

## FUND LOAN AGREEMENT

THIS FUND LOAN AGREEMENT (the “**Fund Loan Agreement**”), dated October \_\_, 2011, is entered into by and between **Chase NMTC SJEIC Investment Fund, LLC**, a Delaware limited liability company (“**Fund Borrower**”), and the **City of San Jose**, a California municipal corporation (“**Fund Lender**”).

### RECITALS

Fund Borrower intends to make a capital contribution, in the amount of \$7,349,645 to NDC New Markets Investments LXV, LLC, a Delaware limited liability company (“**NDC CDE**”) in consideration for NDC CDE issuing to the Fund Borrower 99.99% of the membership interests in NDC CDE, \$7,349,645 to Northern California Community Loan Fund NMTC Sub-CDE III, LLC, a California limited liability company (“**NCCLF CDE**”) in consideration for the NCCLF CDE issuing to the Fund Borrower 99.99% of the membership interests in the NCCLF CDE, and \$12,000,000 to Brownfield Revitalization XV, LLC, a Delaware limited liability company (“**BR CDE**” and, together with NDC CDE and NCCLF CDE, the “**CDE**”) in consideration for the BR CDE issuing to the Fund Borrower 99.99% of the membership interests in the BR CDE (collectively, and together with any other equity investments made by the Fund Borrower in a CDE which is designated as a “qualified equity investment” within the meaning of Section 45D of the Code, the “**CDE Capital Contribution**”). CDE will use the proceeds of the CDE Capital Contribution to, among other things, make loans to EIC QALICB, Inc., a California nonprofit public benefit corporation (“**CDE Loan Borrower**”), for the purpose of financing the Project (as defined herein). Fund Borrower desires to obtain a loan from Fund Lender in the original principal amount of Nineteen Million Six Hundred Nine Thousand Six Hundred Forty-Five and No/100 Dollars (\$19,609,645) (the “**Fund Loan**”) to finance, in part, the CDE Capital Contribution. Fund Lender is willing to make the Fund Loan to Fund Borrower on the terms and conditions set forth below.

Now, therefore, 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 shall have the meanings below, and the interpretations which are applicable under the Fund Agreement, as amended and modified from time to time in accordance with its terms:

“**Amortization Commencement Date**” means [October \_\_, 2019].

“**Bankruptcy Code**” means any section or chapter of the United States Bankruptcy Code and the regulations promulgated thereunder.

“**Business Day**” means any day other than a Saturday, Sunday or any holiday when banks in San Jose, California, are required or permitted to close.

“**CDE**” means collectively, (i) NDC CDE, (ii) NCCLF CDE, and (iii) BR CDE

“**CDE Agreement**” means, collectively, the Amended and Restated Operating Agreement of each of the CDEs, dated the date of this agreement, and all amendments and modifications thereto.

“**CDE Capital Contribution**” means the actual amount of capital contributed or agreed to be contributed to the CDE by Fund Borrower.

“**CDE Loan**” means those certain loans made by CDE to CDE Loan Borrower pursuant to the CDE Loan Agreement, in the aggregate principal amount of Twenty-Five Million Nine Hundred Forty-Four Thousand Eight Hundred Fourteen and No/100 Dollars (\$25,944,814).

“**CDE Loan Agreement**” means, collectively, that certain Loan Agreement, dated as of the date of this agreement, by and between CDE and CDE Loan Borrower, as amended, restated or modified from time to time.

“**CDE Loan Borrower**” shall mean EIC QALICB, Inc., a California nonprofit public benefit corporation.

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

“**CDE Manager**” means collectively, (i) HEDC New Markets, Inc. with respect to NDC CDE, (ii) Northern California Community Loan Fund with respect to NCCLF CDE, and (iii) Brownfield Revitalization, LLC with respect to BR CDE.

“**CDE Note**” means, collectively, those certain promissory note or notes in the aggregate amount of \$25,994,814 from the Project Borrower in favor of CDE dated the date of this agreement.

“**Code**” means the Internal Revenue Code of 1986, as amended, or any provisions of subsequent federal revenue laws and the regulations promulgated thereunder.

“**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 Interest Rate**” means a rate of interest per annum equal to six percent (6%) in excess of the rate of interest otherwise payable under this 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 Reznick Group, P.C., dated October \_\_, 2011, together with the report of the compilation thereof.

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

**“Fund Agreement”** means the Operating Agreement for Fund Borrower by and between the Investor Member and Fund Manager, dated the date of this agreement.

**“Fund Borrower”** has the meaning given to that term in the introductory paragraph of this Fund Loan Agreement.

**“Fund Borrower’s Operating Account”** means the Fund Borrower’s bank account with the JPMorgn Chase Bank, N.A. into which the Fund Borrower shall receive all distributions from the CDE and from which the Fund Borrower will make payments pursuant hereto.

**“Fund Lender”** has the meaning given to that term in the introductory paragraph of this Fund Loan Agreement.

**“Fund Loan”** means the loan from Fund Lender to Fund Borrower in the original principal amount of Nineteen Million Six Hundred Nine Thousand Six Hundred Forty-Five and No/100 Dollars (\$19,609,645).

**“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 or securing 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-1 Financing Statement.

**“Fund Manager”** means Community Development Properties New Markets MM, Inc., a Delaware corporation.

**“Fund Note”** means that certain Promissory Note in the principal amount of Nineteen Million Six Hundred Nine Thousand Six Hundred Forty-Five and No/100 Dollars (\$19,609,645) made by Fund Borrower payable to Fund Lender dated the date hereof.

**“Fund Obligations”** means the principal of and interest on the Fund Loan outstanding pursuant to the Fund Note and all fees and other amounts (other than principal and interest) due and owing to the Fund Lender under the Fund Loan Documents. Interest shall include any interest that accrues after the commencement of an Insolvency Proceeding with respect to the 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 Fund Pledge Agreement between the Fund Borrower and Fund Lender dated the date of this agreement pursuant to which the Fund Borrower has granted a security interest in certain assets to Fund Lender.

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

**“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 NDC Indemnification Agreement of even date herewith by and among HEDC New Markets, Inc., a Delaware corporation, NDC CDE and JPMorgan Chase Bank, N.A. (“JPMC”); (ii) that certain Amended and Restated Indemnification Agreement (Brownfield CDE) of even date herewith by and among TBC Brownfield TC Investors, LLC, a Delaware limited liability company, Cherokee Investment Partners, LLC, a Delaware limited liability company, and JPMC; (iii) that certain Amended and Restated Indemnification Agreement (NCCLF CDE) of even date herewith by and among Northern California Community Loan Fund, a California nonprofit public benefit corporation, NCCLF CDE and JPMC; and (iv) that certain Indemnification Agreement (QALICB) by and among CDE Loan Borrower, NDC CDE, BR CDE and NCCLF CDE for the benefit of JPMC.

**“Indemnity Payments”** has the meaning set forth in Section 7.02(c) 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 one-half of one percent (0.5%) per annum.

**“Investor Member”** means Chase Community Equity, LLC, a Delaware limited liability company, as the investor member of the Fund Borrower, and its successors and assigns.

**“Lien Enforcement Action”** shall mean (i) any action to foreclose on, take possession of, sell or otherwise realize (judicially or non-judicially) upon the Fund Pledged Collateral, or any rights or privileges attendant there to (including, without limitation, by set off), (ii) any action to assert ownership rights with respect to any of the Fund Pledged Collateral, or any rights or privileges attendant thereto, (iii) any action (judicially or non-judicially) to dissolve or liquidate the 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 Fund Borrower’s good standing as a Delaware limited liability company, (ii) the ability of the Fund

Borrower to perform its obligations under the Fund Loan Documents, (iii) the validity or enforceability of the Fund Loan Documents or the rights or remedies of the Fund Lender thereunder or (iv) any collateral securing the Fund Loan.

**“Maturity Date”** means the maturity date stated in the Fund Note.

**“NMTC Compliance Period”** means a period commencing on the date of funding of the first CDE Capital Contribution made by the Fund Borrower in a CDE and ending on the seventh anniversary of the date of funding of the last CDE Capital Contribution made by the Fund Borrower in a CDE.

**“NMTC Program Requirements”** has the meaning set forth in the Fund 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”** means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, government, or any agency or political division thereof, or any other entity.

**“Project”** means the development, construction and renovation of that real property located at 1608 Las Plumas Avenue, San Jose, California 95113, for use as (i) a premier clean technology innovation, development and demonstration facility for emerging clean technology companies, (ii) a construction materials reuse/resale store, and (iii) a permanent household hazardous waste drop off facility to serve local residents.

**“Qualified Low-Income Community Investment”** or **“QLICI”** means a payment of capital, equity or principal as such term is defined in Section 45D of the Code.

**“Qualified Equity Investment”** or **“QEI”** means the CDE Capital Contribution when made as that term is defined in Section 45(D)(b) of the Code.

**“State”** means the State of California.

**“UCC-1 Financing Statement”** means that certain UCC-1 Financing Statement covering the certain assets pledged by the Fund Borrower to Fund Lender pursuant to the Fund Pledge Agreement to be filed with the Secretary of State of the State of California in order for Fund Lender to perfect its interest in such assets.

1.02. **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, the Fund Lender hereby agrees to make the Fund Loan to the Fund Borrower in the aggregate principal amount of Nineteen Million Six Hundred Nine Thousand Six Hundred Forty-Five and No/100 Dollars (\$19,609,645), which shall bear interest at the Interest Rate.

2.02 **Purpose**. The proceeds of the Fund Loan shall be used by the Fund Borrower to make its CDE Capital Contribution, as provided in the Fund Agreement, which shall, in turn, be used by the CDE to make the CDE Loan which will fund the Project expenses as provided in the CDE Loan Documents.

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

2.04 **Loan Disbursement**. Fund Lender shall advance the proceeds of the Fund Loan to Fund Borrower in full on the date all of the conditions precedent to advance described in **Article 4** have been satisfied.

