HAZARDOUS MATERIAL
GUARANTY AND INDEMNIFICATION AGREEMENT

October __, 2011

THIS HAZARDOUS MATERIAL GUARANTY AND INDEMNIFICATION AGREEMENT (this “Guaranty”) is made by EIC QALICB, Inc., a California nonprofit public benefit corporation (the “Borrower”), and City of San Jose, a California municipal corporation (“City of San Jose” and, together with the Borrower, individually and collectively, the “Guarantor” for the purposes of this Guaranty except as the context otherwise requires) in favor of NDC New Markets Investments LXV, LLC, a Delaware limited liability company (“NDC CDE”), Northern California Community Loan Fund NMTC Sub-CDE III, LLC, a California limited liability company (“NCCLF CDE”), and Brownfield Revitalization XV, LLC, a Delaware limited liability company (“BR CDE”) (NDC CDE, NCCLF CDE and BR CDE, are referred to, individually and collectively, as “Lender” for the purposes of this Guaranty except as the context otherwise requires).

WHEREAS, Lender has agreed to make a loan to in the aggregate principal amount of Twenty Five Million Nine Hundred Forty Four Thousand Eight Hundred Thirteen and 00/100 Dollars ($25,944,813) (the “Loan”) to Borrower, which Loan will be (a) evidenced by and payable in accordance with the provisions of the Notes, (b) secured by the Deed of Trust, and (c) advanced pursuant to the provisions of the Loan Agreement, all as defined in Exhibit A. All documents and instruments evidencing, securing or guaranteeing the Loan are referred to herein as the “Loan Documents”;

WHEREAS, the Lender is willing to make the Loan only if the Guarantor executes and delivers this Guaranty; and

WHEREAS, the Lender has appointed JPMorgan Chase Bank, N.A. as agent to act as servicer of the Loan on behalf of the Lender (together with any replacements and successors engaged by the Lender to service the Loan) (the “Servicer”).

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, and in order to induce the Lender to make the Loan, the Guarantor hereby acknowledges, agrees and confirms that all of the above recitals are true, correct and complete and hereby covenant and agrees with the Lender as follows:

1. For the purposes of this Guaranty the following terms shall have the following meanings:

(a) the term “Hazardous Material” shall mean any material or substance that, whether by its nature or use, is now or hereafter defined as hazardous waste, hazardous substance, pollutant or contaminant under any Environmental Requirement (including but not limited to California Health & Safety Code Section 25100 et seq., and California Water Code Section 13000 et seq.), or which is toxic, explosive, corrosive, flammable, infectious,
radioactive, carcinogenic, mutagenic or otherwise hazardous and which is now or hereafter regulated under any Environmental Requirement, or which is or contains petroleum, gasoline, diesel fuel or another petroleum hydrocarbon product, asbestos, asbestos-containing materials or polychlorinated biphenyls;

(b) the term “Environmental Report” shall mean those certain reports and documents referenced on Exhibit B attached hereto and incorporated herein by reference.

(c) the term “Environmental Requirements” shall collectively mean all present and future laws, statutes, common law, ordinances, rules, regulations, orders, codes, licenses, permits, decrees, judgments, directives or the equivalent of or by any Governmental Authority and relating to or addressing the protection of the environment or human health;

(d) the term “Governmental Authority” shall mean the Federal government, or any state or other political subdivision thereof, or any agency, court or body of the Federal government, any state or other political subdivision thereof, exercising executive, legislative, judicial, regulatory or administrative functions, including but not limited to California Environmental Protection Agency and/or Department of Health Services;

(e) the term “Property” shall have the meaning given to such term in the Loan Documents and shall include without limitation any property granted to Lender by Guarantor as security for the Debt; and

(f) the term “Debt” shall mean all principal, interest, additional interest (including specifically all interest accruing from and after the commencement of any case, proceeding or action under any existing or future laws relating to bankruptcy, insolvency or similar matters with respect to the Borrower) and other sums of any nature whatsoever which may or shall become due and payable pursuant to the provisions of the Notes, the Deed of Trust, the Loan Agreement or any other document or instrument now or hereafter executed and/or delivered in connection therewith or otherwise with respect to the Loan (said Notes, Deed of Trust and other documents and instruments, collectively, the “Loan Documents”) and any interest rate swap or other derivative product or depository service contract related to the foregoing (all of the above unaffected by modification thereof in any bankruptcy or insolvency proceeding, and even though the Lender may not have an allowed claim for the same against the Borrower as a result of any bankruptcy proceeding), and shall include the items defined as “Indebtedness” in the Loan Agreement.

