

DISCLAIMER

The attached draft of the Assistance Agreement for the Capital Magnet Fund (CMF) Program is provided for illustrative purposes only and should not be relied upon or used for any other purpose. The draft Assistance Agreement provides boilerplate provisions of the terms and conditions of the Allocation Agreement that may be entered into between the CDFI Fund and a Recipient under the CMF Program.

These boilerplate provisions are subject to further modification by the CDFI Fund. The exact terms and conditions of each specific Award will be set forth in the Assistance Agreement that is executed by the CDFI Fund and each Recipient.

Revised as of December 9, 2016.

TEMPLATE

**CAPITAL MAGNET FUND
ASSISTANCE AGREEMENT**

Recipient: [AMIS to populate]	Capital Magnet Fund Award Number: [AMIS to populate] DUNS Number: Employer Identification Number:
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Address:

Applicable Program: Capital Magnet Fund Date of Applicable NOFA: February 8, 2016	Announcement Date:
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By signing this Assistance Agreement and in consideration of the mutual covenants, conditions, and agreements hereinafter set forth, the parties hereto, by their respective Authorized Representatives, agree to the following: (i) the CMF Award hereunder shall be administered pursuant to the General Award Terms and Conditions, attached hereto as Schedule 2 and made a material part hereof; and (ii) the CMF Award shall be further subject to the provisions, terms, conditions, requirements, certifications and representations set forth in all such additional schedules as are indicated by the Checklist of Schedules, below, which are attached hereto and constitute a material part hereof.

In witness whereof, the parties hereto do hereby execute and enter into this Assistance Agreement.

Community Development Financial Institutions Fund	[AMIS to populate]
By: _____ Authorized Representative: Marcia Sigal Title: Program Manager	By: _____ Authorized Representative:

Effective Date :
Recipient Information
Entity Type:
Eligibility Status: [Certified CDFI or Nonprofit Organization]
CMF Award
Total Grant: \$

Checklist of Schedules: This Assistance Agreement comprises the following documents (checked as applicable) that are hereby incorporated by reference to the same extent as if fully set forth herein:

1-A. Recipient-Specific Terms and Conditions	X
1-B. Annual Report	X
1-C. Annual Report Submission Deadlines	X
2. General Award Terms and Conditions	X
3. Certificate of Good Standing	X

TEMPLATE

Schedule 1
Award No.: [AMIS to populate]
Recipient: [AMIS to populate]

RECIPIENT-SPECIFIC TERMS AND CONDITIONS

TEMPLATE

SCHEDULE 1

A. Performance Goals

The Performance Goals set forth below correspond to the specified sections in Schedule 2 (General Award Terms and Conditions) of this Assistance Agreement. Capitalized terms used, but not defined herein, shall have the respective meanings assigned to them in Schedule 2.

Section 3.2(a): ELIGIBLE ACTIVITIES

The Recipient may only engage in the eligible activities that are listed below:

- Capitalize Loan Loss Reserves
- Capitalize a Revolving Loan Fund
- Capitalize an Affordable Housing Fund
- Capitalize a fund to support Economic Development Activities
- Make Risk-Sharing Loans
- Provide Loan Guarantees
- Direct Administrative Expenses

Section 3.2(b): ELIGIBLE USES

The Recipient may only engage in the eligible uses that are listed below:

- Homeownership Affordable Housing
- Rental Affordable Housing
- Economic Development Activities

Sections 3.2(c), 5.1(c): PRODUCTION TARGETS

Minimum number of units for Eligible Income Families (*i.e.*, at or below 120% area median income (AMI)) to be produced or supported (#):

Sections 3.2(d), 5.1(d), 5.2(a), and 5.3(a): PORTFOLIO-LEVEL TARGETED INCOMES AND GEOGRAPHIES

Rental Housing – Of all units produced or supported with Eligible Project Costs, the total percentage for Very Low-Income (at or below 50% AMI) or Extremely Low-Income Families (at or below 30% AMI) (%):

Homeownership Housing – Of all units produced or supported with Eligible Project Costs, the total percentage for Low-Income (at or below 80% AMI), Very Low-Income (at or below 50% AMI), or Extremely Low-Income Families (at or below 30% AMI) (%):

High Housing Need – Total percentage of units for Eligible Income Families (at or below 120% AMI) located in High Housing Need areas (%):

Sections 3.2(e), 5.2(b), and 5.3(b): PROJECT-LEVEL TARGETED INCOME

Rental – At least twenty percent (20%) of the units in each rental project produced or supported by Eligible Project Costs are for Very Low-Income (at or below 50% AMI) or Extremely Low-Income (at or below 30% AMI) Families:

Applicable Not applicable

Homeownership – At least twenty percent (20%) of the units in each Homeownership project produced or supported by Eligible Project Costs are for Low-Income (at or below 80% AMI), Very Low-Income (at or below 50% AMI), or Extremely Low-Income Families (at or below 30% AMI):

Applicable Not applicable

Section 3.2(f): NON-METROPOLITAN AREA

Minimum percentage of the CMF Award to be used in Non-Metropolitan Counties (%):

Section 3.2(g): SERVICE AREA REQUIREMENTS

Service Area type:

[national, multi-state, statewide, local]

Geographic areas:

State	State FIPS	County	County FIPS	If applicable, required percentage of total CMF Award to expend in state/county (%):

Section 3.2(h): LEVERAGING REQUIREMENTS

Minimum percentage of total Leveraged Costs attributable to private sector Leveraged Costs (%):

Minimum Recipient-level **leverage** multiplier (#):

Section 3.2(i): COMMITMENT

Committed for use date: (within 2 Years of Effective Date)

Section 3.2(j): DISBURSEMENT

Initial disbursement date: (3 Years after Effective Date)

Section 3.2(k): PROJECT COMPLETION

Project Completion date: (5 years after Effective Date)

TEMPLATE

SCHEDULE 1

B. Annual Report

ANNUAL REPORT

Throughout the term of this Assistance Agreement, the Recipient must provide to the CDFI Fund an Annual Report, which comprises the following multiple components. Capitalized terms used, but not defined herein, shall have the respective meanings assigned to them in Schedule 2.

Applicable if checked	Annual report component	How/where to submit:
X	<p><u>FINANCIAL CONDITION REPORT:</u></p> <p>Financial statements and related auditor’s and accountant’s review reports (nonprofit Recipient)</p>	<p>A nonprofit Recipient that is not required to submit a Single Audit in accordance with the Uniform Administrative Requirements for any given fiscal year, shall submit their most recent statement of financial condition audited or reviewed by an independent certified public accountant, if prepared, to the CDFI Fund. Under no circumstances should this be construed as requiring the Recipient to conduct or arrange for additional audits not otherwise required under Uniform Administrative Requirements or otherwise prepared at the request of the Recipient.</p> <p>[Not required for Insured Credit Union, Insured Depository Institution, Depository Institution Holding Company]</p> <p>Form of submission: AMIS.</p>
X	<p><u>FINANCIAL CONDITION REPORT:</u></p> <p>Financial statements and related Auditor’s and</p>	<p>For-profit Recipient must submit statements of financial condition that have been audited or reviewed by an independent certified public accountant.</p>

	accountant’s review report (for-profit Recipient)	[Not required for Insured Credit Union, Insured Depository Institution, Depository Institution Holding Company] Form of submission: AMIS.
X	<u>FINANCIAL CONDITION REPORT:</u> Single Audit Report (nonprofit Recipient, if applicable)	A nonprofit Recipient must complete an annual Single Audit pursuant to the Uniform Administrative Requirements (2 C.F.R. § 200.500) if it expends \$750,000 or more in Federal awards in its fiscal year, or such other dollar threshold established by OMB pursuant to 2 C.F.R. § 200.500. If a Single Audit is required, it must be submitted electronically to the Federal Audit Clearinghouse (FAC) per paragraph II below and Schedule 1-C that follows. Form of submission: Federal Audit Clearinghouse.
X	<u>PERFORMANCE REPORT:</u> <u>CMF performance report components:</u> <ul style="list-style-type: none"> • <u>Investment Period report</u> • <u>Affordability Period report</u> • <u>OMB Standard Form 425 (SF-425)</u> 	The Recipient must submit each component of the CMF performance report to the CDFI Fund. Form of submission: AMIS.
X	<u>OTHER REPORT:</u> <u>Environmental review notification report</u>	The Recipient must submit an environmental review notification report to the CDFI Fund each time it identifies a Committed project, in

		<p>accordance with section IV of this Schedule 1-B, and with all applicable requirements of Schedule 2.</p> <p>Form of submission: AMIS.</p>
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Report deadlines: The Recipient must submit to the CDFI Fund the required reports by the dates set forth on Schedule 1-C of this Assistance Agreement.

I. FINANCIAL CONDITION REPORT – FINANCIAL STATEMENTS AND RELATED AUDITOR’S AND ACCOUNTANT’S REVIEW REPORT:

The financial statements and related auditor’s and accountant’s review report will be reviewed by the CDFI Fund to determine whether the Recipient’s financial statements present fairly in all material respects, in conformity with Government Auditing Standards (GAS) or Generally Accepted Accounting Principles (GAAP), the financial position of the Recipient. After the end of the Investment Period, the CDFI Fund may modify the requirements for these financial statements and related auditor’s and accountant’s review reports in any manner that is necessary or appropriate for the terms and conditions of the CMF Award, in accordance with the Uniform Administrative Requirements.

A. Nonprofit Organizations (excluding all regulated financial institutions) must submit to the CDFI Fund any financial statements that have been prepared and reviewed by an independent certified public accountant in accordance with *Statements on Standards for Accounting and Review Services*, issued by the American Institute of Certified Public Accountants. The financial statements, if any are prepared, must include the related auditor’s or accountant’s review report, a statement of financial position, a statement of activities, and a statement of cash flows. The financial statements, if any are prepared, must be submitted no later than 180 days after the end of the Recipient’s fiscal year (audited financial statements can be provided by the due date in lieu of reviewed statements, if available).

B. For-profit organizations (excluding all regulated financial institutions) must submit to the CDFI Fund financial statements prepared and audited in conformity with generally accepted auditing standards as promulgated by the American Institute of Certified Public Accountants. Financial statements must include the related auditor’s or accountant’s review report, a statement of financial position and a statement of cash flows. The financial statements must be submitted no later than 180 days after the end of the Recipient’s fiscal year.

C. Regulated financial institutions (Insured Depository Institutions, Depository Institution Holding Companies, and Insured Credit Unions), including regulated Nonprofit organizations, are not required to submit financial statements to the CDFI Fund; the CDFI Fund will obtain the necessary information from publicly available sources.

II. FINANCIAL CONDITION REPORT – SINGLE AUDIT REPORTS: Recipient must submit a Single Audit Report, if applicable.

The Recipient must determine annually whether a Single Audit Report must be submitted, per the Uniform Administrative Requirements. If it has been determined that a Single Audit Report is required, the Recipient must submit its Single Audit Report no later than 270 days after the end of the Recipient’s fiscal year end.

For the purposes of preparing a Single Audit Report, the Recipient should consider the CMF Award expended once the Recipient applies the funds towards the eligible uses, as currently outlined in Section 3.3 of the Assistance Agreement. It is permissible under the Assistance Agreement to incrementally **expend** the award during the Period of Performance. Prior to full expenditure the funds are deemed to be “Advance payments” as defined in the Uniform Administrative Requirements and, **if applicable to the Recipient**, should be kept in interest-bearing accounts with interest remitted in compliance with the Uniform Administrative Requirements. The Recipient’s Single Audit Report will be reviewed by the CDFI Fund to determine the following: i) whether the Recipient’s financial statements are presented fairly in all material respects in conformity with Government Auditing Standards (GAS) or Generally Accepted Accounting Principles (GAAP), and whether an opinion (or disclaimer of opinion) as to whether the schedule of expenditures of Federal awards is presented fairly in all material respects in relation to the financial statements taken as a whole; ii) the condition of the Recipient’s internal control related to its financial statements and major programs; and iii) the Recipient’s compliance with laws, regulations and the provisions of contracts or grant agreements, which could have a direct and material effect on each of its major programs. Please review Schedule 1-C regarding the applicable due dates for this report.

III. PERFORMANCE REPORT: The Recipient must submit a performance report, which is a progress report on the Recipient’s use of the CMF Award towards meeting its Performance Goals, affordable housing outcomes, and the Recipient’s overall performance. The CMF performance report covers: the Investment Period for the CMF Award; and the Affordability Period for each project. The Investment Period report entails reporting on the Recipient’s progress in using its CMF Award and its progress in achieving Performance Goals; the Affordability Period report entails reporting on each project’s compliance with the affordability requirements of this Assistance Agreement. Please review Schedule 1-C for information

regarding the due dates for these reports. Once the Recipient's first CMF-funded project is Placed into Service, marking the beginning of the project's Affordability Period, the annual report submission will be modified as described in Schedule 1-C of this Assistance Agreement. If any projects are Placed into Service during the Investment Period, the Recipient shall be required to submit both the Investment Period report and the Affordability Period report.