2.05 **Rights Following NMTC Compliance Period**. If Fund Borrower desires to repay its obligations under the Fund Note following the end of the NMTC Compliance Period, then, with thirty (30) days' written notice of such desire to Fund Lender and provided that the conditions set forth in this **Section 2.05** are satisfied, Fund Lender may elect to accept from Fund Borrower, in full or partial satisfaction of Fund Borrower's obligations under the Fund Note and the Fund Loan Documents as reasonably determined by Fund Lender, an assignment of one or more CDE Notes, representing a portion of the CDE Loan (if Fund Borrower shall have exercised its right pursuant to the CDE Agreement to redeem its membership interest in the CDE in consideration of a distribution in-kind of the CDE Note). Fund Borrower may effect the foregoing assignment by providing Fund Lender with an executed endorsement of note and assignment of CDE Loan Documents and an endorsement of the title policy issued at the closing of the CDE Loan in favor of Fund Lender as mortgagee, and an estoppel certificate specifying the outstanding principal balance, interest rate, and payment terms of the CDE Notes to be assigned, and certifying that the CDE Loan Documents are in full force and effect and that Fund Borrower is not aware of any default under the CDE Loan Documents. All of the documentation described herein is subject to the approval of Fund Lender and its counsel. Unless Fund Lender objects within thirty (30) days, such endorsement and assignment shall be effective immediately following such 30<sup>th</sup> day and Fund Borrower shall automatically receive a credit toward its obligations under the Fund Loan in the amount of the outstanding principal balance of the CDE Notes assigned to the Fund Lender. If the outstanding principal balance of the CDE Loan is equal to or greater than the sum of the outstanding principal balance plus all unpaid interest and

other charges under the Fund Loan, Fund Lender shall return the Fund Note to Fund Borrower marked satisfied and discharge the Fund Loan Documents. If Fund Lender objects to Fund Borrower's exercise of the assignment set forth herein, Fund Lender shall send a notice to Fund Borrower specifying the nature of Fund Lender's objection, which notice shall also return to Fund Borrower the original endorsement and assignment. Fund Borrower may attempt to address such objection and resubmit the endorsed CDE Note and CDE Loan Documents, whereupon Fund Lender shall have the same right to object within thirty (30) days.

**ARTICLE 3.  
PAYMENTS**

3.01. **Interest.** Provided no Event of Default has occurred under the Fund Loan Documents, interest shall accrue at the Interest Rate. From and after the date of any Event of Default hereunder and so long as such Event of Default is continuing, and provided there is no uncured event of default under the CDE Loan Documents, interest on all principal amounts outstanding under the Fund Note shall accrue at the Default Interest Rate. All interest payable hereunder shall be computed on the basis of a 360-day year consisting of twelve 30-day months; provided however that the first annual payment of interest shall be calculated based on the period through the end of the first year after the date the Fund Loan is advanced to Fund Borrower, and thereafter through the end of the succeeding year. Fund Lender is authorized to rely on the oral or written loan requests, including facsimile and email 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. **Payment.**

(a) With respect to the Fund Loan, from and after the date the Fund Loan is advanced to Fund Borrower until the Amortization Commencement Date, interest accrued through the last day of each twelve month period shall be due and payable in annual installments on the [tenth (10<sup>th</sup>)] day (or the next Business Day if such day is not a Business Day) of each twelve month period (each a "**Payment Date**"), with such payments commencing on November \_\_\_\_, 2012.

(b) Commencing with the first Payment Date following the Amortization Commencement Date and on each Payment Date thereafter, Fund Borrower shall make a principal and interest payment equal to the lesser of (i) \$506,023 and (ii) Net Cash Flow (as defined in the Fund Agreement).

3.03. **Repayment of Fund Loan.** The Fund Borrower hereby promises to pay to the Fund Lender all unpaid principal, accrued and unpaid interest and any other amounts due hereunder or under the other Fund Loan Documents on the Maturity Date.

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

3.05. **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 the Fund Lender pursuant to the terms hereof shall be applied first to sums, other than principal and interest, due to the 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 the Fund Lender after the occurrence of an Event of Default hereunder or under any of the Fund Loan Documents, shall be applied to the amounts specified in this Section in such order as set forth above. To the extent that Fund Borrower makes a payment or the Fund Lender receives any payment or proceeds of the Fund 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 the Fund Lender and the Fund Lender may adjust the balance of the Fund Loan as the Fund Lender deems appropriate under the circumstances.

3.06. **Prepayments.** Fund Borrower may prepay the Fund Loan in whole or in part, at any time and from time to time, together with accrued interest on the principal amount so prepaid, upon at least five (5) days written notice to the Fund Lender, with no penalty for such prepayment. Any such prepayments shall be applied as set forth in Section 3.05.

#### **ARTICLE 4. CONDITIONS PRECEDENT**

The obligation of the Fund Lender to enter into this Fund Loan Agreement and to make the Fund Loan shall be subject to the satisfaction at or before the date on which this Agreement has been executed and delivered by both parties of the following conditions precedent:

4.01. **Representations and Warranties.** The representations and warranties made herein shall be true and correct on and as of the date of hereof, and Fund Lender shall have received and may receive such assurances in this respect as Fund Lender may reasonably require.

4.02. **Documents.** Receipt by the Fund Lender of the following documents, in form and substance satisfactory to the Fund Lender and its counsel:

- (a) executed copy of this Fund Loan Agreement, duly executed and delivered by the Fund Borrower, with an original to follow within ten (10) Business Days thereafter;
- (b) Fund Note duly completed, executed and delivered by the Fund Borrower and dated as of the date hereof;
- (c) executed copy of the Fund Pledge Agreement, with an original to follow within ten (10) business days thereafter;
- (d) executed copies of the Fund Agreement;
- (e) executed copy of the CDE Agreements;
- (f) executed copies of the CDE Loan Documents;

(g) the final version of the Financial Projections together with the report of the compilation thereof; and

(h) a copy of the articles of organization of Fund Borrower then in effect, certified by the Secretary of State of the State or by the manager of Fund Borrower.

Funding by Fund Lender shall be deemed to be approval or waiver of the foregoing.

## ARTICLE 5. REPRESENTATIONS AND WARRANTIES

The Fund Borrower represents and warrants to the Fund Lender as follows:

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

5.02. **Power and Authority; Company Action.** The Fund Borrower has full power and authority to incur the Fund 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. The Fund Borrower has taken all necessary manager and 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. The 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 the Fund Borrower is a party have been duly executed and delivered on behalf of the Fund Borrower, and this Fund Loan Agreement and each other Fund Loan Document to which it is a party constitutes a legal, valid and binding obligation of the Fund Borrower, enforceable against the 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. **Registration and Approvals.** All approvals, licenses and authorizations of, and all filings and registrations with, any Governmental Authority necessary for the due execution, delivery, performance and/or enforceability of this Fund Loan Agreement and the other Fund Loan Documents to which the Fund Borrower is a party have been obtained and are in full force and effect.

5.05. **No Conflict.** The execution, delivery and performance of this Fund Loan Agreement and the other Fund Loan Documents to which the 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 directive 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 the Fund Borrower is a party or by which it or

any of its property is bound; and (iv) 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), is reasonably likely to have a Material Adverse Effect.

5.06. **Absence of Defaults**. The 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.

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

5.08. **Taxes**. The 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 the Fund Borrower, if any, have been fully paid except for taxes which are being contested in good faith.

5.09. **No Other Liens**. Except for the lien and security interests granted by the Fund Borrower to the Fund Lender pursuant to the Fund Pledge Agreement, the 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, other than liens permitted pursuant to **Section 6.02(a)** of this Fund Loan Agreement.

5.10. **Compliance with Laws**. To Fund Borrower's knowledge, the 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).

5.11. **ERISA Compliance**. Without limitation of **Section 5.10**, the Fund Borrower has, in the conduct of its business, complied in all material respects with all applicable laws, rules, regulations, policies and orders relating to the employment of labor, including those concerning wages, hours, equal employment opportunity, pension and welfare benefit plans (including ERISA) and the payment of Social Security and similar taxes, and the Fund Borrower is not liable for any arrearages of wages or any tax penalties due to any failure to comply with any of the foregoing.

5.12. **No Material Adverse Effect**. To Fund Borrower's knowledge, since its formation, no event has occurred that has or would, with the passage of time, cause a Material Adverse Effect with respect to the Fund Borrower.

5.13. **Valid Interest in Fund Assets**. Upon full execution and delivery of the Fund Loan Documents and proper filing and indexing of the necessary UCC-1 Financing Statements,

the Fund Lender holds a valid first priority lien on and a perfected security interest in the Fund Pledged Collateral (as defined in the Fund Pledge Agreement), including, but not limited to, Fund Borrower's membership interest in CDE, which entitles Fund Borrower to receive distributions as set forth in the CDE Agreement and provides rights relating to such membership as described in the CDE Agreement. Based solely on an opinion received from counsel to the CDE, the CDE Agreement is enforceable by Fund Borrower against the CDE and the CDE Managing Member, in accordance with their terms.

5.14. **Full Disclosure.** No representations or warranties by the 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.

5.15. **Brokerage Fees.** Fund Borrower has dealt with no broker or finder with regard to the Fund Loan and Fund Borrower shall indemnify, defend and hold Fund Lender harmless for, from and against any and all claims for fees or compensation claimed to be due in connection with the Fund Loan as a result of the acts of Fund Borrower from any broker or finder.

## ARTICLE 6. COVENANTS

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

(a) **Limited Liability Company Existence.** (i) Preserve and maintain its existence and good standing in the jurisdiction of its formation, and (ii) qualify and remain qualified to do business and remain in good standing in each jurisdiction in which such qualification is required except where the failure to so qualify could not be reasonably expected to have a Material Adverse Effect.

(b) **Maintenance of Financial Records.** Keep adequate records and books of account, in which complete entries will be made in accordance with accounting principles consistently applied, reflecting all financial transactions of the Fund Borrower.

(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 and with respect to which adequate reserves have been provided).