2. The Guarantor hereby represents and warrants to the Lender and the Servicer that except as expressly disclosed in the Environmental Report, to the best of the Guarantor’s knowledge after diligent inquiry:

(a) no Hazardous Material is currently located at, in, on, under or about the Property in a manner which violates any Environmental Requirement, or which requires cleanup or corrective action of any kind under any Environmental Requirement;

(b) no releasing, emitting, discharging, leaching, dumping or disposing of any Hazardous Material from the Property onto or into any other property or from any other property...
onto or into the Property has occurred or is occurring in violation of any Environmental Requirement;

   (c) no notice of violation, lien, complaint, suit, order or other notice with respect to the Property is presently outstanding under any Environmental Requirement; and

   (d) the Property and the operation thereof are in full compliance with all Environmental Requirements.

3. The Guarantor absolutely and unconditionally guarantees to the Lender and the Servicer that the Guarantor will fully comply with the environmental requirements set forth in the Deed of Trust, it being understood and agreed that the Guarantor’s obligations hereunder shall be unaffected by modification of any of the Borrower’s obligations in any bankruptcy or insolvency proceeding, nor by the fact that the Lender may not have an allowed claim for the same against the Borrower as a result of any bankruptcy or insolvency proceeding arising out of, and will defend, indemnify, and hold harmless the Lender, the Servicer and their respective employees, agents, officers, and directors, from and against any and all claims, demands, penalties, causes of action, fines, liabilities, settlements, damages, costs, or expenses of whatever kind or nature, known or unknown, foreseen or unforeseen, contingent or otherwise (including, without limitation, reasonable counsel and consultant fees and expenses, investigation and laboratory fees and expenses, court costs, and litigation expenses), or in any way related to:

   (a) the presence, disposal, spillage, discharge, emission, leakage, release, or threatened release of any Hazardous Material which is at, in, on, under, about, from or affecting the Property, including, without limitation, any damage or injury resulting from any such Hazardous Material to or affecting the Property or the soil, water, air, vegetation, buildings, personal property, persons or animals located on the Property or on any other property or otherwise;

   (b) any breach by the Borrower or Guarantor of any of the environmental provisions set forth in the Deed of Trust;

   (c) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to any such Hazardous Material;

   (d) any lawsuit brought or threatened, settlement reached, or order or directive of or by any Governmental Authority relating to such Hazardous Material; or

   (e) any violation of any Environmental Requirement.

4. The Guarantor absolutely and unconditionally agrees to indemnify and to hold the Lender and the Servicer harmless from and against any and all loss, liability, cost or expense of any nature whatsoever, contingent or otherwise, foreseen or unforeseen, incurred by the Lender or the Servicer (including, without limitation, reasonable counsel fees) resulting from any order or action taken by any Governmental Authority having jurisdiction over environmental matters or Hazardous Materials.
5. The Guarantor does hereby indemnify and shall hold harmless and defend the Lender and the Servicer at the Guarantor’s sole cost and expense against any loss or liability, cost or expense (including, but not limited to, reasonable attorneys’ fees and disbursements of the Lender’s counsel, whether in-house staff, retained firms or otherwise), and all claims, actions, procedures and suits arising out of or in connection with:

(a) any ongoing matters arising out of this Guaranty, any document or instrument now or hereafter executed and/or delivered in connection herewith (the “Indemnity Documents”);

(b) any amendment to, or restructuring of the obligations of the Guarantor hereunder; and

(c) any and all lawful action that may be taken by the Lender or the Servicer in connection with the enforcement of the provisions of this Guaranty or any of the other Indemnity Documents and the obligations of the Borrower and/or the Guarantor thereunder, whether or not suit is filed in connection with the same, or in connection with the Borrower, the Guarantor and/or any partner, joint venturer or shareholder thereof becoming a party to a voluntary or involuntary federal or state bankruptcy, insolvency or similar proceeding.

All sums expended by the Lender and the Servicer shall be payable on demand and, if not paid within thirty (30) days of written demand, shall bear interest at the default interest rate set forth in the Notes until reimbursed by the Guarantor.

