

MASTER LEASE
(Triple Net)

THIS MASTER LEASE ("Master Lease") is entered into as of the ___ day of October 2011, (the "Effective Date") by and between **CITY OF SAN JOSE**, a California municipal corporation ("Lessee"), and **EIC QALICB, INC.**, a California nonprofit public benefit corporation ("Lessor").

BACKGROUND

Lessor holds a leasehold interest in that certain real property located at 1608 Las Plumas Avenue, San Jose, CA legally described on Exhibit A (the "Real Property"). The Real Property together with any improvements shall be referred to as the "Property".

AGREEMENT

For and in consideration of the mutual promises, covenants and conditions set forth herein, the parties agree as follows:

1. **Lease.** Lessor hereby sub-leases to Lessee, and Lessee hereby sub-leases from Lessor the Property.
2. **Term.** This Master Lease shall be effective on the date hereof and shall expire at midnight on December 31st of the thirty-fifth (35th) anniversary of the Effective Date (the "Expiration Date"), or on the expiration date of any option to extend this Master Lease, unless the Master Lease is sooner terminated in accordance with the terms hereof (the "Term").
3. **Rent.** Subject to the possession and beneficial use of the Property by the Lessee, Lessee agrees to pay rent according to the table attached as Exhibit B. Upon the completion of the Property's planned construction and possession by the Lessee ("Delivery Date"), estimated to be November 1, 2013, Lessee shall pay rent quarterly, on the first day of January, April, July, and October of each year commencing with the first calendar quarter after the Delivery Date without setoff; provided that Operating Expenses shall be paid pursuant to Section 4 of this Master Lease.
4. **Operating Expenses.** Lessee shall be responsible for the payment of all Operating Expenses of the Property, commencing with the Effective Date. To the extent feasible, all Operating Expenses shall be billed directly to and paid by Lessee. If Lessee fails to timely pay any Operating Expense when it becomes due and payable, Lessor shall have the right, at its option, to make such payment at the expense of Lessee as reasonably required. Any amount so expended by Lessor shall be paid by Lessee promptly after demand. With respect to those Operating Expenses billed to or otherwise paid by the Lessor, Lessee's payment of Operating Expenses shall be due thirty (30) days after receipt of an itemized statement thereof from Lessor. Lessor shall provide Lessee with a written statement of the actual Operating Expenses billed to Lessor for each calendar quarter, within fifteen (15) days after the end of the quarter. The Lessor shall maintain separate detailed records of the Operating Expenses billed to Lessor, and shall make these available on a reasonable basis for examination by Lessee. Within sixty (60) days of the end of each calendar year, Lessor shall provide to Lessee an annual itemized statement of Operating Expenses billed to Lessor, with an explanation of any corrections to the quarterly statements for the prior year, and the next payment to the Lessor shall be adjusted to the extent necessary to take into account any such corrections.

“Operating Expenses” as used herein means:

- (i) All ordinary and special assessments and other governmental charges, that are assessed upon all or any part of the Property, including any tax or other levy on or measured by any rent collected by Lessor with respect to the Property, and any expenses incurred by Lessor in contesting any of the foregoing or the assessed valuation of all or any part of the Property.
- (ii) All costs of utilities, including without limitation, water, sewer, power, garbage removal and recycling services.
- (iii) All premiums on policies of public liability, casualty, and property damage insurance maintained by Lessor with respect to the Property.
- (iv) All property taxes, if any, on the Improvements (as defined below) and the Property.
- (v) All other expenses in connection with the operation, management, maintenance, subleasing and upkeep of the Property.

5. Use.

(A) Permitted Use. Lessee may only use the Property, subject to the terms of this Master Lease. Lessee further agrees that it shall not use or permit the use of the Property, or any part thereof, in any way which would violate any of the terms of this Master Lease, or the certificate of occupancy for the Property, or the laws of the State of California, or any directions, rules or regulations of the Health Officer, Fire Marshall, Building Inspector, Lessor or officers of any public authority having jurisdiction over the Property.

(B) Use Restrictions. In no event shall Lessee’s use of the Property consist of operation of any of the following prohibited activities or businesses: (i) any trade or business consisting predominantly of the development or holding of intangibles for sale or license; (ii) any trade or business the principal activity of which is farming within the meaning of Section 2032A(e)(5)(A) of the Internal Revenue Code of 1986 or corresponding provisions of subsequent superceding federal law (the “Code”); or (iii) any other trade, business or activity, prohibited by any amendment to Section 45D of the Code and any temporary, proposed or final regulations promulgated by the U.S. Treasury pursuant to the Code, and any other guidance published by the Internal Revenue Service; (iv) private or commercial golf course; country club; massage parlor; hot tub facility; suntan facility; race track or other facility used for gambling; any store the principal business of which is the sale of alcoholic beverages for consumption off premises; shooting gallery; adult bookstore or facility selling or displaying pornographic books, literature or videotapes (materials shall be considered “adult” or “pornographic” for such purposes if the same are not available for sale or rental to children under 18 years old because they explicitly deal with or depict human sexuality); bingo or similar games of chance, however lottery tickets and other items commonly sold in retail establishments may be sold as an incidental part of business; or video game or amusement arcade, except as an incidental part of another primary business. The activities and businesses described in clauses (i) through (iv) above are referred to herein, collectively, as “Prohibited Uses.” Lessee shall not permit any Prohibited Use to occur upon the Property. Lessee shall not sublease the Property or any portion of the Property to any person or entity engaged in any Prohibited Use or for the purpose of engaging in any Prohibited Use. Any sublease for the Property or for any portion of the

Property shall provide that the conduct or operation of any Prohibited Uses upon the Property is grounds for immediate termination. Furthermore, in no event shall Lessee use the Property to provide dwelling units, or other areas with sleeping accommodations, on other than a transitory basis.

(C) Hazardous Substances. Lessee shall not, without Lessor's prior written consent, keep on or around the Property for use, disposal, transportation, treatment, storage or sale, any substance designated as, or containing components designated as, hazardous, dangerous, toxic or harmful (collectively referred to as "Hazardous Substances") and/or subject to regulation by any federal, state or local law, regulation, statute or ordinance, except those which are normally used day-to-day for standard industrial, municipal, office, retail or commercial purposes and which shall be used in compliance with all applicable laws and regulations.

(D) Nuisance. Lessee shall not cause, maintain or permit any nuisance in or about the Property, nor commit or suffer any waste in or about the Property.

(E) Increase in Rate of Fire Insurance. Lessee will not do anything in or to the Property or bring anything into the Property or permit anything to be done or brought into or kept in the Property that will in any way increase the rate of fire insurance on said Property currently maintained, nor use the Property or any part thereof, nor allow or permit its use, for any business or purpose that would cause an increase in the rate of fire insurance on the Property, unless Lessee agrees to pay the difference in insurance rates charged to Lessor.

6. Lessee's Maintenance and Repair.

(A) Maintenance and Repairs. Lessee shall operate, maintain and occupy the Property in a good, neat, clean, sanitary condition, and in compliance with all applicable laws and regulations. Lessee shall be obligated to maintain all improvements that are now or hereafter part of the Property (collectively, the "Improvements") in good condition, ordinary wear and tear excepted. Lessor acknowledges that at the expiration of this Master Lease, the Improvements may be expected, through ordinary wear and tear, to be at or near the end of their useful lives. Lessor shall not be obligated to perform any repairs or maintenance on the Property except as expressly stated herein. Lessee shall promptly perform or cause to be performed: (i) any required structural or exterior repairs and maintenance; (ii) any repair or restoration to be performed under the terms hereof with insurance proceeds; and (iii) or repairs of any damage to the Property caused by Lessee

(B) No Waste. Lessee will permit no waste, damage or injury to the Property.