IV. ENVIRONMENTAL REVIEW NOTIFICATION REPORT: The Recipient shall submit the environmental review notification report each time the Recipient identifies a new CMF project for which (i) a categorical exclusion does not apply and/or (ii) the Recipient determines that the proposed project does involve actions that normally require an Environmental Impact Statement, as described in 12 C.F.R. Part 1815. The environmental review notification report must be submitted to the CDFI Fund no later than ninety (90) days prior to the date that funds are Committed to a project.

TEMPLATE

C. Annual Report Submission Deadlines

ANNUAL REPORT SUBMISSION DEADLINES

The Recipient (and all other signatories to the Assistance Agreement, if any) must submit Annual Report components according to the schedule below.

FINANCIAL CONDITION REPORTS

Single Audit Report Deadlines [As applicable; to be determined by Recipient annually.]	
Fiscal year end date:	Single Audit Report due date:
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]

[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 270 days]

Financial statements and related auditor's and accountant's review reports [As applicable.]	
Fiscal year end date:	Financial report due date:
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
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[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]
[fiscal year end date]	[MM/DD/YY] [FYE + 180 days]

PERFORMANCE REPORT

The Performance Goals and measures are derived from the Application and are specified in Schedule 1. Any Recipient that fails to achieve any Performance Goal or measure must provide a narrative explanation for the failure. The Recipient's compliance with the Performance Goals will be measured by information that the Recipient submits in its Performance Report.

Investment Period report and SF-425			
	Start date:	End date:	Annual report due date:
Year 1 of Period of Performance	[Announcement Date]	[fiscal year end date]	[MM/DD/YY] [FYE + 90 days]
Year 2 of Period of Performance	[fiscal year beginning date]	[fiscal year end date]	[MM/DD/YY] [FYE + 90 days]
Year 3 of Period of Performance	[fiscal year beginning date]	[fiscal year end date]	[MM/DD/YY] [FYE + 90 days]
Year 4 of Period of Performance	[fiscal year beginning date]	[fiscal year end date]	[MM/DD/YY] [FYE + 90 days]
Year 5 of Period of Performance	[fiscal year beginning date]	[fiscal year end date]	[MM/DD/YY] [FYE + 90 days]
Year 6 of Period of Performance (if period between Effective Date and Recipient's fiscal year end date is less than 12 months)	[fiscal year beginning date]	[end of Investment Period]	[MM/DD/YY] [FYE + 90 days]

Affordability Period report
The Affordability Period report shall be due each year, beginning when the Recipient's first project begins its Affordability Period and continuing until the Recipient's final project completes its Affordability Period. The due date for each such report shall be ninety (90) days after the Recipient's fiscal year end.

For questions related to these reporting requirements, please submit your questions via AMIS **service requests**.

Schedule 2
Award No.: [AMIS to populate]
Recipient: [AMIS to populate]

GENERAL AWARD TERMS AND CONDITIONS

TEMPLATE

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**ARTICLE I
INCORPORATION BY REFERENCE**

12 C.F.R. Part 1807, as from time to time amended, is incorporated by reference and given the same force and effect as if set out in full text. In the event of any inconsistency between 12 C.F.R. Part 1807 and the terms set forth in these General Award Terms and Conditions, all Schedules and any amendments hereto, the provisions of 12 C.F.R. Part 1807 shall govern.

**ARTICLE II
DEFINITIONS**

When used in this Assistance Agreement (including all schedules and any amendments hereto), the following terms shall have the meanings specified below. Capitalized terms used, but not defined herein, shall have the respective meanings assigned to them in the Act, the Capital Magnet Fund Regulations, the Notice of Funds Availability, the Application, and/or the Uniform Administrative Requirements (as such terms are hereinafter defined).

2.1 Affordability Period. “Affordability Period” shall mean, for each CMF-funded project, the period beginning on the date when the project **is Placed into Service and** consisting of the full ten (10) consecutive years thereafter, during which period the Recipient must ensure the affordability requirements, as set forth in the CMF Regulations and in this Assistance Agreement, are met, or such other period as may be established in writing by the CDFI Fund.

2.2 Announcement Date. “Announcement Date” shall mean the date on which the CDFI Fund announces the Recipients of CMF Awards under the applicable NOFA, as indicated on the signature page of this Assistance Agreement.

2.3 Application. “Application” shall mean the CDFI Fund’s Capital Magnet Fund application form, including any written or verbal information in connection therewith and any attachments, appendices, and/or written or verbal supplements thereto, submitted by the Recipient to the CDFI Fund, in response to the applicable NOFA.

2.4 Assistance Agreement. “Assistance Agreement” or “Agreement” shall mean this Assistance Agreement between the CDFI Fund and the Recipient, of which these General Award Terms and Conditions are a material part, including the cover signature page, any schedules and attachments hereto, as the Agreement may, from time to time, be amended in accordance with its terms.

2.5 Capital Magnet Fund Regulations. “Capital Magnet Fund Regulations” or “CMF Regulations” shall mean the regulations set forth in 12 C.F.R. Part 1807.

2.6 Closing. “Closing” shall mean any proper execution and delivery of the Agreement and/or any other document connected herewith and/or any Payment of CMF Award by electronic funds transfer to an account designated by the Recipient. Pursuant hereto, there will be an initial Closing at which, for example, the Agreement and documents connected herewith will be properly executed and delivered, subsequent to which an initial Payment connected herewith will be made. Subsequently, there may be a subsequent Closing or Closings at which subsequent Payments connected herewith will be made and any documents in addition to the Agreement that may be connected with such Payments shall be properly executed and delivered by the Recipient to the CDFI Fund.

2.7 CDFI Fund or Fund. “CDFI Fund” shall mean the Community Development Financial Institutions Fund, the U.S. Department of the Treasury, established pursuant to the Community Development Banking and Financial Institutions Act of 1994, as amended, 12 U.S.C. 4701 *et seq.*

2.8 Effective Date. “Effective Date” shall mean the date that this Assistance Agreement is effective; such date is determined by the CDFI Fund after the Recipient has returned an executed original of this Assistance Agreement, along with all required supporting documentation, including the certificate of good standing (Schedule 3 of this Agreement).

2.9 High Housing Need. “High Housing Need” shall mean that set forth in the applicable Notice of Funds Availability. In order for a Recipient to receive credit under this Assistance Agreement for creating Affordable Housing in an area of High Housing Need, the Affordable Housing must have been created in a census tract that meets the definition of High Housing Need set forth in the applicable NOFA, as identified by the CDFI Fund.

2.10 Insider. “Insider” shall mean any director, officer, employee, principal shareholder (owning, individually or in combination with family members, five percent (5%) or more of any class of stock), or agent (or any family member or business partner of any of the above) of the Recipient or of any Affiliate or Community Partner (as defined in 12 U.S.C. 4702(6)) of the Recipient.

2.11 Investment Period. “Investment Period” shall mean the period beginning with the Effective Date and ending no earlier than the fifth year anniversary of the Effective Date, or such other period as may be established in writing by the CDFI Fund at its sole discretion pursuant to the Assistance Agreement.

2.12 LIHTC Program. “LIHTC Program” shall mean the Low Income Housing Tax Credit Program authorized under Title I of the U.S. Housing Act of 1937, as amended, 42 U.S.C. 1437 *et seq.*

2.13 Material Event. “Material Event” shall mean an occurrence that affects the Recipient’s strategic direction, mission, business operation, its status as a Certified CDFI or Nonprofit

Organization, or its compliance with the terms and conditions of this Assistance Agreement; or as further described in Section 7.8 of this Assistance Agreement.

2.14 Material Weakness. “Material Weakness” shall have the same meaning ascribed by the American Institute of Certified Public Accountants, meaning a reportable condition in which the design or operation of one or more of the internal control components does not reduce to a relatively low level the risk that misstatements caused by error or fraud in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions.

2.15 Non-Metropolitan Area. “Non-Metropolitan Area” shall mean that set forth in 12 C.F.R. § 1807.104. In order for a Recipient to receive credit under this Assistance Agreement for creating Affordable Housing in a Non-Metropolitan Area, the Affordable Housing must have been created in a county that meets the definition of Non-Metropolitan Area that is set forth in 12 C.F.R. § 1807.104.

2.16 Notice of Funds Availability or NOFA. “Notice of Funds Availability” or “NOFA” shall mean the notice published by the CDFI Fund in the Federal Register that announced the availability of funds for the Capital Magnet Fund.

2.17 Performance Goals. “Performance Goals” shall mean the performance goals and measures as described in Schedule 1, and as further described in 2 C.F.R. part 1000.

2.18 Period of Performance. “Period of Performance” shall mean the period beginning with the Announcement Date and continuing until the end of the Affordability Period of the last project funded by the Recipient under this Assistance Agreement, when all the conditions in Section 9.11 have been met, or such other time established by the CDFI Fund in writing.

2.19 Placed into Service. “Placed into Service” shall mean:

(a) For a rental housing project, at initial occupancy of the last CMF-funded unit (*i.e.*, a unit that is financed or supported by Eligible Project Costs) to be occupied within a project, when such tenant has signed the lease, been given the keys, and has met all other conditions such that this last tenant has the right to move-in and **ninety percent (90%)** of all CMF-funded units within the project have achieved initial occupancy;

(b) For homeownership housing, upon the transfer of equitable title to the homeowner such that the homeowner has the right to move-in to the unit;

(c) For owner-occupied Rehabilitation of homeownership housing only, upon Project Completion pursuant to 12 C.F.R. § 1807.503; and

(d) For Economic Development Activities, when both of the following events have occurred, as applicable and as determined by the CDFI Fund:

- (i) All requirements set forth in 12 C.F.R. § 1807.503 have been met; and
- (ii) At initial occupancy of the Community Service Facility or physical structure, when the initial tenant has signed the lease or appropriate agreement and has met all other conditions such that the tenant has the right to move-in.

2.20 Service Area. “Service Area” shall mean the geographic area approved by the CDFI Fund, in which geographic area the Recipient must use the CMF Award as set forth in this Assistance Agreement.

2.21 Tribal Government. “Tribal Government” shall mean the Federally recognized governing body (including a tribal council) of a Native American tribe or an Alaska Native village, as applicable.

ARTICLE III THE CMF AWARD

3.1 The CMF Award. At all Closings connected herewith, including without limitation, any initial Closing and any subsequent Closing(s), and subject to all of the terms and conditions hereof and in reliance upon all representations, warranties, assurances, certifications and agreements contained herein, the CDFI Fund hereby agrees to provide to the Recipient, subject to the availability of funds, and the Recipient hereby agrees to accept from the CDFI Fund, the CMF Award in the form of a grant.

3.2 Authorized uses of the CMF Award. The Recipient shall use the CMF Award as set forth in Section 3.3 and in the manner below:

(a) Eligible activities. The Recipient shall use the CMF Award only for the activities designated in Schedule 1 of this Assistance Agreement. If the Recipient is authorized to use CMF Award funds for Direct Administrative Expenses, as indicated in Schedule 1, the Recipient shall use no more than five percent (5%) of its CMF Award (*i.e.*, five percent (5%) of the CMF Award amount stated in the signature page of this Assistance Agreement) for the Recipient’s Direct Administrative Expenses.

(b) Eligible uses. The Recipient shall use the CMF Award only for the uses designated in Schedule 1 of this Assistance Agreement. Recipients using the CMF Award for Affordable Housing Activities must ensure that one hundred percent (100%) of Eligible Project Costs are attributable to Affordable Housing, meaning housing that is occupied by Families at or below 120% of area median income (AMI). Further, for a

subset of said one hundred percent (100%), greater than fifty percent (50%) of the Eligible Project Costs must be attributable to Affordable Housing that complies with the affordability qualifications for Low-Income (at or below eighty percent (80%) AMI), Very Low- Income (at or below fifty percent (50%) AMI), or Extremely Low-Income Families (at or below thirty percent (30%) AMI). As applicable, the Recipient shall use no more than thirty percent (30%) of its CMF Award (*i.e.*, thirty percent (30%) of the CMF Award amount stated in the signature page of this Assistance Agreement) to capitalize a fund to support Economic Development Activities.

(c) Production targets. As of the end of the Investment Period, the Recipient shall have used its CMF Award for Affordable Housing Activities resulting in Eligible Income Housing units in an amount that is no less than the amount set forth in Schedule 1 of this Assistance Agreement.

(d) Portfolio-level targeted incomes and geographies.

(i) Rental Affordable Housing. As of the end of the Investment Period, the percentage of rental Housing units that are designated for Very Low-Income or Extremely Low-Income Families, as measured over the Recipient's entire portfolio of rental Housing units financed or supported by this CMF Award or associated Leveraged Costs, shall be no less than the percentage set forth in Schedule 1 of this Assistance Agreement.