6. The Guarantor does hereby represent and warrant that all financial statements of the Guarantor heretofore delivered to the Lender and the Servicer by or on behalf of the Guarantor are true and correct in all material respects and fairly present the financial condition of the Guarantor as of the respective dates thereof, and no material adverse change has occurred in the financial conditions reflected therein since the respective dates thereof. In addition, the Guarantor covenants that so long as any portion of the Debt remains outstanding and unpaid, the Guarantor will, unless otherwise consented to in writing by the Lender and the Servicer, furnish financial statements and information as is required under the Loan Documents.

7. The obligations and liabilities of the Guarantor under this Guaranty shall survive and continue in full force and effect and shall not be terminated, discharged or released, in whole or in part, irrespective of whether the Debt has been paid in full and irrespective of any foreclosure of the Deed of Trust, sale of the Property pursuant to the provisions of the Deed of Trust or acceptance by the Lender, its nominee or wholly owned subsidiary of a deed or assignment in lieu of foreclosure or sale and irrespective of any other fact or circumstance of any nature whatsoever. Notwithstanding anything herein to the contrary, if the Lender or any of its successors or assigns (a) takes title to the Property at a foreclosure sale, at a sale pursuant to a power of sale or by deed-in-lieu of foreclosure or by exercise of any other remedial right; or (b) takes possession, custody and/or control of the Property as a beneficiary in possession or through a court designated receiver, then, under such circumstances, the Guarantor shall have no obligation to defend, indemnify and hold the Lender harmless hereunder against losses, liabilities, costs and expenses described herein (x) relating to Hazardous Material which are
initially placed on, in or under all or any portion of the applicable Property at any time thereafter, or (y) arising out of the negligence of the Lender or any such successor or assign.

8. The Guarantor hereby expressly agrees that this Guaranty is independent of, and in addition to, all collateral granted, pledged or assigned under the Loan Documents, and the Guarantor hereby consents that from time to time, before or after any default by the Guarantor, with or without further notice to or assent from the Guarantor:

(a) any security at any time held by or available to the Lender for any obligation of the Guarantor, or any security at any time held by or available to the Lender for any obligation of any other person or party primarily, secondarily or otherwise liable for all or any portion of the Debt, any other Liabilities and/or any other obligations of the Guarantor or any other person or party, other than the Lender, under any of the Loan Documents ("Other Obligations"), including any guarantor of the Debt, the Liabilities and/or of any of such Other Obligations, may be accelerated, settled, exchanged, surrendered or released and the Lender may fail to set off and may release, in whole or in part, any balance of any deposit account or credit on its books in favor of the Borrower, the Guarantor or any such other person or party;

(b) any obligation of the Borrower, the Guarantor or of any such other person or party, may be changed, altered, renewed, extended, continued, accelerated, surrendered, compromised, settled, waived or released in whole or in part, or any default with respect thereto waived; and

(c) the Lender may extend further credit in any manner whatsoever to the Borrower, and generally deal with the Borrower or any of the above-mentioned security, deposit account, credit on its books or other person or party as the Lender may see fit;

and the Guarantor shall remain bound under this Guaranty, without any loss of rights by the Lender and without affecting the liability of the Guarantor, notwithstanding any such exchange, surrender, release, change, alteration, renewal, extension, continuance, compromise, waiver, inaction, extension of further credit or other dealing. In addition, all moneys available to the Lender for application in payment or reduction of the Debt, the Liabilities and/or any Other Obligations may be applied by the Lender in such manner and in such amounts and at such time or times and in such order, priority and proportions as the Lender may see fit.

9. The Guarantor hereby unconditionally waives:

(a) notice of acceptance of this Guaranty;

(b) protest and notice of dishonor or default to the Guarantor or to any other person or party with respect to any obligations hereby guaranteed;

(c) all other notices to which the Guarantor might otherwise be entitled, except such notices as are specifically described herein;

(d) any requirement of diligence on the part of any person or entity;
(e) to the full extent permitted by law, and except as otherwise expressly provided for in this Guaranty, any claims based on allegations that the Lender has failed to act in a commercially reasonable manner or failed to exercise the Lender’s so-called obligation of good faith and fair dealing;

(f) the benefits of any statutory provision limiting the liability of a surety; and

(g) any demand under this Guaranty.