(d) **Compliance with and Enforcement of CDE Agreement.** Comply in all material respects with its duties and obligations under the CDE Agreement, and exercise and not waive any and all rights and powers of Fund Borrower (i) to enforce the CDE Manager's

obligations to make distributions, (ii) to perform such obligations as are material to maximizing the cash available for distribution to the Fund Borrower in accordance with the terms and conditions of the CDE Agreement, and (iii) to cause the CDE to enforce the CDE Loan Documents, in each case as reasonably necessary (as determined by Fund Borrower in its sole and absolute discretion) to protect and preserve the investment of the Fund Borrower in the CDE and, subject to the NMTC Program Requirements, the repayment of the Fund Loan.

(e) **Reports.** Deliver or cause to be delivered to the Fund Lender, upon written request of Fund Lender information regarding the business, affairs and financial condition of Fund Borrower as Fund Lender may from time to time reasonably request.

(f) **Application of Funds.** Apply all funds held or received in accordance with the Fund Loan Documents, including distributions received in accordance with the CDE Agreement.

(g) **Access to Books and Records.** Comply fully with Fund Lender's advisors and grant Fund Lender and its representatives and advisors reasonable access to the books and records of Fund Borrower.

(h) **Financial Statements.** Within one hundred twenty (120) days after the end of Fund Borrower's fiscal year, deliver to Fund Lender complete copies of its internally prepared financial statements, including a balance sheet and statement of income and, within five (5) business days of receipt, promptly forward to Fund Lender all reports and information provided to it by CDE or its manager relating to the CDE Loan.

(i) **Notice of Events of Default.** Notify Fund Lender within ten (10) business days of the occurrence of any default or Event of Default with respect to any Fund Loan Document, the Fund Agreement, the CDE Agreement, or any agreement evidencing, securing, or executed in connection with the CDE Loan.

(j) **Redeployment.** Notify Fund Lender within ten (10) business days of the commencement of a period of time during which amounts received by the CDE in payment of or for capital, equity or principal with respect to a QLICI, which must be reinvested as required in Section 1.45D-1(d)(2) of the Treasury Regulations.

(k) **Operating Account.** Maintain the Fund Borrower Operating Account and direct the CDE to deposit all distributions made to Fund Borrower under the CDE Agreement directly to Fund Lender or to Fund Borrower's Operating Account.

(l) **Use of Proceeds.** Use the proceeds of the Fund Loan solely for the purpose of making the CDE Capital Contribution for the further purpose of making the CDE Loan. Notwithstanding the foregoing or anything in this Agreement to the contrary, the Fund Borrower may use the Investor Member's equity contribution to pay fees and expenses.

6.02. **Negative Covenants of the Fund Borrower.** So long as any of the Fund Obligations shall remain unpaid, the Fund Borrower covenants and agrees with the Fund Lender that it shall not, by its action or inaction:

(a) **Liens.** Except as permitted in the CDE Agreement, modify, transfer any interest it may have, create or cause to exist any lien, security interest, mortgage or other charge or encumbrance upon which or with respect to or otherwise alienate any interest in any of its property, or any property of the CDE, including, without limitation, the CDE's interest in the CDE Loan Documents, 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 the Fund Borrower with respect to which a stay of execution upon appeal shall have been secured, (iii) liens for delinquent taxes, assessments or other governmental charges which are being contested in good faith, adequate reserves having been created for the payment thereof, and (iv) such existing liens that have been disclosed to the Fund Lender in writing and approved by the 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 Agreement; or engage in any activities other than being the investor member of the CDE and the borrower under this Fund Loan Agreement, and activities reasonably related thereto, if such merger, reorganization, consolidation, or other activity shall have a Material Adverse Effect with respect to (i) Fund Borrower's ability to pay any amounts due under the Fund Loan, or (ii) any collateral securing the Fund Loan. Notwithstanding anything contained in this Fund Loan Agreement to the contrary, Fund Lender hereby agrees to transfers of membership interests in Fund Borrower (i) to Affiliate Funds (as defined in Article 10 hereof) in accordance with the terms of the Fund Agreement and/or (ii) in accordance with that certain Investment Fund Put and Call Agreement dated as of the date hereof.

(c) **Corporate Governance 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 or the CDE Agreement or any of the defined terms contained therein, except to the extent such change, amendment, modification or consent has previously been approved in writing by the Fund Lender (which approval shall not be unreasonably withheld, conditioned, or delayed) or is necessary (in Fund Borrower's sole and absolute discretion) to maintain compliance with the NMTC Program Requirements or to avoid a Recapture Event, provided, however, that Fund Lender's approval shall not be required unless the amendment, modification or change to any of the terms of the Fund Agreement or CDE Agreement would materially affect Fund Lender's rights to payments under the Fund Loan or the value of the Fund Pledged Collateral or Fund Lender's rights with respect to the Fund Pledged Collateral and in any case such approval would not be required if the amendment, modification or change to any of the terms of the Fund Agreement or the CDE Agreement is necessary (in Fund Borrower's sole discretion) to maintain compliance with the NMTC Program Requirements or to avoid a Recapture Event. Fund Borrower acknowledges that any amendment or modification to change the Fund Borrower's existence as a Single Purpose Entity (as defined in the Fund Agreement) shall require prior consent of the Fund Lender.

(d) **Indebtedness.** Create, incur, assume or suffer to exist any indebtedness, other than indebtedness of the Fund Borrower under (i) this Fund Loan Agreement, and (ii)

pursuant to any other Fund Loan Documents; provided, however, that nothing in this Section shall prevent the Investor Member or Fund Manager from making unsecured loans to the Fund Borrower in accordance with the Fund Agreement, or incurring trade payables in the ordinary course of business.

(e) [Reserved]

(f) **Defaults.** Cause a material default under any of the terms and conditions of the CDE Agreement, or any other agreement entered into relating or affecting the collateral hereunder.

(g) **Merger.** Reorganize, merge, consolidate, windup, liquidate or dissolve.

(h) **Changes to Operating Budget.** Consent, give approval, propose action, direct or make an election, in any way, directly or indirectly, through any affirmative act or failure to act, or respond to any notice or request for consent, without prior written consent of Fund Lender, to any modifications to the Fund Borrower's or CDE's operating budget.

#### 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) The Fund Borrower shall fail to pay when due any amount payable under this Fund Loan Agreement or any of the other Fund Loan Documents within ten (10) Business Days after receipt of written notice such amount is due and payable;

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

(c) The Fund Borrower shall default in the observance or performance of any material term, covenant or agreement contained herein (other than not making any required payment when due), unless said default is cured within sixty (60) days after written notice to the Fund Borrower by the 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 such partial enforceability would have a Material Adverse Effect with respect to (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 any party thereto (other than the Fund Lender) and such event shall continue unremedied for a period of sixty (60) days after written notice thereof to the Fund Borrower by the Fund Lender;

(e) The Fund Borrower shall (i) default in the payment, when due (which default remains uncured after expiration of applicable cure or notice periods), of any amount payable in respect of any indebtedness of the Fund Borrower, whether by scheduled maturity, required prepayment, acceleration, demand or otherwise; or (ii) fail to perform or observe any other material term, covenant or condition on its part to be performed or observed under any agreement or instrument relating to any such indebtedness, when required to be performed or observed, if, such failure to perform or observe remains uncured after expiration of applicable cure or notice periods and with the giving of any notice or the lapse of time or both, the effect of such failure to perform or observe is to permit the holder of such indebtedness to accelerate the maturity thereof or to have caused any such indebtedness to be declared due and payable or required to be prepaid prior to the stated maturity thereof; provided that, nothing in this **Section 7.01(e)** shall affect the provisions of **Article 9**;

(f) 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 the 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;

(g) The Fund Borrower takes any of the following actions or consents to the CDE taking any of the following actions: (i) admitting in writing its inability to pay its debts as such debts become due; or (ii) making 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) commencing 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) having 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 ninety (90) days or more; or (v) by any act or omission indicating 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) suffering any such custodianship, receivership, or trusteeship to continue undischarged for a period of ninety (90) days or more;

(h) The Fund Borrower shall consent to the CDE assigning, transferring, encumbering or otherwise alienating the CDE Loan or any of the CDE Loan Documents (other than in connection with a foreclosure or other enforcement action initiated pursuant to the CDE Loan Documents);

THEN, and in any such event, subject to **Article 9** hereof, the Fund Lender may by notice to the Fund Borrower, declare the 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 due and payable, whereupon the principal amount of the Fund Note, all such interest, and all such other amounts shall become and be due and payable, without presentment, demand, protest, or further notice of any kind, all of which are hereby expressly waived by the Fund Borrower; provided that, if there shall be an Event of Default under **Section 7.01(g)** hereof, subject to **Article 9** hereof, the 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 the Fund Borrower.

Fund Lender acknowledges and agrees that the Investor Member or the Fund Manager shall have the right, but not the obligation, to tender a cure for any default of Fund Borrower within the applicable cure periods set forth in this Fund Loan Agreement, and Fund Lender shall accept such cure by the Investor Member or the Fund Manager as if said cure was made by Fund Borrower.

7.02. **Remedies on Event of Default.** Following any Event of Default, regardless of whether any of the Fund Obligations have been, or are deemed to be, accelerated pursuant to **Section 7.01**, Fund Lender may exercise all or any of the remedies provided in this Agreement, the Fund Note or the Fund Loan Documents, or provided by law or equity, including, without limitation, the following:

(a) subject to **Article 9**, enforce the rights and remedies granted to it under the Fund Loan Documents in accordance with their respective terms and any other rights or remedies accorded to the Fund Lender at equity or law, by virtue of statute or otherwise, including, in appropriate cases, an award of specific performance or other equitable remedy in aid of the exercise of any power granted in or pursuant to this Agreement; or

(b) subject to **Article 9**, remedy any default by Fund Borrower hereunder, without waiving such default, and any monies expended in so doing shall be chargeable with interest to Fund Borrower and added to the obligations secured hereby.

7.03. **Limited Recourse.** Notwithstanding any provision of this 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 Agreement 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 (as defined in the CDE Agreement) 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.

In the event of any breach by the Fund Borrower under this agreement or any other Fund Loan Document, notwithstanding anything to the contrary in this Fund Loan Agreement or any other Fund Loan Document, none of Investor Member or Fund Manager, nor their respective shareholders, affiliates, members, managers, partners, officers, directors, employees, or any successors, transferees or assigns thereof, 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 the Investor Member or the Fund Manager or their respective shareholders, affiliates, 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.