(ii) Homeownership Affordable Housing. As of the end of the Investment Period, the percentage of Homeownership Housing units that are designated for Low-Income, Very Low-Income, or Extremely Low-Income Families, as measured over the Recipient's entire portfolio of Homeownership Housing units financed or supported by this CMF Award or associated Leveraged Costs, shall be no less than the percentage set forth in Schedule 1 of this Assistance Agreement.

(iii) High Housing Need. As of the end of the Investment Period, the percentage of all Eligible Income Housing units that are located in High Housing Need areas, as measured over the Recipient's entire portfolio of all Eligible Income Housing units financed or supported by this CMF Award or associated Leveraged Costs, shall be no less than the percentage set forth in Schedule 1 of this Assistance Agreement.

(e) Project-level targeted income.

(i) Rental Affordable Housing. If applicable and as indicated in Schedule 1, as of the end of the Investment Period, at least twenty percent (20%) of the units in each rental project financed or supported by Eligible Project Costs shall be

designated for Families at or below fifty percent (50%) of AMI. Please see additional detail on these rental affordability qualifications in Section 5.2.

(ii) Homeownership Affordable Housing. If applicable and as indicated in Schedule 1, as of the end of the Investment Period, at least twenty percent (20%) of the Housing units in each Homeownership Housing project financed or supported by this CMF Award or associated Leveraged Costs shall be designated for Families at or below eighty percent (80%) of AMI. This requirement will be calculated based on all Housing units or assistance provided to homeowners in the Recipient's portfolio in each of the following discrete eligible activity types financed and supported by this CMF Award or associated Leveraged Costs.

- (1) Development of Homeownership Housing units;
- (2) Rehabilitation of Homeownership Housing units;
- (3) Purchase in the form of mortgage finance assistance of Homeownership Housing units; and
- (4) Purchase in the form of down payment assistance of Homeownership Housing units.

(f) Non-Metropolitan Area. As of the end of the Investment Period, the percentage of total CMF Award dollars used by the Recipient to finance or support Affordable Housing Activities and/or Economic Development Activities resulting in Housing and/or Community Service Facilities/physical structures located in Non-Metropolitan Counties shall be no less than the percentage set forth in Schedule 1.

(g) Service Area requirements. As applicable, the states or counties listed in the geographic areas table in Schedule 1 make up the allowable geographic areas for expenditure of CMF Award dollars for Recipients with multi-state, local, or statewide Service Areas. If applicable, as of the end of the Investment Period, the percentage of total CMF Award dollars used by the Recipient for the eligible activities in 12 C.F.R. § 1807.301 resulting in Housing and/or Community Service Facilities/physical structures located in its Service Area(s) shall be no less than the percentage(s) set forth in Schedule 1.

(h) Leveraging Requirements.

(i) As of the end of the Investment Period, the Recipient shall have yielded Eligible Project Costs in an amount that equals at least ten (10) times the dollar amount of the CMF Award.

(ii) As of the end of the Investment Period, the percentage of total Leveraged Costs attributable to private sector Leveraged Costs yielded by the Recipient shall be no less than the percentage set forth in Schedule 1. As of the end of the Investment Period, the Recipient shall have yielded Recipient-level leverage in an amount that is no less than the dollar amount of the CMF Award multiplied by the multiplier set forth in Schedule 1 of this Assistance Agreement. Recipient-level leverage, which includes the CMF Award and any reinvestments of the CMF Award, are those funds leveraged at the Recipient-level that are used to pay for Eligible Project Costs. Funds may only be counted as Recipient-level leverage if they: were not restricted for use for a specific project at the time they were received by the Recipient; and were actually used to finance or support Eligible Project Costs incurred by the project.

(i) Commitment date. The Recipient shall have Committed all of its CMF Award by no later than the date set forth in Schedule 1, which date shall be within two (2) years of the Effective Date of this Assistance Agreement, unless otherwise determined in writing by the CDFI Fund. Notwithstanding the reporting requirements in this Assistance Agreement, including, but not limited to, Section 7.9 and Schedule 1-B, if the Recipient fails to have all of its CMF Award Committed by the date set forth in Schedule 1 of this Assistance Agreement, the Recipient shall notify the CDFI Fund in writing of this failure as a Material Event by no later than thirty (30) days after the Committed for use date set forth in Schedule 1 of this Assistance Agreement. Pursuant to the Act, the CDFI Fund shall recapture into the Capital Magnet Fund any amount of the CMF Award that has not been Committed for use by the Recipient as of the date set forth in Schedule 1 of this Assistance Agreement.

(j) Disbursement date. The Recipient shall have made an initial disbursement of its CMF Award by no later than the date set forth in Schedule 1 of this Assistance Agreement, which date shall be three (3) years after the Effective Date of this Assistance Agreement, unless otherwise determined in writing by the CDFI Fund. Notwithstanding the reporting requirements in this Assistance Agreement, including, but not limited to, Section 7.9 and Schedule 1-B, if the Recipient fails to make an initial disbursement of its CMF Award by the date set forth in Schedule 1 of this Assistance Agreement, the Recipient shall notify the CDFI Fund in writing of this failure by no later than thirty (30) days after the disbursement date set forth in Schedule 1 of this Assistance Agreement.

(k) Project Completion date. The Recipient shall have achieved Project Completion with respect to its entire CMF Award by no later than the date set forth in Schedule 1 of this Assistance Agreement, which date shall be five (5) years after the Effective Date of this Assistance Agreement, except as specified in Section 3.8(b)(ii) or as otherwise determined in writing by the CDFI Fund. Notwithstanding the reporting requirements in this Assistance Agreement, including, but not limited to, Section 7.9 and Schedule 1-B, if the Recipient fails to achieve Project Completion by the date set forth in Schedule 1 of

this Assistance Agreement, the Recipient shall notify the CDFI Fund in writing of this failure by no later than thirty (30) days after the Project Completion date set forth in Schedule 1 of this Assistance Agreement.

3.3 Purpose of the CMF Award. The Recipient shall use the CMF Award for the eligible activities, as set forth in Section 3.2, for the following purposes and in the following manner:

- (a) The Development, Preservation, Rehabilitation or Purchase of Affordable Housing for primarily Extremely Low-Income, Very Low-Income and Low-Income families; and
- (b) Economic Development Activities that are part of a Concerted Strategy, as set forth in 12 C.F.R. § 1807.104.

3.4 Eligible Project Costs and Leveraged Costs. Eligible Project Costs, which include Leveraged Costs, must be consistent with 12 C.F.R. § 1807.500 and are further limited by the following:

- (a) No costs attributable to Direct Administrative Expenses may be reported as Eligible Project Costs.
- (b) No costs attributable to prohibited uses as identified in 12 C.F.R. § 1807.302(a) and § 1807.302(b) may be reported as Eligible Project Costs. .
- (c) All costs attributable to Affordable Housing Activities and Economic Development Activities must be reported as Eligible Project Costs and must be for Affordable Housing or for Economic Development Activities
- (d) Notwithstanding the foregoing paragraphs of this Section 3.4, costs may only be treated as Eligible Project Costs if they are expenses that are reasonable, necessary, and non-luxury (all as determined by the CDFI Fund), and are related to the Development, Preservation, Rehabilitation, and/or Purchase of Affordable Housing (or Community Service Facilities and/or other physical structures, in the case of Economic Development Activities).

(e) CMF Award dollars may be used to pay for the costs contained in Section 3.4(f) if all of the following conditions are met:

(i) They were incurred not more than thirty-six (36) months prior to the date that the CMF Award dollars are Committed to the Project;

(ii) They were incurred for a Project that achieves Project Completion on or after the Announcement Date; and

(iii) The Recipient expressly permits CMF Award dollars to be used to pay for these costs in the written commitment agreement.

(f) Costs that may be treated as Eligible Project Costs include:

(i) Development hard costs. The actual cost of constructing or rehabilitating Affordable Housing (or Community Service Facilities and/or other physical structures, in the case of Economic Development Activities). These costs include: all costs necessary to meet the standards in 12 C.F.R § 1807.503; the costs to make utility connections; the costs to make improvements to the project site that are in keeping with improvements of surrounding, standard projects and site improvements, which may include on- or off-site roads and sewer and water lines necessary to the development of the project. A project consists of a building or group of buildings on the same site (or on scattered sites if developed together) under the same ownership.

(iii) Refinancing costs. The costs to refinance existing debt secured by a Housing Project in order to make it affordable.

(iv) Costs (origination fees, service fees, recordation fees) relating to the making of loans. The costs to make or pay off an existing construction loan, bridge financing loan, or guaranteed loan.

(v) Acquisition costs. Costs of acquiring improved or unimproved real property, including acquisition by homebuyers.

(vi) Related soft costs. Other reasonable and necessary costs incurred by the owner, associated with the financing or development (or both) of new construction, rehabilitation, or acquisition of Affordable Housing or Economic Development Activity projects assisted with CMF Award funds. These costs include, but are not limited to:

(1) Architectural, engineering, or related professional services required to prepare plans, drawings, specifications, or work write-ups.

(2) Costs to process and settle the financing for a project, such as private lender origination fees, credit reports, fees for title evidence, fees for recordation and filing of legal documents, building permits, attorneys' fees, private appraisal fees and fees for an independent cost estimate, builders or developers fees.

(3) Costs of a project audit, including certification of costs performed by a certified public accountant, that the participating jurisdiction may require with respect to the development of the project.

(4) Costs to provide information services such as affirmative marketing and fair housing information to prospective homeowners and tenants.

(5) For new construction or rehabilitation, the cost of funding an initial operating deficit reserve, which is a reserve to meet any shortfall in project income during the period of project rent-up (not to exceed eighteen (18) months) and which may only be used to pay project operating expenses, scheduled payments to a replacement reserve, and debt service.

(6) Costs for the payment of impact fees that are charged for all projects within a jurisdiction.

(7) Costs of environmental review and release of funds in accordance with 12 C.F.R. Part 1815 that are directly related to the project.

(vii) Relocation costs. The cost of relocation payments and other relocation assistance to persons displaced by the project, including:

(1) Relocation payments include replacement housing payments, payments for moving expenses, and payments for reasonable out-of-pocket costs incurred in the temporary relocation of persons.

(2) Other relocation assistance means staff and overhead costs directly related to providing advisory and other relocation services to persons displaced by the project, including timely written notices to occupants, referrals to comparable and suitable replacement property, property inspections, counseling, and other assistance necessary to minimize hardship.

(viii) Loan Loss Reserves and Loan Guarantees. Funds set aside and reserved for a Loan Loss Reserve or a Loan Guarantee, provided that the loans supported by the reserve or guarantee finance Eligible Project Costs.

3.5 Restrictions on use of the CMF Award. The Recipient shall use the CMF Award in accordance with the restrictions below.

(a) The Recipient's activities under 3.2(a) shall not include the use of the CMF Award for the following:

- (i) Political activities;
- (ii) Advocacy;
- (iii) Lobbying, whether directly or through other parties;
- (iv) Counseling services (including homebuyer or financial counseling);
- (v) Travel expenses;
- (vi) Preparing or providing advice on tax returns;
- (vii) Emergency shelters (including shelters for disaster victims);
- (viii) Nursing homes;
- (ix) Convalescent homes;
- (x) Student dormitories;
- (xi) Projects consisting of the operation of any private or commercial golf course, country club, massage parlor, hot tub facility, suntan facility, racetrack or other facility used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises; or
- (xii) Projects consisting of farming, as set forth in 12 C.F.R. § 1807.302(c)(2).

(b) (i) The Recipient shall not distribute the CMF Award to any Affiliate or Subsidiary, or distribute the CMF Award in any manner that would create a Subrecipient relationship (as defined in the Uniform Administrative Requirements), without the CDFI Fund's prior written consent.

(ii) For the purposes of capitalizing an Affordable Housing Fund, a Revolving Loan Fund, or a fund to support Economic Development Activities pursuant to 12 C.F.R. § 1807.302, the Recipient may establish a single purpose entity to hold such a fund, provided that this entity (an "Approved SPE"):

(1) is managed by and one hundred percent (100%) owned by the Recipient;

(2) is used solely for the purpose of serving as one of the following funds: an Affordable Housing Fund, a Revolving Loan Fund, or a fund to support Economic Development Activities (as those capitalized terms are defined in and pursuant to the CMF Regulations);

(3) does not otherwise engage in any of the prohibited activities set forth in this Section 3.5; and

(4) is approved in advance and in writing by, and meets all other requirements to the satisfaction of, the CDFI Fund.

(c) The Recipient shall not use any CMF Award to pay any costs incurred in connection with (i) any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the CDFI Fund), against the Recipient, or (ii) any prosecution of any claim or appeal against the United States Government, any agency or instrumentality thereof (including the CDFI Fund), which the Recipient instituted or in which the Recipient has joined as a claimant.