10. If any of the following events should occur:

(a) the Guarantor violates any provision of this Guaranty, and (i) if such violation can be cured by the payment of money, such violation continues and remains uncured for a period of thirty (30) days, or (ii) if such violation cannot be cured by the payment of money, such violation continues for thirty (30) days after written notice is given to the Guarantor; or

(b) the Guarantor terminates or dissolves or suspends its usual business activities or conveys, sells, leases, transfers or otherwise disposes of all or a substantial part of its property, business or assets other than in the ordinary course of business;

then, and in such event, the Lender may declare the Debt and all of the obligations of the Guarantor under this Guaranty, whether joint, several, absolute, contingent, secured, matured or unmatured (collectively, the “Liabilities”) to be, and the same shall become, immediately due and payable and/or exercise any or all of its remedies as set forth herein or at law or in equity. In addition to the other rights set forth herein, Lender shall be entitled to all of the benefits of California Civil Code section 3054.

11. The Guarantor shall have the right to (a) contest (each a “Contest”) by appropriate administrative, legal or equitable proceedings, diligently prosecuted in good faith, at the sole cost and expense of the Guarantor, the validity or applicability of any Environmental Requirements, or any claims, litigation, demands, defenses, judgments, suits or proceedings related to Hazardous Materials at or about the Property (each an “Environmental Complaint”) and (b) to postpone compliance with the Environmental Requirements subject to the Contest until a final determination of such Contest without violating the provisions of this Guaranty or any Loan Documents provided, that: (i) enforcement proceedings with respect to any and all Environmental Requirements are deferred or stayed during the pendency of the Contest; (ii) the Lender shall not be subject to any civil or criminal or other penalties or liabilities, costs or expenses by reason of any such Contest or postponement in complying with the Environmental Requirements; (iii) the Guarantor shall post a bond or any other security which shall be required of it in connection with the Contest; (iv) the Collateral for the Loan shall not be impaired in the reasonable judgment of the Lender, no default shall exist under any Loan Document and the Lender shall not have commenced foreclosure or a sale under a power of sale or accepted a deed-in-lieu of foreclosure or otherwise (x) enforced or commenced any of the Lender’s rights or remedies under the Loan Documents or (y) taking title to all or any portion of the Property; (v) any Contest shall be instituted promptly after the Guarantor obtains notice of any Environmental Requirements which asserts any obligation or liability affecting the Guarantor,
the Lender or all or any portion of the Property, and such Contest shall at all times be diligently prosecuted until a final judgment is obtained that negates such assertion of obligation or liability, and (vi) the Guarantor shall notify the Lender in writing within ten (10) days after commencement of a Contest, and shall give the Lender a monthly report, during the period of a Contest, on the Guarantor’s progress with respect thereto, and shall promptly give the Lender such other information with respect thereto as the Lender shall reasonably request.

The Lender will, at the sole expense of the Guarantor, execute and deliver any documents reasonably required to prosecute such Contest proceedings, provided however that the Lender shall not have any liability nor shall the Guarantor have any recourse against the Lender for any liability arising therefrom or in connection therewith. The Lender, at the sole cost and expense of the Guarantor, shall have the right (but not the obligation) to join in any Contest.

12. If the Guarantor fails to commence a Contest, or once commenced the Guarantor fails to prosecute such Contest with due diligence, or a Governmental Authority determines that the Contest is unsuccessful, which determination is not or ceases to be subject to further appeal, then the Guarantor shall promptly perform the work and comply with the Environmental Requirements and all other applicable laws to correct, contain, cleanup, remove, resolve or minimize the impact of such Hazardous Material.

It is expressly understood and agreed that failure by the Lender to object to any actions taken by Guarantor, or the Lender’s failure to participate in any proceedings shall not be construed to be an approval by the Lender of such actions. It is further expressly understood and agreed that this Guaranty shall not be construed as creating any obligation for the Lender to initiate any Contests of the nature described in paragraph 11 hereof, to review any plans for any work or to perform or review the Guarantor’s or any other party’s observance and performance of any work. At any time and from time to time while the Loan is outstanding, the Lender may, through its officers, employees, agents, contractors or other personnel, inspect the Property and the work to determine the Guarantor’s compliance with this Guaranty. The Lender shall have the right, but not the obligation, to exercise any of its rights to cure as provided in this Guaranty and in the Loan Documents or to enter onto the Property or to commence and prosecute a Contest or to take such other actions as it deems necessary or advisable to perform the work. The Guarantor shall cooperate with the Lender and such above-described other parties. All professional, legal, consulting or administrative costs, expenses and disbursements incurred by the Lender in connection with this Agreement shall be paid by the Guarantor on demand.