The limit on the Investor Member's and Fund Manager's liability set forth herein shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the 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 Fund Pledged Collateral (as defined in the Fund Pledge Agreement), or to preclude the Fund Lender from foreclosing the Fund Pledged Collateral in case of an Event of Default after the Forbearance Termination Date.

#### **ARTICLE 8. MISCELLANEOUS**

8.01. **Entire Agreement.** This Fund Loan Agreement and the other Fund Loan Documents to which the Fund Borrower is a party, constitute the entire understanding and agreement of the parties hereto with respect to the transactions contemplated hereby and shall supersede any prior understandings with respect thereto, including, without limitation, any offer letter or letter of intent.

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. **Expenses; Indemnity; Damage Waiver.** Solely to the extent of distributions received by Fund Borrower from the CDE, after payment of amounts due hereunder and reserving an amount sufficient to pay Fund Borrower's reasonably anticipated operating expenses in the next year, the Fund Borrower agrees to pay or reimburse promptly the Fund Lender for all reasonable out-of-pocket costs and expenses incurred by it (including, without limitation, the reasonable fees and expenses of the Fund Lender's counsel) in connection with any modification, supplement or waiver (or proposed modification, supplement or waiver) of any of the terms of this Fund Loan Agreement or any of the other Fund Loan Documents requested by Fund Borrower. Fund Borrower shall indemnify and hold Fund Lender harmless at all times after the date hereof against and in respect of all costs, expenses, claims, suits, damages, deficiencies, liabilities and losses (including, without limitation, reasonable costs and expenses for legal and accounting services incurred in connection therewith) of any nature suffered, incurred or paid by Fund Lender which would not have been suffered, incurred or paid if all the representations, warranties, covenants and agreements made by Fund Borrower in this Agreement or in any other instrument or document furnished to Fund Lender in connection

herewith had been (with respect to representations and warranties) true, complete and correct and had been (with respect to covenants and agreements) performed and fulfilled. No payment or reimbursement to Fund Lender shall be required in connection with any matter set forth in this **Section 8.03** which arises directly or indirectly from a default under the CDE Loan Documents by the CDE Loan Borrower.

8.04. **Waiver and Cumulative Rights.** The failure or delay of the Fund Lender to require performance by the Fund Borrower of any provision of this Fund Loan Agreement or any other Fund Loan Document to which the Fund Borrower is a party shall not affect the right of the Fund Lender to require performance of such provision, unless such performance has been waived in writing by the 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 the Fund Lender hereunder or allowed to the Fund Lender by law or in equity shall be cumulative and may be exercised in part or in whole from time to time.

8.05. **Successors and Assigns.** Subject to Article 9 and Article 10 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, except that the Fund Borrower may not transfer or assign any of its rights or obligations hereunder or under the other Fund Loan Documents without the prior written consent of the Fund Lender.

8.06. **SUBMISSION TO JURISDICTION.**

(a) THE FUND BORROWER AND FUND LENDER HEREBY IRREVOCABLY CONSENT TO THE NONEXCLUSIVE JURISDICTION AND VENUE OF ANY STATE COURT LOCATED WITHIN SANTA CLARA COUNTY, OF THE STATE OR FEDERAL COURT IN 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 IT IS A PARTY AND OTHERWISE ARISING OUT OF OR RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY, AND THE FUND BORROWER AND FUND LENDER HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. THE FUND BORROWER AND FUND LENDER EACH WAIVES ANY OBJECTION TO ANY ACTION OR PROCEEDING IN ANY STATE COURT LOCATED WITHIN SANTA CLARA COUNTY, OF THE STATE OR FEDERAL COURT IN THE NORTHERN DISTRICT OF CALIFORNIA, ON THE BASIS OF FORUM NON CONVENIENS. THE FUND BORROWER 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 THE FUND BORROWER AT THE ADDRESS SET FORTH IN **SECTION 8.09**. THE FUND BORROWER AND FUND LENDER EACH 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. THE FUND BORROWER FURTHER AGREES THAT, AT THE DISCRETION OF THE FUND LENDER, THE FUND LENDER MAY SERVE LEGAL PROCESS IN ANY OTHER MANNER TO THE

EXTENT PERMITTED BY LAW AND MAY BRING ANY ACTION OR PROCEEDING AGAINST THE FUND BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION.

(b) **WAIVER OF JURY TRIAL.** EACH OF THE FUND BORROWER AND THE FUND LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FUND LOAN AGREEMENT, THE OTHER FUND LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

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 the Fund Borrower and the 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 the Fund Lender, be refunded to the Fund Borrower or credited on the principal amount of the Fund Note then outstanding.

8.09. **Notices.** Any Notice required or permitted to be given hereunder shall be in writing and shall be effective when actually received if delivered by hand or overnight courier, or when confirmed by receipt if transmitted by facsimile or other electronic transmission if Notices given by such means of communication are capable of being confirmed upon delivery by electronic means, or three days after being sent by registered or certified mail, postage prepaid, the certification receipt therefore being deemed the date of such Notice, and addressed to the parties as follows:

**To the Fund Borrower:** Chase NMTC San Jose Environmental Innovation Center  
Investment Fund, LLC  
c/o Community Development Partners MM, Inc.  
[ADDRESS]

**with a copy to:** Law Office of Mark D. Foster  
4835 LBJ Freeway, Suite 424  
Dallas, TX 75244  
Attention: Mark D. Foster

Facsimile: (214) 363-9551  
Telephone: (214) 363-9599

**and to:** Chase Community Equity, LLC  
c/o JPMorgan Chase Bank, N.A.  
10 S. Dearborn, 19<sup>th</sup> Floor  
Mail Code: IL1-0953  
Chicago, IL 60603-5506  
Attention: NMTC Asset Manager  
Facsimile: (312) 233-2263  
Email: nmtc.reporting@chase.com

**and to:** JPMorgan Chase Bank, N.A.  
560 Mission Street  
San Francisco, CA 94105  
Attention: Elizabeth Tracey  
Facsimile: [ ]  
Telephone: [ ]

**and to:** Bryan Cave LLP  
1155 F Street, N.W.  
Washington, D.C. 20004  
Attn: Jerome A. Breed  
Facsimile: (202) 220-7336

**To Fund Lender:** City of San Jose  
Office of the City Attorney  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 95113  
Attention: Norberto Duenas  
Facsimile: (408) 998-3131

**with a copy to:** Kantor Taylor Nelson Boyd & Evatt PC  
1501 Fourth Ave., Suite 1610  
Seattle, WA 98101  
Attention: Thomas Nelson  
Facsimile: (206) 607-1852

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; provided, however, that it is expressly acknowledged and agreed that the forbearance provisions of **Article 9** shall be deemed integral to this Fund Loan Agreement and shall not be severable from the remainder of this 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 on the Fund Borrower 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.

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. **Exchange of Information.** Fund Borrower agrees that Fund Lender may exchange or disclose financial and other information about Fund Borrower with or to any of Fund Lender's affiliates or other related entities and with any party that acquires a participation or other interest in all or part of the Fund Loan.

8.18. **Survival.** The representations, warranties, acknowledgments, and agreements set forth herein shall survive the execution, termination or expiration of this Fund Loan Agreement.

8.19. **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 requested, in order to carry out the intent and purpose of this Fund Loan Agreement and the other Fund Loan Documents.

8.20. **Treatment of Loan.** Fund Borrower and Fund Lender each agree that the Fund Loan shall be treated as debt for federal income tax purposes. Fund Borrower and Fund Lender each further agree not to make any reports or file any tax returns or other documents or otherwise take any position inconsistent with the intent of this section.

8.21. **Right to Consent.** Except as expressly set forth in the Fund Loan Documents, Fund Borrower shall have the right and ability to grant or exercise (or withhold or refuse to

exercise) any rights given to Fund Borrower, as a member of the CDE under the terms of the CDE Agreement, in such manner as determined in the Fund Borrower's sole and absolute discretion, and in no event shall the Fund Lender's consent or approval be required for the Fund Borrower's action or inaction with respect to such rights.

## ARTICLE 9. FORBEARANCE

Notwithstanding anything to the contrary in the Fund Loan Documents, Fund Lender agrees to forbear from (a) accelerating the payment in full of all or part of Fund Borrower's obligations to Fund Lender under the Fund Note; (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; and (e) 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 earlier of (1) the termination of the Put Exercise Period (as defined in the Investment Fund Put and Call Agreement), and (2) the exercise by CCE of the Investment Fund Put (as defined in the Investment Fund Put and Call Agreement) (the "***Forbearance Termination Date***"); provided however, that the Forbearance Termination Date shall be no later than the date that is one (1) year after the termination of the NMTC Compliance Period. On and after the Forbearance Termination Date, subject to the 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.

## ARTICLE 10. AFFILIATE FUND TRANSFER

10.01 **Fund Lender Consent to Transfer.** Notwithstanding anything in the Fund Loan Documents to the contrary, Fund Lender hereby consents to the sale or other transfer (an "***Affiliate Fund Transfer***") by Investor Member of its membership interest in the Fund Borrower (the "***Interest***") to a partnership or limited liability company of which CCE or one of its affiliates is the manager, the managing member, or a general partner (an "***Affiliate Fund***") organized to allow an investor (an "***Investor***") to participate in the Interest, provided that such Affiliate Fund Transfer is made in accordance with the requirements set forth in Article 10 hereof.

10.02 **Admission to Fund Borrower.** In the event of an Affiliate Fund Transfer, Fund Lender hereby consents to the admission of such Affiliate Fund as a member of Fund Borrower, with all the rights, obligations and benefits of a member of the Fund Borrower, and Fund Lender further consents to the amendment of Fund Agreement to evidence such admission.

10.03 **No Event of Default.** Fund Lender acknowledges and agrees that neither the Affiliate Fund Transfer nor the amendment of the Fund Agreement to evidence such admission of the Affiliate Fund shall constitute an Event of Default or breach of any covenant, representation or warranty for purposes of the Fund Loan Documents, including the Fund Loan Agreement.