(d) The Recipient may not use any CMF Award provided hereunder for the purpose of covering expenses, including consultant fees, related to the preparation of an application for certification or funding to the CDFI Fund.

(e) The Recipient may not use any CMF Award provided hereunder to cover the costs of organized fund raising (including financial campaigns, solicitations of gifts and requests, grant writing, and similar expenses incurred to raise capital or obtain contributions) regardless of the purpose for which the funds will be used. For additional information regarding fund raising and investment management costs, please refer to the Uniform Administrative Requirements.

(f) The Recipient shall not use any CMF Award provided hereunder to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State, local or Tribal Government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State, local, or Tribal Government contract, grant, loan, or cooperative agreement, as such terms are defined in 31 U.S.C. § 1352.

(g) The Recipient shall not use CMF Award funds for Indirect Costs as defined in the Uniform Administrative Requirements at 2 C.F.R. § 200.56.

(h) The Recipient shall not use CMF Award funds for any project that involves funding from any other CDFI Fund program.

3.6 Closing(s). The obligation of the CDFI Fund to provide any or all of the CMF Award to the Recipient at any Closing connected herewith is subject to the fulfillment, as determined by the CDFI Fund, in its sole discretion, of the following conditions precedent, each of which shall be fulfilled prior to any Closing(s) connected herewith, to the satisfaction of the CDFI Fund.

(a) Performance; representations and warranties. As of the initial Closing, (i) the Recipient shall have performed and complied with all applicable agreements and conditions contained herein required to be performed or complied with by it, (ii) the representations and warranties set forth in this Agreement shall be true and correct in all material respects, and (iii) the Assurances and Certifications contained in the Application shall be true and correct in all material respects or shall, to the satisfaction of the CDFI Fund, not have a material adverse effect on the Recipient's execution of and performance under this Agreement.

(b) Certificate of good standing. Unless otherwise determined by mutual agreement of the CDFI Fund and the Recipient, the CDFI Fund shall have received from the Recipient a certificate of good standing from the Secretary of State for the Recipient's State of formation dated within 180 days of the date that the Recipient executes the Assistance Agreement. For further guidance, and in the event that the Recipient can not obtain a certificate of good standing, the Recipient shall follow the instructions contained in Schedule 3.

(c) Proceedings and documents. All corporate and other proceedings in connection with the transactions contemplated by the Assistance Agreement and all documents and instruments incident to such transactions shall be satisfactory in substance and form to the CDFI Fund, and the CDFI Fund shall have received from the Recipient all such counterpart originals or certified copies or other documents as the CDFI Fund may reasonably request.

3.7 Payment of the CMF Award.

(a) If, at any Closing connected herewith, any of the conditions specified herein or in any document connected herewith shall not have been fulfilled to the satisfaction of the CDFI Fund, the CDFI Fund will not effect such Closing until such time as said conditions shall be fulfilled to the satisfaction of the CDFI Fund.

(b) The Recipient must provide the CDFI Fund with all required supporting documentation by the date specified in the NOFA, unless the CDFI Fund provides prior written approval of submission of the documentation by an alternate date. If the Recipient does not request payment of all of the CMF Award by said date, the CDFI Fund, in its sole discretion, may terminate its obligation to pay said funds.

(c) The CDFI Fund will not make a Payment of any CMF Award pursuant hereto until the Recipient has satisfied all conditions precedent to receiving such CMF Award, including, but not limited to: the Recipient being in compliance with the terms and conditions of any agreement with the CDFI Fund for fiscal years 2015 and thereafter; not being in default, as determined by the CDFI Fund, with the terms and conditions of any agreement with the CDFI Fund; and the Recipient certifying that it has identified at least one project that meets one or more of the Categorical Exclusions in 12 C.F.R. § 1815.110, or involves actions that do not normally require an Environmental Impact Statement (EIS) as defined in 12 C.F.R. § 1815.102(a)(7).

(d) In order to receive Payment of award proceeds, the Recipient is responsible for the accuracy of its banking information as reflected in its System for Award Management (SAM) account. In the event that the Recipient provides inaccurate, non-current or incomplete banking information, the CDFI Fund is not responsible for reimbursement or Payment to the Recipient for any CMF Award transferred to an incorrect account.

3.8 Authorized uses of Program Income; requirements for reinvestment.

(a) Any Program Income earned during the Investment Period in the form of principal and equity repayments of the CMF Award must be reinvested by the Recipient in Affordable Housing Activities that meet the affordability requirements set forth in 12 C.F.R. § 1807.400 *et seq.* or in Economic Development Activities. **Except as provided in Section 3.8(b)(iv), the** requirements of this Section 3.8(a) (including Sections 3.8(a)(i) and 3.8(a)(ii) below), shall apply to all Program Income earned during the Investment Period in the form of principal and equity repayments of the CMF Award, regardless of whether the Recipient has satisfied all of its Performance Goals contained in Schedule 1. (For the purposes of this Section 3.8(a), Program Income that is returned and made available to the Recipient due to CMF Award funds **becoming** unrestricted from Loan Loss Reserves or Loan Guarantees shall be deemed to be Program Income earned in the form of principal and equity repayments of the CMF Award.)

(i) Commitment deadline. Any such Program Income earned and not Committed as of the end of an annual reporting period must be Committed in accordance with this Section 3.8 within the next twelve (12) months, or as otherwise established in writing by the CDFI Fund.

(ii) Notwithstanding the foregoing in this Section 3.8, the Recipient shall satisfy the requirements of Section 3.2 of this Assistance Agreement.

(b) If a Recipient has satisfied all of its Performance Goals prior to the fourth year (4th year) anniversary of the Effective Date:

- (i) The reinvestment requirement of Section 3.8(a) will only be triggered if the total balance of such Program Income that is not Committed at the time of the Recipient's annual reporting deadline is \$100,000 or greater;
- (ii) The Recipient shall have up to thirty-six (36) months from the commitment deadline described in Section 3.8(a)(i) to obtain Project Completion;
- (iii) Any Affordable Housing Activity or Economic Development Activity that is not counted toward meeting the Recipient's Performance Goals shall be subject to a ten-year (10-year) Affordability Period after the resulting housing or structures have been Placed into Service, unless otherwise established in writing by the CDFI Fund; and
- (iv) The reinvestment requirement of Section 3.8(a) shall continue until the fourth year (4th year) anniversary date of the Effective Date.

(c) Any Program Income earned during the Investment Period in the form of interest payments, and all other forms of Program Income (except as described in **Section 3.8(a)**), shall be used by the Recipient solely to further the objectives of its mission as a Certified CDFI or Nonprofit Organization.

(d) Any Program Income in any form, including both principal or equity repayments of the CMF Award and interest payments, that is earned after the Investment Period and during the remaining Period of Performance, shall be used by the Recipient solely to further the objectives of its mission as a Certified CDFI or Nonprofit Organization.

3.9 Restrictions on the use of Program Income.

(a) The Recipient shall not use any Program Income in a manner other than as authorized under this Assistance Agreement, unless the Recipient consults with and obtains the prior written approval of the CDFI Fund.

(b) The Recipient shall not use any Program Income earned hereunder to pay any person to influence or attempt to influence any agency, elected official, officer or employee of a State or local government in connection with the making, award, extension, continuation, renewal, amendment, or modification of any State or local government contract, grant, loan or cooperative agreement as such terms are defined in 31 U.S.C. § 1352.

(c) The Recipient shall not use any Program Income to pay any costs incurred in connection with (i) any defense against any claim or appeal of the United States Government, any agency or instrumentality thereof (including the CDFI Fund), against the Recipient, or (ii) any prosecution of any claim or appeal against the United States

Government, any agency or instrumentality thereof (including the CDFI Fund), which the Recipient instituted or in which the Recipient has joined as a claimant.

(d) The Recipient shall not use any Program Income for Indirect Costs, as defined in the Uniform Administrative Requirements at 2 C.F.R. § 200.56.

(e) In no event shall the Recipient use any Program Income for Economic Development Activities, unless the Recipient has been authorized by the CDFI Fund to use its CMF Award for Economic Development Activities, as so indicated in Schedule 1 of this Assistance Agreement. To the extent that the Recipient has already used thirty percent (30%) of its CMF Award for Economic Development Activities (*i.e.*, disbursed thirty percent (30%) of the CMF Award amount that is stated in the signature page of this Assistance Agreement), the Recipient shall not use any Program Income for any Economic Development Activity.

(f) In no event shall the Recipient use any Program Income for Direct Administrative Expenses, unless the Recipient has been authorized by the CDFI Fund to use its CMF Award for Direct Administrative Expenses, as so indicated in Schedule 1 of this Assistance Agreement. To the extent that the Recipient has already used five percent (5%) of its CMF Award for Direct Administrative Expenses (*i.e.*, disbursed five percent (5%) of the CMF Award amount that is stated in the signature page of this Assistance Agreement), the Recipient shall not use any Program Income for any Direct Administrative Expenses.

ARTICLE IV COMMITMENT, DISBURSEMENT, PROJECT COMPLETION, AND REINVESTMENT

4.1 Commitment. The Recipient shall demonstrate that the CMF Award is Committed for use by the date set forth in Schedule 1. Evidence of commitment shall be demonstrated by an executed, written, legally binding commitment agreement **unless the requirement of 2 C.F.R. § 1807.501(b) for such an agreement is waived by the CDFI Fund pursuant to 2 C.F.R. § 1807.105 and alternate documentation is approved. The commitment agreement or approved alternate documentation must demonstrate** that the CMF Award will be provided to a qualified homebuyer, a developer, or project sponsor for Affordable Housing Activities or Economic Development Activities for an identifiable project, and under which the following occurs:

(a) Construction can reasonably be expected to start within twelve (12) months of the commitment agreement date; or

(b) Property title will be transferred within six (6) months of the commitment agreement date; for the purposes of purchase in the form of down payment assistance or

mortgage finance assistance, the requirements of this Section 4.1(b) are deemed to be met when at least one loan is made that results in the transfer of property title within six (6) months of the commitment agreement date; or

(c) Construction schedule ensures Project Completion within five (5) years of the Effective Date of the Assistance Agreement.

4.2 Disbursement. The Recipient shall make an initial disbursement of the CMF Award for Affordable Housing Activities or Economic Development Activities by the date set forth in Schedule 1. The entire CMF Award, at a minimum, shall have been fully disbursed by the Recipient as of the end of the Investment Period. Funds are considered disbursed when they have been provided to the Housing or Community Service Facility (or other physical structure arising from an Economic Development Activity). If the Recipient uses its CMF Award to fund a Loan Loss Reserve or Loan Guarantee, such funds shall be deemed to have been disbursed, for the purposes of Section 3.2(j) and this Section 4.2, at the time that the funds were Committed for use.

4.3 Project Completion and Placed into Service. Once a CMF-funded project has achieved Project Completion, the Recipient shall ensure that it is Placed into Service by no later than twelve (12) months from Project Completion. Project Completion occurs when all requirements set forth in 12 C.F.R. § 1807.503 have been met, as applicable and as determined by the CDFI Fund.

4.4 Reinvestment. CMF Award funds that have been initially invested by the Recipient and then made available again to the Recipient for subsequent reinvestment during the Investment Period shall be treated as Program Income and reinvested in accordance with Section 3.8.

ARTICLE V AFFORDABILITY REQUIREMENTS

5.1 Affordability requirements in general. The Recipient shall ensure the following affordability qualifications are met for any project undergoing an Affordability Period and for each year that the Recipient has an Affordability Period in place (provided that Sections 5.1(c) and 5.1(d) shall only be required beginning after the end of the Investment Period):

(a) For each Affordable Housing unit for which the CMF Award or associated Leverages Costs is used to finance or support, the Recipient shall ensure that one hundred percent (100%) of total Eligible Project Costs are attributable to Affordable Housing units that meet the affordability qualifications for Eligible-Income Families.

(b) The Recipient shall ensure that, at a minimum, greater than fifty percent (50%) of the total Eligible Project Costs are attributable to Affordable Housing units that meet the

affordability qualifications for Low-Income, Very Low-Income or Extremely Low-Income Families, as set forth in 12 C.F.R. § 1807.400 *et seq.*

(c) Production targets. The Recipient shall ensure that the CMF Award is used for Affordable Housing Activities resulting in Affordable Housing units in an amount no less than the amount set forth in Schedule 1 of this Assistance Agreement.

(d) High Housing Need. The Recipient shall ensure that the percentage of all Affordable Housing units located in High Housing Need areas, as measured over its entire portfolio of Affordable Housing units, shall be no less than the percentage set forth in Schedule 1 of this Assistance Agreement.