13. This is a guaranty of payment and not of collection and the Guarantor further waives any right to require that any action be brought against the Borrower or any other person or party or to require that resort be had to any security or to any balance of any deposit account or credit on the books of the Lender in favor of the Borrower or any other person or party. Any payment on account of or reacknowledgment of the Debt by the Guarantor or any other party liable therefor or action taken, payment or reacknowledgment made, of any of the obligations of the Borrower with respect to any Environmental Requirements or to the Lender in connection therewith, shall be deemed to be taken or made on behalf of the Guarantor and shall serve to start anew the statutory period of limitations applicable to the obligations of the Guarantor pursuant to any Environmental Requirement or to the Lender in connection therewith or herewith.
14. Each reference herein to the Lender shall be deemed to include its successors and assigns, in whose favor the provisions of this Guaranty shall also inure. Each reference herein to the Guarantor shall be deemed to include the respective heirs, executors, administrators, legal representatives, successors and assigns of the Guarantor, all of whom shall be bound by the provisions of this Guaranty; provided, however, that the Guarantor shall not in any event or under any circumstance have the right, without obtaining the prior written consent of the Lender, to assign or transfer the Guarantor’s obligations and liabilities under this Guaranty, in whole or in part, to any other person, party or entity.

15. The term “undersigned” as used herein shall, if this Guaranty is signed by more than one party, unless otherwise stated herein, mean the “undersigned and each of them” and each undertaking herein contained shall be their joint and several undertaking. Lender may proceed against none, one or more of the undersigned at one time or from time to time as it sees fit in its sole and absolute discretion. The Guarantor is executing this Guaranty as a further assurance that their obligations set forth herein will remain in full force and effect, notwithstanding the assignment or discharge of record of the Deed of Trust or any other fact or circumstances whatsoever.

16. No delay on the part of the Lender or the Servicer in exercising any right or remedy under this Guaranty or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on the Guarantor shall be deemed to be a waiver of the obligation of the Guarantor of the right of the Lender to take further action without notice or demand as provided in this Guaranty. No course of dealing between the Guarantor and the Lender shall change, modify or discharge, in whole or in part, this Guaranty or any obligations of the Guarantor hereunder.

17. This Guaranty may only be modified, amended, changed or terminated by an agreement in writing signed by the Lender and the Guarantor. No waiver of any term, covenant or provision of this Guaranty shall be effective unless given in writing by the Lender and if so given by the Lender shall only be effective in the specific instance in which given. The execution and delivery hereafter to the Lender by the Guarantor of a new instrument of guaranty or any reaffirmation of guaranty, of whatever nature, shall not terminate, supersede or cancel this instrument, unless expressly so provided therein, and all rights and remedies of the Lender hereunder or under any instrument of guaranty hereafter executed and delivered to the Lender by the Guarantor shall be cumulative and may be exercised singly or concurrently.

18. The Guarantor acknowledges that this Guaranty and the Guarantor’s obligations under this Guaranty are and shall at all times continue to be absolute, irrevocable and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Guaranty and the obligations of the Guarantor under this Guaranty or the obligations of any other person or party (including, without limitation, the Borrower) relating to this Guaranty or the obligations of the Guarantor hereunder or otherwise with respect to the Debt, including, but not limited to, a foreclosure of the Deed of Trust or the realization upon any other collateral given, pledged or assigned as security for all or any portion of the Debt, or the filing of a petition under Title 11 of the United States Code with regard to the Borrower or the Guarantor, or the commencement of an action or proceeding for the benefit of the creditors of the
Borrower or the Guarantor, or the obtaining by the Lender of title to, respectively, the Property or to any collateral given, pledged or assigned as security for the Debt by reason of the foreclosure or enforcement of the Deed of Trust or any other pledge or security agreement, the acceptance of a deed or assignment in lieu of foreclosure or sale, or otherwise. THIS GUARANTY SETS FORTH THE ENTIRE AND FINAL AGREEMENT AND UNDERSTANDING BETWEEN THE LENDER AND THE GUARANTOR WITH RESPECT TO THE MATTERS COVERED BY THIS GUARANTY AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OF THE PARTIES. THERE ARE NO UNWRITTEN ORAL AGREEMENTS, UNDERSTANDINGS, REPRESENTATIONS, OR WARRANTIES BETWEEN OR AMONG THE PARTIES WITH RESPECT TO THIS GUARANTY OR WITH RESPECT TO THE OBLIGATIONS OF THE GUARANTOR UNDER THIS GUARANTY, EXCEPT THOSE SPECIFICALLY SET FORTH IN THIS GUARANTY.