10.04 **Obligations under Fund Loan Documents.** All obligations and rights of the Affiliate Fund subsequent to the Affiliate Fund Transfer with respect to the Fund Loan Documents shall be applicable to and exercised by Fund Manager as manager of the Affiliate Fund.

(SIGNATURE PAGES FOLLOW)

**IN WITNESS WHEREOF**, the parties hereto have caused the Fund Loan Agreement to be executed by their respective duly authorized signatories as of the day and year written above.

FUND BORROWER:

CHASE NMTC SJEIC INVESTMENT FUND, LLC,  
a Delaware limited liability company

By: Community Development Partners MM, Inc., a  
Delaware corporation, its managing member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, the parties hereto have caused the Fund Loan Agreement to be executed by their respective duly authorized signatories as of the day and year written above.

FUND LENDER:

CITY OF SAN JOSE,  
a California municipal corporation

By: \_\_\_\_\_  
Norberto Dueñas,  
Deputy City Manager

**PROMISSORY NOTE**  
**(Leverage Loan)**

\$19,609,645

October \_\_, 2011

**FOR VALUE RECEIVED**, the undersigned, **Chase NMTC SJEIC Investment Fund, LLC**, a Delaware limited liability company (the "Fund Borrower"), promises to pay to the order of **City of San Jose**, a California municipal corporation (together with its permitted successors and assigns, the "Fund Lender"), in lawful money of the United States of America and in immediately available funds, the principal sum of Nineteen Million Six Hundred Nine Thousand Six Hundred Forty-Five and No/100 Dollars (\$19,609,645) (or the unpaid balance of all principal advanced against this Promissory Note ("Promissory Note"), if that amount is less), together with interest on the unpaid principal balance of this Promissory Note from day to day outstanding as hereinafter provided. Capitalized terms not otherwise defined herein shall have the meanings set forth in, and the interpretations applicable thereto under that certain Fund Loan Agreement of even date herewith, by and between Fund Borrower and Fund Lender, as amended and modified from time to time in accordance with its terms ("Fund Loan Agreement").

Subject to the terms and conditions of the Fund Loan Agreement and this Promissory Note, the outstanding principal amount of the Loan shall bear interest at one-half of one percent (0.5%) per annum (the "Interest Rate"). From and after the date of any Event of Default, interest on all principal amounts outstanding under this Promissory Note shall accrue at the Default Interest Rate. Interest payable hereunder shall be computed, payable and allocated on the basis of a 360-day year consisting of twelve 30-day months.

In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to Fund Lender for the use, forbearance or detention of money advanced hereunder exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto.

The principal amount and accrued interest of this Promissory Note shall be due and payable on the dates and in the manner set forth in the Fund Loan Agreement.

The entire outstanding principal balance under this Promissory Note plus all accrued and unpaid interest thereon and any other amounts due hereunder shall become due and payable on October \_\_, 2053 (the "Maturity Date"). Fund Borrower may not voluntarily prepay, in whole or in part, the outstanding principal under this Promissory Note, at any time, prior to the first day following the end of the NMTC Compliance Period. Thereafter, Fund Borrower may prepay the outstanding principal under this Promissory Note, in whole or in part, at any time.

Until the holder of this Note notifies Fund Borrower otherwise, all payments are to be made by check payable to "City of San Jose" and sent to City of San Jose, Finance – Revenue Management, 200 E. Santa Clara Street 13<sup>th</sup> Floor, San Jose, CA 95113. Alternatively, Fund Borrower may make payments by wire transfer of funds to the following account or such other account as the Fund Lender may specify in writing from time to time:

Promissory Note (Leverage Loan)

Name of Bank:	Wells Fargo Bank, N.A.
Location of Bank (City and State)	San Francisco, CA
ABA Routing Number:	121000248
Credit A/C:	4121-89367
Account name:	City of San Jose
Attention:	Kavita Singh

Time is of the essence of this Promissory Note. To the extent not prohibited by applicable law, Fund Borrower, for itself and its successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, and any and all other notices, demands and consents in connection with the delivery, acceptance, performance, default or enforcement of this Promissory Note, and hereby consents to any extensions of time, renewals, releases of any party to or guarantor of this Promissory Note, waivers and any other modifications that may be granted or consented to by Fund Lender from time to time in respect of the time of payment or any other provision of this Promissory Note.

This Promissory Note is secured by, among other things, the assets of Fund Borrower pledged pursuant to the Fund Pledge Agreement, and is otherwise subject to the terms of the Fund Loan Agreement, including, without limitation, the forbearance obligations contained in Article 9 of the Fund Loan Agreement.

Subject to Article 9 of the Fund Loan Agreement, the occurrence of any Event of Default shall entitle Fund Lender, at its option, to declare the then outstanding principal balance, accrued interest and any other amounts due hereunder to be, and the same shall thereupon become, immediately due and payable without notice to or demand upon Fund Borrower, all of which Fund Borrower hereby expressly waives.

Wherever possible each provision of this Promissory Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Promissory Note shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Promissory Note. No delay or failure on the part of Fund Lender in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as acquiescence in any default, nor shall any single or partial exercise by Fund Lender of any right or remedy preclude any other right or remedy. Subject to Article 9 of the Fund Loan Agreement, Fund Lender, at its option, may enforce its rights against any collateral securing this Promissory Note without enforcing its rights against Fund Borrower or any other property or indebtedness due or to become due to Fund Borrower. Fund Borrower agrees that, without releasing or impairing Fund Borrower's liability hereunder, Fund Lender may at any time release, surrender, substitute or exchange any collateral securing this Promissory Note and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Promissory Note.

All of the terms, covenants and agreements of the Fund Loan Agreement are incorporated herein by reference.

This Promissory Note shall be governed by, and construed and enforced in accordance with, the internal laws of the State of California without regard to the choice of law rules of that

State, except to the extent that any of such laws may now or hereafter be preempted by Federal law.

(SIGNATURE PAGE FOLLOWS)

**IN WITNESS WHEREOF**, the Fund Borrower has set its signature to this Promissory Note as of the date first above written.

**FUND BORROWER:**

CHASE NMTC SJEIC INVESTMENT FUND, LLC,  
a Delaware limited liability company

By: Community Development Properties New Markets MM,  
Inc., a Delaware corporation, its managing member

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## FUND PLEDGE AGREEMENT

THIS FUND PLEDGE AGREEMENT (this “**Agreement**”), dated October \_\_\_\_, 2011 is entered into by and between **Chase NMTC SJEIC Investment Fund, LLC**, a Delaware limited liability company (“**Fund Borrower**”), and the City of San Jose, a California municipal corporation (together with its permitted successors and assigns, “**Fund Lender**”).

### W I T N E S S E T H:

WHEREAS, the Fund Borrower has executed and delivered to Fund Lender that certain Promissory Note of even date herewith in the original principal amount of Nineteen Million Six Hundred Nine Thousand Six Hundred Forty-Five and No/100 Dollars (\$19,609,645) (as amended, supplemented or otherwise modified from time to time, the “**Note**”), which Note evidences the term loan being made by the Fund Lender to the 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 (the “**Fund Loan Agreement**”);

WHEREAS, the Fund Borrower is the record and beneficial owner of a 99.99% membership interest in NDC New Markets Investments LXV, LLC, a Delaware limited liability company (“**NDC CDE**”), a 99.99% membership interest in Northern California Community Loan Fund NMTC Sub-CDE III, LLC, a California limited liability company (“**NCCLF CDE**”), and a 99.99% membership interest in Brownfield Revitalization XV, LLC, a Delaware limited liability company (“**BR CDE**”) (collectively, the “**Fund Pledged Securities**”); and

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 and the Fund Loan Documents (the “**Fund Obligations**”), the Fund Lender is requiring that the Fund Borrower execute and deliver this Agreement and grant the security interest contemplated hereby.

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

(1) **Definitions.**

(a) “**Allocation Agreement**” has the meaning given that term in the Fund Agreement.

(b) “**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 New Markets Tax Credit program.

(c) “**Code**” means the Internal Revenue Code of 1986, as amended, or any corresponding provision or provisions of subsequent superseding federal revenue laws.

(d) **“Fund Agreement”** means the Operating Agreement of the Fund Borrower, dated the date hereof.

(e) **“Issuer”** means collectively NDC CDE, NCCLF CDE and BR CDE, also collectively referred to as the “CDE.”

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

(g) **“Treasury Regulations and Guidance”** means and includes any Regulations and any guidance, rule, or procedure published by the Internal Revenue Service, Treasury Department or CDFI Fund, including without limitation the Community Development Entity Certification Application for the CDE and the New Markets Tax Credit Allocation Agreement.

(h) Capitalized terms not otherwise defined herein shall have the meanings set forth in, and the interpretations applicable thereto under, the Fund Loan Agreement. The meanings given to terms in the Fund Loan 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 Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, schedule and exhibit references are to this Agreement unless otherwise specified.

(2) **Pledge.** The Fund Borrower hereby pledges to the Fund Lender and grants to the Fund Lender, a first position security interest in all of the following now owned or hereafter acquired (collectively, the **“Fund Pledged Collateral”**):

(a) the Fund Pledged Securities and the certificates and other instruments or agreements representing or evidencing the Fund Pledged Securities, if any, 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 its Fund Pledged Securities;

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

(c) all proceeds of any of the foregoing.

(3) **Security for the Obligations.** This Agreement secures, and the Fund Pledged Collateral is security for, the prompt payment and performance of the Fund Obligations. Fund Borrower surrenders all authority or right to assign or encumber the Fund Pledged Collateral. The assignment evidenced by this Agreement is irrevocable so long as any of the Fund Obligations are outstanding or Fund Borrower shall have any obligations under the Fund Loan Documents and shall terminate only upon payment or other satisfaction in full of all Fund Obligations or Fund Lender’s acknowledgment in writing that this Agreement has been terminated.

(4) **Delivery of Fund Pledged Collateral.** All certificates or other instruments, if any, representing or evidencing the Fund Pledged Collateral shall be delivered to the Fund Lender, shall be accompanied by duly executed instruments of transfer or assignment in blank, including a duly executed assignment in blank, substantially in the form attached hereto as **Exhibit A**, all in form and substance satisfactory to the Fund Lender. Subject to **Article 9** of the Fund Loan Agreement, the Fund Lender shall have the right, at any time after the occurrence and during the continuance of an Event of Default hereunder, in its discretion and without notice to the Fund Borrower, to transfer to or to register in the name of the Fund Lender, any or all of the Fund Pledged Collateral.

