsel.** Borrower acknowledges and agrees that (a) Borrower's counsel has reviewed this Agreement and the other Loan Documents and (b) any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement and the other Loan Documents.

Section 10.18 **Third Parties.** None of the Borrower nor Lenders intends the benefits of this Agreement or the other Loan Documents to inure to, or otherwise exist for, the benefit of any third party who has a contractual relationship with Borrower, who is a creditor of Borrower with respect to the Property, or any part thereof, any tenant or other occupant of the Property, or who otherwise succeeds to Borrower's interest or rights, and neither this Agreement nor the other Loan Documents shall be construed to make or render Lenders liable to any materialman, supplier, contractor, subcontractor, successor in title to the Property, or any part thereof, or any tenant or other occupant of the Property, or for debts or claims accruing to any such Persons against Borrower. Notwithstanding anything contained in this Agreement, any of the other Loan Documents or any conduct or course of conduct by Borrower and/or Lenders, whether before or after signing this Agreement, neither this Agreement nor any of the other the Loan Documents shall be construed as creating any right, claim or cause of action against any Lender, or any of Lenders' Affiliates, members, managers, officers, directors, agents or employees, in favor of any materialman, supplier, contractor, subcontractor, successor in title to the Property, or any part thereof, or any tenant or other occupant of the Property or to any other Person.

Section 10.19 **CHOICE OF LAW; WAIVER OF JURY TRIAL AND CERTAIN OTHER RIGHTS; SUBMISSION TO JURISDICTION; SERVICE OF PROCESS.**

(a) **THE VALIDITY OF THIS AGREEMENT AND THE NOTES, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF EACH PARTY WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT GIVING EFFECT TO CONFLICT OR CHOICE OF LAW PRINCIPLES.**

(b) **TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY (i) AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE NOTES SHALL BE TRIED AND LITIGATED ONLY IN THE STATE COURTS LOCATED IN HUMBOLDT COUNTY, STATE OF CALIFORNIA OR IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA (PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDERS' OPTION, IN THE COURTS OF ANY JURISDICTION WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND) AND (ii) WAIVES ANY**
RIGHT IT MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 10.19(b).

(c) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HERETO HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE NOTES OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS, INCLUDING CLAIMS AGAINST PARTIES WHO ARE NOT PARTIES TO THIS AGREEMENT OR THE NOTES. EACH PARTY (i) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, AND (ii) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.19(c).

(d) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY AGREES THAT ANY PROCESS OR NOTICE OF MOTION OR OTHER APPLICATION TO ANY SUCH COURT IN CONNECTION WITH ANY ACTION OR PROCEEDING MAY BE SERVED UPON SUCH PARTY BY REGISTERED OR CERTIFIED MAIL TO OR BY PERSONAL SERVICE AT THE LAST KNOWN ADDRESS OF SUCH PARTY WHETHER SUCH ADDRESS BE WITHIN OR OUTSIDE THE JURISDICTION OF ANY SUCH COURT.

(e) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER AND THEIR RESPECTIVE AFFILIATES SHALL NOT ASSERT, AND HEREBY WAIVE, ANY CLAIM AGAINST ANY OTHER PARTY, ON ANY THEORY OF LIABILITY, FOR SPECIAL, INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES (AS OPPOSED TO DIRECT OR ACTUAL DAMAGES) ARISING OUT OF, IN CONNECTION WITH, OR AS A RESULT OF, THIS AGREEMENT OR ANY AGREEMENT OR INSTRUMENT CONTEMPLATED HEREBY AND/OR THE TRANSACTIONS CONTEMPLATED HEREBY.

(f) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, BORROWER HEREBY WAIVES THE BENEFITS OF ALL VALUATION, APPRAISAL, HOMESTEAD, EXEMPTION, STAY, REDEMPTION AND MORATORIUM LAWS, NOW IN FORCE OR WHICH MAY HEREAFTER BECOME LAWS.

Section 10.20 LEGAL PROCEEDINGS IN CALIFORNIA. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE "COURT") BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY
CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A "CLAIM") AND THE WAIVER SET FORTH IN SECTION 10.19(c) IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(a) WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN SECTION 10.20(b), ANY CLAIM WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638. VENUE FOR THE REFERENCE PROCEEDING WILL BE IN HUMBOLDT COUNTY, STATE OF CALIFORNIA.

(b) THE FOLLOWING MATTERS SHALL NOT BE SUBJECT TO A GENERAL REFERENCE PROCEEDING: (i) NON-JUDICIAL FORECLOSURE OF ANY SECURITY INTERESTS IN REAL OR PERSONAL PROPERTY, (ii) EXERCISE OF SELF-HELP REMEDIES (INCLUDING, WITHOUT LIMITATION, SET-OFF), (iii) APPOINTMENT OF A RECEIVER, AND (iv) TEMPORARY, PROVISIONAL OR ANCILLARY REMEDIES (INCLUDING, WITHOUT LIMITATION, WRITS OF ATTACHMENT, WRITS OF POSSESSION, TEMPORARY RESTRAINING ORDERS OR PRELIMINARY INJUNCTIONS). THIS AGREEMENT DOES NOT LIMIT THE RIGHT OF ANY PARTY TO EXERCISE OR OPPOSE ANY OF THE RIGHTS AND REMEDIES DESCRIBED IN THIS SECTION 10.20(b) AND ANY SUCH EXERCISE OR OPPOSITION DOES NOT WAIVE THE RIGHT OF ANY PARTY TO A REFERENCE PROCEEDING PURSUANT TO THIS AGREEMENT.

(c) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF, AFTER 10 DAYS OF SUCH WRITTEN REQUEST, THE PARTIES DO NOT AGREE UPON A REFEREE, THEN ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(b).

(d) ALL PROCEEDINGS AND HEARINGS CONDUCTED BEFORE THE REFEREE, EXCEPT FOR TRIAL, SHALL BE CONDUCTED WITHOUT A COURT REPORTER, EXCEPT WHEN A PARTY SO REQUESTS, A COURT REPORTER WILL BE USED AND THE REFEREE WILL BE PROVIDED A COURTESY COPY OF THE TRANSCRIPT. THE PARTY MAKING SUCH REQUEST SHALL HAVE THE OBLIGATION TO ARRANGE FOR AND PAY COSTS OF THE COURT REPORTER, PROVIDED THAT SUCH COSTS, ALONG WITH THE REFEREE'S FEES, SHALL ULTIMATELY BE BORNE BY THE PARTY WHO DOES NOT PREVAIL, AS DETERMINED BY THE REFEREE.
(e) THE REFEREE MAY REQUIRE ONE OR MORE PREHEARING CONFERENCES. THE PARTIES HERETO SHALL BE ENTITLED TO DISCOVERY, AND THE REFEREE SHALL OVERSEE DISCOVERY IN ACCORDANCE WITH THE RULES OF DISCOVERY, AND MAY ENFORCE ALL DISCOVERY ORDERS IN THE SAME MANNER AS ANY TRIAL COURT JUDGE IN PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA. THE REFEREE SHALL APPLY THE RULES OF EVIDENCE APPLICABLE TO PROCEEDINGS AT LAW IN THE STATE OF CALIFORNIA AND SHALL DETERMINE ALL ISSUES IN ACCORDANCE WITH APPLICABLE STATE AND FEDERAL LAW. THE REFEREE SHALL BE EMPOWERED TO ENTER EQUITABLE AS WELL AS LEGAL RELIEF AND RULE ON ANY MOTION WHICH WOULD BE AUTHORIZED IN A TRIAL, INCLUDING, WITHOUT LIMITATION, MOTIONS FOR DEFAULT JUDGMENT OR SUMMARY JUDGMENT. THE REFEREE SHALL REPORT HIS DECISION, WHICH REPORT SHALL ALSO INCLUDE FINDINGS OF FACT AND CONCLUSIONS OF LAW.