19. This Guaranty has been validly authorized, executed and delivered by the Guarantor. The Guarantor represents and warrants to the Lender and the Servicer that it has the power to do so and to perform its obligations under this Guaranty and this Guaranty constitutes the legally binding obligation of the Guarantor fully enforceable against the Guarantor in accordance with the terms hereof. The Guarantor further represents and warrants to the Lender and the Servicer that:

   (a) neither the execution and delivery of this Guaranty nor the consummation of the transactions contemplated hereby nor compliance with the terms and provisions hereof will violate any applicable provision of law or any applicable regulation or other manifestation of governmental action; and

   (b) all necessary approvals, consents, licenses, registrations and validations of any governmental regulatory body, including, without limitation, approvals required to permit the Guarantor to execute and carry out the provisions of this Guaranty, for the validity of the obligations of the Guarantor hereunder and for the making of any payment or remittance of any funds required to be made by the Guarantor under this Guaranty, have been obtained and are in full force and effect.

20. Notwithstanding any payments made by any or all of the undersigned pursuant to the provisions of this Guaranty, the City of San Jose irrevocably waives all rights to enforce or collect upon any rights which it now has or may acquire against the Borrower either by way of subrogation, indemnity, reimbursement or contribution for any amount paid under this Guaranty or by way of any other obligations whatsoever of the Guarantor, nor shall the Guarantor file, assert or receive payment on any claim, whether now existing or hereafter arising, against the Borrower in the event of the commencement of a case by or against the Borrower under Title 11 of the United States Code. In the event either a petition is filed under said Title 11 of the United States Code with regard to the Borrower or an action or proceeding is commenced for the benefit of the creditors of the Borrower, this Guaranty shall at all times thereafter remain effective in regard to any payments or other transfers of assets to Lender or Servicer received from or on behalf of the Borrower prior to notice of termination of this Guaranty and which are or may be held voidable on the grounds of preference or fraud, whether or not the Debt has been paid in full. Any payment on account of or reacknowledgment of the Debt by the Borrower, the
Guarantor or any other party liable therefor, or action taken, or payment or reacknowledgement made, of any of the obligations of the Borrower, shall serve to start anew the statutory period of limitations applicable to the Guarantor. The provisions of this paragraph 20 shall survive the term of this Guaranty and the payment in full of the Debt and all other Liabilities.

21. Any notice, request, demand, statement, authorization, approval or consent made hereunder shall be in writing and shall be personally delivered, sent by Federal Express or other reputable courier service, or postage prepaid registered or certified mail, return receipt requested, and shall be deemed given when received or refused (as indicated on the receipt) and addressed as follows:

If to Lender: NDC New Markets Investments LXV, LLC
708 Third Avenue, Suite 710
New York, New York 10017
Attn: Robert W. Davenport, Chairman
Fax: (212) 573-6118

and:

Northern California Community Loan Fund NMTC
Sub-CDE III, LLC
870 Market Street, Suite 677
San Francisco, CA 94102
Attn: Mary A. Rogier
Fax: (415) 392-8216

with copies to:

Law Office of Mark D. Foster
4835 LBJ Freeway, Suite 424
Dallas, Texas 75244
Attn: Mark D. Foster
Fax: (214) 363-9551

and:

Brownfield Revitalization XV, LLC
111 East Hargett Street, Suite 300
Raleigh, NC 27601
Attn: Bret Batchelder
Fax: (919) 743-2501

with copies to:
Holland & Knight
10 St. James Avenue
Boston, MA 02116
Attn: Jeff Gaulin
Fax: (617) 523-6850
and:
New Markets Tax Credits Group
JPMorgan Chase Bank, N.A.
560 Mission Street
San Francisco, California 94105
Attn: Elizabeth Tracey
Fax: 415-315-4946

New Markets Tax Credits Group
JPMorgan Chase Bank, N.A.
10 S. Dearborn, 21st Floor
Mailcode: IL1-0953
Chicago, IL 60603-5506
Attn: NMTC Asset Manager
Fax: (312) 233-226

with copies to:
Bryan Cave LLP
1155 F Street, NW
Washington, DC 20004
Attn: Jerome Breed
Fax: (202) 220-7336

If to the Guarantor:
EIC QALICB, Inc.
200 E. Santa Clara Street, 10th Floor
San Jose, California 95113
Attn: Jo Zientek
Fax: (408) 292-3211

with copies to:
Kantor Taylor Nelson Boyd & Evatt PC
1501 Fourth Avenue, Suite 1610
Seattle, Washington 98101-3613
Attn: Tom Nelson
Fax: (206) 607-1852
it being understood and agreed that each party will use reasonable efforts to send copies of any	notices to the addresses marked "With a copy to" hereinabove set forth; provided, however, that
failure to deliver such copy or copies shall have no consequence whatsoever to the effectiveness
of any notice made to either of the Guarantor or the Lender. Each party to this Guaranty may
designate a change of address by notice given, as herein provided, to the other party fifteen (15)
days prior to the date such change of address is to become effective.