(5) **Representations and Warranties.** The Fund Borrower represents and warrants to the Fund Lender that as of the date hereof:

(a) The 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. The Fund Borrower is duly qualified and authorized to do business in each jurisdiction in which failure to be so qualified and authorized would have a Material Adverse Effect.

(b) The Fund Borrower is, and at the time of delivery of the Fund Pledged Collateral to the Fund Lender pursuant to **Section 4** hereof will be, the sole holder of record and the sole beneficial owner of the Fund 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 Agreement.

(c) The Fund Pledged Securities pledged hereunder constitute the percentage of all of the issued and outstanding equity interests of the CDE set forth on **Exhibit B** attached hereto. All of the Fund Pledged Securities have been duly authorized and validly issued.

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

(e) None of the Fund Pledged Securities has been issued or transferred in violation of the securities registration, securities disclosure or similar laws of any jurisdiction to which such issuance or transfer may be subject. The Fund Borrower's execution, delivery and performance of this Agreement and the pledge of the Fund Pledged Collateral hereunder do not, directly or indirectly, violate in any material respect or result in a violation of any such laws.

(f) The only assets of the Fund Borrower are a \$771 reserve fund, the Fund Pledged Collateral. The Fund Borrower has no indebtedness other than the Fund Loan, except for unsecured loans made by the Member (as defined in the Fund Loan Agreement) to the Fund Borrower in accordance with the Fund Agreement.

(g) None of the Fund Pledged Securities is, as of the date of this Agreement, margin stock, and the Fund Borrower shall, promptly after learning thereof, notify the Fund Lender of any of its Fund Pledged Securities which are or become margin stock and execute and deliver in favor of the Fund Lender any and all instruments, documents and agreements

(including, but not limited to Forms U-1) necessary to cause the pledge of such margin stock to comply with all applicable laws, rules and regulations.

(h) No consent, approval, authorization or other order of any Person and no consent, authorization, approval, or other action by, and no notice to or filing with, any governmental departments, commissions, boards, bureaus, agencies or other instrumentalities, domestic or foreign, is required to be made or obtained by the Fund Borrower either (i) for the pledge of its Fund Pledged Collateral pursuant to this Agreement or for the execution, delivery or performance of this Agreement by the Fund Borrower, or (ii) except as set forth in the CDE Agreement, for the exercise by the Fund Lender of the voting or other rights provided for in this Agreement or the remedies in respect of the Fund Pledged Collateral pursuant to this Agreement, subject to **Article 9** of the Fund Loan Agreement.

(i) The execution, delivery and performance of this Agreement, including the delivery of a certificate evidencing the Fund Pledged Securities, by Fund Borrower will not cause a violation of or a default under either of the CDE Agreement or the Fund Agreement. The execution and delivery of this Agreement and the performance of Fund Borrower's obligations hereunder will not conflict with or result in a breach of the terms or provisions of any (i) legal requirement, (ii) agreement to which any of Fund Borrower or the CDE is a party or by which any of their respective assets are bound, or (iii) judgment, decree, arbitration award, or pending litigation to which the Borrower or the CDE is subject.

(j) The pledge of the Fund Pledged Collateral to Fund Lender pursuant to this Agreement, and delivery to Fund Lender of the certificates evidencing the Fund Pledged Securities, if any, will create a valid lien on and, upon proper filing of Uniform Commercial Code financing statement(s) in all appropriate filing offices (including without limitation payment of all fees and charges and proper indexing thereof), a perfected security interest in the Fund Pledged Collateral pledged by Fund Borrower, and the proceeds thereof, to the extent such lien may be perfected by filing, securing the payment of the Fund Obligations, subject to no other lien, charge, encumbrance or security interest.

(k) The Fund Pledged Securities are "securities" governed by **Article 9** of the Uniform Commercial Code as adopted in applicable jurisdictions (the "UCC").

(l) The CDE Operating Agreement expressly provides that the Fund Pledged Securities are "securities" governed by **Article 9** of the UCC.

(m) This Agreement has been duly authorized, executed and delivered by the Fund Borrower and, to Fund Borrower's knowledge, constitutes the legal, valid and binding obligation of the Fund Borrower enforceable 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).

The representations and warranties set forth in this **Section 5** shall survive the execution, delivery, termination and expiration of this Agreement.

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

(a) The Fund Borrower will not sell, assign, transfer, pledge, or otherwise encumber any of its rights in or to any Fund 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 (except as may be permitted by the Fund Loan Agreement). The Fund Borrower will not issue any additional membership interests in the Fund Borrower, whether certificated or uncertificated, to any Person except in accordance with **Article 10** of the Fund Loan Agreement without the prior written consent of the Fund Lender in its sole discretion.

(b) The Fund Borrower will, at its expense, promptly execute, acknowledge and deliver all such instruments and take all such action as the Fund Lender from time to time may reasonably request in order to ensure to the Fund Lender the benefits of the liens and security interests in and to the Fund Pledged Collateral intended to be created by this Agreement, including the delivery of all certificates, if any, and other documentation evidencing any of the Fund Pledged Collateral. In connection therewith, Fund Borrower hereby authorizes the filing of any necessary Uniform Commercial Code financing statements deemed reasonably necessary by the Fund Lender.

(c) The Fund Borrower will not consent to the CDE issuing any additional equity interests in the CDE, whether certificated or uncertificated, to any person without the prior, written consent of Fund Lender which shall be granted or withheld in the sole discretion of Fund Lender, except as replacement equity interests in connection with the replacement of the CDE Managing Member to a replacement manager.

(d) Subject to **Section 7** hereof, the Fund Borrower will deliver to the Fund Lender each item of Fund Pledged Collateral capable of physical delivery, if possession of the same is necessary to perfect a security interest therein, immediately upon acquisition thereof, and will defend the title to the Fund Pledged Collateral and the liens of the Fund Lender, for the benefit of the Fund Lender, against the claim of any Person at any time claiming the same or any interest therein.

(e) Subject to **Article 9** of the Fund Loan Agreement, the Fund Borrower hereby consents to the Fund Lender's or its designee's right to become and be admitted as a member of the Issuer and to receive distributions and allocations from the Issuer upon the exercise of the Fund Lender's rights hereunder without further action, approval or consent.

(f) The Fund Borrower will not change the state of its organization or location unless it shall have given the Fund Lender prior written notice of its intent to do so or change its legal name in any manner which is reasonably likely to make any financing or continuation statement filed in connection herewith seriously misleading within the meaning of **Section 9-506** of the UCC (or any other then-applicable provision of the UCC) unless it has given the Fund Lender at least thirty (30) days' prior written notice thereof and shall have taken all action (or made arrangements to take such action substantially simultaneously with such change if it is impossible to take such action in advance) necessary or reasonably requested by the Fund Lender to amend such financing statement or continuation statement so that it is not seriously

misleading. The Fund Borrower shall not take any action which would impair the Fund Lender's security interest in the Fund Pledged Collateral or the enforcement thereof.

(7) **Fund Borrower's Rights.** As long as no Event of Default hereunder shall have occurred and be continuing, and until written notice shall be given to the Fund Borrower in accordance with **Section 8** hereof, and in all events subject to **Article 9** of the Fund Loan Agreement:

(a) The Fund Borrower shall have the right, from time to time, to vote and give consents with respect to the Fund Pledged Collateral or any part thereof for all purposes not inconsistent with the provisions of this Agreement, the Fund Loan Agreement, the Note and any other agreement; provided, however, that, except as required by the NMTC Program Requirements or as necessary to prevent a recapture of New Markets Tax Credits as determined by the Fund Borrower in its sole and absolute discretion, no vote shall be cast, and no consent shall be given or action taken, which would authorize or effect (i) the dissolution or liquidation, in whole or in part, of the Issuer, (ii) the consolidation or merger of the Issuer with any other Person, (iii) the sale, disposition or encumbrance of all or substantially all of the assets of the Issuer (except as permitted by the CDE Loan Documents or except in connection with the exercise by an Issuer of any of its rights and remedies following a default under the CDE Loan Documents), (iv) any change in the authorized number of shares or membership interests in the Issuer, the stated capital or the authorized share capital of the Issuer or the issuance of any additional membership interests in the Issuer, or (v) the alteration of the voting rights with respect to the Fund Borrower's interests in the Issuer. Notwithstanding the foregoing, the Fund Lender's consent shall not be required for the exercise by the Investor Member of its rights under that certain Put/Call Option Agreement of even date herewith by and among the Investor Member, the Fund Manager and the Fund Lender.

(b) Fund Borrower may receive cash, property distributions and/or allocations attributable to the Fund Pledged Collateral and make distributions to its members of any amounts not needed to pay the Fund Management Fee and make payments on the Note which are then due and payable.

(8) **Defaults and Remedies.**

(a) Any one or more of the following events shall constitute a default by Fund Borrower under this Agreement ("**Event of Default**"):

(i) Any Event of Default (as such term is defined in the Fund Loan Agreement) shall have occurred and be continuing under the Fund Loan Agreement;

(ii) Breach of any representation or warranty contained in this Agreement, which breach shall remain uncured for more than sixty (60) days following notice thereof from Fund Lender to Fund Borrower.

(b) Subject to **Article 9** of the Fund Loan Agreement, upon the occurrence and during the continuation of an Event of Default hereunder, the 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 Fund Pledged Collateral, to exchange certificates or instruments representing or evidencing Fund Pledged Securities for certificates or instruments of smaller or larger denominations, if any, exercise the voting rights with respect thereto, 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 the 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 the Fund Borrower agrees is commercially reasonable), but without any previous notice or advertisement, the whole or any part of the Fund Pledged Collateral and to otherwise act with respect to the Fund Pledged Collateral as though the Fund Lender were the out-right owner thereof; provided, however, the 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 the 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 the Fund Lender may deem fair and reasonable, and the Fund Lender may be the purchaser of the whole or any part of the Fund Pledged Collateral so sold and hold the same thereafter in its own right free from any claim of the Fund Borrower or any right of redemption. Each sale shall be made to the highest bidder, but the 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 the Fund Lender.