(f) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

Section 10.21 Confidentiality. Each Lender agrees to maintain the confidentiality of the Information, except that Information may be disclosed (a) to its and its Affiliates’ directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to the Obligations or the enforcement of rights under the Loan Documents, (f) with the consent of Borrower, (h) in accordance with Section 10.22 or (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 10.21 or (ii) becomes available to such Lender on a nonconfidential basis from a source other than Borrower. For the purposes of this Section 10.21, "Information" means all information received from Borrower relating to Borrower or its business, other than any such information that is available to a Lender on a nonconfidential basis prior to disclosure by Borrower; provided that, in the case of information received from Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section 10.21 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 10.22 Publicity.

(a) Publication. Borrower consents to and acknowledges that, upon consummation of the Loans, Lenders, Allocates, Disbursement Agent, and/or their applicable Affiliates may, at their option and expense, use the name and logo of the Borrower and any information regarding the financing contemplated by this Agreement (including, without limitation, the names of any
affiliate of Borrower participating in such transactions, and the structure, terms and project specifics of such transactions) in its marketing and communications materials (including without limitation, in issuing press releases or placing or publishing “tombstone” advertisements in such newspapers, newsletters, magazines, trade journals or other periodicals or placing signs on the Land) as they may choose relating to or otherwise referencing the financing transaction contemplated herein and in presentations or speeches made to its employees, officers, clients and other interested third parties. Such information shall be referred to herein as “Client Information.” Borrower understands that the Client Information may be used nationally and/or internationally and may be used in web pages, print ads, press releases, direct mail and various types of brochures, presentation materials or marketing sheets, and that various media formats other than those listed may be used (including without limitation video or audio presentations through any such media form). In these materials, Lenders also may discuss the types of services and solutions they have provided to Borrower or its Affiliates. Borrower, for itself and for its Affiliates, hereby releases the Lenders from any liability for any claim related to the Lenders’ use of the Client Information as contemplated hereby. The rights granted in the foregoing release shall be binding upon the undersigned parties and their successors and assigns. Each of the parties hereto expressly agrees that the foregoing provisions relating to the use of Client Information shall survive the termination of this Agreement.

(b) Photographs and Other Media. Borrower hereby authorizes Lenders to reproduce and display any media (including, without limitation, photographs and illustrations) of the Property submitted to Lenders by Borrower. Borrower represents and warrants to Lenders that Borrower has obtained any and all licenses and/or permissions necessary for Borrower’s and Lenders’ use of such media.

(c) Construction Financing Publicity. Borrower shall do the following:

(i) upon request, include on signs placed on the Property during construction work language to the effect that the (A) "project is funded, in part, from an investment by an affiliate of JPMorgan Chase Bank, N.A. and Chase New Markets Corporation" and (B) "project is funded, in part, from an investment by an affiliate of New Markets Community Capital, LLC";

(ii) acknowledge the contribution of Lenders, Allocates, Disbursement Agent, and their respective Affiliates in project-related web and print media, and in verbal remarks in public;

(iii) invite representatives of Lenders, Allocates, Disbursement Agent, and their respective Affiliates to participate in public relations opportunities (e.g., speaking opportunity at ribbon cutting, ground breaking);

(iv) permit Lenders, Allocates, Disbursement Agent, and their respective Affiliates access to and permission to use any photographic and/or schematic images of the Property obtained by such Persons’ respective marketing departments (e.g., website, brochures, advertisements); and

(v) Lenders, Allocatee, Disbursement Agent, and their respective Affiliates to publicize the financing provided pursuant to this Agreement.
Section 10.23 Enforcement Costs. Notwithstanding anything to the contrary in this Agreement or the other Loan Documents, in the event of any action at law or in equity to enforce the provisions of this Agreement or to secure relief or damages for the breach of this Agreement or the Notes, the prevailing party shall be entitled to payment or reimbursement, as applicable, of its costs (including without limitation reasonable attorneys, accountants, experts, and consultants fees and expenses, court costs and investigative expenses prior to trial, at trial and on appeal) incurred in such proceedings from the non-prevailing party.

[REMAINDER OF PAGE BLANK; SIGNATURE PAGES TO FOLLOW.]
IN WITNESS WHEREOF, the parties hereto have caused this Credit Agreement to be duly executed as of the Effective Date.

BORROWER: HUMBOLDT BAY DEVELOPMENT ASSOCIATION, INC., a California nonprofit public benefit corporation

By: ___________________________
   Name: Richard Marks
   Title: President

Acknowledged and agreed with respect to Article IV and Sections 5.1, 5.2, 5.4, 5.8, 5.9, 5.12, 5.13, 5.19, 6.4, 7.1, 8.1, 9.2(i) and 10.19(e).

GUARANTOR: HUMBOLDT BAY HARBOR, RECREATION AND CONSERVATION DISTRICT, a California public entity

By: Humboldt Bay Harbor, Recreation and Conservation District Commission

By: ___________________________
   Name: Patrick Higgins
   Title: President
CNMC CDE: CNMC SUB-CDE 69, LLC, a Delaware limited liability company

By: Chase New Markets Corporation, a Delaware corporation, its managing member

By: ________________________________
    Name: Timothy C. Karp
    Title: Vice President
NMCC CDE: NEW MARKETS COMMUNITY CAPITAL XVII, LLC, a Delaware limited liability company

By: New Markets Community Capital, LLC, a Delaware limited liability company, its managing member

By: ______________________________
Name: José Villalobos
Title: Senior Vice President
SCHEDULE A
Notice Addresses of Parties

(1) If to Borrower: Humboldt Bay Development Association, Inc.
[601 Startare Drive]3
Eureka, CA 95501
Attention: Mr. Jack Crider, CEO
Facsimile: 707-443-0800
Email: jcrider@humboldtbay.org

With a copy to: Bocarsly Emden Cowan Esmail & Armdt LLP
633 West Fifth Street, 70th Floor
Los Angeles, California 90071
Attention: Eugene Cowan, Esq.
Facsimile: 213-559-0751
Email: ecowan@bocarsly.com

And copies to: The addresses set forth under (4) below.