22. This Guaranty is, and shall be deemed to be, a contract entered into under and
pursuant to the laws of the State of California and shall be in all respects governed, construed,
applied and enforced in accordance with the laws of the State of California without regard to
principles of conflicts of laws. This Guaranty is an agreement executed under seal. If the
Guarantor is a corporation, the designation "(SEAL)" on this Guaranty shall be effective as the
affixing of such Guarantor's corporate seal physically to this Guaranty.

23. The Guarantor agrees to submit to personal jurisdiction in the State of California
in any action or proceeding arising out of this Guaranty. The Guarantor hereby further agrees
that the venue of any litigation arising in connection with the Debt or in respect of any of the
obligations of the Guarantor under this Guaranty, shall, to the extent permitted by law, be in San
Diego County, California.

24. The Guarantor absolutely, unconditionally and irrevocably waives any and all
right to assert or interpose any defense, setoff, counterclaim or cross-claim of any nature
whatsoever with respect to this Guaranty, or the obligations of any other person or party
(including, without limitation, the Borrower) relating to this Guaranty, or the obligations of the
Guarantor hereunder or otherwise with respect to the Loan in any action or proceeding brought
by the Lender to collect the Debt, or any portion thereof, or to enforce the obligations of the
Guarantor under this Guaranty (provided, however, that the foregoing shall not be deemed a
waiver of the right of the Guarantor to assert any compulsory counterclaim maintained in a court
of the United States, or in the State of California if such counterclaim is compelled under local
law or rule of procedure, nor shall the foregoing be deemed a waiver of the right of the
Guarantor to assert any claim which would constitute a defense, setoff, counterclaim or cross-claim of any nature whatsoever against the Lender in any separate action or proceeding). The Guarantor hereby undertakes and agrees that this Guaranty shall remain in full force and effect for all of the obligations and liabilities of the Guarantor hereunder, notwithstanding the maturity of the Loan, whether by acceleration, scheduled maturity or otherwise.

25. No exculpatory provisions which may be contained in any Loan Document shall in any event or under any circumstances be deemed or construed to modify, qualify, or affect in any manner whatsoever the obligations and liabilities of the Guarantor under this Guaranty.

26. The obligations and liabilities of the Guarantor under this Guaranty are in addition to the obligations and liabilities of the Guarantor under the Other Guaranties (as hereinafter defined). The discharge of any or all of the Guarantor’s obligations and liabilities under any one or more of the Other Guaranties by the Guarantor or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the Guarantor’s obligations and liabilities under this Guaranty. Conversely, the discharge of any or all of the Guarantor’s obligations and liabilities under this Guaranty by the Guarantor or by reason of operation of law or otherwise shall in no event or under any circumstance constitute or be deemed to constitute a discharge, in whole or in part, of the Guarantor’s obligations and liabilities under any of the Other Guaranties. The term “Other Guaranties” as used herein shall mean any other guaranty of payment, guaranty of performance, completion guaranty, indemnification agreement or other guaranty or instrument creating any obligation or undertaking of any nature whatsoever (other than this Guaranty) now or hereafter executed and delivered by the Guarantor to the Lender in connection with the Loan.

27. This Guaranty may be executed in one or more counterparts by some or all of the parties hereto, each of which counterparts shall be an original and all of which together shall constitute a single agreement of guaranty. The failure of any party listed below to execute this Guaranty, or any counterpart hereof, or the ineffectiveness for any reason of any such execution, shall not relieve the other signatories from their obligations hereunder.

28. To the extent permitted by applicable law, neither the Borrower nor the Guarantor shall assert, and hereby waives, any claim against the Lender or the Servicer 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 Guaranty) or any agreement or instrument contemplated hereby, the Loan, or the use of the proceeds thereof.

29. WAIVER OF JURY TRIAL AND JUDICIAL REFERENCE PROVISION. 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 AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) 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 (B) 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.

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 THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

WITH THE EXCEPTION OF THE MATTERS SPECIFIED IN THE PARAGRAPH IMMEDIATELY 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. EXCEPT AS OTHERWISE PROVIDED IN THE LOAN AGREEMENT OR THE RELATED DOCUMENTS, 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.