(C) Garbage. Lessee shall cause all garbage, recyclables and other debris emanating from the Property to be removed to such reasonable locations and spaces as may be specified by Lessor from time to time during hours and subject to such reasonable controls as may be established by Lessor from time to time.

(D) Lessee's Failure. In the event Lessee fails to maintain or repair the Property as required herein, Lessor shall give Lessee notice of such failure. If Lessee fails to commence the required maintenance or repair within ten (10) days of notice, or as soon thereafter as any necessary permits and approvals can be obtained with reasonable diligence, or fails to diligently prosecute the same to completion, then Lessor shall have the right, at its option, to do such acts and expend such funds at the expense of Lessee as reasonably required to perform such work. Any amount so expended by Lessor shall be paid by Lessee promptly after demand. Lessor shall have no

liability to Lessee for any damage, inconvenience or interference with the use of the Property by Lessee as a result of performing any such work.

(E) Systems. In addition to the above, maintenance of any systems or equipment serving the Property shall be performed by and paid for by Lessee.

7. Alterations, Additions and Improvements. Commencing upon the Delivery Date, Lessee shall make no alterations to the exterior of the building, any structural element of the Property, or any mechanical system serving the building, without the prior written approval of Lessor. All Improvements undertaken by Lessee shall be at Lessee's sole expense, except as otherwise expressly provided herein, and except for property acquired with funding from the United States Economic Development Administration shall become the property of Lessor, remaining in and surrendered with the Property as a part thereof as of the Expiration Date or earlier termination. All work performed shall be done in a workmanlike manner and in compliance with all applicable laws and ordinances. Lessee shall indemnify and hold Lessor harmless from and against all damages, loss, liens or expenses arising out of such work.

8. Indemnification; Liability Insurance.

(A) Waiver. Lessor shall not be liable to Lessee and Lessee, as a material part of the consideration to Lessor, hereby waives all claims against Lessor and assumes all risk of damages for loss to any property or any injury to any person occurring on the Property from any cause whatsoever.

(B) Lessee's Indemnification. Lessee shall indemnify and save Lessor, their officers, agents, employees, contractors, licensees and invitees harmless from all loss, damage, liability or expense (including attorney's fees and other costs incurred in connection with litigation or the defense of claims, whether claims involved litigation) resulting from any actual or alleged injury to any person, or from any actual or alleged loss of or damage to any property (including any and all contamination by any Hazardous Substances in, on or under the Property whether or not caused by Lessee), arising out of Lessee's operation or occupation of the Property or caused by or resulting from any act or omission of Lessee or any licensee, assignee, sublessee or concessionaire, or of any officer, agent, employee, guest, invitee or visitors of any such person or about the Property or from Lessee's breach of its other obligations hereunder. The indemnification provided for in this paragraph shall survive any termination or expiration of this Master Lease. Lessee shall promptly notify Lessor of casualties or accidents occurring in or about the Property.

(C) Lessor's Responsibility. The exculpation, release and indemnity provisions of Sections 8(A) and 8(B) shall not apply to the extent the claims thereunder were caused by Lessor's gross negligence or willful misconduct. However, in no event shall Lessor be liable to Lessee for consequential damages.

(D) Liability Insurance. Lessee shall, at its own expense, maintain comprehensive general liability insurance, with broad form endorsement, in effect with respect to the Property with minimum limits of \$1,000,000 per occurrence, \$2,000,000 in the aggregate, \$5,000,000 umbrella, and a maximum deductible of \$25,000. The insurance carrier must have an AM Best's Rating of A-VII or better. Lessor shall be named as an additional insured and shall, if requested by Lessor, be furnished with a copy of such policy or policies of insurance which shall bear an endorsement that the same shall not be canceled without thirty (30) days' prior notice to Lessor. If Lessee fails to maintain such insurance, Lessor may do so, and Lessee shall reimburse Lessor for the full expense incurred upon demand.

(E) Self-Insurance. Lessee may satisfy the requirements in this Section 8, so long as Lessee is the City of San Jose, in which case the Lessee can self-insure, but remains liable hereunder as if it was the "insured" under the insurance required hereunder..

9. **Damage to the Property.**

(A) Lessee shall give prompt written notice to Lessor after the occurrence of any fire, earthquake, act of God or other casualty to or in connection with the Property, or any Improvements or any portion thereof (hereinafter sometimes referred to as a "Casualty"). Upon the occurrence of any Casualty, Lessor and Lessee, promptly and with all due diligence, shall apply for all applicable insurance proceeds recoverable with respect to such Casualty, for the benefit of the Lessor, Lessee, and their respective mortgagees, as their interests appear.

(B) In the event the Improvements on the Property can be restored, Lessor and Lessee shall cooperate with one another to have such restoration occur as expeditiously as possible.

(C) In the event Lessee shall determine that it is not economically practical to restore the Improvements and/or the Property to substantially the same condition in which they existed prior to the occurrence of such Casualty, then Lessee may terminate this Master Lease as of a date that is not less than thirty (30) days after Lessee provides notice to Lessor.

(D) If the Improvements shall be damaged by Casualty, then Lessee shall have the option, to be exercised within one hundred twenty (120) days after such Casualty:

(i) to repair or restore the Improvements as provided in this Section; or

(ii) with the written consent of each mortgagees of the Property, to terminate this Master Lease by notice to Lessor, which termination shall be deemed to be effective as of a date not less than thirty (30) days after the date such notice is received by Lessor. If Lessee terminates this Master Lease pursuant to this Section, Lessee shall, at Lessor's option, either (i) surrender possession of the Property to Lessor upon the effective date of termination and assign to Lessor or, if same has already been received by Lessee, pay to Lessor, all of its right, title and interest in and to the proceeds from Lessee's insurance upon the Property, subject to the prior rights of any mortgagees therein, or (ii) apply the necessary portion of Lessee's insurance proceeds to restore the Property to as close to the Delivery Date state as possible, remove all debris from the Property and keep any remaining proceeds.

(E) In the event that this Master Lease is terminated pursuant to this Section, the insurance proceeds received as the result of such casualty shall be distributed to Lessee or Lessor as set forth in the preceding paragraph.

(F) The provisions of this Section 9 are subject in all respects to the terms and conditions of Lessor's mortgage loan documents.

10. Fire and Extended Coverage Insurance. Lessee shall obtain and keep in force at all times during the term of this Master Lease, "special form" insurance covering all risks of physical loss or damage to the Property, with liability limits of not less than one hundred percent (100%) of the full replacement value thereof. Such policy shall name Lessor as an additional insured and each mortgagees as a loss payee under a standard mortgagees endorsement. Such policy shall include, but shall not be limited to, coverage for fire, extended coverage, vandalism, malicious mischief and storm. Lessee shall also maintain

insurance covering its furniture, fixtures, equipment and inventory in any amount equal to the full insurable value thereof, insuring against fire and risk covered by a standard extended coverage endorsement on the Property.

11. Real and Personal Property Taxes. Lessee shall pay, prior to delinquency, all real property taxes payable with respect to the Property (if any) provided that if an increase in property taxes results from an assignment or other conveyance of Lessor's interest in the Property, Lessor shall be responsible for payment prior to delinquency of such increase in real property taxes. Lessee shall pay prior to delinquency all personal property taxes payable, if any, with respect to all property of Lessee's located on the Property. Lessee shall promptly upon request of Lessor provide satisfactory evidence of such payment. "Personal property taxes" under this Section 11 shall include all property taxes assessed against the property of Lessee, whether assessed as real or personal property.

12. Encumbrances by Lessee. Lessee shall not have any right, authority or power to bind Lessor, Lessor's assets or any interest of Lessor in the Property, for any claim for labor or material or for any other charge or expense, lien or security interest incurred in connection with the development, construction or operation of the Property and Improvements or any change, alteration or addition thereto.