5.2 Rental affordability qualifications. The Recipient shall ensure that the rental affordability requirements, as set forth in 12 C.F.R. Part 1807.400 *et seq.*, and the following requirements are met for any project undergoing an Affordability Period and for each year that the Recipient has an Affordability Period in place (provided that Section 5.2(a) shall only be required beginning after the end of the Investment Period):

(a) Portfolio-level targeted incomes. The percentage of rental Affordable Housing units that are occupied by Very Low-Income or Extremely Low-Income Families, as measured over the Recipient's entire portfolio of rental Affordable Housing units financed or supported by this CMF Award or associated Leveraged Costs, shall be no less than the percentage set forth in Schedule 1 of this Agreement.

(b) Project-level targeted income. For each Multi-family rental Affordable Housing project, for which all or a portion of the CMF Award or associated Leveraged Costs is used, at least twenty percent (20%) of all rental units in each project must be occupied by Families at or below fifty percent (50%) of AMI. For the purposes of this Section 5.2(b), a project consists of a building or group of buildings on the same site (or on scattered sites if developed together) under the same ownership and includes all units in that building or group of buildings.

(c) The maximum rent of and utilities allowances for each affordable unit shall not exceed the limitations set forth in 12 C.F.R. § 1807.401.

(d) A tenant's income is determined annually in the manner set forth in 12 C.F. R. 1807.401 *et seq.*

(e) The affordable housing rental provisions of 12 C.F.R. § 1807.401 *et seq.* are otherwise met.

(f) In the event of a refinancing, restructuring, or other event that results in the Recipient's loss of privity with respect to a rental housing project, the CDFI Fund

reserves the right to seek corrective actions from the Recipient in order to satisfy or otherwise address the affordability requirements for the remaining duration of the Affordability Period to the satisfaction of the CDFI Fund, including but not limited to requiring that the Recipient shall invest its own dollars in a replacement rental housing project, or requiring that the Recipient shall demonstrate through legal instruments, filings, and other documentation (*e.g.*, deed restrictions, covenants running with the land, *etc.*) that the original rental housing project will continue to meet the affordability requirements for the remaining duration of the Affordability Period.

(g) For any CMF-funded project, the Recipient shall ensure that the necessary deed restrictions, covenants running with the land, or other recordable mechanisms, as applicable, are filed in accordance with 12 C.F.R. § 1807.401, and the Recipient shall provide to the CDFI Fund evidence of any such filing, including any amendment thereof during the Affordability Period, within thirty (30) days of such filing, or within five (5) days of when the evidence of such filing is first made available to the Recipient, whichever is later. If a Recipient imposes affordability requirements other than through deed restrictions or covenants running with the land, the recordable mechanism being used to impose affordability requirements shall be approved in writing, and in advance of the applicable recordation, by the CDFI Fund. The Recipient shall ensure that all filings and recordations are duly made, such that all the necessary CMF affordability requirements imposed on each project are enforceable under all applicable Federal, State, and local laws. In connection with these filings and recordations, the CDFI Fund reserves the right to require that the Recipient furnish to the CDFI Fund an opinion from its legal counsel that the CMF affordability requirements that are to be imposed by deed restrictions, covenants running with the land, or other CDFI Fund-approved mechanisms are recordable and enforceable under the laws of the State and locality where the Recipient will undertake its CMF activities.

5.3 Homeownership affordability qualifications. The Recipient shall ensure that the Homeownership affordability requirements, as set forth in 12 C.F.R. § 1807.400 *et seq.*, and the following requirements are met for any project undergoing an Affordability Period and for each year that the Recipient has an Affordability Period in place (provided that Section 5.3(a) shall only be required beginning after the end of the Investment Period):

(a) Portfolio-level targeted incomes. The percentage of Homeownership Affordable Housing units that are occupied by Low-Income, Very Low-Income, or Extremely Low-Income Families, as measured over the Recipient's entire portfolio of Homeownership Affordable Housing units financed or supported by this CMF Award or associated Leveraged Costs, shall be no less than the percentage set forth in Schedule 1 of this Assistance Agreement.

(b) Project-level targeted income. At least twenty percent (20%) of the units in each Homeownership Affordable Housing project shall be occupied by Families whose

incomes are at or below eighty percent (80%) of AMI. This requirement will be calculated based on all Homeownership units or assistance provided to homeowners in the Recipient's portfolio in each of the following discrete eligible activity types financed and supported by its FY 2016 CMF Award or associated Leveraged Costs.

- (i) Development of Homeownership units;
 - (ii) Rehabilitation of Homeownership units;
 - (iii) Purchase in the form of mortgage finance assistance of Homeownership units; and
 - (iv) Purchase in the form of down payment assistance of Homeownership units.
- (c) The Housing must be Single-family housing.
- (d) The housing price does not exceed ninety-five percent (95%) of the median purchase price (or for owner-occupied rehabilitation, the after-rehabilitation value) for the area as used in the HOME Program and as determined by HUD and the applicable Participating Jurisdiction.
- (e) The Housing must be owned or purchased by a qualifying Family as set forth in 12 C.F.R. § 1807.400. The Recipient must establish a process for establishing income qualifications that is in compliance with all applicable Federal and State lending laws.
- (f) The Housing must be the principal residence of the Family.
- (g) The Housing must meet the definition of "Homeownership" as defined in 12 C.F.R. § 1807.104.
- (h) Resale and recoupment strategies are imposed as described in 12 C.F.R. § 1807.402(a)(5) and must satisfy the following:
- (i) Prior to the date that the Recipient's first Affordable Housing project is Committed for use, the Recipient shall have prepared in writing, and its board of directors (or equivalent) shall have approved, a resale or recoupment strategy that meets the requirements of 12 C.F.R. § 1807.402(a)(5) and is subject to inspection by the CDFI Fund at any time thereafter pursuant to Section 7.3 of this Assistance Agreement.
 - (ii) At a minimum, this written strategy shall include mechanisms for:

- (1) Providing notice to the CDFI Fund when the Recipient utilizes this resale and recoupment strategy;
 - (2) Ensuring that the Recipient shall demonstrate through legal instruments, filings, and other documentation (*e.g.*, deed restrictions, covenants running with the land, *etc.*), to the satisfaction of the CDFI Fund, that the resold or recoupment housing will meet the affordability requirements for the remaining duration of the Affordability Period;
 - (3) Providing the CDFI Fund with the necessary assurances and certifications that the resold or recoupment housing will meet the affordability requirements for the remaining duration of the Affordability Period; and
 - (4) Any other provisions deemed appropriate or necessary by the CDFI Fund.
- (iii) The resale or recoupment of any housing shall be made in accordance with this written strategy.
- (i) If applicable, CMF-funded rental units' ability to be converted to Homeownership Affordable Housing units shall be in accordance with 12 C.F.R. § 1807.402(e).
 - (j) The affordable homeownership provisions of 12 C.F.R. § 1807.402 *et seq.* are otherwise met.
 - (k) For any CMF-funded project, the Recipient shall ensure that the necessary deed restrictions, covenants running with the land, or other similar mechanisms, as applicable, are filed in accordance with 12 C.F.R. § 1807.402, and the Recipient shall provide to the CDFI Fund evidence of any such filing, execution, or recordation, including any amendment thereof during the Affordability Period, within thirty (30) days of such filing, execution, or recordation, or within five (5) days of when the evidence of such filing is first made available to the Recipient, whichever is later. The Recipient shall ensure that all filings and recordations are duly made, such that all the necessary CMF affordability requirements imposed on each project are enforceable under all applicable Federal, State, and local laws. In connection with these filings and recordations, the CDFI Fund reserves the right to require that the Recipient furnish to the CDFI Fund an opinion from its legal counsel that the CMF affordability requirements that are to be imposed by deed restrictions, covenants running with the land, or other CDFI Fund-approved mechanisms are recordable and enforceable under the laws of the State and locality where the Recipient will undertake its CMF activities.

5.4 Economic Development Activities. The Recipient shall ensure that the requirements of 12 C.F.R. part 1807 are met and shall retain its evidence of a Concerted Strategy pursuant to the record retention requirements of Section 7.3 of this Assistance Agreement. With regard to the requirement that Economic Development Activities (12 C.F.R. § 1807.104) be In Conjunction With Affordable Housing Activities, meaning physically proximate to and reasonably available to residents of Affordable Housing that is located within one (1) mile of the Economic Development Activity for Metropolitan Areas, and within ten (10) miles of the Economic Development Activity for Non-Metropolitan Areas, the Recipient must report in its Annual Report – Performance Report (as described in Schedule 1-B) the address of at least one qualifying Affordable Housing project at the time the CMF Award funds are Committed for use in order to demonstrate compliance with Concerted Strategy.

5.5 Tracking affordability during the Affordability Period. Once the Recipient achieves Project Completion for any given project, the Recipient shall designate the number of Affordable Housing units attributable to the Eligible Project Costs of that project. The Recipient is responsible for tracking this number of units within the project for the duration of the Affordability Period. Each year during the Affordability Period, the Recipient shall report on its compliance with the requirements of this Section 5.5 in the Recipient’s Annual Report – Performance Report (as described in Schedule 1-B). The Recipient shall ensure that the housing units meet the affordability requirements for no less than ten (10) years, beginning after Project Completion and on the date when the housing is Placed into Service, by ensuring the following each year during the Affordability Period:

(a) For rental Affordable Housing units:

- (1) The tenant’s income is re-examined annually to determine if the Family remains income eligible.
- (2) The requirements of Section 5.2 are met.
- (3) The Housing adheres to the applicable Participating Jurisdiction’s maximum monthly allowances for utilities and services (excluding telephone).
- (4) Any increase in rents adheres to the rent limitations and notice requirements set forth in 12 C.F.R. § 1807.401(a) and (g).

(b) For Homeownership Affordable Housing units:

- (1) The original or a subsequent qualifying Family owns and resides in the Housing, provided that qualifications for each such qualifying Family are determined at or around the time that equitable title of the Housing is transferred to the qualifying Family, or at or around the time that the rehabilitation or the refinancing is executed for the qualifying Family, as applicable.

(2) Resale strategies pursuant to Section 5.3(f) and 12 C.F.R. § 1807.402(a)(5) are imposed should the Housing be sold to a non-qualifying family.

ARTICLE VI REPRESENTATIONS AND WARRANTIES

The Recipient hereby represents and warrants to the CDFI Fund the following:

6.1 Organization, standing, and powers. The Recipient is a validly existing Tribal Government, instrumentality of a State, or an entity validly existing and in good standing under Federal law or the laws of the State or Tribe of its legal formation and has all requisite power and authority to own and operate its assets and properties, to carry on its business as it is now being conducted and to carry out its proposed, hereby authorized use(s) of the CMF Award provided hereunder.

6.2 Qualification. The Recipient is duly qualified, in good standing and authorized to transact business in each jurisdiction where the conduct of the Recipient's business, the carrying out of its proposed, hereby authorized use(s) of the CMF Award to be provided hereunder or the ownership of its assets and properties requires such qualification, or, if not so qualified, the Recipient's failure so to qualify shall not have a material adverse effect on the Recipient, its financial condition or operations and will not impair the Recipient's ability to carry out its proposed, hereby authorized use(s) of the CMF Award to be provided hereunder or its right to enforce any material agreement to which it is a party. The Recipient has performed and complied with all applicable agreements and conditions required by the Assistance Agreement to be performed or complied with by it before or at the Closing.

6.3 Authorization; consents. The execution, delivery and performance by the Recipient of the Assistance Agreement and the carrying out of its proposed, hereby authorized use(s) of the CMF Award provided hereunder are within the Recipient's corporate powers and have been duly authorized by all requisite corporate action. No additional consent, license, approval, authorization, qualification, exemption, franchise, designation, permit or order of, notice to or declaration or filing with, any third party, including, without limitation, any governmental entity (other than the CDFI Fund), which has not been previously obtained is required in connection with the conduct of the Recipient's business or in connection with the valid execution, delivery and performance by the Recipient of the Assistance Agreement or any documents or agreements connected herewith or the carrying out of the proposed, hereby authorized use(s) of the CMF Award to be provided hereunder.

6.4 Execution and delivery; binding agreement. The Assistance Agreement and all documents connected therewith have been or will be, on or before the Effective Date, duly

authorized, executed and delivered on behalf of the Recipient and constitute, on or before the Effective Date, legal, valid and binding obligations of the Recipient enforceable in accordance with their respective terms.

6.5 No conflicts. The execution, delivery and performance by the Recipient of the Assistance Agreement and the carrying out of the proposed, hereby authorized uses(s) of the CMF Award provided hereunder shall not result in any violation of and shall not conflict with, or result in a breach of any of the terms of, or constitute a noncompliance under, any provision of Federal or State law to which the Recipient is subject, the Recipient's incorporation, charter, organization, formation, or other establishing documentation, bylaws or any agreement, judgment, writ, injunction, decree, order, rule or regulation to which the Recipient is a party or by which it is bound.

6.6 Litigation. The Recipient has neither actual nor constructive knowledge of any suit, action, proceeding, or investigation pending or threatened that questions the validity of the Assistance Agreement or any action taken or to be taken pursuant hereto or contemplated hereby including, but not limited to, the carrying out of the proposed, hereby authorized use(s) of the CMF Award to be provided hereunder.