(2) If to CNMC CDE: CNMC Sub-CDE 69, LLC
 c/o Chase Community Equity, LLC
 c/o JPMorgan Chase Bank, N.A.
 10 S. Dearborn, 19th Floor
 Mail Code: IL 1-0953
 Chicago, Illinois 60603-5506
 Attention: NMTC Asset Manager
 Facsimile: 312-325-5050
 Email: nmtc.reporting@chase.com

With a copy to: JPMorgan Chase Bank, N.A.
300 South Grand Ave., 4th Floor
Los Angeles, California 90071
Attention: Timothy C. Karp
Facsimile: 213-621-8401
Email: timothy.c.karp@chase.com

And:

Applegate & Thorne-Thomsen, P.C.
626 West Jackson Blvd., Suite 400
Chicago, IL 60661
Attention: Debra A. Kleban, Esq.
Facsimile: 312-491-4411
Email: dkleban@att-law.com

3 TBD
And copies to: The addresses set forth under (4) below.

[CONTINUED NEXT PAGE]
SCHEDULE A (CONT'D)
Notice Addresses of Parties

(3) If to NMCC CDE: New Markets Community Capital XVII, LLC
c/o New Markets Community Capital, LLC
5400 E. Olympic Boulevard, Third Floor
Los Angeles, CA 90022
Attention: Jose Villalobos
Email: jvillalobos@telacu.com

With a copy to: Manatt, Phelps & Phillips, LLP
7 Times Square
New York, NY 10036
Attention: Neil S. Faden, Esq.
Facsimile: 212-830-7328
Email: nfaden@manatt.com

And copies to: The addresses set forth under (4) below

[CONTINUED NEXT PAGE]
SCHEDULE A (CONT'D)
Notice Addresses of Parties

(4) Copy Parties: JPMorgan Chase Bank, N.A.
10 S. Dearborn Street, 19th Floor
Mail Code: IL1-0953
Chicago, IL 60603-5506
Attention: NMTC Asset Manager
Facsimile: 312-325-5050
Email: nmtc.reporting@chase.com

And a copy to: JPMorgan Chase Bank, N.A.
New Markets Tax Credit Group
300 S. Grand, Suite 400
Los Angeles, CA 90071
Attention: Timothy C. Karp
Facsimile: 213-621-8401
Email: timothy.c.karp@chase.com

And a copy to: Applegate & Thorne-Thomsen, P.C.
626 W. Jackson Boulevard, Suite 400
Chicago, IL 60661
Attention: Debra A. Kleban, Esq.
Facsimile: 312-491-4411
Email: dkleban@att-law.com
EXHIBIT A

NEW MARKETS TAX CREDIT PROGRAM
ADDENDUM TO CREDIT AGREEMENT

Borrower acknowledges that Lenders are making the CDE Loans to Borrower on the basis that the CDE Loans will qualify as "qualified low-income community investments" for purposes of generating certain tax credits (the "New Markets Tax Credit" or "NMTCs") under Section 45D of the Internal Revenue Code of 1986, as amended (the "Code"). Borrower certifies the information set forth below to Lenders to induce Lenders to make the CDE Loans. Borrower hereby represents, warrants, covenants, and agrees that the proceeds of the CDE Loans will be used solely for the purposes set forth in the Credit Agreement to which this Addendum is attached as Exhibit A (as the same may be amended, restated, modified, or supplemented, the "Credit Agreement") and, upon a Lender's written request, Borrower will provide such Lender with all documentation determined by such Lender to be reasonably necessary to demonstrate Borrower's compliance with such representations, warranties, and covenants. In connection with the issuance of opinion letters to be delivered by Applegate & Thorne-Thomsen, P.C., Bocarsly Emden Cowan Esmail & Arndt LLP, and Manatt, Phelps & Phillips, LLP, Borrower hereby acknowledges and agrees that the foregoing law firms may rely on the representations, warranties and covenants contained in the Credit Agreement and this Addendum.

Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Credit Agreement. The terms and conditions, and representations, warranties, covenants, and agreements set forth in this Addendum are, by this reference, incorporated into the Credit Agreement and made a part thereof.

1. ADDITIONAL REPRESENTATIONS AND WARRANTIES. Borrower hereby represents and warrants to Lenders as follows:

(a) Borrower is a nonprofit public benefit corporation duly organized, validly existing and in good standing under the laws of the State of California and is, and will be, treated as a corporation for federal income tax purposes. Borrower shall cause the proceeds of the CDE Loans to be expended solely for and with respect to the Project or the Business (defined below).

(b) Borrower leases the Property from the District and subleases the Property back to the District (the "Business"). All of Borrower's Business currently is and throughout the terms of the CDE Loans will be located at the Property.

(c) Borrower currently operates and throughout the terms of the CDE Loans shall operate the Business such that it shall qualify as a "qualified active low-income community business" (as defined in Section 45D(d)(2)(A) of the Code (a "QALICB") and the related Federal Income Tax Regulations, including proposed, interim and temporary regulations (the "Regulations").

(d) Based solely on the CDFI Fund (defined below) Geocoding Mapping System provided by Lenders, the Property is located in highly distressed census tract number 203338547.4
(e) Borrower knows of no facts or circumstances that contradicts or undermines the validity of, or of any reason or circumstances that could reasonably contradict or undermine the validity of: (i) any of the matters described in the Geocoder Report; or (ii) Borrower's representations set forth herein.

(f) Fifty percent (50%) or more of the total gross income of Borrower is and shall (for each tax year throughout the terms of the CDE Loans) continue to be derived from the active conduct of a qualified business (as defined in Section 45D(d)(3) of the Code and the related Regulations) within the Census Tract.

(g) Eighty-five percent (85%) or more of the use of the tangible property of the Business (whether owned or leased) is and shall (for each tax year throughout the terms of the CDE Loans) continue to be within the Census Tract. This percentage shall be determined in accordance with the rules set forth in Section 1.45D-1(d)(4)(i)(B) of the Regulations, which provides that the percentage shall be determined based on a fraction, the numerator of which is the average value of the tangible property owned or leased by Borrower and used by Borrower during the taxable year in the Census Tract and the denominator of which is the average value of the tangible property owned or leased by Borrower during the taxable year. For purposes of this percentage, the Regulations provide that property owned by Borrower is valued at its cost basis under Section 1012 of the Code and property leased by the entity is valued at a reasonable amount established by Borrower.

(h) Borrower currently has no employees and will not have any employees without the prior written consent of Lenders.

(i) If at any time Borrower has employees, at least 50% of the services performed for the Business by its employees (or employees of any Affiliate of Borrower that is primarily engaged in providing services to Borrower), if any, is and shall (for each tax year throughout the terms of the CDE Loans) continue to be performed within a Low-Income Community. The percentage of services performed is determined based on the total amount paid by the Business for employee services performed within a Low-Income Community during the taxable year compared to the total amount paid by the Business for employee services during the taxable year.

(j) Borrower is not and throughout the terms of the CDE Loans shall not be a bank, credit union or other financial institution.

(k) Less than 5% of the average of the aggregate unadjusted bases of the property of the Business is and shall be, for each tax year throughout the term of the CDE Loans, attributable to (i) works of art, (ii) rugs or antiques, (iii) metals or gems, (iv) stamps or coins, (v) alcoholic beverages, (vi) or any other tangible personal property specified by the Secretary of the United States Department of Treasury as a "collectible" (collectively, "Collectibles").