13. Assignment or Sublease. Lessee shall not assign or sublet the whole or any part of the Property without the prior written consent of Lessor. If Lessee elects to so assign its interest in this Master Lease, with Lessor's consent, the parties shall execute assignment and consent documents acceptable to Lessor. Lessor's consent to such assignment shall not be construed to permit any further assignment without Lessor's prior written consent.

14. Sale. In the event of any sale of the Property, or any assignment of this Master Lease by Lessor, Lessor shall be relieved of all liability under this Master Lease arising out of any act, occurrence, or omission occurring after sale or assignment; and the purchaser or assignee at such sale or assignment or any subsequent sale or assignment of this Master Lease shall be deemed without any further agreement to have assumed all of the obligations of Lessor under this Master Lease accruing after the date of such sale or assignment.

15. Access. Lessee will allow Lessor access to the Property at all reasonable times for the purpose of inspections and making repairs, additions or alterations to the Property as Lessor elect to make, but this access shall not be construed as an agreement on the part of Lessor to make any repairs, additions or alterations.

16. Eminent Domain.

(A) In the event that title to the entire Property shall be lawfully condemned or taken in any manner for any public or quasi-public use or conveyed in lieu of condemnation, this Master Lease shall automatically terminate as of the date possession is required to be delivered to the condemner. In the event that only a portion of the Property is taken and the Property is thereby rendered unsuitable for the conduct of Lessee's business, either party may terminate this Master Lease as of the date when possession of the portion of the Property so taken is delivered to the condemning authority.

(B) Award. Any award for the taking of all or part of the Property under the power of eminent domain, including payment made under threat of the exercise of such power, shall be the property of Lessor, as the case may be, whether made as compensation for diminution in value of the leasehold or for the taking of the fee or as severance damages. Lessee shall only be entitled to such compensation as may be separately awarded or recoverable by Lessee in

Lessee's own right for the loss of or damage to Improvements to the Property installed by Lessee, for Lessee's trade fixtures and removable personal property and for Lessee's relocation or moving expenses, but only so long as such award to Lessee does not reduce Lessor's award. Lessor shall not be liable to Lessee for the loss of the use of all or any part of the Property taken by condemnation.

(C) Lessor Authority. Lessor shall have the exclusive authority to grant possession and use to the condemning authority and to negotiate and settle all issues of just compensation or, in the alternative, to conduct litigation concerning such issues; provided, however, that Lessor shall not enter into any settlement of any separate award that may be made to Lessee without Lessee's prior approval of such settlement, which approval shall not be unreasonably withheld.

17. Default.

(A) Definition of Default. The occurrence of any one or more of the following events shall constitute a material default and breach of the Master Lease by Lessee ("Default"):

(i) vacation or abandonment of all or any portion of the Property;

(ii) failure by Lessee to make any payment required as and when due, where such failure shall continue after ten (10) days' written notice from Lessor;

(iii) failure by Lessee to observe or perform any of the covenants, conditions, or provisions of this Master Lease, other than the making of any payment, where such failure shall continue after thirty (30) days' written notice from Lessor; provided, however, that if the nature of Lessee's obligation is such that more than thirty days are required to cure such failure, Lessee shall not be in default if Lessee commences such cure within thirty days after Lessee's notice and thereafter completes such cure diligently and within a reasonable time; and

(iv) any prohibited assignment, transfer, mortgage, encumbrance or other sublet of the Property without the prior written consent from Lessor, except that the parties agree and acknowledge that a Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement for the benefit of NDC New Markets Investments LXV, LLC, Northern California Community Loan Fund NMTC Sub-CDE III, LLC, and Brownfield Revitalization XV, LLC is permitted.

(B) Lessee Notification. Lessee shall notify Lessor promptly of any Default by Lessee (or event or occurrence which, with the passage of time, the giving of notice, or both, would become a Default) that by its nature is not necessarily known to Lessor.

(C) Lessor Default. Lessor shall be in default if it fails to observe or perform any of the covenants, conditions, or provisions of this Master Lease, where such failure shall continue after thirty days written notice from Lessee; provided, however, that if the nature of Lessor's obligation is such that more than thirty days are required for performance, Lessor shall not be in default if Lessor commences performance within thirty days after Lessee's notice and thereafter completes such performance diligently and within a reasonable time. In no event shall a default by Lessor under this Master Lease give rise to any right of Lessee to terminate this Master Lease or withhold or offset the payment of rent. The obligations of Lessee to pay rent shall continue

unaffected in all events unless suspended or terminated pursuant to an express provision of this Master Lease.

18. Remedies In Default.

(A) Lessor Remedies. In the event of any Default by Lessee, Lessor may, at any time without waiving or limiting any other right or remedy, do any one or more of the following: (a) re-enter and take possession of the Property without terminating this Master Lease, or (b) terminate this Master Lease, and (c) pursue any remedy allowed by law or equity.

(i) Termination. In the event Lessor elects to terminate this Master Lease, Lessor shall be additionally entitled to recover from Lessee the award by a court having jurisdiction thereof of the amount by which the unpaid rent and other charges and adjustments called for herein for the balance of the term after the time of such award exceeds the amount of such loss for the same period that Lessee proves could be reasonably avoided.

(ii) No Termination. No re-entry or taking possession of the Property by Lessor pursuant to this Section, or acceptance of Lessee's keys to or surrender of the Property shall be construed as an election to terminate this Master Lease unless a written notice of such intention is given to Lessee. Notwithstanding any reentry or termination, the liability of Lessee for the rent shall continue for the balance of the Term until the Expiration Date, and Lessee shall make good to Lessor any deficiency arising from reletting the Property at a lesser rent than the Rent provided for in this Master Lease. Lessee shall pay such deficiency each month as the amount thereof is ascertained by Lessor.

(B) Lessee Remedies. In the event of Lessor default, Lessee shall be entitled to pursue any remedy available to it under the law, provided however that Lessee shall look only to Lessor's property in the Property for the satisfaction of Lessee's remedies for the collection of a judgment or other judicial process requiring the payment of money by Lessor in the event of any default by Lessor hereunder, and no other property or assets of Lessor or any member of Lessor shall be subject to such enforcement procedure for the satisfaction of Lessee's remedies under this Master Lease.

19. **Surrender of Possession**. Upon the Expiration Date, or other termination of the term, Lessee shall promptly and peacefully surrender the Property to Lessor, in good condition and repair, except for ordinary wear and tear. Trade fixtures, furnishings, and equipment installed by Lessee shall be the property of Lessee. Upon termination, Lessee shall remove all of Lessee's personal property from the Property. Any damage caused by such removal shall be repaired by Lessee at its expense. Any Lessee's property not removed by Lessee on or prior to the Expiration Date shall be deemed abandoned and may be removed and disposed of by Lessor without accountability to Lessee and as the sole cost and expense of Lessee. If Lessor sells any of Lessee's Property, Lessor may receive and retain the proceeds of such sale as the property of Lessor.

20. Renewal Option

(A) Extension Time. Lessee shall have one (1) option to renew this Master Lease (the "Option"), for an additional ten (10) year period (the "Extension Term") commencing on the date following the Expiration Date, upon terms and conditions contained in this Lease, provided that the Rent payable during the applicable Extension Term shall be determined pursuant to Paragraph 20(B) below. The Option is personal to the original Lessee named herein and may not be exercised by any sublessee or assignee, or by any other successor or assign of Lessee. The Option shall be

effective only if Lessee is not in default under this Master Lease, nor has any event occurred which with the giving of notice or the passage of time, or both, would constitute an Event of Default hereunder, either at the time of exercise of the Option or the time of commencement of the applicable Extension Term. To exercise the Option for the Extension Term, Lessee shall give Lessor written notice (the "Extension Notice") of exercise of said Option not less than six (6) months prior to the Expiration Date.