6.7 Compliance with other instruments. The Recipient is not, and at any Closing connected herewith will not be, in violation of any provision of its incorporation, charter, organization, formation or otherwise establishing documents, or any loan agreement or other material agreement to which it is a party. The Recipient is not, and at any Closing connected herewith will not be, in violation of any instrument, judgment, decree, order, statute, rule or governmental regulation applicable to it, the violation of which might have a material adverse effect on the business, affairs, operations, or condition of the Recipient.

6.8 Disclosure. Neither the Assistance Agreement nor any attachment thereto, nor any certification or other document referenced or incorporated herein or therein and furnished to the CDFI Fund by the Recipient contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or therein, in light of the circumstances under which they were made, not misleading. The Recipient has disclosed, in writing, to the CDFI Fund all facts that might reasonably be expected to result in a material adverse effect upon the Recipient's ability either to conduct its principal business or to carry out its proposed and herein authorized use of the CMF Award to be provided hereunder. The Recipient has not knowingly and willfully made or used a document or writing containing any false, fictitious, or fraudulent statement or entry as part of its correspondence or communication with the CDFI Fund. The Recipient acknowledges, under 18 U.S.C. § 1001, that if it knowingly and willfully makes or uses such document or writing, it or its employee(s) or agents shall be fined or imprisoned for not more than five years, or both.

6.9 Taxes; debts; bankruptcy. The Recipient is not delinquent on any debts owed to Federal, State, local, or Tribal Governments including, but not limited to, amounts due under the Internal

Revenue Code, and has never filed for bankruptcy nor had a conservator appointed. The Recipient has neither actual nor constructive knowledge of any pending or anticipated bankruptcy filings or conservatorship appointments on its behalf.

6.10 Debarment, suspension, and other responsibility matters. Pursuant to 31 C.F.R. § 19.335, neither the Recipient nor any of its principals (as defined by 31 C.F.R. § 19.995): (a) are presently excluded or disqualified from covered transactions by any Federal department or agency; (b) within the three-year (3-year) period preceding the date of this Assistance Agreement, have been convicted of or had a civil judgment rendered against them for any of the offenses listed in 31 C.F.R. § 19.800(a); (c) are presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses listed in 31 C.F.R. § 19.800(a); or (d) within the three-year (3-year) period preceding the date of this Assistance Agreement, have had one or more public transactions (Federal, State, or local) terminated for cause or noncompliance.

6.11 Status as a Certified CDFI or Nonprofit Organization.

(a) For Certified CDFIs: Since its certification as a CDFI, the Recipient has neither actual nor constructive knowledge of any changes that may adversely affect its status as a Certified CDFI.

(b) For Nonprofit Organizations:

(i) The Recipient has neither actual nor constructive knowledge of any events or pending matters that may adversely affect its status as a nonprofit or not-for-profit entity under the laws of the Recipient's state of formation.

(ii) The Recipient has neither actual nor constructive knowledge that may adversely affect its Federal income taxation pursuant to the Internal Revenue Code of 1986.

(iii) The Recipient has neither actual nor constructive knowledge of any events or pending matters that may adversely affect that one of its principal purposes is the development or management of affordable housing.

6.12 Environmental review certification and notification.

(a) At the time of closing, and as applicable each time the Recipient identifies a new project for which it would like to use the CMF Award, the Recipient certifies the following:

(i) The Recipient has identified one or more categorical exclusions, as set forth in 12 C.F.R. § 1815.110, that apply to the Recipient's proposed Affordable Housing Activities or Economic Development Activities; and

(ii) The Recipient has determined that the proposed project(s) does not involve actions that normally require an Environmental Impact Statement (EIS) as defined in 12 C.F.R. § 1815.102(a)(7).

(b) Each time the Recipient identifies a new project for which it would like to use the CMF Award but cannot make the certifications in Section 6.12(a) above, the Recipient shall complete and submit to the CDFI Fund the environmental review notification report (form to be provided), but no later than ninety (90) days prior to the Recipient's Committed for use date set forth in Schedule 1.

6.13 Nondiscrimination certification. Within the two-year (2-year) period preceding the Announcement Date, there has been no final determination of liability in any proceeding instituted against the Recipient in, by or before any court, governmental or administrative body or agency, which proceeding involves allegations of discrimination by the Recipient on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex, for which a corrective action plan has not been implemented.

ARTICLE VII COVENANTS AND AGREEMENTS OF THE RECIPIENT

Until the closeout of the Assistance Agreement pursuant to Section 9.11 of the General Award Terms and Conditions (except with respect to Section 7.4 hereof which shall remain in effect for three years following the closeout hereof pursuant to said section), the Recipient shall duly perform and observe each and all of the following covenants and agreements:

7.1 Compliance with government requirements. In carrying out its responsibilities pursuant to the Assistance Agreement, the Recipient shall comply with all applicable Federal, State, local and tribal laws, regulations, ordinances, Office of Management and Budget (OMB) requirements, and Executive Orders. Furthermore, the Recipient shall comply with the CDFI Fund's Environmental Quality Regulations (12 C.F.R. part 1815) as well as all other Federal environmental requirements applicable to Federal awards. The Recipient shall also comply with all applicable Federal nondiscrimination and civil rights laws. Pursuant to Executive Order 13717, the Recipient shall also comply with all applicable earthquake-resistant design provisions of the 2015 editions of the International Building Code or the International Residential Code, nationally recognized building codes promulgated by the International Code Council (ICC), or equivalent ICC codes, and any new versions thereof. Further, the Recipient shall ensure that any Approved SPE, per section 3.5(b) the Assistance Agreement, is in compliance with all such

applicable Federal, State, local and tribal laws, regulations, ordinances, OMB requirements, and Executive Orders.

7.2 Fraud, waste and abuse. If the Recipient becomes aware at any time of the existence or apparent existence of fraud, waste or abuse of CMF Award provided pursuant to the Assistance Agreement, the Recipient shall promptly report such incidence(s) to the Office of Inspector General of the U.S. Department of the Treasury.

7.3 Record retention and access. The Recipient shall comply with all record retention requirements set forth in the Uniform Administrative Requirements at 2 C.F.R. §§ 200.333-336. Public access to Recipient records shall be maintained in accordance with the Uniform Administrative Requirements at 2 C.F.R. § 200.337, including access applicable under the Freedom of Information Act (5 U.S.C. § 552) (FOIA).

7.4 General data collection. The Recipient shall maintain such records as reasonably may be necessary to:

- (a) Disclose the manner in which the CMF Award provided hereunder is used;
- (b) Demonstrate compliance with the requirements of the Act, CMF Regulations, and the Assistance Agreement; and
- (c) Evaluate the accomplishments of the CMF.

7.5 Equal Credit Opportunity Act. The Recipient shall provide its products and services in a manner that is consistent with the Equal Credit Opportunity Act (15 U.S.C. § 1691), to the extent that the Recipient is subject to the requirements of such Act.

7.6 Certain Insider activities. The Recipient shall comply with the restrictions on insider activities set forth in the CMF Regulations (at 12 C.F.R. § 1807.905).

7.7 Maintain CDFI certification (if applicable); maintain status as Nonprofit Organization (if applicable); maintain status as an Insured Credit Union, Depository Institution Holding Company, or Insured Depository Institution (if applicable).

- (a) If the Recipient is certified as a CDFI as of the Effective Date of this Assistance Agreement, the Recipient shall do all things necessary to preserve, renew and keep in full force and effect its certification as a CDFI.
- (b) If the Recipient is a Nonprofit Organization as of the Effective Date of this Assistance Agreement, the Recipient shall do all things necessary to maintain its status as a Nonprofit Organization.

(c) If the Recipient is an Insured Credit Union, Depository Institution Holding Company, Insured Depository Institution or State-Insured Credit Union, the Recipient shall do all things necessary to preserve, renew and keep in full force and effect its status as an Insured Credit Union, Depository Institution Holding Company, Insured Depository Institution, or State-Insured Credit Union, as applicable.

7.8 Advise the CDFI Fund of certain Material Events. The Recipient shall advise the CDFI Fund in writing, within thirty (30) days of the event and in reasonable detail, of any of the following Material Events:

(a) Any proceeding instituted against the Recipient in, by, or before any court, governmental or administrative body or agency, which proceeding or its outcome could have a material adverse effect upon the operations, assets or properties of the Recipient;

(b) Any proceeding instituted against the Recipient in, by or before any court, governmental or administrative body or agency, which proceeding involves allegations of discrimination by the Recipient on the basis of race, color, national origin, disability, age, marital status, receipt of income from public assistance, religion, or sex;

(c) All violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal award. Failure to make required disclosures can result in any of the remedies described in 2 C.F.R § 200.338 of the Uniform Administrative Requirements;

(d) Any material adverse change in the condition, financial or otherwise, or operations of the Recipient that would impair the Recipient's ability to carry out the authorized uses of the CMF Award;

(e) Any substantial change in the business of the Recipient;

(f) The loss of the Recipient's Insured Credit Union status as defined in 12 U.S.C. § 1752(7) (if applicable);

(g) The occurrence of any Event of Noncompliance, as that term is defined in Section 8.1 hereof, or any event which upon notice or lapse of time, or both, would constitute an Event of Noncompliance;

(h) The merger, consolidation or acquisition of the Recipient by or with another entity;

- (i) Loss of the Recipient's Depository Institution Holding Company status under 12 U.S.C. § 1813(w)(1) or Insured Depository Institution status under 12 U.S.C. § 1813(c)(2) (if applicable);
- (j) The debarment, suspension, exclusion, or disqualification, by the U.S. Department of the Treasury, or any other Federal department or agency, of any individual or entity (or principal thereof) that received any portion of the CMF Award in a procurement or nonprocurement transaction, as defined in 31 C.F.R. § 19.970;
- (k) Any event or change that would result in the Recipient not being certified as a CDFI (if applicable) or losing its status as a Nonprofit Organization (if applicable);
- (l) The existence of any noncompliance with the terms and conditions of any loan or other credit agreement with a creditor other than the CDFI Fund;
- (m) Failure by the Recipient to have Committed all of its CMF Award by the date set forth in Schedule 1 of this Assistance Agreement;
- (n) In accordance with Section 9.9(b) of this Assistance Agreement, any change with respect to the Recipient's executive director, chief executive officer, or equivalent leadership official;
- (o) Any amendments or modifications to the deed restrictions, covenants running with the land, or other recordable or similar mechanisms required to be made as they are described in and pursuant to Section 5.2(g) and Section 5.3(k);
- (p) After a project has been Placed into Service, any change in the ownership or management of a project during the Affordability Period; or
- (q) Such other events that may be determined by the CDFI Fund, in its sole discretion, to be Material Events and for which the CDFI Fund issues related guidance.

7.9 Performance Goals, tracking use of the CMF Award, and interest earned on advances. Throughout the Period of Performance, the Recipient shall comply with the following:

- (a) The Recipient must satisfy the measures set forth in Schedule 1 as of the dates set forth in Sections 3.2, 5.1, 5.2, and 5.3, as applicable.
- (b) The Recipient shall not use CMF Award funds for any Project that involves funding from any other CDFI Fund program.
- (c) The Recipient must account for and track the use of the CMF Award and total Eligible Project Costs properly and as further set forth in Schedule 1-B (Annual Report).

(d) For every dollar of CMF Award received from the CDFI Fund, the Recipient must be able to verify how it was used. This requires the Recipient to separately account for the proceeds and uses of the CMF Award for eligible activities set forth in 12 C.F.R. § 1807.301. Recipients that are Institutions of Higher Education, Hospitals, Other Non-Profits, State, local, or Federally-recognized Indian tribal governments should refer to 2 C.F.R. § 200.305(b)(7) of the Uniform Administrative Requirements for additional guidance on proper treatment of Advance payments, including whether Advance payments need to be held in interest bearing accounts and when interest earned on Advance payments must be remitted back to the Federal Government. Recipients must retain records pursuant to Section 7.3 of this Agreement to document that required payments of interest have been made.

(e) The Recipient shall determine whether any individual or entity (or principal thereof), receiving any portion of the CMF Award is currently debarred, suspended, excluded, or disqualified by the U.S. Department of the Treasury or any other Federal department or agency. The Recipient shall include in all of its procurement and nonprocurement contracts and agreements, between the Recipient and an individual or entity (or principal thereof) receiving any portion of the CMF Award, a representation that such individual or entity (or principal thereof) is not currently debarred, suspended, excluded, or disqualified by any Federal department or agency. Notwithstanding the foregoing paragraphs of this Section 7.9, the above representations are not required in those procurement contracts in which the Recipient enters into for goods or services for less than \$25,000.