(l) Less than 5% of the average of the aggregate unadjusted bases of the property of the Business is and shall be, for each tax year throughout the terms of the CDE Loans, attributable to debt, stock, partnership interests, options, futures contracts, forward contracts,
warrants, notional principal contracts (including any interest rate swap, cap or similar agreement), annuities, and other similar property ("Nonqualified Financial Property"); provided, however, that, in accordance with the safe harbor set forth in Regulations Section 1.45D-1(d)(40)(i)(E), Nonqualified Financial Property does not include: (i) reasonable amounts of working capital held in cash (including, without limitation, the proceeds of the CDE Loans that will be expended for construction and rehabilitation of the Property within 14 months of the Effective Date), cash equivalents, or debt instruments with a term of 18 months or less, and (ii) debt instruments described in Section 1221(a)(4) of the Code.

(m) The Business is not currently engaged, and has no expectation that at any point during the terms of the CDE Loans it will become engaged, in any trade or business, either as a principal or an ancillary business, that is an excluded business under Section 1.45D-1(d)(5)(iii) of the Regulations, including, without limitation, any one or more of the following: (i) developing or holding intangibles for sale or license; (ii) the operation of (A) a private or commercial golf course, (B) a country club, (C) a massage parlor, (D) a hot tub facility, (E) a suntan facility, (F) a racetrack or other facility used for gambling, or (G) any store the principal activity of which is the sale of alcoholic beverages for consumption off premises; or (iii) farming (within the meaning of Section 2032A(e)(5)(A) or (B) of the Code and the related Regulations) (collectively with the businesses described in clauses (i) or (ii) of this paragraph, an "Excluded Business").

(n) The Business is, as of the Effective Date, and shall at all times during the terms of the CDE Loans, continue to be a QALICB.

(o) Each CDE Loan is a "qualified low-income community investment" (as such term is defined in Section 45D(d)(1) of the Code and the related Regulations) (a "QLICI").

(p) No tenant, subtenant or occupant of any portion of the Property is engaged in, nor shall Borrower permit any tenant, subtenant or occupant of any portion of the Property to engage in, any Excluded Business throughout the terms of the CDE Loans. No tenant or subtenant is leasing a portion of the Property that contains only vacant land and does not contain improvements. Neither Borrower nor any tenant or subtenant shall enter into a lease of a portion of the Property that contains only vacant land and does not contain improvements.

(q) No portion of the Property constitutes, and throughout the terms of the CDE Loans, no portion of the Property shall constitute "residential rental property" as such term is defined in Section 168(e)(2)(A) of the Code ("Residential Rental Property").

(r) Borrower is currently and throughout the terms of the CDE Loans shall be engaged in activities that further its nonprofit purpose, and upon receipt of its exemption from the Internal Revenue Service shall maintain its exempt nonprofit status under Section 501(c)(3).

(s) Borrower's sole activity is the ownership, development, renovation, management and leasing of the Property.

(t) Borrower does not own or operate, nor will it at any time during the terms of the CDE Loans own or operate, any asset or property other than the Property and incidental personal property necessary for the ownership or operation of the Property.
(u) (i) All information concerning Borrower and the Property known to Borrower, Guarantor or any of their respective Affiliates, or which should have been known to any of them in the exercise of reasonable care, has been disclosed by Borrower to Lenders; (ii) all information concerning all property (other than the Property) of Borrower known to Borrower, or which should have been known to Borrower in the exercise of reasonable care, has been disclosed by Borrower to Lenders; and (iii) there are no facts or information known to Borrower, Guarantor or any of their respective Affiliates, or which should have been known to any of them in the exercise of reasonable care, which would make any of the facts or information submitted by Borrower to Lenders with respect to Borrower or the Property inaccurate, incomplete or misleading in any material respect.

(v) All documents and information provided by Borrower to Lenders are complete and accurate in all material respects and accurately describe the entire business of Borrower.

(w) Borrower has had no correspondence or any communication with, to or from the Community Development Financial Institutions Fund, an agency of the United States Department of the Treasury, concerning non-compliance with, or deficiencies in, reporting practices.

(x) The officers of Borrower have determined that no officer, director, principal, employee or owner of Borrower are on the list of Specially Designated Nationals and Blocked Persons promulgated by the United States Department of the Treasury and located on the internet at http://www.treas.gov/offices/eotfic; http://www.treas.gov/ofac/t11sdsn.pdf.

(y) The assumptions underlying the Projections prepared by the Accountants are reasonable in all material respects and to the best knowledge of Borrower, are accurate and complete in all material respects based on all of the facts and circumstances known to Borrower as of the Effective Date.

(z) Borrower has fully and accurately stated in writing to Lenders the nature of Borrower's business and of the goods or services it provides, Borrower's primary sources of revenue, and Borrower's primary expenditures, all of which is comprised in the Business. Borrower has no present plans or intentions to change the nature of, or manner in which it conducts, the Business in any way that would cause to be untrue any of the representations, warranties or covenants set out in this Agreement.

(aa) The amount of reserves, receivables, assets and other items of working capital shown on the Projections is reasonable in all material respects based upon the reasonably anticipated costs of constructing and operating the Property by the Business.

(bb) The economic useful life of the Project exceeds 40 years, and the Project will continue to have significant residual value at the end of the term of the Lease. Borrower reasonably expects to recoup its investment in the Project from its renting of the Project pursuant to the Lease and from the Project's residual value. Borrower has reasonable grounds to believe that the fair market value of the Collateral will exceed the aggregate principal balance of the CDE Loans upon maturity.
(cc) Borrower and District will treat the Lease as a full net lease (as opposed to a sale) for federal income tax purposes.

(dd) The rents payable under the Lease and Sublease, which are projected in the Projections, are reasonable (i) based upon the appraised value of the Property, market rents in the area surrounding the Project and the Lessee’s projected net income and (ii) taking into consideration the restrictions placed upon the use of the Property.

2. ADDITIONAL COVENANTS. Borrower hereby covenants and agrees with Lenders that, so long as the Agreement remains in effect:

(a) Borrower shall provide, at no cost to Lenders, such reporting information as Lenders may reasonably require to comply with New Markets Tax Credit Program and otherwise consistent with Borrower's obligations under the Loan Documents. Borrower shall provide each Lender with such information as it or its Affiliates has in its possession and provide Lenders with access to the Property and to tenants of the Property and subject to the terms of any lease and any sublease(s), assist Lenders in obtaining information needed to maintain compliance with the New Markets Tax Credit Program requirements and in addition will provide any information required to be provided to the Community Development Financial Institutions Fund, an agency of the United States Department of the Treasury (the "CDFI Fund"). Such assistance shall include providing reasonable estimates to Lenders where necessary or otherwise assisting Lenders in obtaining such information. Such information shall be provided within a reasonable period after a specific request is made, and shall include, without limitation, the following:

(i) the number of minority, woman or low income person-owned or controlled businesses at the Property;

(ii) the number of minority, woman or low income persons employed by businesses at the Property;

(iii) the number of persons employed by businesses at the Property;

(iv) information regarding locally-owned companies involved in the improvement, and operation of the Property and the operation of the Business;

(v) an estimate of the number of full-time equivalent jobs as of the date hereof, the projected full-time equivalent jobs to be created or retained, the jobs actually created or retained as a result of the financing, including an estimate of the number of permanent jobs held by low-income persons or residents of low-income communities as defined in Section 45D of the Code to the extent the latter information is available, and a breakdown of such jobs based on wages;

(vi) the annual gross revenues of Borrower as of its fiscal year ending prior to the date hereof, the annual gross revenues of Borrower for each subsequent tax year;
(vii) an estimate of the amount of taxes payable by Borrower after completion of construction, the amount of taxes paid by Borrower for the preceding tax year;

(viii) the total construction costs (provided only through the completion of construction of the Property);

(ix) the total construction costs funded by equity (provided only through the completion of construction of the Property); and

(x) the total construction costs funded by public sources, if any (provided only through the completion of construction of the Property).