(B) Rent Adjustment. Upon receipt of Lessee's Extension Notice, Lessor will prepare and present to Lessee a proposed Rent adjustment for the Extension Term. Lessor shall use the Consumer Price Index for All Urban Consumers for the San Jose area (the "CPI") as an index to determine its proposed Rent for the Extension Term. If the CPI is discontinued, Lessor will use the index promulgated by the Department of Labor which in Lessor's opinion must closely approximate the CPI. Lessor and Lessee shall have six (6) months from the date of the Extension Notice but no later than the Expiration Date to negotiate the adjustment to Rent for the Extension Term. If the Lessee and Lessor cannot agree on the Rent adjustment, then this right to extend the Term shall terminate.

21. General Provisions.

(A) Attorney's Fee. In the event Lessor reasonably requires the services of any attorney in connection with any Default or violation by Lessee of the terms of this Master Lease or the exercise by Lessor of its remedies for any Default by Lessee under this Master Lease, or a request by Lessee for Lessor's waiver of any terms of this Master Lease or extension of time to perform or pay any obligation of Lessee under this Master Lease; Lessee shall promptly on demand reimburse Lessor for its reasonable attorneys' fees incurred in such instance. In the event of any litigation, arbitration or other proceeding (including proceedings in bankruptcy and probate and on appeal) brought to enforce or interpret or otherwise arising under this Master Lease, the substantially prevailing party therein shall be entitled to the award of its reasonable attorneys' fees, witness fees, and court costs incurred therein and in preparation therefor.

(B) Waiver of Subrogation. Lessee and Lessor each releases the other, and its employees, agents, and representatives, from liability, and waives its entire right of recovery against the other for loss or damage occurring in or about the Property to the extent such loss or damages is covered under fire, casualty and all risk insurance policies, including extended coverage endorsements, carried by the parties. Each party agrees that each such insurance policy obtained by it with respect to the Property shall include a waiver by the insurer of its subrogation rights for such losses and damages. The foregoing mutual waivers shall be effective only so long as such waivers are available in the State of California and do not invalidate the insurance coverage.

(C) Waiver. Neither the acceptance of rental nor any other act or omission of Lessor at any time or times under the happening of any breach or default by Lessee hereunder, shall operate as a waiver of any past or future violation, breach or failure to keep or perform any covenant, agreement, term or condition hereof, or to deprive Lessor of its right to cancel or forfeit this Master Lease, or be construed so as to at any future time estop Lessor from promptly exercising any option, right or remedy that it may have under any term or provision of this Master Lease.

(D) Quiet Enjoyment. Upon fully complying with and promptly performing all other terms, covenants and conditions required of it under the terms of this Master Lease, Lessee shall have and quietly enjoy the Property during the term of this Master Lease.

(E) Notices. All notices required or permitted hereunder shall be in writing and may be either delivered personally or mailed. If mailed, they shall be sent by postage prepaid or certified or registered mail, return receipt requested, to Lessor at their addresses, or at Lessee at the Property, or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed shall be conclusive evidence of the date of mailing. Either party may change its address for notices by notice to the other party.

If to Lessor: EIC QALICB, Inc.
 Attn: President/Chairperson
 200 E. Santa Clara Street, 10th Floor
 San Jose, CA 95113

If to Lessee: City of San Jose
 Attn: Jo Zientek
 200 E. Santa Clara Street, 10th Floor
 San Jose, CA 95113

(F) Encumbrance. The Lease is expressly made subject and subordinate to any mortgage, deed of trust, ground lease, underlying lease or like encumbrance affecting any part of the Property or any interest of Lessor therein which is now existing or hereafter executed or recorded ("Encumbrance"). Lessee agrees to give any holder of any Encumbrance, covering any part of the Property ("Mortgagees"), by certified mail, a copy of any notice of default served upon Lessor. If Lessor shall have failed to cure such default within thirty (30) days from the effective date of such notice of default, then the Mortgagees' shall have an additional thirty (30) days within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default (including the time necessary to foreclose or otherwise terminate its Encumbrance, if necessary to effect such cure), and the Lease shall not be terminated so long as such remedies are being diligently pursued.

(G) Successors and Assigns. Subject to the provisions hereof pertaining to assignment and subletting, the covenants and agreements of this Master Lease shall be binding on the heirs, legal representatives, successors and assigns of the parties hereto.

(H) Subordination, Estoppel Certificates; Attornment. It is understood and agreed that Lessor may mortgage, or grant deeds of trust with respect to the Property or the property of which such Property are a part. On Lessor's request, Lessee agrees to promptly execute and deliver such certificates as may be reasonably required by Lessor or any mortgagee, trust deed beneficiary, or purchaser. Such certificates shall reflect that the Master Lease is in full force and effect, the dates to which the rent and charges have been paid and other Master Lease-related matters. Upon any foreclosure (or conveyance in lieu thereof) and a demand by Lessor's successor, Lessee shall attorn to and recognize such successor as Lessor under this Master Lease, such attornment shall be in a form as lender, Lessor may approve and shall provide that the Lessee shall not have the right of set off or defense to payment of rents for any event or act that occurred prior to such successor obtaining title to Lessor, as the case may be, interest except to the extent such event or act is continuing at the time such successor obtains such title. Lessee also agrees to execute such further evidences of attornment as lender may from time to time request. The provisions of this Subparagraph 22(H) shall be self-operative and no further agreement of the Lessor, Lessee or lender shall be necessary.

(I) Force Majeure. If either party shall be prevented or delayed from punctually performing any obligation or satisfying any condition under this Master Lease, other than the payment of rent or other sums due hereunder, by any strike, lockout, labor dispute, inability to obtain labor or materials or reasonable substitutes therefor, acts of God, governmental restriction, regulation or control, enemy or hostile governmental action, civil commotion, insurrection, sabotage, fire or other casualty, or any other condition beyond the reasonable control of such party, then the time to perform such obligation or satisfy such condition shall be extended by the delay caused by, such event. If either party shall, as a result of any such event, be unable to exercise any right or option within any time limit provided therefor in this Master Lease, such time limit shall be deemed extended for a period equal to the duration of the delay caused by such event.

(J) Severability. The invalidity, unenforceability, or waiver of any provision of this Master Lease shall not affect or impair any other provision.

(K) Master Lease, Conditions and Restrictions. Lessee's rights under this Master Lease are subject to that certain Ground Lease dated _____ by and between _____ (the "Ground Lessor") and Lessor (as Ground Lessee) (the "Ground Lease") and any covenants, conditions, or restrictions now or hereafter recorded against the Property and/or the real property on which the Property is located.

(L) Full Agreement. No provision of this Master Lease may be amended or added except by an agreement in writing signed by the parties hereto or their respective successors in interest, and having the written consent of each mortgagee's of the Property.

[Signatures on following page.]

IN WITNESS WHEREOF, the parties hereto have executed this Master Lease as of the day and year first above set forth.

LESSEE:

CITY OF SAN JOSE
a California municipal corporation

By: _____
Norberto Dueñas,
Deputy City Manager

(Signatures continue on following page)

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public personally appeared Norberto Dueñas, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature _____ (Seal)

IN WITNESS WHEREOF, the parties hereto have executed this Master Lease as of the day and year first above set forth.