(f) The Recipient shall include in all of its nonprocurement transaction agreements, for which it is using the CMF Award, a representation that the individual or entity (or principal thereof) receiving the CMF Award is currently not debarred, suspended, excluded, or disqualified by the U.S. Department of the Treasury or any other Federal department or agency.

7.10 Federal Funding Accountability and Transparency Act of 2006 (as amended)
Compliance; reporting subawards and executive compensation.

(a) Reporting of first-tier subawards.

(i) Applicability. Unless you are exempt as provided in paragraph d. of this award term, you must report each action that obligates \$25,000 or more in Federal funds that does not include Recovery funds (as defined in section 1512(a)(2) of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5) for a subaward to an entity (see definitions in paragraph (e) of this award term).

(ii) Where and when to report.

(1) You must report each obligating action described in paragraph a(i) of this award term to <http://www.fsrs.gov>.

(2) For subaward information, report no later than the end of the month following the month in which the obligation was made. (For example, if the obligation was made on November 7, 2010, the obligation must be reported by no later than December 31, 2010.)

(iii) What to report. You must report the information about each obligating action that the submission instructions posted at <http://www.fsrs.gov> specify.

(b) Reporting total compensation of Recipient executives.

(i) Applicability and what to report. You must report total compensation for each of your five most highly compensated executives for the preceding completed fiscal year, if—

(1) the total Federal funding authorized to date under this award is \$25,000 or more;

(2) in the preceding fiscal year, you received—

(A) eighty percent (80%) or more of your annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

(B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and

(3) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)

(ii) Where and when to report. You must report executive total compensation described in paragraph (b)(i) of this award term:

- (1) As part of your registration profile at <http://www.ccr.gov>.
 - (2) By the end of the month following the month in which this award is made, and annually thereafter.
- (c) Reporting of total compensation of Subrecipient executives.
- (i) **Applicability and what to report.** Unless you are exempt as provided in paragraph (d) of this award term, for each first-tier subrecipient under this award, you shall report the names and total compensation of each of the subrecipient's five most highly compensated executives for the subrecipient's preceding completed fiscal year, if—
 - (1) in the subrecipient's preceding fiscal year, the subrecipient received—
 - (A) eighty percent (80%) or more of its annual gross revenues from Federal procurement contracts (and subcontracts) and Federal financial assistance subject to the Transparency Act, as defined at 2 C.F.R. § 170.320 (and subawards); and
 - (B) \$25,000,000 or more in annual gross revenues from Federal procurement contracts (and subcontracts), and Federal financial assistance subject to the Transparency Act (and subawards); and
 - (2) The public does not have access to information about the compensation of the executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78m(a), 78o(d)) or section 6104 of the Internal Revenue Code of 1986. (To determine if the public has access to the compensation information, see the U.S. Security and Exchange Commission total compensation filings at <http://www.sec.gov/answers/excomp.htm>.)
 - (ii) **Where and when to report.** You must report subrecipient executive total compensation described in paragraph c(1) of this award term:
 - (1) To the recipient.
 - (2) By the end of the month following the month during which you make the subaward. For example, if a subaward is obligated on any date during the month of October of a given year (*i.e.*, between October 1 and

31), you must report any required compensation information of the subrecipient by November 30 of that year.

(d) Exemptions. If, in the previous tax year, you had gross income, from all sources, under \$300,000, you are exempt from the requirements to report:

- (i) Subawards, and
- (ii) The total compensation of the five most highly compensated executives of any subrecipient.

(e) Definitions. For purposes of this award term:

- (i) Entity means all of the following, as defined in 2 C.F.R. part 25:
 - (1) A Governmental organization, which is a State, local government, or Indian tribe;
 - (2) A foreign public entity;
 - (3) A domestic or foreign nonprofit organization;
 - (4) A domestic or foreign for-profit organization;
 - (5) A Federal agency, but only as a subrecipient under an award or subaward to a non-Federal entity.
- (ii) Executive means officers, managing partners, or any other employees in management positions.
- (iii) Subaward:
 - (1) This term means a legal instrument to provide support for the performance of any portion of the substantive project or program for which you received this award and that you as the recipient award to an eligible subrecipient.
 - (2) The term does not include your procurement of property and services needed to carry out the project or program (for further explanation, see Sec. __ .210 of the attachment to OMB Circular A-133, “Audits of States, Local Governments, and Non-Profit Organizations”).

- (3) A subaward may be provided through any legal agreement, including an agreement that you or a subrecipient considers a contract.
- (iv) Subrecipient means an entity that:
- (1) Receives a subaward from you (the recipient) under this award; and
 - (2) Is accountable to you for the use of the Federal funds provided by the subaward.
- (v) Total compensation means the cash and noncash dollar value earned by the executive during the recipient's or subrecipient's preceding fiscal year and includes the following (for more information see 17 C.F.R. § 229.402(c)(2)):
- (1) Salary and bonus.
 - (2) Awards of stock, stock options, and stock appreciation rights. Use the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2004) (FAS 123R), Shared Based Payments.
 - (3) Earnings for services under non-equity incentive plans. This does not include group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of executives, and are available generally to all salaried employees.
 - (4) Change in pension value. This is the change in present value of defined benefit and actuarial pension plans.
 - (5) Above-market earnings on deferred compensation which is not tax-qualified.
 - (6) Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the executive exceeds \$10,000.

**ARTICLE VIII
EVENTS OF NONCOMPLIANCE AND REMEDIES**

8.1 Events of noncompliance. If any one or more of the following events occurs, the CDFI Fund, in its sole discretion, may find the Recipient to be in noncompliance:

- (a) Fraud, mismanagement, or noncompliance with the Act;
- (b) Any representation, warranty, certification, assurance, or any other statement of fact set forth in this Assistance Agreement or the Application including, but not limited to, the Assurances and Certifications contained in the Application, or any representation or warranty set forth in any document, report, certificate, financial statement or instrument now or hereafter furnished in connection with the Assistance Agreement, is found by the CDFI Fund to be inaccurate, false, incomplete, or misleading when made, in any material respect;
- (c) A Material Weakness, an audit finding (as described in 2 C.F.R. § 200.5 and 2 C.F.R. § 200.516(a) of the Uniform Administrative Requirements), a qualified opinion or any statement in the Recipient's annual audited financial statements that evidences a failure of the Recipient to be financially sound, be managerially sound, and/or maintain appropriate internal controls;
- (d) **Except as provided in Section 8.1(i)**, the failure of the Recipient to observe, comply with or perform any term, covenant, agreement, or other provision contained in the CMF Regulations, this Assistance Agreement including, but not limited to, the Performance Goals, or the Application **(as modified or superceded by this Assistance Agreement)** including, but not limited to, the Assurances and Certifications contained therein or any instrument or other document delivered to the CDFI Fund in connection with or pursuant to the Assistance Agreement;
- (e) The failure of the Recipient to conduct its business in the usual and ordinary course or to maintain its corporate existence and right to carry on its business and duly obtain all necessary renewals, licensing and extensions thereof and to maintain, preserve and renew all such rights, powers, privileges, and franchises;
- (f) The Recipient's becoming insolvent or unable to meet its obligations as they mature, making a general assignment for the benefit of creditors, or consenting to the appointment of a trustee or a receiver, or admitting in writing its inability to pay its debts as they mature;
- (g) The institution of bankruptcy, reorganization, arrangement, insolvency, or liquidation proceedings by or against the Recipient and, if instituted against it, the same being consented to by the Recipient or remaining undismissed for a period of thirty (30) calendar days;

(h) The occurrence of a Material Event (as defined in Section 7.8 of this Assistance Agreement) to the extent that such event has a material adverse effect on the Recipient, its financial condition or business operations and impairs the Recipient's ability to carry out the eligible uses.

(i) The failure of the Recipient to satisfy the conditions set forth in Article IV by the fifth year (5th year) anniversary of the Effective Date, unless the CDFI Fund determines that an extension of the Investment Period is appropriate and notifies the Recipient in writing of such an extension.

(j) The Recipient's failure to properly monitor the activities of an Approved SPE.

(k) The Recipient's loss of management or Control over, or its failure to maintain one hundred percent (100%) ownership of, an Approved SPE.

8.2 Remedies for noncompliance. If, after reasonable notice and opportunity for hearing, the CDFI Fund finds the Recipient to be in noncompliance under Section 8.1, the CDFI Fund may, in its sole discretion, take any one or more of the following actions, subject to Section 8.4:

(a) Require changes in the Recipient's Assistance Agreement;

(b) Revoke approval of the Recipient's Application;

(c) Revoke approval of any other applications submitted to the CDFI Fund by the Recipient under any of the CDFI Fund's programs, and declare such applications to be ineligible;

(d) Reduce or terminate the CMF Award authorized hereunder;

(e) Require repayment of any CMF Award that has been distributed to the Recipient pursuant hereto;

(f) Render the Recipient ineligible to apply for additional CMF and other Awards or Assistance from the CDFI Fund through future funding rounds;

(g) Require the Recipient to convene a meeting(s) of its board of directors at which meeting(s) the CDFI Fund will be given the opportunity to address the attendees with respect to the CDFI Fund's evaluations and concerns regarding the performance of the Recipient under the Assistance Agreement;

(h) Limit the availability of the CMF Award to specific uses;

(i) Take such other actions in accordance with the Uniform Administrative Requirements, as the CDFI Fund deems appropriate, including, but not limited to, suspension or revocation of CDFI certification.

8.3 No waiver. No course of dealing on the part of the CDFI Fund or any delay or failure on the part of the CDFI Fund to exercise any right herein will operate as a waiver of the right or otherwise prejudice the CDFI Fund's rights, powers and remedies under the Assistance Agreement, the Act, the CMF Regulations, or any other applicable law or regulation.

8.4 Notice of noncompliance; time to cure. Prior to exercising or imposing any remedy/remedies for noncompliance under Section 8.2 herein, the CDFI Fund will provide the Recipient with written notice of the noncompliance and the prescribed remedy/remedies, if any, for noncompliance, provided that the CDFI Fund reserves the right to provide notice through alternative reasonable means. Unless otherwise specified in the notice, and provided that the CDFI Fund reserves the right to provide hearing through alternative reasonable means, the Recipient shall have ten (10) days from the date of the noncompliance notice to cure the noncompliance. If the Recipient believes that the noncompliance is of such a nature that it cannot be cured within the time set forth in the notice, then the Recipient may, within five (5) days of the date of the notice, request, in writing, additional time to cure the noncompliance. If the CDFI Fund determines, in its sole discretion, that such additional time is necessary, then the CDFI Fund may extend the cure period. If the CDFI Fund does not extend the cure period, as outlined above, and the Recipient fails to cure the noncompliance within the ten-day (or other period specified in the written notice) cure period, the CDFI Fund may, in its sole discretion, impose or exercise the remedy/remedies, if any, for noncompliance set forth in its written notice, and any other remedy for noncompliance to which it might be entitled hereunder, or in law or at equity, within a timeframe set by the CDFI Fund in its sole discretion. Nothing in the Assistance Agreement, however, will create in the Recipient any right to any formal or informal hearing or comparable proceeding not otherwise required by law.

Notwithstanding the foregoing paragraph in this Section 8.4, if the CDFI Fund determines, in its sole discretion, that the Recipient has engaged in fraud, mismanagement, or other prohibited misconduct, or that the noncompliance is of such a nature that it cannot be cured, the CDFI Fund may, in its sole discretion, impose the prescribed remedy/remedies for noncompliance without notice, except as may be required by law.

8.5 Terms and conditions related to regulated institutions only.

(a) Prior notice to Appropriate Federal Banking Agency of remedy/remedies for noncompliance. Prior to imposing or exercising any remedy/remedies for noncompliance under Section 8.2 of the Assistance Agreement, the CDFI Fund will provide the Appropriate Federal Banking Agency with written notice of the proposed remedy (or remedies). Moreover, the CDFI Fund will not impose or exercise any proposed remedy (or remedies) if the Appropriate Federal Banking Agency, in writing, not later than thirty (30) calendar days after receiving the notice

from the CDFI Fund of any proposed remedy (or remedies) against the Recipient, takes all of the following actions:

- (i) Objects to the proposed remedy (or remedies);
 - (ii) Determines that the remedy (or remedies) would:
 - (1) Have a material adverse effect on the safety and soundness of the Recipient; or
 - (2) Impede or interfere with an enforcement action against the Recipient by the Appropriate Federal Banking Agency;
 - (iii) Proposes a comparable alternative action; and
 - (iv) Specifically explains:
 - (1) The basis for the determination made pursuant to this section, and, if appropriate, provides documentation to support the determination; and
 - (2) How the alternative action proposed would be as effective as the remedy (or remedies) proposed by the CDFI Fund in securing compliance and deterring future noncompliance.
- (b) Insured Depository Institution, Depository Institution Holding Companies, or Insured Credit Union as Recipient. The provisions of the Act, the CMF Regulations, and the Assistance Agreement shall be enforceable under 12 U.S.C. § 1786, 12 U.S.C. § 1818, and 12 U.S.C. § 1844 by the Appropriate Federal Banking Agency, and any violation of such provisions will be treated as a violation of the Federal Credit Union Act, Federal Deposit Insurance Act, or Bank Holding Company Act, as applicable. Nothing herein shall be construed to preclude the CDFI Fund from directly enforcing the Assistance Agreement as provided for hereunder and under the terms of the Act.
- (c) No authority to limit supervision and regulation. Nothing herein is intended nor should be construed to affect any authority of the Appropriate Federal Banking Agency to supervise and regulate the Recipient.