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.

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).


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.

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.

30. Reservation of Other Rights and Remedies. Nothing in this Guaranty shall be construed to limit any claim or right which any indemnified party may otherwise have at any time against Guarantor or any other person arising from any source other than this Guaranty, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Guaranty, and any rights of contribution or indemnity under federal, state or local environmental law or other applicable law, regulation or ordinance.

In accordance with California Code of Civil Procedure Section 726.5, as such Section may be amended from time to time, Lender may waive the security of the Deed of Trust and the other Related Documents as to any parcel of Property which is real property that is "environmentally impaired" or is an "affected parcel" (as such terms are defined in such section), and as to any Property which is personal property attached to such parcel, and thereafter exercise
against Guarantor, to the extent permitted by such Section 726.5, the rights and remedies of an unsecured creditor, including reduction of Lender's claim against Guarantor to judgment, and any other rights and remedies permitted by law. Guarantor hereby waives the provisions of California Code of Civil Procedure Section 726.5(c), as such section may be amended from time to time, and acknowledges and agrees that this waiver shall be deemed to have been signed by Guarantor for good and valuable consideration, as Guarantor's informed and voluntary act, after the occurrence of a default under the Loan Agreement or Related Documents. Guarantor shall pay all expenses, costs and other amounts incurred by Lender in connection with any proceeding under California Code of Civil Procedure Section 726.5.

In accordance with California Code of Civil Procedure Section 736, as such section may be amended from time to time, Lender may bring an action for breach of contract against Guarantor for breach of any "environmental provision" (as such term is defined in such section) made by Guarantor in this Guaranty or in any other Related Document, for the recovery of damages (including attorneys' fees and costs) and/or for the enforcement of the environmental provision (including without limitation to recover all costs and expenses incurred by Lender in connection with any remedial work) without foreclosing the Deed of Trust judicially or nonjudicially or accepting a deed or assignment in lieu of foreclosure. Guarantor agrees to pay to Lender, upon Lender's demand, all expenses, costs and other amounts incurred by Lender in connection with any such action under California Code of Civil Procedure Section 736.

In addition to any other rights granted hereunder, Lender shall have all rights of a lender under California Civil Code Section 2929.5, as such section may be amended from time to time. Guarantor agrees to pay to Lender, upon Lender's demand, all expenses, costs or other amounts incurred by Lender in performing any inspection and/or testing for the purposes set forth in such Section 2929.5.

Lender shall have all rights of a lender under California Code of Civil Procedure Section 564, as such section may be amended from time to time. Guarantor agrees to pay to Lender, upon Lender's demand, all expenses, costs and other amounts incurred by Lender in connection with any appointment of a receiver under California Code of Civil Procedure Section 564.

Nothing in this Agreement shall be construed to limit any claim or right which any indemnified party may otherwise have at any time against Guarantor or any other person arising from any source other than this Guaranty, including any claim for fraud, misrepresentation, waste, or breach of contract other than this Guaranty, and any rights of contribution or indemnity under federal, state or local environmental law or other applicable law, regulation or ordinance.

31. **Direct Obligations.** The parties hereto acknowledge and agree that the obligations of Guarantor hereunder are direct obligations and are not intended to be guaranteed or suretyship obligations.
IN WITNESS WHEREOF, the Guarantor has duly executed this Guaranty or caused it to be executed under seal by its authorized officers, as of the date first written above, with the intent that this shall be deemed an instrument under seal.

**GUARANTOR:**

EIC QALICB, Inc., a California nonprofit public benefit corporation

By: ____________________________
Matthew Morley,
President / Chairperson of the Board

and

City of San Jose,
a California municipal corporation

By: ____________________________
Norberto Dueñas,
Deputy City Manager
EXHIBIT A

All capitalized terms used in this HAZARDOUS MATERIAL GUARANTY AND INDEMNIFICATION AGREEMENT shall have the definitions set forth in that certain Loan Agreement dated as of the date hereof, by and among EIC QALICB, Inc., a California nonprofit public benefit corporation, NDC New Markets Investments LXV, LLC, a Delaware limited liability company, Northern California Community Loan Fund NMTC Sub-CDE III, LLC, a California limited liability company, and Brownfield Revitalization XV, LLC, a Delaware limited liability company, unless such terms are otherwise defined herein.
EXHIBIT B

Environmental Reports