LESSOR:

EIC QALICB, INC.

a California nonprofit public benefit corporation

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

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public personally appeared Matthew Morley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature _____ (Seal)

Exhibit A
Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF San Jose, COUNTY OF SANTA CLARA, STATE OF California AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

All of Parcel 1 as described in the Grant Deed recorded on September 28, 1973 in Book 0584 at Pages 211-213 and all of the property described in the Grant Deed recorded on March 27, 1973 in Book 295 at Pages 217-218, Official Records of Santa Clara County.

and, in addition thereto, the following area:

Beginning at the most westerly corner of Parcel 3 as described in said Grant Deed recorded in Book 0584 at Pages 211-213, said point being on the southeasterly line of Las Plumas Avenue (80' wide);

Thence along the southwesterly line of said Parcel 3, S 39° 15' 00" E 408.44 feet to the most southerly corner of said Parcel 3;

Thence along the southeasterly line of said Parcel 3, N 50° 45' 00" E 7.37 feet to a point that is 185.00 feet, measured at a right angle, from the northeasterly line of said Parcel 3;

Thence leaving said southeasterly line of Parcel 3, parallel with said northeasterly line of Parcel 3, N 38° 11' 00" W 408.51 feet to the northwesterly line of said Parcel 3, said point also being on said southeasterly line of Las Plumas Avenue;

Thence along said northwesterly line of Parcel 3 and said southeasterly line of Las Plumas Avenue, S 50° 45' 00" W 14.97 feet to the Point of Beginning.

Said Land being Parcel A as described in the Lot Line Adjustment Permit recorded July 13, 2011 as Instrument No. 21237478 in the Office of the Santa Clara County Recorder.

PARCEL TWO:

A non-exclusive easement for the purpose of ingress and egress over a strip of land 80.0 feet in width described as follows:

Beginning at a point on the center line of King Road, at the northernmost corner of that certain 11.33 acre tract of land conveyed by the Western Pacific Railroad Company to the United States Printing & Lithograph Company by Deed recorded January 19, 1955 in Book 3063, Page 224 of Official Records, Santa Clara County, California; thence from said point of beginning South 50° 45' West along the southerly side of an 80 foot wide street known as Las Plumas Street, a distance of 1529.27 feet; thence North 39° 15' West, a distance of 80.0 feet to a point on the Northerly line of said road; thence North 50° 45' East along said Northerly line, a distance of 1530.84 feet, more or less, to a point on said center line of King Road; thence South 38° 06' East along said center line, a distance of 61.39 feet; thence South 38° 11' East a distance of 18.61 feet to the point of beginning.

APN: 254-03-022 (ptn.)

Exhibit B
Annual Rent

<i>Year</i>	<i>Annual Base Rent</i>		<i>Year</i>	<i>Annual Base Rent</i>
2011	-		2033	\$644,000
2012	-		2034	\$660,000
2013	\$392,000		2035	\$677,000
2014	\$402,000		2036	\$694,000
2015	\$412,000		2037	\$711,000
2016	\$422,000		2038	\$729,000
2017	\$433,000		2039	\$747,000
2018	\$444,000		2040	\$766,000
2019	\$455,000		2041	\$785,000
2020	\$466,000		2042	\$805,000
2021	\$478,000		2043	\$825,000
2022	\$490,000		2044	\$846,000
2023	\$502,000		2045	\$867,000
2024	\$515,000		2046	\$889,000
2025	\$528,000		2047	\$911,000
2026	\$541,000		2048	\$934,000
2027	\$555,000		2049	\$957,000
2028	\$569,000		2050	\$981,000
2029	\$583,000		2051	\$1,006,000
2030	\$598,000		2052	\$1,031,000
2031	\$613,000		2053	\$1,057,000
2032	\$628,000			

WHEN RECORDED, MAIL TO:

Jane Rakay Nelson
Kantor Taylor Nelson Boyd & Evatt P.C.
1501 Fourth Avenue, Suite 1610
Seattle, WA 98101

Assessor's Parcel Number: _____

Space above this line for recording purposes

MEMORANDUM OF MASTER LEASE

(INSERT TITLE OF DOCUMENTS TO BE RECORDED)

*THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)*

AFTER RECORDING, RETURN TO:

Jane Rakay Nelson
Kantor Taylor Nelson Boyd & Evatt P.C.
1501 Fourth Avenue, Suite 1610
Seattle, WA 98101

MEMORANDUM OF MASTER LEASE

Effective October [], 2011 (the “Commencement Date”), **CITY OF SAN JOSE**, a California municipal corporation (“Lessee”), and **EIC QALICB, INC.**, a California nonprofit public benefit corporation (“Lessor”), entered into a lease (the “Lease”) in connection with the lease of certain real property located at 1608 Las Plumas Avenue, in the City of San Jose, County of Santa Clara, California, commonly known as the Environmental Innovation Center (the “Leased Premises”), located on land legally described in **Exhibit A** attached hereto and made a part hereof, together with certain other improvements and all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining thereto or to the Leased Premises (collectively, the “Land” and, together with the Leased Premises, the “Property”), and, in furtherance thereof, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Leased Premises, pursuant and subject to all of the terms and provisions set forth in the Lease. All capitalized terms not defined herein have the same meaning set forth in the Lease, reference to which is made for the balance of its terms and conditions.

The Lease commences on the Commencement Date and expires at midnight on October 31, 2053, except if otherwise terminated in accordance with the Lease.

(Signatures on succeeding pages)

LESSEE:

CITY OF SAN JOSE,
a California municipal corporation

By: _____

Name: _____

Title: _____

STATE OF CALIFORNIA)

) ss:

COUNTY OF SANTA CLARA)

On October _____, 2011, before me, _____, Notary Public, personally appeared _____, _____, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Seal)

Signature: _____

EXHIBIT A

LEGAL DESCRIPTION

All of Parcel 1 as described in the Grant Deed recorded on September 28, 1973 in Book 0584 at Pages 211-213 and all of the property described in the Grant Deed recorded on March 27, 1973 in Book 295 at Pages 217-218, Official Records of Santa Clara County.

and, in addition thereto, the following area:

Beginning at the most westerly corner of Parcel 3 as described in said Grant Deed recorded in Book 0584 at Pages 211-213, said point being on the southeasterly line of Las Plumas Avenue (80' wide);

Thence along the southwesterly line of said Parcel 3, S 39°15'00" E 408.44 feet to the most southerly corner of said Parcel 3;

Thence along the southeasterly line of said Parcel 3, N 50°45'00" E 7.37 feet to a point that is 185.00 feet, measured at a right angle, from the northeasterly line of said Parcel 3;

Thence leaving said southeasterly line of Parcel 3, parallel with said northeasterly line of Parcel 3, N 38°11'00" W 408.51 feet to the northwesterly line of said Parcel 3, said point also being on said southeasterly line of Las Plumas Avenue;

Thence along said northwesterly line of Parcel 3 and said southeasterly line of Las Plumas Avenue, S 50°45'00" W 14.97 feet to the Point of Beginning.

PARCEL B

All of Parcel 3 as described in the Grant Deed recorded on September 28, 1973 in Book 0584 at Pages 211-213, Official Records of Santa Clara County.

excepting therefrom, the following area:

Beginning at the most westerly corner of Parcel 3 as described in said Grant Deed recorded in Book 0584 at Pages 211-213, said point being on the southeasterly line of Las Plumas Avenue (80' wide);

Thence along the southwesterly line of said Parcel 3, S 39°15'00" E 408.44 feet to the most southerly corner of said Parcel 3;

Thence along the southeasterly line of said Parcel 3, N 50°45'00" E 7.37 feet to a point that is 185.00 feet, measured at a right angle, from the northeasterly line of said Parcel 3;

Thence leaving said southeasterly line of Parcel 3, parallel with said northeasterly line of Parcel 3, N 38°11'00" W 408.51 feet to the northwesterly line of said Parcel 3, said point also being on said southeasterly line of Las Plumas Avenue;

Thence along said northwesterly line of Parcel 3 and said southeasterly line of Las Plumas Avenue, S 50°45'00" W 14.97 feet to the Point of Beginning.