(c) If, at the original time or times appointed for the sale of the whole or any part of the Fund Pledged Collateral, the highest bid, if there be but one sale, shall be inadequate to discharge in full the defaulted Fund Obligations or if the Fund 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 the Fund Lender, in its discretion, the unlikelihood of the proceeds of the sales of the whole of the Fund Pledged Collateral being sufficient to discharge all the defaulted Fund Obligations, the 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 the Fund Borrower.

(d) In the event of any sales hereunder, the 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 the Fund Lender, of the Fund Obligations.

(e) In the event that it becomes necessary to comply with any Federal or State law or regulation or to make or file any registration thereunder in order for the Fund Lender to exercise any of its rights hereunder, the Fund Borrower expressly agrees to do or cause to be done all acts and prepare and execute all documents necessary to effect such compliance or registration, and to bear all reasonable costs in connection therewith (but only from distributions made by the CDE). The Fund Borrower agrees (but only from distributions made by the CDE) to indemnify, defend and hold the Fund Lender harmless for, from and against any claim or

liability caused by (i) any omission or alleged omission to state a material fact required to be stated, or necessary to make the statements, in light of the circumstances in which they are made, not misleading (as required in any registration or prospectus) or (ii) a failure to register or comply with any such law or regulation, unless such failure is caused by the Fund Lender.

(f) Subject to **Article 9** of the Fund Loan Agreement, if, at any time when the Fund Lender shall determine to exercise its right to sell the whole or any part of the Fund Pledged Collateral hereunder, such Fund Pledged Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Securities Act of 1933, as amended, the Fund Lender may, in its discretion (subject only to applicable requirements of law), sell such Fund 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 the Fund Lender agrees and causes any purchaser of Fund Pledged Collateral to agree that the Fund Borrower shall (a) not be liable to any purchaser of Fund Pledged Collateral for any action taken or omitted to be taken by the Fund Lender in connection with the sale of Fund Pledged Collateral, or (b) be responsible in any manner to any purchaser of Fund Pledged Collateral for any statement, representation or warranty made by the Fund Lender in connection with the sale of Fund Pledged Collateral. Without limiting the generality of the foregoing, in any such event the Fund Lender in its discretion (i) may, in accordance with applicable securities laws, proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Fund Pledged Collateral or part thereof could be or shall have been filed under said Securities Act (or similar statute), (ii) may approach and negotiate with a single possible purchaser to effect such sale, and (iii) may 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 Fund Pledged Collateral or part thereof. In addition to a private sale as provided above in this **Section 8**, if any of the Fund Pledged Collateral shall not be freely distributable to the public without registration under the Securities Act of 1933, as amended (or similar statute) at the time of any proposed sale pursuant to this **Section 8**, then the Fund Lender shall not be required to effect such registration or cause the same to be effected but, in its discretion (subject only to applicable requirements of law), may require that any 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 Fund 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 Issuer and such Person's intentions as to the holding of the Fund 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 as the Fund Lender may, in its discretion, deem 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.

(g) The Fund Borrower recognizes that the Fund Lender may be unable to effect a public sale of any or all the Fund Pledged Collateral and may be compelled to resort to one or more private sales thereof. The 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. The 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. The Fund Lender shall be under no obligation to delay a sale of any of the Fund 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 the Fund Borrower and the Issuer would agree to do so.

(h) The Fund Borrower agrees, to the extent not prohibited by applicable law, that following the occurrence and during the continuance of an Event of Default hereunder, 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 Agreement, or the absolute sale of the whole or any part of the Fund Pledged Collateral or the possession thereof by any purchaser at any sale hereunder, and the 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 the Fund Lender to exercise any such right, power or remedy and no notice or demand which may be given to or made upon the Fund Lender with respect to any such remedies shall operate as a waiver thereof, or limit or impair the 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 the Fund Borrower.

(i) The Fund Borrower further agrees that a breach of any of the covenants contained in this **Section 8** will cause irreparable injury to the Fund Lender, that the 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 the Fund Borrower, and the 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 Fund Lender's rights are subject to **Article 9** of the Fund Loan Agreement or that any of the Fund Obligations are not then due and payable in accordance with the agreements and instruments governing and evidencing such obligations.

Subject to **Article 9** of the Fund Loan Agreement, the rights and remedies of the Fund Lender under this Agreement shall be cumulative and not exclusive of any other rights or remedies available to the Fund Lender at law or equity. In exercising such rights and remedies, the Fund Lender may be selective, and no failure or delay by the 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 hereunder and during its continuance (except during the Reinvestment Period), the Fund Borrower irrevocably designates, makes, constitutes and appoints the Fund Lender as its true and lawful attorney (and agent-in-fact) and the Fund Lender may, without notice to the Fund Borrower, and at such time or times thereafter as the Fund Lender, in its discretion, determine, in the name of the Fund Borrower or the Fund Lender, request that the Issuer transfer any or all of the Fund Pledged Collateral on the books of the Issuer, with full power of substitution in the premises; endorse the name of the Fund Borrower upon any checks, notes, acceptance, money orders, certificates, drafts or other forms of payment

of security that come into the Fund Lender's possession; and do all acts and things necessary, in the Fund Lender's discretion, to fulfill the obligations of the Fund Borrower under this Agreement. The appointment set forth herein is deemed to be coupled with an interest and therefore irrevocable.

(10) **Waiver**. No delay on the 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 the Fund Borrower by the Fund Lender with respect to any power of sale, lien, option or other right hereunder, shall constitute a waiver thereof, or limit or impair the 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 the Fund Lender's rights as against the Fund Borrower in any respect.

(11) **Termination**. This Agreement shall terminate and be of no further force or effect at such time as the Fund Obligations shall be paid and performed in full. Upon such payment and performance in full of the Fund Obligations, the Fund Lender shall deliver to the Fund Borrower, the Fund Pledged Collateral at the time subject to this Agreement and then in the 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 the Fund Borrower's obligations hereunder shall at such time terminate.

(12) **Lien Absolute**. Subject to **Article 9** of the Fund Loan Agreement, all rights of the Fund Lender hereunder, and all obligations of the Fund Borrower hereunder, shall be absolute and unconditional irrespective of:

(a) any lack of validity or enforceability of the Note, or any other agreement or instrument governing or evidencing any Fund Obligations or any of the Fund Borrower's obligations under the 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 Fund Obligations or any of the Fund Borrower's obligations under the Note, or any other amendment or waiver of or any consent to any departure from the Note or any other agreement or instrument governing or evidencing any Fund Obligations or any of the Fund Borrower's obligations under the 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 Fund Obligations or any of the Fund Borrower's obligations under the Note; or

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

(13) **Release**. Except as provided for in the Note, the Fund Borrower hereby waives notice of acceptance of this Agreement, and also presentment, demand, protest and notice of dishonor of any and all of the Fund Obligations or any of the Fund Borrower's obligations under the 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 the Fund Borrower. No act or omission of any kind on the Fund Lender's part shall in any event affect or impair this

Agreement. The Fund Borrower consents and agrees that the Fund Lender may at any time, or from time to time, in its discretion:

(a) renew, extend or change the time of payment, not including an acceleration of the payments thereunder, and/or the manner, place or terms of payment of all or any part of the Fund Obligations; and

(b) exchange, release and/or surrender all or any of the Fund Pledged Collateral, or any part thereof, by whomsoever deposited, which is now or may hereafter be held by the Fund Lender in connection with all or any of the Fund Obligations; all in such manner and upon such terms as the Fund Lender may deem proper, and without notice to or further assent from the Fund Borrower, it being hereby agreed that the Fund Borrower shall be and remain bound upon this Agreement, irrespective of the value or condition of any of the Fund Pledged Collateral, and notwithstanding any such change, exchange, settlement, compromise, surrender, release, renewal or extension, and notwithstanding also that the Fund Obligations may, at any time, exceed the aggregate principal amount thereof set forth in the Note.

(14) **Reinstatement.** This Agreement shall remain in full force and effect and continue to be effective or be reinstated, as the case may be, if at any time payment and performance of the Fund Obligations, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the Fund Obligations, whether as a “voidable preference”, “fraudulent conveyance”, or otherwise, all as though such payment or performance had not been made.

(15) **Miscellaneous.** This Agreement shall be binding upon the Fund Borrower and its successors and assigns, and shall inure to the benefit of the Fund Lender, and be enforceable by, the Fund Lender and its successors and assigns. The Fund Lender may assign or otherwise transfer all or a portion of its rights and obligations under the Note as provided in the Fund Loan Agreement and such assignee shall thereupon become vested with all the benefits in respect thereof granted to the Fund Lender herein or otherwise; provided, however, that such assignee shall in any event remain bound by **Article 9** of the Fund Loan Agreement. Notwithstanding the foregoing, prior to the Forbearance Termination Date, Fund Lender agrees that it will not assign or otherwise transfer any of its rights and obligations under the Note without the prior written consent of the Fund Borrower (which consent shall not be unreasonably withheld, conditioned or delayed). None of the terms or provisions of this Agreement may be waived, altered, modified or amended except in writing duly signed for and on behalf of the Fund Lender and the Fund Borrower. Neither the Fund Lender, nor any of its respective officers, directors, employees, agents or counsel shall be liable for any action lawfully taken or omitted to be taken by it or them hereunder or in connection herewith, except for its or their own gross negligence or willful misconduct; and any loss or damage incurred by the Fund Lender by reason of any act or omission performed or omitted by it in good faith, reasonably believed by it to be within the scope of the authority granted to it by this Agreement (but not, in any event, any loss or damage incurred by the Fund Lender by reason of gross negligence, willful misconduct or fraud with respect to such acts or omissions) shall be paid from the Fund Borrower's assets to the extent available. Time is of the essence in the performance of this Agreement, and each and every term thereof, by Fund Borrower.