(b) Borrower shall execute the Community Benefits Agreement and submit all required reporting therein, including the annual Community Benefits Report as required in the Community Benefits Agreement.

(c) Borrower shall not move or expand existing operations to any location other than the Property or a qualified census tract under the New Markets Tax Credit Program or develop, construct or improve any real property at any location other than the Property or a qualified census tract under the New Markets Tax Credit Program without the prior written consent of each Lender (which consent may be granted or withheld in such Lender’s sole and absolute discretion).

(d) Borrower shall not have any employees without the prior written consent of Lenders.

(e) Borrower shall not use or convert the Property (or any portion thereof) into Residential Rental Property.

(f) If and to the extent Borrower is ever required to depreciate the Property for Federal income tax purposes, Borrower shall depreciate the Improvements over 39 years as nonresidential real property, except to the extent accelerated depreciation is allowed under the Code.

(g) Borrower will not be a bank, credit union or other financial institution.

(h) Eighty-five percent (85%) or more of the use of the tangible property of Borrower (whether owned or leased), as determined in the manner set forth in Section 1(f) of this Addendum, shall (for each tax year throughout the term of the Loan) be within the Census Tract.

(i) The Borrower shall not purchase, acquire or allow the build-up of Nonqualified Financial Property to the extent such purchase, acquisition or build-up would cause the aggregate bases of the Borrower's Nonqualified Financial Property to be 5% or more of the aggregate unadjusted bases of all property of the Borrower nor shall the Borrower dispose of any asset if the disposition would cause the aggregate bases of the Borrower's Nonqualified Financial Property to be 5% or more of the aggregate unadjusted bases of all property of the Borrower. Borrower shall not lease any portion of the Property without the prior written consent of Lenders,
which consent shall not be unreasonably withheld or delayed. The Lease is hereby consented to by Lenders. No tenant, subtenant or occupant of the Property shall be engaged in any Excluded Business nor shall Borrower permit any tenant, subtenant or occupant to engage in any Excluded Business.

(j) The Business shall not acquire any Collectible to the extent that, after such acquisition, the aggregate bases of Collectibles owned by the Business would equal or exceed 5% of the aggregate unadjusted bases of all property of the Business nor shall the Business dispose of any asset if the disposition would cause the aggregate bases of Collectibles owned by the Business to equal or exceed 5% of the aggregate unadjusted bases of all property of the Business.

(k) Borrower shall not conduct any Excluded Business, nor shall Borrower permit any tenant, lessee, sublessee or other user or occupant of the Property to conduct any Excluded Business.

(l) Borrower shall be a QALICB and shall take all actions necessary to maintain such status required by Section 45D of the Code and the related Regulations.

(m) Borrower shall take all actions within its control necessary to maintain the status of each CDE Loan as a QLICI, including, without limitation, not making any unscheduled prepayment of any CDE Loan not specifically permitted in the Credit Agreement.

(n) Borrower shall comply with any request by Lenders in connection with the duties and obligations of Borrower under Section 45D of the Code to prevent a recapture of NMTCs, provided that any such request will not adversely affect the economic terms and conditions of the CDE Loans for Borrower or any of Borrower's obligations hereunder in any material manner.

(o) Borrower shall not take any action which would cause (i) Borrower to cease to be a QALICB pursuant to Section 45D of the Code and the related Regulations, or (iii) prepayment of any CDE Loan other than as permitted under the Loan Documents.

(p) Borrower shall not take any action which would cause any Lender to be in default under any agreement between such Lender and the CDFI Fund, if such Lender first informs Borrower that such action would cause such default, unless the failure by Borrower to take such action would cause Borrower to be in default under any Loan Documents and/or would also adversely affect the economic terms and conditions of the applicable CDE Loan for Borrower or any of Borrower's obligations hereunder in any material manner.

(q) Borrower shall provide each Lender with all information reasonably requested by such Lender (i) to complete any reporting to such Lender's members in connection with the NMTC resulting from the applicable CDE Loans, (ii) in connection with such Lender's NMTC reports and audits, including those made by the CDFI Fund's Community Investment Impact System, and (iii) in connection with any application to be made by such Lender to the CDFI Fund for additional allocations of NMTCs.

(r) Borrower shall comply with the requirements imposed by the New Markets Tax Credit Program on the Property pursuant to Section 45D of the Code and the related Regulations.
(s) Borrower shall do all things necessary to observe organizational formalities and preserve its separate legal existence, and Borrower shall not amend, modify or otherwise change its organizational documents (including, without limitation, as applicable, its articles of incorporation, articles of organization, bylaws, operating agreement, or limited partnership agreement) without the prior written consent of each Lender (which consent may be granted or withheld in such Lender's sole and absolute discretion).

(t) Borrower shall only use proceeds of the CDE Loans in connection with the acquisition, development, renovation and leasing of the Property and shall not use proceeds of the CDE Loans in connection with any other property or business of Borrower (no permission for the ownership or operation of any such other property or business being implied).

(u) Borrower shall prepare all required federal, state or local income tax returns or reports in a manner consistent with its ownership of the entire Property, including any portion of the Property leased by Borrower to any other Person (including but not limited to the Lessee under the Lease).

(v) Borrower shall treat the CDE Loans as indebtedness for all purposes, shall treat the Lease as a lease for all purposes and shall not take any positions contrary to such treatment.

(w) No portion of the Property will constitute a "qualified low-income building" under Section 42 of the Code.

(x) Borrower shall provide to each Lender such information and sign such documents as are reasonably necessary for such Lender and its members to make timely, accurate and complete submissions of (i) federal and state income tax returns, and (ii) reports to governmental agencies.

(y) Borrower shall not permit a change in control or ownership of interests in the Business which would result in any Lender, any member of any Lender, CCE or Bank having NMTC Control (as such term is defined in Regulations Section 1.45D-1(d)(6)(ii)(B), as amended, restated, or modified from time to time) of Borrower.

(z) Borrower shall not discontinue conducting the Business, shall not relocate, expand or materially change the nature of its business, and shall not materially change the manner in which its business activities are conducted, other than changes in the nature of its business or the manner in which it conducts its business that do not cause such business to cease to be a qualified business (as defined in Section 45D(d)(3) of the Code and the related Regulations) of Borrower or to cease to continue as a QALICB (as determined by Lenders in their good faith judgment and based upon the advice of counsel) and which are otherwise permitted hereunder.

(aa) Borrower shall utilize all proceeds of the CDE Loans within 12 months of the Effective Date.

(bb) Borrower will certify in writing to Lenders that it remains in compliance with the provisions hereof, including in such certification the current percentages or ratios under the above sections that are applicable to Borrower at such time, by providing a certificate
substantially in the form attached hereto as Attachment 1, as set forth in Section 5.2(e) of the Credit Agreement.