ARTICLE IX MISCELLANEOUS

9.1 Entire agreement. The Assistance Agreement (including all schedules and amendments thereto), the Application and the attachments, exhibits, appendices and supplements to the

Application, and the Notice of Funds Availability between the Recipient and the CDFI Fund with respect to the obligation of funds necessary to provide the CMF Award to the Recipient contain the entire agreement of the parties with respect to the subject matter hereof and supersede all prior agreements or understandings, written or oral, in respect thereof, and no change, modification, or waiver of any provision hereof shall be valid unless in writing and signed by the party to be bound. The Application, including any attachments, exhibits, appendices, and supplements thereto, any attachments, schedules, exhibits, appendices, and supplements to the Assistance Agreement, and the Notice of Funds Availability are incorporated in and made a part of this Agreement.

9.2 Assignment. The Recipient may not assign, pledge, or otherwise transfer any rights, benefits, or responsibilities of the Recipient under the Assistance Agreement without the prior written consent of the CDFI Fund. In addition, any assignment by the Recipient shall comply, to the extent applicable, with the Assignment of Claims Act, codified at 31 U.S.C. § 3727.

9.3 Successors. The rights, benefits, and responsibilities of each of the parties to the Assistance Agreement shall inure to their respective successors, subject to this Section 9.3. If the Recipient merges with or is acquired by another entity, the CDFI Fund reserves the right to request information from and examine the new entity, which acquired or merged with the Recipient, to determine its acceptability as a Recipient. If the CDFI Fund determines that the new entity is not eligible or acceptable as a Recipient, or if the new entity does not agree to abide by all the provisions of the Assistance Agreement and shall continue operations and performance as if there were no interruption in the parties to the Assistance Agreement, the CDFI Fund may terminate the continued provision of the CMF Award under the Assistance Agreement and take any or all remedies it deems appropriate in accordance with Article VIII hereof.

9.4 Severability. If any provision of the Assistance Agreement shall for any reason be held to be illegal, invalid, or unenforceable, such illegality, invalidity, or unenforceability shall not affect any other provision of the Assistance Agreement, and the Assistance Agreement shall be construed as if such illegal, invalid, or unenforceable provision had never been contained herein.

9.5 Applicable law. The Assistance Agreement shall be governed by and construed in accordance with Federal law to the extent such Federal law is applicable, and to the extent Federal law is not applicable, the Assistance Agreement shall be governed by and construed in accordance with the law of the State of incorporation or formation of the Recipient.

9.6 Disclaimer of relationships.

(a) The Recipient shall not be deemed to be an agency, department, or instrumentality of the United States merely by virtue of it being a Recipient.

(b) Nothing in the Assistance Agreement, nor any act of the CDFI Fund or the Recipient, shall be construed by either of them, or by a third party, to create any

relationship of third-party beneficiary, principal and agent, limited or general partner or joint venture, or of any association or relationship whatsoever involving the CDFI Fund.

(c) Notwithstanding any other provision of law, the CDFI Fund shall not be deemed to control the Recipient by reason of any CMF Award provided hereunder for the purpose of any other applicable law, provided that the CDFI Fund does not own more than fifty percent (50%) of the equity of the Recipient.

9.7 Counterparts. The Assistance Agreement may be executed in counterparts, each of which shall constitute an original but all of which together shall constitute one and the same instrument.

9.8 Headings. The headings contained in the Assistance Agreement are for convenience only and shall not affect the meaning or interpretation of the Assistance Agreement.

9.9 Amendments.

(a) The terms of the Assistance Agreement may be amended, modified, or supplemented by the mutual written consent of the parties hereto.

(b) If the Recipient proposes to change its executive director (or equivalent) or change the employment status of the signatory of this executed Assistance Agreement, the Recipient must first notify the CDFI Fund in writing and receive approval from the CDFI Fund for such change pursuant to 2 C.F.R. § 200.308(c)(1)(ii) of the Uniform Administrative Requirements.

(c) If the Recipient proposes to make an amendment to Performance Goals, Annual Report due dates, and/or make pre-noncompliance amendments during the Period of Performance, amendment requests must be received by the CDFI Fund in writing with all required documentation no later than sixty (60) days prior to the effective date of the change or end of the applicable Period of Performance. The Recipient must include justification for the amendment when it submits the amendment request to the CDFI Fund.

(d) Notwithstanding the above paragraphs in this Section 9.9, the CDFI Fund may, upon reasonable notice to the Recipient, unilaterally amend the Assistance Agreement for the sole purpose of making ministerial or administrative changes or correcting scrivener's errors.

9.10 Survival of representations and warranties. All representations, warranties, covenants, and agreements made by the Recipient in the Assistance Agreement or the Application, including, without limitation, all Assurances and Certifications contained in the Application, or in any document, report, certificate, financial statement, note, or instrument now or hereafter

furnished in connection with the Assistance Agreement shall survive the execution and delivery of the Assistance Agreement and the provision of any CMF Award pursuant hereto.

9.11 Closeout.

(a) Unless otherwise mutually agreed upon in writing by the Recipient and the CDFI Fund, the Assistance Agreement shall be closed out pursuant to the Uniform Administrative Requirements, at the end of the Period of Performance, when all of the following conditions have been met:

- (i) the CDFI Fund determines that the Recipient has submitted to the CDFI Fund all reports and surveys required under this Assistance Agreement;
- (ii) the CDFI Fund determines that all of the CMF Award provided under the Agreement has been used as permitted by this Assistance Agreement; and
- (iii) the CDFI Fund determines that the Recipient has met all of the requirements under the Act, the CMF Regulations and this Assistance Agreement, including its Performance Goals.

(b) Notwithstanding the above Section 9.11(a), the following sections of the Assistance Agreement shall no longer apply as of the end of the Investment Period: Section 6.12 of this Assistance Agreement.

9.12 Termination. The Assistance Agreement may be terminated in whole or in part by the CDFI Fund, the Recipient, or both parties pursuant to the requirements of 2 C.F.R. § 200.339 of the Uniform Administrative Requirements.

9.13 Applicability of criminal provisions. The criminal provisions of 18 U.S.C. § 657 regarding embezzlement or misappropriation of funds are applicable to all Recipients and Insiders.

9.14 Disclosure of Recipient reports by CDFI Fund. The CDFI Fund will, consistent with applicable law, make reports described in Schedule 1 hereof available for public inspection after deleting any materials necessary to protect privacy or proprietary interests.

9.15 Limitation on CDFI Fund and Federal liability. The liability of the CDFI Fund and the United States Government arising out of the provision of any CMF Award to the Recipient hereunder shall be limited to the amount of such CMF Award. The CDFI Fund shall be exempt from any assessments and other liabilities that may be imposed on controlling or principal shareholders by any Federal law or the law of any State. Nothing herein is intended or should be construed to affect the application of any Federal tax law.

9.16 Compliance with nondiscrimination statutes. The Recipient, and any Approved SPE of the Recipient pursuant to section 3.5(b) of the Assistance Agreement, shall comply with all Federal statutes relating to nondiscrimination, including, but not limited to: Title VI of the Civil Rights Act of 1964; Title IX of the Education Amendments of 1972; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Drug Abuse Office and Treatment Act of 1972; the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970; sections 523 and 527 of the Public Health Service Act of 1912; and Title VIII of the Civil Rights Act of 1968.

9.17 Trafficking in persons.

(a) **Provisions applicable to a Recipient that is a Private Entity.**

(i) The Recipient, its employees, subrecipients under this award, and subrecipients' employees may not—

- (1) Engage in severe forms of trafficking in persons during the period of time that the award is in effect;
- (2) Procure a commercial sex act during the period of time that the award is in effect; or
- (3) Use forced labor in the performance of the award or subawards under the award.

(ii) The CDFI Fund as the Federal awarding agency may unilaterally terminate this award, without penalty, if the Recipient or a subrecipient that is a Private Entity –

- (1) Is determined to have violated a prohibition in paragraph (a)(i) of this Section; or
- (2) Has an employee who is determined by the CDFI Fund official authorized to terminate the award to have violated a prohibition in paragraph (a)(i) of this Section through conduct that is either—

(A) Associated with performance under this award; or

(B) Imputed to the Recipient or the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Government-wide

Debarment and Suspension (Nonprocurement),” as implemented by our agency at 31 C.F.R. § 19.335.

(b) **Provision applicable to a Recipient other than a Private Entity.** The CDFI Fund as the Federal awarding agency may unilaterally terminate this award, without penalty, if a subrecipient that is a Private Entity—

(i) Is determined to have violated an applicable prohibition in paragraph (a)(i) of this Section; or

(ii) Has an employee who is determined by the CDFI Fund official authorized to terminate the award to have violated an applicable prohibition in paragraph (a)(i) of this Section through conduct that is either—

(1) Associated with performance under this award; or

(2) Imputed to the subrecipient using the standards and due process for imputing the conduct of an individual to an organization that are provided in 2 C.F.R. part 180, “OMB Guidelines to Agencies on Government-wide Debarment and Suspension (Nonprocurement),” as implemented by our agency at 31 C.F.R. § 19.335.

(c) **Provisions applicable to any recipient.**

(i) The Recipient must inform the CDFI Fund immediately of any information the Recipient receives from any source alleging a violation of a prohibition in paragraph a.1 of this Section.

(ii) The CDFI Fund’s right to terminate unilaterally that is described in paragraph (a)(ii) or (b) of this Section:

(1) Implements section 106(g) of the Trafficking Victims Protection Act of 2000 (TVPA), as amended (22 U.S.C. 7104(g)), and

(2) Is in addition to all other remedies for noncompliance that are available to the CDFI Fund under this award.

(3) The Recipient must include the requirements of paragraph (a)(1) of this Section in any subaward the Recipient makes to a Private Entity.

(d) **Definitions.** For purposes of this Section:

(i) “Employee” means either:

(1) An individual employed by the Recipient or a subrecipient who is engaged in the performance of the project or program under this award; or

(2) Another person engaged in the performance of the project or program under this award and not compensated by the Recipient including, but not limited to, a volunteer or individual whose services are contributed by a third party as an in-kind contribution toward cost sharing or matching requirements.

(ii) “Forced labor” means labor obtained by any of the following methods: the recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

(iii) “Private entity”:

(1) Means any entity other than a State, local government, Indian tribe, or foreign public entity, as those terms are defined in 2 C.F.R. § 175.25. ii. Includes:

(A) A nonprofit organization, including any nonprofit institution of higher education, hospital, or tribal organization other than one included in the definition of Indian tribe at 2 C.F.R. § 175.25(b).

(B) A for-profit organization.

(iv) “Severe forms of trafficking in persons,” “commercial sex act,” and “coercion” have the meanings given at section 103 of the TVPA, as amended (22 U.S.C. § 7102).

CERTIFICATE OF GOOD STANDING

Instructions:

The Recipient must provide the CDFI Fund with a certificate of good standing from the Secretary of State for the Recipient's State of formation. This certificate, which can typically be acquired online on the Secretary of State website for the Recipient's State of formation, must be dated within 180 days of the date that the Recipient executes the Assistance Agreement. Capitalized terms used, but not defined herein, shall have the respective meanings assigned to them in Schedule 2.

Special information for Recipients that are regulated institutions:

Recipients that are regulated institutions do not have to provide a certificate of good standing.

Special information for tribal Recipients:

Tribe Recipients. Recipients that are Federally or State recognized tribes do not have to provide a certificate of good standing.

Tribally incorporated Recipients. Recipients that are incorporated by a Tribal Government rather than a State may provide the certificate of good standing from the Tribal Government.

If the Tribal Government does not normally provide a certificate of good standing, the Recipient may provide a letter from the Tribal Government confirming the Recipient is validly incorporated and is in good standing under the laws of the Tribal Government and is registered to conduct business. Offices within the Tribal Government that may be able to provide a letter with this information include: officer/secretary of the tribal council, Bureau of Indian Affairs office, executive secretary of the tribe, in house tribal legal office, tribe finance office (head of finance department), or the tribal operations office.

Special information for political subdivisions or instrumentalities of a State:

If the State does not normally provide a certificate of good standing to its political subdivisions or instrumentalities, the Recipient may provide a legal opinion from counsel (including in-house counsel) opining that the Recipient is validly formed/incorporated and is in good standing under the laws of the State and is registered to conduct business.

[Attach certificate of good standing.]