The Real Property or its address is commonly known as 1608 Las Plumas Avenue, San Jose, California 95133. The Assessor's Parcel Numbers for the Real Property are

_____.

RECORDATION REQUESTED BY:

NDC New Markets Investments LXV, LLC
708 Third Avenue, Suite 710
New York, New York 10017

WHEN RECORDED MAIL TO:

NDC New Markets Investments LXV, LLC
708 Third Avenue, Suite 710
New York, New York 10017

FOR RECORDER'S USE ONLY

DOCUMENT COVER SHEET

TITLE OF DOCUMENT: SUBORDINATION, NON-DISTURBANCE AND
ATTORNMEN T AGREEMENT

DATE OF DOCUMENT: October __, 2011

GROUND LESSOR: **The City of San Jose**
Mailing Address: 200 E. Santa Clara Street, 10th Floor
San Jose, California 95113

GROUND LESSEE: **EIC QALICB, Inc.**
Mailing Address: 200 E. Santa Clara Street, 10th Floor
San Jose, California 95113

SUBLESSEE: **The City of San Jose**
Mailing Address: 200 E. Santa Clara Street, 10th Floor
San Jose, California 95113

LENDER: **NDC New Markets Investments LXV, LLC**
Mailing Address: 708 Third Avenue, Suite 710
New York, New York 10017

Mailing Address: **Northern California Community Loan Fund NMTC
Sub-CDE III, LLC**
870 Market Street, Suite 677
San Francisco, California 94102

Mailing Address: **Brownfield Revitalization XV, LLC**
111 East Hargett Street, Suite 300,
Raleigh, North Carolina 27601

LEGAL DESCRIPTION: See Attached Exhibit A

REFERENCE BOOK & PAGE:

SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMENT AGREEMENT (this "Agreement") is made and entered into as of October __, 2011, by and among the City of San Jose, a California municipal corporation (in its capacity as lessor under the Ground Lease (as defined herein), the "Ground Lessor"), EIC QALICB, Inc., a California nonprofit public benefit corporation (the "Owner"), the City of San Jose, a California municipal corporation (in its capacity as lessee under the Lease (as defined herein), the "Tenant"); NDC New Markets Investments, LXV, LLC, a Delaware limited liability company ("NDC CDE"), Northern California Community Loan Fund NMTC Sub-CDE III, LLC, a California limited liability company ("NCCLF CDE"), and Brownfield Revitalization XV, LLC, a Delaware limited liability company ("BR CDE" and, collectively with the NDC CDE and the NCCLF CDE, the "Lender").

RECITALS

WHEREAS, Ground Lessee is the leasehold owner of certain improved real property located at 1608 Las Plumas Ave., San Jose, California, more particularly described on Exhibit A attached hereto, together with certain improvements thereon and all appurtenances, easements, rights of way and other rights belonging to or in any way pertaining thereto (the "Real Estate") pursuant to the Ground Lease (the "Ground Lease") dated October __, 2011 between Ground Lessor, as lessor, and Owner, as lessee; and

WHEREAS, the Lender is making loans to the Owner in the aggregate principal amount of \$25 to provide financing for the acquisition, development, renovation and construction of a demonstration center for emerging clean technology companies that will include a construction materials reuse/resale store to be operated by Habitat for Humanity and a 10,000 square foot facility to house a permanent household hazardous waste drop off facility on the Real Estate (the "Project"); and

WHEREAS, Tenant is leasing the Project from Owner pursuant to the terms of that certain Master Lease dated October __, 2011, between Owner, as lessor, and Tenant, as lessee (the "Lease"); and

WHEREAS, Owner has entered into and delivered that certain Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Financing Statement dated on or about October __, 2011, in favor of Lender to be recorded in the Office of the Clerk-Recorded for Santa Clara County, California prior to the recording of this Agreement (the "Deed of Trust"), as security for those certain loans (collectively, the "Loan") from Lender to Owner, evidenced by a promissory notes in the aggregate principal amount of \$25,994,814 (collectively, the "Note") (the Deed of Trust and all other documents evidencing, securing or otherwise executed in connection with the Loan, are hereinafter collectively referred to as the "Loan Documents"); and

WHEREAS, the Loan requires that Lender consents to any lease of the Real Estate.

NOW, THEREFORE, in consideration of the forgoing, of mutual promises of the parties

hereto and of other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereby agree as follows:

1. SUBORDINATION. Subject to the terms of this Agreement, the Lease is hereby made subject, junior and subordinate to the Deed of Trust and to all renewals, modifications, consolidations, replacements and extensions of the Deed of Trust so that all rights of Tenant under the Lease shall be subject, junior and subordinate to the rights of the Lender under the Deed of Trust and to all renewals, modifications, consolidations, replacements and extensions of the Deed of Trust as fully as if such instrument had been executed, delivered and recorded prior to the execution of the Lease or possession of all or part of the Real Estate by the Tenant or its predecessors in interest.

2. LENDER'S RIGHT TO RECOGNIZE THE LESSEE'S RIGHTS UNDER THE LEASE. If the interests of Owner under the Lease shall be transferred to and owned by Lender, its nominee or assignee or any purchaser by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or by any other manner, provided that the Tenant is not then in default (beyond any period given Tenant to cure such default) in the payment of rent or additional rent or in the performance of any of the terms, covenants or conditions of the Lease to be performed by Tenant, or provided that Lender elects to so recognize such rights regardless of such default (but in no way shall such election waive Lender's rights otherwise because of such default), the Tenant's possession of the Real Estate and Tenant's rights and privileges under the Lease, or any extensions or renewals thereof, shall not be diminished or interfered with by Lender, its nominee or assignee, or such purchaser, as applicable, and Tenant's occupancy of the Real Estate shall not be disturbed by Lender, its nominee or assignee or such purchaser, as applicable, during the remaining term of the Lease or any extensions or renewals thereof for any reason, except for a subsequent default by Tenant (beyond any period given Tenant to cure such default) under the Lease.

3. GROUND LESSOR'S RECOGNITION OF LENDER UNDER THE GROUND LEASE. If the interests of Owner under the Ground Lease shall be transferred to or owned by Lender, its nominee or any assignee or any purchaser by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or by any other manner, the Ground Lease shall not terminate, and Lender's possession of the Real Estate thereunder shall not be disturbed by Ground Lessor, its nominee or assignee or such purchaser, as applicable, during the remaining term of the Ground Lease or any extension or renewals thereof for any reason, except for a subsequent default by Lender (beyond any period given Owner to cure such default) under the Ground Lease. Moreover, if Owner is in default under the Ground Lease, Ground Lessor shall not exercise any right to terminate the Ground Lease or to otherwise exercise any of its remedies thereunder without first giving Lender notice thereof and an opportunity to cure the same consistent with the provisions of this Agreement.

4. ATTORNMENMENT UNDER THE LEASE.

A. If the interests of Owner under the Lease shall be transferred to and owned by Lender, its nominee or assignee or purchaser by reason of foreclosure or other proceedings brought in lieu of or pursuant to a foreclosure, or by any other manner, and Lender, its nominee or assignee, or such purchaser succeeds to the interest of the Owner under the Lease, Tenant agrees that Tenant shall be bound to Lender, its nominee, assignee or such purchaser, as applicable, under all of the terms, covenants and conditions of the Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Lease, with the same force and effect as if Lender, its nominee, assignee or such purchaser, as applicable, were the landlord under the Lease, and Tenant does hereby attorn to Lender, or its nominee, assignee or purchaser, as the case may be, as its landlord, said attornment to be effective and self-operative immediately upon Lender, or its nominee, assignee or purchaser, as the case may be, succeeding to the interest of the Owner under the Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Tenant shall be under no obligation to pay rent to Lender, or its nominee, assignee or purchaser, as the case may be, by reason of such attornment until Tenant receives written notice from Lender, or its nominee, assignee or purchaser, as the case may be, that such party has succeeded to the interest of the Owner under the Lease. The respective rights and obligations of Tenant and Lender, or its nominee, assignee or purchaser, as the case may be, upon such attornment, to the extent of the then remaining balance of the term of the Lease and any such extensions and renewals, shall be and are the same as set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Lease in this Agreement by reference with the same force and effect as if set forth at length herein.