[REMAINDER OF PAGE BLANK]
ATTACHMENT 1

COMPLIANCE CERTIFICATE

In order to ensure that each of the loan or loans made by CNMC SUB-CDE 69, LLC, a Delaware limited liability company ("CNMC CDF"), NEW MARKETS COMMUNITY CAPITAL XVII, LLC, a Delaware limited liability company ("NMCC CDF" and together with CNMC CDF, the "Lenders"), to HUMBOLDT BAY DEVELOPMENT ASSOCIATION, INC., a California nonprofit public benefit corporation ("Borrower"), on February [__], 2016 (the "Effective Date") qualify as a "qualified low-income community investment" (a "QLICI"), Borrower hereby certifies that it is a "qualified active low-income community business" (a "QALICB"), as such terms are defined by Section 45D of the Internal Revenue Code, as amended (the "Code"), and Section 1.45D-1(d)(4) of the Treasury Regulations.

1. Capitalized terms not otherwise defined in this Certificate have the meanings set forth in the New Markets Tax Credit Addendum to Credit Agreement attached as Exhibit A to that certain Credit Agreement, dated as of the Effective Date, by and between Lenders and Borrower.

2. Borrower acknowledges and agrees that it is and will remain a QALICB. Accordingly, Borrower hereby certifies that, as of the date hereof:

(a) The ratio of (i) the average value of the tangible property owned or leased by the Borrower and used by the Borrower during the current fiscal year of the Borrower to date within any "low-income community" as such term is defined in Section 45D of the Code and the related Regulations, to (ii) the total average value of the tangible property owned or leased by the Borrower and used by the Borrower in the current fiscal year to date, is no less than 85%. For purposes of the preceding sentence, tangible property owned by the Borrower has been valued at its cost basis as determined under Section 1012 of the Code and tangible property leased by the Borrower has been valued at a reasonable amount established by Borrower and reasonably acceptable to Lenders.

(b) Less than 5% of the average aggregate unadjusted bases of the Borrower's property is attributable to collectibles (as defined in Section 408(m)(2) of the Code). Borrower has provided Lenders a true, correct and complete listing of any collectables owned by the Borrower, which listing includes the unadjusted bases of such property.

(c) Less than 5% of the average aggregate unadjusted bases of the Borrower's property is attributable to nonqualified financial property (as defined in Section 1397C(e) of the Code). Borrower has provided Lenders with a true, correct and complete listing of any non-qualified financial property owned by the Borrower, which includes the unadjusted bases of such property.

(d) The Borrower's business activities do not include operation of any Excluded Business.

(e) Additionally, no lessee or sublessee of Borrower is a business operating any Excluded Business as of the date hereof.
(f) No portion of the Property constitutes Residential Rental Property.

(g) Borrower currently has no employees and will not have any employees without the prior written consent of Lenders.

(h) If applicable, at least 50% of the services performed for the Borrower by its employees (or employees of any Affiliate of Borrower that is primarily engaged in providing services to Borrower) is, will be and shall continue to be performed on the Property. The percentage of services performed is determined based on the total amount paid by the Borrower for employee services performed on the Property during the taxable year compared to the total amount paid by the Borrower for employee services during the taxable year.

(i) Throughout the terms of the CDE Loans, Borrower shall be engaged in activities that further its exempt purpose and maintain its exempt nonprofit status under Section 501(a)(3) of the Code.

(j) The Property is located in highly distressed census tract number [06023001300], and such census tract constitutes a "low-income community" as such term is defined in Section 45D of the Code and the related Regulations.

(k) The nature of the Borrower, and Borrower's primary sources of revenue, is the development and use of the Property, and Borrower's primary expenditures are projected to be as set forth in the Projections. Borrower has no present plans or intentions to change the nature of or manner in which it conducts its business activities which would cause it not to be in accordance with the provisions of this subsection (k).

IN WITNESS WHEREOF, the Borrower has caused this Compliance Certificate to be duly executed on ____________, 20__.

BORROWER: Humboldt Bay Development Association, Inc., a California nonprofit public benefit corporation

By: ____________________________
   Name: Richard Marks
   Title: President
EXHIBIT B

PROJECT BUDGET

[attached behind]
EXHIBIT C

QALICB QUESTIONNAIRE

**Entity Name:** Humboldt Bay Development Association, Inc., a California nonprofit public benefit corporation ("Borrower")

**Effective date of report:**

**Date report prepared:**

**Name of person preparing report:**

**Phone number:**

**Defined terms:** Capitalized terms used herein and not otherwise defined herein have the meanings set forth in the Credit Agreement to which this Exhibit C is attached.

<table>
<thead>
<tr>
<th>No.</th>
<th>Question</th>
<th>Explanation / Response</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Has there been any default, with or without notice, or conditions which if unchanged may lead to a default or an Event of Default under the Loan Documents, the Lease, or any other lease or sublease of the Land, or the Property? Describe:</td>
<td></td>
</tr>
<tr>
<td>2.</td>
<td>Are all required taxes currently paid? If not, how much is unpaid to whom and why?</td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Is all required insurance bound and paid for through the date of this report? If not, explain:</td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Is there any material fact which may substantially alter projected payments of interest and/or principal as set forth in the Projections? Explain:</td>
<td></td>
</tr>
<tr>
<td>5.</td>
<td>If applicable, has any member pledged or collateralized any of its interest in Borrower? Explain?</td>
<td></td>
</tr>
<tr>
<td>6.</td>
<td>Has any Affiliate of Borrower received any distributions, compensation, or reimbursed expenses during the quarter? If so, please provide detail:</td>
<td></td>
</tr>
<tr>
<td>7.</td>
<td>Has Borrower borrowed any money this period (secured or unsecured) from any Person for any reason, including operating deficit loans? If so, please provide a detailed breakdown of all such</td>
<td></td>
</tr>
</tbody>
</table>
8. Was there any natural disaster or other incident creating property damage this period that might have an adverse impact on construction or operations? If so, please provide detail:

9. If applicable, during the period, did any member of Borrower or Guarantor die, dissolve, or go bankrupt? Provide details and an explanation of the impact on Borrower.

10. Were there any conditions or circumstances this period which reduced or might be expected to reduce below projected levels the amount of New Market Tax Credits available to any Lender's investor member? Explain:

11. Were there violations of any health, safety, building code, or other statutes or regulations by Borrower? Please explain and provide detail:

12. Are there any material lawsuits or other legal proceedings, threatened or actual, against Borrower or Guarantor which had or could reasonably be excepted to have a Material Adverse Effect on Borrower or Guarantor? Provide copies of all court filings or description of any such action or threatened action.

13. Are there any operating or reserve accounts which were required to be funded that have not been funded to required levels?

14. Are there any limited liability company distributions that were required to be made that have not been made?

15. Are there any advances owed by any members or their Affiliates to Borrower?

16. Has the Internal Revenue Service made any claims against Borrower or Guarantor or are you aware of any upcoming audits of Borrower or Guarantor?

[REMAINDER OF PAGE BLANK; SIGNATURE PAGE TO FOLLOW.]
IN WITNESS WHEREOF, the Borrower has caused this QALICB Questionnaire to be duly executed on ____________, 20__.