(16) **Non-Recourse.** Notwithstanding anything in this Agreement to the contrary, the provisions of this Agreement are expressly made subject to the limitations on recourse set forth in **Section 7.03** of the Fund Loan Agreement, which are incorporated herein by reference.

(17) **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 Agreement which are valid; provided, however, that it is expressly acknowledged and agreed that the forbearance provisions of **Article 9** of the Fund Loan Agreement which are incorporated herein by reference, shall be deemed integral to this Agreement and shall not be severable from the remainder of this Agreement.

(18) **Notices.** All notices and other communications provided to any party hereto under this Agreement shall be given in accordance with and at addresses set forth in the Fund Loan Agreement.

(19) **Section Titles.** The Section titles contained in this 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.

(20) **Counterparts.** This Agreement may be executed in any number of counterparts, which shall, collectively and separately, constitute one agreement.

(21) **SUBMISSION TO JURISDICTION.** THE FUND BORROWER HEREBY IRREVOCABLY CONSENTS TO THE NONEXCLUSIVE JURISDICTION AND VENUE OF ANY STATE COURT LOCATED WITHIN SANTA CLARA COUNTY, NORTHERN DISTRICT OF CALIFORNIA OR FEDERAL COURT, OVER ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS FUND LOAN AGREEMENT, ANY OF THE OTHER FUND LOAN DOCUMENTS TO WHICH IT IS A PARTY AND OTHERWISE ARISING OUT OF OR RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY, AND THE FUND BORROWER HEREBY IRREVOCABLY AGREES THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD AND DETERMINED IN SUCH STATE OR FEDERAL COURT. THE FUND BORROWER WAIVES ANY OBJECTION TO ANY ACTION OR PROCEEDING IN ANY STATE COURT LOCATED WITHIN SANTA CLARA COUNTY, NORTHERN DISTRICT OF CALIFORNIA OR FEDERAL COURT, ON THE BASIS OF FORUM NON CONVENIENS. THE FUND BORROWER 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 THE FUND BORROWER AT THE ADDRESS SET FORTH IN **SECTION 8.10** HEREOF. THE FUND BORROWER 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. THE FUND BORROWER FURTHER AGREES THAT, AT THE DISCRETION OF THE FUND LENDER, THE FUND LENDER MAY SERVE LEGAL PROCESS IN ANY OTHER MANNER TO THE EXTENT PERMITTED BY LAW AND MAY BRING ANY ACTION OR PROCEEDING AGAINST

THE FUND BORROWER OR ITS PROPERTY IN THE COURTS OF ANY OTHER JURISDICTION.

(22) **WAIVER OF JURY TRIAL.** EACH OF THE FUND BORROWER AND THE FUND LENDER HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS FUND PLEDGE AGREEMENT, THE OTHER FUND LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY, WHETHER ARISING IN CONTRACT, TORT OR OTHERWISE.

(23) **GOVERNING LAW.** THIS FUND PLEDGE AGREEMENT AND THE 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.

(SIGNATURE PAGE FOLLOWS)

**IN WITNESS WHEREOF**, this Fund Pledge Agreement has been duly executed as an instrument under seal as of the date first above written.

FUND BORROWER:

CHASE NMTC SJEIC INVESTMENT FUND, LLC,  
a Delaware limited liability company

By: Community Development Partners MM, Inc., a  
Delaware corporation, its managing member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**IN WITNESS WHEREOF**, this Fund Pledge Agreement has been duly executed as an instrument under seal as of the date first above written.

FUND LENDER:

CITY OF SAN JOSE,  
a California municipal corporation

By: \_\_\_\_\_

Name: Norberto Dueñas

Title: Deputy City Manager

**EXHIBIT A**

**FORM OF ASSIGNMENT**

**CHASE NMTC SJEIC INVESTMENT FUND, LLC**, a Delaware limited liability company ("Assignor") hereby collaterally assigns to the **CITY OF SAN JOSE**, a California municipal corporation ("Assignee"), all of its rights, title and interest in and to the investor membership interest (the "Membership Interest") in (i) NDC New Markets Investments LXV, LLC, a Delaware limited liability company ("NDC CDE"), (ii) Northern California Community Loan Fund NMTC Sub-CDE III, LLC, a California limited liability company ("NCCLF CDE"), and (iii) Brownfield Revitalization XV, LLC, a Delaware limited liability company ("BR CDE"), and together with NDC CDE and NCCLF CDE, the "Issuers"), and, except as provided in **Section 7** of that certain Fund Pledge Agreement dated [CLOSING DATE], by and between Assignor and Assignee (the "Fund Pledge"), directs that all future distributions and allocations of income or loss on account of such interest be paid or allocated to such Assignee.

Subject to the terms of the Pledge Agreement, Assignee shall have the right to cause the membership interest to be registered in its name upon the later of the occurrence of (i) an Event of Default under that certain Fund Loan Agreement dated [CLOSING DATE], by and between Assignor and Assignee (the "Fund Loan Agreement") and (ii) the Forbearance Termination Date (as defined in the Fund Loan Agreement).

Assignee hereby accepts said collateral assignment subject to (i) all terms, covenants and conditions of the Issuers' operating agreements in effect as of the date hereof and (ii) the terms and provisions of the Pledge Agreement.

Date: [CLOSING DATE]

**ASSIGNOR:**

**CHASE NMTC SJEIC INVESTMENT FUND, LLC**,  
a Delaware limited liability company

By: Community Development Partners MM, Inc., a Delaware corporation,  
its managing member

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**ASSIGNEE:**

**CITY OF SAN JOSE**,  
a California municipal corporation

By: \_\_\_\_\_

Norberto Dueñas,  
Deputy City Manager

**EXHIBIT B**

**DESCRIPTION OF EQUITY INTERESTS**

Attached to and forming a part of that certain Security and Pledge Agreement by and between **CHASE NMTC SJEIC INVESTMENT FUND, LLC**, a Delaware limited liability company, as Pledgor, and **CITY OF SAN JOSE**, a California municipal corporation, as Pledgee, dated as of [CLOSING DATE].

<b>Issuers</b>	<b>Percentage Interest</b>
NDC New Markets Investments LXV, LLC, a Delaware limited liability company	99.99%
Northern California Community Loan Fund NMTC Sub-CDE III, LLC, a California limited liability company	99.99%
Brownfield Revitalization XV, LLC, a Delaware limited liability company	99.99%

**UCC FINANCING STATEMENT**

FOLLOW INSTRUCTIONS (front and back) CAREFULLY

A. NAME & PHONE OF CONTACT AT FILER [optional]

---

B. SEND ACKNOWLEDGMENT TO: (Name and Address)

**Thomas H. Nelson  
Kantor Taylor Nelson Boyd & Evatt P.C.  
1501 Fourth Avenue, Suite 1610  
Seattle, WA 98101**

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (1a or 1b) - do not abbreviate or combine names

1a. ORGANIZATION'S NAME  
**CHASE NMTC SJEIC INVESTMENT FUND, LLC**

OR 1b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

1c. MAILING ADDRESS  
**c/o Community Development Partners MM, Inc.  
[ADDRESS]** CITY STATE POSTAL CODE COUNTRY  
**USA**

1d. ADD'L INFO RE ORGANIZATION DEBTOR 1e. TYPE OF ORGANIZATION  
**limited liability company** 1f. JURISDICTION OF ORGANIZATION  
**Delaware** 1g. ORGANIZATIONAL ID #, if any  
**5010076**  NONE

2. ADDITIONAL DEBTOR'S EXACT FULL LEGAL NAME - insert only one debtor name (2a or 2b) - do not abbreviate or combine names

2a. ORGANIZATION'S NAME

OR 2b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

2c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY

2d. ADD'L INFO RE ORGANIZATION DEBTOR 2e. TYPE OF ORGANIZATION 2f. JURISDICTION OF ORGANIZATION 2g. ORGANIZATIONAL ID #, if any  NONE

3. SECURED PARTY'S NAME (or NAME of TOTAL ASSIGNEE of ASSIGNOR S/P) - insert only one secured party name (3a or 3b)

3a. ORGANIZATION'S NAME  
**CITY OF SAN JOSE**

OR 3b. INDIVIDUAL'S LAST NAME FIRST NAME MIDDLE NAME SUFFIX

3c. MAILING ADDRESS CITY STATE POSTAL CODE COUNTRY  
**200 E. Santa Clara Street, 16th Floor San Jose CA 95113 USA**

4. This FINANCING STATEMENT covers the following collateral:

**SEE EXHIBIT A ATTACHED HERETO.**

5. ALTERNATIVE DESIGNATION [if applicable]: LESSEE/LESSOR CONSIGNEE/CONSIGNOR BAILEE/BAILOR SELLER/BUYER AG. LIEN NON-UCC FILING

6.  This FINANCING STATEMENT is to be filed [for record] (or recorded) in the REAL ESTATE RECORDS. Attach Addendum  7. Check to REQUEST SEARCH REPORT(S) on Debtor(s) [if applicable] [ADDITIONAL FEE]  All Debtors  Debtor 1  Debtor 2

8. OPTIONAL FILER REFERENCE DATA

**SJEIC (075-1)**

FILING

**DRAFT--Contact the Office of the City Clerk at (408) 535-1260 or CityClerk@sanjoseca.gov for final document.**

**Financing Statement**  
**Exhibit A**

**Secured Party:** City of San Jose  
200 E. Santa Clara Street, 16<sup>th</sup> Floor  
San Jose, CA 95113

**Debtor:** Chase NMTC SJEIC Investment Fund, LLC,  
a Delaware limited liability company

All of Debtor's present and future right, title and interest in and to all of the following:

(a) its 99.99% membership interest in (i) NDC New Markets Investments LXV, LLC, a Delaware limited liability company, (ii) Northern California Community Loan Fund NMTC Sub-CDE III, LLC, a California limited liability company, and (iii) Brownfield Revitalization XV, LLC, a Delaware limited liability company (collectively, the "Fund Pledged Securities") and the certificates and other instruments or agreements, if any, representing or evidencing its Fund Securities, if any, 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 its Fund Pledged Securities;

(b) all rights and privileges of Debtor with respect to the securities and assets referred to in clause (a) above; and

(c) all proceeds of any of the foregoing.