B. Tenant waives any and all rights to terminate the Lease by reason of the foreclosure of the Deed of Trust. If any court holds the Lease to be terminated by reason of such a foreclosure and if the Lender or its nominee, assignee or any purchaser at foreclosure of the Deed of Trust, has not exercised any available right to terminate the Lease under Section 2 above, this Agreement shall be deemed to be a new lease between the Lender, its nominee, assignee or any purchaser at such foreclosure, as landlord, and Tenant, as tenant, for the balance of the term of the Lease at the same rental therein provided and upon the same terms and conditions as therein provided. Also, in such event and at the written request of the Lender, its nominee, assignee or such purchaser at foreclosure, Tenant shall execute and deliver a new lease for the balance of the term of the Lease at the same rental therein provided and upon the same terms and conditions as therein provided.

5. ATTORNMENMENT UNDER THE GROUND LEASE.

A. If the interests of Owner under the Ground Lease shall be transferred to and owned by Lender, its nominee or assignee or purchaser by reason of foreclosure or other

proceedings brought in lieu of or pursuant to a foreclosure, or by any other manner, and Lender, its nominee or assignee, or such purchaser succeeds to the interest of Owner under the Ground Lease, Lender, its nominee, assignee or such purchaser, as applicable, shall be bound to Ground Lessor under all of the terms, covenants and conditions of the Ground Lease for the balance of the term thereof remaining and any extensions or renewals thereof which may be effected in accordance with any option therefor in the Ground Lease, with the same force and effect as if Lender, its nominee, assignee or such purchaser, as applicable, were the tenant under the Ground Lease, and Lender, its nominee, assignee or purchaser, as the case may be, does hereby attorn to Ground Lessor as its landlord, said attornment to be effective and self operative immediately upon Lender, or its nominee, assignee or purchaser, as the case may be, succeeding to the interest of the Owner under the Ground Lease without the execution of any further instruments on the part of any of the parties hereto; provided, however, that Lender, its nominee, assignee or purchaser, as the case may be, shall be under no obligation to pay rent to Ground Lessor by reason of such attornment until such party has succeeded to the interest of Owner under the Ground Lease. The respective rights and obligations of Ground Lessor and Lender, or its nominee, assignee or purchaser, as the case may be, upon such attornment, to the extent of the then remaining balance of the term of the Ground Lease and any such extensions and renewals, shall be and are the same as set forth therein; it being the intention of the parties hereto for this purpose to incorporate the Ground Lease into the applicable provisions of this Agreement by reference with the same force and effect as if set forth at length herein.

B. Ground Lessor waives any and all rights to terminate the Ground Lease by reason of the foreclosure of the Deed of Trust. If any court holds the Ground Lease to be terminated by reason of such a foreclosure and if Lender or its nominee, assignee or any purchaser at foreclosure of the Deed of Trust, has not exercised any available right to terminate the Ground Lease under Section 3 above, this Agreement shall be deemed to be a new lease between the Lender, its nominee, assignee or any purchaser at such foreclosure, as tenant, and Ground Lessor, as landlord, for the balance of the term of the Ground Lease at the same rental therein provided and upon the same terms and conditions as therein provided. Also, in such event and at the written request of the Lender, its nominee, assignee or such purchaser at foreclosure, Ground Lessor shall execute and deliver a new lease for the balance of the term of the Ground Lease at the same rental therein provided and upon the same terms and conditions as therein provided.

6. LENDER NOT BOUND BY CERTAIN ACTS OF OWNER.

A. If Lender or its nominee, assignee or purchaser at a foreclosure sale or proceeding in lieu thereof (a "Lender Party") shall succeed to the interest of Owner under the Lease, such party shall not be liable for any act or omission of any prior landlord (including Owner) unless such act or omission continues during Lender's control of the Property after receipt of notice from Tenant of such act or omission and Lender thereafter takes no action to cure; nor subject to any offsets or defenses which Tenant might have against any prior landlord (including Owner),

including without limitation all rights of offset, which shall be of no force and effect from and after the date a Lender Party succeeds to the interest of Owner under the Lease; nor bound by any rent or additional rent which Tenant might have paid for more than the then current installment; nor bound by any amendment or modification of the Lease made without its consent; nor obligated to comply with any obligations of Owner under the Lease regarding the completion of construction of the improvements to be constructed on the Real Estate. In the event of a default by Owner under the Lease or any occurrence that would give rise to an offset against rent or claim against Owner under the Lease, Tenant will use its best efforts to set off such defaults against rents currently due Owner (subject to the limits on Tenant's offset rights set forth in this Agreement) and will give Lender written notice of such defaults or occurrence at the address of Lender as set forth above and will give Lender such time as, in Lender's opinion, is reasonably required to cure such default or rectify such occurrence, provided Lender uses reasonable diligence to correct the same. Tenant agrees that notwithstanding any provision of the Lease to the contrary, Tenant will not be entitled to cancel the Lease, or to abate or offset against the rent, or to exercise any other right or remedy until Lender has been given notice of default and opportunity to cure such default as provided herein. If, in Lender's opinion, Owner's default is not curable by Lender, Lender may at its option assume all of Owner's right, title and interest in the Lease and all of Owner's obligations and covenants under the Lease, and thereafter Tenant shall attorn to Lender or Lender's nominee, assignee or purchaser as the Owner under the Lease, and if the Lender so elects, Tenant shall not have the right to terminate the Lease as a result of Owner's default.

B. If Lender or a Lender Party shall succeed to the interest of Owner under the Ground Lease, such party shall not be liable for any act or omission of Owner under the Ground Lease, unless such act or omission continues during Lender's control of the Property after receipt of notice from Ground Lessor of such act or omission and Lender thereafter takes no action to cure; nor subject to any offsets or defenses which Ground Lessor might have against Owner under the Ground Lease, including without limitation all rights of offset, which shall be of no force and effect from and after the date Lender or a Lender Party succeeds to the interest of Owner under the Ground Lease; nor bound by any rent or additional rent which Owner might have paid for more than the then current installment; nor bound by any amendment or modification of the Ground Lease made without its consent; nor obligated to comply with any obligations of Owner under the Lease regarding the completion of construction of the improvements to be constructed on the Real Estate. Ground Lessor agrees that notwithstanding any provision of the Ground Lease to the contrary, Ground Lessor will not be entitled to exercise any right or remedy until Lender has been given notice of default and opportunity to cure such default as provided herein. If, in Lender's opinion, Owner's default is not curable by Lender, Lender may at its option assume all of Owner's right, title and interest in the Ground Lease and all of Owner's obligations and covenants under the Ground Lease.

7. LEASE PAYMENTS. If in the future there is a default by the Owner in the

performance and observance of the terms of the Deed of Trust, the Lender may require that all rents and other payments due under the Lease be paid directly to the Lender. Upon notification to that effect by the Lender, the Owner hereby authorizes and directs Tenant and the Tenant agrees to pay any payments due under the terms of the Lease to Lender. The Assignment does not diminish any obligations of the Owner under the Lease or impose any such obligations on the Lender prior to any foreclosure sale of proceeding or transfer in lieu thereof. Any payments by Tenant to Lender in accordance with this Agreement shall be deemed and shall constitute a payment of rental under the Lease.