BORROWER: Humboldt Bay Development Association, Inc., a California nonprofit public benefit corporation

By: ____________________________

Name: Richard Marks
Title: President
### Exhibit D

<table>
<thead>
<tr>
<th>Type</th>
<th>Amount</th>
<th>Certificate/Policy/Endorsement Requirements</th>
</tr>
</thead>
<tbody>
<tr>
<td>Borrower’s Commercial General Liability</td>
<td>$1,000,000 per occurrence, combined single limit, $2,000,000 aggregate</td>
<td>Name Investment Fund and the CDEs as Additional Insured as their interests may appear using approved endorsements with defense provided in addition to policy limits for indemnitees and products, personal injury, completed operation coverage for 24 mo. and cross liability if more than one Named Insured.</td>
</tr>
<tr>
<td>Borrower’s Commercial Excess/Umbrella Liability</td>
<td>$2,000,000 (minimum for loans up to $1mm) $5,000,000 (minimum for loans $1mm and higher)</td>
<td>Name Investment Fund and the CDEs as Additional Insured as their interests may appear</td>
</tr>
<tr>
<td>Borrower’s Worker’s Comp. and Employer’s Liability (if applicable)</td>
<td>Statutory limits and $1,000,000 minimum per accident</td>
<td>“All States” Endorsement if applicable.</td>
</tr>
<tr>
<td>Borrower’s or Contractor’s Special/All Risk Builder’s Risk during Construction</td>
<td>100% Insurable Value (if have appraisal, replacement cost basis (excluding land); if no appraisal-- for new construction, calculated as construction contract value less land, foundation costs and architect’s fees; for rehab, calculated as estimate of core and shell plus construction budget for rehab)</td>
<td>Name CDEs as Mortgagees and Loss Payees and Owner as Insured. [Owner as Additional Named Insured if supplied by 3rd party Contractor]. Completed value, Non- Reporting form with no coinsurance requirement, [delayed opening (delay in start-up and grant the insured permission to occupy prior to completion)]. [Policy shall not contain exclusion for terrorist losses. If such exclusion exists a separate Terrorism policy covering Certified Acts of Terrorism in an amount equal to the full replacement cost or the loan amount, whichever is less.] All deductibles/self insured retentions shall be clearly evidenced.</td>
</tr>
<tr>
<td>Borrower’s Special Cause of Loss/All Risk Hazard</td>
<td>100% Insurable Value (if have appraisal, replacement cost basis (excluding land); if no appraisal-- for new construction, calculated as construction contract value less land, foundation costs and architect’s fees; for rehab, calculated as estimate of core and shell plus construction budget for rehab)</td>
<td>Name CDEs as Mortgagees and Loss Payees and Owner as Insured [Owner as Additional Named Insured if supplied by 3rd party.] Completed value, Non- Reporting form with no coinsurance requirement and grant the insured permission to occupy prior to completion. Include a non-contributing mortgagee clause and an Ordinance or Change in Law endorsement equal to 25% of the property insurance limit [50% if the bldg is over 10 yrs old; 10% if new construction or adding to existing project but not gut rehab]. If the real property is a condominium or a co-op, additional insurance from the Condominium Association or the Co-op Board is required showing adequate insurance of the structure All deductibles/self insured retentions shall be clearly evidenced.</td>
</tr>
<tr>
<td>Borrower’s Windstorm, if project is located in a Windstorm Zone</td>
<td>100% Insurable Value (if have appraisal, replacement cost basis (excluding land); if no appraisal-- for new construction, calculated as construction contract value less land, foundation costs and architect’s fees; for rehab,</td>
<td>Name CDEs as Mortgagees and Loss Payees.</td>
</tr>
</tbody>
</table>
| Contractor's Commercial Excess/Umbrella Liability | $1,000,000 (minimum for loans up to $1mm)  
$5,000,000 (minimum for loans $1mm and higher) | Name Investment Fund, CDEs and Owner as Additional Insured as their interests may appear 
[Owner as Additional Named Insured if supplied by 3rd party Contractor]. |
| Boiler & Machinery Insurance | 100% Replacement Cost | Name CDEs as Mortgagees and Loss Payees 
(Required If a central HVAC system exists or if the bldg is relying on equipment & machinery to operate elevators, escalators and the like.) |
| Borrower's Earthquake Insurance 
(Applicable to properties in Seismic Zones 3 & 4 and FM Zones 40 & 70. An evaluation of the potential for earthquake damage is required.) | To be determined | Name CDEs as Mortgagees and Loss Payees. |
| Borrower's Business Interruption /Loss of Rents (if applicable) 
[Note: such coverage will only be required if the Borrower leases the project and collects rent.] | To be determined | Name CDEs as Mortgagees and Loss Payees 
(Extension to the Special Cause of Loss policy providing protection if a loss occurs and the tenants abate rent). |
| Contractor's Commercial General Liability | $1,000,000 per occurrence, combined single limit,  
$2,000,000 aggregate | Name Investment Fund and the CDEs as Additional Insured as their interests may appear |
| Flood Insurance | To be determined | Name CDEs as Mortgagees and Loss Payees. 
[JPMC to add additional information] |

**Additional Requirements:**

1. For the Investment Fund: Certificate holder as non-contributing Additional Insured clause shall read as "[Investment Fund] and its successors and/or assigns." For each CDE, clause shall read "[CDE Entity Name] and its successors and/or assigns." Address is to be provided. [Note: please insert address for JPMC of the group responsible for tracking insurance for the project.]

2. Certificate must reference the property description or address, full name of insurance company and term of policy.

3. Blanket policies: Certificate must identify the secured property by address and show the sum insured or state replacement value.

4. Certificate must provide for 30 days notice of adverse change, cancellation or non-renewal ("endeavor to" verbiage is not acceptable).

5. Evidence of liability insurance must be presented on an Acord 25 form certificate or on a form approved by the Investment Fund and CDE. Builder’s risk and special cause of loss, hazard and property must be on an Acord 27(Personal Property)/28 (Commercial Property) form certificate or on a form approved by the Investment Fund and CDE.

6. Company insuring must be rated not less than "A-" VIII or better by A.M. Best Co., in Best’s Rating Guide.

7. Waiver of Subrogation against named Additional Insured.

8. Loan documentation may have the right to force place special cause of loss, hazard and property insurance and flood insurance (if applicable) if there is a lapse in coverage.

Investment Fund: Chase NMTC Samoa Investment Fund, LLC

CDEs: New Markets Community Capital XVII, LLC  
CNMC Sub-CDE 69, LLC

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Title Insurance Standards

1. Obtain ALTA form lender’s policy (revised 2006, where available) with deletion of standard exceptions for mechanics’ liens, parties in possession and survey.

2. Amount of insurance to be no less than loan amount(s) (to be provided).

3. Name lender(s) (to be provided), its successors and assigns, as their interests may appear, as the Insured.

4. Send copy of title insurance commitment (with legible copies of underlying exception documents) or recently issued policy to Chase’s outside counsel for review of basic terms and title exceptions.

5. Title insurance policy must be dated down as of date of recording of mortgage or deed of trust.

6. Legal description of the Insured Premises must be identical to that shown on ALTA/ACSM Survey provided for the transaction.