8. TENANT'S RIGHT TO CURE DEFAULTS. Lender agrees to give prompt notice to the Tenant of any default by Owner under the Loan Documents, specifying the nature of such default, and thereupon Tenant shall have the right (but not the obligation) to cure such default. Lender shall not exercise any remedies under the Loan Documents by reason of such default unless and until it has afforded Tenant the same cure period applicable to Owner under the Loan Documents, which cure period shall commence on the date of such notice. Notwithstanding the foregoing, Tenant shall not have the right to cure any monetary default of Owner for more than three (3) consecutive months at any time. It is specifically agreed that Lender shall not require Tenant to cure any default of Owner which is not susceptible of cure by Tenant, but in such event Lender shall have all of its rights by reason of such uncured default of Owner.

9. LENDER'S RIGHT TO CURE DEFAULTS. Ground Lessor agrees to give prompt notice to the Lender of any default by Owner under the Ground Lease, specifying the nature of such default, and thereupon Lender shall have the right (but not the obligation) to cure such default. Ground Lessor shall not exercise any remedies under the Ground Lease by reason of such default unless and until it has afforded Lender the same length of time afforded Owner to cure such defaults under the Ground Lease, which cure period shall commence from the date such notice.

10. SUCCESSORS AND ASSIGNS. This Agreement and each and every covenant, agreement and other provisions hereof shall be binding upon the parties hereto and their heirs, administrators, representatives, successors and assigns, including without limitation each and every from time to time holder of the Lease or the Ground Lease or any other person having an interest therein and shall inure to the benefit of the Lender and its successors and assigns.

11. CHOICE OF LAW. This Agreement is made and executed under and in all respects is to be governed and construed by the laws of the State of California (excluding its choice-of-law principles).

12. CAPTIONS AND HEADINGS. The captions and headings of the various sections of this Agreement are for convenience only and are not to be construed as confining or

limiting in any way the scope or intent of the provisions hereof. Whenever the context requires or permits, the singular shall include the plural, the plural shall include the singular and the masculine, feminine and neuter shall be freely interchangeable.

13. EXECUTION IN COUNTERPARTS. This Agreement may be executed in any number of counterparts all of which taken together shall constitute one and the same instrument, and any of the parties or signatories hereto may execute this Agreement by signing any such counterpart.

14. SEVERABILITY. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

15. AMENDMENTS. No provision of this Agreement may be amended, changed, waived, discharged, or terminated except by an instrument in writing signed by the party against whom enforcement of the change, waiver, discharge, or termination is sought.

16. NOTICES. Any and all notices, elections, demands, or requests permitted or required to be made under this Agreement shall be in writing, signed by the party giving such notice, election, demand or request, and shall be delivered personally, or sent by registered, certified, or Express United States mail, postage prepaid, or by Federal Express or similar service requiring a receipt, to the other party at the address stated above, or to such other party and at such other address within the United States of America as any party may designate in writing as provided herein. The date of receipt of such notice, election, demand or request shall be the earliest of (i) the date of actual receipt, (ii) three (3) business days after the date of mailing by registered or certified mail, (iii) one (1) business day after the date of mailing by Express Mail or the delivery (for redelivery) to Federal Express or another similar service requiring a receipt, or (iv) the date of personal delivery (or refusal upon presentation for delivery).

[COUNTERPART SIGNATURE PAGES FOLLOW]

COUNTERPART SIGNATURE PAGE

This is a counterpart signature page to the SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT, dated as of October __, 2011, by and among the Ground Lessor, the Owner, the Tenant, and the Lender.

The undersigned, by his signature, hereby agrees to be bound by the terms and conditions of the Agreement and this counterpart signature page.

TENANT:

CITY OF SAN JOSE,
a California municipal corporation

By: _____
Norberto Dueñas
Deputy City Manager

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public personally appeared Norberto Dueñas, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature _____ (Seal)

(Signatures continue on following page)

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OWNER:

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

By: _____
Matthew Morley
President / Chairperson of the Board

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public personally appeared Matthew Morley, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal

Signature _____ (Seal)

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LENDER:

**NORTHERN CALIFORNIA COMMUNITY
LOAN FUND NMTC SUB-CDE II, LLC,**
a California limited liability company

By: Northern California Community Loan Fund,
its managing member

By: _____
Mary A. Rogier
President

STATE OF CALIFORNIA)

COUNTY OF _____)

On _____, before me, _____, Notary Public personally appeared Mary A. Rogier, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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LENDER:

NDC NEW MARKETS INVESTMENTS LXV, LLC, a Delaware limited liability company

By: HEDC New Markets, Inc.,
Its Managing Member

By: _____
Robert W. Davenport
Chairman

STATE OF _____)

COUNTY OF _____)

On _____, before me, _____, Notary Public personally appeared Robert W. Davenport, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature _____ (Seal)

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LENDER:

BROWNFIELD REVITALIZATION XV, LLC,
a Delaware limited liability company

By: Brownfield Revitalization, LLC,
a Delaware limited liability company,
its managing member

By: Cherokee Investment Partners, LLC,
a Delaware limited liability
company, its manager

By: _____
Bret Batchelder
Managing Director

STATE OF _____)

COUNTY OF _____)

On _____, before me, _____, Notary Public personally appeared Bret Batchelder, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal

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GROUND LESSOR:

CITY OF SAN JOSE,
a California municipal corporation.

By: _____
Norberto Dueñas
Deputy City Manager

STATE OF CALIFORNIA)
COUNTY OF _____)

On _____, before me, _____, Notary Public personally appeared Norberto Dueñas, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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WITNESS my hand and official seal

Signature _____ (Seal)

EXHIBIT A

Legal Description

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE CITY OF San Jose, COUNTY OF SANTA CLARA, STATE OF California AND IS DESCRIBED AS FOLLOWS:

PARCEL ONE:

All of Parcel 1 as described in the Grant Deed recorded on September 28, 1973 in Book 0584 at Pages 211-213 and all of the property described in the Grant Deed recorded on March 27, 1973 in Book 295 at Pages 217-218, Official Records of Santa Clara County.

and, in addition thereto, the following area:

Beginning at the most westerly corner of Parcel 3 as described in said Grant Deed recorded in Book 0584 at Pages 211-213, said point being on the southeasterly line of Las Plumas Avenue (80' wide);

Thence along the southwesterly line of said Parcel 3, S 39° 15' 00" E 408.44 feet to the most southerly corner of said Parcel 3;

Thence along the southeasterly line of said Parcel 3, N 50°45'00" E 7.37 feet to a point that is 185.00 feet, measured at a right angle, from the northeasterly line of said Parcel 3;

Thence leaving said southeasterly line of Parcel 3, parallel with said northeasterly line of Parcel 3, N 38° 11' 00" W 408.51 feet to the northwesterly line of said Parcel 3, said point also being on said southeasterly line of Las Plumas Avenue;

Thence along said northwesterly line of Parcel 3 and said southeasterly line of Las Plumas Avenue, S 50° 45' 00" W 14.97 feet to the Point of Beginning.

Said Land being Parcel A as described in the Lot Line Adjustment Permit recorded July 13, 2011 as Instrument No. 21237478 in the Office of the Santa Clara County Recorder.

PARCEL TWO:

A non-exclusive easement for the purpose of ingress and egress over a strip of land 80.0 feet in width described as follows:

Beginning at a point on the center line of King Road, at the northernmost corner of that certain 11.33 acre tract of land conveyed by the Western Pacific Railroad Company to the United States Printing & Lithograph Company by Deed recorded January 19, 1955 in Book 3063, Page 224 of Official Records, Santa Clara County, California; thence from said point of beginning South 50° 45' West along the southerly side of an 80 foot wide street known as Las Plumas Street, a distance of 1529.27 feet; thence North 39° 15' West, a distance of 80.0 feet to a point on the Northerly line of said road; thence North 50° 45' East along said Northerly line, a distance of 1530.84 feet, more or less, to a point on said center line of King Road; thence South 38° 06' East along said center line, a distance of 61.39 feet; thence South 38° 11' East a distance of 18.61 feet to the point of beginning.

APN: 254-03-022 (ptn.)