7. Exception for only real estate taxes and assessments not yet due and payable. (Send copies of updated municipal lien certificates showing outstanding real estate taxes, water and sewer use charges.)

8. Any tenants’ right exception must be limited to “Rights of tenants, as tenants only, under unrecorded leases”.

9. For all easements, the title policy shall provide affirmative insurance that such easements do not interfere with the use and enjoyment of the property as currently used.

10. The following endorsements must be attached (where available):

(a) Zoning (ALTA 3.1 or the equivalent)
(b) Environmental Protection
(c) Comprehensive
(d) Location/Address
(e) Public Street Access and Entry
(f) Deletion of Arbitration (if applicable)
(g) Tax Parcel
(h) Same as Survey
(i) Mechanic’s Lien
(j) Future Advance (if applicable)
(k) Variable Rate (if applicable)
(l)  Affirmative insurance over any unlocated ("blanket") easements

(m)  Doing Business

(n)  Contiguity

(o)  Gap

(p)  Affirmative insurance over any encroachments

(q)  Any other endorsements that Chase’s outside counsel may deem necessary

If any of the above is unavailable, a written explanation must be provided. If title insurance policy is issued by an agent on behalf of a title insurance company, the title insurance company must provide an insured closing protection letter in form acceptable to Chase’s outside counsel.

[remainder of page blank]
Survey Certification & Table A Requirements

To (name of insured, if known), (name of insurer, if known), New Markets Community Capital XVII, LLC, CNMC Sub-CDE 69, LLC., Chase NMTC Samoa Investment Fund, LLC, Chase Community Equity, LLC and JPMorgan Chase Bank, N.A.:

This is to certify that this map or plat and the survey on which it is based were made in accordance with the 2011 Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys, jointly established and adopted by ALTA and NSPS, and includes Items _____ of Table A thereof. The field work was completed on ____________.

Date of Plat or Map: ______ (Surveyor's signature, printed name and seal with Registration/License Number)

TABLE A

OPTIONAL SURVEY RESPONSIBILITIES AND SPECIFICATIONS

NOTE: The items of Table A must be negotiated between the surveyor and client. It may be necessary for the surveyor to qualify or expand upon the description of these items (e.g., in reference to Item 6(b), there may be a need for an interpretation of a restriction). The surveyor cannot make a certification on the basis of an interpretation or opinion of another party. Notwithstanding Table A Items 5 and 11(b), if an engineering design survey is desired as part of an ALTA/ACSM Land Title Survey, such services should be negotiated under Table A, item 22.

If checked, the following optional items are to be included in the ALTA/ACSM LAND TITLE SURVEY, except as otherwise qualified (see note above):

1. ___ Monuments placed (or a reference monument or witness to the corner) at all major corners of the boundary of the property, unless already marked or referenced by existing monuments or witnesses.

2. ___ Address(es) if disclosed in Record Documents, or observed while conducting the survey.

3. ___ Flood zone classification (with proper annotation based on federal Flood Insurance Rate Maps or the state or local equivalent) depicted by scaled map location and graphic plotting only.

4. ___ Gross land area (and other areas if specified by the client).

5. _____ Vertical relief with the source of information (e.g. ground survey or aerial map), contour interval, datum, and originating benchmark identified.

6. _____ (a) Current zoning classification, as provided by the insurer.

   _____ (b) Current zoning classification and building setback requirements, height and floor space area restrictions as set forth in that classification, as provided by the insurer. If none, so state.

7. ___ (a) Exterior dimensions of all buildings at ground level.

   (b) Square footage of:

      ___ (1) exterior footprint of all buildings at ground level.

203338547.4
___ (2) other areas as specified by the client.

___ (c) Measured height of all buildings above grade at a location specified by the client. If no location is specified, the point of measurement shall be identified.

8. ___ Substantial features observed in the process of conducting the survey (in addition to the improvements and features required under Section 5 above) such as parking lots, billboards, signs, swimming pools, landscaped areas, etc.

9. ___ Striping, number and type (e.g. handicapped, motorcycle, regular, etc.) of parking spaces in parking areas, lots and structures.

10. ____ (a) Determination of the relationship and location of certain division or party walls designated by the client with respect to adjoining properties (client to obtain necessary permissions).

____ (b) Determination of whether certain walls designated by the client are plumb (client to obtain necessary permissions).

11. Location of utilities (representative examples of which are listed below) existing on or serving the surveyed property as determined by:

___ (a) Observed evidence.

___ (b) Observed evidence together with evidence from plans obtained from utility companies or provided by client, and markings by utility companies and other appropriate sources (with reference as to the source of information).

* Railroad tracks, spurs and sidings;

* Manholes, catch basins, valve vaults and other surface indications of subterranean uses;

* Wires and cables (including their function, if readily identifiable) crossing the surveyed property, and all poles on or within ten feet of the surveyed property. Without expressing a legal opinion as to the ownership or nature of the potential encroachment, the dimensions of all encroaching utility pole crossmembers or overhangs; and

* utility company installations on the surveyed property.

Note - With regard to Table A, item 11(b), source information from plans and markings will be combined with observed evidence of utilities to develop a view of those underground utilities. However, lacking excavation, the exact location of underground features cannot be accurately, completely and reliably depicted. Where additional or more detailed information is required, the client is advised that excavation may be necessary.

12. ____ Governmental Agency survey-related requirements as specified by the client, such as for HUD surveys, and surveys for leases on Bureau of Land Management managed lands.

13. ____ Names of adjoining owners of platted lands according to current public records.
14. Distance to the nearest intersecting street as specified by the client.

15. Rectified orthophotography, photogrammetric mapping, airborne/mobile laser scanning and other similar products, tools or technologies as the basis for the showing the location of certain features (excluding boundaries) where ground measurements are not otherwise necessary to locate those features to an appropriate and acceptable accuracy relative to a nearby boundary. The surveyor shall (a) discuss the ramifications of such methodologies (e.g. the potential precision and completeness of the data gathered thereby) with the insurer, lender and client prior to the performance of the survey and, (b) place a note on the face of the survey explaining the source, date, precision and other relevant qualifications of any such data.

16. Observed evidence of current earth moving work, building construction or building additions.

17. Proposed changes in street right of way lines, if information is available from the controlling jurisdiction. Observed evidence of recent street or sidewalk construction or repairs.

18. Observed evidence of site use as a solid waste dump, sump or sanitary landfill.

19. Location of wetland areas as delineated by appropriate authorities.

20. (a) Locate improvements within any offsite easements or servitudes benefitting the surveyed property that are disclosed in the Record Documents provided to the surveyor and that are observed in the process of conducting the survey (client to obtain necessary permissions).

(b) Monuments placed (or a reference monument or witness to the corner) at all major corners of any offsite easements or servitudes benefitting the surveyed property and disclosed in Record Documents provided to the surveyor (client to obtain necessary permissions).

21. Professional Liability Insurance policy obtained by the surveyor in the minimum amount of $____________ to be in effect throughout the contract term. Certificate of Insurance to be furnished upon request.

[remainder of page blank]
EXHIBIT E

COMMUNITY IMPACT SURVEY

[Chase to provide]